

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,

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,
PETITION FOR EN BANC RECONSIDERATION

Respondents, and

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 Case

No.: 81857

Electronically Filed
Mar 04 2021 12:58 p.m.

Elizabeth A. Brown
Clerk of Supreme Court

**DIRECTOR
DEFENDANTS'**

APPENDIX

(VOLUME I OF IV)

LIPSON NEILSON P.C.

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GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN,
JEFF MARSHALL AND ERIC STICKELS*

CHRONOLOGICAL INDEX

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07/16/2020	Notice of Entry of Order Re: Plaintiff's Motion for Preferential Trial Setting and Issuance of New Discovery	I	DD0212-DD0221
07/17/2020	Appendix to Director Defendants' Opposition to the Motion for Leave to File Fourth Amended Complaint	II-III	DD0222-DD0643
07/22/2020	Director Defendants' Motion for Leave to File a Supplemental Brief in Support of the Opposition to the Plaintiff's Motion for Leave to File Amended Complaint on OST	IV	DD0644-DD0732

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07/09/2020	Errata to Proposed Fourth Amended Complaint Exhibit 37	I	DD0089-DD0211
06/24/2020	Motion for Preferential Trial Setting on OST	I	DD0013-DD0088
05/21/2018	Notice of Entry of Order Granting Stipulation to Extend (Third Request)	I	DD0001-DD0012

07/16/2020	Notice of Entry of Order Re: Plaintiff's Motion for Preferential Trial Setting and Issuance of New Discovery	I	DD0212-DD0221
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DATED: March 4th, 2021.

LIPSON NEILSON P.C.

/s/ Angela Ochoa

By: _____

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing **DIRECTOR DEFENDANTS' APPENDIX (VOLUME I OF IV)** on the following parties, via the manner of service indicated below, on March 4th, 2021:

Via Electronic Service through E-Flex System:

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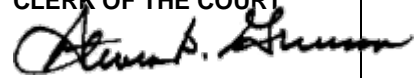
The Honorable Nancy Allf
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Las Vegas, Nevada 89155
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/s/ Juan Cerezo

An employee of LIPSON NEILSON P.C.



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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No.: A-14-711535-C

Dept No.: 27

**NOTICE OF ENTRY OF STIPULATION
AND ORDER TO EXTEND DISCOVERY
DEADLINES AND TO CONTINUE
TRIAL (THIRD REQUEST)**

PLEASE TAKE NOTICE that a Stipulation and Order to Extend Discovery Deadlines and
to Continue Trial (Third Request) was entered by the Court on May 17, 2018. A copy of which is
attached hereto.

DATED this 21st day of May, 2018.

FENNEMORE CRAIG, P.C.

By: /s/ Brenoch R. Wirthlin
JAMES L. WADHAMS, ESQ.
Nevada Bar No. 1115
BRENOCH WIRTHLIN, ESQ.
Nevada Bar No. 10282
*Attorneys for Plaintiff Commissioner of
Insurance For the State of Nevada*

1 **CERTIFICATE OF SERVICE**

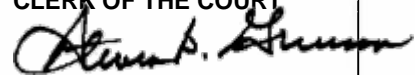
2 I hereby certify that I am an employee of Fennemore Craig, P.C. and that on May 21,
3 2018, service of the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER TO**
4 **EXTEND DISCOVERY DEADLINES AND TO CONTINUE TRIAL (THIRD REQUEST)**
5 was made on the following counsel of record and/or parties via the Court's electronic filing
6 system as follows:

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Attorneys for Defendants/Third-Party Plaintiffs
Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut,
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24 /s/ Morganne Westover
25 An employee of Fennemore Craig, P.C.
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1 **SAO**
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15 *For the State of Nevada*

10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 COMMISSIONER OF INSURANCE FOR
13 THE STATE OF NEVADA AS RECEIVER
14 OF LEWIS AND CLARK LTC RISK
15 RETENTION GROUP,

16 Plaintiff,

17 vs.

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

26 Defendants.

Case No.: A-14-711535-C

Dept. No.: 27

STIPULATION AND ORDER TO
EXTEND DISCOVERY DEADLINES AND
TO CONTINUE TRIAL

(THIRD REQUEST)

23 IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Commissioner
24 of Insurance for the State of Nevada ("Plaintiff"), by and through counsel of record, Fennemore
25 Craig, P.C., Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut,
26 Barbara Lumpkin, Jeff Marshall, Eric Stickels ("Director Defendants"), by and between counsel
27 of record, Lipson Neilson, P.C., and Defendants Uni-Ter Underwriting Management Corp,
28 ("Uni-Ter UMC"), Uni-Ter Claims Services Corp. ("Uni-Ter CS"), and U.S. RE Corporation

1 (“U.S. Re”) (collectively “Uni-Ter/U.S. Re Defendants”), by and through counsel of record
2 McDonald Carano LLP and Broad and Cassel, to extend the discovery deadlines as further
3 detailed in this Stipulation.

4 **1. Summary of Discovery Completed**

5 The Parties have conducted discovery as follows:

6 **A. Early Case Conference**

- 7 • The Parties attended the Early Case Conference, September 28, 2016.

8 **B. Initial and Supplemental Disclosures**

- 9 • Plaintiff served its initial disclosures and nine supplements, producing over
10 295,000 pages of documents (including native excel files) and identifying over 100
11 witnesses.
- 12 • Director Defendants served their initial disclosures, responses to request for
13 production of documents and one supplemental disclosure, producing
14 approximately 14,000 pages of documents and identifying 30 witnesses.
- 15 • Defendant U.S. Re served its initial disclosures and three supplemental
16 disclosures, producing approximately 1,500,000 pages of documents and
17 identifying 29 witnesses.
- 18 • Defendants Uni-Ter UMC and Uni-Ter CS served their initial disclosures and one
19 supplemental disclosure, approximately 100 pages of documents and identifying
20 32 witnesses.

21 **C. Written Discovery**

- 22 • Plaintiff served the following written discovery:

<u>Request</u>	<u>Propounded Upon</u>	<u>Served</u>
1 st Set RFPs	US Re	7/17/17
2 nd Set RFPs	US Re	7/19/17
1 st Set RFPs	Defendants Uni-Ter UMC and Uni-Ter CS	7/17/17

<u>Request</u>	<u>Propounded Upon</u>	<u>Served</u>
2 nd Set RFPs	Defendants Uni-Ter UMC and Uni-Ter CS	7/19/17
3 rd Set RFPs	Defendants Uni-Ter UMC and Uni-Ter CS	3/30/18
1 st Set RFPs	Director Defendants	7/17/17
2 nd Set RFPs	Director Defendants	7/19/17
3 rd Set RFPs	Director Defendants	3/30/18

- Director Defendants served the following written discovery:

<u>Request</u>	<u>Propounded Upon</u>	<u>Served</u>
1 st Set ROGs	Plaintiff	9/5/17
2 nd Set ROGs	Plaintiff	4/13/18
1 st Set RFPs	Plaintiff	4/13/18

- Defendants U.S. Re, Uni-Ter UMC, and Uni-Ter CS served the following written discovery:

<u>Request</u>	<u>Nos.</u>	<u>Propounded Upon</u>	<u>Served</u>
1 st Set RFPs	1-7	Director Defendants	3/5/18

- Defendants Uni-Ter UMC and Uni-Ter CS served the following written discovery:

<u>Request</u>	<u>Propounded Upon</u>	<u>Served</u>
1 st Set RFPs	Plaintiff	3/9/18

D. Third-Party Subpoenas

- Plaintiff served the following Third-Parties with a Subpoena Duces Tecum:

Third-Party Served

1	Catlin Insurance Services, Inc.
2	Marquis Companies I, Inc.
3	Stiefel Consulting, Inc. f/k/a Praxis Claims Consulting, LLC d/b/a Praxis Claims Consulting
4	Marcum LLP f/k/a Marcum & Kleigman LLP
5	Pinnacle Healthcare, Inc.
6	Sophia Palmer Nurses Risk Retention Group, Inc.
7	Community Bank, N.A. f/k/a Oneida Savings Bank
8	Ponce de Leon LTC Risk Retention Group, Inc.
9	J.M. Woodworth Risk Retention Group, Inc.
10	Johnson Lambert, LLP
11	Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
12	Chur Companies NY, Inc. f/k/a Elderwood Affiliates, Inc. d/b/a Elderwood Senior Care
13	Rohm Services Corporation d/b/a Hurlbut Care Communities
14	Prestige Care, Inc. f/k/a Eagle Healthcare, Inc.
15	Congdon, Flaherty, O'Callaghan, Reid, Donlon, Travis & Fishlinger, P.C.
16	Broad and Cassel, P.A.
17	Barclay Damon, LLP f/k/a Hiscock & Barclay, LLP
18	William Fahy
19	Anthony Salerno
20	Henry Hudson LTC Risk Retention Group, Inc.
21	
22	

- 23 • Defendants U.S. Re, Uni-Ter UMC, and Uni-Ter CS served the following Third-
- 24 Parties with a Subpoena Duces Tecum and/or FOIA request:

25 <u>Third-Party Served</u>
26 NV DOI - FOIA

- 27 • Uni-Ter/U.S. Re Defendants served the following Third-Parties with a Subpoena
- 28 Duces Tecum:

Third-Party Served

Milliman, Inc.

Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

2. Discovery to be Completed

The discovery that remains to be completed includes, but is not limited to:

A. Additional Production of Documents

Plaintiff caused 17 Subpoenas Duces Tecum to be served on various third-parties. As of the date of this Stipulation, Plaintiff has received over 23,000 pages of subpoenaed records from Marquis Companies, Praxis and Marcum, which are in the process of being bates labeled and produced to the Defendants. It is anticipated that Plaintiff will receive additional subpoenaed records from the other third-parties. Upon receipt of such records, they will be bates labeled and produced to the Defendants.

B. Additional written discovery

The Parties anticipate additional written discovery including interrogatories and requests for admission, as well as additional requests for production of documents.

C. Depositions and additional third-party subpoenas

The Parties intend to take the depositions of the following parties: (1) Steve Fogg; (2) Robert Chur (3) Mark Garber; (4) Carol Harter; (5) Robert Hurlbut; (6) Barbara Lumpkin; (7) Jeff Marshall; and (8) Eric Stickels. The Parties are currently working with the Director Defendants' counsel to coordinate scheduling of these depositions. Currently, Mr. Fogg's deposition is being scheduled for either June 6, 2018 at June 13, 2018.

The Parties also intend to notice the depositions of the following third-party witnesses: (1) Sanford Elsass; (2) Donna Dalton; (3) Jonna Miller; (4) Lynn Fulstone; and (5) various individuals from the Nevada Division of Insurance, including but not limited to Michael Lynch and Amy Parks. be issued. Finally, Plaintiff will cause Amended Subpoenas Duces Tecum to be issued to Milliman, Inc. and Florida Nurses Association. Finally, after Expert Disclosures and Reports have been produced, the Parties will need to take the depositions of the Experts.

1 **3. Reasons Why Discovery Dates Should Be Amended**

2 This is a case regarding the reasons for the failure of a risk retention group that insured
3 skilled nursing facilities and nurses for approximately 10 years. Prior to commencement of this
4 case, the Uni-Ter Defendants, as custodian of records for the Lewis & Clark Risk Retention
5 Group, provided thousands of files in electronic format to the Receiver of the Lewis & Clark Risk
6 Retention Group. Those documents contained among other things, sensitive HIPAA information
7 of the various claimants and confidential, attorney-client privilege type of documents which
8 included claim notes, claim files and reserves. Some of these documents were similarly provided
9 to the Board of Director Defendants while they served on the Lewis & Clark Risk Retention
10 Group board. If disclosed to third parties, this information could be detrimental to the claims
11 process currently proceeding in the Liquidation Receivership of the Lewis & Clark Risk
12 Retention Group. Processing and handling of this type of information has been time consuming
13 and has taken longer than expected, especially with Defendants refusing to produce documents
14 within their possession, custody or control.

15 During the week of May 7, 2018, Defendant U.S. Re produced documents bates labeled
16 **LC-USRE-0001070-1523020** (which appears to be approximately 1.5 million pages of
17 documents). Both Plaintiff's counsel and the Director Defendants' counsel will need to dedicate
18 substantial time in order to review the massive production of documents. Regardless of this
19 recent production, there is currently a discovery dispute related to production of documents for
20 the years of 2006 to 2009. This could require a Motion to Compel production. In any event,
21 Plaintiff believes that the records associated with the years of 2006 to 2009 could easily be
22 another 1.5 million pages of production, requiring more time for a review.

23 Between March and April 2018, Plaintiff received unredacted documents of
24 approximately 14,000 pages from the Director Defendants. Additionally, Plaintiff is starting to
25 receive subpoenaed records from third-parties (so far approximately 28,000 pages). These
26 documents will need to be reviewed and provided to Plaintiff's expert(s) in order to prepare of
27 their reports (currently due July 13, 2018). Finally, the Parties need to take depositions in this
28 case.

1 This Stipulation to extend time is brought in good faith and not for the purpose of delay.
2 The parties do not anticipate any further requests for continuance. Based on the above, there is
3 good cause to extend discovery and the trial dates as proposed below.

4 **4. Proposed Schedule For Remaining Discovery**

5 Based upon the foregoing, the Parties request that the discovery deadlines be extended for
6 an additional 6 months, as follows:

7 **A. Discovery Cut Off:**

8 Currently: October 30, 2018

9 **Proposed: April 30, 2019**

10 **B. Deadline for Parties to file Motions in Amend:**

11 Currently: July 13, 2018

12 **Proposed: January 14, 2019**

13 **C. Plaintiff shall make initial expert disclosures:**

14 Currently: July 13, 2018

15 **Proposed: January 14, 2019**

16 **D. Defendants shall make initial expert disclosures:**

17 Currently: August 13, 2018

18 **Proposed: February 13, 2019**

19 **E. All parties shall make rebuttal expert disclosures:**

20 Currently: September 14, 2018

21 **Proposed: March 15, 2019**

22 **F. Deadline for Parties to file Dispositive Motions:**

23 Currently: December 5, 2018

24 **Proposed: June 5, 2019**

25 ///

26 ///

27 ///

28 ///

1 **5. Trial date**

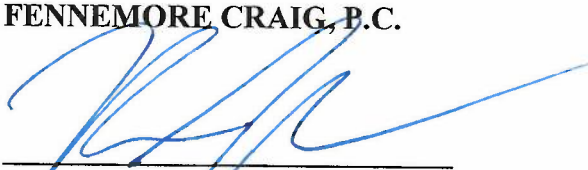
2 The case is currently set for trial to commence in a March 11, 2019 trial stack. The
3 Parties request a continuance of the trial date as the proposed discovery deadline falls after the
4 current trial date.


5 Dated this 15 day of May, 2018.

Dated this 14th day of May, 2018.

6 **FENNEMORE CRAIG, P.C.**

LIPSON NEILSON, P.C.

7 
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16 *For the State of Nevada*



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*Attorneys for Robert Chur, Steve Fogg, Mark
Garber, Carol Harter, Robert Hurlbut,
Barbara Lumpkin, Jeff Marshall, and Eric
Stickels*

15 Dated this ____ day of May, 2018.

16 **MCDONALD CARANO LLP**

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26 Miami, Florida 33131

27 *Attorney for Defendants Uni-Ter Underwriting Management Corp.,*
28 *Uni-Ter Services Corp. and U.S. RE Corporation*

1 **5. Trial date**

2 The case is currently set for trial to commence in a March 11, 2019 trial stack. The
3 Parties request a continuance of the trial date as the proposed discovery deadline falls after the
4 current trial date.

5 Dated this ____ day of May, 2018.

Dated this ____ day of May, 2018.

6 **FENNEMORE CRAIG, P.C.**


LIPSON NEILSON, P.C.

7
8
9 _____
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Las Vegas, Nevada 89144
Attorneys for Robert Chur, Steve Fogg, Mark
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Barbara Lumpkin, Jeff Marshall, and Eric
Stickels

14
15 Dated this 14TH day of May, 2018.

16 **MCDONALD CARANO LLP**

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24 *Attorney for Defendants Uni-Ter Underwriting Management Corp.,*
25 *Uni-Ter Services Corp. and U.S. RE Corporation*
26
27
28

ORDER

Based on the stipulation of the Parties and good cause appearing,

IT IS HEREBY ORDERED that the remaining discovery deadlines in the above-captioned matter are hereby continued as follows:

A. Discovery Cut Off: **April 30, 2019;**

B. Deadline for Parties to file Motions in Amend: **January 14, 2019;**

C. Plaintiff shall make initial expert disclosures: **January 14, 2019;**

D. Defendants shall make initial expert disclosures: **February 13, 2019;**

E. All parties shall make rebuttal expert disclosures: **March 15, 2019;** and

F. Deadline for Parties to file Dispositive Motions: **June 5, 2019.**

IT IS FURTHER ORDERED that the current trial date is vacated. *MLA*

IT IS SO ORDERED.

DATED: 5/16/19.

*LAST STIPULATION TO
CONTINUE.*

Nancy L Alf
DISTRICT COURT JUDGE

Respectfully submitted by:

FENNEMORE CRAIG, P.C.

By: 

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No.: A-14-711535-C

Dept. No.: XXVII

**PLAINTIFF'S MOTION FOR
PREFERENTIAL TRIAL SETTING AND
FOR ISSUANCE OF A NEW DISCOVERY
SCHEDULING ORDER OR, IN THE
ALTERNATIVE, MOTION TO STAY ALL
DISCOVERY DURING THE PENDENCY
OF MOTION FOR LEAVE TO FILE
FOURTH AMENDED COMPLAINT; ON
ORDER SHORTENING TIME**

Hearing on OST Time Requested

Pursuant to this Court's Administrative Order #20-17, Plaintiff, COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP (the "Plaintiff"), by and through its attorneys, the law firm of

1 Hutchison & Steffen, hereby files its Motion for Preferential Trial Setting and for Issuance of a
2 New Discovery Scheduling Order or, in the alternative, Motion to Stay All Discovery During the
3 Pendency of Motion for Leave to File Fourth Amended Complaint (the “Motion”). Pursuant to
4 EDCR 2.26, Plaintiff requests that this Court hear the Motion on an Order Shortening Time.

5 This Motion is based on the Memorandum of Points and Authorities which follows, all
6 documents on file with the Court, the Declaration of Plaintiff’s counsel and the exhibits attached
7 hereto, all of which demonstrate that Plaintiff is entitled to a preferential trial setting and a new
8 discovery scheduling order should issue or, in the alternative, the parties are entitled to a stay of
9 all discovery pending a determination on Plaintiff’s Motion for Leave to File Fourth Amended
10 Complaint.

11 DATED: June 24, 2020.

12 **HUTCHISON & STEFFEN**

13 By: /s/ Brenoch R. Wirthlin, Esq.
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15 Nevada Bar No. 10282
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19 Nevada Bar No. 14285
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Las Vegas, Nevada 89145
Attorneys for Plaintiff

20 **DECLARATION OF BRENOCH R. WIRTHLIN, ESQ. IN SUPPORT OF EX PARTE**
21 **MOTION FOR AN ORDER SHORTENING TIME**

22 I, Brenoch R. Wirthlin, Esq., declare under the penalty of perjury as follows:

23 1. I am an attorney at the law firm of Hutchison & Steffen, counsel for Plaintiff,
24 COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF
25 LEWIS AND CLARK LTC RISK RETENTION GROUP (the “Plaintiff”), in the above-
26 referenced action.

27 2. I am aware of and have personal knowledge of the matters contained herein.
28

1 3. I assert each of the facts, provided in the Statement of Facts following this
2 Declaration, as if fully stated herein and I confirm such facts are true and correct to the best of
3 my knowledge.

4 4. On June 18, 2020, this Court held a continued hearing on Plaintiff's Motion for
5 Clarification related to lifting of the discovery stay ("June 18 Hearing").

6 5. As this Court is aware, a stay for all purposes was originally put in place by this
7 Court on March 14, 2019, due to Director Defendants' Writ Petition before the Nevada Supreme
8 Court and then the Chief Judge of this Court (the Honorable Linda Bell) issued a stay of
9 discovery, as well as a stay/tolling of NRCP 41(e).

10 6. Given the Nevada Supreme Court recently rendered its final decision on the
11 Director Defendants' Writ Petition, on June 18, 2020 this Court ordered the discovery stay to be
12 lifted on July 1, 2020.

13 7. NRCP 41(e) remains stayed/tolled based upon Administrative Order #20-17.

14 8. With the lifting of the discovery stay, the parties only have approximately three
15 and a half (3 ½) months left to complete discovery.

16 9. Upon the stay being lifted, because one day remained under the prior scheduling
17 order for the parties to move to amend, Plaintiff intends on immediately filing its Motion for
18 Leave to File Fourth Amended Complaint ("Motion to Amend") on July 2, 2020.

19 10. Plaintiff agrees that the filing of its Motion to Amend is necessary in order to
20 move this matter forward, and will do so as set forth above.

21 11. At the time of the imposition of the stay by this Court on March 14, 2019, one
22 judicial day remained under the then-operative scheduling order ("Prior Scheduling Order") for
23 all parties to move to amend, and for Plaintiff to submit its initial expert disclosures.

24 12. Plaintiff is also prepared to make its initial expert disclosures on July 2.
25 However, if Plaintiff is required to do so, Defendants have suggested they will seek to stay
26 discovery pending the resolution of the Motion to Amend. Should Defendants do so, Defendants
27 would have Plaintiff's initial expert disclosure for an extended, unknown period, possibly several
28 months without the need to serve their own initial expert disclosures.

- 1 13. This would unfairly and severely prejudice Plaintiff.
- 2 14. Because there was one judicial day remaining under the Prior Order, Plaintiff's
- 3 initial expert disclosures could conceivably be due as early as July 2.
- 4 15. If Plaintiff is required to make such a disclosure, the relief requested will be moot
- 5 as Defendants will have Plaintiffs disclosure. Thus, Plaintiff respectfully submits the instant
- 6 Motion is necessary to be heard on shortened time to resolve certain discovery and trial concerns
- 7 without delay.
- 8 16. Time is of the essence in having this Motion heard as quickly as possible.
- 9 17. Setting the hearing on this Motion on shortened time will not prejudice the
- 10 Defendants.
- 11 18. Plaintiff requests that the hearing on its Motion be set for prior to **July 1, 2020** as
- 12 Plaintiff's initial expert disclosures are due on July 2, 2020.

13 I declare under the penalty of perjury the foregoing is true and correct.

14 DATED: June 24, 2020.

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/s/ Brenoch R. Wirthlin, Esq.
BRENOCH R. WIRTHLIN, ESQ.

ORDER SHORTENING TIME

It appearing to the satisfaction of the Court, and good cause appearing therefore,

IT IS HEREBY ORDERED that **PLAINTIFF'S MOTION FOR PREFERENTIAL TRIAL SETTING AND FOR ISSUANCE OF A NEW DISCOVERY SCHEDULING ORDER OR, IN THE ALTERNATIVE, MOTION TO STAY ALL DISCOVERY DURING THE PENDENCY OF MOTION FOR LEAVE TO FILE FOURTH AMENDED COMPLAINT** shall be heard on the 10 day of _____, 2020 at 11:00 a.m., REMOTELY (via Blue Jeans Video Conferencing system), in Department XXVII, or as soon thereafter as counsel may be heard.

July

IT IS HEREBY FURTHER ORDERED that you have the choice to appear either by phone or computer/video, using the following instructions:

Dial the following number: 1-408-419-1715

Meeting ID: TBD

Meeting URL: <https://bluejeans.com/> _____

To connect by phone dial the number provided and enter the meeting ID followed by # via Blue Jeans.

IT IS HEREBY FURTHER ORDERED that the deadline for Defendants to file and serve their oppositions to such Motion is the 3 day of July, 2020.

IT IS HEREBY FURTHER ORDERED that the deadline for Plaintiff to file and serve its reply brief in support of its Motion is the 7 day of _____, 2020.

DATED this _____ day of June, 2020.

July

Dated this 24th day of June, 2020

DISTRICT COURT JUDGE
Nancy L Alf

A39 A01 DBD2 BD95

Nancy Alf

Respectfully submitted by:
HUTCHISON & STEFFEN
By: /s/ Brenoch R. Wirthlin, Esq.
BRENOCH R. WIRTHLIN, ESQ.
Nevada Bar No. 10282
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Attorneys for Plaintiff

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF RELEVANT FACTS**

3 **A. The Receivership and authority to initiate this Lawsuit**

4 When Lewis and Clark LTC Risk Retention Group, Inc. (“L&C”) became insolvent in
5 2012, Nevada law required that the Commissioner of Insurance step in to take over the failed
6 insurer. On November 15, 2012, the Commissioner initiated the L&C Receivership action, case
7 no. A-12-672047-B (the “Receivership Action”). Thereafter, Judge Gonzales entered an Order of
8 Liquidation (“Liquidation Order”) authorizing the Commissioner to commence any action or
9 proceeding on behalf of L&C within two years of December 26, 2012, as well as directing the
10 Receiver to liquidate the business Lewis & Clark LTC Risk Retention Group, Inc. (“L&C”) and
11 to secure possession all documents pertaining to L&C.

12 In or about October, 2013, Uni-Ter Underwriting Management Corp. (“Uni-Ter UMC”),
13 Uni-Ter Claims Services Corp. (“Uni-Ter CS”) and U.S. Re Corporation (“US Re”) provided the
14 Receiver with 125 boxes of paper documents and two hard drives containing electronic data, and
15 represented to the Receiver that these documents were all they had pertaining to L&C. As
16 evidenced below, Uni-Ter UMC, Uni-Ter CS and US Re were in possession of over an
17 additional 1.5 million pages of documents, which it would take Uni-Ter UMC, Uni-Ter CS and
18 US Re almost five (5) additional years to provide to the Receiver.

19 **B. Filing of this Lawsuit and delays in conducting discovery**

20 On December 23, 2014, Plaintiff filed this instant lawsuit against Uni-Ter UMC, Uni-Ter
21 CS, US Re and the Director Defendants¹ (collectively, the “Defendants”). The delays to
22 conducting discovery included attempts to proceed with a mediation/settlement conference and
23 multiple Motions to Dismiss filed by the Defendants.

24 **1. Mediation/Settlement Conferences**

25 Immediately after initiating this lawsuit, the Director Defendants indicated they were
26

27
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¹ “Director Defendants” shall refer to Defendants: Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels.

1 interested in resolving this lawsuit short of defending against the claims. Plaintiff worked for the
2 better part of the first year of litigation to coordinate a mediation/settlement conference,
3 including confirming that Director Defendants were earnest in wanting to participate in good-
4 faith, reaching out to various mediators/settlement judges and coordinating all parties' schedule.
5 At the last minute, the Director Defendants decided not to proceed with mediation/settlement
6 conference and instead decided to file their first Motion to Dismiss.

7 In or around the summer of 2018, Uni-Ter CS, Uni-Ter UMC and US Re reached out to
8 Plaintiff to discuss the possibility of settlement. While Plaintiff was apprehensive to go forward
9 with another delay while proceeding with a settlement conference, Plaintiff agreed to a
10 settlement conference, as long as all Defendants participated in good-faith. While a settlement
11 conference was actually held in July 2018, the Parties were unable to resolve this lawsuit.²

12 **2. Defendants' Motions to Dismiss**

13 From December 11, 2015 through August 12, 2016, the Defendants filed five (5) separate
14 Motions to Dismiss, of which Plaintiff opposed each one and filed three amended Complaints.
15 This Court denied the final set of Motions to Dismiss and the Defendants filed Answers to the
16 Third Amended Complaint.

17 **C. Discovery conducted and completed to date**

18 After the extensive Motion practice initiated by the Defendants, as well as the attempts to
19 resolve this matter through settlement conferences, the parties proceeded with discovery. The
20 discovery conducted and completed to date is summarized as follows:

21 **1. Early Case Conference and Initial and Supplemental Disclosures**

- 22 • The Parties attended the Early Case Conference, September 28, 2016.
- 23 • Plaintiff served its initial disclosures and sixteen supplements, producing over
24 300,000 pages of documents (including native excel files) and identifying over 100 witnesses.
- 25 • Director Defendants served their initial disclosures and supplemental disclosures,
26 producing over 14,000 pages of documents and identifying 30 witnesses.

27 _____
28 ² Prior to proceeding with a mediation/ settlement conference, Plaintiff served Offers of Judgments on the
Defendants in March of 2018, however, such Offers were not accepted.

• Defendants Uni-Ter UMC, Uni-Ter CS and US Re served their initial disclosures and several supplemental disclosures, producing **over 1.8 million pages** of documents. Almost all of the over 1.8 million pages of documents was produced between May and August 2018. As a result of the very late productions of over 1.8 million pages, Plaintiff's counsel has had to spend a considerable amount of time and efforts in reviewing, analyzing and culling through the massive amount of documents in a relatively short amount of time. Such time and efforts were necessary in order to properly and appropriately prosecute Plaintiff's case, including taking the Defendants' depositions.

2. Written Discovery

• From July 2017 through March 2019, Plaintiff served the following written discovery:

<u>Request</u>	<u>Nos.</u>	<u>Propounded Upon</u>	<u>Served</u>
1 st Set RFPs	1-67	US Re	7/17/17
2 nd Set RFPs	68-81	US Re	7/19/17
1 st Set RFPs	1-62	Defendants Uni-Ter UMC and Uni-Ter CS	7/17/17
2 nd Set RFPs	63-465	Defendants Uni-Ter UMC and Uni-Ter CS	7/19/17
3 rd Set RFPs	466-474	Defendants Uni-Ter UMC and Uni-Ter CS	3/30/18
1 st Set RFPs	1-84	Director Defendants	7/17/17
2 nd Set RFPs	85-96	Director Defendants	7/19/17
3 rd Set RFPs	97-104	Director Defendants	3/30/18

• Director Defendants served the following written discovery:

<u>Request</u>	<u>Nos.</u>	<u>Propounded Upon</u>	<u>Served</u>
1 st Set ROGs	1-67	Plaintiff	9/5/17
2 nd Set ROGs	24-30	Plaintiff	4/13/18
1 st Set RFPs	1-5	Plaintiff	4/13/18

• Defendant U.S. Re served the following written discovery: **N/A.**

- 1 • Defendants Uni-Ter UMC and Uni-Ter CS served the following written
2 discovery:

3

<u>Request</u>	<u>Nos.</u>	<u>Propounded Upon</u>	<u>Served</u>
4 1 st Set RFPs	1-19	Plaintiff	3/9/18

5

6 **3. Third-Party Subpoenas**

- 7 • From November 2017 through March 2019, Plaintiff served over 20 Subpoenas.
8 The following Third-Parties were served with a Subpoena Duces Tecum: Catlin Insurance
9 Services, Inc.; Marquis Companies I, Inc.; Stiefel Consulting, Inc. f/k/a Praxis Claims
10 Consulting, LLC d/b/a Praxis Claims Consulting; Marcum LLP f/k/a Marcum & Kleigman LLP;
11 Pinnacle Healthcare, Inc.; Sophia Palmer Nurses Risk Retention Group, Inc.; Community Bank,
12 N.A. f/k/a Oneida Savings Bank; Ponce de Leon LTC Risk Retention Group, Inc.; J.M.
13 Woodworth Risk Retention Group, Inc.; Johnson Lambert, LLP; Stearns Weaver Miller Weissler
14 Alhadeff & Sitterson, P.A.; Chur Companies NY, Inc. f/k/a Elderwood Affiliates, Inc. d/b/a
15 Elderwood Senior Care; Rohm Services Corporation d/b/a Hurlbut Care Communities; Florida
16 Nurses Association; Prestige Care, Inc. f/k/a Eagle Healthcare, Inc.; Milliman, Inc.; Congdon,
17 Flaherty, O'Callaghan, Reid, Donlon, Travis & Fishlinger, P.C.; Broad and Cassel, P.A.; Barclay
18 Damon, LLP f/k/a Hiscock & Barclay, LLP; William Fahy; Anthony Salerno; and Henry Hudson
19 LTC Risk Retention Group, Inc.

- 20 ▪ These Subpoenas required Plaintiff to: (1) apply for issuance of foreign
21 subpoenas in the states where the deponents were locate; (2) effectuate
22 service across the country, from Washington to New York to Florida; and
23 (3) provide continuous, immense follow-up in order to receive the
24 requested records.
25 ▪ All records received to date by Plaintiff have already been produced.

- 26 • Director Defendants served FOIA request on the NV Division of Insurance, in
27 which the following bates labeled records were produced on 3/21/18: LC000001-5642; BB-
28 00001-855; JM-0001-52; and KS-0001-536.

- Defendants Uni-Ter UMC, Uni-Ter CS and US Re served the following Third-

Parties with a Subpoena Duces Tecum: Milliman, Inc.; Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. Given the confidential and privilege of the communications and records from the Stearns Weaver firm, Plaintiff had to perform an extensive review of such documents prior to their production. The Stearns Weaver documents have been produced.

4. Depositions

- To date, the Parties have taken the following depositions:

<u>Deponent</u>	<u>Deposition Date</u>	<u>Deposed By</u>
Robert Greer (as Plaintiff's PMK/30(b)(6))	11/8/18	Defendants
Steve Fogg	11/15/18	Plaintiff and Defendants Uni-Ter UMC, Uni-Ter CS and US Re
Eric Stickels (first half)	11/28/18	Plaintiff and Defendants Uni-Ter UMC, Uni-Ter CS and US Re
Jeff Marshall	12/11/18	Plaintiff and Defendants Uni-Ter UMC, Uni-Ter CS and US Re
Carol Harter	12/17/18	Plaintiff and Defendants Uni-Ter UMC, Uni-Ter CS and US Re
Robert Hurlbut	1/30/19	Plaintiff and Defendants Uni-Ter UMC, Uni-Ter CS and US Re
Joseph Fedor (as US Re's PMK/30(b)(6))	2/19/19	Plaintiff
Anthony Ciervo (as US Re's PMK/30(b)(6))	2/20/19	Plaintiff
Constance Akridge, Esq.	3/1/19	Plaintiff and Defendants Uni-Ter UMC, Uni-Ter CS and US Re
Richard Davies (as Uni-Ter's PMK/30(b)(6))	3/13/19-3/14/19	Plaintiff and Director Defendants

5. Experts

- Currently, Plaintiff is to set to serve its Initial Expert Disclosures on July 2, 2020. Since the early stages of this litigation, Plaintiff and its counsel retained the experts and have constantly been providing documents, records and updates to the experts to assist them with

1 preparing their reports. Since the Nevada Supreme Court disavowed *Shoen*, the Plaintiff's
2 experts had address matters related to the *Chur* decision in their reports.

3 **6. Motion to Amend Complaint**

4 • With the discovery conducted and completed to date, as well as based off the
5 Nevada Supreme Court disavowing *Shoen*, the Plaintiff is filing its Motion to Amend Complaint
6 on July 2, 2020. The Plaintiff seeks leave to file its Fourth Amended Complaint.

7 **D. Director Defendants' Writ Petition, Stay imposed and decision**

8 Due to this Court's denial of the Director Defendants' Motion for Judgment on the
9 Pleadings, the Director Defendants filed a Petition for Writ of Mandamus/Prohibition (the "Writ
10 Petition") with the Nevada Supreme Court on March 13, 2019. With the Director Defendants
11 filing their Writ Petition, this Court imposed a stay on all proceedings effective as of March 14,
12 2019. Given the holding in *Shoen*, this Court's decision to deny the Director Defendants' Motion
13 for Judgment on the Pleadings was completely supported. In issuing a decision on the Director
14 Defendants' Writ Petition, the Nevada Supreme Court has given this Court the discretion of
15 whether to grant a Motion to Amend the Complaint. For the reasons that will be asserted in
16 Plaintiff's Motion to Amend, Plaintiff respectfully submits this Court should grant Plaintiff leave
17 to file its Fourth Amended Complaint.

18 **E. Discovery Stay lifted and Plaintiff's continuing efforts to prosecute case**

19 On June 18, 2020, this Court ordered the lifting of its stay (imposed on March 14, 2019)
20 effective as of July 1, 2020. With the lifting of the discovery stay, Plaintiff is eager to once again
21 recommence discovery and proceed to trial without any further delays.

22 **1. Plaintiff's ongoing discovery efforts**

23 Plaintiff has a clear, straight-forward discovery plan, which includes but is not limited to:

24 • **Written Discovery.** Plaintiff will serve additional written discovery on all
25 Defendants, including interrogatories, requests for admission, and requests for production.

26 • **Depositions and Subpoenas.** Plaintiff will be seeking leave to conduct numerous
27 out-of-state depositions of key witnesses throughout the United States. Plaintiff will need to take
28 depositions in Georgia, Florida, New York, Massachusetts, and Oregon. Those depositions

1 include but are not limited to: all remaining Director defendants, U.S. Re's CEO (Tal Piccione)
2 and former employees of Uni-Ter and US Re, including Sanford Elsass, Donna Dalton, Jonna
3 Miller and Christine McCarthy, as well as additional time to depose Uni-Ter and US Re's PMKs.
4 Additional time to depose the PMK witnesses is required in part due to their errata to their
5 deposition testimonies, which will be further addressed in a separate motion. Further, in
6 deposing third-party witnesses, Plaintiff will need to serve foreign deposition subpoenas in
7 several states, including New York, which is the epicenter of COVID-19 outbreak in the U.S.

8 • **Experts.** Plaintiff's Expert Disclosures are set to be disclosed on July 2, 2020,
9 unless otherwise stayed by this Court. Defendants' Initial Expert Disclosures are due 30 days
10 thereafter, with all parties' rebuttal expert disclosures being due 30 days after that. After Expert
11 Disclosures and Reports have been produced, the parties will need to take the depositions of all
12 experts.

13 • **Plaintiff's Motion to Amend.** As previously indicated, on July 2, 2020 Plaintiff
14 will be filing a motion for leave to file a Fourth Amended Complaint.

15 • **Dispositive Motions.** Given the new standard imposed upon this case by the
16 Supreme Court of Nevada, as well as the substantial factual evidence already obtained, Plaintiff
17 anticipates filing dispositive motions to resolve several issues before the Court, and to narrow the
18 issues remaining for discovery and trial.

19 **2. Preferential Trial Setting**

20 Since initiating this Lawsuit, Plaintiff has taken considerable and diligent efforts to
21 prosecute its case, including conducting and completing quite a bit of discovery. Despite the
22 unforeseen delays caused by: (1) the significant motion practice at the early stages of this
23 litigation; (2) the Defendants requesting settlement conferences; (3) Defendants Uni-Ter UMC,
24 Uni-Ter CS and US Re's withholding of **over 1.8 million pages** of documents until 3.5 years
25 into this litigation; (4) the stay imposed as a result of the Director Defendants' Writ Petition, as
26 well as the Nevada Supreme Court disavowing *Shoen*; and (5) the stay imposed due to COVID-
27 19, Plaintiff is gearing up to complete the remaining discovery as expeditiously as possible.

28

Before the stay imposed by this Court on March 14, 2019, this case was set for trial to start on October 21, 2019. Additionally, under NRCP 41(e), with initiation of this lawsuit on December 23, 2014, at the time of the stay, Plaintiff had until December 22, 2019 (i.e., **283 days or just over 9 months remaining**) to bring its case to trial, however, this Court's stay tolled the time period under NRCP 41(e). While this Court's Administrative Order #20-17 continues to stay and /toll NRCP 41(e), Plaintiff requests to have this matter set for a preferential trial setting so that this matter can be fully adjudicated and brought to trial within the next 8-9 months (or by **March 31, 2021**), which would alleviate any and all NRCP 41(e) timeline concerns presented as a result of the COVID-19 pandemic.

Under Administrative Order #20-17, this Court will:

“...prioritize trials, beginning with criminal cases involving interstate compact issues and criminal cases in which the defendant has invoked speedy trial rights. After those cases, the priority will be civil cases with preferential trial settings; older in-custody criminal cases; **and older civil cases, particularly those with NRCP 41(e) timeline concerns.**”

See A.O. #20-17 (emphasis added), pg. 16, lines 19-23, attached as **Exhibit 1**. Counsel for Defendants Uni-Ter UMC, Uni-Ter CS and US Re has already indicated that he believes there are concerns with the “5 Year Rule” and that the “case needs to move forward.” See G. Ogilvie's e-mail dated June 23, 2020, attached as **Exhibit 2**. While Plaintiff disagrees, the preferential trial setting requested will alleviate any possible concerns. Further, under A.O. #20-17, this case must be prioritized and be given a preferential trial setting to occur no later than March 31, 2021.

3. Issuing a New Discovery Scheduling Order

Alongside a preferential jury trial setting, Plaintiff respectfully submits that this Court should issue a new discovery scheduling order as the prior scheduling order is out of date. Plaintiff provides a table of the days remaining under the prior scheduling order and the proposed new discovery deadlines based upon the lifting of the stay on July 1, 2020:

<u>Description</u>	<u>No. of Days Remaining</u>	<u>Proposed New Deadline</u>
Discovery Cut-Off	109 days	October 19, 2020

1	Last Day to Amend or Add Parties	1 day	July 2, 2020
2	Plaintiff's Initial Expert Disclosures	1 day	July 2, 2020
3	Defendants' Initial Expert Disclosures	32 days	August 3, 2020
4	Rebuttal Experts Disclosures	61 days	September 2, 2020
5	File Dispositive Motions	144 days	November 23, 2020

6
7 See prior Discovery Scheduling Order, attached as **Exhibit 3**.

8 **4. Facts related to alternative request to stay discovery**

9 In the very same e-mail where the Uni-Ter Defendants' counsel raises NRCP 41(e)
10 concerns, he asserts the following:

11 The Receiver has had a 15-month extension while the case has been stayed to
12 prepare its initial expert disclosures, and the Receiver has the benefit of knowing
13 what its proposed amended pleading alleges. Meanwhile, US Re and Uni-Ter
(both of which opposed the stay) have been stymied while the Receiver and the
director defendants litigated the writ petition.

14 ...

15 US Re and Uni-Ter may or may not seek to extend some deadlines. We will not
16 be in a position to evaluate this until we have the opportunity to review the
17 Receiver's proposed amended pleading and expert disclosures. So, we cannot
enter into the stipulation you propose.

18
19 See Exhibit 2. It was the Director Defendants who filed a Writ Petition, which necessitated the
20 imposition of a stay. The Nevada Supreme Court completely disavowed prior case law in its
21 order regarding the Directors' petition. This resulted in Plaintiff needing to adapt to the order on
22 the writ petition. However, the Plaintiff's case against the Uni-Ter UMC, Uni-Ter and US Re
23 remains substantially unchanged as a result of the *Chur* decision.

24 If the Prior Scheduling Order is applicable only to Plaintiff, forcing Plaintiff to make its
25 initial expert disclosures on July 2, only to see Defendants seek to delay their own initial expert
26 disclosures until after the Motion to Amend is resolved, this would unduly and unfairly prejudice
27 Plaintiff. Normally both sides' Initial Expert Disclosures would be due on the exact same date
28 which would coincide with the deadline to file a Motion to Amend or Add Parties.

1 Plaintiff has and continues to progress its case forward and seeks relief from this Court to
2 set trial and issue a new discovery scheduling order. As an alternative to this Court providing a
3 preferential trial setting and issuing a new discovery scheduling order, Plaintiff would request
4 that all discovery be stayed during the pendency of Plaintiff's Motion for Leave to File its Fourth
5 Amended Complaint. It would be unfair for Plaintiff to have to produce its Initial Expert
6 Disclosures, only to see the Defendants not have to respond to Plaintiff's initial expert
7 disclosures for 60-90 days, or possibly even longer. Defendants already have an advantage given
8 their initial expert reports are due a month after Plaintiff's expert reports are due. Based upon
9 communications from Defendants' counsel, including their unwillingness to stipulate to the relief
10 requested by them at the June 18 Hearing, Plaintiff requests the relief sought herein.

11 **II. LAW AND ARGUMENT**

12 **A. Plaintiff requests a preferential trial setting.**

13 Although the stay imposed by this Court stayed and tolled the timeline under NRCP 41(e)
14 and the Administrative Order #20-17 continues to stay and toll NRCP 41(e), Defendants have
15 asserted concerns with the NRCP 41(e) timeline. *See* Exhibits 1-2. Under Administrative Order
16 #20-17, courts in this district are to:

17 "...prioritize trials, beginning with criminal cases involving interstate compact
18 issues and criminal cases in which the defendant has invoked speedy trial rights.
19 After those cases, the priority will be civil cases with preferential trial settings;
older in-custody criminal cases; and older civil cases, particularly those with
NRCP 41(e) timeline concerns."

20 *See* Exhibit 1 (emphasis added), pg. 16, lines 19-23. Here, in order to resolve and alleviate
21 NRCP 41(e) timeline concerns, Plaintiff seeks a preferential trial setting, with a jury trial to be
22 set within the next 8-9 months (or by March 31, 2021).

23 Administrative Order #20-17 gives this Court the authority to provide Plaintiff with a
24 preferential trial setting due to the COVID-19 pandemic and given this is an older civil case with
25 NRCP 41(e) timeline concerns. Irrespective of the COVID-19 pandemic, this Motion satisfies
26 the factors set forth in *Carstarphen v. Milsner*, 270 P. 3d 1251, 1256, 128 Nev. 55, 63 (2012)
27 (concluding that in resolving a motion for a preferential trial date brought to avoid dismissal
28 under NRCP 41(e)'s five-year rule, district courts must evaluate (1) the time remaining in the

1 five-year period when the motion is filed, and (2) the diligence of the moving party and his or
2 her counsel in prosecuting the case).

3 Here, as addressed above, Plaintiff's Motion for Preferential Trial Setting is filed with
4 more than 283 days or just over 9 months remaining. Further, as set forth in the Statement of
5 Facts, Plaintiff demonstrates the requisite diligent efforts it has taken in prosecuting its case.
6 Plaintiff's diligent efforts include, but is not limited to: (1) early attempts toward resolution short
7 of further litigation; (2) serving Offers of Judgments on Defendants; (3) when resolution proved
8 unsuccessful, Plaintiff was forced to oppose five separate Motions to Dismiss and amend its
9 Complaint three times over the course of a year; (4) proceeding with discovery, including
10 serving over 20 Foreign Subpoenas across the nation, reviewing/analyzing/culling through **1.8**
11 **million pages** of documents produced by Defendants Uni-Ter and US Re after 3.5 years of
12 litigation, propounding and responding to written discovery requests, working with its experts
13 and preparing/filing its Motion to Amend given the Nevada Supreme Court disavowed *Shoen*;
14 and (5) opposing Director Defendants' Motion for Judgment on the Pleadings and addressing
15 their subsequent Writ Petition. Plaintiff continues to progress its case forward and has set out an
16 ongoing discovery plan.

17 Consistent with *Carstarphen* decision, this Court should determine that Plaintiff's Motion
18 is timely and appropriately filed as more than three (3) months remain in the five-year period and
19 that the record reflects Plaintiff diligently moved its case forward. *Id.*³ But for the stay imposed
20 as a result of the Director Defendants' Writ Petition, Plaintiff had a trial date well within 5-year
21 period. Further, if not for the COVID-19 pandemic, Plaintiff would likely not have a need to
22 seek a preferential trial setting.

23 ///

24 ///

25
26 ³ The *Carstarphen* Court determined that in "[a]pplying these factors to the present case, because
27 appellant filed his preferential trial motion with more than three months remaining in the five-
28 year period and the record reflects that appellant diligently moved his case forward, we conclude
that the district court abused its discretion in denying appellant's motion for a preferential trial
date."

1 **B. Plaintiff requests this Court issue a new discovery scheduling order.**

2 This Court is well within its inherent authority to issue a new discovery scheduling order.
3 *See DeChambeau v. Blakenbush*, 134 Nev. 625, 431 P.3d 359, 360-361 (Ct. App. 2018)
4 (discussing new scheduling order on remand after reversal of summary judgment.); *Halverson v.*
5 *Hardcastle*, 123 Nev. 245, 262, 163 P.3d 428, 440 (2007) (All courts, including this Court, have
6 the “inherent authority to administrate its own procedures and to manage its own affairs”). Based
7 upon the lifting of the stay on July 1, 2020 and the time remaining under the prior discovery
8 scheduling order (Exhibit 3), Plaintiff respectfully submits that this Court should issue a new
9 discovery scheduling order consistent with the following table:

10

<u>Description</u>	<u>No. of Days Remaining</u>	<u>Proposed New Deadline</u>
Discovery Cut-Off	109 days	October 19, 2020
Last Day to Amend or Add Parties	1 day	July 2, 2020
Plaintiff’s Initial Expert Disclosures	1 day	July 2, 2020
Defendants’ Initial Expert Disclosures	32 days	August 3, 2020
Rebuttal Experts Disclosures	61 days	September 2, 2020
File Dispositive Motions	144 days	November 23, 2020

17

18

19 **C. Alternatively, Plaintiff submits that this Court should stay all discovery**
20 **during pending the resolution of Plaintiff’s Motion to Amend.**

21 In the alternative, Plaintiff respectfully submits that this Court should stay all discovery
22 during the pendency of the Motion and any related motions thereto. At the June 18 Hearing on
23 the Motion for Clarification, counsel for Defendants Uni-Ter and US Re, articulated an
24 underlying concern regarding discovery moving forward in this matter:

25 I don’t – the problem here, Your Honor, is the case is kind of stuck right now
26 until the receiver does two things. One, files its motion for leave to amend
27 because the receiver’s recent filings indicate that, in fact, the receiver will be
28 seeking to amend its complaint to file a third amended complaint to assert
 additional allegations to support its causes of action against the director
 defendants.

1 Until that's done, the case is kind of stuck in the water. We can't move forward
2 with additional scheduling orders because we don't know what this case is going
3 to look like on the other side of the either granting or denying of that motion for
4 leave to amend. We don't even know what that -- that new pleading is going to
5 look like.

6 So my concern is that until . . . we have final operative pleadings, we don't know
7 how to proceed with this case other than to conduct some discovery that was --
8 that's going to be needed no matter what. But in terms of scheduling deadlines
9 and a trial date, we are -- we're at a standstill until we see what the case actually
10 shapes up to be.

11 Exhibit 4, at 6:4-22. While Plaintiff believes its Motion to Amend has substantial merit, Plaintiff
12 cannot presume to know what the ruling of this Court will be on the Motion to Amend, and
13 agrees that an issue facing the parties is the burden of having to disclose experts and conduct
14 extensive and expensive discovery despite not knowing whether this Court will grant or deny the
15 Motion to Amend. In light of this, Plaintiff believes the Uni-ter Defendants' proposal makes
16 sense. As such, counsel for Plaintiff reached out to the Defendants to see if they would agree to
17 that resolution. Strangely, despite the Uni-ter Defendants' counsel having made the initial
18 proposal, Defendants would not agree. *See* Exhibit 2.

19 Plaintiff recognizes this Court acknowledged it would not grant any further continuances
20 of discovery because any such continuance would adversely affect the parties' ability to have this
21 case heard within the time constraints of NRCP 41(e). Due to AO 20-17, however, Plaintiff
22 submits that there are no concerns that staying discovery, as contemplated here, will burden the
23 Court or parties as to the five-year rule, as NRCP 41(e) remains stayed/tolled based upon AO 20-
24 17.⁴

25 Importantly, Plaintiff fears that if discovery is not stayed as requested herein, it will be
26 severely prejudiced, as noted above. Defendants' refusal to enter into a stipulation resolving this
27 issue strongly suggests they intend to seek to have the Plaintiff make its initial expert disclosures,
28 then seek a stay of discovery so they are not required to respond with their initial expert

⁴ In fact, counsel for the Uni-ter Defendants expressly recognized at the June 18 Hearing that
"Rule 41 is -- continues to be tolled, and certain discovery is tolled under AO 20-17." *See*
Exhibit 4, at p. 6.

1 disclosures in 30 days as provided in the Prior Scheduling Order.

2 Defendants' refusal to agree to their own proposal suggests they will ask for a
3 continuance of all discovery deadlines so that, understandably, they will not have to incur the
4 costs and expend the resources of engaging in extensive discovery and expert disclosures when it
5 is unclear what the Motion's outcome will be. The concerning issue is that Defendants, as Uni-
6 Ter Defendants' counsel's statement implies, will very likely do so only after Plaintiff has made
7 its expert disclosures—effectively ensuring Defendants will have up to 60, 90, or even more
8 additional days to review and rebut the opinions therein. This runs contrary to the Prior
9 Scheduling Order, and gives Defendants an inordinate amount of time to review and rebut
10 Plaintiff's expert disclosures. This would be highly prejudicial and go against all notions of
11 fundamental fairness.

12 The reality is that Plaintiff has had to adjust its theories of the case due to the Opinion
13 and has not simply had a 15-month extension to the discovery deadlines. Further, this same
14 extension applied to all parties equally and gave Defendants the same additional period to
15 prepare for expert disclosures. And, as Uni-ter Defendants' counsel correctly notes, at this point
16 we do not know for sure what the final operative pleadings will look like. Thus, allowing
17 Defendants any additional time beyond the 30-day window between Plaintiff and Defendants'
18 respective initial expert disclosure deadlines, provided in the Prior Scheduling Order, is unfair
19 and highly prejudicial to Plaintiff.

20 Although Plaintiff is ready to disclose expert and proceed with discovery when the Stay
21 is lifted July 1, 2020, Plaintiff understands the burden of moving forward with discovery when it
22 is unclear the outcome of the Motion. In light of this, it seems prudent that the Court, in the
23 alternative to setting forth and enforcing the above proposed scheduling order, stay all discovery
24 until the Motion and all other motions thereto are resolved. It is only fair that any scheduling
25 order issued by this Court apply and be enforced as to all parties equally or that it be continued
26 as to all parties equally. Any other outcome is unfair, as it would be highly prejudicial for
27 Plaintiff to be forced to comply with the scheduling order while Defendants are able to have a
28 substantial extension of time, while the aforementioned issues are resolved, to not only prepare

1 their expert disclosures but have access to, review and prepare rebuttal arguments to Plaintiff's
2 disclosed expert disclosures. Thus, in the alternative, Plaintiff respectfully asks this Court to stay
3 all discovery during the pendency of the Motion and all related motions thereto.

4 **III. CONCLUSION**

5 For all these reasons, Plaintiff respectfully requests the Court grant a preferential trial
6 setting and issue a new discovery scheduling order as set forth herein. Alternatively, Plaintiff
7 requests this Court stay all discovery for all parties equally pending resolution of Plaintiff's
8 forthcoming Motion for Leave to File its Fourth Amended Complaint, and grant such other and
9 further relief as the Court deems appropriate.

10 DATED: June 24, 2020.

11 **HUTCHISON & STEFFEN**

12
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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

FILED

JUN - 1 2020

John J. Blum
CLERK OF COURT

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

IN THE ADMINISTRATIVE MATTER
REGARDING ALL COURT OPERATIONS IN
RESPONSE TO COVID-19

Administrative Order: 20-17

On March 12, 2020, Governor Steve Sisolak issued a Declaration of Emergency in response to the COVID-19 pandemic. The next day, March 13, 2020, the President of the United States declared a nationwide emergency pursuant to §501(6) of the Robert T. Stanford Disaster Relief and Emergency Assistance Act. 42 U.S.C. §§5121-5207. To mitigate the spread of this deadly virus, the Center for Disease Control recommends social distancing and wearing face coverings. Governor Sisolak, in Directive 021, also recommends social distancing and mandates the wearing of face masks by employees interfacing with the public.

The Nevada Constitution provides in Article 3 §1 that, "The powers of the Government of the State of Nevada shall be divided into three separate departments, - the Legislative, - the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases expressly directed or permitted in this constitution." The Nevada Supreme Court has also found that "In addition to the constitutionally expressed powers and functions of each Department, each (the Legislative, the Executive, and the Judicial) possess inherent and incidental powers that are properly termed ministerial. Ministerial functions are methods of implementation to accomplish or put into effect the basic function of each Department." Galloway v. Truesdell, 83 Nev. 13, 21, 422 P.2d 234, 237 (1967).

1 The judicial power is vested in the state Court system comprised of the Nevada Supreme
2 Court, the Nevada Court of Appeals, District Courts, Justice Courts and Municipal Courts. Nev.
3 Const. art. VI, §1. The Nevada Constitution expressly recognizes the Chief Justice as the
4 administrative head of the Court system. Nev. Const. art. VI §19. By expressly identifying the
5 Chief Justice as the Court system's administrative leader, the Chief Justice has "inherent power
6 to take actions reasonably necessary to administer justice efficiently, fairly, and economically."
7 Halverson v. Hardcastle, 123 Nev. 245, 260, 163 P.3d 428, 439 (2007). Consequently, the
8 Nevada Supreme Court, "through the Chief Justice, has the ultimately authority over the
9 judiciary's inherent administrative functions." Id. at 260, 163 P.3d at 439.

10 Rule 1.30(b) of the Rules of Practice for the Eighth Judicial District Court charges the
11 Chief Judge of the Eighth Judicial District Court with various responsibilities, including
12 supervising the administrative business of the District Court, ensuring the quality and continuity
13 of Court services, supervising the Court calendar, reassigning cases as convenience or necessity
14 requires, assuring the Court's duties are untimely and orderly performed, and otherwise
15 facilitating the business of the district Court.

16 Following the March 12, 2020 Declaration of Emergency, the District Court, in
17 consultation with the Nevada Supreme Court, concurred with the Governor and exercised its
18 ministerial judicial powers. The District Court entered Administrative Orders 20-01 through
19 20-14 and 20-16 on an emergency basis. These Orders changed Court procedures to minimize
20 person-to-person contact and mitigate the risk associated with the COVID-19 pandemic, while
21 continuing to provide essential Court services.

22 Since March 12, 2020, the Governor has reopened essential and non-essential businesses
23 with certain protections in place. As our State enters Phase 2 of recovery, in order to ensure
24 access to justice and to prevent an excessive backlog of cases, the District Court will begin
25 hearing all cases. At the same time, the safety of the public and Court staff remains a priority.
26 This order, entered jointly with the Chief Justice of the Nevada Supreme Court provides for
27 continued extensive use of alternative means appearances, social distancing protocols, and mask-
28 wearing to allow the business of the Court to go forward safely.

1 For purposes of clarity and to avoid confusion, this order supersedes AO 20-01 through
2 20-13 and 20-16. Any portions of those orders that remain in effect are included in this order.
3 AO 20-14 (the process for electronic processing of search warrants) remains in effect. Except
4 where otherwise noted, this order takes effect June 1, 2020.

5 6 **SAFETY AND PRECAUTIONS**

7 Governor Sisolak's May 7, 2020 Declaration of Emergency Directive 018 directs
8 employers to take proactive measures to ensure compliance with social distancing and sanitation
9 guidelines and to follow guidelines promulgated by the Nevada State Occupational Safety and
10 Health Administration (NV OSHA). The Governor reiterated these principles in Directive
11 021 §§12-16.

12 Under the directive, employers must require employees who interact with the public to
13 cover their noses and mouths with face coverings to the maximum extent possible and employers
14 must meet or exceed standards promulgated by NV OSHA. The directive also encourages
15 employers and employees to incorporate the following protocols into their operations to the
16 maximum extent practicable:

- 17 (1) Encourage customers to cover their noses and mouths with face coverings;
- 18
- 19 (2) Continue to encourage telework, whenever possible and feasible with business
- 20 operations;
- 21
- 22 (3) Return to work in phases;
- 23
- 24 (4) Close common areas where personnel are likely to congregate and interact, or enforce
- 25 strict social distancing protocols;
- 26
- 27 (5) Strongly consider special accommodations for personnel who are members of a
- 28 vulnerable population;
- (6) Encourage employees to do a self-assessment each day in order to check if they have
any COVID-19 type symptoms, for example, fever, cough or shortness of breath;
- (7) Practice hand hygiene;

1 (8) Perform frequent enhanced environmental cleaning of commonly touched surfaces;

2 (9) Implement separate operating hours for vulnerable populations;

3 (10) Provide signage advising the public of appropriate social distancing within the
4 facility, including six feet of social distancing from other individuals; and

5 (11) Provide readily available hand sanitizer or other sanitizing products for employees
6 and customers.

7
8 NV OSHA's guidelines require that employers must provide face coverings for
9 employees assigned to serving the public and shall require these employees to wear the face
10 coverings so as to cover their faces and mouths. NV OSHA also recommends that employers
11 monitor employees, including during lunches and breaks to ensure that they are maintaining
12 proper social distancing protocols at all times.

13 The District Court is committed to providing a safe and healthy workplace for all our
14 employees and the public we serve. To mitigate the spread of COVID-19, we will need to
15 change many of our ordinary practices in a manner that reduces the risks associated with this
16 public health emergency. Consequently, the following precautions are ordered:

17 **Screening Protocols**

18 During this time, it is critical to prevent the spread of illness among members of the
19 Court, counsel, staff, the public, and our community partners. The Centers for Disease Control
20 has advised people to take precautions to stay healthy and that the best way to prevent illness is
21 to avoid exposure. As a result, District Court Administration shall maintain notices at the
22 entrance of all District Court facilities advising the following people may not enter the Court
23 facility:

24 (1) Persons who have traveled out of the country in the past 14 days or who reside with
25 someone who has traveled out of the country in the past 14 days;

26 (2) Persons who have been asked to self-quarantine by any doctor, hospital, or health
27 agency;

1 (3) Persons who have been diagnosed with coronavirus and not medically cleared or
2 persons who have had contact in the past 14 days with anyone diagnosed with
3 coronavirus and not medically cleared; or

4 (4) Persons with unexplained fever, cough, or shortness of breath.

5 The Marshal's Division may develop screening protocols including screening questions
6 and temperature checks if deemed appropriate. Anyone attempting to enter in violation of these
7 protocols or refusing to comply with the protocols will be denied entry by District Court
8 Marshals.

9 District Court Administration will also maintain a customer service number in
10 cooperation with the Las Vegas Municipal Court and Las Vegas Justice Court to assist all persons
11 unable to enter the Court facility because of exposure or illness. If a person is unable to appear
12 in Court because of the restrictions, that person may call 702-455-4472 to speak to a customer
13 service representative for assistance in rescheduling their Court appearance, arranging for
14 appearance by alternative means or to obtain other information based on the circumstances of the
15 appearance.

16 **Appearances by Alternative Means**

17 During this time, due to restrictions on the entrants to the Court facilities and to reduce
18 the potential for spread of infection, appearances by alternative means are strongly encouraged
19 whenever possible. This includes all case types. Unless exceptional circumstances exist, District
20 Court Judges should accommodate requests to appear by alternative means for any attorney,
21 party or witness who is considered a vulnerable person under Governor's Directive 21§5. This
22 includes persons who are over 65, pregnant, or suffering from an underlying health condition.

23 The District Court has four methods of appearance by alternative means: videoconference
24 through BlueJeans, telephone conference through BlueJeans, regular telephone, and CourtCall.
25 Since CourtCall involves a cost to the litigants, no party may be required to use CourtCall at this
26 time. Use of BlueJeans is strongly favored given the number of people the system can
27 accommodate and its compatibility with the JAVS system. Video is also favored as it aids
28 communication and produces a better record.

1 Attorneys, parties, and witnesses are reminded that alternative means still constitutes a
2 court appearance and attire should remain professional and court appropriate. Appearances
3 should be made from a quiet place free of distractions. Also, for the safety of the community and
4 for the quality of the audio recording, no appearances by alternative means should be made while
5 driving.

6 The requirement for a formal written notice of any appearance by alternative means is
7 suspended. Arrangements for alternative appearances may be made via e-mail to the department
8 JEA. E-mails about scheduling appearances should not be sent to the department inboxes.

9 Nevada Supreme Court Rules Part IX expressly excludes juvenile proceedings from the
10 rules governing appearances by telephonic and audiovisual transmission. This rule is suspended
11 due to the COVID-19 pandemic. Attorneys, probation officers, social workers, parents,
12 guardians, and any other necessary parties to a juvenile proceeding are strongly encouraged to
13 appear by alternative means.

14 For civil and domestic cases, if the judge intends to hold a hearing before deciding a
15 matter, the judicial department will contact attorneys or self-represented litigants two judicial
16 days before the hearing to determine which method of appearance the party intends to use and
17 gather the appropriate contact information to arrange for the appearance by alternative means.

18 For probate cases, attorneys appearing by alternative means or having clients appear by
19 alternative means must notify the departments via e-mail two judicial days before the
20 appearance. The e-mail to the department must include the case number for the proceeding and
21 the names and e-mail addresses for each person appearing by video. This will allow the
22 department to send a link to appear via video. If arrangements need to be made on shorter notice
23 due to an emergency, the judicial department must be contacted by phone.

24 For criminal cases, juvenile dependency cases, and juvenile delinquency cases all
25 appearances by alternative means for attorneys and out-of-custody defendant must be through
26 BlueJeans video unless for technical reasons a phone conference is necessary. Attorneys
27 appearing by video, or having clients/witnesses/agency representatives/probation officers appear
28 by alternative means, must notify the department via e-mail at least one judicial day before the

1 appearance. In juvenile cases, parents or guardians may provide their e-mail addresses to the
2 juvenile's attorney to arrange for the appearance. The e-mail to the department must include the
3 case number for the proceeding and the names and e-mail addresses for each person appearing
4 by video. This will allow the department to send a link to appear via video. If arrangements
5 need to be made on shorter notice due to an emergency, the judicial department must be
6 contacted by phone.

7 Media reporters may request to attend any public court proceeding by alternative means
8 for the purpose of observing the proceedings. Any reporter requesting an appearance in this
9 manner must contact the department for a BlueJeans video link. Reporters appearing by
10 alternative means must remain on mute and are not permitted to interject or speak during any
11 proceeding. A reporter violating this rule will lose the ability to appear by alternative means.

12 **Mandatory Face Coverings**

13 For the health and safety of all, members of the public must wear face coverings that
14 cover their noses and mouths. Face coverings must be worn at all times while in any Court
15 facility and while in any security screening line to enter a Court facility. "Court facilities"
16 include the Regional Justice Center, the Family Court building, District Court courtrooms and
17 office space on the tenth and eleventh floors of the Phoenix building, District Court courtrooms
18 and office space in the Greystone building and District Court office space in the Clark Place
19 building.

20 All District Court employees must cover their noses and mouths with face coverings
21 while at work unless they are alone in unshared work space. This includes all common areas of
22 any facility as well as parking lots, back hallways, employee-only elevators, shared restrooms
23 and break rooms.

24 All attorneys, vendors, and employees of any organization or entity who work in a Court
25 facility must cover their noses and mouths with face coverings while in any common areas of the
26 facilities. Common areas include, but are not limited to, security screening, lobby areas, public
27 elevators, employee elevators, shared back hallways, public restrooms and courtrooms. This
28 includes, but is not limited to, employees of Las Vegas Municipal Court, Las Vegas Justice

1 Court, Legal Aid Self-Help Centers, Clark County Clerk's Main Office, Clark County District
2 Attorney's Office, Clark County Public Defender's Office, Clark County Department of Juvenile
3 Justice Services, Clark County Department of Family Services, and contract counsel. Employees
4 of other organizations or entities with space in Court facilities are subject to the policies of their
5 individual employer while in their own organization's work space.

6 Children under the age of two and individuals who are unable to remove the face
7 covering without assistance do not have to comply with the above-referenced face covering
8 directives. Individuals who are unable to wear a face covering should make arrangements to
9 appear by alternative means.

10 Face coverings must cover the nose and mouth at all times.

11 Meetings

12 Meeting by telephone, teleconference, videoconference or e-mail remains highly
13 preferred. To protect judicial resources and prevent the spread of illness among members of the
14 Court, counsel, staff, public and community partners, there shall be no in-person gatherings or
15 meetings to discuss Court business of more than 50 people. This includes judges meetings;
16 executive committee meetings; division judges meetings; bench-bar meetings; any meetings with
17 community partners; specialty Court staffing; specialty Court graduations; administrative
18 department meetings; continuing education meetings; meetings of judges, hearing masters and/or
19 staff within a particular case assignment. Any in-person meeting must observe social distancing
20 and mask requirements. No food or beverages may be served at in-person meetings.

21 Policies

22 Court Administration is directed to develop more extensive return-to-work policies to
23 provide guidance to supervisors and employees to ensure that the District Court is complying
24 with OSHA guidelines. This may include screening, hygiene practices, social distancing
25 practices, sanitation, employee phasing in and remote work schedules, and disciplinary
26 guidelines for failure of employees to follow safety protocols.
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District Court employees must ensure they maintain proper social distancing at all times while at work and during breaks. District Court Marshals should maintain proper social distancing at all times except when their work assignment makes it impossible to do.

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1 District Court Civil/Criminal Division
2 Attn: Clerk's Office
3 Regional Justice Center
4 200 Lewis Ave.
5 Las Vegas, NV 89155

6 District Court Family Division
7 Attn: Clerk's Office
8 Family Court
9 601 N. Pecos Rd.
10 Las Vegas, NV 89155

11 The Clerk's Office shall maintain a safety protocol for clerks tasked with opening mail
12 and handling paper documents.

13 OTHER THAN MAIL, NO PAPER DOCUMENTS WILL BE ACCEPTED BY THE
14 COURT AT THIS TIME. Call (702) 455-4472 with questions regarding filing.

15 Continuances

16 The continuance of any trial or evidentiary hearing will be considered on a case-by-case
17 basis. Attorneys may have difficulty obtaining witnesses or being prepared for evidentiary
18 proceedings in the period immediately following the duration of the administrative orders
19 relating to COVID-19. Continuances should be granted to allow time for preparation or to obtain
20 witnesses. Judges will need to examine the merits of any application for a continuance, balancing
21 the consequences of a delay in the proceedings and the constraints placed on attorneys and
22 litigants to prepare for a trial or evidentiary hearing.

23 Courtesy Copies

24 No paper courtesy copies of any documents filed in Odyssey may be sent to the Court for
25 any case type. Judges are strongly discouraged from requesting electronic courtesy copies from
26 parties due to the burden it places on the system as a result of additional storage required. This
27 does not preclude a judge from asking for a word version of a submitted order that requires
28 significant editing. To reduce the potential spread of infection through paper and to reduce Court
operating costs, judges are strongly discouraged from having documents printed from Odyssey to
read.

1 Counsel should contact the Court Clerk for handling of documents that cannot be
2 converted to electronic format.

3 **Depositions**

4 In-person depositions may go forward effective July 1, 2020 as long as social distancing
5 protocols are observed. Until that date, no in-person depositions shall proceed except on
6 stipulation or order obtained after filing a motion demonstrating good cause for the need for an
7 in-person deposition. Deposition by alternative means is the preferred method of handling
8 depositions. During the period this order is in effect the Court interprets NRCP 28(a)(1) and
9 NRCP 30 to allow the deposition officer to be in a separate location from the despondent. See
10 SCR Part IX-B(A) and (B) Rule 9.

11 Attorneys must cooperate in the scheduling of witnesses, in the handling depositions by
12 alternative means when any participant is part of a vulnerable population, and in continuing
13 depositions when needed because of COVID-19 issues.

14 **Discovery (Civil and Domestic)**

15 All discovery hearings in both the civil and domestic case types shall continue to be
16 conducted by alternative means.

17 The tolling of discovery deadlines will end on July 1, 2020. This includes deposition by
18 written questions, interrogatories, production of documents, entering onto land for inspection
19 purposes and requests for admissions. The Court acknowledges that discovery may still be
20 impeded by COVID-19 related issues and it may be difficult to obtain certain items such as
21 medical records. Judges are encouraged to grant requests to continue discovery under these
22 circumstances.

23 Beginning July 1, 2020, Rule 35 examinations may be scheduled as medical providers are
24 available. Parties may agree to schedule the Rule 35 exam sooner. Parties may also file a
25 motion with the Discovery Commissioner demonstrating good cause to proceed forward with a
26 Rule 35 examination. Good cause includes an emergency such as imminent destruction or loss
27 of evidence. The motion shall also include protocols for ensuring the safety of the examiner and
28 an affidavit from the medical provider indicating that the provider is able to conduct the

1 examination following those protocols. Any issues with scheduling or health concerns of the
2 party to be examined should be addressed with the Discovery Commissioner.

3 Discovery motions may be resolved on the papers by way of a written recommendation
4 issued by the Discovery Commissioner. If the Commissioner determines oral argument is
5 needed, the hearing will be held by alternative means unless the Commissioner determines a
6 personal appearance is necessary.

7 **Electronic Service**

8 All lawyers and self-represented litigants are required to register for electronic service
9 and update any change of e-mail address with the Court. In the limited circumstance where a
10 self-represented litigant does not have an e-mail address, the Court Clerk's Office is directed to
11 assist the self-represented litigant in creating an e-mail address.

12 **Hearings**

13 At this time, hearings of all sorts in all case types should go forward. Except as provided
14 in this order, all District Court non-evidentiary hearings must be conducted by video or
15 telephonic means or decided on the papers unless otherwise directed by a District Court Judge.
16 Cases should be rescheduled at the request of parties or counsel due to issues caused by the
17 COVID-19 pandemic including witness unavailability, inability to obtain documents or other
18 good cause.

19 Evidentiary hearings should go forward when possible. Appearances by witnesses,
20 parties, and lawyers should be by alternative means unless the District Court Judge finds that a
21 personal appearance by an individual is necessary to the proceeding. To the extent possible,
22 exhibits should be produced, displayed, and admitted in an electronic format.

23 **Original Signature Requirements**

24 With the exception of documents requiring the signature of a notary, an electronic
25 signature will be considered an original signature. All documents filed with the Court may be
26 electronically signed as provided in the Nevada Electronic Filing and Conversion Rules, Rule
27 11(a). All documents requiring a signature of another person may be electronically signed;
28 however, the party submitting the document must obtain e-mail verification of the other person's

1 agreement to sign electronically. That verification must be embedded in the document or
2 attached as the last page of the document.

3 Filers are reminded that NRCP Rule 11 provides sanctions for filing with improper
4 purpose, which would include a misrepresentation of a signature. Additionally, other civil or
5 criminal penalties could apply for misrepresenting or fraudulently signing a document.

6 **Proposed Orders**

7 All proposed orders, requests for orders shortening time, stipulation and orders, or any
8 other document submitted to a judge for signature shall be submitted to the appropriate
9 department electronically. A department inbox list is attached to this order. DEPARTMENT
10 INBOXES ARE TO BE USED ONLY FOR SUBMITTING DOCUMENTS FOR THE
11 JUDGE'S SIGNATURE. NO OTHER E-MAILS MAY BE SENT TO DEPARTMENT
12 INBOXES.

13 Documents must be submitted as a PDF document. If a judge has significant revisions,
14 the department will request a Microsoft Word version of the order from the submitting party for
15 editing purposes. The Court notes that both WordPerfect and Apple Pages allow documents to be
16 saved in a Word format.

17 The e-mail subject line must identify the full case number, the filing event code, and the
18 name of the case. The information must be in that order for the Court's automated filing system
19 to work properly. This naming convention looks like: A-20-1234560-C - ORDR - Smith v. Doe

20 Documents not properly submitted may be returned.

21 NO ADDITIONAL ARGUMENT OR DISCUSSION SHOULD BE INCLUDED IN
22 THE E-MAIL.

23 After reviewing submitted documents, the judge will electronically sign and file the order
24 into the Odyssey system. The Court will not print or retain paper copies of the orders.

25 All documents submitted will be filed by the department and served to all parties
26 registered for electronic service. Parties are responsible for filing the Notice of Entry of Order as
27 well as serving orders by mail to any party who is not registered for electronic service.
28

1 For any self-represented litigant who is unable to submit an order by e-mail, the Court
2 shall prepare and file the order.

3 To ensure the integrity of electronically signed and filed orders, the Clerk's Office will
4 reject orders submitted for filing from outside of the Court.

5 **Rule 16.1 (Civil), 16.2 (Domestic), and 16.205 (Custody) Early Case Conferences**

6 Rule 16.1, 16.2, and 16.205 conferences should proceed. Early case conferences should
7 be conducted by telephone or videoconference. To the extent possible, all initial disclosures,
8 supplements and other written discovery should be exchanged through electronic means. If a
9 conference cannot proceed because of issues related to COVID-19, an appropriate motion should
10 be filed with the assigned District Court Judge.

11 Deadlines for initial disclosures, disclosure of expert witnesses and testimony,
12 supplementation of discovery, pre-trial disclosures, and filing of case conference reports will no
13 longer be stayed as of July 1, 2020. Requests to continue deadlines should be filed with the
14 assigned District Court Judge.

15 **Settlement Conferences (Civil, Criminal and Family Divisions)**

16 In order to assist with the backlog of trials, judicial settlement conferences are
17 encouraged. Settlement conferences may be held by alternative means. If the settlement
18 conference is not held by alternative means, the judge and attorneys must develop a social
19 distancing plan prior to the settlement conference. All participants must wear masks that cover
20 their noses and mouths.

21 Civil and Family Division settlement conference programs will resume on July 1, 2020.
22 Settlement briefs and supporting exhibits must be submitted electronically. Counsel may also
23 contact individual judges to request settlement conferences or reach out to the assigned
24 departments to submit a request for a senior judge to conduct a settlement conference.

25 Criminal Division settlement conferences will resume on June 1, 2020. Requests for
26 settlement conferences should be submitted via e-mail on the settlement conference form to the
27 Chief Judge. The form must be completely filled out or the conference will not be set. In-
28 custody criminal settlement conferences will be scheduled to take place in the Lower Level

1 Arraignment courtroom. Priority will be given to trials where the defendant is in-custody and
2 has invoked speedy trial rights and to older homicide cases.

3 **Specialty Courts (All Divisions)**

4 All status hearings should go forward by alternative means unless a judge or hearing
5 master determines that extraordinary circumstances warrant a personal appearance. For Criminal
6 Division Specialty Court matters in-custody participants will continue to be heard together on
7 Fridays at noon. No jail or community service sanctions will be imposed by any specialty court
8 program for non-compliance. This does not prevent arrest of a participant who is on probation
9 for a probation violation. This also does not preclude a participant from being placed on
10 electronic monitoring; however, with the exception of felony DUI participants in the first six
11 months of the program who lack the current ability to self-pay, no Specialty Court participant
12 may be placed on CCDC house arrest. The Court will work with the treatment providers to
13 continue to provide treatment while balancing the safety of the participants and treatment
14 provider staff.

15 **Sealed Documents**

16 If a party is requesting a document be sealed, the party must file a motion to file the
17 document under seal. The party should separately file the document to be sealed, using the code
18 TSPCA (Temporarily Sealed Pending Court Approval). The judge will review the motion and
19 determine whether the document should be filed under seal. Failure to properly submit a motion
20 to seal the documents, failure to submit the document separately, or failure to use the proper
21 document code may result in the public electronic filing of the temporarily sealed document.

22 **Service of Process**

23 The Court recognizes that accomplishing personal service may continue to pose
24 significant challenges at this time given that many businesses are closed or operating on a limited
25 capacity. Properly documented service issues related to the COVID-19 pandemic will be
26 considered good cause for a timely motion to extend service of process. For service issues
27 between March 13, 2020 and June 30, 2020, good cause exists regardless of whether the motion
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1 is made before or after the 120-day service period. Effective July 1, 2020, motions to extend
2 service of process must be filed prior to the expiration of the time to serve.

3 **Summonses and Certified Copies**

4 Summonses and certified copies shall be issued by the Court Clerk's Office. A lawyer or
5 party seeking to have the Clerk of Court issue a summons under NRCP 4(b) shall e-file the
6 summons. The filing code "SEI" must be used for the proper processing of the summons. The
7 Clerk will issue the summons electronically. All certified copies will be issued electronically.

8 **Trials**

9 Bench trials in all case types should go forward when possible. Appearances by
10 witnesses, parties, and lawyers should be by alternative means unless the District Court Judge
11 finds that a personal appearance by an individual is necessary to conduct the proceeding.

12 If possible, trial exhibits should be produced, displayed, and admitted in an electronic
13 format. If the use of electronic exhibits is not possible, exhibits should be submitted to the
14 assigned judicial department at the direction of the Judge.

15 Beginning the week of June 1, the Jury Commissioner will begin summoning jurors for
16 jury trials. To maintain social distancing and juror safety, one panel of jurors will be summonsed
17 per day for District Court. The Jury Commissioner is to include health and safety information in
18 the jury summons, including social distancing and mask requirements. District Court Jury
19 selection will take place in the Jury Services Room. The District Court will prioritize trials,
20 beginning with criminal cases involving interstate compact issues and criminal cases in which
21 the defendant has invoked speedy trial rights. After those cases, the priority will be civil cases
22 with preferential trial settings; older in-custody criminal cases; and older civil cases, particularly
23 those with NRCP 41(e) timeline concerns.

24 Panels for other courts in Clark County may also be summonsed provided that Court
25 requesting the panel creates a social distancing/safety plan for the juries. Key points of the plan
26 will be included with the jury summons.

27 Jury questionnaires will be sent, completed, returned and distributed to the Court and
28 counsel electronically. If a juror cannot complete a questionnaire by electronic means, the

1 questionnaire will be mailed to the juror with a self-addressed and stamped return envelope.
2 Once Jury Services receives the questionnaire back, it will be scanned and distributed with the
3 other questionnaires.

4 This order shall continue to stay trial in civil cases for purposes of tolling NRCP 41(e)
5 except where a District Court Judge makes findings to lift the stay in a specific case to allow the
6 case to be tried.

7 The time period of any continuance entered as a result of this order shall be excluded for
8 the purposes of calculating speedy trial under NRS 178.556(1) and NRS 174.511 as the Court
9 finds that the ends of justice served by taking this action outweigh the interests of the parties and
10 public in a speedy trial.

11 **Writs of Execution and Writs of Garnishment**

12 Writs of execution and garnishment have been stayed by the Governor's Directive 017
13 §1-2. No new writs of execution or garnishment may be issued while the stay is in place. The
14 stay does not apply to child support, spousal support, or criminal restitution. Any change or
15 termination of that directive will be determined by the Governor.

17 **CIVIL MATTERS**

19 **Alternative Dispute Resolution**

20 All matters in the Court Annexed Arbitration Program, Court Annexed Mediation
21 Program, and Nevada Foreclosure Mediation Program should proceed. These matters shall be
22 conducted by video or telephonic means when possible. If a personal meeting is necessary,
23 social distancing must be observed and all participants must wear face coverings covering their
24 noses and mouths.

25 For any cases assigned to the Court Annexed Arbitration program, none of the time
26 between March 17, 2020 and June 1, 2020 shall count toward the one year deadline to hold any
27 arbitration hearing pursuant to NAR 12(B). Additional requests to toll time should be addressed
28 to the assigned District Court Judge on a case-by-case basis.

1 **Extension of Time Deadlines**

2 Pursuant to NRCP 6(b), the Court recognizes the COVID-19 emergency as constituting
3 "good cause" and "excusable neglect" warranting the extension of time in non-essential civil
4 case types. This provision will expire July 1, 2020. This does not apply to time deadlines that
5 must not be extended under NRCP 6(b)(2) (motions under NRCP 50(b), 52(b), 59, and 60 and
6 motions made after NRCP 54(d)(2) time has expired).

7 **Evictions and Foreclosures**

8 Residential and small business evictions and judicial foreclosures have been stayed by the
9 Governor's Directive 008 (Revised) §1, with certain exceptions. Any change or termination of
10 that directive will be determined by the Governor.

11 **Response Time for Offers of Judgment**

12 The tolling of time to respond to offers of judgment submitted pursuant to NRCP 68 will
13 end July 1, 2020. Parties will have until July 10, 2020 to respond to any pending offer of
14 judgment.

15 **Rule 16 Conferences**

16 Rule 16 conferences must be conducted by alternative means. The District Court Judges
17 should continue to comply with the deadlines set in NRCP 16(b)(2) but should be mindful that
18 attorneys and parties may face difficulties conducting discovery, obtaining discovery responses
19 and communicating with their clients. These potential difficulties should be addressed and taken
20 into consideration when issuing NRCP 16 scheduling orders.

21 **Statutes of Limitation; Medical Malpractice Cases**

22 Statutes of limitation have been tolled by the Governor's Directive 009 (Revised) §2.
23 Any change or termination of that directive will be determined by the Governor. Attorneys and
24 litigants should be aware the District Court is unable to waive jurisdictional requirements for
25 expert affidavit requirements in medical malpractice cases should counsel choose to file a
26 complaint during this time or for requests for trial de novo.
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1 request of the District Attorney's Office, the 2018C Grand Jury will be recalled beginning Friday,
2 July 10 and will meet every Friday thereafter until excused by the Court to allow the District
3 Attorney's Office the opportunity to continue presentation of matters previous heard by that
4 Grand Jury. No new matters may be presented to the recalled Grand Jury.

5 Any Grand Jurors who are unable to continue service to the Grand Jury due to
6 COVID-19 related health or employment issues will be excused on a case-by-case basis and
7 replaced with alternates.

8 All Grand Juries will meet in the 17A Courtroom, which will be marked to provide for
9 social distancing of grand jurors, witnesses, court reporter, and attorneys. All Grand Jurors,
10 witnesses present in the Courtroom, attorneys, and the court reporter will be required to wear
11 face coverings covering their nose and mouth while in the RJC and throughout the grand jury
12 proceedings. No food or beverages will be permitted in the Courtroom.

13 Nevada Revised Statute 172.138 provided for the use of audiovisual technology to
14 present live testimony at grand jury proceedings "if good cause otherwise exists." The statute
15 requires that the technology ensures that the witness may be "clearly heard and seen" and
16 "examined." The Nevada Supreme Court has also provided for use of audiovisual equipment in
17 criminal proceedings in Supreme Court Rules Part IX-A(B).

18 During the current COVID-19 pandemic, good cause exists to allow witnesses to appear
19 before the grand jury via audiovisual technology. In order for a witness to appear by alternative
20 means, the State must notify the Chief Judge's department two judicial days prior to the
21 proceeding. The State will provide the time of the witness's testimony and the name, telephone
22 number and e-mail address of the witness to allow a BlueJeans link to be sent to the witness.
23 District Court IT will assist with any issues with the audiovisual equipment on the Court side,
24 but is not responsible for issues on the witness's side.

25 Grand jury returns will take place at the end of each day to prevent the Grand Jury
26 Forepersons from having to re-enter the Regional Justice Center.
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1 **Guilty Pleas**

2 When the defendant is unable to provide a signed copy of the guilty plea due to
3 appearance by alternative means, the guilty plea shall be signed by by counsel in the following
4 manner: "Signature affixed by (insert name of defense counsel) at the direction of (insert name of
5 defendant)" The judge shall make a record that because of COVID-19 precautions that the
6 defendant was unable to physically sign the guilty plea agreement. The defendant shall be
7 canvassed by the judge taking the plea as follows:

8
9 On page ____ of the plea agreement your attorney has signed your name with a
10 notation that they signed it at your direction. Is that correct?

11 Did you agree for your attorney to sign in place of your actual signature?

12 Did you knowingly, willingly and voluntarily direct your attorney to sign the
13 agreement on your behalf?

14 Before directing your attorney to sign for you, did you read the guilty plea
15 agreement and talk to your attorney about the terms of the guilty plea agreement?

16 Did you discuss that your attorney signing your name at your direction will be
17 treated the same as if you actually signed the plea agreement?

18 Do you agree to have the signature placed on the agreement by your attorney to
19 be treated the same as if you signed the plea agreement?

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21 **In-Custody Appearances**

22 All in-custody defendants will appear by video to the assigned judicial departments for
23 law and motion calendars. Arraignments, competency, and in-custody specialty court matters
24 will continue to be heard in the lower-level arraignment Courtroom. Except for jury trials, no
25 defendant will be transported to a District Court courtroom absent extraordinary circumstances.
26 Due to limited access to alternative appearances, evidentiary hearings or lengthy sentencings for
27 in-custody defendants should be coordinated through the Chief Judge's office. Also, no
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1 defendant who is in isolation pursuant to Detention Services protocol will be brought for any
2 court appearance.

3 Defense attorneys will have limited ability to discuss matters with their clients during
4 Court appearances. Attorney-client conversations will be facilitated if needed; however,
5 attorneys are cautioned that it will be absolutely necessary for clients to be prepared in advance
6 of court.

7 **Out-of-Custody Appearances**

8 Due to the limited capacity of the Regional Justice Center at this time, out-of-custody
9 defendants must appear by alternative means whenever possible, including for entry of plea,
10 status checks, motions, and sentencing where the negotiation contemplates probation. Out-of-
11 custody defendants shall appear in person for probation revocation hearings where jail time or
12 revocation is being sought, sentencings where the negotiation contemplates a prison or jail
13 sentence, trials, and for any matter where the judge makes an individual determination that the
14 defendant's presence is necessary for the determination of the matter.

15 Lawyers representing indigent defendants are urged to provide assistance to defendants
16 who do not have the independent ability to appear by alternative means.

17 All attorneys are encouraged to appear by alternative means. Video appearance is
18 required in criminal matters unless prevented by technological issues. In order to appear by
19 alternative means in a criminal matter, attorneys must e-mail the department at least one judicial
20 day in advance of the Court appearance and provide the e-mail the attorney intends to use to
21 appear. In case of an emergency that does not allow for one day's notice, attorneys should
22 contact the department.
23

24 **DOMESTIC MATTERS**

25 **Confidential Reports**

26
27 Notwithstanding the provisions of EDCR 5.203, confidential reports (including custody
28 evaluations, child interviews, brief focus assessments, drug test results, and paternity test results)

1 shall be transmitted electronically to retained counsel, subject to the limitations imposed on
2 counsel pursuant to EDCR 5.301 and EDCR 5.304. For self-represented litigants, civil-domestic
3 departments may convey the information contained in the foregoing confidential reports by
4 telephone. The transmittal of this information by telephone shall include, where reasonably
5 practical, the reading of the information to the self-represented litigant. If unusual circumstances
6 exist, the Judge may have the self-represented litigant make a personal appearance to review the
7 report.

8 **Motions**

9 The Court may deny a motion at any time. The Court may grant all or any part of a
10 motion after an opposition has been filed or 21 days after service of the motion if no opposition
11 was filed. The Court may issue other written orders relating to the motion.

12 Motions related to emergency legal and physical custody issues should receive priority
13 with respect to the scheduling of a hearing on an appropriate order shortening time.

15 **GUARDIANSHIP**

17 All guardianship matters will proceed, including compliance hearings. Given the
18 vulnerability of the guardianship populations, all protected persons must appear by alternative
19 means. Assistance with emergency guardianships may be obtained by calling (702) 455-4472.

21 **JUVENILE DEPENDENCY CASES**

23 All juvenile dependency matters should proceed. Appearances by alternative means for
24 lawyers, DFS workers and others is strongly encouraged when possible.

25 **Adjudicatory Hearings**

26 Beginning June 1, 2020, time frames under NRS Chapter 432B may be tolled by the
27 assigned District Court Judge for good cause on a case-by-case basis.
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1 When possible, pleas should be handled by alternative means. Pleas may be negotiated
2 by the parties and electronically filed with the Court. If the Court accepts the electronically filed
3 plea, a disposition hearing will be set within 15 business days.

4 Disposition hearings held pursuant to NRS 432B.540 and NRS 432B.550 must be heard
5 by alternative means when possible. Reports must be filed with the Court in advance to help
6 narrow the focus of any hearing. Attorneys for the parents, the children and any CASA may file
7 a report to supplement the DFS recommendations for disposition, placement, and services to
8 further assist in narrowing the scope of the hearing.

9 All semi-annual reviews held pursuant to NRS 432B.580 may be decided on reports
10 submitted to the Court by DFS. Annual reviews held pursuant to NRS 432B.580 and NRS
11 432B.590 should be heard by alternative means to the extent possible.

12 **Termination of Parental Rights Proceedings**

13 Parents may appear in court for initial hearings on termination of parental rights;
14 however, a video appearance by the parents will be considered an in-person appearance for
15 purposes of the statute.

16 Appearances by alternative means are encouraged for any party, witness or lawyer
17 participating in a termination of parental rights trial unless the Judge determines a personal
18 appearance is necessary.

19 Other motions may be decided on the papers or heard through alternative means. Status
20 checks should be handled by written reports or, if necessary, heard by alternative means.

21 Mediations conducted pursuant to NRS 432B.5904 shall proceed by alternative means
22 when possible. Otherwise, the mediation should proceed with appropriate social distancing. For
23 in-person mediations, all participants must cover their noses and mouths with face coverings.

24 **Adoptions**

25 Adoptions will proceed by alternative means or in person at the discretion of the Judge.
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1 **Court-Ordered Admissions to Mental Health Facilities**

2 Court-ordered admissions to mental health facilities pursuant to NRS 432B.607 et. seq.
3 may be held by alternative means.

4 **Child Haven and Parent Visitation**

5 Placements at Child Haven should be strongly discouraged. Out-of-state visitation will
6 be allowed unless the Court determines that visitation poses a health risk to the child. Visitation
7 at Child Haven and parental visitation of children in foster care may proceed if precautions are
8 taken to ensure the safety of the child and the well-being of others in the home in which the child
9 resides. The Division of Family Services is directed to create policies for visitation given the
10 current circumstances.

11 **Timely Filing of Orders**

12 Judicial departments will be responsible for timely filing orders from hearings. The
13 Division of Family Services will electronically upload orders for the Court for review and the
14 judicial departments will be responsible for reviewing and filing orders in a timely manner to
15 prevent disruption of federal funding.

16
17 **JUVENILE DELINQUENCY CASES**
18

19 All juvenile delinquency matters will proceed. Audiovisual appearances should be used
20 whenever possible. No in-custody juvenile who is hospitalized, isolated, or quarantined will be
21 transported to court or appear for a court proceeding. Those matters are to be continued until the
22 juvenile is no longer under any hospitalization, isolation, or quarantine. No juvenile matter may
23 proceed without the juvenile present either in person or by alternative means. If the juvenile is
24 unavailable, the matter will be continued.

25 **Signatures on Juvenile Written Admissions**

26 In order to ensure the rights of juveniles are being protected while the court allows
27 appearances by alternative means, all admissions must be in writing and include an
28 acknowledgment of rights and an acknowledgment of the standard terms and conditions of

1 probation or parole. Written admissions must be signed by the juvenile or signed by the
2 juvenile's attorney and be e-filed and accepted by the court.

3 If the juvenile is unable to personally sign the written admission due to coronavirus
4 precautions, the written admission shall be signed by counsel in the following manner:

5 Signature affixed by (insert name of defense counsel) at the direction of
6 (insert name of defendant). The judge shall make a record that because of
7 COVID-19 precautions that the defendant was unable to physically sign
8 the [admission].

9 The defendant shall be canvassed by the judge taking the plea as follows:

10 On page [say page number] of the [admission] your attorney has signed your
11 name with a notation that they signed it at your direction. Is that correct?

12 Did you agree for your attorney to sign in place of your actual signature?

13 Before directing your attorney to sign for you, did you read the [admission] and
14 talk to you[r] attorney about the terms of [probation or parole]?

15 Did you discuss that your attorney signing your name at your direction will be
16 treated the same as if you actually signed the [admission]?

17 Did you knowingly, willingly, and voluntarily direct your attorney to sign this
18 [admission] on your behalf?

19 Do you agree to have the signature placed on the [admission] by your attorney to
20 be treated the same as if you signed the [admission]?

21 PROBATE

22
23 Probate hearings on the Probate Commissioner's calendar that are opposed or require a
24 hearing shall go forward and be heard by alternative means unless the Probate Commissioner
25 determines a personal appearance is necessary. Matters that can be approved without a hearing
26 will be on the approved list if no objection has been electronically filed and served by 9:30 am
27 on the day before the hearing. The approved list may be accessed on the probate section of the
28 District Court's website at:

1 <http://www.clarkcountycourts.us/departments/probate>

2 Once on the website, select the weekly probate calendar list.

3 Probate matters on the Probate Judges' calendars will be decided on the papers or heard
4 by video or telephonic means, unless the Judge determines a personal appearance is necessary.

5 If a party electronically files an election to proceed before the District Judge pursuant to
6 EDCR 4.08, any petitions on file will be set by the assigned judge.

7 Scheduling orders in contested matters may be requested by stipulation of the parties
8 submitted to chambers electronically with an order approving the proposed schedule. The
9 assigned Probate Judge or Probate Commissioner will set the evidentiary hearing or trial.
10 Contested matters will be decided on the papers or heard by alternative means unless the Judge
11 or Commissioner makes a determination that a personal appearance is necessary.

12 Sale confirmations currently set will be confirmed based upon the papers filed with the
13 Court and without the necessity of placing the sale for public bid, unless a notice of intent to
14 overbid is electronically filed and served 72 hours before the date of the sale confirmation
15 hearing. Any petition to confirm a sale filed after issuance of this Administrative Order shall
16 contain, in addition to the statutory requirements, language advising that the notice of intent to
17 overbid must be electronically filed and served 72 hours before the scheduled hearing. After
18 receiving an electronically filed notice of intent to overbid, the Court will set a remote hearing
19 through video or telephonic means. Otherwise the sale will be approved in accordance with the
20 notice. All orders on approved matters will be electronically filed by the Court and electronically
21 served.
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COURT FACILITIES

Family Court and Services Complex

Family Law Self-Help Center

The Family Law Self-Help Center may begin providing in-person services. The Self-Help Center is encouraged to provide as many services as possible via telephone, e-mail, and other alternative means. Self-represented litigants may obtain help with family law forms and information at:

www.FamilyLawSelfHelpCenter.org

e-mail: fishcinfo@lascn.org

Telephone: (702) 455-1500 or (702)386-1070

Before re-opening to provide services to the public, the Family Self-Help Center has agreed to develop protocols to ensure the health and safety of staff and patrons. The protocols should include methods of limiting waiting times for services, mask-wearing, observing social distancing, and sanitation measures.

Family Mediation Center

The Family Mediation Center may begin providing in-person mediation services. The Family Mediation Center shall continue conducting mediations via telephone or other alternative means to the extent possible. Child interviews and parent-child observations may be scheduled. Before re-opening, the Family Mediation Center shall develop protocols to ensure the health and safety of staff and patrons. The protocols must include methods of limiting waiting times for services, mask-wearing, social distancing plans, and sanitation measures.

Donna's House Central

Donna's House Central may begin providing supervised visitation, supervised custody exchanges and other in-person services by appointment only. Before re-opening, Donna's House shall develop protocols to ensure the health and safety of staff and patrons. The protocols must include methods of limiting waiting times for services, mask-wearing, social distancing plans, and sanitation measures.

1 **Court Appointed Special Advocate Program**

2 The Court Appointed Special Advocate Program may resume in-person trainings,
3 orientations and other meetings with member of the public in groups of 50 or less. During any
4 training, orientation or meeting, social distancing must be observed and all participants must
5 cover their noses and mouths with face coverings. The CASA program is encouraged to
6 continue conducting as must business as possible by telephone or other alternative means.

7 **Regional Justice Center**

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9 **Civil Self-Help Center**

10 The Civil Self-Help Center may begin providing in-person services. The Self Help
11 Center is encouraged to continue to serve as many individuals as possible by phone, e-mail, and
12 other alternative means. Self-represented litigants may obtain help with civil forms, information,
13 evictions and other matters from the Civil Law Self-Help Center:

14 www.CivilLawSelfHelpCenter.org

15 e-mail: clshcinfo@lascn.org

16 Telephone: (702) 671-3976

17 Before re-opening to provide services to the public, the Civil Self-Help Center has agreed
18 to develop protocols to include methods of limiting waiting times for services, observing social
19 distancing, and sanitation measures.

20 **Traffic**


21 Due to the limited capacity at the Regional Justice Center as a result of social distancing,
22 the Las Vegas Justice Court and Las Vegas Municipal Court traffic customer service counter
23 located on the first floor of the Regional Justice Center should remain closed until social
24 distancing restrictions are lifted. Traffic-related matters should be conducted by telephone, video
25 or other remote electronic means.
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FINAL PROVISIONS

This order shall be reviewed no later than every 30 days and shall remain in effect until modified or rescinded by a subsequent order.

Entered this 1st day of June 2020.


LINDA MARIE BELL
Chief Judge
Eighth Judicial District Court


KRISTINA PICKERING
Chief Justice
Nevada Supreme Court

	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
VIDEO FROM CCDC 3B TO COURTROOMS					
8:30 – 10:00	T. JONES In custody via video to 14B	WIESE In custody via video to 14A	T. JONES In custody via video to 14B	WIESE In custody via video to 14A	BELL Sell/Comp Hearings
8:30 – 10:00	KEPHART Out of custody by video/phone 16B	VILLANI Out of custody by video/phone 11A	KEPHART Out of custody by video/phone 16B	VILLANI Out of custody by video/phone 11A	
10:15 - 11:45	KEPHART In custody via video to 16B	VILLANI In custody via video to 11A	KEPHART In custody via video to 16B	VILLANI In custody via video to 11A	VILLANI (Homicide) In custody via video to 11A
10:15 – 11:45	T. JONES Out of custody by video/phone 14B	WIESE Out of custody by video/phone 14A	T. JONES Out of custody by video/phone 14B	WIESE Out of custody by video/phone 14A	
10:15 – 11:45	ELLSWORTH Out of custody by video/phone 16D	LEAVITT Out of custody by video/phone 14D	ELLSWORTH Out of custody by video/phone 16D	LEAVITT Out of custody by video/phone 14D	
12:00-1:30	ELLSWORTH In custody via video to 16D	LEAVITT In custody via video to 14D	ELLSWORTH In custody via video to 16D	LEAVITT In custody via video to 14D	LEAVITT (Homicide) In custody via video to 14D
12:00 – 1:30	ISRAEL Out of custody by video/phone 15C	E. JOHNSON Out of custody by video/phone 12A	ISRAEL Out of custody by video/phone 15C	E. JOHNSON Out of custody by video/phone 12A	
1:45-3:15	ISRAEL In custody via video to 15C	E. JOHNSON In custody via video to 12A	ISRAEL In custody via video to 15C	E. JOHNSON In custody via video to 12A	HERNDON (Homicide) In custody via video to 16D
1:45 – 3:15	DELANEY Out of custody by video/phone 15B	ADAIR Out of custody by video/phone 11C	DELANEY Out of custody by video/phone 15B	ADAIR Out of custody by video/phone 11C	
3:30 – 5:00	DELANEY In custody via video to 15B	ADAIR In custody via video to 11C	DELANEY In custody via video to 15B	ADAIR In custody via video to 11C	ADAIR (Homicide) In custody via video to 11C

LOWER LEVEL ARRAIGNMENT COURT					
	MONDAY	TUESDAY	WEDENSDAY	THURSDAY	FRIDAY
8:00 – 10:00 ARRAIGNMENT	WIESE IN CUSTODY	BELL IN CUSTODY	SILVA IN CUSTODY	T. JONES IN CUSTODY	BLUTH IN CUSTODY
10:00 – 10:45 ARRAIGNMENT	WIESE OUT OF CUSTODY	BELL OUT OF CUSTODY	SILVA OUT OF CUSTODY	T. JONES OUT OF CUSTODY	BLUTH OUT OF CUSTODY
11:00		CRIMINAL SETTLEMENT	CRIMINAL SETTLEMENT	OUT OF CUSTODY SETTLEMENT	BELL COMPETENCY
12:00					SPECIALTY COURTS
2:00		CRIMINAL SETTLEMENT	CRIMINAL SETTLEMENT	OUT OF CUSTODY SETTLEMENT	
	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
VIDEO FROM CCDC 5A TO COURTROOMS					
10:15 - 11:45		HOLTHUS Out of custody by video/phone 3F		HOLTHUS Out of custody by video/phone 3F	DO NOT SET ANYTHING
10:15 – 11:45	BLUTH In custody via video to 10C	D. JONES In custody via video to 15A	BLUTH In custody via video to 10C	D. JONES In custody via video to 15A	
12 -1:30	BLUTH Out of custody by video/phone 10C	D. JONES Out of custody by video/phone 15A	BLUTH Out of custody by video/phone 10C	D. JONES Out of custody by video/phone 15A	
12 -1:30		HOLTHUS In custody via video to 3F		HOLTHUS In custody via video to 3F	
1:45 - 3:15	SILVA In custody via video to 11B	HARDY In custody via video to 11D	SILVA In custody via video to 11B	HARDY In custody via video to 11D	
1:45 - 3:15	MILEY Out of custody by video/phone 12C	HERNDON Out of custody by video/phone 16C	MILEY Out of custody by video/phone 12C	HERNDON Out of custody by video/phone 16C	
3:30 - 5:00	MILEY In custody via video to 12C	HERNDON In custody via video to 16C	MILEY In custody via video to 12C	HERNDON In custody via video to 16C	
3:30 - 5:00	SILVA Out of custody by video/phone 11B	HARDY Out of custody by video/phone 11D	SILVA Out of custody by video/phone 11B	HARDY Out of custody by video/phone 11D	

DISTRICT COURT EMAILS FOR DOCUMENT SUBMISSIONS

***SUBMIT ALL DOCUMENTS AS EMAIL ATTACHMENTS IN BOTH WORD AND .PDF ***

CIVIL/CRIMINAL DIVISION

Dept. 1 DC1Inbox@ClarkCountyCourts.us
Dept. 2 DC2Inbox@ClarkCountyCourts.us
Dept. 3 DC3Inbox@ClarkCountyCourts.us
Dept. 4 DC4Inbox@ClarkCountyCourts.us
Dept. 5 DC5Inbox@ClarkCountyCourts.us
Dept. 6 DC6Inbox@ClarkCountyCourts.us
Dept. 7 DC7Inbox@ClarkCountyCourts.us
Dept. 8 DC8Inbox@ClarkCountyCourts.us
Dept. 9 DC9Inbox@ClarkCountyCourts.us
Dept. 10 DC10Inbox@ClarkCountyCourts.us
Dept. 11 DC11Inbox@ClarkCountyCourts.us
Dept. 12 DC12Inbox@ClarkCountyCourts.us
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Dept. 30 DC30Inbox@ClarkCountyCourts.us
Dept. 31 DC31Inbox@ClarkCountyCourts.us
Dept. 32 DC32Inbox@ClarkCountyCourts.us

Discovery

DiscoveryInbox@ClarkCountyCourts.us

ADR

ADRInbox@ClarkCountyCourts.us

Probate

ProbateInbox@ClarkCountyCourts.us

FAMILY DIVISION

Dept. A DEPTAInbox@ClarkCountyCourts.us
Dept. B DEPTBInbox@ClarkCountyCourts.us
Dept. C DEPTCInbox@ClarkCountyCourts.us
Dept. D DEPTDInbox@ClarkCountyCourts.us
Dept. E DEPTEInbox@ClarkCountyCourts.us
Dept. F DEPTFInbox@ClarkCountyCourts.us
Dept. G DEPTGInbox@ClarkCountyCourts.us
Dept. H DEPTHInbox@ClarkCountyCourts.us
Dept. I DEPTIInbox@ClarkCountyCourts.us
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Dept. S DEPTSInbox@ClarkCountyCourts.us
Dept. T DEPTTInbox@ClarkCountyCourts.us

TPO

TPOInbox@ClarkCountyCourts.us

Child Support

ChildSupportInbox@ClarkCountyCourts.us

Civil Commitment

CivilCommitmentInbox@ClarkCountyCourts.us

Dependency Hearing Masters

HMWhiteInbox@ClarkCountyCourts.us
HMPickardInbox@ClarkCountyCourts.us
HMRoysInbox@ClarkCountyCourts.us

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EXHIBIT 2

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

From: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
Sent: Tuesday, June 23, 2020 4:13 PM
To: Brenoch R. Wirthlin; Angela Ochoa
Cc: Jon Linder; Christian M. Orme; Stuart J. Taylor; Jon.Wilson@nelsonmullins.com; Danielle Kelley; Daniel Maul
Subject: RE: Lewis and Clark v. Chur, et al.

Brenoch,

I disagree with your premise that it would be unfair for the Receiver to make its initial expert disclosures while the defendants may seek additional time. The Receiver has had a 15-month extension while the case has been stayed to prepare its initial expert disclosures, and the Receiver has the benefit of knowing what its proposed amended pleading alleges. Meanwhile, US Re and Uni-Ter (both of which opposed the stay) have been stymied while the Receiver and the director defendants litigated the writ petition. As I also disagree with your statement that there are no 5-year rule concerns, the case needs to move forward.

US Re and Uni-Ter may or may not seek to extend some deadlines. We will not be in a position to evaluate this until we have the opportunity to review the Receiver's proposed amended pleading and expert disclosures. So, we cannot enter into the stipulation you propose.

George F. Ogilvie III | Partner

McDONALD CARANO

P: 702.873.4100 | **E:** gogilvie@mcdonaldcarano.com

From: Brenoch R. Wirthlin [mailto:bwirthlin@hutchlegal.com]
Sent: Tuesday, June 23, 2020 1:21 PM
To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Angela Ochoa <AOchoa@lipsonneilson.com>
Cc: Jon Linder <jlinder@hutchlegal.com>; Christian M. Orme <COrme@hutchlegal.com>; Stuart J. Taylor <staylor@hutchlegal.com>; Jon.Wilson@nelsonmullins.com; Danielle Kelley <dkelley@hutchlegal.com>; Daniel Maul <dmaul@hutchlegal.com>
Subject: RE: Lewis and Clark v. Chur, et al.

That is fine, I can recirculate. I was not intending to make any distinction between judicial or non-judicial days, as only one day remained to disclose after the stay was lifted.

However, that does raise an issue we wanted to discuss with both of you. In reviewing the transcript of Thursday's hearing, it appears that the defendants would prefer addressing the motion to amend before having to disclose experts or engage in further discovery. It would, of course, be unfair for the Plaintiff to make its initial expert disclosures, only to have the defendants seek additional time to make their initial expert disclosures or respond to discovery until after the motion to amend and related issues were resolved. We would propose a stipulation pursuant to which Plaintiff will file its motion to amend on July 2 in accordance with the Court's order, but all parties would wait to engage in further discovery or disclosures, including expert disclosures, until the Court rules on the motion to amend and any related motions. We believe this is in all parties' best interests in conserving resources and there are no 5-year rule concerns due to AO 20-17 tolling NRCP 41(e).

Absent this stipulation, we would expect all defendants to make initial expert disclosures within 30 days of Plaintiff's, to respond to discovery requests within the 30 day time frame under the NRCP, and not seek to delay depositions or otherwise request that the Court delay discovery.

From: George F. Ogilvie III [<mailto:gogilvie@Mcdonaldcarano.com>]

Sent: Tuesday, June 23, 2020 12:30 PM

To: Angela Ochoa; Brenoch R. Wirthlin

Cc: Jon Linder; Christian M. Orme; Stuart J. Taylor; Jon.Wilson@nelsonmullins.com; Danielle Kelley; Daniel Maul

Subject: RE: Lewis and Clark v. Chur, et al.

Agreed, and the date certain should be specified for both the motion for leave and the initial expert witness disclosure.

George F. Ogilvie III | Partner

McDONALD CARANO

P: 702.873.4100 | **E:** gogilvie@mcdonaldcarano.com

From: Angela Ochoa [<mailto:AOchoa@lipsonneilson.com>]

Sent: Tuesday, June 23, 2020 12:28 PM

To: Brenoch R. Wirthlin <bwirthlin@hutchlegal.com>; George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>

Cc: Jon Linder <jlinder@hutchlegal.com>; Christian M. Orme <COorme@hutchlegal.com>; Stuart J. Taylor <staylor@hutchlegal.com>; Jon.Wilson@nelsonmullins.com; Danielle Kelley <dkelley@hutchlegal.com>; Daniel Maul <dmaul@hutchlegal.com>

Subject: RE: Lewis and Clark v. Chur, et al.

Brenoch,

Can you please advise the date that you think your Motion for Leave to Amend will be filed. I'm looking through your Motion for Clarification and there's no distinction between judicial day and day. You represented in the Motion that there was only 1 day to file.

So I'm curious why your order now says judicial day. What I know is, the Stay was issued March 14, 2019 the deadline to file any motions to amend was March 15, 2019.

Do you plan to file your Motion for Leave to Amend on July 2? I think it would be clearer for all parties if you set forth the date instead.

Angela

From: Brenoch R. Wirthlin <bwirthlin@hutchlegal.com>

Sent: Tuesday, June 23, 2020 11:58 AM

To: Angela Ochoa <AOchoa@lipsonneilson.com>; George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>

Cc: Jon Linder <jlinder@hutchlegal.com>; Christian M. Orme <COorme@hutchlegal.com>; Stuart J. Taylor <staylor@hutchlegal.com>; Jon.Wilson@nelsonmullins.com; Danielle Kelley <dkelley@hutchlegal.com>; Daniel Maul <dmaul@hutchlegal.com>

Subject: Lewis and Clark v. Chur, et al.

George and Angela, please see the attached proposed order regarding Plaintiff's motion for clarification.

Brenoch R. Wirthlin
Partner



HUTCHISON & STEFFEN, PLLC
(702) 385-2500
hutchlegal.com

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Brenoch R. Wirthlin
Partner



HUTCHISON & STEFFEN, PLLC
(702) 385-2500
hutchlegal.com

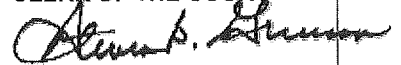
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EXHIBIT 3

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1 **ORDG**
2 LIPSON NEILSON, P.C.
3 JOSEPH P. GARIN, ESQ.
4 Nevada Bar No. 6653
5 ANGELA T. NAKAMURA OCHOA, ESQ.
6 Nevada Bar No. 10164
7 JONATHAN K. WONG, ESQ.
8 Nevada Bar No. 13621
9 9900 Covington Cross Drive, Suite 120
10 Las Vegas, Nevada 89144
11 (702) 382-1500 - Telephone
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13 jgarin@lipsonneilson.com
14 aochoa@lipsonneilson.com
15 jwong@lipsonneilson.com
16 *Attorneys for Defendants/Third-Party*
17 *Plaintiffs Robert Chur, Steve Fogg,*
18 *Mark Garber, Carol Harter,*
19 *Robert Hurlbut, Barbara Lumpkin,*
20 *Jeff Marshall, and Eric Stickels*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

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

18 Plaintiff,

19 vs.

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

Defendants.

CASE NO.: A-14-711535-C

DEPT. NO.: 27

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR EXTENSION OF
DISCOVERY DEADLINES AND TO
CONTINUE TRIAL ON AN ORDER
SHORTENING TIME**

Plaintiff's Motion for Extension of Discovery Deadlines and to Continue Trial on
an Order Shortening Time ("Motion to Extend") was heard on December 27, 2018. In
attendance were Brenoch Wirthlin, Esq. on behalf of Plaintiff, Commissioner of

Insurance for the State of Nevada as Receiver for the Lewis & Clark Risk Retention Group, Inc.; Angela Ochoa, Esq. on behalf of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshal and Eric Stickels; and George Ogilvie, III, Esq. on behalf of U.S. RE Corporation, Uni-Ter Underwriting Management Corp., and Uni-Ter Claims Servicing Corp.

The Honorable Nancy Alf presiding, and the Court having heard oral argument, reviewed the pleadings and papers on file herein and being fully advised in the premises and for good cause appearing,

THE COURT HEREBY ORDERS that Plaintiff's Motion to Extend is GRANTED in PART and DENIED in PART.

Specifically, the Court grants the Motion to Extend to allow for a sixty (60) day extension on all discovery deadlines. The Court denies the Motion to Extend insofar as it requests an extension of more than 60 days on the discovery deadlines. The new discovery deadlines are as follows:

	Current Deadline:	New Deadline:
Discovery Cut-Off:	April 30, 2019	July 1, 2019
Last Day to Amend or Add Parties:	January 14, 2019	March 15, 2019
Plaintiff's Initial Expert Disclosures Due:	January 14, 2019	March 15, 2019
Defendant's Initial Expert Disclosures Due:	February 13, 2019	April 15, 2019
Rebuttal Expert Disclosures Due:	March 15, 2019	May 14, 2019
Last Day to File Dispositive Motions:	June 5, 2019	August 5, 2019

///

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

1 It is FURTHER ORDERED that there shall be no further extensions of the
2 discovery deadlines.

3 It is FURTHER ORDERED that the current trial date be vacated and that a firm
4 trial setting in this matter be set for October 21, 2019 at 10:20 a.m. through November
5 8, 2019.

6
7 DATED this 25 day of January, 2019.

8
9 Nancy L. Allf
JUDGE NANCY ALLF

10 Submitted by:
11 LIPSON NEILSON, P.C.

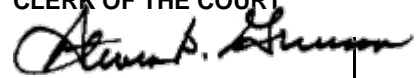
12 Joseph P. Garin
13 Joseph P. Garin, Esq. (NV Bar No. 6653)
14 Angela Ochoa, Esq. (NV Bar No. 10164)
15 Jonathan Wong, Esq. (NV Bar No. 13621)
16 9900 Covington Cross Dr., Suite 120
17 Las Vegas, NV 89144
18 *Attorneys for Defendants Robert Chur,*
Steve Fogg, Mark Garber, Carol Harter,
Robert Hurlbut, Barbara Lumpkin, Jeff
Marshall & Eric Stickels

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EXHIBIT 4

HUTCHISON & STEFFEN

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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

Plaintiff,)

vs.)

ROBERT CHUR, et al,)

Defendants.)

CASE NO. A-14-711535-C

DEPT NO. XXVII

**Transcript of
Proceedings**

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

PLAINTIFF'S MOTION FOR CLARIFICATION ON ORDER SHORTENING TIME

THURSDAY, JUNE 18, 2020

APPEARANCES:

FOR THE PLAINTIFF:

BRENOCH WIRTHLIN, ESQ.

FOR THE DEFENDANTS:

GEORGE F. OGILVIE III, ESQ.

ANGELA T. NAKAMURA OCHOA, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

1 LAS VEGAS, NEVADA, THURSDAY, JUNE 18, 2020, 9:59 A.M.

2 (Court was called to order)

3 THE COURT: Commissioner of Insurance versus Chur.
4 Motion for clarification. Let's take appearances from the
5 plaintiff to the defendants. Everyone please remember to unmute
6 your mic when you speak. Is there anyone on the phone?

7 MS. OCHOA: Angela Ochoa on behalf of the Management
8 defendants, Your Honor.

9 THE COURT: Thank you, Ms. Ochoa. How about for the
10 plaintiffs? Is there anyone present?

11 MR. OGILVIE: Your Honor, this is George Ogilvie. I
12 was just waiting for the plaintiff to -- plaintiff's counsel to
13 state his appearance, but this is George Ogilvie appearing on
14 behalf of U S Re and the Uni-Ter defendants.

15 THE COURT: Thank you.

16 So we have Ms. Ochoa and Mr. Ogilvie. Is -- do you
17 expect Mr. Peek or someone from his office to appear?

18 MS. OCHOA: Oh, no, Your Honor. Mr. Peek has
19 withdrawn. I'm back in this case --

20 THE COURT: Oh, right.

21 MS. OCHOA: -- on behalf of the board.

22 THE COURT: Good enough. And is there, then, for the
23 plaintiff, isn't it Mr. Wirthlin?

24 Mr. Wirthlin, are you --

25 MR. OGILVIE: Yes.

1 THE COURT: -- on the phone? Mr. Wirthlin, are you on
2 the phone?

3 I don't see that he is on the phone. So, Mr. Ogilvie
4 and Ms. Ochoa, how do you wish to proceed today? My intent
5 would be, because there was a status report filed yesterday,
6 just to set the matter out or just take it off calendar.

7 MS. OCHOA: I think the question was -- sorry, George.

8 MR. OGILVIE: Go ahead, Angela.

9 MS. OCHOA: Did you want to go ahead? Okay.

10 MR. OGILVIE: No, go ahead.

11 MS. OCHOA: Okay. The question was whether the stay
12 should be lifted, and I think it was based on Mr. Wirthlin's
13 status report he thinks it's July 1st based on the
14 administrative order. It's our position that the stay was put
15 in place because of the writ, and the petition for a rehearing
16 has since been denied, so there's no more reason for a stay and
17 the stay should be lifted on June 19th, as early as tomorrow.

18 MR. WIRTHLIN: Hello?

19 THE COURT: Okay. So --

20 MR. WIRTHLIN: Hello, Your Honor.

21 THE COURT: Who -- who is speaking, please?

22 MR. WIRTHLIN: I apologize. This is Brenoch Wirthlin.
23 I have been on the phone for about half an hour, but,
24 unfortunately, my phone wasn't working and I didn't realize that
25 until Your Honor asked for appearances, so I apologize. I have

1 called in through my cell phone.

2 THE COURT: Good enough. I did begin the hearing.
3 Did you hear any part of it before you called in?

4 MR. WIRTHLIN: Yes. Yes, I did, Your Honor. I heard
5 everything. We could hear fine, but I did just get my phone
6 replaced this week and, unfortunately, it appears it's not
7 working so I had to call in through my cell phone. I apologize.

8 THE COURT: That's fine. All right. So Ms. Ochoa
9 argues that the stay should be lifted effective tomorrow.

10 Is that correct, Ms. Ochoa?

11 MS. OCHOA: That's correct.

12 THE COURT: All right. And do you have a response to
13 that, Mr. Wirthlin?

14 MR. WIRTHLIN: Yes, I do, Your Honor. We would have
15 an objection to that for a couple of reasons. I did not see any
16 response to our most recent supplement, which addressed this
17 Court's Administrative Order 20-17, which I think I would submit
18 that the request by opposing counsel violates the provision in
19 AO 20-17 regarding unwarranted -- seeking unwarranted tactical
20 advantages on recently denied continuances.

21 I do think that there is -- there are two stays at
22 issue here. There is the stay that was imposed originally
23 because of the repetition, and that has been decided by the
24 Supreme Court, but there is also the stay that is imposed under
25 this Court's order 20 -- AO 20-17, which is lifted July 1st, and

1 that relates to all discovery matters and a continuance of any
2 case.

3 In the event the Court were to determine that that
4 stay was not in place, we would submit, Your Honor, under page
5 18 of AO 20-17 that this Court has determined, along with the
6 Nevada Supreme Court, that COVID-19 does constitute good cause
7 and excusable neglect warranting the extension of time.

8 In addition, on page 17 of that same order, the Court
9 confirms that Rule 41(e) is still tolled, so there is no concern
10 about the five-year rule as that rule is still stayed. We would
11 submit that a 12-day extension -- we would submit that the AO
12 20-17 tolls those deadlines until July 1st, including
13 disclosures of experts, as well as our motion to amend. In the
14 alternative, we would submit that a stay until that day, which
15 is, I believe, 11 days away, is warranted.

16 THE COURT: Thank you.

17 Mr. Ogilvie and Ms. Ochoa, your response, please?

18 MS. OCHOA: George, did you want to go or should I go?

19 MR. OGILVIE: Yeah. No, I -- Your Honor, if I could
20 be heard. This is George Ogilvie. I would -- the Uni-Ter and U
21 S Re defendants would agree with Ms. Ochoa. I don't know any
22 reason for the stay not to be lifted, but we're only talking
23 about two weeks difference between lifting it tomorrow and it
24 being lifted effective July 1.

25 I disagree with Mr. Wirthlin's interpretation of AO

1 20-17 to the extent that he's arguing that the stay cannot be
2 lifted until July 1. As he recognizes, Rule 41 is -- continues
3 to be tolled, and certain discovery is tolled under AO 20-17.

4 I don't -- the problem here, Your Honor, is the case
5 is kind of stuck right now until the receiver does two things.
6 One, files its motion for leave to amend because the receiver's
7 recent filings indicate that, in fact, the receiver will be
8 seeking to amend its complaint to file a third amended complaint
9 to assert additional allegations to support its causes of action
10 against the director defendants.

11 Until that's done, the case is kind of stuck in the
12 water. We can't move forward with additional scheduling orders
13 because we don't know what this case is going to look like on
14 the other side of the either granting or denying of that motion
15 for leave to amend. We don't even know what that -- that new
16 pleading is going to look like.

17 So my concern is that until -- until the -- until we
18 have final operative pleadings, we don't know how to proceed
19 with this case other than to conduct some discovery that was --
20 that's going to be needed no matter what. But in terms of
21 scheduling deadlines and a trial date, we are -- we're at a
22 standstill until we see what the case actually shapes up to be.

23 So for that reason, I would ask that the Court lift
24 the stay now so we can move forward with getting the pleadings
25 in order, and then we -- and then what I would ask, Your Honor,

1 is after -- after we see what the pleadings are going to look
2 like, then the parties get together and -- and collaborate on a
3 revised scheduling order to be submitted to the Court, and then
4 the Court set a new -- another status conference as soon as
5 possible to discuss a trial date and a new scheduling order.
6 Again, so I would ask that none of that be delayed.

7 And the -- as everyone knows, there's not only the
8 obligation by the receiver to file its motion for leave to
9 amend, but also to serve the receiver's initial expert
10 disclosures. I don't -- I don't agree with the receiver's
11 counsel that there's any tactical advantage being sought here by
12 lifting the stay now because the receiver has had, I don't know,
13 what is it, 15 months now since the case was stayed to do two
14 things. One, to start preparing its amended pleading, and to
15 prepare its initial disclosure.

16 So the receiver has known, again, for 15 months that
17 they were due -- those initial disclosures were going to be due
18 a day after the stay was lifted. They were going to be due. In
19 fact, they probably should have been prepared already, and I'm
20 sure they were because they were going to be due in a day or two
21 days from the day that the stay was imposed.

22 But for the imposition of the stay, we would have had
23 the -- the receiver's initial disclosures in March of 2019. So
24 there shouldn't be any prejudice to the receiver by lifting of
25 the stay and requiring the receiver to move the case forward.

1 Again, though, it's a matter of, I guess, 12 days, not 13 days,
2 12 days between now and what the receiver is requesting.

3 So Uni-Ter and U S Re defendants are not adamant about
4 this, I just don't know why we would continue to delay,
5 particularly getting the -- the amended pleading either granted
6 or denied so we know what this case shapes up to be.

7 THE COURT: Thank you.

8 Ms. Ochoa, do you have anything to add?

9 MS. OCHOA: No, I agree with what Mr. Ogilvie has
10 stated. You know, it's not a tactical advantage to disagree
11 with the reading of AO 20-17. We're setting forth our position,
12 and it's not done in bad faith.

13 THE COURT: Thank you.

14 And, Mr. Wirthlin, a brief reply.

15 MR. WIRTHLIN: Yes, Your Honor, very briefly. I think
16 the tactical advantage here, frankly, is that we filed our
17 second supplement over a week ago. I've been in communication
18 with opposing counsel, both, and have not received any
19 indication from them that they had any objection or disagreement
20 whatsoever with the July 1st date. That would prejudice the
21 receiver.

22 I think that one thing that is not referenced is that
23 due to the Supreme Court's decision on the director's writ
24 petition, the receiver has had to change the case, effectively
25 dramatically when it comes to the directors. The language on

1 [indiscernible] which was relied on, as the Court well knows,
2 was disavowed by the Supreme Court after several years of
3 litigation on that basis.

4 So that being said, Your Honor, we would submit that
5 even if the Court found that there was a stay that should be
6 lifted at this time, we would submit that and request, and would
7 have put it into any kind of reply had we received an
8 opposition, an 11-day extension. I believe it's only 11 days
9 until July 1st pursuant to this Court's AO -- Administrative
10 Order 20-17. Thank you, Your Honor.

11 THE COURT: Thank you all. This is the Commissioner's
12 motion for clarification. I'm going to grant the motion and
13 lift the stay as of July 1 for this simple reason, we are at
14 this point only required to do essential hearings as to finding
15 the administrative order.

16 Beginning in June I've started to hold hearings simply
17 because in the business court cases particularly, the parties
18 need more certainty. And so I've found it -- and just at least
19 to move the docket forward it's beneficial for everyone. So
20 this isn't a hearing that I would have necessarily even had to
21 have heard. I chose to give the parties more certainty. So for
22 that sole reason, I will grant the motion for clarification and
23 lift the stay as of July 1st.

24 There are -- there is no -- I don't believe the
25 defendants are asking for any type of tactical advantage. They

1 want to move the case forward, as well, but there are challenges
2 to all of the parties at this point in securing witnesses,
3 there's inability to travel, some people are not working or
4 working from home and not as efficient. And so I think to be
5 fair to both sides, July 1st needs to be the date.

6 So Mr. Withlin to prepare the order. If Mr. Ogilvie
7 and Ms. Ochoa wish to sign off, please so indicate.

8 MR. OGILVIE: Yes, Your Honor, on behalf of -- this is
9 George Oglivie. Yes.

10 MS. OCHOA: I'll review it, as well. Thank you, Your
11 Honor.

12 THE COURT: Very good. So present an order that's
13 agreed as to form. No competing orders. If you have an issue
14 with the language, let me know. I'll either sign, interlineate,
15 or conduct a telephonic. Thank you all for your appearance.
16 Stay safe, stay healthy.

17 MR. WIRTHLIN: Thank you, Your Honor. You, as well.

18 MS. OCHOA: Thank you.

19 (Proceedings concluded at 10:14 a.m.)

20 * * * * *

21

22

23

24

25

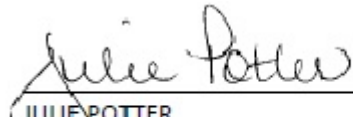
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**Julie Potter
Kingman, AZ 86402
(702) 635-0301**



JULIE POTTER
TRANSCRIBER

DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for
the State of Nevada as Receiver
of Lewis and Clark, Plaintiff(s)

vs.

Robert Chur, Defendant(s)

CASE NO: A-14-711535-C

DEPT. NO. Department 27

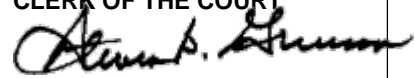
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1 **APPX**
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3 Nevada Bar No. 4639
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5 Nevada Bar No. 8287
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12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

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

17 Plaintiff,

18 vs.

19 ROBERT CHUR, STEVE FOGG, MARK
20 GARBER, CAROL HARTER, ROBERT
21 HURLBUT, BARBARA LUMPKIN, JEFF
22 MARSHALL, ERIC STICKELS, UNI-TER
23 UNDERWRITING MANAGEMENT CORP.,
24 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

**ERRATA TO THE PROPOSED FOURTH
AMENDED COMPLAINT ATTACHED AS
EXHIBIT 37 TO APPENDIX (VOLUME 3)
TO MOTION FOR LEAVE TO FILE
FOURTH AMENDED COMPLAINT**

Hearing Date: July 16, 2020

Hearing Time: 11:00 a.m.

25 Plaintiff, COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS
26 RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP (the "Plaintiff"), by and
27 through its attorneys, the law firm of Hutchison & Steffen, hereby submits this Errata to the
28 Proposed Fourth Amended Complaint that is attached as Exhibit 37 to Appendix (Volume 3) to

1 Motion for Leave to File Fourth Amended Complaint. This Errata replaces Exhibit 37 with a
2 revised proposed Fourth Amended Complaint (attached hereto as **Exhibit 37** and labeled **00536-**
3 **654**) in order to correct the following typographical errors: paragraphs that were numbered without
4 any allegations, lower case letters at the start of certain sentences and other non-substantive,
5 typographical errors.

6 DATED: July 8, 2020.

7 **HUTCHISON & STEFFEN**

8 By /s/ Brenoch Wirthlin, Esq.

9 MARK A. HUTCHISON, ESQ.

10 Nevada Bar No. 4639

11 PATRICIA LEE, ESQ.

12 Nevada Bar No. 8287

13 BRENOCH R. WIRTHLIN, ESQ.

14 Nevada Bar No. 10282

15 CHRISTIAN ORME, ESQ.

16 *Attorneys for Plaintiff*

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of Hutchison & Steffen, and that on this date, I served the
3 foregoing **ERRATA TO THE PROPOSED FOURTH AMENDED COMPLAINT**
4 **ATTACHED AS EXHIBIT 37 TO APPENDIX (VOLUME 3) TO MOTION FOR LEAVE**
5 **TO FILE FOURTH AMENDED COMPLAINT** on the parties set forth below by legally serving
6 via Odyssey electronic service as follows:

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9 Lipson, Neilson, Cole, Seltzer & Garin, P.C.
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10 *Attorneys for Director Defendants*

11 George Oglive, III
12 McDonald Carano LLP
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Attorneys for Defendants Uni-Ter Underwriting
14 *Management Corp., Uni-Ter Claims Services Corp.,*
15 *and U.S. RE Corporation*

16 Jon M. Wilson
17 Kimberly Freedman
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18 Miami Florida 33131
Attorneys for Defendants Uni-Ter Underwriting
19 *Management Corp., Uni-Ter Claims Services Corp.,*

20 DATED July 9, 2020.

21
22 /s/ Danielle Kelley
23 An Employee of Hutchison & Steffen
24
25
26
27
28

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EXHIBIT PAGE ONLY

EXHIBIT 37

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

1 **ACOM**
2 **HUTCHISON & STEFFEN**
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20 *Attorneys for Plaintiff Commissioner of Insurance*
21 *for the State of Nevada*

22 **DISTRICT COURT OF NEVADA**
23 **CLARK COUNTY, NEVADA**

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

28 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., U.S.
RE CORPORATION, CATALDO
PICCIONE, aka TAL PICCIONE; DOES 1-
50, inclusive; and ROES 51-100, inclusive
v
sive;

Defendants.

Case No.: A-14-711535-C

Dept No.: XXVII

FOURTH 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"), files the Fourth Amended Complaint and hereby

1 complains and alleges as follows:

2 **PARTIES, JURISDICTION AND VENUE**

3 1. L&C was a Nevada domiciled risk retention group formed in 2003. Between 2004
4 and February 28, 2013, L&C provided general and professional liability coverage to long term
5 care facilities and home health providers.

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

15 3. Defendant Robert Chur (“Chur”) was a director of L&C at all relevant times
16 including as of the time the Receivership Action was filed.

17 4. Chur at all relevant times resided in Williamsville, New York.

18 5. Chur was also President of ElderWood Senior Care at relevant times.

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

21 7. Fogg at all relevant times resided in Oregon.

22 8. Fogg was also Chief Financial Officer of Marquis Companies at relevant times.

23 9. Defendant Mark Garber (“Garber”) was a director of L&C at all relevant times
24 including as of the time the Receivership Action was filed.

25 10. Garber at all relevant times resided in Oregon.

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

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

3 13. Harter resides in Las Vegas, Nevada.

4 14. Harter was also a professor at University of Nevada, Las Vegas at relevant times.

5 15. Defendant Robert Hurlbut (“Hurlbut”) was a director of L&C at all relevant times
6 including as of the time the Receivership Action was filed.

7 16. Hurlbut at all relevant times resided in New York.

8 17. Defendant Barbara Lumpkin (“Lumpkin”) was a director of L&C at all relevant
9 times including as of the time the Receivership Action was filed.

10 18. Lumpkin at all relevant times resided in Florida.

11 19. Lumpkin was also the Associate Executive Director of the Florida Nurses
12 Association at relevant times.

13 20. Defendant Jeff Marshall (“Marshall”) was the President and CEO of L&C at all
14 relevant times including as of the time the Receivership Action was filed.

15 21. Marshall at all relevant times resided in Washington.

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

18 23. Defendant Eric Stickels (“Stickels”) was the Secretary and Treasurer of L&C at all
19 relevant times including as of the time the Receivership Action was filed.

20 24. Stickels at all relevant times resided in New York.

21 25. Stickels was also Chief Financial Officer of Oneida Savings Bank (“Oneida”) at
22 relevant times.

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

26 27. Defendant Uni-Ter Underwriting Management Corporation (“Uni-Ter UMC”) is a
27 Georgia corporation and is a wholly owned subsidiary of U.S. RE Corporation.

28

1 28. Uni-Ter Claims Services Corp. (“Uni-Ter CS” and collectively with Uni-Ter
2 UMC referred to herein as “Uni-Ter” or the “Uni-Ter Defendants”) is a Georgia corporation and
3 is a wholly owned subsidiary of Uni-Ter UMC.

4 29. Defendant Catalado Piccione aka Tal Piccione (“Piccione”) was the Chairman,
5 President, Chief Executive Officer, and a Director of U.S. RE at all relevant times including as of
6 the time the Receivership Action was filed.

7 30. Piccione was Chairman and a Director of Uni-Ter at all relevant times including
8 as of the time the Receivership Action was filed.

9 31. Piccione was the President, Chairman and a Director of U.S. RE Consulting
10 Agency Services, Inc., (“U.S. RE Consulting”) at all relevant times including as of the time the
11 Receivership Action was filed.

12 32. U.S. RE Consulting was a “sister company” to L&C’s managing general agent,
13 Uni-Ter, and U.S. RE Consulting entered into a business relationship with Uni-Ter and L&C to
14 work as a broker for L&C’s medical liability insurance product for nurses.

15 33. U.S. RE Consulting was a Nevada corporation, a holder of a Nevada insurance
16 brokerage license, and a wholly owned subsidiary of U.S. RE Companies, Inc. (“U.S. RE
17 Companies”) based in New York.

18 34. Piccione was a founder, Chairman, President, Chief Executive Officer, a Director,
19 and the largest shareholder of U.S. RE Companies at all relevant times including as of the time
20 the Receivership Action was filed.

21 35. Piccione was the largest shareholder of U.S. RE Companies, and as a result had
22 the largest ownership interest in U.S. RE, Uni-Ter, and U.S. RE Consulting, due to the fact that
23 U.S. RE, Uni-Ter, and U.S. RE Consulting were direct or indirect wholly owned subsidiaries of
24 U.S. RE Companies.

25 36. In addition to Piccione’s business dealings in Nevada through his U.S. RE
26 Companies’ wholly owned subsidiaries, Piccione also had direct communications with
27 representatives at the Nevada DOI, including several telephone calls and correspondences with
28

1 Nevada DOI Deputy Director Michael Lynch, regarding L&C and its deteriorating financial
2 condition prior to the filing of the Receivership Action.

3 37. Piccione at all relevant times resided in New York.

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

9 **GENERAL ALLEGATIONS**

10 **A. Introduction**

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

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

17 41. The individual defendants include the directors and officers of L&C at the relevant
18 times who, among other things, breached their fiduciary duties in performing their duties as
19 directors and officers of L&C which resulted the Receivership Action being filed.

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

22 43. The Defendants who were directors and officers of L&C (collectively referred to
23 herein as the "Board", "Directors" or "Director Defendants," which terms include said defendants
24 from the time they became members of L&C's Board of Directors) knew at the time it retained
25 Uni-Ter and its affiliates that they had only recently been formed and had limited operating
26 history. Further, the Board understood that the Board members had not previously organized an
27 insurance company. Thus, the Board placed undue reliance on Uni-Ter as its manager without
28 properly informing itself of the information provided by Uni-Ter and its affiliates. Further, 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 breached its fiduciary duties in failing to verify or correct the
4 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 44. 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 45. 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 46. 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 47. 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 48. The Uni-Ter entities hold themselves out as a leading provider of liability
21 insurance to the healthcare industry.

22 49. 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 50. As a Managing General Underwriter, Uni-Ter's services to L&C included
25 administration, underwriting, risk management, claims, and regulatory compliance.

26 ///

27 ///

28 ///

1 **(1) Management Agreements**

2 51. 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 52. 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 53. 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 54. The 2004 Management Agreement states that Uni-Ter UMC would “serve L&C in
13 a fiduciary capacity for all legal duties.” *Id.*

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

27 56. Uni-Ter’s duties also specifically included “[t]o arrange for or perform risk
28 management services for the benefit of the insureds of L&C. Such risk management shall have

1 the primary goal of reducing the frequency of medical incidents that give rise to policy claims.
2 Specific risk management duties are set forth in Exhibit C.” *Id.* Art. III(R).

3 57. Uni-Ter’s duties also included filing quarterly and annual financial statements with
4 the Nevada DOI and other states requiring the same. *Id.* Art. III(H)(2).

5 58. The 2004 Management Agreement also included Exhibit B entitled Claims
6 Management Authority which stated that Uni-Ter UMC “shall handle all aspects of claim
7 processing . . . for all claims and allocated loss adjustment expenses subject to this Agreement.”
8 The Exhibit then lists specific claims handling duties of Uni-Ter including monthly reporting of
9 new claims, open reserves, paid claims, and ending reserve balance for both indemnity and
10 expense activity. *Id.*, at Exhibit B.

11 59. Regarding compensation, Uni-Ter was paid in three components.

- 12 (i) A management fee of 22% of gross written premiums net of cancellations
13 and non renewals up to \$5 million, 20% between \$5 million and \$15
14 million, and 17.5% above \$15 million. Management fees were to be paid
15 monthly.
- 16 (ii) Claims handling fees of \$250 per file setup for each claim or investigation,
17 \$95 per hour for claim adjuster/nurse professional time, and actual travel
18 expenses.
- 19 (iii) A profit sharing bonus on a sliding scale as a percent of earned premiums
20 based on loss ratio for each calendar year. The profit sharing bonus was to
21 be paid no later than March 1 of the year following the fifth year after the
22 year at issue.

23 *See id.*

24 60. The 2004 Management Agreement included amendments that modified these
25 payment terms. *Id.*

26 61. The Second Amendment to the 2004 Management Agreement states that for all
27 services under the 2004 Management Agreement other than claims handling, the management fee
28 will be 12% of annual gross written premiums net of cancellations and non-renewals plus the

1 amount of agency commissions (at rates approved by L&C) payable to retail and wholesale
2 agents appointed by Uni-Ter. *Id.*

3 62. Various amendments raised the hourly rate for claim adjuster/professional time.
4 *Id.*

5 63. The Fifth Amendment to the 2004 Management Agreement modified the profit
6 sharing bonus provision to be paid on March 1 of the year following the fourth year after the year
7 at issue. *Id.*

8 64. In or around 2009 L&C, at Uni-Ter's direction, accepted multiple multi-site LTC
9 operators ("Multi-site Operators") as policyholders. As noted above, in or around 2009 L&C also
10 accepted Sophia Palmer.

11 65. At the time L&C accepted Sophia Palmer, Lumpkin – a director of L&C – also
12 chaired the board of Sophia Palmer.

13 66. The DOI reprimanded the Board for failing to submit a Conflict of Interest
14 Statement as the officers and directors of L&C were required to do pursuant to NAC 694C.

15 67. The Board accepted Uni-Ter's direction to obtain the Multi-site Operators,
16 including Sophia Palmer, without adequate information. In fact, the Board breached its fiduciary
17 duties in determining to accept the Multi-site Operators, including Sophia Palmer.

18 68. Had the Board complied with its fiduciary duties in informing itself based upon
19 the information available to it regarding the Multi-site Operators, it would have discovered that in
20 fact the recommendation by Uni-Ter was ill advised.

21 69. L&C's acceptance of the Multi-site Operators constituted a significant divergence
22 from the established business model of L&C as the Multi-site Operators were large, multi-facility
23 operators and had historical loss records outside L&C's typical underwriting range. Further, one
24 of the contracts at issue contained an unprecedented provision that limited the claims exposure of
25 L&C on an aggregate level rather than on a claim-specific level.

26 70. Following L&C's acquisition in 2009 of the Sophia Palmer nurse/nurse
27 practitioner book of business in Florida, the Seventh Amendment stated that the existing profit
28 sharing terms were applicable to L&C's long term care facility/home health care book of

1 business, but that regarding L&C's nurse/nurse practitioner book of business produced by agents,
2 the profit sharing bonus (called "commissions") were to be paid at a rate of 37.5% of the annual
3 gross written premiums net of cancellations and non-renewals. For nurse/nurse practitioner
4 business produced by Uni-Ter UMC, the commission rate was to be 30.0%.

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

8 72. Uni-Ter received at least \$1,500,000 in management fees in 2010.

9 b. 2011 Management Agreement

10 73. At the expiration of the 2004 Management Agreement, L&C and Uni-Ter UMC
11 (and Uni-Ter's subsidiary Uni-Ter CS) entered into a similar Management Agreement on January
12 1, 2011 ("2011 Management Agreement") for a period of five years. A copy of the 2011
13 Management Agreement is attached hereto as **Exhibit 3**.

14 74. The 2011 Management Agreement was in place when the Order of Liquidation
15 was entered.

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

21 76. The 2011 Management Agreements included the following revisions to the 2004
22 Management Agreement:

- 23 (i) The accounting reporting to L&C is to be done on a quarterly basis instead
24 of monthly. Art. III(H).
- 25 (ii) Exhibit A was revised regarding the territory to include all of the U.S.
26 except for Hawaii and Alaska and excluding long term care and home
27 healthcare in Florida.
- 28 (iii) The limitations of Uni-Ter's authority in Article III(Y) are revised to delete

1 the limitations set forth in items 2, 6, and 9 of the 2004 agreement. Uni-
2 Ter's new allowed duties (i.e., no longer a limitation) included that it had
3 full authority to settle claims on L&C's behalf or commit L&C to pay
4 claims.

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

11 *Id.*

12 77. The First Amendment to the 2011 Management Agreement revised the
13 management fee for calendar year 2011 to be at a rate of 10% instead of 12% and stated that
14 continuation of the 2% differential for subsequent periods is subject to mutual agreement of the
15 parties. A handwritten notation on the amendment states that "This was revised on February 7th,
16 2011." *Id.*

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

21 79. The Third Amendment done on December 31, 2011 states that no profit sharing
22 bonus would accrue or be paid regarding the 2008 calendar year. *Id.*

23 80. Despite the changes to Uni-Ter's management responsibilities, and despite the dire
24 financial circumstances of L&C during 2011, Uni-Ter received not less than \$1,000,000.00 in
25 management fees in 2011.

26 81. Milliman, Inc. ("Milliman"), an actuarial firm, provided Rate and Loss Reserve
27 analysis to Uni-Ter ("Milliman Reports"). Milliman was engaged by Uni-Ter, and not L&C, in
28

1 the work that it did. Milliman did premium rate and professional liability and general liability
2 rate analysis for Uni-Ter. Milliman also did loss reserve analysis for Uni-Ter.

3 (2) U.S. RE Agreement

4 82. In a Broker of Record Letter Agreement between L&C and U.S. RE (“U.S. RE
5 Agreement”), L&C appointed U.S. RE as its exclusive reinsurance intermediary/broker for a
6 period of seven years and granted U.S. RE full and complete authority to negotiate the placement
7 of reinsurance on all classes of insurance with unspecified limits of coverage as requested by any
8 underwriter of L&C, *i.e.*, Uni-Ter (“U.S. RE Agreement”). A copy of the U.S. RE Agreement is
9 attached hereto as **Exhibit 4**.

10 83. The U.S. RE Agreement states that U.S. RE will handle all funds collected for
11 L&C in a fiduciary capacity. *Id.*

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

15 85. U.S. RE was not merely hired as some uninvolved third party broker of
16 reinsurance, although acting as a third party broker of reinsurance was included with U.S. RE’s
17 duties.

18 86. Uni-Ter Underwriting Management Corporation (“Uni-Ter Underwriting”) and
19 Uni-Ter Claims Services Corporation (“Uni-Ter Claims”) were retained as the managers of L&C.

20 87. Both Uni-Ter Underwriting and Uni-Ter Claims are direct or indirect subsidiaries
21 of U.S. RE.

22 88. U.S. RE was itself engaged as L&C’s “exclusive reinsurance intermediary/broker”
23 and as L&C’s agent, including being granted “full and complete authority to negotiate the
24 placement of reinsurance or retrocessions on all classes of insurance with unspecified limits of
25 coverage as specifically requested by any underwriter of [L&C].” *Id.*

26 89. The U.S. RE Agreement further recognizes U.S. RE’s agency with L&C by stating
27 that U.S. RE “will exercise its best efforts in the discharge of its duties **on behalf of the**
28 **Company.**” *Id.* (emphasis added).

1 90. The Supreme Court of Nevada has held that “[a]n agency relationship is formed
2 when one who hires another retains a contractual right to control the other's manner of
3 performance.” *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 108 Nev. 811, 815, 839 P.2d
4 599, 602 (1992) (citation omitted).

5 91. U.S. RE acted as the agent of L&C, as the U.S. RE Agreement expressly states not
6 only that U.S. RE will act “on behalf of” L&C, but also that L&C has the right to control U.S.
7 RE’s manner of performance as U.S. RE promises to “comply with written standards established
8 by [L&C] for the cession or retrocession of all insured risks.” *Id.*

9 92. Further, Nevada law makes clear that “[a]n agent, such as respondent in these
10 circumstances, owes to the principal the highest duty of fidelity, loyalty and honesty in the
11 performance of the duties by the agent on behalf of the principal.” *LeMon v. Landers*, 81 Nev.
12 329, 332, 402 P.2d 648, 649 (1965) (holding that the agent breached her fiduciary obligations)
13 (emphasis added); *see also Chem. Bank v. Sec. Pac. Nat. Bank*, 20 F.3d 375, 377 (9th Cir. 1994)
14 (“The very meaning of being an agent is assuming fiduciary duties to one's principal.”) (*citing*
15 *Restatement (Second) of Agency* § 1(1)).

16 93. Additionally, as noted above, U.S. RE was engaged not only as L&C’s exclusive
17 broker, but also as its consultant. Many courts have recognized that insurance brokers are agents
18 of, and therefore owe fiduciary duties to, their insureds. *See Capitol Indem. Corp. v. Stewart*
19 *Smith Intermediaries, Inc.*, 229 Ill. App. 3d 119, 124-25, 593 N.E.2d 872, 876 (1992) (“An
20 agency relationship is a fiduciary one; insurance brokers employed for a single transaction or
21 series of transactions are agents...”).

22 94. The Nevada Supreme Court has recognized that insurance brokers may assume
23 additional duties – including through representations by the broker upon which the insured relies
24 – thereby creating a special relationship between the broker and the insured. *Flaherty v. Kelly*,
25 2013 WL 7155078, at *2 (Nev. Dec. 18, 2013).

26 95. U.S. RE assumed such duties including “substantial and essential efforts expended
27 by U.S. RE and its affiliates in the organization and licensing of [L&C]” and serving as a
28 consultant to U.S. RE. *See* U.S. RE Agreement.

1 96. Further, as recognized in the U.S. RE Agreement, U.S. RE's agency relationship
2 with Plaintiff extended to additional actions and bases with U.S. RE, including but not limited to
3 the "substantial and essential efforts expended by U.S. RE and its affiliates in the organization
4 and licensing of [L&C]" and to state that U.S. RE will "serve as the exclusive intermediary in
5 connection with the placement of all of [L&C's] reinsurance." *Id.*

6 97. The U.S. RE Agreement further recognizes U.S. RE's agency with L&C by stating
7 that U.S. RE "will exercise its best efforts in the discharge of its duties on behalf of the
8 Company." *Id.* (emphasis added). The U.S. RE Agreement also states that "[a]ll funds collected
9 for [L&C]'s account will be handled by U.S. RE in a fiduciary capacity in a bank which is a
10 qualified United States financial institution." *Id.*

11 98. Thus, U.S. RE was the agent of Plaintiff in multiple aspects, including but not
12 limited to, those set forth above.

13 99. Further, U.S. RE did more than merely act as some disinterested third party
14 reinsurance broker. In fact, U.S. RE was directly involved in the activities of L&C in its capacity
15 as agent of L&C.

16 100. Moreover, U.S. RE was actively involved in management related activities,
17 including presenting financial and other pertinent information to L&C's Board.

18 101. U.S. RE intentionally failed to obtain reinsurance through syndicates as required
19 under the U.S. RE Agreement. No facts were found that reinsurance failed to pay as required. To
20 the contrary, the reinsurance policies seemed not to be invoked because deductible amounts were
21 not reached, especially in the early years of 2004 to 2008.

22 102. Nevertheless, U.S. RE intentionally represented to L&C that it would act in L&C's
23 best interests, creating additional duties toward L&C other than merely finding and securing
24 reinsurance, including but not limited to, fiduciary duties, as set forth herein.

25 103. In violation of such duties, U.S. RE intentionally did not find appropriate
26 reinsurance because the deductible rates were consistently too high. This is shown by the fact
27 that reinsurance did not come into play at all in the early years. Indeed, the Board approved
28 commutation of the 2007 treaty only 10 days into 2008.

1 (3) Reinsurance Contracts

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

4 (i) April 1, 2004 to December 31, 2004 Treaty (Commuted).

5 (ii) January 1, 2005-December 31, 2006 Treaty.

- 6 - Applicable to \$750,000 excess of \$250,000 per claim
- 7 - Aggregate limit is lesser of \$3,500,000 or 225% of ceded
premium.
- 8 - Ceded premium is 25% of gross net written premium
income (GNWPI)

9 (iii) January 1, 2007-December 31, 2007 Treaty (Commuted in early 2008)

- 10 - Applicable to \$750,000 excess of \$250,000 per claim
- 11 - Deductible is 22% of GNWPI.
- 12 - Aggregate limit is 300% of ceded premium.
- 13 - Ceded premium is 20% of GNWPI.

14 (iv) July 1, 2005-December 31, 2006 Treaty.

- 15 - Applicable to \$1,000,000 excess of \$1,000,000 per claim
- 16 - Aggregate limit is \$3,000,000 or 300% of ceded premium.
- 17 - Ceded premium is 100% of gross premiums for policies
with limits greater than \$1,000,000 per claim.

18 (v) January 1, 2008-March 31, 2009 Treaty.

- 19 - Applicable to \$650,000 excess of \$350,000 per claim
- 20 - Deductible is greater of 13% of GNWPI or \$1,274,000.
- 21 - Aggregate limit is 300% of ceded premium.
- 22 - Ceded premium is 17.08% of GNWPI for all policies
subject to a minimum of \$1,575,000.

23 (vi) April 1, 2009-March 31, 2010 Treaty.

- 24 - Applicable to \$650,000 excess of \$350,000 per claim
- 25 - Deductible is greater of 11% of GNWPI or \$1,100,000.
- 26 - Aggregate limit is 300% of ceded premium.
- 27 - Ceded premium is 17.93% of GNWPI for all policies
subject to a minimum of \$1,613,700.

28 (vii) April 1, 2010-May 31, 2011 Treaty.

- 29 - Applicable to \$650,000 excess of \$350,000 per claim
- 30 - Deductible is greater of 11% of GNWPI or \$1,220,000.
- 31 - Aggregate limit is 300% of ceded premium.
- 32 - Ceded premium is 17.00% of GNWPI for all policies
subject to a minimum of \$1,890,000.

33 (viii) December 1, 2009-May 31, 2011 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 greater of \$3,000,000 or 300% of ceded premium.
 - Ceded premium is 100% of net excess premiums (gross premiums less 20%) for policies with limits greater than \$1,000,000 per claim
- (ix) June 1, 2011-May 31, 2012 Treaty.
- 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.

D. Financial Disaster in 2010 and 2011.

105. 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.**

106. 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....

Id.

107. The September 2010 Letter ended with an admonition from the DOI that “[b]ecause of the company’s capital decline revealed by the June 30, 2010 financial statement, management should commence preparing a corrective action plan and an implementation schedule addressing a means to enhance earnings and surplus, reduce expenses, and improve liquidity.” *Id.*

108. Despite the DOI’s recommendations regarding L&C’s deteriorating financial condition and need for an effective corrective action plan, the Board intentionally and knowingly failed to fulfill their fiduciary duties to correct the substantial problems L&C was facing, and the alarming financial problems of L&C outlined by the DOI in its September 2010 Letter were not corrected, and in fact were dramatically worsened, by the Board’s actions.

109. In the first three (3) quarters of 2011, L&C experienced a net loss of not less than \$3,100,000.

110. A principal reason for these losses was that the Multi-Site Operators had passed on significant losses to L&C in the two policy years from 2009-2011, as well as increases in claims for other insureds.

111. On or about September 1, 2011, Sanford Elsass and Donna Dalton sent a memorandum to the Board purporting to outline the events causing financial difficulties. Included in that memorandum was a representation that Uni-Ter would hire a consultant to perform a “complete analysis” of the claims process of Uni-Ter Claims Services Corporation.

112. The consultant hired by Uni-Ter was Praxis Claims Consulting (“Praxis”).

113. At this time the Board knew that reliance on information presented to it by, or at the direction of, Uni-Ter and U.S. RE could not be relied on, in part because the decision to accept the Multi-Site Operators was financially devastating to L&C.

114. Despite this knowledge of the Board regarding the wholly inadequate and inaccurate information provided by Uni-Ter, the Board's breaches of their fiduciary duties is manifest in the fact that, the Board failed to verify whether Praxis was provided accurate information in preparing its reviewing the claims process.

115. In fact Uni-Ter did not provide Praxis with accurate information and, in fact, limited the scope of Praxis's initial engagement to a review of claims-related processes and of a small sample size of only nine (9) specific claims reserves. Praxis's review, which was grossly inadequate due to Uni-Ter's failure to provide adequate and accurate information to Praxis, resulted in a report dated September 15, 2011 ("September 2011 Praxis Report"). A copy of the September 2011 Praxis Report is attached hereto as **Exhibit 6**.

116. Because Uni-Ter failed to provide accurate and complete information to Praxis, the September 2011 Praxis Report was substantially inaccurate and incomplete.

117. The Board later learned that, in fact, Uni-Ter had not provided Praxis with accurate information and that Uni-Ter had limited the scope of Praxis's engagement to a review of claims-related processes and of a small sample size of only nine (9) specific claims reserves. This is information which the Board could have known before the 2011 Praxis Report was issued.

118. Further, on or around September 23, 2011, the DOI sent another letter to Marshall regarding the now disastrous financial condition of L&C ("September 2011 Letter"). A copy of the September 2011 Letter is attached hereto as **Exhibit 7**.

119. In the September 2011 Letter, the DOI identified several massive financial problems with L&C which the Board had, taken improper or no action to correct, including the following:

- Of particular concern is the Combined ratio which has increased since prior year-end from 99.4% to 153.9% - a 54.8% increase post-merger.

- A major concern is Risk Based Capital (“RBC”) – 208.8%. This RBC calculation results from year-end 2010 financial statement. The RBC is now well below that level considering the reserve (Liability) increases and net loss reducing policyholder surplus by 40.3% for only one-half (Six Months) of a year of operating activity.
- ...
- Net underwriting loss has deteriorated to \$3.1 million
- Net loss = \$1.8 million

Id.

120. The September 2011 Letter further noted the following regarding the second quarter of 2011:

Since prior year-end, **policyholder surplus has declined by 40.3%**. Company is experiencing adverse claims Development and is becoming extremely leveraged. **Total Liabilities have increased by 26.5%** ... Net Loss is \$1.8 million, **a result of \$3.1 million net underwriting loss for six months and \$1.7 million underwriting loss for just the second quarter**. Unassigned Funds have deteriorated further to a negative (\$1.4 million). Since prior year-to-date, net premiums earned have improved nominally by 5.8% while net losses incurred has increased by 117.6% **causing a net loss ratio of 114.4% and resulting in a 153.9% combined ratio**. Company is highly leveraged. Cash and invested assets **only represent 59.2% of total assets** resulting in a **148.7% liquidity ratio** coupled with gross premiums written representing 571.6% of policyholder surplus and net premiums written representing 499.9% of policyholder surplus ...

Id. (emphasis added).

121. 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]he 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.*

122. The Board failed to comply with its fiduciary duties in addressing the September 2011 Letter, and failed to correct the staggering financial problems L&C was facing.

123. Subsequently, in late November 2011, Uni-Ter conducted what purported to be a full-scale internal review of all claims reserves, and later engaged Uni-Ter to conduct a full review as well.

1 124. The outcome of the internal review by Uni-Ter, as well as the negative review by
2 Praxis, showed that Uni-Ter had incorrectly understated the sampled claims in the September
3 2011 Praxis Report by a net of not less than \$1,200,000.

4 125. Uni-Ter and/or U.S. RE informed the Board on a conference call that, in fact, an
5 increase of at least \$5,000,000.00 to L&C's claims reserves was necessary. This significantly
6 increased the net loss of Lewis & Clark on a full 2011 year basis and further decreased L&C's
7 capital to an unacceptable level for operational, regulatory, and rating purposes.

8 126. The Board, through its breaches of its fiduciary duties, ignored or improperly
9 responded to the multiple red flags – including communications from the DOI – regarding
10 L&C's financial position, Uni-Ter's management and the representations of Uni-Ter and U.S.
11 RE, which proximately caused and contributed to the damages suffered by Plaintiff.

12 **E. L&C Board Meeting Minutes**

13 127. The Board met generally once per quarter starting in late 2004 and continuing to
14 September 2012 related to L&C. Minutes of said meetings were kept by L&C ("Minutes").

15 128. Because Uni-Ter UMC was managing all of the business aspects of L&C's
16 business, Mr. Sanford Elsass ("Elsass"), President of Uni-Ter UMC and an officer of U.S. RE at
17 all relevant times, attended all of the L&C Board meetings in person except for the last two.
18 Elsass and other Uni-Ter employees gave most of the reports about the company to the Board
19 members.

20 129. Many of the approvals and actions of the Board were done at the recommendation
21 of Mr. Elsass.

22 130. The Board had knowledge concerning Mr. Elsass and his recommendations that
23 caused reliance on the reports and recommendations of Mr. Elsass and Uni-Ter UMC to be
24 unwarranted.

25 131. Despite this knowledge, the Board failed to comply with its fiduciary duties with
26 respect to accepting the information and recommendations provided by Mr. Elsass and Uni-Ter
27 UMC and failed to verify whether this information was accurate and whether the
28

1 recommendations should be adopted.

2 132. The Minutes also do not mention the monthly reports that Uni-Ter UMC was
3 supposed to provide to L&C in the 2004 Management Agreement or the quarterly reports that
4 Uni-Ter UMC was supposed to provide to L&C in the 2011 Management Agreement. The
5 Minutes do reference annual and quarterly financial results and there are discussions of the claims
6 and underwriting activities for each quarter, but no mention of the reports required by the 2004
7 and 2011 Management Agreements.

8 133. Item 13 in the March 9, 2005 Minutes states that the Board requested that Uni-Ter
9 provide financial information to the Board monthly. Uni-Ter already had the obligation to
10 provide the information listed in the 2004 Management Agreement to the Board monthly.

11 134. Item 10 from the August 12, 2005 Minutes, attached hereto as **Exhibit 8**, which
12 state that the Board is unhappy with the work of Uni-Ter. The Minutes state that the Board was
13 concerned regarding the lack of completion by Uni-Ter regarding marketing plans presented at
14 the March 2005 meeting, including non-receipt of periodic marketing reports, lack of contract
15 with state associations and potential new agents, and generally, a lack of production of new
16 business during 2005.

17 135. Despite these clear indications that Uni-Ter was failing to provide complete and
18 accurate information, the Board remained indifferent to its legal duty to act on an informed basis
19 by ensuring the information and recommendations provided by Uni-Ter and Mr. Elsass were
20 complete and accurate.

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

26 137. Uni-Ter undertook the fiduciary duty of determining and establishing the
27 appropriate loss reserves for the company. Item 3 in the September 14, 2005 Minutes, attached
28 hereto as **Exhibit 9**, states that Elsass reported on establishing the appropriate loss reserves for

1 the company.

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

5 139. The Audit Committee generally reviewed and approved L&C's financial audits.
6 There are no entries stating that the Audit Committee performed any auditing functions other than
7 review of financial audits.

8 140. The May 30, 2006 Minutes, attached hereto as **Exhibit 10**, state that L&C's D&O
9 insurance was renewed, but that L&C's E&O insurance was not renewed.

10 141. L&C subsequently obtained E&O insurance.

11 142. Item 3 of the October 20, 2006 Minutes, attached hereto as **Exhibit 11**, states that
12 the Board directed Donna Dalton of Uni-Ter and L&C's counsel to comment to the Nevada DOI
13 regarding issues including loss reserves and Risk Retention Act requirements.

14 143. Item 9 of the March 23, 2007 Minutes, attached hereto as **Exhibit 12**, references
15 the Nevada DOI triennial examination report for 2003 to 2005, but does not state any findings
16 related to the report or what corrective actions, if any, the Board would take.

17 144. The October 12, 2007 Minutes, attached hereto as **Exhibit 13**, reference an
18 incurred but not reported ("IBNR") reduction of \$934,000 but do not explain it or why the
19 reduction occurred. The October 12, 2007 Minutes also state that L&C was beginning to offer
20 occurrence policies subject to required regulatory filings, but do not discuss the required
21 regulatory filings.

22 145. The January 10, 2008 Minutes, attached hereto as **Exhibit 14**, state that there will
23 be commutation of the 2007 reinsurance with Imagine RE, and note the change that Uni-Ter will
24 begin a retail policy sales agency to improve on the disappointing efforts by the "current agency
25 network." The entry notes that Uni-Ter will be paid commissions on L&C's retail policy
26 business at 10% of gross written premiums rather than 15% of gross written premiums. The
27 Minutes do not say which contract Uni-Ter would provide such services under. The 2004
28 Management Agreement required solicitation services by Uni-Ter. This same item mentions that

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

3 146. Item 13 in the April 24, 2008 Minutes, attached hereto as **Exhibit 15**, references
4 insolvency gap coverage of \$1 million. Then, item 11 of the December 2, 2009 Minutes, attached
5 hereto as **Exhibit 16**, notes a renewal of insolvency gap coverage in the amount of \$2 million.

6 147. Item 4 in the December 10, 2008 Minutes, attached hereto as **Exhibit 17**, notes
7 that, based on a request from the Nevada DOI, the Board ratified clarification amendments to the
8 Oneida surplus notes.

9 148. Item 6 of the December 2, 2009 Minutes, attached hereto as **Exhibit 17**, notes a
10 report on the current triennial examination by the Nevada DOI but does not state any more
11 regarding said examination.

12 149. Item 5 of the May 21, 2010 Minutes, attached hereto as **Exhibit 18**, references the
13 Board's review of results of the Nevada DOI triennial examination and approval of responses to
14 the DOI. The Minutes do not explain or discuss the responses or any corrective actions that the
15 Board may take. Those Minutes also approved the 2009 annual audited statements and report
16 prepared by Johnson Lambert & Co. as well as the 2009 Milliman Report and calculation of
17 "Profit Sharing bonuses."

18 150. The November 2010 Minutes, attached hereto as **Exhibit 19**, contain discussion of
19 renewal of L&C's Management Agreement with Uni-Ter subject to noted revisions including a
20 requirement of clarification of significant claims notice to the Board with settlement authority
21 remaining with Uni-Ter.

22 151. The May 4-5, 2011 Minutes, attached hereto as **Exhibit 20**, approved the 2010
23 annual audited statements and report prepared by L&C's auditors, Johnson Lambert & Co.

24 152. The September 21, 2011 Minutes, attached hereto as **Exhibit 21**, contain in Item 7
25 a statement that the Board reviewed and approved a new underwriting philosophy. The Minutes
26 do not say what the new underwriting philosophy was. However, a document dated 8/31/11 and
27 entitled "Long Term Care Underwriting Philosophy & Strategic Direction" was part of the
28

1 directors' package for that meeting. The document lists specific requirements related to
2 consideration of long term care facilities for coverage.

3 153. On October 5, 2011 the Board held a special meeting and approved capital
4 contributions by shareholders Oneida, Eagle Healthcare, Pinnacle, Marquis, Elderwood, Rohm,
5 and Uni-Ter in exchange for surplus notes. The action of the Board in lieu of a special meeting,
6 attached hereto as **Exhibit 22** ("Action"), also noted that depending on the fourth quarter, the
7 same parties other than Oneida would commit to an additional amount of \$550,000 in the fourth
8 quarter of 2011 and first quarter of 2012 as the stated proportions (with Uni-Ter having 20/55 or
9 4/11 responsibility). The Minutes also noted approval of the new underwriting philosophy.

10 154. The minutes of the October 5, 2011 action by the Board demonstrate that the
11 Board was well aware it was not receiving accurate and complete information from Uni-Ter as
12 the Board requested "more frequent financial reporting to the Board **as discussed at the last**
13 **meeting**, preferably monthly." (Emphasis added). The Board failed to comply with its fiduciary
14 duties and failed to ensure that Uni-Ter did, in fact, provide more complete and accurate reporting
15 of L&C's financial status.

16 155. Even with the bad financial news in early October, 2011, the Board was indifferent
17 to its legal obligations and did not meet again until December 20, 2011, over two and a half
18 months later. At that meeting, as reflected in the Minutes attached hereto as **Exhibit 23**, Uni-Ter
19 reported that claims reserves may have increased by \$5 million from the November 2011 figures,
20 *i.e., in one month.*

21 156. In or around the latter part of 2011, William Fishlinger ("Fishlinger") was retained
22 to provide claims review for L&C. Item 3 in the December 28, 2011 Minutes, attached hereto as
23 **Exhibit 24**, states that the Board was advised regarding the schedule for Fishlinger's claims
24 review commencing in the first full week of January 2012. Item 4 of those Minutes states that
25 Uni-Ter's pro forma December 31, 2011 financials indicate that L&C is neither impaired nor
26 insolvent and pending receipt of the Fishlinger review, Uni-Ter should process the current
27 renewals. The Minutes also note that the Board's claims committee should have a conference call
28

1 with Fishlinger about his work and conclusions before the work is done to finalize his written
2 report.

3 157. The Board failed to comply with its fiduciary duties regarding this information
4 and took no action whatsoever to verify whether the information provided by Uni-Ter suggesting
5 that L&C was “neither impaired nor insolvent” was accurate, despite numerous indications that
6 information provided by Uni-Ter was inaccurate and incomplete.

7 158. At the January 16, 2012 meeting, the Minutes for which are attached hereto as
8 **Exhibit 25**, the Board was told that capital and surplus was \$1,979,730 as of December 31, 2011.
9 Thus, L&C’s surplus dropped over \$2.5 million in one year.

10 159. The Minutes do not reflect any discussion of how that relates to the approximate
11 \$5 million additional loss reserves noted at the December 20, 2011 meeting.

12 160. L&C’s Nevada counsel was instructed to contact Nevada DOI regarding the
13 “current inquiry.” The Minutes do not say what the current inquiry was.

14 161. The January 26, 2012 Minutes state in Item 2 that L&C’s Nevada counsel reported
15 on her conversations with the Nevada DOI. *See Exhibit 26.* The Minutes do not include the
16 substance of those discussions. Item 3 states that the Board deferred approval of commutation of
17 reinsurance for years 2005, 2006, 2008, and 2009 pending receipt from Uni-Ter of a report
18 regarding outstanding claims for such periods. Item 5 states that the Board met in executive
19 session to discuss issues involving potential additional capital.

20 162. Further, the minutes for the January 26, 2012 meeting stated that “Mr. Elsass
21 presented a report on current claims activity in California and New York and discussions with the
22 Corporation’s actuaries and auditors.” *Id.* The Board intentionally and knowingly failed to fulfill
23 their fiduciary duties regarding this information took no action to verify that Mr. Elsass’s report
24 was accurate, despite clear indications that information provided by Mr. Elsass was incomplete
25 and inaccurate.

26 163. At the February 2, 2012 meeting, the Minutes for which are attached hereto as
27 **Exhibit 27**, the Board approved \$480,000 additional capital contributions in exchange for
28 subordinated surplus notes on the same terms used in the fall of 2011. Elsass reported to the

1 Board “regarding recent favorable claims activity.” The Minutes do not say what the alleged
2 favorable claims activity was. The Board failed to comply with its fiduciary duties regarding this
3 information and did not verify whether the report by Elsass regarding alleged “favorable claims
4 activity” was accurate or complete.

5 164. Notwithstanding the dire financial issues, the Board continued to breach its
6 fiduciary duties, including without limitation by not meeting again until April 30, 2012, almost
7 three (3) months later. At the April 30, 2012 meeting, the Minutes for which are attached hereto
8 as **Exhibit 28**, Item 1 provides that L&C’s submissions to the Nevada DOI were approved, but do
9 not explain what the submissions were.

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

13 166. Item 5 of the May 14, 2012 Minutes, attached hereto as **Exhibit 29**, state that a
14 Nevada DOI examination was scheduled, but do not explain this matter further.

15 167. The Board did not meet for another two and a half (2 ½) months regarding the
16 financial conditions of L&C. The Board met telephonically on June 6, 2012, the Minutes for
17 which are attached hereto as **Exhibit 30**, but the only business noted was the approval of
18 reinsurance. There is no entry regarding a discussion of the financial status of L&C.

19 168. In fact, despite the clear indications that Uni-Ter and U.S. RE were providing
20 inaccurate and/or incomplete information to L&C, the minutes of the June 6, 2012 Board meeting
21 state that the Board approved the renewal of L&C’s reinsurance “[f]ollowing a presentation by
22 USRE [sic]”. *Id.* There is no indication whatsoever regarding any measures taken by the Board
23 to verify the information provided by Uni-Ter and/or U.S. RE.

24 169. At the July 25, 2012 meeting, the Minutes for which are attached hereto as **Exhibit**
25 **31**, Uni-Ter and U.S. RE presented a report of second quarter financial results in which a
26 significant increase in loss reserves was reported. The Board then discussed possible courses of
27 action. The Board requested that Uni-Ter contact Fishlinger to conduct an independent roll
28 forward of its last claims reserve review preferably by August 7, 2012. The Board also resolved

1 that the preliminary second quarter results not be filed until the Fishlinger review is done and that
2 the results should be approved by the Board before filing. Finally, the Minutes noted that no new
3 business should be written by L&C and no capital raised until further notice, but that renewals
4 may be processed until notice otherwise.

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

8 171. At the August 22, 2012 meeting, Minutes for which are attached hereto as **Exhibit**
9 **32**, L&C's counsel reported on recent discussions with Uni-Ter and U.S. RE. Uni-Ter personnel
10 were not present at the meeting.

11 172. The Board held a telephonic meeting on September 24, 2012, the Minutes for
12 which are attached hereto as **Exhibit 33**. The Board's failure to inform itself of the basic
13 financial condition of the Company, as required by its fiduciary duties, was made clear as the
14 Board tacitly acknowledged it was not aware whether the Company was financially solvent at that
15 time, resolving that "a request be made to the Nevada Division [sic] of Insurance that the
16 Corporation be placed in rehabilitation, in view of the fact that the Corporation **is or may be**
17 insolvent." *Id.* (emphasis added).

18 **F. Information Available to the Officers and Directors**

19 173. Substantial financial information regarding L&C was available to the Board of
20 which the Board intentionally and knowingly failed to fulfill their fiduciary duties to properly
21 inform themselves and understand.

22 174. Among this available information was the Annual Statement of L&C for the year
23 ending December 31, 2006, attached hereto as **Exhibit 34**, which was submitted to the Nevada
24 DOI contains L&C's financial statement for 2006. The Notes to Financial Statements (pages 14-
25 14.3) include the reinsurance in place (note 23) as well as the change of incurred losses and LAE
26 (note 25). The Quarterly Statement for L&C for the first quarter of 2007, attached hereto as
27 **Exhibit 35**, has similar notes.
28

175. Sophia Palmer 2007 board Minutes were very similar to L&C board Minutes. Uni-Ter was the underwriter for Sophia Palmer as well.

176. L&C's Internal Unaudited Financial Statements as of December 31, 2007, attached hereto as **Exhibit 36**, states that unpaid losses and loss expenses were \$578,000 in 2004, \$1,142,000 in 2005, \$2,636,000 in 2006, and \$3,013,000 in 2007. This is a growth of over 500% in only four (4) years.

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

178. The information provided to the directors of L&C for 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%

179. The Board wholly failed to comply with its fiduciary duties in informing itself of the reasons behind the dangerous financial status of the company or in taking timely, corrective action.

180. Further, L&C's Summary Balance Sheet as of December 31, 2008, attached hereto as **Exhibit 37**, 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.

1 181. L&C's Internal Unaudited Financial Statements as of December 31, 2009, attached
2 hereto as **Exhibit 38**, state that unpaid losses and loss expenses jumped to \$6,255,488 in 2009
3 from \$3,941,000 in 2008. Uni-Ter's management fees jumped to \$1,717,482 for 2009 from
4 \$1,372,915 in 2008.

5 182. The 2009 Milliman Report, which supports the corresponding Statement of
6 Actuarial Opinion attached hereto as **Exhibit 39**, states that the existing risk factors, "coupled
7 with the variability that is inherent in any estimate of unpaid loss and loss adjustment expense
8 obligations, could result in material adverse deviation from the carried net reserve amounts." The
9 Milliman Report concludes that L&C's actual net outstanding losses and loss adjustment expense
10 ("LAE") exceed L&C's reserves for unpaid losses (\$5,021,810) and unpaid LAE (\$1,233,678) by
11 an amount of more than 5% of L&C's statutory surplus shown on the annual statement, which
12 was \$4,031,349. The Milliman Report also states that this materiality standard was selected
13 based on the fact that his opinion was prepared for regulatory review. Further, the corresponding
14 Statement of Actuarial Opinion provides that it is reliant on "data and related information
15 prepared by [L&C]" and that "[t]here are a variety of risk factors that expose [L&C's] reserves to
16 significant variability." *Id.*

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

20 184. In or around October 2010, Elsass, Larry Shatoff at U.S. RE, Donna Dalton, John
21 Klaus at Uni-Ter, Curtis Sitterson at Stearns Weaver, and Jim Murphy at the accounting firm
22 Johnson Lambert & Co., through email correspondence, made the decision to record the twenty-
23 five percent (25%) refund payment, in the amount of \$569,600, from the commutation of the
24 January 1, 2008 to April 1, 2009 reinsurance treaty.

25 185. Mr. Shatoff stated in said email correspondence that the April 1, 2004 to
26 December 31, 2004 treaty was commuted, the January 1, 2007 to December 31, 2007 treaty was
27 commuted, and the January 1, 2005 to December 31, 2006 treaty was "swing rated" and had been
28 adjusted to the minimum premium. Regarding the January 1, 2008 to April 1, 2009 reinsurance

1 treaty, Mr. Shatoff said that it covers all claims reported on occurrence policies up to April 1,
2 2012. Mr. Shatoff further stated that L&C was subject to a 13% aggregate deductible for an
3 amount of \$1,690,673, and that L&C had paid reinsurance premiums of \$2,278,400, which at a
4 25% refund rate would result in a refund of \$569,600 if no claims were paid by the reinsurers.
5 Further, Mr. Shatoff's communications state that there had been no losses reported under that
6 treaty. Mr. Shatoff noted that L&C could commute at any time before January 1, 2013 to obtain
7 the "profit commission" - how he referred to the 25% refund.

8 186. Mr. Shatoff encouraged L&C to commute that treaty to ensure that seventy-five
9 percent (75%) of premiums paid could be confirmed as received by the reinsurers with
10 confirmation that no claims or losses would be paid by them.

11 187. Elsass directed that the refund for the commutation of the January 1, 2008 to April
12 1, 2009 reinsurance treaty be recorded at that time in the third quarter of 2010.

13 188. Mr. Shatoff noted that it would be too soon to record any "profit commission" on
14 the April 1, 2009 to April 1, 2010 treaty because the premium for those policies would not be
15 fully earned until April 1, 2011.

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

19 190. More than half of the policies written by Sophia Palmer were occurrence policies.

20 191. The Milliman Report stated that the loss development for occurrence policies is
21 relatively immature at the current evaluation and that caused uncertainty in the loss estimates.

22 192. Further, the 2010 Milliman Report opined that the existing risk factors "coupled
23 with the variability that is inherent in any estimate of unpaid loss and loss adjustment expense
24 obligations, could result in material adverse deviation from the carried net reserve amounts." He
25 concluded that based on the calculation shown in Exhibit B that shows that L&C's actual net
26 outstanding losses and LAE exceed L&C's reserves for unpaid losses (\$7,353,289) and unpaid
27 LAE (\$1,798,188) by an amount of more than five percent (5%) of L&C's statutory surplus
28 shown on the annual statement, which was \$4,579,710. The 2010 Milliman Report states that this

1 materiality standard was selected based on the fact that his opinion was prepared for regulatory
2 review.

3 193. The financial information provided to the Board for the September 2011 Board
4 Meeting included a report from Brian Stiefel, President of Praxis, which was the September 2011
5 Praxis Report. The Praxis Report provides that Uni-Ter has adopted a new reserve philosophy, is
6 revising its litigation management guidelines to reflect a more aggressive approach to the
7 litigation process, and that standardizing the claims documentation, evaluation, and reporting
8 process is recommended. The Praxis Report does not evaluate the level of L&C's loss reserves.
9 See **Exhibit 6** hereto.

10 194. The information provided to the directors for the September 2011 Board meeting
11 also contains a power point presentation from Milliman which shows that L&C steadily decreased
12 its reinsurance deductible across the years 2008 to 2011, demonstrating that L&C's reinsurance
13 deductible was set too high, especially in years 2009 and 2010.

14 195. In or around December 19, 2011, Milliman provided a preliminary draft of certain
15 schedules to its actuarial reports ("2011 Milliman Schedules"). The Schedules provide that as of
16 November 30, 2011, L&C's Incurred Loss & ALAE for years 2004 through November 2011 was
17 \$17,858,866. That same exhibit states that Paid Loss & ALAE for those same dates was a total of
18 \$11,208,076. The exhibit states that L&C's Paid Loss & ALAE was \$2,230,000.00 for 2009 and
19 \$2,440,000.00 for 2010 but only \$198,711.00 for 2011 through November.

20 196. L&C's Annual Statement for the year ending December 31, 2011 ("2011 Annual
21 Statement"), attached as **Exhibit 40**, stated a drastic increase in incurred losses and LAE and a
22 significant drop in shareholder's surplus. Pursuant to that statement, reserves for losses and LAE
23 increased from a total of \$9,181,477 at the end of 2010 to \$14,026,020 at the end of 2011, almost
24 a \$5 million increase. Note 24 to L&C's 2011 Financial Statements (which is presented below)
25 stated that unpaid losses and LAE increased from \$9,153,000 at the beginning of 2011 to
26 \$14,843,000 at the end of 2011, a \$5,700,000 increase. Meanwhile, the company's policyholder's
27 surplus amount decreased from \$4,579,710 at the end of 2010 to \$3,625,317 at the
28 end of 2011.

197. 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 **\$ 14,843,000**
(emphasis added)

Id.

198. Notwithstanding this information, the Board represented in Note 14 at page 14.2 that "[T]he 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."

Id.

199. On February 2, 2012, Milliman provided a preliminary draft of certain schedules to its actuarial reports ("2012 Milliman Schedules"). Exhibit 1 Page 2 states that, as of December 30, 2011, L&C's Discounted Net Loss & LAE Reserve (after Ceded Loss and LAE Reserve) was Low Estimate of \$13,019,000, Central Estimate of \$14,973,000, and High Estimate of \$18,635,000. Exhibit 3 of that document shows that Incurred Loss and ALAE had grown substantially from 2005 (\$373,816) to 2010 (\$9,068,552) while showing estimated reserves only

1 growing to \$4,048,241. It also shows that for 2011, Ultimate Loss & ALAE was \$7,620,000 and
2 Incurred Loss & ALAE was \$5,744,385, but estimate reserves was only \$5,938,479, which is
3 over \$1.6 million less than the Ultimate Loss & ALAE.

4 200. The 2011 Milliman Report, attached hereto as **Exhibit 41**, in the section entitled
5 “Risk of Material Adverse Deviation”, provides that “[t]he Company’s carried reserves are within
6 a reasonable range, however other points within the reasonable range would cause surplus to be
7 below zero. Therefore I believe that there are significant risks and uncertainties that could result
8 in material adverse deviation in the loss and loss adjustment expense reserves, possibly by
9 amounts exceeding surplus.” The report again provides that the current risk factors, “coupled
10 with the variability that is inherent in any estimate of unpaid loss and loss adjustment expense
11 obligations, could result in material adverse deviation from the carried net reserve amounts.” The
12 report concluded that based on the calculation shown in Exhibit B that shows that L&C’s actual
13 net outstanding losses and LAE exceed L&C’s reserves for unpaid losses (\$11,766,924) and
14 unpaid LAE (\$2,259,096) by an amount of more than five percent (5%) of L&C’s statutory
15 surplus shown on the annual statement, which was \$3,625,316. The report states that this
16 materiality standard was selected based on the fact that his opinion was prepared for regulatory
17 review.

18 201. Further, in the Notes to Financial Statements for Years Ended December 31, 2011
19 and 2010 (“2011 Notes”), the management of L&C stated Uni-Ter “believes that its aggregate
20 provision for losses and loss adjustment expenses is reasonable and adequate to meet the ultimate
21 net cost of covered losses...”. The Board failed to comply with its fiduciary duties with respect
22 to this information it was receiving concerning Uni-Ter’s opinions and failed to take any action to
23 verify that this information was complete or accurate.

24 202. The 2011 Notes also provide that “[a]t December 31, 2011 and 2010, management
25 determined that no premium deficiency reserve was required.” The Board failed to comply with
26 its fiduciary duties with respect to this information it was receiving concerning Uni-Ter’s
27 opinions and failed to take any action to verify that this information was complete or accurate.

28 203. Further, the 2011 Notes state that was a party to various lawsuits “in the normal

1 course of business” but that “[t]he Company’s management does not believe that any ongoing
2 litigation would, individually or collectively, result in judgments for amounts, after considering
3 the established loss reserves and reinsurance, that would be material to the Company’s financial
4 condition or results of operations.” The Board failed to comply with its fiduciary duties with
5 respect to this information it was receiving concerning Uni-Ter’s opinions and failed to take any
6 action to verify that this information was complete or accurate.

7 204. L&C’s “NAIC Property and Casualty Financial Ratio Results for 2011”, attached
8 hereto as **Exhibit 42**, painted a very bleak picture of the L&C. It has a date stamp of 2/23/2012.
9 It states that Direct Premiums Written in 2011 totaled \$10,224,774. It states that Net Premiums
10 Written for 2011 were \$8,997,524 which was a 25% drop from Net Premiums Written in 2010 of
11 \$11,946,738. It states that Losses and LAE incurred for 2011 totaled \$12,759,779 when Losses
12 and LAE incurred for 2010 totaled \$8,183,816, about \$4.6 million less. It states that surplus for
13 2011 was \$3,625,316 when the surplus for 2010 was \$4,579,709, almost a million drop. Finally,
14 it states that L&C’s estimated current reserve deficiency was -\$752,997.5.

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

17 206. A spreadsheet document dated February 2012 and entitled “L&C Loss Ratio
18 Report” shows a substantial reduction of loss payments for 2011. The document states that the
19 information is through 02/29/2012, but says that earned premium for 2011 dropped to \$5,209,362
20 from \$12,798,406 in 2010 and \$11,776,406 in 2009. It also shows that earned premium was only
21 \$240,573 through February which, extrapolated through December, would be only \$1,443,438.
22 Meanwhile, total incurred losses for 2011 were only \$1,573,965 even though total incurred losses
23 were almost \$9.5 million in 2010 and almost \$8 million in 2009.

24 207. The loss ratios shown for 2006 through 2010 were 78.92%, 65.33%, 67.83%, and
25 73.59%, respectively. The loss ratio chart in the April 2008 Board meeting directors’ package
26 states that the 2006 loss ratio was only 25.25% and the 2007 loss ratio was stated to be only
27 22.41%. The loss ratio for 2011 was only 30.21%. Paid losses in all of 2011 were only \$264,000
28

1 even though those were almost \$5 million in 2010, \$5.4 million in 2009, and over \$3.5 million in
2 2008.

3 208. L&C's Summary Balance Sheet as of February 29, 2012, attached hereto as
4 **Exhibit 43**, states that unpaid losses and loss expenses were \$14,026,019 at the end of 2011 and
5 grew to \$14,607,812 as of the end of February 2012. Uni-Ter's management fees for 2011 were
6 only \$87,617.

7 209. L&C's Comparative Summary Balance Sheet dated through March 2012, attached
8 as **Exhibit 44**, shows the growth of L&C's losses and Uni-Ter's fees. Unpaid losses and LAE
9 was \$3,624,000 as of March 2008, \$4,325,000 as of March 2009, \$7,313,000 as of March 2010,
10 \$9,953,000 as of March 2011, and \$12, 381,985 as of March 2012. Uni-Ter's management fees
11 were \$728,000 as of March 2008, \$1,329,000 as of March 2009, \$1,607,000 as of March 2010,
12 \$830,000 as of March 2011, and \$104,000 as of March 2012.

13 210. The 2012 Milliman Report states that L&C reserves of \$16,333,000 were
14 \$1,367,000 below the Central Estimate of what L&C's loss reserves should be. The report states
15 that L&C's reserves were over \$7 million below the High Estimate of what L&C's reserves
16 should be. There is no mention of the report in the Board Minutes. The report states as follows:

17 The ultimate loss and ALAE estimates have increased significantly since
18 the prior report as of December 31, 2010. *Through report/accident/tail effective*
19 *year 2010, the selected ultimate loss and ALAE estimates have increased by \$9.2*
20 *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)

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

24 211. In the D&O policy application submitted by Uni-Ter on behalf of L&C on or
25 about May 23, 2012, attached as **Exhibit 45**, Uni-Ter stated in the supplement that "[t]o improve
26 the financial stability of [L&C], UUMC has reviewed the entire book of business and intends to
27 only renew accounts that have maintained a favorable historical loss ratio. This may result in a
28 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.

212. 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)

213. 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.

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

9 215. Due to the strengthening entry, and the resulting downturn in the financial
10 condition of L&C, additional capital of \$2,220,000 was raised in the form of surplus notes.

11 216. In the October 5, 2011 Action by Unanimous Consent of the Board of Directors
12 (“Action”) surplus note contributions were agreed to be paid by November 15, 2011:

13	○ Oneida Bank	\$750,000
14	○ Eagle Healthcare	\$220,000
15	○ Pinnacle Healthcare	\$220,000
16	○ Marquis Companies	\$220,000
17	○ Elderwood Senior Care	\$220,000
	○ Rohm Services	\$220,000
	○ Uni-Ter	\$300,000

18 217. The Action indicated that an additional \$550,000 in capital could be raised in
19 additional surplus notes, “depending upon the requirements of the business in the fourth quarter,
20 2011, as approved by the Board”. The following commitments were funded in the form of
21 Surplus Notes on February 7, 2012:

22	○ Eagle Healthcare	\$70,000
23	○ Pinnacle Healthcare	\$70,000
24	○ Marquis Companies	\$70,000
25	○ Elderwood Senior Care	\$70,000
	○ Rohm Services	\$70,000
	○ Uni-Ter	\$200,000

26 218. With the exception of Oneida Bank, where L&C’s investments are held in
27 custody, and Uni-Ter, the captive manager, all other Surplus Note holders were facilities insured
28 by L&C and whose management is a representative on the Board of Directors of L&C.

1 219. Stickels is the President of Oneida Bank.

2 220. Prior to the second commitment coming due in the first quarter of 2012, the Board
3 determined that they wanted a second review to confirm the conclusion of the reserve
4 strengthening in late 2011. Fishlinger was hired to conduct an independent analysis of the same
5 claims reviewed by Praxis.

6 221. Using the low end of the ranges of reserves established by Praxis, Fishlinger
7 concluded a low end of strengthening could be approximately a million dollars less than
8 determined by Praxis. Although the Board had requested that Fishlinger conduct its review
9 independently, ultimately it used the work of Praxis in coming to a similar conclusion on the
10 reserve strengthening needed. Based on these two reviews, the additional capitalization of
11 \$480,000 was determined to be adequate by the Board.

12 222. At the end of the second quarter of 2012, the Board assumed that the reserving
13 methodology established under Praxis had continued to be deployed. The Board determined that
14 a follow up review was necessary. Praxis completed their review in July of 2012, involving
15 review of the same estimated 150 claims reviewed at year end 2011. Praxis recommended
16 stepping up of reserves in the cases previously reviewed and indicated that trouble getting case
17 reserve information from attorneys had been one cause of the continued adverse development of
18 these claims. Praxis concluded an additional \$2 million in strengthening was required at July
19 2012.

20 223. Fishlinger was also brought in for a second review, which ultimately concluded
21 some differences on the low and high end of the ranges for these cases, but ultimately
22 recommended similar cumulative reserve strengthening. An additional party also reviewed the
23 case reserves, the London Based reinsurance broker (“London Broker”) for U.S. RE, the
24 reinsurance broker for L&C. The Board and Uni-Ter thought that they would have a vested
25 interest in picking accurate reserves because of the reinsurance that the London broker had placed
26 for L&C with various reinsurers. The London Broker determined that it would be comfortable in
27 the low end of the ranges for many of the cases.

28

1 224. Milliman, L&C's opining actuary, booked its estimate of reserves at 6/30 and
2 12/31 of each year, based on its own analysis. During its June 30, 2012 analysis, Milliman
3 determined that L&C would most likely need to increase premium rates by 12-20% on its current
4 book of business to remain a viable entity. This does not include capital needed to raise the
5 current level to minimum requirements. Milliman also estimated that \$6,000,000 - \$6,500,000
6 million in capital would need to be raised in order to result in \$3.6 million of unimpaired capital.

7 **G. The Board's Breaches of Their Fiduciary Duties Involving Intentional**
8 **Misconduct and Knowing Violations of the Law.**

9 **1. Legal and Contractual Obligations of the Board.**

10 225. The former members of the Board, with the exception of Barbara Lumpkin who is
11 deceased, all held positions on the Board by 2006: Jeff Marshall and Mark Garber held positions
12 on the Board throughout the life of L&C from 2003 through 2012; both Robert Hurlbut and Eric
13 Stickels took positions on the Board beginning in 2005 and remained on the Board through 2012.
14 In 2006, Robert Chur, Steve Fogg, and Carol Harter joined the Board and served through 2012.
15 Finally, Barbara Lumpkin joined the Board in May of 2009.

16 226. As used herein, the terms "Board", "Director Defendants", "Directors", refers to
17 each member's tenure on the Board, and includes only the times said individuals served as a
18 director.

19 227. Further, Marshall, Garber and Stickels were officers of L&C throughout their
20 tenure on the Board.

21 228. The Board's responsibilities included, without limitation, reviewing and approving
22 quarterly financial information of the Company, ultimate authority to direct the operations of
23 L&C, approve defense counsel, binding of all reinsurance treaties including endorsements and
24 commutations, and to comply with all relevant obligations under the Management Agreements
25 and applicable law, including NRS 681A.120 with which the Board knowingly failed to comply.

26 229. As part of their responsibilities, the Board had access to all financial information
27 of the Company at all relevant times.

1 230. In addition, upon their entry on the Board, the Board members were aware of all
2 formation documents of L&C, and were familiar with the contents thereof.

3 231. The Articles of Incorporation of L&C (“Articles”) provide that “the corporation
4 shall not carry on any business or exercise any power in any state, territory, or country which
5 under the laws thereof the corporation may not lawfully carry on or exercise.”

6 232. In addition, the Bylaws of L&C (“Bylaws”) make clear that “[t]he business and
7 affairs of the corporation shall be managed by the Board of Directors of the corporation.”

8 233. Under Nevada law, the power to carry out the purposes and objects of the
9 corporate charter are vested fully in the board of directors. NRS 78.120(1), states that “[s]ubject
10 only to such limitations as may be provided by this chapter, or the articles of incorporation of the
11 corporation, the board of directors has full control over the affairs of the corporation.”

12 234. Under Nevada law, this creates non-delegable fiduciary duties for the board of a
13 company to, without limitation, act in good faith, on an informed basis, with a view to the
14 interests of the company.

15 235. At all relevant times, all defendants, including the Director Defendants, knew of
16 these requirements under the Articles, Bylaws, and Nevada law.

17 236. All defendants, including the Director Defendants, knew of these requirements
18 under the Management Agreements at all relevant times.

19 237. The Articles of L&C provide that the nature of the business of L&C is to “engage
20 in every aspect of casualty insurance business and risk management business as it relates to long
21 term care facilities, to the extent permitted and in accordance with the Captive Laws of the State
22 of Nevada and The Federal Risk Retention Act of 1986, as amended from time to time.”

23 238. In addition to Nevada law and the formative documents of the Company, the
24 Management Agreements set forth multiple requirements by which the Board, as well as Uni-Ter
25 and U.S. RE, were required to abide.

26 239. Many of the requirements under the Management Agreements were violated by the
27 Board and Uni-Ter, constituting a breach of fiduciary duty by both the Board and Uni-Ter
28 involving intentional and knowing misconduct.

1 240. For example, the Management Agreements provided that Uni-Ter shall “perform
2 the investigation, settlement and payment of each and all claims, and to collect deductibles due
3 and salvage or subrogation.” The amount of the deductible was set at \$5,000.00.

4 241. The Board knew that Uni-Ter was not properly collecting deductibles on all claims
5 that were reported and settled on behalf of L&C, and yet failed to require Uni-Ter to adhere to its
6 legal obligations, which personally benefitted many Board members who knew that their
7 respective facilities had claims for which no deductible were paid. As a result, the Board engaged
8 in intentional and knowing misconduct by deliberately allowing Uni-Ter to not collect
9 deductibles as required under the Management Agreements.

10 242. The 2004 Management Agreement provided that Uni-Ter “will identify defense
11 counsel by state, and will review the qualifications with L&C and obtain the approval of L&C
12 before engaging defense counsel and such review shall be on periodic basis.”

13 243. The Board knew that Uni-Ter was not properly obtaining the approval of the
14 Board before engaging defense counsel, including without limitation as set forth herein. Despite
15 this, the Board did not require that Uni-Ter to obtain approval by the Board before retaining
16 defense counsel. As a result, the Board engaged in intentional and knowing misconduct by
17 deliberately failing to perform its crucial role concerning the important duty of approving defense
18 counsel as provided in the 2004 Management Agreement.

19 244. The 2004 Management Agreement provided that Uni-Ter “shall prepare and
20 forward to L&C on a monthly basis, within twenty (20) calendar days of the end of each calendar
21 month, a complete set of financial statements prepared in accordance with Generally Accepted
22 Accounting Principles (GAAP) basis to include: a. Operating Statement, b. Balance Sheet, c.
23 Policies written for the month, d. Claims incurred for the month, e. Accounts receivable
24 summary, f. Summary report of all claims, reserves and losses.”

25 245. The Board knew that from 2004 through 2010, Uni-Ter failed to provide proper
26 monthly reporting as required, and yet the Board did not require Uni-Ter comply with the
27 reporting requirements of the 2004 Management Agreement. As a result, the Board engaged in
28 intentional and knowing misconduct by failing to require Uni-Ter provide all monthly reports

1 from Uni-Ter so that the Board could perform its critical obligation of reviewing monthly
2 financial statements to promote and protect the interests of L&C.

3 246. The Management Agreements provided that Uni-Ter shall “comply fully with,
4 timely and promptly with all manuals, rules, guidelines, instructions and directions issued in
5 writing by L&C relating to business covered by this Agreement as well as to comply with all state
6 and federal rules, regulations, and statutes including those relating to privacy & confidentiality for
7 all L&C business covered hereby.”

8 247. The Board knew that Uni-Ter was not fully complying with state and federal
9 rules, regulations, and statutes as more fully described herein, but failed to insist that Uni-Ter
10 comply with its crucial legal duties. The deliberate failure of the Board to require that Uni-Ter
11 comply with state and federal rules, regulations, and statutes that it knew were being violated by
12 Uni-Ter constitutes intentional and knowing misconduct by the Board.

13 248. All defendants, including the Director Defendants, knew of these requirements
14 under the Management Agreements at all relevant times.

15 249. In addition, the U.S. RE Agreement acknowledged that U.S. RE would “comply
16 with applicable State Insurance Laws” and with “the provisions of the State Insurance Codes,
17 Rules and Regulations governing reinsurance intermediaries/brokers.”

18 250. The Board knew that U.S. RE was not fully complying with applicable state
19 insurance law, as well as the provision of state insurance codes, rules and regulations governing
20 reinsurance intermediaries/brokers, but failed to insist that Uni-Ter comply with its crucial legal
21 duties. The deliberate failure of the Board to require that U.S. RE comply with state and federal
22 rules, regulations, and statutes that it knew were being violated by U.S. RE constitutes intentional
23 and knowing misconduct by the Board.

24 **2. Red Flags proving the Board knew reliance on Uni-Ter or U.S. RE was**
25 **unwarranted.**

26 **a. Conflicts of interest**
27
28

1 251. From the inception of L&C, and through its existence, the Board knew of
2 numerous facts and circumstances which caused reliance by the Board on Uni-Ter or U.S. RE to
3 be unwarranted. Some of these facts and circumstances, without limitation, are set forth herein.
4 Collectively, these facts and circumstances, as well as others brought forth in discovery or
5 otherwise, shall be referred to herein as “Red Flags.”

6 252. As an example, in an offering memorandum prepared in 2003 (“2003 Offering
7 Memorandum”) and which the Board members reviewed, stated specifically that there were
8 “various conflicts of interest” arising out of the Company’s relationship with Uni-Ter and U.S.
9 RE which made reliance on Uni-Ter or U.S. RE unwarranted (“Conflicts of Interest”). This
10 include without limitation, the following from a section of the 2003 Offering Memorandum
11 entitled “Conflicts of Interest”:

12 **Uni-Ter and U.S. RE as Affiliates**

13 Although the Company is relying on Uni-Ter for administrative and underwriting
14 services, U.S. RE, the parent of Uni-Ter, will be engaged by the Company as
15 reinsurance broker and consultant for a seven year period (with an additional seven
16 year renewal option). U.S. RE also owns a minority beneficial interest in a
17 wholesale age ncy that may produce insurance business for the Company on a
18 nonexclusive basis. **Given the interlocking directorates, management, and**
19 **ownership of each of these related entities, there will be on-going conflicts of**
20 **interests between the management of these entities. For example, the**
21 **interlocking management creates risk that Uni-Ter will not review the**
22 **activities of its affiliates providing services to the Company as diligently as it**
23 **might review the activities of an independent third party.**

24 253. The 2003 Offering Memorandum spelled out that the minimum statutory
25 capitalization required in Nevada was \$500,000, “and such further capitalization as may be
26 required by the DOI.”

27 254. The 2003 Offering Memorandum noted that with organizational expenses of
28 \$250,000, the minimum capitalization under Nevada law was \$750,000.

 255. In addition, the 2003 Offering Memorandum specifically stated that if L&C
experienced substantial adverse claims and its surplus was depleted below the required minimum
surplus amounts, L&C would lose its ability to continue writing insurance.

1 256. The 2003 Offering Memorandum also noted that [t]he Company's insurance
2 business will be administered by Uni-Ter pursuant to the Management Agreement, subject to the
3 control and supervision of the Board of the Directors." In addition, the memorandum noted that
4 "[u]ltimate responsibility for management of the Company will be vested in the Board of
5 Directors."

6 257. The 2003 Offering Memorandum acknowledged that "[s]pecific underwriting
7 rules" were "subject to Nevada DOI approval."

8 258. The 2003 Offering Memorandum also noted that L&C would be "subject to
9 regulation by the Nevada DOI under Nevada's insurance statutes and regulations" and that
10 "[s]uch statutes, among other things, ... prescribe solvency standards that must be met and
11 maintained and require the Company to maintain reserves for losses, loss adjustment expenses
12 and unearned premium."

13 259. The 2003 Offering Memorandum also stated that the Company would "rely on the
14 management of Uni-Ter for administrative and underwriting consulting services" but that "Uni-
15 Ter was only recently formed and has limited operating history..."

16 260. A subsequent offering memorandum prepared in or around 2008 ("2008 Offering
17 Memorandum") also contained the same information regarding conflicts of interest inherent in the
18 structure of Uni-Ter and U.S. RE.

19 261. The Board reviewed the 2003 Offering Memorandum and 2008 Offering
20 Memorandum and knew of the pertinent information contained therein at all relevant times
21 herein.

22 **b. Lack of qualifications of Uni-Ter and U.S. RE**

23 262. The Board knew that the President and Chief Executive Officer of Uni-Ter,
24 Sanford Elsass ("Elsass"), lacked education, training, and experience running an insurance
25 company, particularly with regard to managing claims and setting reserves, and that his prior
26 experience in the insurance industry was in the area of insurance sales, marketing, brokering, and
27 investment banking.

28

1 263. The Board was also aware that the Chief Financial Officer of Uni-Ter, Donna
2 Dalton (“Dalton”), lacked education, training, and experience running an insurance company,
3 particularly with regard to managing claims and setting reserves, and that her prior experience in
4 the insurance industry was as an accounting manager.

5 264. As a result, at all relevant times the Board had knowledge concerning the matters
6 set forth herein, including without limitation that Elsass or Dalton could not competently manage
7 an insurance company, particularly with regard to managing claims and setting reserves, which
8 made any reliance by the Board upon Uni-Ter with regard to information, opinions, reports,
9 books of account or statements, including financial statements and other financial data that was
10 prepared by, or at the request of, Uni-Ter and provided to the Board, unwarranted.

11 265. In addition, the Board could not reasonably rely, and knew reliance was
12 unwarranted, with respect to U.S. RE as it was not properly licensed, and the Board knew this at
13 all relevant times.

14 266. The Board could not reasonably rely, and knew reliance was unwarranted, with
15 respect to Uni-Ter as it had reason to suspect Uni-Ter of mismanagement and/or wrongdoing at
16 all relevant times herein.

17 267. The Board could not reasonably rely, and knew reliance was unwarranted, with
18 respect to Curtis Sitterson at any time herein, as he was not properly licensed to practice law in
19 Nevada, and the Board knew this at all relevant times herein.

20 268. Further, the Director Defendants could not reasonably rely, and knew reliance was
21 unwarranted, with respect to each of the other Director Defendants themselves, because they
22 lacked the experience, knowledge, training and education to run an insurance company, obtain
23 reinsurance, or otherwise operate L&C.

24 **c. Knowledge of inaccurate or incomplete financial information**

25 269. Further, at all relevant times, the Board had knowledge concerning the matters in
26 question set forth herein, including without limitation that the information, opinions, reports,
27 books of account or statements, including financial statements or other financial data, provided to
28 the Board by other directors, officers or employees of the Company, or, without limitation,

1 counsel, public accountants, financial advisors, valuation advisors, investments bankers,
2 actuaries, auditors, attorneys, or other persons, was based upon financial and/or other information
3 provided to said persons by Uni-Ter or U.S. RE, and that therefore reliance on said information
4 was unwarranted.

5 270. This includes, without limitation, Milliman, Johnson Lambert, Praxis, and
6 Fishlinger.

7 271. Specifically, and without limitation, the reports and additional documentation
8 provided to the Board by its accountants, auditors, and others noted that it was prepared in
9 reliance on data and other information provided by Uni-Ter and/or U.S. RE, which information
10 had not been verified, and that therefore if the underlying data or information provided by Uni-
11 Ter was inaccurate or incomplete, the results prepared by the accountants, auditors, and others
12 would likewise be inaccurate or incomplete.

13 **d. Failure to comply with obligations under the Management Agreements**

14 272. Further, the Board was well aware that Uni-Ter was otherwise failing to fulfill its
15 obligations to the Company. For example, and without limitation, at the March 9, 2005 L&C
16 Board of Directors Meeting, the Board was presented with a marketing and advertising plan,
17 which was approved by the Board subject to specific action items and timelines.

18 273. Uni-Ter failed to follow through on the plan, including neglecting to provide
19 periodic marketing reports as promised, as well as not contacting state associations on which
20 L&C had spent substantial sums for membership, among other things.

21 274. The Board knew of Uni-Ter's failures under the Management Agreements, and as
22 a result, the Board's reliance upon Uni-Ter with regard to information, opinions, reports, books of
23 account or statements, including financial statements and other financial data that was prepared
24 by Uni-Ter, or prepared by others based upon information provided by Uni-Ter, was
25 unwarranted.

26 **e. Henry Hudson Merger**

27 275. Further, the first merger involving L&C between Henry Hudson and L&C and
28 took place on April 4, 2005 ("Henry Hudson Merger"). At the time, the Board was told by Uni-

1 Ter that the merger with Henry Hudson would financially benefit L&C, yet by the end of 2006,
2 L&C had sustained a net loss of approximately \$494,544 as a result of the merger.

3 276. The Board later learned that Henry Hudson's primary insured, HCFA, had been in
4 financial and legal trouble at the time of the merger, and that it was sued by the State of New
5 York right after the merger for Medicaid fraud in 2006, and ultimately went bankrupt.

6 277. As a result of this and other information the Board learned following the Henry
7 Hudson merger, the Board knew that Uni-Ter offered advice with self-interested motives at the
8 expense of L&C, and therefore the Board's reliance upon Uni-Ter with regard to information,
9 opinions, reports, books of account or statements, including financial statements and other
10 financial data that was prepared by Uni-Ter and provided to the Board, or prepared by others with
11 information provided by Uni-Ter, was thereafter unwarranted.

12 **f. Uni-Ter fires L&C's auditors**

13 278. On May 29, 2007, Marcum & Kliegman sent a letter to the Board informing them
14 of "material weaknesses in the Company's system of internal control over financial reporting."
15 The May 29, 2007 letter was hidden from the Board by Uni-Ter; however, Uni-Ter knew it would
16 not be able to hide this information from the Board should it appear in Marcum and Kleigman's
17 year-end financial report.

18 279. On December 4, 2007, Uni-Ter replaced Marcum & Kliegman with Johnson &
19 Lambert to prepare L&C's 2007 year-end financial statements. Uni-Ter did not consult with the
20 Board prior to making the decision, and the Board only learned of the change months after it had
21 happened. Despite this, Uni-Ter told the Nevada Department of Insurance in a December 17,
22 2007 letter that "the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc., (the
23 Company) has dismissed the auditor, Marcum & Kliegman LLP, effective December 4, 2007."

24 280. The Board learned shortly thereafter that Uni-Ter had terminated L&C's auditor
25 without approval from the Board.

26 281. The very fact that Uni-Ter dismissed L&C's auditor without Board approval was
27 was clear evidence that reliance on Uni-Ter was unwarranted. As a result, the Board's reliance
28 upon Uni-Ter with regard to information, opinions, reports, books of account or statements,

1 including financial statements and other financial data that was prepared by Uni-Ter, or prepared
2 by others based upon information provided by Uni-Ter, was unwarranted.

3 **g. Merger with Sophia Palmer to the Detriment of L&C**

4 282. In 2009, Uni-Ter recommended to the Board that L&C would benefit from a
5 merger with Sophia Palmer.

6 283. Uni-Ter had its own interests in mind when suggesting the merger. First, Sophia
7 Palmer was impaired and insolvent at the time and could not pay off a note to another RRG that
8 Uni-Ter managed. Second, Sophia Palmer's management agreement with Uni-Ter provided that
9 Uni-Ter would not receive a profit sharing bonus until the \$650,000 note was paid off.

10 284. The Board knew of this because, without limitation, Carol Harter served as a
11 Director of both Sophia Palmer and L&C.

12 285. During the merger with Sophia Palmer or very shortly thereafter, the Board
13 learned about the self-dealing of Uni-Ter in recommending the Board merge with Sophia Palmer.

14 286. As a result of Uni-Ter recommending that L&C merge with an impaired and/or
15 insolvent insurance company, the Board knew that Uni-Ter offered self-interested advice at the
16 expense of L&C, and therefore the Board's reliance upon Uni-Ter with regard to information,
17 opinions, reports, books of account or statements, including financial statements and other
18 financial data that was prepared by Uni-Ter, or prepared by others based upon information
19 provided by Uni-Ter, was unwarranted.

20 **h. Uni-Ter and U.S. RE conspire to unlawfully bind reinsurance for L&C**
21 **in violation of the Management Agreement and Nevada law, and the**
22 **Board knowingly fails to act**

23 287. The 2004 Management Agreement provided that Uni-Ter had no authority to
24 "[b]ind reinsurance on behalf of L&C or commit L&C to participate in insurance or reinsurance
25 syndicates." Beginning in 2004 and continuing each year through 2012, the Board knew that
26 Uni-Ter committed and/or bound L&C to participate in reinsurance syndicates in violation of the
27 2004 Management Agreement and Nevada law.
28

1 288. By allowing Uni-Ter to bind and commit L&C to reinsurance contracts from 2004
2 through 2012, the Board engaged in intentional and knowing misconduct by deliberately failing
3 to perform its crucial role and its important duty of binding and committing L&C to reinsurance
4 agreements as provided in the Management Agreements.

5 **i. Uni-Ter commits additional violations of the Management Agreements**
6 **of which the Board knew, and the Board fails to act.**

7 289. The 2004 Management Agreement provided that Uni-Ter had no authority to “pay
8 or commit to pay a claim over a specified amount, net of reinsurance, which exceeds one (1)
9 percent of the L&C’s policyholder’s surplus as of December 31 of the last completed calendar
10 year.” In 2010, the Board knew that Uni-Ter committed and/or paid claims that exceeded 1% of
11 surplus from the prior year. As a result, the Board engaged in intentional and knowing
12 misconduct by deliberately failing to perform its crucial role concerning the important duty of
13 directly managing the payment of large claims that exceeded 1% of L&C’s surplus as required by
14 the 2004 Management Agreement.

15 290. The 2004 Management Agreement and the 2011 Management Agreement
16 provided that Uni-Ter shall “perform the investigation, settlement and payment of each and all
17 claims, and to collect deductibles due and salvage or subrogation.” The amount of the deductible
18 was set at \$5,000.00.

19 291. The Board knew that Uni-Ter was not properly collecting deductibles on all claims
20 that were reported and settled on behalf of L&C, which personally benefitted many Board
21 members who knew that their respective facilities had claims for which no deductible were paid.
22 As a result, the Board engaged in intentional and knowing misconduct by intentionally allowing
23 Uni-Ter to not collect deductibles as required under the Management Agreements.

24 292. The 2004 Management Agreements provided that Uni-Ter “will identify defense
25 counsel by state, and will review the qualifications with L&C and obtain the approval of L&C
26 before engaging defense counsel and such review shall be on periodic basis.” The Board knew
27 that Uni-Ter was not properly obtaining the approval of the Board before engaging defense
28

1 counsel, and despite this the Board did not require that Uni-Ter to obtain approval by the Board
2 before retaining defense counsel. As a result, the Board engaged in intentional and knowing
3 misconduct by deliberately failing to perform its crucial role concerning the important duty of
4 approving defense counsel as provided in the 2004 Management Agreement.

5 **j. Uni-Ter fails to provide monthly financial documents as required, and**
6 **the Board knowingly fails to act.**

7 293. The 2004 Management Agreement provided that Uni-Ter “shall prepare and
8 forward to L&C on a monthly basis, within twenty (20) calendar days of the end of each calendar
9 month, a complete set of financial statements prepared in accordance with Generally Accepted
10 Accounting Principles (GAAP) basis to include: a. Operating Statement, b. Balance Sheet, c.
11 Policies written for the month, d. Claims incurred for the month, e. Accounts receivable
12 summary, f. Summary report of all claims, reserves and losses.” The Board knew that from 2004
13 through 2010, Uni-Ter failed to provide proper monthly reporting as required, and yet the Board
14 failed to act to ensure they received the required monthly financial statements. As a result, the
15 Board engaged in intentional and knowing misconduct from 2004 through 2010 by deliberately
16 failing to require Uni-Ter provide all monthly reports from Uni-Ter so that the Board could
17 perform its important duty of reviewing monthly financial statements to promote and protect the
18 interests of L&C in the 2004 Management Agreement.

19 **3. Reinsurance.**

20 **a. Defendants knowingly violate Nevada law regarding reinsurance**

21 294. Beginning in December 2003, the Board knew of Nevada insurance laws,
22 including without limitation that a reinsurance broker must be licensed pursuant to Nevada law.

23 295. Each Board member was aware of these legal requirements upon joining the Board
24 through review of the formation documents of the Company, and because the information was
25 conveyed to Board members as they joined the Board.
26
27
28

1 296. The Board’s knowledge of these legal requirements is evidenced by their demand
2 in 2003 that U.S. RE must comply with state insurance codes, rules and regulations governing
3 reinsurance intermediaries/brokers as set forth in the U.S. RE Agreement.

4 297. On or around December 22, 2003, the Company entered into the U.S. RE
5 Agreement.

6 298. Pursuant to the terms of the U.S. RE Agreement, U.S. RE was to act as the
7 Company’s “exclusive reinsurance intermediary/broker”. This agreement created a fiduciary
8 relationship between U.S. RE and the Company.

9 299. The U.S. RE Agreement acknowledged that U.S. RE would “comply with
10 applicable State Insurance Laws” and with “the provisions of the State Insurance Codes, Rules
11 and Regulations governing reinsurance intermediaries/brokers ...,” confirming the Board’s
12 knowledge of such laws, rules and regulations.

13 300. Nevada Revised Statute (“NRS”) 681A.480 provides in relevant part that “[a]n
14 insurer shall not engage the services of any person to act as a broker for reinsurance on its behalf
15 unless the person is licensed pursuant to NRS 681A.430.” Nev. Rev. Stat. Ann. § 681A.480
16 (West).

17 301. Further, NRS 681A.430 provides in relevant part that “[t]he Commissioner may
18 issue a license to act as an intermediary to any person who has complied with the requirements of
19 NRS 681A.250 to 681A.580, inclusive, and who submits a written application for a license to act
20 as an intermediary, the appropriate fee set forth in NRS 680B.010 and, in addition to any other
21 fee or charge, all applicable fees required pursuant to NRS 680C.110.” See NRS 681A.430
22 (West).

23 302. As authorized by these sections, Nevada Administrative Code (“NAC”) section
24 694C.300 provides as follows:

25 A person shall not act as a manager, a broker or an agent in this State for a captive
26 insurer without authorization of the Commissioner. An application for
27 authorization to act as a manager, a broker or an agent must be made to the
28 Commissioner on a form prescribed by the Commissioner.

1 See Nev. Admin. Code 694C.300.

2 303. At no time did U.S. RE obtain a license as required by NRS 681A.480 or NAC
3 694C.300 to act as a reinsurance broker for L&C in Nevada.

4 304. At all relevant times, the Director Defendants, and each of them, knew that at no
5 time did U.S. RE obtain a license as required by NRS 681A.480 or NAC 694C.300 to act as a
6 reinsurance broker for L&C in Nevada.

7 305. Despite having no license to act as a reinsurance broker in Nevada for L&C, U.S.
8 RE brokered reinsurance for L&C in each year from 2004 to 2012 as follows (collectively the
9 “Reinsurance Treaties”):

- 10 a. 2004 – Treaty No. 0399-01-2004 (“2004 Treaty”).
- 11 b. 2005 - 2006 – Treaty No. 0399-01-2005 (“2005-2006 Treaty”). The
12 2005-2006 Treaty was signed by Sanford Elsass (“Elsass”) on behalf of
13 Uni-Ter as managing general agent of L&C.
- 14 c. 2007 – Treaty No. 0399-01-2007 (“2007 Treaty”). The 2007 Treaty was
15 signed by Elsass on behalf of Uni-Ter as managing general agent of
16 L&C.
- 17 d. 2008 – Treaty No. 0399-01-2008 (“2008 Treaty”). The 2008 Treaty was
18 signed by Elsass on behalf of Uni-Ter as managing general agent of
19 L&C.
- 20 e. 2009 – Treaty No. 0399-02-2009 (“2009 Treaty”). The 2009 Treaty was
21 signed by Elsass on behalf of Uni-Ter as managing general agent of
22 L&C.
- 23 f. 2010 – Treaty No. 0399-01-2010 (“2010 Treaty”). The 2010 Treaty was
24 signed by Elsass on behalf of Uni-Ter as managing general agent of
25 L&C.
- 26 g. 2011 – Treaty No. 0399-02-2011 (“2011 Treaty”). The 2011 Treaty was
27 signed by Elsass on behalf of Uni-Ter as managing general agent of
28 L&C.
- h. 2012 – Treaty No. 0399-01-2012 (“2012 Treaty”). The 2012 Treaty was
signed by Elsass on behalf of Uni-Ter as managing general agent of
L&C.

306. The inappropriateness of the reinsurance program that was recommended to L&C
by U.S. RE was first pointed out the DOI in its December 31, 2005 examination report of L&C,

1 in which the Board was notified that “[b]ased upon the low loss experience, it is not reasonable to
2 assume that any loss will penetrate the loss retention amount and result in a recoverable balance;
3 therefore, we recommend the removal of this recoverable.” Despite this recommendation from
4 the DOI, the Board continued to purchase reinsurance with such a high retention amount that
5 between 2005 and 2011, no losses were paid by reinsurers for any of L&C’s claims.

6 307. Further, the Director Defendants could not reasonably believe they were informed
7 about reinsurance to the extent they reasonably believed appropriate, and could not reasonably
8 believe the Reinsurance Treaties were in the best interests of L&C, as the Director Defendants
9 lacked sufficient knowledge to know whether the Reinsurance Treaties were appropriate.

10 308. NAC 683A.530 provides in relevant part:

11 A managing general agent shall not:

12 ...

13 7. Bind reinsurance or retrocessions on behalf of the insurer.

14
15 *See Nev. Admin. Code 683A.530(7).*

16 309. Despite the legal prohibition against a managing general agent binding reinsurance
17 on behalf of an insurer, with the exception of the 2004 Treaty, each of the other Reinsurance
18 Treaties was signed by Elsass on behalf of Uni-Ter as managing general agent of L&C.

19 310. In addition, Elsass was an employee and agent of U.S. RE Companies, Inc., the
20 parent company of both U.S. RE and Uni-Ter, and was otherwise affiliated with U.S. RE.

21 **b. In 2009, the DOI discovers the Defendants’ knowing violations of the**
22 **law with respect to reinsurance, and emphasizes said violations to all**
23 **Defendants.**

24 311. While the Board knew beginning in 2004 that U.S. RE was operating without the
25 required license in brokering the Reinsurance Treaties, the Nevada DOI discovered the unlawful
26 activity engaged in by the Defendants, including the Board, as a result of its investigation during
27 the DOI’s 2008 Triennial Examination (“2008 Exam”) of L&C.
28

1 312. As part of the 2008 Exam, on November 19, 2009, DOI examiner Bob Burch
2 (“Burch”) requested a copy of U.S. RE’s Nevada reinsurance broker license.

3 313. In fact, in an internal email that same day, Larry Shatoff of U.S. RE admitted that
4 “U.S. RE does not have a license.”

5 314. On December 1, 2009, Burch made very clear that U.S. RE was, in fact, required
6 to have a Nevada license to broker reinsurance for a Nevada entity such as L&C:

7 I have forwarded this to the NVDOI for their review. I understand Connie’s
8 [Akridge] position, **however for purposes of the company entering into and/or**
9 **approving or ratifying, or failing to act to prevent, any agreements including**
10 **reinsurance agreements, Nevada being the domiciliary state, is the only state**
11 **where these agreements are considered to be entered into and also for purposes**
12 **of any disputes must be disputed in accordance with Nevada law. A reinsurance**
13 **intermediary effecting a reinsurance agreement in Nevada would have to be**
14 **licensed in Nevada.**

15 315. In fact, at all relevant times the Board members were well aware they had
16 unlawfully been employing an unlicensed reinsurance broker. This knowledge – and Burch’s
17 confirmation of all Defendants’ violations of Nevada law in this regard – was emphasized to the
18 Board on December 2, 2009 at the Board meeting at which Dalton “reported on the current
19 triennial examination by the Nevada Department of Insurance.”

20 316. Realizing that the DOI had caught U.S. RE, Uni-Ter, and the Board in ongoing
21 and very serious violations of Nevada law, U.S. RE submitted an application to obtain a license in
22 Nevada to become a nonresident reinsurance intermediary/broker (“Broker Application”).

23 317. On December 30, 2009, the DOI emailed Joseph Fedor of U.S. RE stating that it
24 had received U.S. RE’s Broker Application. The DOI attached instructions and requirements for
25 processing the Broker Application. In addition, the DOI stated that it had “received a list of
26 officers and directors” for L&C and directed that U.S. RE needed to provide “an affidavit for
27 each individual on the list.”

28 318. The Broker Application was never approved by the DOI.

 c. **In 2010, the DOI again reiterates to all defendants, including the**
 Director Defendants, that they are engaged in knowing violations of
 the law with respect to reinsurance.

1 319. On or around April 8, 2010, the DOI sent a letter via certified mail to the Board
2 (“April 2010 Letter”) enclosing the report of the 2008 Exam (“2008 Exam Report”).

3 320. The April 2010 Letter and 2008 Exam Report were both received, and reviewed,
4 by all Director Defendants at or near the time it was sent.

5 321. The April 2010 Letter made clear that the Board was required to review and
6 respond to the 2008 Exam Report.

7 322. The 2008 Exam Report found that the Board was in violation of Nevada law in
8 several respects. With respect to U.S. RE’s failure to become properly licensed as a reinsurance
9 broker for L&C, the 2008 Exam Report found as follows:

10 1. Pursuant to NAC 694C.300, “A person shall not act as a manager, a broker
11 or an agent in this State for a captive insurer without authorization of the
12 Commissioner.” The Nevada Division of Insurance (“Division”) requires all
13 reinsurance intermediaries negotiating and/or placing reinsurance of behalf of a
14 company, to be licensed as such in Nevada. It is recommended the Company
require U.S. RE to become licensed in Nevada prior to it negotiating and/or
placing reinsurance on its behalf.

15 323. In response, on April 26, 2010, the Board confirmed that it had received and
16 reviewed the 2008 Exam Report and knew of the violations all Defendants, including the Board,
17 had committed.

18 324. The Board further acknowledged the violations of law committed by all
19 Defendants, including the intentional and knowing misconduct and knowing violations of the law
20 committed by the Board, by noting that it had “requested that U.S. RE become licensed as a
21 reinsurance intermediary in Nevada and they [U.S. RE] have filed the application to do so.”

22 325. At the Board meeting on May 21, 2010, the entire Board confirmed that it
23 “reviewed the results of the Nevada triennial examination and approved the responses thereto.”

24 326. On December 29, 2010, the DOI sent the final Order and Report of Examination
25 regarding the 2008 Exam (“2008 Exam Order”) to Jeff Marshall, President of the Board, via
26 certified mail.

1 327. The 2008 Exam Order made clear that pursuant to NRS 679B.280, the attached
2 2008 Exam Report and L&C's response were "adopted and filed as an official public record of
3 the Division."

4 328. The 2008 Exam Order included the finding that U.S. RE was still not licensed as a
5 reinsurance broker as required under Nevada law.

6 329. In fact, despite the communications from the DOI to Uni-Ter, U.S. RE and L&C's
7 Board beginning in November, 2009, confirming U.S. RE must have a broker license in Nevada,
8 and despite the 2008 Exam Report making it clear and unequivocal to the Board that it was
9 required under Nevada law to require U.S. RE to become licensed in Nevada "prior" to U.S. RE
10 negotiating and/or placing reinsurance on its behalf, the Board failed to require U.S. RE to
11 become licensed as a reinsurance broker.

12 330. At all relevant times the Board knew this, and its utilization of an unlicensed
13 reinsurance broker, were violations of law, including Nevada law, and that such conduct was
14 wrongful.

15 331. At no time did U.S. RE obtain a license to act as a reinsurance broker/intermediary
16 for L&C in Nevada as required by Nevada law.

17 **d. In 2012, the DOI yet again reiterates to all defendants, including the**
18 **Director Defendants, that they are engaged in knowing violations of**
19 **the law with respect to reinsurance.**

20 332. As part of the Financial Examination of L&C as of December 31, 2011 ("2011
21 Exam"), on July 13, 2012, the investigator for the DOI, Carolyn Maynard ("Maynard" or "DOI
22 Examiner") requested that she be provided U.S. RE's broker license with the state of Nevada.

23 333. Maynard also raised the issue that Uni-Ter, through Elsass, had executed several
24 of the Treaties on behalf of L&C in violation of Nevada law and that this appeared "to be a real
25 conflict."

26 334. In fact, even in his communications with the Board, Elsass's email signature block
27 noted that he was president of "U.S. RE Agencies, Inc." a wholly owned subsidiary of U.S. RE,
28 and the parent company of Uni-Ter.

1 335. Moreover, the Board knew that Elsass wore multiple conflicting hats, including on
2 behalf of Uni-Ter, directing the operations of both Uni-Ter UMC and Uni-Ter CS, and he had
3 even attended a Board meeting “as an officer of U.S. RE,” thereby creating conflicts of interest
4 with respect to Elsass’s, Uni-Ter’s and U.S. RE’s duties and obligations.

5 336. In a memorandum dated September 17, 2012 (“September 17, 2012 Memo”), the
6 DOI Examiner found as follows:

7
8 During each year under examination, the reinsurance contracts were executed by
9 Sandy Elsass, President & CEO of the management company, Uni-Ter
10 Management Corporation (Uni-Ter), on behalf of and binding Lewis & Clark on
11 ceded reinsurance.

12 **This practice is in violation of the Nevada Administrative Code (NAC)**
13 **683A.530(7)**, which states that a managing general agent (MGA) shall not bind
14 reinsurance or retrocessions on behalf of the insurer.

15 ...

16 **The NV DOI has issued no specific exception to NAC 683A.530(7).**

17 337. U.S. RE had never been licensed as a reinsurance broker for L&C, and could
18 therefore not produce a license at the request of the DOI Examiner.

19 338. In response, in a memorandum dated September 25, 2012 (“September 25, 2012
20 Memo”), the DOI Examiner found that with respect to L&C, U.S. RE **“has no license or specific**
21 **authority to do business in the State of Nevada.”** The DOI Examiner further found:

22 **This is an unresolved compliance issue from the prior 2008 examination**
23 **management letter.** At that time the Company assured the NVDOI that the
24 reinsurance broker was in the process of procuring a license to do business in
25 Nevada. **As of our 2011 examination, no license or specific authorization was**
26 **obtained by the reinsurance broker USRE from the State of Nevada.**

27 339. The DOI Examiner concluded that the Company was in violation of Nevada law
28 “by contracting with an unlicensed reinsurance broker.”

29 e. **Defendants’ violations of Nevada law and intentional and knowing**
30 **misconduct with respect to reinsurance caused substantial harm to the**
31 **Company.**

1 340. The Defendants' multiple and knowing violations of Nevada law with respect to
2 reinsurance were substantial factors in its demise. In fact, U.S. RE itself pointed out that L&C
3 had sustained massive losses due to the extremely unfavorable Reinsurance Treaties brokered by
4 U.S. RE.

5 341. In an email dated May 9, 2011, John Klaus of U.S. RE, boasted to the reinsurers
6 for whom it had illegally brokered various treaties on behalf of L&C, that the treaties it had
7 brokered had resulted in a net gain to L&C's reinsurers – and a net loss to L&C – of over
8 \$8,000,000:

9
10 3. Since Lewis and Clark's inception, there have been 2 losses that exceeded
11 their current \$350,000 retention. However, because of the aggregate
12 deductible component, no losses have been paid by reinsurers. (page 38
provides an "as if" exhibit displaying treaty experience for 2004-2010
using current terms.).

13 4. **Based on current valuations, reinsurers total positive balance for all**
14 **treaties is over \$8,000,000** (pages 33 & 34).

15 342. U.S. RE's point to the reinsurers was clear: U.S. RE was brokering deals that were
16 detrimental to L&C to the benefit of reinsurers, and of course, to the benefit of U.S. RE who
17 obtained a commission on the unlawfully brokered transactions.

18 **f. Rebuttal of the business judgment rule, and breach of fiduciary duties**
19 **by the Board involving intentional and knowing misconduct and**
20 **knowing violations of the law regarding reinsurance.**

21 343. U.S. RE's violations of Nevada law, including without limitation its brokering of
22 the Reinsurance Treaties while failing to obtain a license to broker reinsurance in Nevada on
23 behalf of L&C, constitute breaches of its fiduciary duties to the Company.

24 344. Uni-Ter's violations of Nevada, including without limitation its binding of
25 reinsurance on behalf of L&C, constitute breaches of its fiduciary duties to the Company.

26 345. The Director Defendants' acts, ratification, or failures to act, including without
27 limitation its decisions to obtain, or failure to refuse, reinsurance through the services of an
28 unlicensed broker, and to permit Uni-Ter to unlawfully bind reinsurance on its behalf, all in

1 violation of Nevada law of which the Director Defendants knew, constitute breaches of the
2 Director Defendants' fiduciary duties to the Company.

3 346. These breaches were not protected by the business judgment rule in Nevada
4 ("BJR"), and involved intentional and knowing misconduct and/or knowing violations of the law
5 by the Board, including without limitation as set forth herein.

6 347. In intentionally and knowingly entering into and/or approving or ratifying, or
7 failing to act to prevent, the 2004 Treaty on behalf of the Company, Marshall and Garber failed to
8 act honestly and in good faith, on an informed basis, and with a view to the interests of the
9 Company as required by Nevada law, including without limitation, NRS 78.138(3).

10 348. Marshall and Garber failed to act honestly and in good faith, on an informed basis,
11 and with a view to the interests of the Company by, without limitation, intentionally and
12 knowingly entering into and/or approving or ratifying, or failing to act to prevent, the 2004 Treaty
13 without ensuring that U.S. RE had obtained the appropriate license to broker reinsurance,
14 continuing to engage the services of an unlicensed reinsurance broker/intermediary while
15 knowing that doing so was a violation of Nevada law and/or intentional and knowing misconduct,
16 permitting Uni-Ter to bind reinsurance on behalf of the Company while knowing that doing so
17 was a violation of the Management Agreements and Nevada law and constituted an intentional
18 and intentional and knowing violation of the law and/or intentional and knowing misconduct,
19 failing to be informed about the 2004 Treaty to the extent they reasonably believed appropriate,
20 and not reasonably believing their decision with respect to the 2004 Treaty was in the best interest
21 of the Company.

22 349. In knowingly and intentionally entering into, ratifying and/or approving, or failing
23 to act to prevent, the 2004 Treaty, Marshall and Garber relied on Uni-Ter and U.S. RE, among
24 others, including without limitation information, opinions, reports, or books of account or
25 statements, including financial statements or other financial data provided by Uni-Ter and/or U.S.
26 RE and others, or prepared based on information provided by Uni-Ter and/or U.S. RE, despite
27 having knowledge concerning the matter in question that caused reliance thereon, including
28 without limitation, Uni-Ter and/or U.S. RE, to be unwarranted.

1 350. Such knowledge included, without limitation, the Conflicts of Interest among Uni-
2 Ter and U.S. RE, and the lack of expertise of Uni-Ter or U.S. RE, as well as the Red Flags
3 occurring prior thereto. Thus, the actions and/or inaction by Marshall and Garber regarding the
4 2004 Treaty are not protected by the BJR, and the BJR is rebutted with respect thereto. The 2004
5 Treaty constitutes a breach of Marshall's and Garber's fiduciary duties which involved intentional
6 and knowing misconduct and knowing violations of the law by Marshall and Garber, who knew
7 such conduct was wrongful.

8 351. In intentionally and knowingly entering into and/or approving or ratifying, or
9 failing to act to prevent, the 2005-2006 Treaty, Marshall, Garber, Hurlbut, and Stickels failed to
10 act honestly and in good faith, on an informed basis, and with a view to the interests of the
11 Company as required by applicable law, including without limitation NRS 78.138(3).

12 352. In knowingly and intentionally entering into, ratifying and/or approving, or failing
13 to act to prevent, the 2005-2006 Treaty, Marshall, Garber, Hurlbut, and Stickels failed to act
14 honestly and in good faith, on an informed basis, and with a view to the interests of the Company
15 by, without limitation, intentionally and knowingly entering into and/or approving or ratifying, or
16 failing to act to prevent, the 2005-2006 Treaty without ensuring that U.S. RE had obtained the
17 required license in Nevada, continuing to engage the services of an unlicensed reinsurance
18 broker/intermediary while knowing that doing so was a violation of Nevada law and/or
19 intentional and knowing misconduct, permitting Uni-Ter to bind reinsurance on behalf of the
20 Company while knowing that doing so was a violation of the Management Agreements and
21 Nevada law and constituted an intentional and intentional and knowing violation of the law
22 and/or intentional and knowing misconduct, failing to be informed about the 2005-2006 Treaty to
23 the extent they reasonably believed appropriate, and not reasonably believing their decision with
24 respect to the 2005-2006 Treaty was in the best interest of the Company.

25 353. In knowingly and intentionally entering into, ratifying and/or approving, or failing
26 to act to prevent, the 2005-2006 Treaty, Marshall, Garber, Hurlbut, and Stickels relied on Uni-Ter
27 and U.S. RE, among others, including without limitation information, opinions, reports, or books
28 of account or statements, including financial statements or other financial data provided by Uni-

1 Ter and/or U.S. RE and others, or prepared based on information provided by Uni-Ter and/or
2 U.S. RE, despite having knowledge concerning the matter in question that caused reliance
3 thereon, including without limitation, Uni-Ter and/or U.S. RE, to be unwarranted.

4 354. Such knowledge included, without limitation, the Conflicts of Interest among Uni-
5 Ter and U.S. RE, the lack of expertise of Uni-Ter and U.S. RE, the failure to provide all relevant
6 monthly financial reports to the Board, as well as the Board's knowledge they had failed to
7 review all such reports, and the Red Flags occurring prior to the acts or failures to act at issue.
8 Thus, the actions and/or inaction by Marshall, Garber, Hurlbut, and Stickels regarding the 2005-
9 2006 Treaty are not protected by the BJR, and the BJR is rebutted with respect thereto. The
10 2005-2006 Treaty constitutes a breach of Marshall's, Garber's, Hurlbut's, and Stickels' fiduciary
11 duties which involved intentional and knowing misconduct and knowing violations of the law,
12 which Marshall, Garber, Hurlbut and Stickels knew was wrongful at all relevant times.

13 355. In intentionally and knowingly entering into and/or approving or ratifying, or
14 failing to act to prevent, the 2007 Treaty, Marshall, Garber, Hurlbut, and Stickels, Chur and Fogg
15 failed to act honestly and in good faith, on an informed basis, and with a view to the interests of
16 the Company as required by applicable law, including without limitation NRS 78.138(3).

17 356. Marshall, Garber, Hurlbut, and Stickels, Chur and Fogg failed to act honestly and
18 in good faith, on an informed basis, and with a view to the interests of the Company by, without
19 limitation, intentionally and knowingly entering into and/or approving or ratifying, or failing to
20 act to prevent, the 2007 Treaty without ensuring that U.S. RE had obtained the required license in
21 Nevada, continuing to engage the services of an unlicensed reinsurance broker/intermediary while
22 knowing that doing so was a violation of Nevada law and/or intentional and knowing misconduct,
23 permitting Uni-Ter to bind reinsurance on behalf of the Company while knowing that doing so
24 was a violation of the Management Agreements and Nevada law and constituted an intentional
25 and intentional and knowing violation of the law and/or intentional and knowing misconduct,
26 failing to be informed about the 2007 Treaty to the extent they reasonably believed appropriate,
27 and not reasonably believing their decision with respect to the 2007 Treaty was in the best interest
28 of the Company.

1 357. In knowingly and intentionally entering into, ratifying and/or approving, or failing
2 to act to prevent, the 2007 Treaty, Marshall, Garber, Hurlbut, and Stickels, Chur and Fogg relied
3 on Uni-Ter and U.S. RE, among others, including without limitation information, opinions,
4 reports, or books of account or statements, including financial statements or other financial data
5 provided by Uni-Ter and/or U.S. RE and others, or prepared based on information provided by
6 Uni-Ter and/or U.S. RE, despite having knowledge concerning the matter in question that caused
7 reliance thereon, including without limitation, Uni-Ter and/or U.S. RE, to be unwarranted.

8 358. Such knowledge included, without limitation, the Conflicts of Interest among Uni-
9 Ter and U.S. RE, the lack of expertise of Uni-Ter and U.S. RE, the failure to provide all relevant
10 monthly financial reports to the Board, as well as the Board's knowledge they had failed to
11 review all such reports, and the Red Flags occurring prior to the acts or failures to act at issue.
12 Thus, the actions and/or inaction by Marshall, Garber, Hurlbut, and Stickels, Chur and Fogg
13 regarding the 2007 Treaty are not protected by the BJR, and the BJR is rebutted with respect
14 thereto. The 2007 Treaty constitutes a breach of Marshall's, Garber's, Hurlbut's, Stickels',
15 Chur's and Fogg's fiduciary duties involving intentional and knowing misconduct and knowing
16 violations of the law by said defendants, which Marshall, Garber, Hurlbut, Stickels, Chur and
17 Fogg knew was wrongful at all relevant times.

18 359. In intentionally and knowingly entering into and/or approving or ratifying, or
19 failing to act to prevent, the 2008 Treaty, Marshall, Garber, Hurlbut, and Stickels, Chur, Fogg and
20 Harter failed to act honestly and in good faith, on an informed basis, and with a view to the
21 interests of the Company as required by applicable law, including without limitation NRS
22 78.138(3).

23 360. Marshall, Garber, Hurlbut, and Stickels, Chur, Fogg and Harter failed to act
24 honestly and in good faith, on an informed basis, and with a view to the interests of the Company
25 by, without limitation, intentionally and knowingly entering into and/or approving or ratifying, or
26 failing to act to prevent, the 2008 Treaty without ensuring that U.S. RE had obtained the required
27 license in Nevada, continuing to engage the services of an unlicensed reinsurance
28 broker/intermediary while knowing that doing so was a violation of Nevada law and/or

1 intentional and knowing misconduct, permitting Uni-Ter to bind reinsurance on behalf of the
2 Company while knowing that doing so was a violation of the Management Agreements and
3 Nevada law and constituted an intentional and intentional and knowing violation of the law
4 and/or intentional and knowing misconduct, failing to be informed about the 2008 Treaty to the
5 extent they reasonably believed appropriate, and not reasonably believing their decision with
6 respect to the 2008 Treaty was in the best interest of the Company.

7 361. In knowingly and intentionally entering into, ratifying and/or approving, or failing
8 to act to prevent, the 2008 Treaty, Marshall, Garber, Hurlbut, and Stickels, Chur, Fogg and Harter
9 relied on Uni-Ter and U.S. RE, among others, including without limitation information, opinions,
10 reports, or books of account or statements, including financial statements or other financial data
11 provided by Uni-Ter and/or U.S. RE and others, or prepared based on information provided by
12 Uni-Ter and/or U.S. RE, despite having knowledge concerning the matter in question that caused
13 reliance thereon, including without limitation, Uni-Ter and/or U.S. RE, to be unwarranted.

14 362. Such knowledge included, without limitation, the Conflicts of Interest among Uni-
15 Ter and U.S. RE, the lack of expertise of Uni-Ter and U.S. RE, the failure to provide all relevant
16 monthly financial reports to the Board, as well as the Board's knowledge they had failed to
17 review all such reports, and the Red Flags occurring prior to the acts or failures to act at issue.
18 Thus, the actions and/or inaction by Marshall, Garber, Hurlbut, and Stickels, Chur, Fogg and
19 Harter regarding the 2008 Treaty are not protected by the BJR, and the BJR is rebutted with
20 respect thereto. The 2008 Treaty constitutes a breach of Marshall's, Garber's, Hurlbut's,
21 Stickels', Chur's and Fogg's fiduciary duties involving intentional and knowing misconduct and
22 knowing violations of the law by said defendants, which Marshall, Garber, Hurlbut, Stickels,
23 Chur, Fogg and Harter knew was wrongful at all relevant times.

24 363. In intentionally and knowingly entering into and/or approving or ratifying, or
25 failing to act to prevent, the 2009 Treaty, Marshall, Garber, Hurlbut, and Stickels, Chur, Fogg,
26 Harter and Lumpkin failed to act honestly and in good faith, on an informed basis, and with a
27 view to the interests of the Company as required by applicable law, including without limitation
28 NRS 78.138(3).

1 364. Marshall, Garber, Hurlbut, and Stickels, Chur, Fogg, Harter and Lumpkin failed to
2 act honestly and in good faith, on an informed basis, and with a view to the interests of the
3 Company by, without limitation, intentionally and knowingly entering into and/or approving or
4 ratifying, or failing to act to prevent, the 2009 Treaty without ensuring that U.S. RE had obtained
5 the required license in Nevada, continuing to engage the services of an unlicensed reinsurance
6 broker/intermediary while knowing that doing so was a violation of Nevada law and/or
7 intentional and knowing misconduct, permitting Uni-Ter to bind reinsurance on behalf of the
8 Company while knowing that doing so was a violation of the Management Agreements and
9 Nevada law and constituted an intentional and intentional and knowing violation of the law
10 and/or intentional and knowing misconduct, failing to be informed about the 2009 Treaty to the
11 extent they reasonably believed appropriate, and not reasonably believing their decision with
12 respect to the 2009 Treaty was in the best interest of the Company.

13 365. In knowingly and intentionally entering into, ratifying and/or approving, or failing
14 to act to prevent, the 2009 Treaty, Marshall, Garber, Hurlbut, and Stickels, Chur, Fogg, Harter
15 and Lumpkin relied on Uni-Ter and U.S. RE, among others, including without limitation
16 information, opinions, reports, or books of account or statements, including financial statements
17 or other financial data provided by Uni-Ter and/or U.S. RE and others, or prepared based on
18 information provided by Uni-Ter and/or U.S. RE, despite having knowledge concerning the
19 matter in question that caused reliance thereon, including without limitation, Uni-Ter and/or U.S.
20 RE, to be unwarranted.

21 366. Such knowledge included, without limitation, the Conflicts of Interest among Uni-
22 Ter and U.S. RE, and the lack of expertise of Uni-Ter and U.S. RE, the failure to provide all
23 relevant monthly financial reports to the Board, as well as the Board's knowledge they had failed
24 to review all such reports, and the Red Flags occurring prior to the acts or failures to act at issue.
25 Thus, the actions and/or inaction by Marshall, Garber, Hurlbut, Stickels, Chur, Fogg, Harter and
26 Lumpkin regarding the 2009 Treaty are not protected by the BJR, and the BJR is rebutted with
27 respect thereto. The 2009 Treaty constitutes a breach of Marshall's, Garber's, Hurlbut's,
28 Stickels', Chur's, Fogg's, Harter's and Lumpkin's fiduciary duties involving intentional and

1 knowing misconduct and knowing violations of the law by said defendants, which Marshall,
2 Garber, Hurlbut, Stickels, Chur, Fogg, Harter and Lumpkin knew was wrongful at all relevant
3 times.

4 367. In intentionally and knowingly entering into and/or approving or ratifying, or
5 failing to act to prevent, the 2010 Treaty, Marshall, Garber, Hurlbut, and Stickels, Chur, Fogg,
6 Harter and Lumpkin failed to act honestly and in good faith, on an informed basis, and with a
7 view to the interests of the Company as required by applicable law, including without limitation
8 NRS 78.138(3).

9 368. Marshall, Garber, Hurlbut, and Stickels, Chur, Fogg, Harter and Lumpkin failed to
10 act honestly and in good faith, on an informed basis, and with a view to the interests of the
11 Company by, without limitation, intentionally and knowingly entering into and/or approving or
12 ratifying, or failing to act to prevent, the 2010 Treaty without ensuring that U.S. RE had obtained
13 the required license in Nevada, continuing to engage the services of an unlicensed reinsurance
14 broker/intermediary while knowing that doing so was a violation of Nevada law and/or
15 intentional and knowing misconduct, permitting Uni-Ter to bind reinsurance on behalf of the
16 Company while knowing that doing so was a violation of the Management Agreements and
17 Nevada law and constituted an intentional and intentional and knowing violation of the law
18 and/or intentional and knowing misconduct, failing to be informed about the 2010 Treaty to the
19 extent they reasonably believed appropriate, and not reasonably believing their decision with
20 respect to the 2010 Treaty was in the best interest of the Company.

21 369. In knowingly and intentionally entering into, ratifying and/or approving, or failing
22 to act to prevent, the 2010 Treaty, Marshall, Garber, Hurlbut, and Stickels, Chur, Fogg, Harter
23 and Lumpkin relied on Uni-Ter and U.S. RE, among others, including without limitation
24 information, opinions, reports, or books of account or statements, including financial statements
25 or other financial data provided by Uni-Ter and/or U.S. RE and others, or prepared based on
26 information provided by Uni-Ter and/or U.S. RE, despite having knowledge concerning the
27 matter in question that caused reliance thereon, including without limitation, Uni-Ter and/or U.S.
28 RE, to be unwarranted.

1 370. Such knowledge included, without limitation, the Conflicts of Interest among Uni-
2 Ter and U.S. RE, and the lack of expertise of Uni-Ter and U.S. RE, the failure to provide all
3 relevant monthly financial reports to the Board, as well as the Board's knowledge they had failed
4 to review all such reports, and the Red Flags occurring prior to the acts or failures to act at issue.
5 Thus, the actions and/or inaction by Marshall, Garber, Hurlbut, Stickels, Chur, Fogg, Harter and
6 Lumpkin regarding the 2010 Treaty are not protected by the BJR, and the BJR is rebutted with
7 respect thereto. The 2010 Treaty constitutes a breach of Marshall's, Garber's, Hurlbut's,
8 Stickels', Chur's, Fogg's, Harter's and Lumpkin's fiduciary duties involving intentional and
9 knowing misconduct and knowing violations of the law by said defendants, which Marshall,
10 Garber, Hurlbut, Stickels, Chur, Fogg, Harter and Lumpkin knew was wrongful at all relevant
11 times.

12 371. In intentionally and knowingly entering into and/or approving or ratifying, or
13 failing to act to prevent, the 2011 Treaty, Marshall, Garber, Hurlbut, and Stickels, Chur, Fogg,
14 Harter and Lumpkin failed to act honestly and in good faith, on an informed basis, and with a
15 view to the interests of the Company as required by applicable law, including without limitation
16 NRS 78.138(3).

17 372. Marshall, Garber, Hurlbut, and Stickels, Chur, Fogg, Harter and Lumpkin failed to
18 act honestly and in good faith, on an informed basis, and with a view to the interests of the
19 Company by, without limitation, intentionally and knowingly entering into and/or approving or
20 ratifying, or failing to act to prevent, the 2011 Treaty without ensuring that U.S. RE had obtained
21 the required license in Nevada, continuing to engage the services of an unlicensed reinsurance
22 broker/intermediary while knowing that doing so was a violation of Nevada law and/or
23 intentional and knowing misconduct, permitting Uni-Ter to bind reinsurance on behalf of the
24 Company while knowing that doing so was a violation of the Management Agreements and
25 Nevada law and constituted an intentional and intentional and knowing violation of the law
26 and/or intentional and knowing misconduct, failing to be informed about the 2011 Treaty to the
27 extent they reasonably believed appropriate, and not reasonably believing their decision with
28 respect to the 2011 Treaty was in the best interest of the Company.

1 373. In knowingly and intentionally entering into, ratifying and/or approving, or failing
2 to act to prevent, the 2011 Treaty, Marshall, Garber, Hurlbut, and Stickels, Chur, Fogg, Harter
3 and Lumpkin relied on Uni-Ter and U.S. RE, among others, including without limitation
4 information, opinions, reports, or books of account or statements, including financial statements
5 or other financial data provided by Uni-Ter and/or U.S. RE and others, or prepared based on
6 information provided by Uni-Ter and/or U.S. RE, despite having knowledge concerning the
7 matter in question that caused reliance thereon, including without limitation, Uni-Ter and/or U.S.
8 RE, to be unwarranted.

9 374. Such knowledge included, without limitation, the Conflicts of Interest among Uni-
10 Ter and U.S. RE, the lack of expertise of Uni-Ter and U.S. RE, the failure to provide all relevant
11 monthly financial reports to the Board, as well as the Board's knowledge they had failed to
12 review all such reports, and the Red Flags occurring prior to the acts or failures to act at issue.
13 Thus, the actions and/or inaction by Marshall, Garber, Hurlbut, Stickels, Chur, Fogg, Harter and
14 Lumpkin regarding the 2011 Treaty are not protected by the BJR, and the BJR is rebutted with
15 respect thereto. The 2011 Treaty constitutes a breach of Marshall's, Garber's, Hurlbut's,
16 Stickels', Chur's, Fogg's, Harter's and Lumpkin's fiduciary duties involving intentional and
17 knowing misconduct and knowing violations of the law by said defendants, which Marshall,
18 Garber, Hurlbut, Stickels, Chur, Fogg, Harter and Lumpkin knew was wrongful at all relevant
19 times.

20 375. In intentionally and knowingly entering into and/or approving or ratifying, or
21 failing to act to prevent, the 2012 Treaty, Marshall, Garber, Hurlbut, and Stickels, Chur, Fogg,
22 Harter and Lumpkin failed to act honestly and in good faith, on an informed basis, and with a
23 view to the interests of the Company as required by applicable law, including without limitation
24 NRS 78.138(3).

25 376. Marshall, Garber, Hurlbut, and Stickels, Chur, Fogg, Harter and Lumpkin failed to
26 act honestly and in good faith, on an informed basis, and with a view to the interests of the
27 Company by, without limitation, intentionally and knowingly entering into and/or approving or
28 ratifying, or failing to act to prevent, the 2012 Treaty without ensuring that U.S. RE had obtained

1 the required license in Nevada, continuing to engage the services of an unlicensed reinsurance
2 broker/intermediary while knowing that doing so was a violation of Nevada law and/or
3 intentional and knowing misconduct, permitting Uni-Ter to bind reinsurance on behalf of the
4 Company while knowing that doing so was a violation of the Management Agreements and
5 Nevada law and constituted an intentional and intentional and knowing violation of the law
6 and/or intentional and knowing misconduct, failing to be informed about the 2012 Treaty to the
7 extent they reasonably believed appropriate, and not reasonably believing their decision with
8 respect to the 2012 Treaty was in the best interest of the Company.

9 377. In knowingly and intentionally entering into, ratifying and/or approving, or failing
10 to act to prevent, the 2012 Treaty, Marshall, Garber, Hurlbut, and Stickels, Chur, Fogg, Harter
11 and Lumpkin relied on Uni-Ter and U.S. RE, among others, including without limitation
12 information, opinions, reports, or books of account or statements, including financial statements
13 or other financial data provided by Uni-Ter and/or U.S. RE and others, or prepared based on
14 information provided by Uni-Ter and/or U.S. RE, despite having knowledge concerning the
15 matter in question that caused reliance thereon, including without limitation, Uni-Ter and/or U.S.
16 RE, to be unwarranted.

17 378. Such knowledge included, without limitation, the Conflicts of Interest among Uni-
18 Ter and U.S. RE, the lack of expertise of Uni-Ter and U.S. RE, the failure to provide all relevant
19 monthly financial reports to the Board, as well as the Board's knowledge they had failed to
20 review all such reports, and the Red Flags occurring prior to the acts or failures to act at issue.
21 Thus, the actions and/or inaction by Marshall, Garber, Hurlbut, Stickels, Chur, Fogg, Harter and
22 Lumpkin regarding the 2012 Treaty are not protected by the BJR, and the BJR is rebutted with
23 respect thereto. The 2012 Treaty constitutes a breach of Marshall's, Garber's, Hurlbut's,
24 Stickels', Chur's, Fogg's, Harter's and Lumpkin's fiduciary duties involving intentional and
25 knowing misconduct and knowing violations of the law by said defendants, which Marshall,
26 Garber, Hurlbut, Stickels, Chur, Fogg, Harter and Lumpkin knew was wrongful at all relevant
27 times.
28

1 379. In renewing the agreement with U.S. RE, Marshall, Garber, Hurlbut, and Stickels,
2 Chur, Fogg, Harter and Lumpkin failed to act honestly and in good faith, on an informed basis,
3 and with a view to the interests of the Company as required by applicable law, including without
4 limitation NRS 78.138(3).

5 380. Marshall, Garber, Hurlbut, and Stickels, Chur, Fogg, Harter and Lumpkin failed to
6 act honestly and in good faith, on an informed basis, and with a view to the interests of the
7 Company by, without limitation, renewing the agreement with U.S. RE without ensuring that
8 U.S. RE had obtained the required license in Nevada, continuing to engage the services of an
9 unlicensed reinsurance broker/intermediary while knowing that doing so was a violation of
10 Nevada law and/or intentional and knowing misconduct, permitting Uni-Ter to bind reinsurance
11 on behalf of the Company while knowing that doing so was a violation of the Management
12 Agreements and Nevada law and constituted an intentional and intentional and knowing violation
13 of the law and/or intentional and knowing misconduct, failing to be informed about the renewal
14 of the agreement with U.S. RE to the extent they reasonably believed appropriate, and not
15 reasonably believing their decision with respect to the renewal of the Agreement with U.S. RE
16 was in the best interest of the Company.

17 381. In renewing the agreement with U.S. RE, Marshall, Garber, Hurlbut, and Stickels,
18 Chur, Fogg, Harter and Lumpkin relied on Uni-Ter and U.S. RE, among others, including without
19 limitation information, opinions, reports, or books of account or statements, including financial
20 statements or other financial data provided by Uni-Ter and/or U.S. RE and others, or prepared
21 based on information provided by Uni-Ter and/or U.S. RE, despite having knowledge concerning
22 the matter in question that caused reliance thereon, including without limitation, Uni-Ter and/or
23 U.S. RE, to be unwarranted.

24 382. Such knowledge included, without limitation, the Conflicts of Interest among Uni-
25 Ter and U.S. RE, the lack of expertise of Uni-Ter and U.S. RE, the failure to provide all relevant
26 monthly financial reports to the Board, as well as the Board's knowledge they had failed to
27 review all such reports, and the Red Flags occurring prior to the acts or failures to act at issue.
28 Thus, the actions and/or inaction by Marshall, Garber, Hurlbut, Stickels, Chur, Fogg, Harter and

1 Lumpkin regarding renewing the agreement with U.S. RE are not protected by the BJR, and the
2 BJR is rebutted with respect thereto. Renewal of the agreement with U.S. RE constitutes a breach
3 of Marshall's, Garber's, Hurlbut's, Stickels', Chur's, Fogg's, Harter's and Lumpkin's fiduciary
4 duties involving intentional and knowing misconduct and knowing violations of the law by said
5 defendants, which Marshall, Garber, Hurlbut, Stickels, Chur, Fogg, Harter and Lumpkin knew
6 was wrongful at all relevant times.

7 **4. Failure to Amend Business Plans as Required by Nevada Law and**
8 **unlawful Underwriting of Country Villa**

9 **a. The Board is aware of applicable Nevada law at all relevant**
10 **times.**

11 383. NRS 694C.240 provides as follows:

12
13 A captive insurer shall include its business plan with its application for the
14 issuance and renewal of a license. If the captive insurer makes any changes to the
15 business plan, the captive insurer shall, as soon as practicable, file a copy of the
updated business plan with the Commissioner.

16 Nev. Rev. Stat. Ann. § 694C.240 (West).

17 384. In addition, NRS 694C.230 provides for annual renewal of a captive insurer.

18 385. At all relevant times, the Board, as well as Uni-Ter and U.S. RE, knew of these
19 requirements.

20 386. At all relevant times, the Board, as well as Uni-Ter and U.S. RE, knew that
21 without approval from the DOI for any changes to its business model and plan, such changes
22 were in violation of Nevada law, including without limitation the above statutes.

23 387. L&C submitted its business plan in 2003 as part of its captive insurance
24 application to the Nevada Department of Insurance for issuance of a license as a Nevada captive
25 insurer ("2003 Business Plan"). The 2003 Business Plan limited L&C to providing maximum
26 policy limits of \$500,000 per claim and \$1,000,000 aggregate without reinsurance, or \$1,000,000
27 per claim and \$3,000,000 aggregates should L&C maintain reinsurance.
28

1 388. Section 7 of the 2003 Business Plan, entitled Underwriting Guidelines
2 (“Underwriting Guidelines”) again stated that L&C would limit its risk by maintaining a
3 maximum policy limit of \$500,000 per claim, and added the additional limitation that “[a]ll
4 policies issued by L&C will have a terms no greater than 12 months” and that “[i]nsureds that
5 manage, own or control more than (15) locations are unique because of their higher propensity for
6 loss.”

7 389. L&C also provided reinsurers with underwriting guidelines which deemed “any
8 submission that could be considered a chain (preference is for those accounts that have fewer than
9 15 locations)” as an unacceptable risk, and that “any submission that had a claim (paid or
10 reserved) larger than \$250,000 in the last 5 years” as an unacceptable risk.

11 390. In 2007, when all Director Defendants except Lumpkin were members of the
12 Board, the Board was advised of the requirements to file business plans in accordance with NRS
13 694C.240. Lumpkin was also aware of this requirement upon her membership on the Board

14 391. Specifically, on March 14, 2007, following the examination of L&C performed by
15 the Nevada DOI for the years of December 31, 2003 to December 31, 2005, the Board’s
16 knowledge of, and knowledge of the wrongfulness of, its wrongful and unlawful actions was
17 confirmed by the DOI pertaining to NRS 694C.240, and the Board was ordered to provide an
18 amended business plan to the Commissioner.

19 392. The Board’s continued intentional and knowing violations of Nevada law were
20 again confirmed to the Board in 2010 by the DOI, including without limitation of NRS 694C.240
21 violations by the Board for its failure to submit amended business plans on an annual basis. On
22 April 26, 2010, the Board specifically acknowledged such violations.

23 **b. The Board approves Country Villa in violation of Nevada law.**

24 393. Further, the Board’s violations of its legal obligation to update its business plan
25 and obtain DOI approval of any changes in its business plan included its decision in 2009 to
26 substantially change its business without informing the DOI through an updated business plan.

1 394. In or around July, 2009, L&C accepted two California-based multi-site long-term
2 care operatives, referred to as Country Villa Health Services, Inc. (“Country Villa”) and Braswell
3 Family Senior Care (“Braswell” and collectively the “California Insureds”).

4 395. This was a divergence from the established business model of L&C, and violated
5 L&C’s underwriting guidelines, including without limitation because it was the first time L&C
6 chose to insure a large multi-facility operator, with Country Villa operating in excess of the 15
7 facility limitation.

8 396. In addition, Country Villa had historical loss records that were outside of L&C’s
9 typical underwriting range and violated L&C’s underwriting guidelines.

10 397. Moreover, the agreement with Country Villa contained an aggregate policy limit
11 of \$5,000,000 on five of Country Villa’s facilities which exceeded the maximum aggregate policy
12 limit of \$3,000,000 as contained in L&C’s business plan.

13 398. In addition, the 2004 Management Agreement required that the Board approve all
14 defense counsel for all claims. Throught the agreement with Country Villa the Board violated
15 this requirement and gave Country Villa exclusive authority to appoint defense counsel in
16 violation of the Board’s obligations under the 2004 Management Agreement. Despite knowledge
17 of this requirement, and that the Board’s intentional and knowing decision regarding the
18 underwriting of Country Villa was wrongful and a violation of the Board’s obligations to L&C,
19 the Board approved underwriting Country Villa.

20 399. This decision was not protected by the BJR, and was a breach of the Board’s
21 fidudiciary duties involving intentional and knowing misconduct and knowing violations of the
22 law by the Board.

23 400. Further, under the 2004 Management Agreement, the Board was required to
24 review the monthly financial documents of L&C on a monthly basis, but had failed to comply
25 with this requirement beginning no later than, despite knowledge that such conduct was wrongful.

26 401. Despite knowledge of these violations and acts of misconduct, the Board approved
27 the underwriting of Country Villa in 2009, and its renewal in 2010, which involved intentional
28

1 misconduct by the Board, including without limitation its breach of the applicable underwriting
2 guidelines.

3 402. Further, the Board failed to file an updated business plan to inform the DOI
4 regarding the changes to its business model and plan as required by Nevada law.

5 403. In addition, the 2004 Management Agreement required that the Board approve all
6 defense counsel for all claims. Through the agreement with Country Villa the Board violated this
7 requirement and gave Country Villa exclusive authority to appoint defense counsel in violation of
8 the Board's obligations under the 2004 Management Agreement.

9 404. Despite knowledge of this requirement, and that the Board's decision to allow the
10 underwriting of Country Villa was wrongful and a violation of the Board's obligations to L&C,
11 the Board allowed, and/or failed to act to prevent the underwriting of Country Villa. Despite
12 knowledge of these violations and acts of misconduct, the Board allowed the underwriting of
13 Country Villa in 2009, and its renewal in 2010.

14 405. The Board failed to ensure the filing of an updated business plan to inform the
15 DOI regarding the changes to its business model and plan the Country Villa entailed as required
16 by Nevada law.

17 406. The Board's intent was clear: it knew Country Villa was a divergence from the
18 established business model of L&C, and it knew it was an extreme risk. The Board did not want
19 to inform the DOI for fear the DOI would prohibit the underwriting of Country Villa, denying the
20 Board its "get rich quick" scheme that the high premiums of the Country Villa account
21 represented. The Board was aware of the applicable laws concerning updating its business plans
22 and obtaining the approval of the DOI, and wrongfully violated those laws.

23 **c. Rebuttal of the BJR and breach of fiduciary duties by the**
24 **Board involving intentional and knowing misconduct and**
25 **knowing violations of the law with respect to Country Villa and**
its failure to update its business plans.

26 407. In intentionally and knowingly entering into and/or approving or ratifying, or
27 failing to act to prevent, or otherwise reject the underwriting of Country Villa, all Director
28

1 Defendants failed to act honestly and in good faith, on an informed basis, and with a view to the
2 interests of the Company as required by applicable law, including without limitation NRS
3 78.138(3).

4 408. In knowingly and intentionally entering into, ratifying and/or approving, or failing
5 to act to prevent, or otherwise reject the underwriting of Country Villa, all Director Defendants
6 failed to act honestly and in good faith, on an informed basis, and with a view to the interests of
7 the Company by, without limitation, failing to obtain proper approval from the DOI regarding the
8 change to the Company's business plan that Country Villa represented in violation of Nevada
9 law, failing to adhere to the Underwriting Guidelines, failing to retain the right to choose defense
10 counsel as required by the 2004 Management Agreement, failing to be informed about Country
11 Villa to the extent they reasonably believed appropriate, and not reasonably believing the decision
12 to underwrite Country Villa was in the best interests of the Company.

13 409. The Board was not properly informed about CV to the extent they reasonably
14 believed appropriate, and did not reasonably believe he decision to underwrite CV was in the
15 bests interests of the Company.

16 410. The fact that the Board was not properly informed about Country Villa to the
17 extent they reasonably believed appropriate, and did not reasonably believe the decision to
18 underwrite Country Villa was in the bests interests of the Company is evidenced by, without
19 limitation, the testimony of director defendant Hurlbut, who testified that the Board was not
20 "fully briefed" on the issue of insuring Country Villa, and in fact did not even have a say in the
21 decision to insure Country Villa:

22
23 Q: And were you fully briefed on Country Villa?

24 A: No. It was a done deal. We were told they're coming in. Sandy
brought them in.

25 ...

26 Q: If Mr. Marshall, Dr. Harter, or others said extensive presentations
27 were made to the board, the board considered it, chose to assume the risk or fully
briefed, they would be wrong?

28 [Objections]

1
2 A: **It was a done deal.**

3 ...

4 Q: You do not recall anybody from UniTer specifically making a
5 presentation to the board in Sonoma, California, to discuss whether or not to bring
6 Country Villa on, fully vetting the number of units it had, its underwriting of that
7 units and the risk?

8 A: There was discussion. **What I'm trying to tell you, Counselor, is
9 the fact that it was a done deal. We were told that this is going to happen; it
10 doesn't really matter.**

11 ...

12 Q: Could you have undone it?

13 A: I don't think so.

14 See Deposition of Robert Hurlbut, at p.32 lines 4-7, 15-18, 23; p.33 lines 2-10, 23-24.

15 411. In knowingly and intentionally entering into, ratifying and/or approving, or failing
16 to act to prevent, or otherwise reject the underwriting of Country Villa, all Director Defendants
17 relied on Uni-Ter and U.S. RE, among others, including without limitation information, opinions,
18 reports, or books of account or statements, including financial statements or other financial data
19 provided by Uni-Ter and/or U.S. RE and others, or prepared based on information provided by
20 Uni-Ter and/or U.S. RE, despite having knowledge concerning the matter in question that caused
21 reliance thereon, including without limitation, Uni-Ter and/or U.S. RE, to be unwarranted.

22 412. Such knowledge included, without limitation, the Conflicts of Interest among Uni-
23 Ter and U.S. RE, the lack of expertise of Uni-Ter and U.S. RE, the failure to provide all relevant
24 monthly financial reports to the Board, as well as the Board's knowledge they had failed to
25 review all such reports, and the Red Flags occurring prior to the official conduct at issue. Thus,
26 the actions and/or inaction by all Director Defendants regarding Country Villa are not protected
27 by the BJR, and the BJR is rebutted with respect thereto. The decision and/or approval of the
28 underwriting of Country Villa by the Board constitutes a breach of the Director Defendants'
fiduciary duties involving intentional and knowing misconduct and knowing violations of the law
by said defendants, which the Director Defendants knew was wrongful at all relevant times.

5. **Insolvency of L&C.**

1 **a. The Board is aware of applicable Nevada law at all relevant**
2 **times.**

3 413. NRS 695E.200 provides in relevant part:

4 A risk retention group shall not:

5 ...

6 3. Transact insurance or otherwise operate while financially impaired or in a
7 hazardous financial condition;

8 ...

9 Nev. Rev. Stat. Ann. § 695E.200 (West).

10 414. The term “hazardous financial condition” is defined as follows:

11
12 “Hazardous financial condition” means that, based on its present or reasonably
13 anticipated financial condition, a risk retention group, although not yet financially
14 impaired or insolvent, is unlikely to be able to:

15 1. Meet obligations to policyholders with respect to known claims and
16 reasonably anticipated claims; or

17 2. Pay other obligations in the normal course of business.

18 Nev. Rev. Stat. Ann. § 695E.050 (West).

19 415. At all relevant times the Board knew of the meaning of the term “hazardous
20 financial condition,” including without limitation having reviewed and executed or approved
21 documents containing this information, including without limitation, offering memoranda,
22 regulatory documents, and statutes and other applicable laws. documents containing this
23 information.

24 416. At all relevant times the Board knew of the prohibitions against operating L&C in
25 a hazardous financial condition and/or financially impaired, including without limitation having
26 reviewed and executed or approved documents containing this information, including without
27 limitation, offering memoranda, regulatory documents, and statutes and other applicable laws.
28 documents containing this information.

1 417. At all relevant times the Board knew that the minimum statutory capitalization
2 required in Nevada was \$500,000, and such further capitalization as may be required by the DOI,
3 including without limitation having reviewed and approved documents containing this
4 information, including without limitation, offering memoranda, regulatory documents, and
5 statutes and other applicable laws.

6 418. At all relevant times the Board knew that Florida law required that L&C have a
7 minimum positive surplus of \$1,500,000 to operate.

8 419. At all relevant times the Board knew that operating L&C without the minimum
9 capital requirements was a violation of law, and was wrongful.

10 420. Further, as Harter acknowledged in her deposition, the Board knew it was
11 responsible for approving the Company's financial statements:

12 Q. And who was in charge of setting the reserves?

13 A. In my view, it's staff with the approval of the board. And the board
14 approved the financial statements, so we're all involved in that.

15 *See Deposition of Carol Harter at 92: 9-12.*

16 **b. The Board continues operating L&C in a hazardous financial
17 condition, knowingly violating Nevada law.**

18 421. In or around mid-year, 2010, the Board, having access to all financial information
19 of the Company, approved the June 30, 2010 financial statement of the Company ("2010 2Q
20 Financials").

21 422. The 2010 2Q Financials was submitted under oath that it was a "full and true
22 statement of all the assets and liabilities and of the condition and affairs of the said reporting
23 entity as of the reporting period stated above."

24 423. The 2010 2Q Financials demonstrated unequivocally that the Company was, at
25 best, operating while in hazardous financial condition within the meaning of NRS 695E.200. The
26 Board knew of this fact at all relevant times herein, including upon review of the 2010 2Q
27 Financials.
28

1 424. The 2010 2Q Financials were submitted to the DOI. The 2010 2Q Financials so
2 clearly demonstrated the Company was, at a minimum, in a hazardous financial condition,
3 impaired and/or insolvent, that very shortly after its receipt by the DOI, on or around September
4 8, 2010, the DOI sent a letter to Marshall, President of L&C and a member of the Board (*i.e.*, the
5 September 2010 Letter) advising the Board of the dangerous financial position of L&C.

6 425. As noted above, in the September 2010 Letter, captioned “Lewis & Clark
7 Deteriorating Financial Condition,” the DOI sets for the hazardous financial condition in which
8 the Company was operating, based upon the 2010 2Q Financials.

9 426. The September 2010 Letter ended with an admonition from the DOI that
10 “[b]ecause of the company’s capital decline revealed by the June 30, 2010 financial statement,
11 management should commence preparing a corrective action plan and an implementation
12 schedule addressing a means to enhance earnings and surplus, reduce expenses, and improve
13 liquidity.”

14 427. Despite having access to all financial and other information upon which the June
15 2010 Financial Statement was based, and knowing that continued operation of the Company in
16 such a condition was wrongful, intentional and knowing misconduct, and a violation of law,
17 including Nevada law, the Board intentionally and knowingly failed to fulfill their fiduciary
18 duties to correct the substantial problems L&C was facing and instead continued operating L&C
19 in violation of Nevada law including by, without limitation, transacting insurance, renewing
20 accounts and obtaining new business.

21 **c. L&C’s financial condition continues to deteriorate.**

22 428. Further, Lewis & Clark experienced a net loss during the three quarters ending
23 September 30, 2011, of \$3.1 million.

24 429. In or around mid-year, 2011, the Board (having access to all financial information)
25 approved the June 30, 2011 financial statement of the Company (“2011 2Q Financials”).

26 430. The 2011 2Q Financials were submitted to the DOI. The 2011 2Q Financials so
27 clearly demonstrated the Company was, at a minimum, in a hazardous financial condition,
28 impaired and/or insolvent, that very shortly after its receipt by the DOI, on or around September

1 8, 2011, the DOI sent a letter to Marshall, President of L&C and a member of the Board (*i.e.* the
2 September 2011 Letter) advising the Board of the now extremely dire position of L&C.

3 431. The September 2011 Letter referenced the September 2010 Letter, noting that the
4 September 2010 Letter had been sent previously to the Board regarding the hazardous financial
5 condition, impairment and/or insolvency of the Company at that time.

6 432. Further, in the September 2011 Letter, the DOI identified several massive financial
7 problems with L&C which the Board had, taken improper or no action to correct.

8 433. The September 2011 Letter noted that the DOI had sent “a prior letter advis[ing]
9 the Board of Directors of deteriorating financial condition and admonish[ing] the Board and
10 management to consider a correction plan.” The letter also required that “[t]he Board and
11 management must now prepare a short-term (3 month) action plan and based on this action plan
12 how they forecast their 12/31/2011 statement to appear.”

13 **d. Knowing violation of the law by the Board in continued operation of**
14 **L&C.**

15 434. The Board held a meeting on September 21, 2011 (“September 2011 Meeting”).

16 435. All directors were present at the September 2011 Meeting, with Fogg attending by
17 telephone.

18 436. Elsass, Dalton and Jonna Miller (“Miller”) attended the September 2011 Meeting
19 in person.

20 437. The packages Uni-Ter prepared for, and delivered to, each Lewis & Clark Board
21 Member for the September 2011 Meeting (“September 2011 Board Package”), included a report
22 from the consultant, the Praxis Claims Consulting (“Praxis”), dated September 15, 2011.

23 438. William Donnelly, Reinsurance Claims Manager of U.S. RE, had arranged the
24 September 15, 2011 audit. Mr. Donnelly was on-site and took part in the meetings during the first
25 day of Praxis' site visit to Uni-Ter on or about September 8, 2011, and Mr. Donnelly supplied the
26 documents Praxis reviewed before the site visit to Praxis by e-mail.

1 439. At the September 2011 Meeting, Brian Stiefel (“Stiefel”), CPCU of Praxis
2 presented the September 15, 2011 report (“September 2011 Praxis Report”) to the Lewis & Clark
3 Board of Directors.

4 440. At that time, Elsass of Uni-Ter, emphasized to the Board the dire financial
5 situation of the Company as set forth in the 2011 2Q Financials, and emphasized to the Board in
6 the September 2011 Letter from the DOI.

7 441. Uni-Ter requested that all entities with representatives on the Lewis & Clark
8 Board of Directors, make additional investments in Lewis & Clark (the “Required
9 Contributions”), totaling approximately \$2.2M, in order to try to meet the minimum financial
10 requirements to be in compliance with Nevada law and to maintain a legally acceptable premium-
11 to-equity ratio.

12 442. The Board knew that even more money was needed to meet reserve requirements,
13 and that the Required Contributions would not be sufficient.

14 443. The Director Defendants knew that at the time, L&C was, at best, continuing to
15 operate in a hazardous financial condition, and that continued operation of L&C was intentional
16 misconduct and a knowing violation of the law.

17 444. Moreover, the fact that the Required Contributions were required from several of
18 the Director Defendants confirmed to the entire Board that Uni-Ter had been improperly stating
19 reserves, resulting in inadequate reserves.

20 445. In fact, this was not the first time that Uni-Ter, including Uni-Ter CS, had taken
21 steps to suppress claims reserves below appropriate levels. In April 2010, Christine McCarthy
22 assumed the role of Vice President-Claims for Uni-Ter. She immediately overhauled Uni-Ter's
23 claims handling, reserve setting, and litigation management policies, resulting in increases in
24 claims reserves from \$6.3 million at the end of 2009, to \$8.0 million at June 30, 2010, to \$9.2
25 million at the end of 2010.

26 446. In May 2011, Uni-Ter terminated Ms. McCarthy for, among other reasons, her
27 unwillingness to suppress reserves.
28

1 447. Notwithstanding Ms. McCarthy's termination, and the fact that her policies were
2 put in place during 2010, Uni-Ter represented to Praxis that Ms. McCarthy's policies were newly
3 instituted corrective measures in August of 2011, which is a representation recounted in the
4 September 15, 2011 Praxis report.

5 448. Further, Uni-Ter used an accounting software program, known as Pyramid,
6 throughout the existence of L&C which was obsolete, no longer had developer support, and was
7 considered to be "extremely outdated" by Uni-Ter's IT Director. This was known to both the
8 President of Uni-Ter and U.S. RE, whom respectively referred to Pyramid as the "inept system"
9 and a "patchwork quilt." In addition, Uni-Ter senior management reported to a third-party IT
10 auditor that Pyramid was "only approximately 50% accurate/complete; therefore the data has to
11 be compared to documents outside of Pyramid to reconcile the data to approximately 90%
12 accuracy/completeness." Despite the fact that both Uni-Ter and U.S. RE knew that Pyramid
13 provided inaccurate data, and that at least 10% of the data being provided to L&C was not
14 accurate, both U.S. RE and Uni-Ter nevertheless allowed this data to be provided to L&C,
15 thereby negligently misrepresenting the accuracy of the data to the Board, and breaching their
16 fiduciary duties to L&C.

17 **f. Continued deterioration of L&C despite the Required Contributions.**

18 449. Despite having made the Required Contributions, immediately after making the
19 Required Contributions, or even before all the Required Contributions were actually made, the
20 Director Defendants received the Company's third quarter 2011 financial statement ("2011 3Q
21 Financials").

22 450. The 2011 3Q Financials showed further financial deterioration of L&C, despite the
23 addition of the Required Contributions.

24 451. After receipt of the Company's 2011 3Q Financials, the DOI emailed the
25 Company stating the following:

26
27 Attached are questions and concerns regarding the above. **Despite the addition of**
28 **\$2.15 million in capital, capital still declined 20% in the 3rd Quarter and**
 losses continue to increase.

1 Please respond in writing within 10 business days to the first paragraph of the
2 attached September 23, 2011 letter which was sent as a result of the Qtr 2 2011
3 Financial Statement.

4 452. The Board knew of this additional capital decline demonstrated by the 2011 3Q
5 Financials as it approved the Company's 2011 3Q Financials.

6 453. The Board knew it was a violation of law, including without limitation Nevada
7 law, to continue operating L&C due to its financial condition, and that such conduct was
8 wrongful.

9 454. Further, notwithstanding the reduced scope of the September 2011 Praxis Report
10 and its report to the Board of Directors, Uni-Ter, at U.S. RE's direction, conducted an internal
11 full-scale review of all claims reserves and subsequently engaged Praxis to also conduct a full-
12 scale review. The internal review was initiated based on Uni-Ter's and U.S. RE's concerns about
13 the adequacy of claims reserves raised in the September 15, 2011 Praxis report.

14 455. U.S. RE required Uni-Ter to retain Praxis to complete its full claims review in or
15 around November, 2011 ("Full Praxis Review") because U.S. RE had doubts about the adequacy
16 of Lewis & Clark's reserves based on the significantly adverse findings of the internal review.

17 456. The Full Praxis Review showed that, in fact, an additional increase of at least, and
18 possibly in excess of, \$5,000,000 of claims reserves was necessary for the Company to have the
19 minimum reserves required to meet obligations to policyholders with respect to known claims and
20 reasonably anticipated claims, or to pay other obligations in the normal course of business.

21 457. On December 20, 2011, the Board met telephonically. At that meeting, Uni-Ter
22 and U.S. RE confirmed to the Board that an addition of at least, and possibly in excess of,
23 \$5,000,000 was necessary to the Company's claims reserves to even have a chance of meeting the
24 minimum regulatory and legal requirements for operating L&C, based on the Full Praxis Review.

25 458. In fact, Uni-Ter also submitted to the Board the preliminary draft of the actuarial
26 analysis prepared by Richard Lord ("Lord") of Milliman, the Company's actuary ("Milliman
27 December 2011 Report").
28

1 459. Lord noted that the audit of L&C had increased claim case reserves by
2 approximately \$5,000,000 and the reserves estimate had increased by that amount as well.

3 460. In the email to the Board dated December 21, 2011, in which it sent the Milliman
4 December 2011 Report, Uni-Ter pointed out to the Board that “[t]he amount of the increase in
5 reserves is \$5,214,000.”

6 461. This change significantly increased the net loss of Lewis & Clark on a full 2011
7 year basis and further decreased Lewis & Clark's capital to an unacceptable and unlawful level
8 for operational, regulatory, and rating purposes, in violation of, inter alia, NRS 695E.200.

9 462. At all relevant times herein, the Board knew that L&C's capital was at an
10 unacceptable and unlawful level for operational, regulatory, and rating purposes in violation of
11 law, including Nevada law, and that continuing to operate L&C in such a condition was wrongful.

12 463. On or around October 5, 2011, the Board approved and agreed to make the
13 Required Contributions on or before November 15, 2011.

14 464. At the time of their additional Required Contributions in October/November 2011,
15 however, the Board had access to all financial information related to the Company and knew
16 about the significant reserve concerns raised in September 2011 to Uni-Ter and U.S. RE by
17 Praxis.

18 465. Further, the Board unreasonably relied upon Uni-Ter's assertion that the
19 September 2011 Praxis Report represented a complete review of the claims process, which the
20 Board easily could have done, and eventually did discover was inaccurate.

21 466. The Board had no basis to rely on Uni-Ter's and U.S. RE's representations at the
22 September Board Meeting.

23 467. In fact, the Board knew it had received inaccurate financial information and other
24 representations from Uni-Ter on multiple occasion.

25 468. The Board knew at the September Board Meeting that claims reserves were in fact,
26 inadequate, because they were required to provide nearly two million (\$2,000,000) out of their
27 own pocket or from their entities.
28

1 469. The Board also knew that Uni-Ter was contributing an additional \$300,000 due to
2 the inadequate reserves and other serious financial problems L&C was experiencing.

3 470. Further, in or around November, 2011, Uni-Ter prepared and issued an Offering
4 Memorandum dated November 2011 (the "2011 Offering Memorandum") seeking equity
5 investments in Lewis & Clark. Uni-Ter issued this offering memorandum to long-term care
6 facilities, home health care businesses, and individuals engaged in nursing or allied health care
7 practice in an attempt to sell securities to additional insured parties.

8 471. The 2011 Offering Memorandum failed to disclose material adverse information,
9 specifically the existence of the review by the Praxis Group.

10 472. The 2011 Offering Memorandum failed to disclose that the Company was
11 insolvent.

12 473. The Memorandum further stated that:

13 It is expected that the net proceeds generated from this Offering of the
14 Company's Shares will provide additional funds for the Company to
15 continue operations and to comply with all applicable capitalization
 requirements under the laws of Nevada.

16 In this sentence, the Offering Memorandum was careful not to state that Lewis & Clark's capital
17 was sufficient or that Lewis & Clark was solvent, because the Board, Uni-Ter and U.S. RE knew
18 the Company was impaired or insolvent.

19 **e. Continued deterioration of L&C's financial status, and the Board's**
20 **decision to continue operating in violation of law.**

21 474. The financial situation regarding L&C clearly demonstrated the Company was in
22 such a hazardous financial condition, on December 21, 2011, Uni-Ter put its own professional
23 liability insurers on notice, stating that the surplus of L&C was potentially "exhausted", and that
24 the "Board of L&C is being kept informed" and a further telephonic conference with the Board
25 was set for December 23, 2011.

26 475. The continued inaccurate representations by Uni-Ter and U.S. RE regarding the
27 financial condition of the Company were further confirmed to the Board since the Board knew,
28 no later than December 20, 2011, that the Company had a negative surplus in excess of

1 \$5,000,000 from the November 2011 figures based on the Full Praxis Review, despite \$2,000,000
2 having been infused into the Company only a few weeks before.

3 476. On December 23, 2011, the Board had a conference call that became very heated
4 regarding the financial condition of the Company (“December 23 Conference Call”). During that
5 conference call, the Board expressed anger at the dire financial situation of the Company. Dalton,
6 who was on the conference call at the time, stated that Marshall had “lost his cool” and said he
7 “feels like his house has been ransacked and he wants a f***ing answer as to how this happened
8 since September.”

9 477. The Board recognized formally what it had known all along, which was that it
10 could not trust or rely on Uni-Ter or U.S. RE. As an acknowledgement of this fact, the meeting
11 minutes for the December 23, 2011 Board meeting reflect that the Board resolved that “all actions
12 which Uni-Ter or U.S. RE, directly or indirectly, wish to take or recommend on behalf of the
13 Corporation which are outside the ordinary course of business, or inconsistent with the
14 Corporation’s historic day to day business practices, should receive prior approval from the
15 Board.”

16 478. In an email dated December 23, 2011, Marshall, with copies to the other Board
17 members as well as to Sitterson and Akridge, emailed Uni-Ter regarding the severe financial
18 problems of L&C “that could jeopardize the very existence of Lewis & Clark,” questioning
19 L&C’s “solvency.”

20 479. At that time the Board also set the next Board telephonic meeting for December
21 28, 2011.

22 480. On December 28, 2011, the Board, with Uni-Ter and U.S. RE, conducted a
23 telephonic conference call (“December 28 Meeting”).

24 481. As part of the December 28 Meeting, Piccione confirms to the board that the
25 Company was very likely insolvent:

26 For whatever it’s worth, we are concerned fundamentally that notwithstanding the
27 fact that you have a monthly calibration of premiums, the effect is that by putting
28 those policies into force it’s not just a question of responsibility to return the
unearned premiums, but if you have a loss that takes place during that period

1 during the effect of that cancelation, you run the potential that you've got an
2 insurance company that's potentially insolvent to pay that claim.

3 482. Piccione further advised the Board that due to the fact that L&C wrote insurance in
4 Florida, continued operation meant L&C was going to "run the risk of a criminal felony."

5 483. Sitterson stated that if Piccione thought that "there is a risk of criminal penalties
6 you should have your counsel submit a report to the board that tells them that."

7 484. Immediately after the call was over, Piccione stated that he needed to "call right
8 now Carlton Fields [Uni-Ter's attorneys], tell them they need to get a letter done right now to that
9 board."

10 485. The motive for the Board to continue operating while insolvent – despite their
11 knowledge that such action was in violation of many laws, including Nevada's and Florida laws,
12 and included civil and criminal penalties – was clear: the Board wanted to maintain the façade
13 that it was a healthy company to avoid intervention by the DOI, and to attempt to deceive another
14 company, namely Health Cap, into taking over L&C.

15 486. During the December 28 Meeting, Elsass put it this way, and the Board agreed:

16 I think we want to keep Health Cap interested. **Whatever we need to do to keep**
17 **that going, I think we need to keep it going.**

18 487. Sitterson confirmed that Health Cap was the only entity even considering taking
19 over L&C, stating that "[t]he only option that's on the table is Health Cap."

20 488. Further, later on December 28, 2011, Sitterson forwarded to the Board multiple
21 emails from Uni-Ter representatives in which Uni-Ter stated that it believed that it "must
22 respectfully point out that we [Uni-Ter] are not as yet confident of the ultimate level of reserves
23 as at 31 December 2011 ... nor whether the finalized level of reserves will correlate to L&C
24 having a positive surplus as at 31 December 2011..."

25 489. Despite this clear warning from even Uni-Ter that, based on L&C's then present or
26 reasonably anticipated financial condition, L&C was unlikely to be able to meet obligations to
27 policyholders with respect to known claims and reasonably anticipated claims, or to pay other
28

1 obligations in the normal course of business, the Board directed Uni-Ter to “process the current
2 renewals.”

3 490. Each of the Director Defendants knew unequivocally that this decision was
4 wrongful and a direct, knowing violation of both Nevada and Florida law.

5 491. Uni-Ter acknowledged receipt of the instructions and stated it would proceed
6 accordingly. However, knowing that the Board’s instruction was unlawful, Uni-Ter stated that
7 there was “an important issue” with respect to this instruction,” that it had “sought the advice of
8 counsel regarding the issue of processing renewals,” and informed the Board as follows:

9
10 According to legal counsel, a managing general agent such as Uni-Ter has no
11 common law liability to brokers, agents or policyholders as a result of the
12 insolvency of the insurer. However, it is the general rule in most states that an
13 insurance broker has a duty not to place insurance with an insurer which the broker
14 knows or reasonably should have known to be insolvent, and this duty applies to
15 renewal policies as well.

16 492. Further, Uni-Ter noted that in the previous day’s Board meeting, “concern was
17 expressed by us over issues having to do with Florida Statutes dealing with potential liability
18 (beyond civil), as a result of L&C becoming impaired or insolvent.” Accordingly, Uni-Ter sent
19 the Board a letter from Uni-Ter’s attorneys, Carlton Fields, and quoted the letter in the email, “to
20 better assure” that the Board members received it. The letter stated in relevant part as follows:

21 You have asked us to provide you with information concerning potential liability
22 under Florida law for Lewis & Clark LTC Risk Retention Group, Inc. (“L&C”) as
23 a result of L&C becoming impaired or insolvent. Under Fla. Stat. Ann. §
24 626.9541(l)(w), the following is defined as an “unfair method[] of competition and
25 unfair or deceptive act[] or practice[]” that is prohibited by Fla. Stat. Ann.
26 §626.9541:

27 (w) Soliciting or accepting new or renewal insurance risks by
28 insolvent or impaired insurer prohibited; penalty-

1. Whether or not delinquency proceedings as to the insurer
have been or are to be initiated, but while such insolvency or impairment exists, no
director or officer of an insurer, except with the written permission of the office,
shall authorize or permit the insurer to solicit or accept new or renewal insurance
risks in this state after such director or officer knew, or reasonably should have
known, that the insurer was insolvent or impaired. “Impaired” includes
impairment of capital or surplus, as defined in s. 631.011(12) and (13).

1
2 2. Any such director or officer, upon conviction of a
3 violation of this paragraph, is guilty of a felony of the third degree, punishable as
4 provided in s. 775.082, s. 775.083, or s. 775.084.

5 It is our understanding that this applies to risk retention groups domiciled in other
6 states but doing business in Fla. See § 627.944(5), and of course imposes potential
7 criminal liability for the individual officers and directors of the insolvent or
8 impaired insurer.

9 493. And, in fact, as the Director Defendants knew, the statutes cited by Carlton Fields
10 make clear that Florida law required a positive surplus of \$1,500,000.00. *See* Fla. Stat. Ann. §
11 624.408 (West) (“an insurer in this state must at all times maintain surplus as to policyholders at
12 least the greater of: (a) Except as provided in paragraphs (e), (f), and (g), \$1.5 million).

13 494. Knowing that continued operation of the Company was in violation of multiple
14 laws, including at least one states laws that carried criminal penalties, Uni-Ter demanded the
15 Board confirm on December 29, 2011, that the Director Defendants wanted to continue operating
16 L&C, including processing renewals.

17 495. Despite this clear statement of law, and the knowledge the Board had that L&C
18 was over \$5,000,000 below the amount necessary to even cover the minimum statutory reserves,
19 the Board continued to operate L&C, including ordering Uni-Ter to renew policies coming due
20 for renewal January, 2012, in direct, knowing violation of multiple laws.

21 496. In fact, despite the Board’s knowledge that L&C was at least \$5,200,000 below
22 where it needed be to meet minimum statutory requirements, that the 3Q 2011 Financial
23 Statement showed an additional 20% capital decrease (even including the \$2.2 million Required
24 Contributions), in order to provide false cover for its decision to keep operating while in violation
25 of multiple states’ laws, the Board minutes for the December 28, 2011, meeting stated the
26 following:

27 Having been advised that Uni-Ter’s pro forma for December 31, 2011 financials
28 for the Corporation indicate that the Corporation is neither impaired nor insolvent
and pending receipt of the Fishlinger review, Uni-Ter should process the current
renewals, with level monthly premium payment offered to the facilities.

1 497. Noticeably absent from this decision by the Director Defendants (“December 2011
2 Resolution”) is any statement by the Director Defendants that L&C is not in a hazardous financial
3 condition. the reason for this glaring omission is that the Director Defendants knew, and had
4 known for over a year, that the Director Defendants had been operating L&C in a hazardous
5 financial condition, knowing it to be wrongful and in violation of law, including without
6 limitation, Nevada law.

7 498. The December 2011 Resolution to continue operating in reliance on the pro forma
8 for December 31, 2011 financials received from Uni-Ter (the “December 2011 Pro Forma”), was
9 made in reliance on information provided by Uni-Ter despite the Director Defendants’ knowledge
10 concerning the matter in question that caused reliance thereon to be unwarranted.

11 499. Specifically, among other things, reliance by the Board on the December 2011 Pro
12 Forma was unwarranted because Uni-Ter itself told the Director Defendants not to rely on the
13 December 2011 Pro Forma.

14 500. Dalton sent the Director Defendants an email on December 30, 2011, stating that
15 Uni-Ter wanted to “make sure that everyone understands that decisions should not be made based
16 on whatever you received [*i.e.* the December 2011 Pro forma] as it was an internal working copy.”

17 501. The Director Defendants knew the statements contained in the December 2011
18 Resolution were inaccurate, and that the December 2011 Pro Forma was unreliable.

19 502. Further, the Board’s internal communications reveal that the Board was well aware
20 it could not rely on the December 2011 Pro Forma.

21 503. In fact, on December 29, 2011, Stickels emailed the Board stating that “[t]he
22 proforma [*i.e.* the December 2011 Pro Forma] doesn’t indicate insolvency but may meet the
23 impaired capital test.”

24 504. This statement by Stickels was an admission that, at a minimum, the Company
25 was operating in a hazardous financial condition in violation of law, including without limitation
26 Nevada law, and that the Director Defendants knew it, and knew it was wrongful.

27 505. In truth, even Uni-Ter itself had advised the Board multiple times that it was
28 concerned there was no positive surplus in L&C, and was so concerned about the negative

1 financial condition of the Board it asked its attorneys to advise the Board that processing renewals
2 could even subject the Board to criminal – not just civil – penalties.

3 506. And, in fact, the Board acknowledged outside the presence of Uni-Ter that it knew
4 it could not rely on anything Uni-Ter provided to it, including the December 2011 Pro Forma,
5 knowing Uni-Ter to have misrepresented the financial status of L&C on numerous occasions.

6 507. In an email from Lumpkin to the Board dated December 30, 2011, Lumpkin stated
7 that with respect to information received from Uni-Ter, “[a]t this point it is difficult to have any
8 confidence in the data/info we get.”

9 508. In an email dated December 30, 2011, Marshall stated that L&C “should not work
10 with a mgmt. [sic] entity that reflects incompetence in its principal duties.”

11 509. In response to this, Marshall further confirmed what the Board all knew – that the
12 Board could not rely on Uni-Ter’s data. In an email to the Board on December 30, 2011,
13 Marshall stated as follows:

14 Confused by Donna’s [Dalton] caution to not pay too much attention to internal
15 documents – is Uni-Ter’s financial data reliable or not? (rhetorical question, do not
16 respond!).

17 510. Yet, despite even Uni-Ter itself telling the Director Defendants not to rely on the
18 December 2011 Pro Forma, despite the Director Defendant acknowledging in internal emails that
19 they knew they could not rely on the information provided by Uni-Ter, the Board issued the
20 December 2011 Resolution to create the false narrative that it was justified in relying on
21 information it knew to be unreliable from Uni-Ter in order to continue operating L&C in its
22 extremely hazardous financial condition, impairment and/or insolvency, to the detriment of the
23 Company, as well as others, and in breach of the Director Defendants’ fiduciary duties.

24 511. Further, in a letter from Sitterson on behalf of the Board to Uni-Ter dated
25 December 30, 2011, Sitterson emphasized the continued dire financial situation of L&C, and the
26 unreliability of Uni-Ter’s information. In the letter, Sitterson noted that “[t]his is a time of crisis
27 for Lewis & Clark” and that the Board had just been “convinced by Uni-Ter to invest
28

1 approximately \$2.0 million two months ago, only to be told now that the claims information upon
2 which they relied was fundamentally inaccurate.”

3 512. In a response dated the same day, Uni-Ter’s lawyers made clear that Uni-Ter was
4 assuming “that the Board has made an independent judgment based upon not only information
5 from Uni-Ter, but information from all other sources including appropriate laws, regulations and
6 accounting rules and conventions in order to make the representation that the Board has reached
7 the conclusions that L&C neither is, or is likely to be “insolvent or impaired.”

8 513. Communication between the Board and Uni-Ter had broken down so severely that
9 Sitterson informed the Board he could not even communicate directly with anyone at Uni-Ter
10 “without permission from their counsel.”

11 514. The Board knew that L&C had been operating while impaired, insolvent, or in a
12 hazardous financial condition for a substantial amount of time, even from mid-year 2010, and the
13 information provided at the December 2011 Board Meeting confirmed this knowledge to the
14 Board.

15 515. The Board knew, beginning in mid-year 2010, that further operations of Lewis &
16 Clark were in violation of numerous laws, including NRS 695E.200.

17 516. Despite this knowledge, in December, 2011, the Board reaffirmed the decision to
18 continue operating in violation of Nevada and Florida law, knowing that such continued
19 operations were a violation of multiple laws, including without limitation, Nevada and Florida
20 law.

21 517. The Board made said decision to continue operating through improper reliance on
22 information provided by Uni-Ter and/or U.S. RE, including without limitation financial
23 statements and other financial data, prepared or presented by Uni-Ter and/or U.S. RE, or by
24 others based on information provided by Uni-Ter and/or U.S. RE, despite knowledge concerning
25 the matter in question that caused the Board’s reliance on Uni-Ter and U.S. RE to be
26 unwarranted.

1 518. Despite its knowledge that the Company was, at a minimum, in a hazardous
2 financial condition, and possibly impaired or insolvent, beginning no later than August, 2010, the
3 Board continued to operate the Company in violation of Nevada law until September, 2012.

4 **f. Rebuttal of the Business Judgment Rule and Breach of**
5 **Fiduciary Duties by the Board involving Intentional**
6 **Misconduct and Knowing Violations of the Law.**

7 519. In deciding to continue operating L&C, or failing to act to cease its operation, after
8 review of the 2010 2Q Financials, all Director Defendants failed to act honestly and in good faith,
9 on an informed basis, and with a view to the interests of the Company as required by applicable
10 law, including without limitation NRS 78.138(3).

11 520. In determining to continue operating L&C, or failing to act to cease its operation,
12 after review of the 2010 2Q Financials, all Director Defendants failed to act honestly and in good
13 faith, on an informed basis, and with a view to the interests of the Company by, without
14 limitation, continuing to operate L&C, or failing to act to cease its operation, while knowing it
15 was in a hazardous financial condition, impaired and/or insolvent, knowingly violating Nevada
16 law, failing to be informed about the exact nature of the Company's financial condition to the
17 extent they reasonably believed appropriate, not reasonably believing that continuing to operate
18 the Company, or failing to act to cease its operation, while it was impaired, insolvent, and/or in a
19 hazardous financial condition was in the best interests of the Company.

20 521. In deciding to continue operating L&C, or failing to act to cease its operation, after
21 review of the 2010 2Q Financials, all Director Defendants relied on Uni-Ter and U.S. RE, among
22 others, including without limitation information, opinions, reports, or books of account or
23 statements, including financial statements or other financial data provided by Uni-Ter and/or U.S.
24 RE and others, or prepared by others with information provided by Uni-Ter and/or U.S. RE,
25 despite having knowledge concerning the matter in question that caused reliance thereon,
26 including without limitation, Uni-Ter and/or U.S. RE, to be unwarranted.

27 522. Such knowledge included, without limitation, the Conflicts of Interest among Uni-
28 Ter and U.S. RE, and the lack of expertise of Uni-Ter and U.S. RE, the failure to provide all

1 relevant monthly financial reports to the Board, as well as the Board's knowledge they had failed
2 to review all such reports, and the Red Flags occurring prior to the official conduct at issue.
3 Thus, the actions and/or inaction by all Director Defendants regarding the decision to continue
4 operating L&C, or failure to act to cease its operation, after review of the 2010 2Q Financials are
5 not protected by the BJR, and the BJR is rebutted with respect thereto. Such official conduct
6 constitutes a breach of all Director Defendants' fiduciary duties involving intentional and
7 knowing misconduct and knowing violations of the law by said defendants, which all Director
8 Defendants knew was wrongful at all relevant times.

9 523. In deciding to continue operating L&C, or failing to act to cease its operation, after
10 review of the 2011 1Q Financials, all Director Defendants failed to act honestly and in good faith,
11 on an informed basis, and with a view to the interests of the Company as required by applicable
12 law, including without limitation NRS 78.138(3).

13 524. In deciding to continue operating L&C, or failing to act to cease its operation, after
14 review of the 2011 1Q Financials, all Director Defendants failed to act honestly and in good faith,
15 on an informed basis, and with a view to the interests of the Company by, without limitation,
16 continuing to operate L&C, or failing to act to cease its operation, while knowing it was in a
17 hazardous financial condition, impaired and/or insolvent, knowingly violating Nevada law, failing
18 to be informed about the exact nature of the Company's financial condition to the extent they
19 reasonably believed appropriate, not reasonably believing that continuing to operate the
20 Company, or failing to act to cease its operation, while it was impaired, insolvent, and/or in a
21 hazardous financial condition was in the best interests of the Company.

22 525. In deciding to continue operating L&C, or failing to act to cease its operation, after
23 review of the 2011 1Q Financials, all Director Defendants relied on Uni-Ter and U.S. RE, among
24 others, including without limitation information, opinions, reports, or books of account or
25 statements, including financial statements or other financial data provided by Uni-Ter and/or U.S.
26 RE and others, or prepared based on information provided by Uni-Ter and/or U.S. RE, despite
27 having knowledge concerning the matter in question that caused reliance thereon, including
28 without limitation, Uni-Ter and/or U.S. RE, to be unwarranted.

1 526. Such knowledge included, without limitation, the Conflicts of Interest among Uni-
2 Ter and U.S. RE, and the lack of expertise of Uni-Ter and U.S. RE, the failure to provide all
3 relevant monthly financial reports to the Board, as well as the Board's knowledge they had failed
4 to review all such reports, and the Red Flags occurring prior to the official conduct at issue.
5 Thus, the actions and/or inaction by all Director Defendants regarding the decision to continue
6 operating L&C, or failure to act to cease its operation, after review of the 2011 1Q Financials are
7 not protected by the BJR, and the BJR is rebutted with respect thereto. Such official conduct
8 constitutes a breach of all Director Defendants' fiduciary duties involving intentional and
9 knowing misconduct and knowing violations of the law by said defendants, which all Director
10 Defendants knew was wrongful at all relevant times.

11 527. In deciding to continue operating L&C, or failing to act to cease its operation, after
12 review of the 2011 2Q Financials, all Director Defendants failed to act honestly and in good faith,
13 on an informed basis, and with a view to the interests of the Company as required by applicable
14 law, including without limitation NRS 78.138(3).

15 528. In deciding to continue operating L&C, or failing to act to cease its operation, after
16 review of the 2011 2Q Financials, all Director Defendants failed to act honestly and in good faith,
17 on an informed basis, and with a view to the interests of the Company by, without limitation,
18 continuing to operate L&C, or failing to act to cease its operation, while knowing it was in a
19 hazardous financial condition, impaired and/or insolvent, knowingly violating Nevada law, failing
20 to be informed about the exact nature of the Company's financial condition to the extent they
21 reasonably believed appropriate, not reasonably believing that continuing to operate the
22 Company, or failing to act to cease its operation, while it was impaired, insolvent, and/or in a
23 hazardous financial condition was in the best interests of the Company.

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25 review of the 2011 2Q Financials, all Director Defendants relied on Uni-Ter and U.S. RE, among
26 others, including without limitation information, opinions, reports, or books of account or
27 statements, including financial statements or other financial data provided by Uni-Ter and/or U.S.
28 RE and others, or prepared based on information provided by Uni-Ter and/or U.S. RE, despite

1 having knowledge concerning the matter in question that caused reliance thereon, including
2 without limitation, Uni-Ter and/or U.S. RE, to be unwarranted.

3 530. Such knowledge included, without limitation, the Conflicts of Interest among Uni-
4 Ter and U.S. RE, and the lack of expertise of Uni-Ter and U.S. RE, the failure to provide all
5 relevant monthly financial reports to the Board, as well as the Board's knowledge they had failed
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10 constitutes a breach of all Director Defendants' fiduciary duties involving intentional and
11 knowing misconduct and knowing violations of the law by said defendants, which all Director
12 Defendants knew was wrongful at all relevant times.

13 531. In deciding to continue operating L&C, or failing to act to cease its operation, after
14 review of the 2011 3Q Financials, all Director Defendants failed to act honestly and in good faith,
15 on an informed basis, and with a view to the interests of the Company as required by applicable
16 law, including without limitation NRS 78.138(3).

17 532. In deciding to continue operating L&C, or failing to act to cease its operation, after
18 review of the 2011 3Q Financials, all Director Defendants failed to act honestly and in good faith,
19 on an informed basis, and with a view to the interests of the Company by, without limitation,
20 continuing to operate L&C, or failing to act to cease its operation, while knowing it was in a
21 hazardous financial condition, impaired and/or insolvent, knowingly violating Nevada law, failing
22 to be informed about the exact nature of the Company's financial condition to the extent they
23 reasonably believed appropriate, not reasonably believing that continuing to operate the
24 Company, or failing to act to cease its operation, while it was impaired, insolvent, and/or in a
25 hazardous financial condition was in the best interests of the Company.

26 533. In deciding to continue operating L&C, or failing to act to cease its operation, after
27 review of the 2011 3Q Financials, all Director Defendants relied on Uni-Ter and U.S. RE, among
28 others, including without limitation information, opinions, reports, or books of account or

1 statements, including financial statements or other financial data provided by Uni-Ter and/or U.S.
2 RE and others, or prepared based on information provided by Uni-Ter and/or U.S. RE, despite
3 having knowledge concerning the matter in question that caused reliance thereon, including
4 without limitation, Uni-Ter and/or U.S. RE, to be unwarranted.

5 534. Such knowledge included, without limitation, the Conflicts of Interest among Uni-
6 Ter and U.S. RE, and the lack of expertise of Uni-Ter and U.S. RE, the failure to provide all
7 relevant monthly financial reports to the Board, as well as the Board's knowledge they had failed
8 to review all such reports, and the Red Flags occurring prior to the official conduct at issue.
9 Thus, the actions and/or inaction by all Director Defendants regarding the decision to continue
10 operating L&C, or failure to act to cease its operation, after review of the 2011 3Q Financials are
11 not protected by the BJR, and the BJR is rebutted with respect thereto. Such official conduct
12 constitutes a breach of all Director Defendants' fiduciary duties involving intentional and
13 knowing misconduct and knowing violations of the law by said defendants, which all Director
14 Defendants knew was wrongful at all relevant times.

15 535. In deciding to continue operating L&C, or failing to act to cease its operation, after
16 the December 28, 2011 Board Meeting, all Director Defendants failed to act honestly and in good
17 faith, on an informed basis, and with a view to the interests of the Company as required by
18 applicable law, including without limitation NRS 78.138(3).

19 536. In deciding to continue operating L&C, or failing to act to cease its operation, after
20 the December 28, 2011 Board Meeting, all Director Defendants failed to act honestly and in good
21 faith, on an informed basis, and with a view to the interests of the Company by, without
22 limitation, continuing to operate L&C, or failing to act to cease its operation, while knowing it
23 was in a hazardous financial condition, impaired and/or insolvent, knowingly violating Nevada
24 law, failing to be informed about the exact nature of the Company's financial condition to the
25 extent they reasonably believed appropriate, not reasonably believing that continuing to operate
26 the Company, or failing to act to cease its operation, while it was impaired, insolvent, and/or in a
27 hazardous financial condition was in the best interests of the Company.
28

1 537. In deciding to continue operating L&C, or failing to act to cease its operation, after
2 the December 28, 2011 Board Meeting, all Director Defendants relied on Uni-Ter and U.S. RE,
3 among others, including without limitation information, opinions, reports, or books of account or
4 statements, including financial statements or other financial data provided by Uni-Ter and/or U.S.
5 RE and others, including without limitation the December 2011 Pro Forma, despite having
6 knowledge concerning the matter in question that caused reliance thereon, including without
7 limitation, Uni-Ter and/or U.S. RE, to be unwarranted.

8 538. Such knowledge included, without limitation, the Conflicts of Interest among Uni-
9 Ter and U.S. RE, and the lack of expertise of Uni-Ter and U.S. RE, the failure to provide all
10 relevant monthly financial reports to the Board, as well as the Board's knowledge they had failed
11 to review all such reports, and the Red Flags occurring prior to the official conduct at issue.
12 Thus, the actions and/or inaction by all Director Defendants regarding the decision to continue
13 operating L&C after the December 28, 2011 Board Meeting are not protected by the BJR, and the
14 BJR is rebutted with respect thereto. Such official conduct constitutes a breach of all Director
15 Defendants' fiduciary duties involving intentional and knowing misconduct and knowing
16 violations of the law by said defendants, which all Director Defendants knew was wrongful at all
17 relevant times.

18 539. In deciding to continue operating L&C, or failing to act to cease its operation, after
19 review of the 2011 4Q Financials, all Director Defendants failed to act honestly and in good faith,
20 on an informed basis, and with a view to the interests of the Company as required by applicable
21 law, including without limitation NRS 78.138(3).

22 540. In deciding to continue operating L&C, or failing to act to cease its operation, after
23 review of the 2011 4Q Financials, all Director Defendants failed to act honestly and in good faith,
24 on an informed basis, and with a view to the interests of the Company by, without limitation,
25 continuing to operate L&C, or failing to act to cease its operation, while knowing it was in a
26 hazardous financial condition, impaired and/or insolvent, knowingly violating Nevada law, failing
27 to be informed about the exact nature of the Company's financial condition to the extent they
28 reasonably believed appropriate, not reasonably believing that continuing to operate the

1 Company, or failing to act to cease its operation, while it was impaired, insolvent, and/or in a
2 hazardous financial condition was in the best interests of the Company.

3 541. In deciding to continue operating L&C, or failing to act to cease its operation, after
4 review of the 2011 4Q Financials, all Director Defendants relied on Uni-Ter and U.S. RE, among
5 others, including without limitation information, opinions, reports, or books of account or
6 statements, including financial statements or other financial data provided by Uni-Ter and/or U.S.
7 RE and others, or prepared based on information provided by Uni-Ter and/or U.S. RE, despite
8 having knowledge concerning the matter in question that caused reliance thereon, including
9 without limitation, Uni-Ter and/or U.S. RE, to be unwarranted.

10 542. Such knowledge included, without limitation, the Conflicts of Interest among Uni-
11 Ter and U.S. RE, and the lack of expertise of Uni-Ter and U.S. RE, the failure to provide all
12 relevant monthly financial reports to the Board, as well as the Board's knowledge they had failed
13 to review all such reports, and the Red Flags occurring prior to the official conduct at issue.
14 Thus, the actions and/or inaction by all Director Defendants regarding the decision to continue
15 operating L&C, or failure to act to cease its operation, after review of the 2011 4Q Financials are
16 not protected by the BJR, and the BJR is rebutted with respect thereto. Such official conduct
17 constitutes a breach of all Director Defendants' fiduciary duties involving intentional and
18 knowing misconduct and knowing violations of the law by said defendants, which all Director
19 Defendants knew was wrongful at all relevant times.

20 543. In deciding to continue operating L&C, or failing to act to cease its operation, after
21 review of the 2012 1Q Financials, all Director Defendants failed to act honestly and in good faith,
22 on an informed basis, and with a view to the interests of the Company as required by applicable
23 law, including without limitation NRS 78.138(3).

24 544. In deciding to continue operating L&C, or failing to act to cease its operation, after
25 review of the 2012 1Q Financials, all Director Defendants failed to act honestly and in good faith,
26 on an informed basis, and with a view to the interests of the Company by, without limitation,
27 continuing to operate L&C, or failing to act to cease its operation, while knowing it was in a
28 hazardous financial condition, impaired and/or insolvent, knowingly violating Nevada law, failing

1 to be informed about the exact nature of the Company's financial condition to the extent they
2 reasonably believed appropriate, not reasonably believing that continuing to operate the
3 Company, or failing to act to cease its operation, while it was impaired, insolvent, and/or in a
4 hazardous financial condition was in the best interests of the Company.

5 545. In knowingly and intentionally entering into, ratifying and/or approving, or failing
6 to act to prevent, or otherwise reject the underwriting of Country Villa, all Director Defendants
7 relied on Uni-Ter and U.S. RE, among others, including without limitation information, opinions,
8 reports, or books of account or statements, including financial statements or other financial data
9 provided by Uni-Ter and/or U.S. RE and others, or prepared based on information provided by
10 Uni-Ter and/or U.S. RE, despite having knowledge concerning the matter in question that caused
11 reliance thereon, including without limitation, Uni-Ter and/or U.S. RE, to be unwarranted.

12 546. Such knowledge included, without limitation, the Conflicts of Interest among Uni-
13 Ter and U.S. RE, and the lack of expertise of Uni-Ter and U.S. RE, the failure to provide all
14 relevant monthly financial reports to the Board, as well as the Board's knowledge they had failed
15 to review all such reports, and the Red Flags occurring prior to the official conduct at issue.
16 Thus, the actions and/or inaction by all Director Defendants regarding the decision to continue
17 operating L&C, or failure to act to cease its operation, after review of the 2012 1Q Financials are
18 not protected by the BJR, and the BJR is rebutted with respect thereto. Such official conduct
19 constitutes a breach of all Director Defendants' fiduciary duties involving intentional and
20 knowing misconduct and knowing violations of the law by said defendants, which all Director
21 Defendants knew was wrongful at all relevant times.

22 547. In deciding to continue operating L&C, or failing to act to cease its operation, after
23 review of the 2012 2Q Financials, all Director Defendants failed to act honestly and in good faith,
24 on an informed basis, and with a view to the interests of the Company as required by applicable
25 law, including without limitation NRS 78.138(3).

26 548. In deciding to continue operating L&C, or failing to act to cease its operation, after
27 review of the 2012 2Q Financials, all Director Defendants failed to act honestly and in good faith,
28 on an informed basis, and with a view to the interests of the Company by, without limitation,

1 continuing to operate L&C, or failing to act to cease its operation, while knowing it was in a
2 hazardous financial condition, impaired and/or insolvent, knowingly violating Nevada law, failing
3 to be informed about the exact nature of the Company's financial condition to the extent they
4 reasonably believed appropriate, not reasonably believing that continuing to operate the
5 Company, or failing to act to cease its operation, while it was impaired, insolvent, and/or in a
6 hazardous financial condition was in the best interests of the Company.

7 549. In deciding to continue operating L&C, or failing to act to cease its operation, after
8 review of the 2012 2Q Financials, all Director Defendants relied on Uni-Ter and U.S. RE, among
9 others, including without limitation information, opinions, reports, or books of account or
10 statements, including financial statements or other financial data provided by Uni-Ter and/or U.S.
11 RE and others, or prepared based on information provided by Uni-Ter and/or U.S. RE, despite
12 having knowledge concerning the matter in question that caused reliance thereon, including
13 without limitation, Uni-Ter and/or U.S. RE, to be unwarranted.

14 550. Such knowledge included, without limitation, the Conflicts of Interest among Uni-
15 Ter and U.S. RE, and the lack of expertise of Uni-Ter and U.S. RE, the failure to provide all
16 relevant monthly financial reports to the Board, as well as the Board's knowledge they had failed
17 to review all such reports, and the Red Flags occurring prior to the official conduct at issue.
18 Thus, the actions and/or inaction by all Director Defendants regarding the decision to continue
19 operating L&C, or failure to act to cease its operation, after review of the 2012 2Q Financials are
20 not protected by the BJR, and the BJR is rebutted with respect thereto. Such official conduct
21 constitutes a breach of all Director Defendants' fiduciary duties involving intentional and
22 knowing misconduct and knowing violations of the law by said defendants, which all Director
23 Defendants knew was wrongful at all relevant times.

24 551. In deciding to renew the management agreement with Uni-Ter, all Director
25 Defendants failed to act honestly and in good faith, on an informed basis, and with a view to the
26 interests of the Company as required by applicable law, including without limitation NRS
27 78.138(3).
28

1 552. In determining to renew the management agreement with Uni-Ter, all Director
2 Defendants failed to act honestly and in good faith, on an informed basis, and with a view to the
3 interests of the Company by, without limitation, continuing to operate L&C, or failing to act to
4 cease its operation, while knowing it was in a hazardous financial condition, impaired and/or
5 insolvent, knowingly violating Nevada law, failing to be informed about the exact nature of the
6 Company's financial condition to the extent they reasonably believed appropriate, not reasonably
7 believing the decision to renew the management agreement with Uni-Ter was in the best interests
8 of the Company.

9 553. in determining to renew the management agreement with Uni-Ter, all Director
10 Defendants relied on Uni-Ter and U.S. RE, among others, including without limitation
11 information, opinions, reports, or books of account or statements, including financial statements
12 or other financial data provided by Uni-Ter and/or U.S. RE and others, or prepared based on
13 information provided by Uni-Ter and/or U.S. RE, despite having knowledge concerning the
14 matter in question that caused reliance thereon, including without limitation, Uni-Ter and/or U.S.
15 RE, to be unwarranted.

16 554. Such knowledge included, without limitation, the Conflicts of Interest among Uni-
17 Ter and U.S. RE, and the lack of expertise of Uni-Ter and U.S. RE, the failure to provide all
18 relevant monthly financial reports to the Board, as well as the Board's knowledge they had failed
19 to review all such reports, and the Red Flags occurring prior to the official conduct at issue.
20 Thus, the actions and/or inaction by all Director Defendants regarding the decision to in
21 determining to renew the management agreement with Uni-Ter are not protected by the BJR, and
22 the BJR is rebutted with respect thereto. Such official conduct constitutes a breach of all Director
23 Defendants' fiduciary duties involving intentional and knowing misconduct, including without
24 limitation the violations of the Management Agreements set forth herein, and potentially others,
25 and knowing violations of the law by said defendants, including without limitation knowing
26 violation of the statutes set forth herein, and potentially others, which all Director Defendants
27 knew was wrongful and constituted intentional misconduct and/or knowing violation of the law at
28 all relevant times.

1 555. As a proximate result of the Defendants' breaches of fiduciary duties, Plaintiff
2 sustained damages which could have been prevented had the Defendants performed their
3 fiduciary duties as required.

4 556. The Defendants' acts and failures to act, as set forth herein, were a substantial
5 factor in L&C's damages which were reasonably foreseeable to another in Defendants' position
6 under similar circumstances.

7 **H. Piccione's Aiding and Abetting Defendants' breaches of their fiduciary duties.**

8 **1. U.S. RE.**

9 557. By virtue of his position as Chairman, President, Chief Executive Officer, and
10 founder or U.S. RE, Piccione had the power, control, and authority to set policy, make
11 employment decisions, decide all matters of business, and to oversee and manage the affairs of
12 U.S. RE.

13 558. By virtue of his position at U.S. RE, Piccione had detailed knowledge of the
14 affairs of U.S. RE in regard to its relationship with L&C.

15 559. L&C was incorporated and organized at the direction of Piccione.

16 560. The U.S. RE Agreement made U.S. RE the exclusive reinsurance broker for L&C
17 for seven (7) years, and was entered into at the direction of Piccione.

18 561. Employees under the direction and control of Piccione were responsible for initial
19 licensing and license renewal at U.S. RE, and as a result had knowledge that U.S. RE was not a
20 licensed insurance intermediary in Nevada.

21 562. Piccione knew that U.S. RE was never licensed as a reinsurance broker for L&C.

22 563. On or around July of 2011, U.S. RE employee Bill Joseph provided Piccione with
23 a comprehensive list of all licenses held by U.S. Re, including insurance intermediary licenses,
24 which showed that U.S. RE did not hold a reinsurance intermediary license in Nevada.

25 564. Despite Piccione's knowledge that U.S. RE needed and did not have a Nevada
26 reinsurance intermediary license to act as a reinsurance broker for L&C, Piccione knowingly
27
28

1 participated in the breach of U.S. RE's fiduciary duties to L&C by acting as L&C's reinsurance
2 broker each year from 2004 to 2012.

3 565. Piccione actively participated in recommending and negotiating reinsurance
4 programs for L&C, including without limitation in 2012, and did so knowing that U.S. RE did not
5 hold a Nevada license as a reinsurance intermediary in breach of its fiduciary duty to L&C.

6 566. Piccione knew that U.S. RE provided L&C improper advice on reinsurance in
7 breach of its fiduciary duty to L&C, including but not limited to recommending to L&C
8 reinsurance programs that had inappropriate excess of loss and retention levels.

9 567. Piccione knowingly participated in said breach of U.S. RE's fiduciary duties to
10 L&C, including but not limited to failing to notify L&C or its Board, or taking other corrective
11 action.

12 568. Piccione knew that U.S. RE failed to advise the Board that L&C had options
13 outside of buying reinsurance that would have been more appropriate for L&C, and that such
14 failure by U.S. RE constituted a breach of U.S. RE's fiduciary duties to L&C.

15 569. Piccione knowingly participated in said breach of U.S. RE's fiduciary duties to
16 L&C, including but not limited to failing to notify L&C or its Board, or taking other corrective
17 action.

18 2. Uni-Ter.

19 570. As a founder, a Director, and the Chairman of Uni-Ter, Piccione had detailed
20 knowledge of the affairs of Uni-Ter in regard to its relationship with L&C.

21 571. By virtue of his position at Uni-Ter, Piccione had the power, control and authority
22 over Uni-Ter to set policy, provide directives to employees, and to oversee and manage the affairs
23 of the business.

24 572. Piccione was deeply involved in the day to day affairs of Uni-Ter, was frequently
25 consulted and made decisions on behalf of Uni-Ter, closely monitored and had knowledge of the
26 daily operations of Uni-Ter, and was known by the employees of Uni-Ter as the individual who
27 had the final say on all matters related to Uni-Ter.
28

1 573. L&C was incorporated and organized at the direction of Piccione for the purpose
2 of providing a captive source of management fees to Uni-Ter, to benefit Piccione personally,
3 because Uni-Ter was an indirect wholly owned subsidiary of U.S. RE Companies, of which
4 Piccione was the largest shareholder.

5 574. Piccione created L&C with the intention that L&C would be managed by Uni-Ter,
6 and caused that Uni-Ter enter into the 2004 Management Agreement with L&C, despite that fact
7 that Piccione knew he had no background or experience in running an insurance company and
8 had no reasonable belief that he could do so competently.

9 575. Piccione caused that the Board of L&C would be composed of individuals that
10 had no education, training, or experience running an insurance company, and that Uni-Ter would
11 be headed by individuals that had no education, training, or experience running an insurance
12 company.

13 576. Piccione put Elsass in charge of running Uni-Ter, who Piccione knew had a
14 background in sales, brokering and investment banking, but had never run or managed an
15 insurance company, and had no experience in handling claims or setting reserves.

16 577. Piccione caused that compensation for Elsass to include incentives to increase the
17 amount of premiums underwritten by Uni-Ter on behalf of L&C, and to increase the net profits of
18 Uni-Ter, but failed to include any incentives to Elsass to provide for the financial strength and
19 stability of L&C, thereby placing undue emphasis and focus on L&C's rapid growth at the
20 expense of L&C's solvency and ability to pay claims.

21 578. In or around 2011, Piccione became aware that Elsass had been suppressing
22 L&C's claims reserves in breach of Uni-Ter's fiduciary duty to L&C, but did not notify the Board
23 or take appropriate corrective action.

24 579. In or around 2010 or 2011, Piccione became aware that L&C was in a hazardous
25 financial condition, but did not notify the Board or take appropriate corrective action in time to
26 avert the events leading up to the Receivership Action.

27 580. Piccione knew that U.S. RE was not licensed in Nevada as an insurance
28 intermediary, and that Uni-Ter was advising L&C to use U.S. RE as its exclusive reinsurance

1 broker in breach of is fiduciary duty to L&C, but did not inform the Board of this fact or take
2 appropriate corrective action.

3 581. Piccione became aware no later than May 2012 that there was an employee
4 “whistle blower” at Uni-Ter that had likely “kept detailed records of all e-mails and conversations
5 specific to the issues of reserves being suppressed.” Despite this, Piccione intentionally failed to
6 disclose this information to the Board, or take other corrective action, which purposely aided and
7 abetted Uni-Ter’s breach of fiduciary duties and negligent misrepresentations to L&C as more
8 fully detailed herein.

9 **CLAIMS**

10 582. The allegations set forth above are incorporated into the claims set forth herein as
11 is fully set forth for each claim.

12 **FIRST CLAIM FOR RELIEF**

13 **(Breach of Fiduciary Duties – Robert Chur)**

14 583. Plaintiff repeats and realleges all allegations contained herein, including without
15 limitation Paragraphs 1 through 582, as though fully set forth herein.

16 584. As a director of L&C, a fiduciary relationship existed between Plaintiff and Chur
17 at the time of the acts or inaction alleged herein.

18 585. As such, Chur owed fiduciary duties to Plaintiff, including without limitation the
19 duties of care, honesty, loyalty, confidentiality, full disclosure, fairness, and good faith.

20 586. Chur breached one or more of those duties, as set forth herein.

21 587. Such breaches were not protected by the business judgment rule, and/or the
22 business judgment rule was rebutted with respect thereto, as set forth herein.

23 588. Such breaches involved intentional and knowing misconduct and/or knowing
24 violations of the law by said defendant, which said defendant knew was wrongful at all relevant
25 times, as set forth herein.

26 589. As a proximate result, Plaintiff has been damaged in an amount in excess of
27 \$15,000, the exact amount to be proven at trial in this matter.

28

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

SECOND CLAIM FOR RELIEF

(Breach of Fiduciary Duties – Steve Fogg)

591. Plaintiff repeats and realleges all allegations contained herein, including without limitation Paragraphs 1 through 590, as though fully set forth herein.

592. As a director of L&C, a fiduciary relationship existed between Plaintiff and Fogg at the time of the acts or inaction alleged herein.

593. As such, Fogg owed fiduciary duties to Plaintiff, including without limitation the duties of care, honesty, loyalty, confidentiality, full disclosure, fairness, and good faith.

594. Fogg breached one or more of those duties, as set forth herein.

595. Such breaches were not protected by the business judgment rule, and/or the business judgment rule was rebutted with respect thereto, as set forth herein.

596. Such breaches involved intentional and knowing misconduct and/or knowing violations of the law by said defendant, which said defendant knew was wrongful at all relevant times, as set forth herein.

597. As a proximate result, Plaintiff has been damaged in an amount in excess of \$15,000, the exact amount to be proven at trial in this matter.

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

THIRD CLAIM FOR RELIEF

(Breach of Fiduciary Duties – Mark Garber)

599. Plaintiff repeats and realleges all allegations contained herein, including without limitation Paragraphs 1 through 598, as though fully set forth herein.

600. As a director of L&C, a fiduciary relationship existed between Plaintiff and Garber at the time of the acts or inaction alleged herein.

1 601. As such, Garber owed fiduciary duties to Plaintiff, including without limitation the
2 duties of care, honesty, loyalty, confidentiality, full disclosure, fairness, and good faith.

3 602. Garber breached one or more of those duties, as set forth herein.

4 603. Such breaches were not protected by the business judgment rule, and/or the
5 business judgment rule was rebutted with respect thereto, as set forth herein.

6 604. Such breaches involved intentional and knowing misconduct and/or knowing
7 violations of the law by said defendant, which said defendant knew was wrongful at all relevant
8 times, as set forth herein.

9 605. As a proximate result, Plaintiff has been damaged in an amount in excess of
10 \$15,000, the exact amount to be proven at trial in this matter.

11 606. Plaintiff has retained the undersigned law firm to represent the Receiver in this
12 matter, and is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to
13 recover herein.

14 **FOURTH CLAIM FOR RELIEF**

15 **(Breach of Fiduciary Duties – Carol Harter)**

16 607. Plaintiff repeats and realleges all allegations contained herein, including without
17 limitation Paragraphs 1 through 606, as though fully set forth herein.

18 608. As a director of L&C, a fiduciary relationship existed between Plaintiff and Harter
19 at the time of the acts or inaction alleged herein.

20 609. As such, Harter owed fiduciary duties to Plaintiff, including without limitation the
21 duties of care, honesty, loyalty, confidentiality, full disclosure, fairness, and good faith.

22 610. Harter breached one or more of those duties, as set forth herein.

23 611. Such breaches were not protected by the business judgment rule, and/or the
24 business judgment rule was rebutted with respect thereto, as set forth herein.

25 612. Such breaches involved intentional and knowing misconduct and/or knowing
26 violations of the law by said defendant, which said defendant knew was wrongful at all relevant
27 times, as set forth herein.

613. As a proximate result, Plaintiff has been damaged in an amount in excess of \$15,000, the exact amount to be proven at trial in this matter.

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

FIFTH CLAIM FOR RELIEF

(Breach of Fiduciary Duties – Robert Hurlbut)

615. Plaintiff repeats and realleges all allegations contained herein, including without limitation Paragraphs 1 through 614, as though fully set forth herein.

616. As a director of L&C, a fiduciary relationship existed between Plaintiff and Hurlbut at the time of the acts or inaction alleged herein.

617. As such, Hurlbut owed fiduciary duties to Plaintiff, including without limitation the duties of care, honesty, loyalty, confidentiality, full disclosure, fairness, and good faith.

618. Hurlbut breached one or more of those duties, as set forth herein.

619. Such breaches were not protected by the business judgment rule, and/or the business judgment rule was rebutted with respect thereto, as set forth herein.

620. Such breaches involved intentional and knowing misconduct and/or knowing violations of the law by said defendant, which said defendant knew was wrongful at all relevant times, as set forth herein.

621. As a proximate result, Plaintiff has been damaged in an amount in excess of \$15,000, the exact amount to be proven at trial in this matter.

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

623. WHEREFORE, Plaintiff prayse for relief and judgment as set forth herein.

SIXTH CLAIM FOR RELIEF

(Breach of Fiduciary Duties – Jeff Marshall)

624. Plaintiff repeats and realleges all allegations contained herein, including without limitation Paragraphs 1 through 623, as though fully set forth herein.

625. As a director of L&C, a fiduciary relationship existed between Plaintiff and Marshall at the time of the acts or inaction alleged herein.

626. As such, Marshall owed fiduciary duties to Plaintiff, including without limitation the duties of care, honesty, loyalty, confidentiality, full disclosure, fairness, and good faith.

627. Marshall breached one or more of those duties, as set forth herein.

628. Such breaches were not protected by the business judgment rule, and/or the business judgment rule was rebutted with respect thereto, as set forth herein.

629. Such breaches involved intentional and knowing misconduct and/or knowing violations of the law by said defendant, which said defendant knew was wrongful at all relevant times, as set forth herein.

630. As a proximate result, Plaintiff has been damaged in an amount in excess of \$15,000, the exact amount to be proven at trial in this matter.

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

632. WHEREFORE, Plaintiff prayse for relief and judgment as set forth herein.

SEVENTH CLAIM FOR RELIEF

(Breach of Fiduciary Duties – Eric Stickels)

633. Plaintiff repeats and realleges all allegations contained herein, including without limitation Paragraphs 1 through 632, as though fully set forth herein.

634. As a director of L&C, a fiduciary relationship existed between Plaintiff and Stickels at the time of the acts or inaction alleged herein.

635. As such, Stickels owed fiduciary duties to Plaintiff, including without limitation the duties of care, honesty, loyalty, confidentiality, full disclosure, fairness, and good faith.

636. Stickels breached one or more of those duties, as set forth herein.

637. Such breaches were not protected by the business judgment rule, and/or the business judgment rule was rebutted with respect thereto, as set forth herein.

638. Such breaches involved intentional and knowing misconduct and/or knowing violations of the law by said defendant, which said defendant knew was wrongful at all relevant times, as set forth herein.

639. As a proximate result, Plaintiff has been damaged in an amount in excess of \$15,000, the exact amount to be proven at trial in this matter.

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

641. WHEREFORE, Plaintiff prayse for relief and judgment as set forth herein.

EIGHTH CLAIM FOR RELIEF

(Breach of Fiduciary Duties – Barbara Lumpkin)

642. Plaintiff repeats and realleges all allegations contained herein, including without limitation Paragraphs 1 through 641, as though fully set forth herein.

643. As a director of L&C, a fiduciary relationship existed between Plaintiff and Lumpkin at the time of the acts or inaction alleged herein.

644. As such, Lumpkin owed fiduciary duties to Plaintiff, including without limitation the duties of care, honesty, loyalty, confidentiality, full disclosure, fairness, and good faith.

645. Lumpkin breached one or more of those duties, as set forth herein.

646. Such breaches were not protected by the business judgment rule, and/or the business judgment rule was rebutted with respect thereto, as set forth herein.

647. Such breaches involved intentional and knowing misconduct and/or knowing violations of the law by said defendant, which said defendant knew was wrongful at all relevant times, as set forth herein.

648. As a proximate result, Plaintiff has been damaged in an amount in excess of \$15,000, the exact amount to be proven at trial in this matter.

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

650. WHEREFORE, Plaintiff prayse for relief and judgment as set forth herein.

NINTH CLAIM FOR RELIEF

(Deepening of the Insolvency of L&C Caused by all Defendants)

651. Plaintiff repeats and realleges all allegations contained herein, including without limitation Paragraphs 1 through 650, as though fully set forth herein.

652. Defendants' actions and/or failures to act severely and unlawfully prolonged the life of L&C, led to its initial insolvency and, also increased its insolvency.

653. As a proximate result, Plaintiff has been damaged in an amount in excess of \$15,000, the exact amount to be proven at trial in this matter.

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

655. WHEREFORE, Plaintiff prayse for relief and judgment as set forth herein.

TENTH CLAIM FOR RELIEF

(Negligent Misrepresentation by Uni-Ter UMC)

656. Plaintiff repeats and realleges all allegations contained herein, including without limitation Paragraphs 1 through 655, as though fully set forth herein.

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

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

659. However, instead of presenting all relevant financial information to the Board, Uni-Ter appears to have selectively provided information such that the Board was not informed

1 of the actual financial condition of L&C at certain times. Even after a number of reports showed
2 substantial growth of L&C's losses in late 2011, Mr. Elsass even represented to the Board in early
3 2012 that claims losses were not as bad as previously reported in late December.

4 660. Uni-Ter and Milliman told the Board that the large losses that started appearing in
5 the 3rd quarter of 2010 were primarily because of three insureds who had been non-renewed in
6 2011, thus giving the impression that this would resolve the large losses issue. These
7 representations are representative of how the Board was kept in the dark regarding the actual
8 financial condition of L&C.

9 661. L&C justifiably relied on the information presented to it by Uni-Ter, as set forth
10 herein.

11 662. As a proximate result, Plaintiff has suffered damages in excess of \$15,000, the
12 exact amount to be proven at trial herein.

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

15 664. WHEREFORE, Plaintiff prayse for relief and judgment as set forth herein.

16 **ELEVENTH CLAIM FOR RELIEF**

17 **(Breach of Fiduciary Duty by Uni-Ter UMC)**

18 665. Plaintiff repeats and realleges all allegations contained herein, including without
19 limitation Paragraphs 1 through 664, as though fully set forth herein.

20 666. A fiduciary relationship between L&C and Uni-Ter UMC pursuant to which Uni-
21 Ter UMC owed fiduciary duties to L&C because, without limitation, such a fiduciary relationship
22 was set forth in the 2004 Management Agreement and the 2011 Management Agreement, as well
23 as because L&C had the right to expect trust and confidence in the integrity and fidelity of Uni-
24 Ter UMC.

25 667. As a result, Uni-Ter UMC owed fiduciary duties to L&C, including without
26 limitation the duties of care, honesty, loyalty, confidentiality, full disclosure, fairness, and good
27 faith.

668. Uni-Ter UMC breached one or more of those duties, including without limitation as set forth herein.

669. As a proximate result, Plaintiff has been damaged in an amount in excess of \$15,000, the exact amount to be proven at trial in this matter.

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

671. WHEREFORE, Plaintiff prayse for relief and judgment as set forth herein.

TWELFTH CLAIM FOR RELIEF

(Breach of Fiduciary Duty by Uni-Ter CS)

672. Plaintiff repeats and realleges all allegations contained herein, including without limitation Paragraphs 1 through 671, as though fully set forth herein.

673. A fiduciary relationship between L&C and Uni-Ter CS pursuant to which Uni-Ter CS owed fiduciary duties to L&C because, without limitation, such a fiduciary relationship was set forth in the 2011 Management Agreement, as well as because L&C had the right to expect trust and confidence in the integrity and fidelity of Uni-Ter CS.

674. As a result, Uni-Ter CS owed fiduciary duties to L&C, including without limitation the duties of care, honesty, loyalty, confidentiality, full disclosure, fairness, and good faith.

675. Uni-Ter CS breached one or more of those duties, as set forth herein, including without limitation by suppressing reserves and failing to correct the problem.

676. As a proximate result, Plaintiff has been damaged in an amount in excess of \$15,000, the exact amount to be proven at trial in this matter.

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

678. WHEREFORE, Plaintiff prayse for relief and judgment as set forth herein.

1 **THIRTEENTH CLAIM FOR RELIEF**

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

3 679. Plaintiff repeats and realleges all allegations contained herein, including without
4 limitation Paragraphs 1 through 678, as though fully set forth herein.

5 680. L&C engaged U.S. RE as its agent and exclusive broker and consultant to find and
6 secure appropriate reinsurance. The U.S. RE 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).

10 681. U.S. RE was itself engaged as L&C's "exclusive reinsurance intermediary/broker"
11 and as L&C's agent, including being granted "full and complete authority to negotiate the
12 placement of reinsurance or retrocessions on all classes of insurance with unspecified limits of
13 coverage as specifically requested by any underwriter of [L&C]." *See* Exhibit 4, the U.S. RE
14 Agreement.

15 682. The U.S. RE Agreement further recognizes U.S. RE's agency with L&C by stating
16 that U.S. RE "will exercise its best efforts in the discharge of its duties **on behalf of the**
17 **Company.**" *Id.* (emphasis added).

18 683. The Supreme Court of Nevada has held that "[a]n agency relationship is formed
19 when one who hires another retains a contractual right to control the other's manner of
20 performance." *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 108 Nev. 811, 815, 839 P.2d
21 599, 602 (1992) (citation omitted).

22 684. U.S. RE acted as the agent of L&C, as the U.S. RE Agreement expressly states not
23 only that U.S. RE will act "on behalf of" L&C, but also that L&C has the right to control U.S.
24 RE's manner of performance as U.S. RE promises to "comply with written standards established
25 by [L&C] for the cession or retrocession of all insured risks." *See* Exhibit 4.

26 685. Further, Nevada law makes clear that "[a]n agent, such as respondent in these
27 circumstances, owes to the principal the highest duty of fidelity, loyalty and honesty in the
28 performance of the duties by the agent on behalf of the principal." *LeMon v. Landers*, 81 Nev.

1 329, 332, 402 P.2d 648, 649 (1965) (holding that the agent breached her fiduciary obligations)
2 (emphasis added); *see also Chem. Bank v. Sec. Pac. Nat. Bank*, 20 F.3d 375, 377 (9th Cir. 1994)
3 (“The very meaning of being an agent is assuming fiduciary duties to one's principal.”) (*citing*
4 *Restatement (Second) of Agency* § 1(1)).

5 686. Thus, as the agent of L&C, U.S. RE owed L&C fiduciary duties under Nevada
6 law, as set forth herein. These fiduciary duties included without limitation the duties of care,
7 honesty, loyalty, confidentiality, full disclosure, fairness, and good faith.

8 687. U.S. RE breached these fiduciary duties through intentional acts, including without
9 limitation, as set forth herein.

10 688. No facts were found that reinsurance failed to pay as required. To the contrary, the
11 reinsurance policies seemed not to be invoked because deductible amounts were not reached,
12 especially in the early years of 2004 to 2008.

13 689. Nevertheless, U.S. RE intentionally represented to L&C that it would act in L&C's
14 best interests, creating additional duties toward L&C other than merely finding and securing
15 reinsurance, including but not limited to, fiduciary duties, as set forth herein.

16 690. In violation of such duties, U.S. RE intentionally failed to find appropriate
17 reinsurance because the retention levels were consistently too high. This is shown by the fact that
18 reinsurance did not come into play at all in the early years.

19 691. As a proximate result, Plaintiff has been damaged in an amount in excess of
20 \$15,000, the exact amount to be proven at trial in this matter.

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

23 693. WHEREFORE, Plaintiff prays for relief and judgment as set forth herein.

24 **FOURTEENTH CLAIM FOR RELIEF**

25 **(Aiding and Abetting Breach of Fiduciary Duty by Uni-Ter UMC)**

26 694. Plaintiff repeats and realleges all allegations contained herein, including without
27 limitation Paragraphs 1 through 693, as though fully set forth herein.

28 695. Defendant Uni-Ter UMC owed fiduciary duties to Plaintiff, as set forth herein.

696. Defendant Uni-Ter UMC breached its fiduciary duties to Plaintiff, as set forth herein.

697. Defendant Uni-Ter UMC substantially assisted or encouraged Uni-Ter CS's and U.S. RE's conduct in breaching their fiduciary duties to Plaintiff, as set forth herein.

698. As a proximate result, Plaintiff has been damaged in an amount in excess of \$15,000, the exact amount to be proven at trial in this matter.

699. 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.

700. WHEREFORE, Plaintiff prays for relief and judgment as set forth herein.

FIFTEENTH CLAIM FOR RELIEF

(Aiding and Abetting Breach of Fiduciary Duty by Uni-Ter CS)

701. Plaintiff repeats and realleges all allegations contained herein, including without limitation Paragraphs 1 through 700, as though fully set forth herein.

702. Defendant Uni-Ter CS owed fiduciary duties to Plaintiff, as set forth herein.

703. Defendant Uni-Ter CS breached its fiduciary duties to Plaintiff, as set forth herein.

704. Defendant Uni-Ter CS substantially assisted or encouraged Uni-Ter UMC's and U.S. RE's conduct in breaching their fiduciary duties to Plaintiff, as set forth herein.

705. As a proximate result, Plaintiff has been damaged in an amount in excess of \$15,000, the exact amount to be proven at trial in this matter.

706. 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.

707. WHEREFORE, Plaintiff prays for relief and judgment as set forth herein.

SIXTEENTH CLAIM FOR RELIEF

(Aiding and Abetting Breach of Fiduciary Duty by U.S. RE)

708. Plaintiff repeats and realleges all allegations contained herein, including without limitation Paragraphs 1 through 707, as though fully set forth herein.

709. Defendant U.S. RE owed fiduciary duties to Plaintiff, as set forth herein.

710. Defendant U.S. RE breached its fiduciary duties to Plaintiff, as set forth herein.

1 711. Defendant substantially assisted or encouraged Uni-Ter UMC's and Uni-Ter CS's
2 conduct in breaching their fiduciary duties to Plaintiff, as set forth herein.

3 712. As a proximate result, Plaintiff has been damaged in an amount in excess of
4 \$15,000, the exact amount to be proven at trial in this matter.

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

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

8 **SEVENTEENTH CLAIM FOR RELIEF**

9 **(Aiding and Abetting U.S. RE's Breach of Fiduciary Duty Against Piccione)**

10 715. Plaintiff repeats and realleges all allegations contained herein, including without
11 limitation Paragraphs 1 through 714, as though fully set forth herein.

12 716. As a result of the relationship that existed between U.S. RE and L&C, U.S. RE
13 owed a fiduciary duty to L&C at all time relevant herein.

14 717. As a result of the fiduciary relationship that existed between U.S. RE and L&C,
15 U.S. RE breached its fiduciary duty to L&C as more fully described herein.

16 718. Piccione knew of U.S. RE's fiduciary obligations to L&C, knew of U.S. RE's
17 breaches of fiduciary duties to L&C, and substantially assisted or encouraged in U.S. RE's breach
18 of fiduciary duty to L&C by aiding and abetting U.S. RE's breaches. These actions include,
19 without limitation, aiding and abetting U.S. RE acting as L&C's reinsurance broker without
20 having a Nevada reinsurance intermediary license, with respect to recommending inappropriate
21 reinsurance programs to L&C, and with respect to failing to advise L&C that there may options
22 outside of buying reinsurance that may have been more appropriate for L&C.

23 719. As a proximate result, Plaintiff has been damaged in an amount in excess of
24 \$15,000, the exact amount to be proven at trial in this matter.

25 720. 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.

27 721. WHEREFORE, Plaintiff prayse for relief and judgment as set forth herein.

28 ///

EIGHTEENTH CLAIM FOR RELIEF
(Aiding and Abetting Uni-Ter UMC and Uni-Ter CS's Breaches of Fiduciary Duty Against Piccione)

722. Plaintiff repeats and realleges all allegations contained herein, including without limitation Paragraphs 1 through 721, as though fully set forth herein.

723. L&C engaged Uni-Ter to act as its managing general agent pursuant to the terms of the 2004 Managing Agreement and later the 2011 Management Agreement.

724. As a result of the relationship that existed between Uni-Ter and L&C, Uni-Ter owed a fiduciary duty to L&C at all time relevant herein.

725. As a result of the fiduciary relationship that existed between Uni-Ter and L&C, Uni-Ter breached its fiduciary duty to L&C as more fully described herein.

726. Piccione knew of Uni-Ter's fiduciary obligations to L&C, knew of Uni-Ter's breaches of fiduciary duties to L&C, and substantially assisted or encouraged in Uni-Ter's breach of fiduciary duty to L&C by aiding and abetting Uni-Ter's breaches. These actions include, without limitation, not informing the Board and taking appropriate actions when Uni-Ter suppressed L&C's reserves, when Uni-Ter failed to provide material, timely or accurate information to the Board, when L&C was in a hazardous financial position, and by recommending that L&C use U.S. RE as its reinsurance broker knowing that needed but did not have a Nevada reinsurance intermediary license.

727. As a proximate result, Plaintiff has been damaged in an amount in excess of \$15,000, the exact amount to be proven at trial in this matter.

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

WHEREFORE, Plaintiff prays for relief and judgment as follows:

A. For actual damages, including without limitation general, compensatory and special damages, sustained by Plaintiff in an amount in excess of \$15,000 in an amount to be more specifically established at trial in accordance with proof;

B. For reasonable attorney's fees pursuant to statute or as special damages, or as

1 provided in the agreement between the parties;

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

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

5 DATED: July 2, 2020.

HUTCHISON & STEFFEN

By: /s/ Brenoch Wirthlin, Esq.

MARK A. HUTCHISON, ESQ.

Nevada Bar No. 4639

PATRICIA LEE, ESQ.

Nevada Bar No. 8287

BRENOCH R. WIRTHLIN, ESQ.

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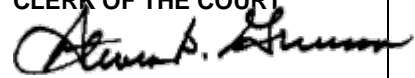
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Attorneys for Plaintiff

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.: XXVII

NOTICE OF ENTRY OF ORDER

Please take notice that an Order Re: Plaintiff's Motion for Preferential Trial Setting and for Issuance of a New Discovery Scheduling Order or, in the Alternative, Motion to Stay All Discovery During the Pendency of Motion for Leave to File Fourth Amended Complaint was entered on the 15th day of July, 2020,

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a copy of which is attached hereto.

DATED this 16th day of July, 2020.

HUTCHISON & STEFFEN

By /s/Brenoch Wirthlin
BRENOCH R. WIRTHLIN, ESQ.
Nevada Bar No. 10282
CHRIS ORME, ESQ.
Nevada Bar No. 10175
STUART J. TAYLOR, ESQ.
Nevada Bar No. 14285
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 16th day of July, 2020, I caused the document entitled **NOTICE OF ENTRY OF ORDER** to be served on the following by Electronic Service to:

ALL PARTIES ON THE E-SERVICE LIST

/s/Danielle Kelley
An Employee of Hutchison & Steffen, PLLC

ORDG

BRENOCH R. WIRTHLIN, ESQ.

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Attorneys for Plaintiff

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.: XXVII

**ORDER RE: PLAINTIFF'S MOTION FOR
PREFERENTIAL TRIAL SETTING AND
FOR ISSUANCE OF A NEW DISCOVERY
SCHEDULING ORDER OR, IN THE
ALTERNATIVE, MOTION TO STAY ALL
DISCOVERY DURING THE PENDENCY
OF MOTION FOR LEAVE TO FILE
FOURTH AMENDED COMPLAINT**

This matter having come before the Honorable Nancy Allf for hearing on July 1, 2020
("Hearing"), on Plaintiff's Motion for Preferential Trial Setting and for Issuance of a New
Discovery Scheduling Order or, in the Alternative, Motion to Stay All Discovery During the

1 Pendency of Motion for Leave to File Fourth Amended Complaint (“Motion”) filed herein on July
2 25, 2020; Angela T. Nakamura Ochoa, Esq., having appeared on behalf of Defendants Robert Chur,
3 Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric
4 Stickels (collectively the “Director Defendants”); George F. Ogilvie III, Esq., Kimberly Freedman,
5 Esq. and Erin Kolmansberger, Esq. having appeared on behalf of Defendants Uni-Ter Underwriting
6 Management Corp., Uni-Ter Claims Services Corp., and U.S. Re Corporation (collectively the
7 “Uni-Ter Defendants”); Brenoch Wirthlin, Esq., having appeared on behalf of Plaintiff
8 Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark LTC Risk
9 Retention Group (“Plaintiff”); the Director Defendants having filed a Response (“Directors’
10 Response”) to the Motion on June 30, 2020; the Uni-Ter Defendants having filed a Response in
11 Opposition (“Uni-Ter Defendants’ Opposition”) to the Motion on June 30, 2020; the Court having
12 read and considered the Motion, the Directors’ Response and the Uni-Ter Defendants’ Opposition,
13 as well as having heard and considered the arguments of counsel at the Hearing on the Motion, and
14 good cause appearing, the Court hereby orders as follows:¹

15 IT IS ORDERED that the hearing on Plaintiff’s Motion is continued to **July 23, 2020** at
16 **10:00 a.m.**, for further arguments and for the Court to make a final decision on such Motion;

17 IT IS FURTHER ORDERED that Plaintiff’s Motion for Leave to File Fourth Amended
18 Complaint (“Motion to Amend”), which was filed on July 2, 2020, will be heard on shortened time
19 and is hereby scheduled for **July 23, 2020 at 10:00 a.m.**;

20 IT IS FURTHER ORDERED that Defendants’ Oppositions to Plaintiff’s Motion to Amend
21 will be due on July 17, 2020;

22 IT IS FURTHER ORDERED that Plaintiff’s Reply to any such Opposition will be due by
23 the close of business on July 21, 2020;

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28 ¹ Since the hearing held on July 1, 2020, the parties filed (on July 10, 2020) a Stipulation and Order regarding Plaintiff’s Motion for Leave to File Fourth Amended Complaint. The new hearing dates and briefing schedule have been modified to be consistent with such Stipulation and Order.

Commissioner of Insurance for the State of Nevada v. Chur, et al.
Case No. A-14-711535-C

IT IS FURTHER ORDERED that the deadline for Plaintiff to serve its Initial Expert Disclosure is hereby extended from July 2, 2020 to until the conclusion of the hearing on Plaintiff's Motion to Amend; and

IT IS FURTHER ORDERED that, at the July 23, 2020 hearing, the Court wants firm availability from all of the lawyers and the Court will set the trial at that time (expect a trial setting of February to March 2021).

DATED this _____ day of _____, 2020.

Dated this 15th day of July, 2020

Nancy L Alf
DISTRICT COURT JUDGE JD

6A9 3F1 CC02 41E0
Nancy Alf
District Court Judge

Respectfully submitted by:

Dated this 15th day of July, 2020.

HUTCHISON & STEFFEN

/s/Brenoch Wirthlin

Brenoch Wirthlin, Esq.
Nevada Bar No. 10282
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Attorneys for Plaintiff

Approved as to form and content:

Dated this 15th day of July, 2020.

LIPSON NEILSON

/s/Angela Ochoa

Angela T. Nakamura Ochoa, Esq.
Nevada Bar No. 10164
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Attorneys for Director Defendants

Approved as to form and content by:

Dated this 15th day of July 2020.

MCDONALD CARANO LLP

/s/George Ogilvie

George F. Ogilvie III, Esq.
Nevada Bar No. 3352
2300 West Sahara Avenue, Ste 1200
Las Vegas, Nevada 89102

Jon M. Wilson, Esq.
NELSON MULLINS
2 South Biscayne Blvd. 21st Floor
Miami, FL 33131
Attorney Uni-Ter Defendants

From: Angela Ochoa <AOchoa@lipsonneilson.com>
Sent: Wednesday, July 15, 2020 1:34 PM
To: George F. Ogilvie III; Brenoch R. Wirthlin
Cc: Jon Wilson; Christian M. Orme; Jon Linder; Daniel Maul; Danielle Kelley; Kimberly Freedman; Erin Kolmansberger; Daniela Ferro; Melissa Gomberg
Subject: RE: L&C - order on hearing

On behalf of the Director Defendants, you have my authority to submit this with my signature.
Thank you,
Angela

From: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
Sent: Wednesday, July 15, 2020 1:17 PM
To: Brenoch R. Wirthlin <bworthlin@hutchlegal.com>; Angela Ochoa <AOchoa@lipsonneilson.com>
Cc: Jon Wilson <Jon.Wilson@nelsonmullins.com>; Christian M. Orme <COrme@hutchlegal.com>; Jon Linder <jlinder@hutchlegal.com>; Daniel Maul <dmaul@hutchlegal.com>; Danielle Kelley <dkelley@hutchlegal.com>; Kimberly Freedman <Kimberly.Freedman@nelsonmullins.com>; Erin Kolmansberger <Erin.Kolmansberger@nelsonmullins.com>; Daniela Ferro <Daniela.Ferro@nelsonmullins.com>; Melissa Gomberg <Melissa.Gomberg@nelsonmullins.com>
Subject: RE: L&C - order on hearing

Thank you, Brenoch. With the addition of "Esq." after both Kimberly and Erin's names (there isn't a need for the pro hac reference), this revised version is acceptable to Uni-Ter and US Re.

George F. Ogilvie III | Partner

MCDONALD CARANO

P: 702.873.4100 | **E:** gogilvie@mcdonaldcarano.com

1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Commissioner of Insurance for
7 the State of Nevada as Receiver
of Lewis and Clark, Plaintiff(s)

CASE NO: A-14-711535-C

DEPT. NO. Department 27

8 vs.

9 Robert Chur, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 7/15/2020

16 Adrina Harris .	aharris@fclaw.com
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18 Ashley Scott-Johnson .	ascott-johnson@lipsonneilson.com
19 Brenoch Wirthlin .	bwirthli@fclaw.com
20 CaraMia Gerard .	cgerard@mcdonaldcarano.com
21 George F. Ogilvie III .	gogilvie@mcdonaldcarano.com
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24 Jon M. Wilson .	jwilson@broadandcassel.com
25 Kathy Barrett .	kbarrett@mcdonaldcarano.com

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22	Jon Linder	jlinder@klnevada.com
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Daniel Maul	dmaul@hutchlegal.com
Brenoch Wirthlin	bwirthlin@hutchlegal.com
Jon Linder	jlinder@hutchlegal.com

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,

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,
PETITION FOR EN BANC RECONSIDERATION

Respondents, and

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 Case
No.: 81857**

**DIRECTOR
DEFENDANTS'
APPENDIX
(VOLUME II OF IV)**

LIPSON NEILSON P.C.
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*Attorneys for Real Parties in Interest, ROBERT CHUR, STEVE FOGG, MARK
GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN,
JEFF MARSHALL AND ERIC STICKELS*

CHRONOLOGICAL INDEX

Date	Description	Volume	Page Nos.
05/21/2018	Notice of Entry of Order Granting Stipulation to Extend (Third Request)	I	DD0001-DD0012
06/24/2020	Motion for Preferential Trial Setting on OST	I	DD0013-DD0088
07/09/2020	Errata to Proposed Fourth Amended Complaint Exhibit 37	I	DD0089-DD0211
07/16/2020	Notice of Entry of Order Re: Plaintiff's Motion for Preferential Trial Setting and Issuance of New Discovery	I	DD0212-DD0221
07/17/2020	Appendix to Director Defendants' Opposition to the Motion for Leave to File Fourth Amended Complaint	II-III	DD0222-DD0643
07/22/2020	Director Defendants' Motion for Leave to File a Supplemental Brief in Support of the Opposition to the Plaintiff's Motion for Leave to File Amended Complaint on OST	IV	DD0644-DD0732

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07/22/2020	Director Defendants' Motion for Leave to File a Supplemental Brief in Support of the Opposition to the Plaintiff's Motion for Leave to File Amended Complaint on OST	IV	DD0644-DD0732
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06/24/2020	Motion for Preferential Trial Setting on OST	I	DD0013-DD0088
05/21/2018	Notice of Entry of Order Granting Stipulation to Extend (Third Request)	I	DD0001-DD0012

07/16/2020	Notice of Entry of Order Re: Plaintiff's Motion for Preferential Trial Setting and Issuance of New Discovery	I	DD0212-DD0221
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DATED: March 4th, 2021.

LIPSON NEILSON P.C.

/s/ Angela Ochoa

By: _____

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Nevada Bar No. 6653

Angela T. Nakamura Ochoa, Esq.

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HURLBUT, BARBARA LUMPKIN, JEFF
MARSHALL AND ERIC STICKELS

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing **DIRECTOR DEFENDANTS' APPENDIX (VOLUME II OF IV)** on the following parties, via the manner of service indicated below, on March 4th, 2021:

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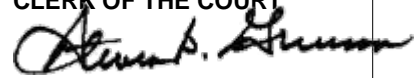
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Robert Hurlbut, Barbara Lumpkin,
Jeff Marshall, and Eric Stickels*

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

**APPENDIX OF EXHIBITS IN SUPPORT
OF DEFENDANTS ROBERT CHUR,
STEVE FOGG, MARK GARBER, CAROL
HARTER, ROBERT HURLBUT,
BARBARA LUMPKIN, JEFF MARSHALL
AND ERIC STICKELS' OPPOSITION TO
THE MOTION FOR LEAVE TO FILE
FOURTH AMENDED COMPLAINT**

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///

Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels (collectively “Directors”) by and through their counsel, Lipson Neilson P.C. hereby submit their Appendix of Exhibits in Support of the Opposition to the Motion for Leave to File Fourth Amended Complaint.

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D	Plaintiff’s Responses to Defendants’ 2 nd Set of Interrogatories	140-147
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P	Excerpts from Deposition of Carol Harter	357-359
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V	09/26/2012 E-Mail to Ken Stern	408-409
W	Bylaws	411-418

Dated this 17th day of July, 2020.

LIPSON NEILSON P.C.

/s/ Angela Ochoa

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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 17th day of July, 2020, I electronically transmitted the foregoing **APPENDIX OF EXHIBITS IN SUPPORT OF DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' OPPOSITION TO THE MOTION FOR LEAVE TO FILE FOURTH AMENDED COMPLAINT** to the Clerk's Office using the Odyssey E-File & Serve System for filing and transmittal to the following Odyssey E-File & Serve registrants:

**E-Service Master List
For Case**

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/s/ Juan Cerezo

An employee of LIPSON NEILSON P.C.

EXHIBIT “A”

EXHIBIT “A”

Page 1

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,) Case No.
) A-14-711535-C
vs.) Dept. No.
) XXVII

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.)
_____)

VIDEOTAPED DEPOSITION OF ROBERT GREER
AS 30(b)(6) WITNESS FOR THE COMMISSIONER OF
INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF
LEWIS AND CLARK LTC RISK RETENTION GROUP, INC.,
LAS VEGAS, NEVADA
THURSDAY, NOVEMBER 8, 2018

Reported by: Holly Larsen, CCR NO. 580, CA CSR 12170

Page 3

1 APPEARANCES (Continued):

2 For Defendants Robert Chur, Steve Fogg, Mark Garber,
3 Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff
4 Marshall, and Eric Stickels:

5 LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.
6 BY: ANGELA T. NAKAMURA OCHOA, ESQ.
7 9900 Covington Cross Drive
8 Suite 120
9 Las Vegas, Nevada 89144
10 702.382.1500
11 aochoa@lipsonneilson.com

12 Also Present:

13 KENNETH LAURSEN, Videographer
14 SHLANE HUE
15
16
17
18
19
20
21
22
23
24
25

Page 2

1 VIDEOTAPED DEPOSITION OF ROBERT GREER, taken
2 at 2300 West Sahara Avenue, Suite 1200, Las Vegas,
3 Nevada, on Thursday, November 8, 2018, at 9:01 a.m.,
4 before Holly Larsen, Certified Court Reporter, in
5 and for the State of Nevada.
6

7 APPEARANCES:

8 For the Plaintiff

9 FENNEMORE CRAIG, P.C.

10 BY: BRENOCH R. WIRTHLIN, ESQ.

11 BY: DANIEL S. CEREGHINO, ESQ.

12 300 South Fourth Street

13 Suite 1400

14 Las Vegas, Nevada 89101

15 702.692.8000

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17 dcereghino@fclaw.com

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

21 NELSON MULLINS BROAD and CASSEL

22 BY: JON M. WILSON, ESQ.

23 2 South Biscayne Boulevard

24 21st Floor

25 Miami, Florida 33131

305.373.9400

jon.wilson@nelsonmullins.com

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20 Marshall, dated October 5,
21 2018 66
22 Exhibit 4 Letter dated July 15, 2009, 66
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24 through 613 89
25 Exhibit 5 Minutes of Meeting of the
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1 Exhibit 8 Document entitled "Action 146
2 By Unanimous Written
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4 Directors of Lewis & Clark
5 LTC Risk Retention Group,
6 Inc. In Lieu of a Special
7 Meeting," dated October 5,
8 2011, Bates LC0261527
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13 Plan," Bates
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1 LAS VEGAS, NEVADA; THURSDAY, NOVEMBER 8, 2018
2 9:01 a.m.
3 -oOo-
4
5 THE VIDEOGRAPHER: Today is Thursday,
6 November 8, 2018. The time is 9:01 as indicated on
7 the video screen. The videographer is Kenneth
8 Laursen. The court reporter is Holly Larsen. We
9 are here from Sound Deposition Services. The
10 witness is 30(b)(6) witness of Commissioner of
11 Insurance for the State of Nevada, Robert Greer.
12 We are here in the matter Commissioner of
13 Insurance for the State of Nevada versus Robert
14 Chur, et al.
15 Will all present please identify themselves
16 for the record and then the court reporter will
17 administer the oath.
18 MR. WIRTHLIN: Brenock Wirthlin.
19 MR. CEREGHINO: Dan Cereghino.
20 MS. NAKAMURA OCHOA: My name is Angela
21 Ochoa. I'm here on behalf of Robert Chur, Steve
22 Fogg, Mark Garber, Carol Harter, Robert Hurlbut,
23 Barbara Lumpkin, and Jeff Marshall and Eric
24 Stickels.
25 MR. WILSON: Jon Wilson with the law firm

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09:06 1 of Nelson Mullins Broad and Cassel. Represent
09:06 2 defendants U.S. RE, Uni-Ter Management, and Uni-Ter
09:06 3 Claims Services. With me is my assistant Shiane,
09:06 4 S-h-i-a-n-e, Hue.
09:06 5 THE WITNESS: My name is Robert Greer. I'm
09:06 6 the deputy receiver for the Nevada Department of
09:06 7 Insurance in their capacity as receiver of the
09:06 8 Lewis & Clark Long-Term Care Risk Retention Group,
09:06 9 which is in liquidation.
09:06 10 MR. WIRTHLIN: And if I could make just one
09:06 11 clarification, Jon. I think when the notice was
09:06 12 read, it was deposition of the 30(b)(6) witness for
09:06 13 the Commissioner of Insurance for the State of
09:06 14 Nevada. I just want to clarify, as receiver for
09:06 15 Lewis & Clark LTC Risk Retention Group, Inc.
09:07 16 MR. WILSON: Right. That's a good point.
09:07 17 What I would like to do is refer to, when I ask
09:07 18 questions, "the receiver" or "you." When I talk to
09:07 19 Mr. Greer about "you," I mean the receiver.
09:07 20 MR. WIRTHLIN: Understood.
09:07 21 MR. WILSON: If that's understood with
09:07 22 everybody.
09:07 23 THE WITNESS: Yes.
09:07 24 MR. WIRTHLIN: That's fair.
25 ///

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1 Whereupon,
2 ROBERT GREER,
3 having been first duly sworn to testify to the
4 truth, was examined, and testified as follows:
5
09:07 6 EXAMINATION
7 BY MR. WILSON:
09:07 8 Q. Please state your name.
09:07 9 A. Robert L. Greer.
09:07 10 Q. Where do you reside, Mr. Greer?
09:07 11 A. In Bridgeport, West Virginia.
09:07 12 Q. What is your profession or occupation?
09:07 13 A. I am a licensed attorney and also a
09:07 14 certified insurance receiver for multiple lines
09:07 15 companies, so I work in both the law practice and as
09:07 16 consultant to receivers of insolvent insurance
09:07 17 companies.
09:07 18 Q. In what states are you licensed?
09:07 19 A. The law license is West Virginia, state and
09:08 20 federal courts, as well as the U.S. Supreme Court in
09:08 21 the Fourth and Eleventh Circuits.
09:08 22 The designation that I hold as far as being
09:08 23 a certified insurance receiver is conferred by the
09:08 24 International Association of Insurance Receivers
09:08 25 and to my knowledge has no state boundary

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09:08 1 limitations.
 09:08 2 Q. How long have you practiced -- been
 09:08 3 licensed to practice law?
 09:08 4 A. I received my law license, as I recall, in
 09:08 5 1991.
 09:08 6 Q. Do you still actively practice law?
 09:08 7 A. I do.
 09:08 8 Q. What areas?
 09:08 9 A. In insolvency insurance consulting, as well
 09:08 10 as in -- it's a laundry list. I have a small
 09:08 11 small-town practice where I handle matters involving
 09:09 12 estate administration, estate planning, real estate,
 09:09 13 and litigation involving corporate matters.
 09:09 14 Q. I'm going to focus next on your certificate
 09:09 15 as an insurance receiver.
 09:09 16 A. Yes, sir.
 09:09 17 Q. How long have you been so certified?
 09:09 18 A. Wow, I can't recall how long that's been.
 09:09 19 Q. Just --
 09:09 20 A. It's been at least -- at least 20, maybe
 09:09 21 even 25, years.
 09:09 22 Q. Are there any requirements to get a
 09:09 23 certification?
 09:09 24 A. There are.
 09:09 25 Q. What are those generally?

Page 10

09:09 1 A. It has to do with experience in
 09:09 2 administering insolvent insurance entities, both
 09:09 3 life and health, as well as property and casualty
 09:09 4 companies. They had to -- at the time I received
 09:09 5 it, they had to be of a certain size and they had to
 09:09 6 involve a certain amount of reinsurance in my
 09:10 7 experience level. I had to certify to them that I
 09:10 8 had that experience and that I had in the past had
 09:10 9 day-to-day administrative responsibilities over an
 09:10 10 insolvent receivership.
 09:10 11 Q. Are there any tests required to be a
 09:10 12 certified insurance receiver?
 09:10 13 A. There was not a test at the time that I
 09:10 14 obtained my certification. I don't know whether --
 09:10 15 there have been discussions over a number of years
 09:10 16 to institute a testing process, but there is -- to
 09:10 17 my knowledge, there is not one of those yet.
 09:10 18 Q. Are you aware in the practice of law there
 09:10 19 are CLE requirements?
 09:10 20 A. There are.
 09:10 21 Q. Are there any similar requirements for
 09:10 22 those people who are designated as certified
 09:10 23 insurance receivers?
 09:10 24 A. There are.
 09:10 25 Q. And what are those generally?

Page 11

09:10 1 A. Generally they're about twice what I have
 09:10 2 to maintain for my law license. I want to say about
 09:10 3 25 to 30 hours of insolvency-specific or
 09:11 4 insurance-specific continuing education over a
 09:11 5 two-year period of time.
 09:11 6 Q. And have you completed those requirements?
 09:11 7 A. To the best of my knowledge, I have, yes.
 09:11 8 Q. And are you in good standing with the bar
 09:11 9 of West Virginia?
 09:11 10 A. I am.
 09:11 11 Q. And you are the deputy receiver in
 09:11 12 this case?
 09:11 13 A. Yes, sir.
 09:11 14 Q. What does the deputy receiver mean?
 09:11 15 A. Deputy receiver means that I am contracted
 09:11 16 with the Nevada insurance commissioner in her
 09:11 17 capacity as the receiver of this company and that
 09:11 18 I'm responsible for the day-to-day administration
 09:11 19 and management of the receivership activities.
 09:11 20 Q. And to whom do you report at the State of
 09:11 21 Nevada?
 09:11 22 A. Generally report to the general counsel for
 09:11 23 the Department of Insurance.
 09:11 24 Q. And who is that?
 09:11 25 A. Her name is Amy Parks.

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09:11 1 Q. Do you understand that you're here as a
 09:12 2 30(b)(6) witness?
 09:12 3 A. Yes, sir.
 09:12 4 Q. And what is your understanding of a
 09:12 5 30(b)(6) witness?
 09:12 6 A. Well, that I am here to respond to the
 09:12 7 issues that were noticed in the 30(b)(6) notice of
 09:12 8 deposition as well as other matters that may be
 09:12 9 appropriate for you to ask.
 09:12 10 Q. Have you ever been a 30(b)(6) witness in an
 09:12 11 insurance-related piece of litigation in the past?
 09:12 12 A. Don't know that I've ever been a 30(b)(6)
 09:12 13 witness, no, sir.
 09:12 14 Q. And do you understand you're here
 09:12 15 testifying on behalf of, we'll say, the receiver?
 09:12 16 A. Correct.
 09:12 17 Q. And when I use the word "you," I'm
 09:12 18 referring to the receiver, not you personally.
 09:12 19 A. I understand.
 09:12 20 Q. So that I'm not interested necessarily at
 09:12 21 this time in your own personal knowledge. I'm
 09:12 22 interested in the knowledge and position of the
 09:12 23 receiver in this case.
 09:12 24 A. And I will answer your questions to the
 09:12 25 best of my ability.

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<p>09:12 1 MR. WILSON: And in terms of documents, let 09:13 2 me mark as Exhibit 1, which is the notice of taking 09:13 3 deposition, NRCP 30(b)(6), of Plaintiff, 09:13 4 Commissioner of Insurance for the State of Nevada, 09:13 5 as Receiver for Lewis & Clark LTC Risk Retention 09:13 6 Group. 09:13 7 (Exhibit 1 marked.) 09:13 8 BY MR. WILSON: 09:13 9 Q. Have you seen that document before? 09:13 10 A. I have. 09:13 11 Q. Have you reviewed it? 09:13 12 A. I have. 09:13 13 Q. Have you reviewed it in detail? 09:13 14 A. Yes. 09:13 15 Q. And there are a number of items listed here 09:13 16 in areas where we're going to make inquiry. If you 09:14 17 start at page 5 of 9, it lists the subjects of 09:14 18 examination. Do you see those? 09:14 19 A. I do. 09:14 20 Q. They go from 1 through 14. Have you 09:14 21 reviewed all of those items 1 through 14? 09:14 22 A. Yes. 09:14 23 Q. Are you here to testify to all 14 items or 09:14 24 just certain of those items? 09:14 25 MR. WIRTHLIN: Form.</p>	<p>09:15 1 Q. I don't want the details of any 09:15 2 conversations you may have with counsel. I just 09:16 3 want to know how much time have you spent with 09:16 4 counsel for the plaintiff in preparing for 09:16 5 deposition? 09:16 6 A. Of that 8 to 10 -- 8 to 12, whatever number 09:16 7 I threw out there, probably an hour at most was 09:16 8 spent with counsel. 09:16 9 Q. When did you start preparing for the 09:16 10 deposition? 09:16 11 A. Well, I started once it was determined that 09:16 12 I was the -- was going to be the 30(b)(6) witness; 09:16 13 after this notice was served back in October, 09:16 14 September time period, maybe before that. And that 09:16 15 accelerated over the last couple of days while I was 09:16 16 out -- once I came to Nevada, where the documents 09:16 17 are located. 09:16 18 Q. And how much time did you spend reviewing 09:16 19 documents? 09:16 20 A. Probably eight or ten hours of the 09:17 21 totality. 09:17 22 MR. WILSON: I'm going to ask the reporter 09:17 23 to mark as Exhibit Number 2 a copy of the third 09:17 24 amended complaint without exhibits. If we need to 09:17 25 refer to those, we can do so.</p>
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<p>09:14 1 THE WITNESS: To the extent that they 09:14 2 relate to the receiver, I'm here to testify to all 09:14 3 of them. 09:14 4 BY MR. WILSON: 09:14 5 Q. So you'll be the only 30(b)(6) witness 09:14 6 produced, as you understand it, in this case as it 09:14 7 relates to this notice? 09:14 8 A. To my understanding, yes. 09:14 9 Q. What did you do to prepare for the 09:14 10 deposition? 09:14 11 A. Obviously I reviewed the notice that you 09:14 12 have handed me, which is Exhibit 1. I have reviewed 09:14 13 the complaint -- actually, the third amended 09:15 14 complaint, which was filed in this matter, as well 09:15 15 as the exhibits thereto. And the examination 09:15 16 reports for Lewis & Clark as identified in 09:15 17 Number 12. And then those communications I'm aware 09:15 18 of as between the defendants and the Department of 09:15 19 Insurance in their capacity as receiver. 09:15 20 Q. And did somebody provide those documents 09:15 21 for your review, or did you select them yourself? 09:15 22 A. Those were provided to me by counsel. 09:15 23 Q. And how much time have you spent preparing 09:15 24 for the deposition today? 09:15 25 A. Between eight and ten hours.</p>	<p>09:17 1 The exhibits are rather bulky, aren't they? 09:17 2 THE WITNESS: They are. 09:17 3 MR. WILSON: We have not -- this will have 09:17 4 to be stapled at a break. We'll staple it. Let me 09:17 5 have her mark this. 09:17 6 (Exhibit 2 marked.) 09:18 7 THE WITNESS: Mr. Wilson, let me clarify. 09:18 8 In addition to this, I also reviewed some of the 09:18 9 responses to the various motions to dismiss that 09:18 10 have been filed since the inception of this, along 09:18 11 with the exhibits that were attached thereto as 09:18 12 well. 09:18 13 BY MR. WILSON: 09:18 14 Q. You became deputy receiver when? 09:18 15 A. When Betty Cordial retired in two thousand 09:18 16 and -- it's been a while -- '15. It may have been 09:18 17 '16, but I think it was in 2015. 09:18 18 Prior to that, I was her assistant. So 09:18 19 I've been involved with this receivership since, my 09:18 20 opinion, its inception. 09:19 21 Q. Which was back when? 09:19 22 A. I want to say my first exposure to it was 09:19 23 in January of 2013. 09:19 24 Q. And how much time has it taken -- in your 09:19 25 capacity as the deputy receiver, do you spend?</p>

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<p>09:19 1 A. I probably spend, depending upon -- it 09:19 2 varies by month and the various activities involved. 09:19 3 It's taken probably 10 to 15 hours a month is the 09:19 4 minimum amount of time that I spend on the 09:19 5 receivership matters collectively, not just this 09:19 6 asset recovery litigation, which is how I refer to 09:19 7 it. Some months that's been as much as full-time, 09:20 8 150, 60 hours plus. 09:20 9 Q. What is the hourly rate you charge? 09:20 10 A. I believe my current hourly rate to the 09:20 11 estate is \$225 an hour. 09:20 12 Q. And how much have you billed since you were 09:20 13 originally retained to be a deputy receiver? 09:20 14 A. I don't have that information with me today 09:20 15 and couldn't speculate. 09:20 16 Q. Did you review the board of director 09:20 17 minutes of Lewis & Clark? 09:20 18 A. To the extent they were attached to the 09:20 19 third amended complaint, I did. 09:20 20 Q. Do you know whether all the board of 09:20 21 director minutes were attached to the third amended 09:20 22 complaint? 09:20 23 A. I don't know if they were all attached or 09:20 24 not. I don't believe they were, because the 09:20 25 complaint only goes back to a certain period of time</p>	<p>09:22 1 Exhibit 6 to the complaint. 09:22 2 A. I did review not only that but there were 09:22 3 actually several letters from Praxis, and your 09:22 4 notice seemed to suggest that the Praxis issues were 09:22 5 part of what you wanted to talk to me today about. 09:22 6 So I want to say there's a September 12, 13, 14. He 09:22 7 appeared to write a daily report, and I reviewed 09:22 8 several of those. But I do recall seeing a 09:22 9 September 15th report. 09:22 10 Q. Do you recall that the document attached to 09:22 11 the complaint was missing page 15? 09:22 12 A. I do not recall that as we sit here today, 09:22 13 no, sir. 09:22 14 Q. So you don't -- but the one you reviewed 09:22 15 was the one attached to the complaint? 09:22 16 A. I reviewed the one that was attached to the 09:22 17 complaint as well as an additional document that was 09:23 18 provided to me by counsel. 09:23 19 Q. Was it the September 15, 2011, Praxis 09:23 20 report? 09:23 21 A. It was. Whether it had page 15, I 09:23 22 didn't -- I don't recall. 09:23 23 Q. Let me direct your attention to the 09:23 24 Exhibit 1, which is the notice of deposition, and 09:23 25 then particularly to Exhibit 1(a). Item 1(a) on</p>
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<p>09:21 1 in 2009, 2010, and there should have been board 09:21 2 minutes that went back to the inception of the 09:21 3 company in 2004. 09:21 4 Q. Do you know whether 2004 and 2005 board 09:21 5 minutes were attached to the complaint? 09:21 6 A. Not without having the exhibits in front of 09:21 7 me. I believe there were a few that related to the 09:21 8 creation of the entity from early, but they were not 09:21 9 comprehensive. So there was -- '05, '06, '07, I 09:21 10 don't recall seeing any board minutes. 09:21 11 Q. Did you review all of the exhibits attached 09:21 12 to the complaint? 09:21 13 A. Yes, sir. I tried to. 09:21 14 Q. You physically had them? 09:21 15 A. Physically had them. 09:21 16 Q. Did you read them? 09:21 17 A. To the extent they were legible, yes, sir. 09:21 18 Q. Did you have exhibits that weren't legible? 09:21 19 A. Some of the copies of the -- what I'll call 09:21 20 the blanks or the financial statements were a little 09:21 21 fuzzy. 09:21 22 Q. Do you remember receiving a report by a 09:21 23 gentleman named -- a gentleman who was involved 09:22 24 with a company called Praxis, and it was a 09:22 25 September 15, 2011, report? I think it was</p>	<p>09:23 1 Exhibit 1. And it references the fact that there 09:23 2 was an allegation from the receiver that the board 09:23 3 was grossly negligent in performing their duties as 09:23 4 directors and officers of L&C -- 09:23 5 And can we agree that "L&C" represents 09:23 6 Lewis & Clark? 09:23 7 A. Yes. 09:23 8 Q. -- which resulted in the receivership 09:23 9 action being filed as set forth in paragraph 32 of 09:24 10 the complaint. 09:24 11 Do you see that? 09:24 12 A. I see that, yes, sir. 09:24 13 Q. And do you understand in the notice when we 09:24 14 defined it the word "Complaint" refers to the third 09:24 15 amended complaint? 09:24 16 A. I believe that to be the case, but I 09:24 17 appreciate you clarifying that. 09:24 18 Q. So that when we talk about the "Complaint" 09:24 19 and the "Notice," we talk about Exhibit 1 being the 09:24 20 notice and Exhibit Number 2 being the third amended 09:24 21 complaint or the "Complaint" as referenced in the 09:24 22 notice? 09:24 23 A. Correct. I understand that. 09:24 24 Q. Would you please turn to page -- to 09:24 25 paragraph 32 of the complaint, which is on page 4.</p>

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09:24 1 A. Yes, sir. I'm there.
 09:24 2 Q. And would you please provide to me the
 09:24 3 basis -- factual basis for contending and alleging
 09:24 4 that the board was grossly negligent in performing
 09:24 5 their duties as directors and officers of L&C?
 09:25 6 MR. WIRTHLIN: Object to form. Legal
 09:25 7 conclusion and subject of expert opinion.
 09:25 8 If I could interject. I don't mean to
 09:25 9 interrupt.
 09:25 10 MR. WILSON: You can have a standing
 09:25 11 objection. Whatever you set forth in your --
 09:25 12 MR. WIRTHLIN: Standing objection?
 09:25 13 MR. WILSON: -- letters you can have a
 09:25 14 standing objection to.
 09:25 15 MR. WIRTHLIN: Right. Well, and if I could
 09:25 16 just clarify. In addition to our letters, expert
 09:25 17 opinion, I'm not sure -- Dan, correct me -- if we
 09:25 18 included that legal conclusion and anything else
 09:25 19 incorporated.
 09:25 20 MR. WILSON: You can have --
 09:25 21 MR. WIRTHLIN: Standing objection?
 09:25 22 MR. WILSON: You can have a standing
 09:25 23 objection to what you've asserted --
 09:25 24 MR. WIRTHLIN: Thank you, Jon.
 09:25 25 MR. WILSON: -- and you don't need to make

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09:25 1 them each time.
 09:25 2 MR. WIRTHLIN: Okay.
 09:25 3 MR. WILSON: I would ask, if there's
 09:25 4 something specific about the way the question is
 09:25 5 framed that could be corrected --
 09:25 6 MR. WIRTHLIN: We'll note it.
 09:25 7 MR. WILSON: -- just let me know. And,
 09:25 8 once again, I'll give you an objection to that too.
 09:25 9 I would just ask as a courtesy to let me know.
 09:25 10 Otherwise, you have complete objections.
 09:25 11 MR. WIRTHLIN: Will do. Thank you.
 09:25 12 Appreciate it.
 09:26 13 THE WITNESS: Okay. I think your question
 09:26 14 related to paragraph 32.
 09:26 15 BY MR. WILSON:
 09:26 16 Q. My question related to -- I'm sorry. I
 09:26 17 didn't mean to cut you short -- to 1(a), which says
 09:26 18 that the board was grossly negligent, and it
 09:26 19 references the fact of paragraph 32, where in
 09:26 20 paragraph 32 there was an allegation that "The
 09:26 21 individual defendants include the directors and
 09:26 22 officers of L&C at the relevant times who, among
 09:26 23 other things, were grossly negligent in performing
 09:26 24 their duties as directors and officers of L&C which
 09:26 25 resulted in the Receivership Action being filed."

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09:26 1 A. Well, okay. "Grossly negligent" is a
 09:26 2 legal term, as I understand it, and the attorneys
 09:26 3 drafted -- drafted this paragraph. But as far as
 09:26 4 your question I believe is related to the factual
 09:26 5 underpinning.
 09:26 6 Q. Yes.
 09:26 7 A. I think from -- my recollection is
 09:27 8 that the -- and in this case the directors and
 09:27 9 officers, had opportunities to do or not do certain
 09:27 10 things that might have prevented the receivership
 09:27 11 from occurring, or the insolvency.
 09:27 12 Q. Let's try to do it in point in time as to
 09:27 13 when this occurred.
 09:27 14 When did the gross negligence -- factual
 09:27 15 basis for which you contend they were grossly
 09:27 16 negligent occur?
 09:27 17 A. It was continuing from --
 09:27 18 Q. So in 2004 they were grossly negligent?
 09:27 19 A. No, I don't know that they were grossly
 09:27 20 negligent in 2004. They might have done some things
 09:27 21 that were grossly negligent in 2004, but that's
 09:27 22 really beyond the scope of what this complaint
 09:28 23 focuses on.
 09:28 24 Q. You're here as the receiver?
 09:28 25 A. Correct.

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09:28 1 Q. Are there any -- is there any
 09:28 2 contention or factual basis to conclude or to at
 09:28 3 least argue the board of directors were grossly
 09:28 4 negligent in 2004?
 09:28 5 A. I think to the extent there is, it relates
 09:28 6 to the decision to hire Uni-Ter as their management
 09:28 7 company at that point in time.
 09:28 8 Q. Go ahead. I don't want to cut you off.
 09:28 9 A. I mean, that's -- it's my understanding
 09:28 10 that -- and I think this is the factual question to
 09:28 11 some degree, is which came first: Did Uni-Ter bring
 09:28 12 the idea of Lewis & Clark to this group of directors
 09:28 13 and then they formed Lewis & Clark, or did the
 09:28 14 company -- was it created and then it went out and
 09:28 15 searched and found Uni-Ter as its administrator?
 09:28 16 And I think there's some questions, at
 09:29 17 least in my mind, as to how that process played out
 09:29 18 and to what extent those two interact with regard to
 09:29 19 the long-term administration of this book of
 09:29 20 business.
 09:29 21 Q. Now, when you say there's some questions in
 09:29 22 your mind, is that your mind, Mr. Greer, or your
 09:29 23 mind as the receiver?
 09:29 24 A. That's Mr. Greer.
 09:29 25 Q. And I'm asking your factual basis as the

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09:29 1 receiver. Do you understand under 30(b)(6) you
 09:29 2 have to -- you may not actually know individually,
 09:29 3 but you have to do things to determine what the
 09:29 4 facts are?
 09:29 5 A. Correct. But --
 09:29 6 Q. So what did you do to determine whether or
 09:29 7 not the board of directors of Lewis & Clark erred or
 09:30 8 did something wrong in hiring Uni-Ter to manage the
 09:30 9 risk retention group?
 09:30 10 A. I don't know that I've done anything
 09:30 11 special for today's preparation. Your notice does
 09:30 12 not reference the period of time as far back as
 09:30 13 2004. Your question today does. So I'm trying
 09:30 14 to -- from my best memory of my recollection of the
 09:30 15 receivership, to help you understand what might have
 09:30 16 occurred.
 09:30 17 In 2004 the insurance commissioner, and in
 09:30 18 fact most of the people that are at the Department
 09:30 19 of Insurance today that I deal with, were not around
 09:30 20 in 2004.
 09:30 21 Q. And who was the insurance commissioner
 09:30 22 in 2004?
 09:30 23 A. You understand the life expectancy of an
 09:31 24 insurance commissioner is about 18 months. I
 09:31 25 believe Scott Kipper was the insurance commissioner

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09:31 1 in that time frame. But I don't know that I know
 09:31 2 the exact name of the person in 2004. I've worked
 09:31 3 for the Department of Insurance here in Nevada for a
 09:31 4 number of years and have been through a number of
 09:31 5 different insurance commissioners.
 09:31 6 Q. You understand that the complaint was
 09:31 7 signed off by the insurance commissioner or receiver
 09:31 8 or somebody on behalf of the State; correct?
 09:31 9 A. I believe that -- I don't know that that
 09:31 10 person is anyone other than myself.
 09:31 11 Q. Okay. So you -- you were actively involved
 09:31 12 in the preparation of the complaint?
 09:31 13 A. I would have reviewed it before it was
 09:31 14 filed, yes, sir.
 09:31 15 Q. Now, the complaint says -- and these are
 09:31 16 pretty serious allegations. When you take reputable
 09:32 17 people who own long-term care facilities and you put
 09:32 18 in public records that they're grossly negligent,
 09:32 19 that doesn't come lightly, does it, to the receiver?
 09:32 20 A. It does not. We did not bring this action
 09:32 21 lightly.
 09:32 22 Q. And if you claim somebody is grossly
 09:32 23 negligent, do you agree, as receiver, you should
 09:32 24 have some factual basis?
 09:32 25 A. I believe we do have a factual basis.

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09:32 1 Q. I'm asking you, so I can understand and
 09:32 2 Ms. Ochoa and I can defend this action, what facts
 09:32 3 you contend exist that support an allegation made by
 09:32 4 you that the officers and directors were grossly
 09:32 5 negligent.
 09:32 6 MR. WIRTHLIN: Asked and answered.
 09:32 7 THE WITNESS: I believe -- I believe
 09:33 8 I've -- as it was related to 2004, I've answered
 09:33 9 that. There are some -- there are some additional
 09:33 10 things that occurred later in time that I think also
 09:33 11 meet that definition.
 09:33 12 BY MR. WILSON:
 09:33 13 Q. In my question it's in response to what's
 09:33 14 alleged in paragraph 32. And is it accurate that
 09:33 15 paragraph 32 does not specify the time period of the
 09:33 16 gross negligence?
 09:33 17 A. It does not. That's correct.
 09:33 18 Q. Okay. Now, what I want to know so we can
 09:33 19 defend the case --
 09:33 20 A. Uh-huh.
 09:33 21 Q. -- tell me each of the facts that exist
 09:33 22 that you as receiver contend constitute the basis
 09:33 23 for the gross negligence, whether they occurred in
 09:33 24 2004 or 2012.
 09:34 25 A. And in answer to your question, sir, what I

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09:34 1 can tell you is that there are 30-, 40-plus pages of
 09:34 2 additional acts that are defined in this complaint
 09:34 3 that identify specific issues of gross negligence as
 09:34 4 it relates to both the interaction between the board
 09:34 5 and Uni-Ter and -- and the board of directors, in
 09:34 6 this case paragraph 32, and the directors and
 09:34 7 officers of Lewis & Clark could have done specific
 09:34 8 things in response to the information that they were
 09:34 9 provided if they were provided the information by
 09:34 10 Uni-Ter or if they had done due diligence and
 09:35 11 identified matters that Uni-Ter maybe wasn't sharing
 09:35 12 with them.
 09:35 13 Q. Do you fault either of the defendants'
 09:35 14 counsel here for trying to find out what those
 09:35 15 facts are?
 09:35 16 A. I don't understand the question. Counsel
 09:35 17 of record in this current action I do not find
 09:35 18 personally or collectively at fault for the actions
 09:35 19 of their clients, no.
 09:35 20 Q. Counsel on behalf of my clients want to
 09:35 21 know the actual facts that you contend -- you, the
 09:35 22 receiver, contend -- constitute the basis for your
 09:35 23 allegation that the officers and directors were
 09:36 24 grossly negligent, including the time period when
 09:36 25 those facts occurred.

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<p>09:36 1 MR. WIRTHLIN: Object to form. Asked and 09:36 2 answered. 09:36 3 BY MR. WILSON: 09:36 4 Q. I want you -- I want to know those. 09:36 5 A. Okay. 09:36 6 Q. So tell me what facts do you know in 2004 09:36 7 that constitute the basis for your contention in a 09:36 8 public document that we were -- that the officers 09:36 9 and directors were grossly negligent. 09:36 10 MR. WIRTHLIN: Object to form. Misstates 09:36 11 the complaint. 09:36 12 THE WITNESS: I -- I don't know that the -- 09:36 13 first of all, in 2004 the insurance commissioner's 09:36 14 receiver doesn't exist. Okay? That entity, the 09:36 15 entity for which I am here today, does not exist 09:36 16 until the creation document appointing the receiver 09:36 17 in 2012. So your question is confusing to me in 09:36 18 that how could a receiver know facts in 2004. 09:37 19 And I don't mean to argue with you. I 09:37 20 just -- 09:37 21 BY MR. WILSON: 09:37 22 Q. I'll clarify. Do you mind if I clarify? 09:37 23 Sir, I'm not asking you what knowledge the receiver 09:37 24 had in 2004. I'm asking you to give me the facts 09:37 25 that constitute the basis for the receiver to sue us</p>	<p>09:38 1 groups and management? 09:39 2 MR. WIRTHLIN: Objection. Outside the 09:39 3 scope. 09:39 4 THE WITNESS: I don't know the experience 09:39 5 of Uni-Ter in 2004. 09:39 6 BY MR. WILSON: 09:39 7 Q. But isn't there a contention in this 09:39 8 complaint that the officers and directors were 09:39 9 negligent because they hired somebody that didn't 09:39 10 have the experience in managing and running risk 09:39 11 retention groups? 09:39 12 MR. WIRTHLIN: Object to form. 09:39 13 BY MR. WILSON: 09:39 14 Q. Is that one of your contentions? 09:39 15 MR. WIRTHLIN: Misstates complaint. 09:39 16 THE WITNESS: It's not my understanding 09:39 17 that that -- I mean, the complaint speaks for 09:39 18 itself. Here's -- as far as Uni-Ter's experience -- 09:39 19 and I think your question personally -- I don't mean 09:39 20 to -- Uni-Ter's experience in dealing with risk 09:39 21 retention groups, risk retention groups are as 09:39 22 diverse as any group of insurance entities out 09:39 23 there. So experience with a risk retention group 09:40 24 that's covering long-haul trucking is not 09:40 25 equivalent, in my opinion, to experience in dealing</p>
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<p>09:37 1 in 2014 and say, You were grossly negligent, as it 09:37 2 relates to the officers and directors. 09:37 3 I want the facts that support that 09:37 4 contention. That's a pretty serious contention, 09:37 5 isn't it? 09:37 6 MR. WIRTHLIN: Object to form. Asked and 09:37 7 answered. Complaint speaks for itself. 09:37 8 THE WITNESS: The statements and the 09:37 9 allegations here, I believe, on behalf of myself 09:38 10 personally and the 30(b)(6) witness, are borne out 09:38 11 by the documents that were both attached to the 09:38 12 complaint and the other documents that exist as it 09:38 13 relates to the Lewis & Clark receivership. Now -- 09:38 14 BY MR. WILSON: 09:38 15 Q. You can look at the whole thing. You can 09:38 16 take time. I need to know what the actual facts 09:38 17 were. Because you mentioned, for example, that the 09:38 18 officers and directors may have been negligent as it 09:38 19 relates to even hiring Uni-Ter. Remember when you 09:38 20 said that earlier? 09:38 21 A. Yes. And that's addressed on page 6 of the 09:38 22 complaint as it relates to the 2004 management 09:38 23 agreement. 09:38 24 Q. All right. And what was the experience of 09:38 25 Uni-Ter as of 2004 with respect to risk retention</p>	<p>09:40 1 with nursing home liability claims. 09:40 2 And I think -- 09:40 3 MR. WIRTHLIN: You can wait for a question. 09:40 4 BY MR. WILSON: 09:40 5 Q. Do you know Mr. Sandy Elsass, Sanford 09:40 6 Elsass? 09:40 7 A. I do not know Mr. Elsass. 09:40 8 Q. Do you know his background and experience? 09:40 9 A. I do not, as we sit here today, have 09:40 10 specific recollections. He's been involved, as I 09:40 11 understand it, in the insurance business for an 09:40 12 extensive period of time. 09:40 13 Q. Do you know his experience with risk 09:40 14 retention groups? 09:40 15 MR. WIRTHLIN: Outside the scope. 09:40 16 THE WITNESS: I do not. 09:40 17 BY MR. WILSON: 09:40 18 Q. Did you review an affidavit by Jeffrey 09:40 19 Marshall that was filed in another dispute in this 09:40 20 case in a motion -- filed in this case on another 09:40 21 issue where he described the experience of 09:40 22 Mr. Elsass? 09:41 23 MR. WIRTHLIN: Same objection. 09:41 24 THE WITNESS: I don't recall. If you've 09:41 25 got a copy of it, I'll be glad to see if it looks</p>

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09:41 1 familiar.
 09:41 2 MR. WILSON: We'll mark as Exhibit Number 3
 09:41 3 the declaration of Jeffrey Marshall, which is dated
 09:41 4 October the 5th of 2018.
 09:41 5 (Exhibit 3 marked.)
 09:41 6 BY MR. WILSON:
 09:41 7 Q. Have you seen that document before?
 09:41 8 A. I don't recall having seen this document
 09:41 9 before, no, sir.
 09:41 10 Q. Are you aware Mr. Marshall has indicated
 09:42 11 what he understood the experience was of Uni-Ter?
 09:42 12 MR. WIRTHLIN: Same objection.
 09:42 13 THE WITNESS: As it relates -- I know
 09:42 14 Mr. Marshall was the president of Lewis & Clark.
 09:42 15 BY MR. WILSON:
 09:42 16 Q. Are you aware of whether Mr. Elsass had a
 09:42 17 leadership position at risk retention group trade
 09:42 18 organizations and worked on federal legislation to
 09:42 19 support the information [sic] of risk retention
 09:42 20 groups?
 09:42 21 MR. WIRTHLIN: Same objection.
 09:42 22 THE WITNESS: I believe that I've heard
 09:42 23 that before, yes.
 09:42 24 BY MR. WILSON:
 09:42 25 Q. Tell me in what way factually that the

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09:43 1 information. So if they're identified in the
 09:43 2 complaint, how much time will it take you to review
 09:44 3 the complaint so that you can specify what you
 09:44 4 contend to be the factual basis that constitutes the
 09:44 5 claim of gross negligence against the officers and
 09:44 6 directors?
 09:44 7 MR. WIRTHLIN: Same objection.
 09:44 8 BY MR. WILSON:
 09:44 9 Q. Would you like to do that?
 09:44 10 A. I don't know that any amount of time is
 09:44 11 going to give you the answer that you apparently
 09:44 12 want from me.
 09:44 13 Q. I just want the facts.
 09:44 14 A. Well, then give me all the documents. I
 09:44 15 mean, we have -- we have -- we have thousands of
 09:44 16 pages of documents as it relates to the receivership
 09:44 17 or to the actions of Lewis & Clark which have been
 09:44 18 produced. We have accumulated those and we have
 09:44 19 summarized in this complaint, to the best of our
 09:44 20 ability, the grounds for which we have brought this
 09:44 21 suit, and those are based upon the facts that are
 09:44 22 cited in this complaint. And we are learning every
 09:45 23 day of additional facts as we continue to review the
 09:45 24 discovery in this matter.
 09:45 25 Q. What is the last thing you learned that

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09:42 1 receiver contends that Uni-Ter was not competent as
 09:42 2 a manager of a risk retention group as it relates to
 09:42 3 this piece of litigation.
 09:42 4 MR. WIRTHLIN: Same objection.
 09:42 5 THE WITNESS: I don't -- collectively the
 09:43 6 administration of this book of business resulted in
 09:43 7 the insolvency of the company. So was that based
 09:43 8 upon actions or inactions of the directors and
 09:43 9 officers or of Uni-Ter? That's part of what we're
 09:43 10 trying to sort out here in this litigation.
 09:43 11 BY MR. WILSON:
 09:43 12 Q. I'm trying to find the factual basis that
 09:43 13 you, the receiver, are suing the defendants in this
 09:43 14 litigation and claiming that they were grossly
 09:43 15 negligent. I just need the facts is all.
 09:43 16 MR. WIRTHLIN: Asked and answered.
 09:43 17 THE WITNESS: And --
 09:43 18 BY MR. WILSON:
 09:43 19 Q. What are the facts?
 09:43 20 MR. WIRTHLIN: Same objection.
 09:43 21 THE WITNESS: They're identified in the
 09:43 22 complaint, sir.
 09:43 23 BY MR. WILSON:
 09:43 24 Q. And in what way -- you understand you have
 09:43 25 an obligation as the 30(b)(6) witness to provide me

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09:45 1 supports the contention that the officers and
 09:45 2 directors were grossly negligent? You said you
 09:45 3 learn it every day. What's the last thing you
 09:45 4 learned?
 09:45 5 A. Yesterday in reviewing for this deposition
 09:45 6 I came across a memo from Uni-Ter and Sal
 09:45 7 Piccione --
 09:45 8 Q. Sal?
 09:45 9 A. Whoever the president of U.S. RE is.
 09:45 10 Q. You don't know?
 09:45 11 A. It's only the pronunciation of his last
 09:45 12 name, sir.
 09:45 13 Q. His first name is Tal, not Sal.
 09:45 14 A. Tal.
 09:45 15 Q. Not Sal. So let's start with his first
 09:45 16 name.
 09:45 17 A. Okay. Tal Piccione.
 09:45 18 Q. Go ahead.
 09:45 19 A. -- that is on U.S. RE letterhead, that's
 09:45 20 addressed to the Department of Insurance in 2012,
 09:46 21 which set out half a dozen different theories on how
 09:46 22 they wanted to try and avoid a receivership.
 09:46 23 Q. What was wrong with that?
 09:46 24 A. Well, the one that I was most troubled with
 09:46 25 was the one where he suggested reducing the reserves

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09:46 1 to an amount lower than the assets of the company,
 09:46 2 which would create a situation where you are
 09:46 3 manipulating the case-based reserves in order to
 09:46 4 show a non-insolvency or a profitable company.
 09:46 5 Q. Wasn't he using facultative reinsurance?
 09:46 6 A. That particular paragraph doesn't make
 09:46 7 specific reference to how it's going to come about.
 09:46 8 Q. You're aware that that letter talked about
 09:46 9 facultative reinsurance?
 09:46 10 A. It talks about several different things.
 09:47 11 But yes, sir, reinsurance is one of them.
 09:47 12 Q. What is facultative reinsurance?
 09:47 13 A. Facultative reinsurance, as I understand
 09:47 14 it, would be -- well, it comes in a couple of
 09:47 15 different forms. But I believe they were talking
 09:47 16 about a portfolio transfer, as I understand it, in
 09:47 17 that situation.
 09:47 18 Q. The letter specified, didn't it?
 09:47 19 MR. WIRTHLIN: Object to form. The
 09:47 20 document speaks for itself.
 09:47 21 THE WITNESS: I'd have -- I don't have the
 09:47 22 document in front of me.
 09:47 23 BY MR. WILSON:
 09:47 24 Q. You're citing that document and what's
 09:47 25 contained in that document as something negative

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09:47 1 to U.S. RE?
 09:47 2 A. Something that I learned -- you asked me
 09:47 3 what I had learned in the last -- most recently that
 09:47 4 impacted the claims that we have brought in this
 09:47 5 case. And that's a document that I reviewed for the
 09:47 6 first time in preparation for this deposition and I
 09:47 7 saw it yesterday and it gave me some concern.
 09:47 8 Q. What was the concern -- what was the
 09:48 9 receiver's concern about that?
 09:48 10 A. The receiver's concern was --
 09:48 11 MR. WIRTHLIN: Objection. Asked and
 09:48 12 answered.
 09:48 13 Go ahead.
 09:48 14 THE WITNESS: The receiver's concern is, is
 09:48 15 that it suggested, in my thought process, an avenue
 09:48 16 that I thought was inappropriate as a solution. You
 09:48 17 don't negatively affect the reserves of an insurance
 09:48 18 entity for the sole purpose or for the purpose of
 09:48 19 maintaining its solvency.
 09:48 20 BY MR. WILSON:
 09:48 21 Q. And that's what that document said?
 09:48 22 MR. WIRTHLIN: Same objection.
 09:48 23 THE WITNESS: That's what I interpreted
 09:48 24 that paragraph of that document to --
 09:48 25 ///

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1 BY MR. WILSON:
 09:48 2 Q. And did you read the entire document?
 09:48 3 A. I did.
 09:48 4 Q. What else came to your attention recently
 09:48 5 that caused you to conclude that either the officers
 09:48 6 or directors or my clients were grossly negligent?
 09:49 7 MR. WIRTHLIN: Same objection. Outside the
 09:49 8 scope.
 09:49 9 THE WITNESS: The -- I mean, there are
 09:49 10 not -- there are not bombshells here, sir. The
 09:49 11 facts that we have in front of us are laid out here.
 09:49 12 So if we're talking about the various
 09:49 13 transactions, whether it's the Country Villas
 09:49 14 matters which are outlined in the complaint, the
 09:49 15 information that was provided by or not provided by
 09:49 16 Uni-Ter as outlined in the complaint, the -- I don't
 09:50 17 know -- I don't know how to answer your question
 09:50 18 other than to say what I have already said.
 09:50 19 BY MR. WILSON:
 09:50 20 Q. Okay, sir. I'm going to use an example
 09:50 21 that falls outside the insurance industry. And I'm
 09:50 22 going to use an example of an automobile accident.
 09:50 23 You're aware that people have automobile
 09:50 24 accidents?
 09:50 25 A. I am familiar with automobile accidents.

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09:50 1 Q. And the plaintiff says to the defendants,
 09:50 2 You were grossly negligent, like you're contending
 09:50 3 in these proceedings that the officers and directors
 09:50 4 were grossly negligent.
 09:50 5 And the lawyer for the defense says, In
 09:50 6 what way was my client grossly negligent?
 09:50 7 And the plaintiff says, Well, we're in a
 09:50 8 35-mile-an-hour zone. He was driving 82 miles an
 09:51 9 hour on the wrong side of the street.
 09:51 10 Those are facts; correct? And you can
 09:51 11 reach a conclusion as to whether or not driving the
 09:51 12 wrong way on the side of the street doing 85 in a 35
 09:51 13 is gross negligence.
 09:51 14 I'm asking you in this case: Tell me the
 09:51 15 facts that support the contention -- just give me
 09:51 16 the facts -- of gross negligence. That's all.
 09:51 17 MR. WIRTHLIN: Asked and answered.
 09:51 18 THE WITNESS: And your -- I wish that
 09:51 19 insurance insolvencies were as simplistic as
 09:51 20 red car/blue car cases. This particular scenario,
 09:51 21 situation, that I was confronted with and the
 09:51 22 Department of Insurance of the State of Nevada was
 09:51 23 confronted with is not as simple as somebody driving
 09:51 24 in excess of the speed limit on the wrong side of
 09:51 25 the road.

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<p>09:51 1 The directors and officers and the</p> <p>09:52 2 defendants in this action, from late 2003, early</p> <p>09:52 3 2004, through the time that the Department of</p> <p>09:52 4 Insurance sought and obtained a receivership order,</p> <p>09:52 5 they took a number of different actions. Some of</p> <p>09:52 6 them were merely negligent, some of them were</p> <p>09:52 7 grossly negligent, and all of them have led to an</p> <p>09:52 8 insolvency where policyholders of the Lewis & Clark</p> <p>09:52 9 Risk Retention Group and claimants against the</p> <p>09:52 10 Lewis & Clark Risk Retention Group are not having</p> <p>09:52 11 their claims paid because the assets of Lewis &</p> <p>09:52 12 Clark Risk Retention Group do not amount to the</p> <p>09:52 13 amount necessary to pay those claims. And those</p> <p>09:52 14 claims are a part of the reserving practices that</p> <p>09:53 15 were taken care of by Uni-Ter and were maybe</p> <p>09:53 16 disclosed or not disclosed to the officers and</p> <p>09:53 17 directors, and the officers and directors took</p> <p>09:53 18 action or no action in response to those things over</p> <p>09:53 19 a period -- an extended period of time.</p> <p>09:53 20 That's an example of one. Okay? Was it --</p> <p>09:53 21 you know, Uni-Ter went through three claims managers</p> <p>09:53 22 over --</p> <p>09:53 23 BY MR. WILSON:</p> <p>09:53 24 Q. Like insurance commissioner. Every 18</p> <p>09:53 25 months you get a new one.</p>	<p>09:55 1 Lewis & Clark's reserves on a basis other than</p> <p>09:55 2 through the financial documents that they filed with</p> <p>09:55 3 the Department at this point in time. So I don't</p> <p>09:55 4 know if they -- but I saw a memorandum that said</p> <p>09:55 5 that they did. And that predated --</p> <p>09:55 6 BY MR. WILSON:</p> <p>09:55 7 Q. What was the date of that memo?</p> <p>09:55 8 A. I don't recall the date specifically. It</p> <p>09:55 9 predated the -- it was part and parcel of a</p> <p>09:55 10 discussion about the role of Praxis and their</p> <p>09:55 11 reports, as well as the Fishinger reports, where</p> <p>09:55 12 they set high/low on the reserves, and then they</p> <p>09:55 13 went in and they adjusted their reserves back down</p> <p>09:55 14 to a level that Praxis and Fishinger believed to be</p> <p>09:56 15 part of their recommendations.</p> <p>09:56 16 Q. Are you aware of a contention set forth in</p> <p>09:56 17 the complaint or being made by the receiver that</p> <p>09:56 18 Praxis was not given accurate information?</p> <p>09:56 19 MR. WIRTHLIN: Objection.</p> <p>09:56 20 THE WITNESS: I don't recall that, but if</p> <p>09:56 21 you want to point me to the paragraph that you</p> <p>09:56 22 believe says that.</p> <p>09:56 23 MR. WIRTHLIN: Complaint speaks for itself.</p> <p>09:56 24 BY MR. WILSON:</p> <p>09:56 25 Q. Do you have any issue with the way Uni-Ter</p>
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<p>09:53 1 A. I understand that, but --</p> <p>09:53 2 Q. Sir, do you have any evidence of any kind</p> <p>09:54 3 whatsoever that there was any manager of claims for</p> <p>09:54 4 Uni-Ter that was negligent?</p> <p>09:54 5 MR. WIRTHLIN: Objection. Asked and</p> <p>09:54 6 answered. Outside the scope.</p> <p>09:54 7 THE WITNESS: That's a broad question.</p> <p>09:54 8 There -- there are documents that suggest that the</p> <p>09:54 9 claims manager before Joanna Miller --</p> <p>09:54 10 BY MR. WILSON:</p> <p>09:54 11 Q. Johanna Miller.</p> <p>09:54 12 A. -- Johanna Miller came in and increased the</p> <p>09:54 13 reserves on the Lewis & Clark book of business to</p> <p>09:54 14 over \$20 million.</p> <p>09:54 15 Q. Do you know that to be a fact?</p> <p>09:54 16 A. I saw -- I have seen a memorandum to that</p> <p>09:54 17 effect in the documents that I have reviewed, sir,</p> <p>09:54 18 in preparation for both this deposition and for the</p> <p>09:54 19 receivership.</p> <p>09:54 20 Q. And, in fact, the books and records of</p> <p>09:54 21 Lewis & Clark reflected a \$20 million reserve?</p> <p>09:55 22 MR. WIRTHLIN: I object to form of that.</p> <p>09:55 23 Documents speak for themselves.</p> <p>09:55 24 THE WITNESS: I did not compare the -- in</p> <p>09:55 25 fact, I don't even know that I have access to</p>	<p>09:56 1 interacted with Praxis as it relates to this entire</p> <p>09:56 2 matter?</p> <p>09:56 3 MR. WIRTHLIN: Same objection.</p> <p>09:56 4 THE WITNESS: I think -- I think there is</p> <p>09:56 5 some question as to what Uni-Ter's use of Praxis --</p> <p>09:57 6 what the -- what was the goal there.</p> <p>09:57 7 BY MR. WILSON:</p> <p>09:57 8 Q. What's your understanding?</p> <p>09:57 9 A. I'm not sure I understand --</p> <p>09:57 10 MR. WIRTHLIN: Same objection.</p> <p>09:57 11 THE WITNESS: -- as we sit here today why</p> <p>09:57 12 Praxis was brought in, other than to reduce the</p> <p>09:57 13 reserve, to give the basis for a reserve reduction.</p> <p>09:57 14 BY MR. WILSON:</p> <p>09:57 15 Q. Your understanding is that Praxis was</p> <p>09:57 16 brought into this matter by Uni-Ter to reduce the</p> <p>09:57 17 reserves?</p> <p>09:57 18 MR. WIRTHLIN: Objection.</p> <p>09:57 19 THE WITNESS: Well, to do an evaluation of</p> <p>09:57 20 the reserves.</p> <p>09:57 21 BY MR. WILSON:</p> <p>09:57 22 Q. Is there a difference between reducing</p> <p>09:57 23 reserves and doing an evaluation of reserves?</p> <p>09:57 24 A. It depends on -- it depends on what</p> <p>09:57 25 direction they were given on the front end.</p>

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09:57 1 Q. Do you know whether they were given any
09:57 2 direction on the front end?
09:57 3 A. I don't -- I don't have that information
09:57 4 before me. We're planning to take depositions, and
09:58 5 that's an area that we expect to explore further.
09:58 6 Q. Do you know whether Praxis, in its report,
09:58 7 identified the specific instructions that were given
09:58 8 to it and what it was supposed to do?
09:58 9 MR. WIRTHLIN: Document speaks for itself.
09:58 10 THE WITNESS: The Praxis reports lay out
09:58 11 the plan, as I recall, from -- as to who they talked
09:58 12 to and what they were supposed to do.
09:58 13 BY MR. WILSON:
09:58 14 Q. What was that plan?
09:58 15 MR. WIRTHLIN: Same objection.
09:58 16 THE WITNESS: I don't -- I don't recall.
09:58 17 They were to do an evaluation of the claims
09:58 18 reserves.
09:58 19 BY MR. WILSON:
09:58 20 Q. All claims reserves?
09:58 21 MR. WIRTHLIN: Same objection.
09:58 22 THE WITNESS: I think they started out with
09:58 23 Country Villas in the first place and then they
09:58 24 expanded the scope of their claims review.
09:58 25 ///

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1 BY MR. WILSON:
09:58 2 Q. What is the basis for your statement here
09:58 3 today that Praxis started out with Country Villas
09:59 4 initially?
09:59 5 A. That's my recollection of the documents
09:59 6 that I reviewed in preparation for this deposition.
09:59 7 Q. Are you familiar with a company called
09:59 8 Brazwell?
09:59 9 A. Not as we sit here today, I'm not.
09:59 10 Q. If you looked at the first report of
09:59 11 Praxis, would it be a surprise to you to see a
09:59 12 number of Brazwell claims analyzed rather than
09:59 13 Country Villas?
09:59 14 MR. WIRTHLIN: Document speaks for itself.
09:59 15 THE WITNESS: No. I mean, if you've got a
09:59 16 document that you want me to review. I didn't
09:59 17 review them -- I didn't review them as if this was
09:59 18 going to be a memory test of what I reviewed. I
09:59 19 reviewed documents in preparation for the identified
09:59 20 questions in the notice.
09:59 21 BY MR. WILSON:
09:59 22 Q. We're here to find out the factual basis of
09:59 23 the contentions being made by you, the receiver,
09:59 24 against our respective clients. And no one has ever
10:00 25 said it was a memory test. You could bring any

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10:00 1 document with you. You could bring any notes with
10:00 2 you. You could do anything you wanted to. But
10:00 3 we're here to find out the facts. And I want to
10:00 4 know what facts you have that the Praxis review was
10:00 5 centered on Country Villas.
10:00 6 MR. WIRTHLIN: Same objection. Document
10:00 7 speaks for itself. If you have a document, Jon,
10:00 8 he's more than willing to review it.
10:00 9 THE WITNESS: And I don't believe that's
10:00 10 what I said. I recall that Praxis did review
10:00 11 Country Villa claims. I told you previously that I
10:00 12 reviewed maybe three or four daily reports from
10:00 13 Praxis besides the September 15th one that was
10:00 14 referred to in this complaint.
10:00 15 BY MR. WILSON:
10:00 16 Q. You're referring to -- you said "daily
10:00 17 reports." They did daily reports?
10:00 18 MR. WIRTHLIN: Same objection.
10:00 19 THE WITNESS: I believe there -- there are
10:00 20 reports dated -- and I'm sure you'll correct me --
10:01 21 September 11th or 12th, the 13th, the 14th, the
10:01 22 15th, and maybe the 16th of September of two
10:01 23 thousand and -- whatever that was, '12, maybe '11.
10:01 24 BY MR. WILSON:
10:01 25 Q. Do you know even what year we're talking

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10:01 1 about?
10:01 2 A. Yeah.
10:01 3 Q. What year was it?
10:01 4 MR. WIRTHLIN: Same objections.
10:01 5 BY MR. WILSON:
10:01 6 Q. '11 or '12? Am I entitled to find out the
10:01 7 year?
10:01 8 MR. WIRTHLIN: The document speaks for
10:01 9 itself.
10:01 10 THE WITNESS: If you've got -- I didn't
10:01 11 bring the documents with me because -- and you
10:01 12 didn't attach any documents to your notice. So I
10:01 13 reviewed documents. I did them yesterday and the
10:01 14 day before and the day before that. And I did not
10:01 15 commit the date to memory, no, sir.
10:01 16 BY MR. WILSON:
10:01 17 Q. You reviewed documents over the last three
10:01 18 days in preparation to testify as a receiver with --
10:01 19 in this litigation. What is the contention, if any,
10:02 20 of the receiver as it relates to the reserving
10:02 21 practice of Uni-Ter with respect to Lewis & Clark?
10:02 22 MR. WIRTHLIN: Same objection. Asked and
10:02 23 answered.
10:02 24 THE WITNESS: To the extent that it's
10:02 25 included in the complaint, that's -- it's outlined

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10:02 1 there.
 10:02 2 BY MR. WILSON:
 10:02 3 Q. What is it? You reviewed it within the
 10:02 4 last three days.
 10:02 5 MR. WIRTHLIN: Misstates testimony.
 10:02 6 BY MR. WILSON:
 10:02 7 Q. I just want to know what positions -- what
 10:02 8 position you maintain based upon your review within
 10:02 9 the last few days.
 10:02 10 MR. WIRTHLIN: Same objection.
 10:02 11 THE WITNESS: Okay.
 10:02 12 BY MR. WILSON:
 10:02 13 Q. What is it?
 10:02 14 A. My -- my contention, whether it's in the
 10:02 15 complaint or not, is that Uni-Ter was manipulating
 10:02 16 the reserves of Lewis & Clark to try and maintain
 10:02 17 its solvency.
 10:02 18 Q. In what way?
 10:02 19 A. By adjusting the reserves through its
 10:02 20 employees and in consultation with consultants, in
 10:03 21 order to try and maintain this company in a solvent
 10:03 22 capacity.
 10:03 23 Q. What did they do?
 10:03 24 A. I assume that --
 10:03 25 Q. I want facts. I don't want you to assume.

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10:03 1 I don't mean to interrupt you, but assumptions -- I
 10:03 2 want to make sure that what you give me are the
 10:03 3 facts of what they did.
 10:03 4 MR. WIRTHLIN: Asked and answered.
 10:03 5 THE WITNESS: I believe you understand how
 10:03 6 reserves of insurance companies are maintained.
 10:03 7 BY MR. WILSON:
 10:03 8 Q. Why don't you explain it to me.
 10:03 9 A. But the claims management group, in this
 10:03 10 case Uni-Ter, maintains -- maintained the claim
 10:03 11 information as it was reported on the book of
 10:03 12 business that was Lewis & Clark LTC Risk Retention
 10:03 13 Group. Those files were supervised by a claims
 10:04 14 manager who changed over time and claims adjusters.
 10:04 15 And the manager and the adjusters, in consultation
 10:04 16 with various consultants brought in over time,
 10:04 17 maintained a reserve, a liability or indemnity
 10:04 18 reserve, as well as at one point in time they
 10:04 19 started tracking allocated loss adjustment expense
 10:04 20 reserves on a computer system that I believe -- was
 10:04 21 told was owned, operated, and maintained by Uni-Ter.
 10:04 22 Q. What's wrong with that?
 10:04 23 MR. WIRTHLIN: Same objections.
 10:04 24 THE WITNESS: To the extent that there is a
 10:04 25 manipulation or a reserving practice that is

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10:05 1 inconsistent with the facts in the claim files and
 10:05 2 that that is done for the purposes of trying to
 10:05 3 maintain the solvency of the company, that is not,
 10:05 4 in my opinion, an appropriate use of the reserves.
 10:05 5 BY MR. WILSON:
 10:05 6 Q. Was that done?
 10:05 7 A. There is evidence, as I have just
 10:05 8 discussed, which leads me to believe that it was.
 10:05 9 Q. Tell me the evidence that supports that and
 10:05 10 when that occurred.
 10:05 11 MR. WIRTHLIN: Asked and answered.
 10:05 12 THE WITNESS: We've gone over this.
 10:05 13 BY MR. WILSON:
 10:05 14 Q. Tell me. Just tell me. Did it occur in
 10:05 15 2010? 2011? 2012? When did it occur?
 10:05 16 MR. WIRTHLIN: Same objection.
 10:05 17 THE WITNESS: It occurred on and after
 10:05 18 2010.
 10:05 19 BY MR. WILSON:
 10:05 20 Q. So as far as the receiver is concerned, the
 10:05 21 reserving practices of Lewis & Clark there's no
 10:06 22 issue from 2004 through 2009?
 10:06 23 MR. WIRTHLIN: Misstates testimony.
 10:06 24 BY MR. WILSON:
 10:06 25 Q. Because you said it started in 2010.

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10:06 1 MR. WIRTHLIN: Same objection. Speculation
 10:06 2 as well.
 10:06 3 THE WITNESS: Yeah. I've focused -- the
 10:06 4 complaint focuses on that latter time period.
 10:06 5 You've asked me to give a blank check to the
 10:06 6 reserves before that, and I don't know that I've
 10:06 7 reviewed claims that were opened and closed in 2004,
 10:06 8 2005, 2006, or what those reserving practices were.
 10:06 9 We were looking at the period that's covered under
 10:06 10 this complaint.
 10:06 11 BY MR. WILSON:
 10:06 12 Q. I'm trying to find out, representing
 10:06 13 Uni-Ter, what you contend to be the deficiencies, if
 10:07 14 any, in the reserving practices, and then when they
 10:07 15 occurred, so I can defend myself against your
 10:07 16 allegations. You understand that?
 10:07 17 A. I do, and I believe I have given --
 10:07 18 MR. WIRTHLIN: Objection to the extent it's
 10:07 19 outside the scope and asked and answered. Thank
 10:07 20 you.
 10:07 21 BY MR. WILSON:
 10:07 22 Q. Let's take it first, when do you contend
 10:07 23 that inappropriate reserving practices occurred by
 10:07 24 my clients?
 10:07 25 MR. WIRTHLIN: Same objection.

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<p>10:07 1 THE WITNESS: I believe we've covered this.</p> <p>10:07 2 BY MR. WILSON:</p> <p>10:07 3 Q. Just tell me when.</p> <p>10:07 4 A. 2010 -- after 2010.</p> <p>10:07 5 Q. Okay. So as a receiver, when I look at</p> <p>10:07 6 defending this case, I don't need to look at the</p> <p>10:07 7 reserving practices because you're not making any</p> <p>10:07 8 contentions that reserving was not done correctly</p> <p>10:07 9 from 2004 up to 2010?</p> <p>10:08 10 MR. WIRTHLIN: Objection. Misstates</p> <p>10:08 11 testimony. Outside the scope.</p> <p>10:08 12 THE WITNESS: I can't tell you what you</p> <p>10:08 13 should or shouldn't be looking at. I think there</p> <p>10:08 14 may arise questions in this litigation, and we're</p> <p>10:08 15 still working -- I'm working with counsel to</p> <p>10:08 16 identify when this company was impaired --</p> <p>10:08 17 BY MR. WILSON:</p> <p>10:08 18 Q. When was it impaired?</p> <p>10:08 19 A. -- and insolvent.</p> <p>10:08 20 I don't have an answer for you. I've got</p> <p>10:08 21 an expert witness working on that as we speak.</p> <p>10:08 22 Q. Are you familiar with a company called</p> <p>10:08 23 Milliman?</p> <p>10:08 24 A. I am.</p> <p>10:08 25 Q. And what was your familiarity with</p>	<p>10:09 1 MR. WIRTHLIN: Objection. Calls for</p> <p>10:09 2 speculation. Outside the scope.</p> <p>10:09 3 THE WITNESS: I have been in -- I can't</p> <p>10:09 4 tell you -- it doesn't relate to this matter.</p> <p>10:09 5 Milliman, as I understand it, has been a defendant</p> <p>10:10 6 in other insurance insolvency asset recovery</p> <p>10:10 7 matters.</p> <p>10:10 8 BY MR. WILSON:</p> <p>10:10 9 Q. Where?</p> <p>10:10 10 A. Just as if -- just as Ernst & Young and</p> <p>10:10 11 Coopers & Lybrand and Peat Marwick and other</p> <p>10:10 12 accountants, other people involved with the</p> <p>10:10 13 financial reportings of companies from time to time</p> <p>10:10 14 have been sued. I can't tell you, as we sit here</p> <p>10:10 15 today, what the source of my knowledge is on that.</p> <p>10:10 16 Q. Do you know whether they have been found</p> <p>10:10 17 liable for any deficiencies by a court of law with</p> <p>10:10 18 respect to insurance actuarial work?</p> <p>10:10 19 MR. WIRTHLIN: Same objection. I just</p> <p>10:10 20 wanted to point out I don't believe Milliman was</p> <p>10:10 21 mentioned in the notice.</p> <p>10:10 22 MR. WILSON: It's in the paragraphs</p> <p>10:10 23 referenced.</p> <p>10:10 24 MR. WIRTHLIN: You can go ahead and answer.</p> <p>10:10 25 THE WITNESS: I can't give you a specific</p>
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<p>10:08 1 Milliman?</p> <p>10:08 2 A. They're an actuarial company that practices</p> <p>10:08 3 extensively in the insurance arena as well as maybe</p> <p>10:08 4 in banking.</p> <p>10:08 5 Q. Are there some really big actuarial</p> <p>10:08 6 companies that practice in the insurance arena?</p> <p>10:09 7 A. I'm sure, yes.</p> <p>10:09 8 Q. There's a couple of them, aren't there?</p> <p>10:09 9 A. I believe so.</p> <p>10:09 10 Q. And one of them is Milliman?</p> <p>10:09 11 A. I don't disagree with you.</p> <p>10:09 12 Q. They're a highly regarded, highly</p> <p>10:09 13 competent, well respected actuarial firm who knows</p> <p>10:09 14 what they're doing; correct?</p> <p>10:09 15 MR. WIRTHLIN: Object to form.</p> <p>10:09 16 THE WITNESS: Generally speaking, I think</p> <p>10:09 17 that's correct. I think they have also been the</p> <p>10:09 18 focus of some complaints about their work over the</p> <p>10:09 19 period of time I've been involved in the industry.</p> <p>10:09 20 BY MR. WILSON:</p> <p>10:09 21 Q. Any complaints as it relates to the matters</p> <p>10:09 22 involved in this litigation?</p> <p>10:09 23 A. They are not defendants in this matter.</p> <p>10:09 24 Q. Tell me what complaints that you're aware</p> <p>10:09 25 of against Milliman.</p>	<p>10:10 1 one way or the other whether or not they were found</p> <p>10:10 2 liable in a matter that I can't remember.</p> <p>10:10 3 BY MR. WILSON:</p> <p>10:10 4 Q. What did they do in this case for</p> <p>10:10 5 Lewis & Clark? What was Milliman's role?</p> <p>10:10 6 MR. WIRTHLIN: Same objection.</p> <p>10:11 7 THE WITNESS: They -- I believe they</p> <p>10:11 8 certified -- they filed a report in 2011 at least,</p> <p>10:11 9 that I'm aware of, or it related to 2011's</p> <p>10:11 10 financials. And I believe it was attached to the --</p> <p>10:11 11 but it may have been separate from -- the annual</p> <p>10:11 12 report filed by the -- Lewis & Clark.</p> <p>10:11 13 BY MR. WILSON:</p> <p>10:11 14 Q. So Milliman only filed one report in this</p> <p>10:11 15 matter?</p> <p>10:11 16 MR. WIRTHLIN: Objection. Misstates</p> <p>10:11 17 testimony.</p> <p>10:11 18 THE WITNESS: That's the one that I</p> <p>10:11 19 reviewed in preparation for this deposition. It's</p> <p>10:11 20 attached as an exhibit to the complaint.</p> <p>10:11 21 BY MR. WILSON:</p> <p>10:11 22 Q. Are you aware that Milliman did an</p> <p>10:11 23 actuarial analysis of reserves for each and every</p> <p>10:11 24 year that Lewis & Clark operated except for the year</p> <p>10:12 25 it went insolvent?</p>

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<p>10:12 1 MR. WIRTHLIN: Objection. Documents speak 10:12 2 for themselves. 10:12 3 THE WITNESS: If they did -- I mean, I 10:12 4 don't know that they didn't do that. 10:12 5 BY MR. WILSON: 10:12 6 Q. Are you aware of the conclusions that 10:12 7 Milliman reached with respect to the reserving 10:12 8 practices for Lewis & Clark for each and every year 10:12 9 of its operation except for 2012? 10:12 10 MR. WIRTHLIN: Same objection. 10:12 11 THE WITNESS: I'm familiar with their 10:12 12 report in 2011, as I've -- as I've stated. I'm not 10:12 13 familiar with their conclusions in all those prior 10:12 14 years, sir. 10:12 15 BY MR. WILSON: 10:12 16 Q. Well, you're an expert in the insurance 10:12 17 industry, aren't you -- 10:12 18 MR. WIRTHLIN: Objection -- 10:12 19 BY MR. WILSON: 10:12 20 Q. -- as it relates to receiverships? 10:12 21 MR. WIRTHLIN: Misstates testimony. 10:12 22 THE WITNESS: I have -- I have been found 10:13 23 by courts in the United States to be an expert in 10:13 24 areas of insurance receivership, yes, sir. 10:13 25 ///</p>	<p>10:14 1 THE WITNESS: If you have those and want me 10:14 2 to review them, they are beyond what I reviewed for 10:14 3 my deposition today. 10:14 4 MR. WILSON: Let's take a break. 10:14 5 THE VIDEOGRAPHER: Going off record 10:14 6 agreeable with all counsel present? 10:14 7 MR. WIRTHLIN: Yes. 10:14 8 THE VIDEOGRAPHER: Stand by, please. This 10:14 9 is the end of Disc Number 1 in today's videographed 10:14 10 deposition of Robert Greer. The time as indicated 10:14 11 on the video screen, 10:11. We are off the record. 10:14 12 (A break was taken.) 10:23 13 THE VIDEOGRAPHER: We are back on the 10:24 14 record. This is the beginning of Disc Number 2 in 10:24 15 today's videographed deposition of Robert L. Greer. 10:25 16 The time as indicated on the video screen, 10:21. 10:25 17 MR. WILSON: I think it's the deposition of 10:25 18 the receiver. Mr. Greer is appearing. It's not his 10:25 19 deposition. 10:25 20 THE VIDEOGRAPHER: I stand corrected. 10:25 21 BY MR. WILSON: 10:25 22 Q. Now, sir, would you look at Exhibit 10:25 23 Number 1 and go to paragraph number 2, which is on 10:25 24 page 6 of 9. 10:25 25 A. Yes, sir.</p>
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<p>1 BY MR. WILSON: 10:13 2 Q. And you're aware that insurance companies 10:13 3 like the risk retention group here have actuaries 10:13 4 that do an annual report; correct? 10:13 5 A. I believe that it's required -- 10:13 6 Q. Right. 10:13 7 A. -- that they have their reserves certified 10:13 8 by an actuarial company like a Milliman. 10:13 9 Q. Right. And if you're going to make a 10:13 10 complaint against Uni-Ter that it did not properly 10:13 11 reserve, wouldn't you look at the reports of the 10:13 12 actuary who was required to do that and submit it to 10:13 13 the State to see what they concluded on reserving? 10:13 14 MR. WIRTHLIN: Object to form. 10:13 15 THE WITNESS: I didn't say that we weren't 10:13 16 reviewing those. I just said I have not personally 10:13 17 done so. 10:13 18 BY MR. WILSON: 10:13 19 Q. I'm asking you as the receiver here whether 10:13 20 or not in each and every year Milliman concluded 10:14 21 that the reserving done by Lewis & Clark was 10:14 22 absolutely consistent with what was required in the 10:14 23 insurance industry and appropriate. 10:14 24 MR. WIRTHLIN: The documents speak for 10:14 25 themselves.</p>	<p>10:25 1 Q. And it says -- we ask about L&C's 10:25 2 acceptance of multistate [sic] operators as 10:25 3 policyholders. And there was an allegation that the 10:25 4 board accepted multistate operators at Uni-Ter's 10:25 5 direction without exercising diligence and without 10:25 6 adequate information. 10:25 7 What is the claim being made by the 10:25 8 receiver as it relates to multistate operators? 10:25 9 MR. WIRTHLIN: The complaint speaks for 10:26 10 itself. 10:26 11 THE WITNESS: I believe the complaint 10:26 12 actually talks about multisite operators, not 10:26 13 multistate operators. 10:26 14 BY MR. WILSON: 10:26 15 Q. Multisite operators. I'm sorry. 10:26 16 A. And some of those may be, although I think 10:26 17 most of them are contiguous within the same state. 10:26 18 It's my understanding that the multisite 10:26 19 operators, which are larger insured entities, were 10:26 20 not part of the original target insured group that 10:26 21 Lewis & Clark and their underwriting practices were 10:26 22 designed to pursue, and in part that those -- that 10:26 23 these multisite operators provided a different, in 10:27 24 some ways, risk than a single-site operation. 10:27 25 Q. What is the basis for that conclusion that</p>

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<p>10:27 1 that was part of, I assume, the business model of</p> <p>10:27 2 Lewis & Clark was not to have multisite operators?</p> <p>10:27 3 A. That's my understanding as we sit here</p> <p>10:27 4 today.</p> <p>10:27 5 Q. Okay. Are you familiar with a gentleman</p> <p>10:27 6 named Jeff Marshall?</p> <p>10:27 7 A. You showed me -- he's the president of</p> <p>10:27 8 Lewis & Clark, is he not? Is that not the same</p> <p>10:27 9 Jeff Marshall?</p> <p>10:27 10 Q. Yes.</p> <p>10:27 11 A. Okay. Then I'm familiar with him.</p> <p>10:27 12 Q. Chairman of the board.</p> <p>10:27 13 A. Okay.</p> <p>10:27 14 Q. One of the original founding people as it</p> <p>10:27 15 relates to the risk retention group Lewis & Clark;</p> <p>10:27 16 correct?</p> <p>10:27 17 A. His name appears in the very beginning of</p> <p>10:27 18 this organization.</p> <p>10:27 19 Q. Right at the very beginning. And you're</p> <p>10:28 20 saying that the business model of Lewis & Clark was</p> <p>10:28 21 not to have multisite operators?</p> <p>10:28 22 A. That's my understanding of the complaint,</p> <p>10:28 23 but the document -- I mean, you cite paragraphs 55</p> <p>10:28 24 through -- that's my understanding.</p> <p>10:28 25 Q. I cite a number of paragraphs because</p>	<p>10:29 1 site-specific basis and not as a multisite basis at</p> <p>10:30 2 the beginning of the creation of Lewis & Clark, and</p> <p>10:30 3 that at some point in time they changed that -- they</p> <p>10:30 4 did or Uni-Ter did -- and accepted multisite</p> <p>10:30 5 operators in block.</p> <p>10:30 6 BY MR. WILSON:</p> <p>10:30 7 Q. What do you mean by "multisite"?</p> <p>10:30 8 A. Well, let's -- we talk about -- I don't</p> <p>10:30 9 know how to best explain it to you without maybe a</p> <p>10:30 10 hypothetical. But if you've got a single corporate</p> <p>10:30 11 entity that has nursing home facilities in three or</p> <p>10:30 12 four different cities, that might be considered a</p> <p>10:30 13 multisite operation.</p> <p>10:30 14 But at the beginning of this, each site was</p> <p>10:31 15 being individually underwritten. So you were</p> <p>10:31 16 looking at -- as I understand it, Uni-Ter's</p> <p>10:31 17 underwriting department was looking at each facility</p> <p>10:31 18 without regard to the fact that it might have common</p> <p>10:31 19 ownership in a corporate sense. And that at some</p> <p>10:31 20 point in time that practice changed.</p> <p>10:31 21 Q. When?</p> <p>10:31 22 A. In or around 2009.</p> <p>10:31 23 Q. What is the basis for your statement that</p> <p>10:32 24 it changed in 2009?</p> <p>10:32 25 A. I believe that's when they acquired the</p>
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<p>10:28 1 that's the ones that make that allegation.</p> <p>10:28 2 A. Yes, sir.</p> <p>10:28 3 Q. Do you know where Mr. Marshall's facilities</p> <p>10:28 4 were located?</p> <p>10:28 5 A. Not as we sit here.</p> <p>10:28 6 Q. Do you know how many facilities he had?</p> <p>10:28 7 A. I don't know that either.</p> <p>10:28 8 Q. Well, if it was the business model of</p> <p>10:28 9 Lewis & Clark, when it started in 2004, not to have</p> <p>10:28 10 multisite operators, you would expect Mr. Marshall's</p> <p>10:28 11 facility to be one site, wouldn't you?</p> <p>10:29 12 MR. WIRTHLIN: Calls for speculation.</p> <p>10:29 13 THE WITNESS: Not necessarily.</p> <p>10:29 14 BY MR. WILSON:</p> <p>10:29 15 Q. So the business model, as you're testifying</p> <p>10:29 16 here as a receiver, was that Lewis & Clark was not</p> <p>10:29 17 to have multisite operators, but that it was started</p> <p>10:29 18 by a group of people who had multisites. Is that</p> <p>10:29 19 your testimony?</p> <p>10:29 20 MR. WIRTHLIN: Form. Misstates the</p> <p>10:29 21 testimony.</p> <p>10:29 22 THE WITNESS: I mean, I don't know how to</p> <p>10:29 23 explain it any differently than I did.</p> <p>10:29 24 Mr. -- my recollection of the insured block</p> <p>10:29 25 was that the facilities were underwritten on a</p>	<p>10:32 1 Sophia Palmer book of business, which was the nurses</p> <p>10:32 2 in Florida, the nursing liability book.</p> <p>10:32 3 Q. Was that a multisite operation?</p> <p>10:32 4 A. It was -- I think it was an entire book of</p> <p>10:32 5 business. So as I understand Sophia Palmer,</p> <p>10:32 6 individual nurses and nurse practitioners who were</p> <p>10:32 7 required, I believe under Florida law, to have</p> <p>10:32 8 liability coverage separate and apart from their</p> <p>10:33 9 hospital, care home, physician employers, had to</p> <p>10:33 10 have their own separate liability coverage. And</p> <p>10:33 11 that was the coverage that was being written by</p> <p>10:33 12 Sophia Palmer and that that book of business came</p> <p>10:33 13 over in its entirety without regard to the</p> <p>10:33 14 individual underwriting of it by Lewis & Clark.</p> <p>10:33 15 Q. Is the receiver faulting either</p> <p>10:33 16 Lewis & Clark or the directors, Uni-Ter, U.S. RE, or</p> <p>10:33 17 any of these defendants for doing that?</p> <p>10:33 18 MR. WIRTHLIN: Objection. The complaint</p> <p>10:33 19 speaks for itself.</p> <p>10:33 20 THE WITNESS: It is one of the things that</p> <p>10:33 21 we have included in our complaint as an area where</p> <p>10:33 22 the directors failed to exercise their duty and</p> <p>10:33 23 care.</p> <p>10:33 24 BY MR. WILSON:</p> <p>10:33 25 Q. In what way did they fail to exercise their</p>

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10:33 1 duty and care?

10:33 2 MR. WIRTHLIN: Same objection.

10:33 3 THE WITNESS: I don't believe that they --

10:34 4 I mean, as we've laid out in the complaint and

10:34 5 continue to articulate and hope to flesh out, they

10:34 6 did not, is my understanding, exercise any due

10:34 7 diligence in evaluating the effect that Sophia

10:34 8 Palmer's acquisition would have on their ability to

10:34 9 operate and continue to operate.

10:34 10 BY MR. WILSON:

10:34 11 Q. When you say they did not "exercise any due

10:34 12 diligence," what do you mean by that?

10:34 13 MR. WIRTHLIN: Same objection.

10:34 14 BY MR. WILSON:

10:34 15 Q. What should they have done?

10:34 16 MR. WIRTHLIN: Calls for speculation.

10:34 17 THE WITNESS: I think they -- I don't know

10:34 18 what they could have done except that they didn't do

10:34 19 anything, is my understanding.

10:34 20 BY MR. WILSON:

10:34 21 Q. Let me show you a document. We'll mark

10:35 22 this as Exhibit 4. It's a letter from Jones Vargas

10:35 23 law firm, Constance L. Akridge, dated July 15, 2009,

10:35 24 and attachments, to Ms. Terri B-e-r-r-u-g-h-e-n,

10:35 25 Division of Insurance.

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1 A. Okay.

10:36 2 (Exhibit 4 marked.)

3 BY MR. WILSON:

10:36 4 Q. Have you ever seen that document

10:36 5 before, sir?

10:36 6 A. I don't recall seeing this document before,

10:36 7 no, sir.

10:36 8 Q. Do you know what that is?

10:36 9 A. It's a letter from Constance Akridge of

10:36 10 Jones Vargas to the Division of Insurance in

10:36 11 Carson City.

10:36 12 Q. Do you know what it analyzes?

10:36 13 MR. WIRTHLIN: Objection. Document speaks

10:36 14 for itself.

10:36 15 THE WITNESS: Well, the reference to it is

10:36 16 the merger of Sophia Palmer Nurses Risk Retention

10:36 17 Group into the Lewis & Clark LTC Risk Retention

10:37 18 Group.

10:37 19 BY MR. WILSON:

10:37 20 Q. Doesn't there appear to be a fairly

10:37 21 detailed set of binders that were presented to the

10:37 22 Division of Insurance by Lewis & Clark to approve

10:37 23 the merger?

10:37 24 MR. WIRTHLIN: Same objection.

10:37 25 THE WITNESS: The cover letter says there

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10:37 1 are six binders of documents. I don't know if they

10:37 2 were different documents or there were simply six

10:37 3 versions of the same document. I don't know. Never

10:37 4 seen them before.

10:37 5 BY MR. WILSON:

10:37 6 Q. Well, before you accuse somebody of not

10:37 7 doing due diligence, wouldn't it be good due

10:37 8 diligence on your behalf to see what documents

10:37 9 exist --

10:37 10 MR. WIRTHLIN: Speculation. Form.

10:37 11 MR. WILSON: Can I finish the question?

12 BY MR. WILSON:

10:37 13 Q. -- exist that were submitted to the

10:37 14 insurance commissioner about the merger?

10:37 15 MR. WIRTHLIN: Form. Speculation.

10:37 16 THE WITNESS: The crux -- the crux of the

10:37 17 question is should we have looked at the documents

10:38 18 that were submitted to the Department of Insurance

10:38 19 in their regulatory capacity?

10:38 20 BY MR. WILSON:

10:38 21 Q. My question to you is very simple. You've

10:38 22 accused Uni-Ter and you've accused the directors of

10:38 23 not exercising due diligence in the merger between

10:38 24 Lewis & Clark and Sophia Palmer, but yet it appears

10:38 25 that you've not looked at the documents that were

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10:38 1 even presented to your group about the merger; is

10:38 2 that correct?

10:38 3 MR. WIRTHLIN: Form. Compound. Misstates

10:38 4 testimony.

10:38 5 THE WITNESS: Well, that misstates the role

10:38 6 of which I'm here today. Because in July of 2009

10:38 7 the receiver did not exist. And I am not involved

10:38 8 in that aspect of the regulation of insurance

10:39 9 entities in the state of Nevada. I did not say that

10:39 10 we didn't as a receivership group review

10:39 11 documents that -- we have reviewed all the documents

10:39 12 that we have had access to from the time -- in

10:39 13 advance of bringing this complaint.

10:39 14 BY MR. WILSON:

10:39 15 Q. What I'm trying to find out, Mr. Receiver,

10:39 16 is what factually I did allegedly wrong when the

10:39 17 merger occurred between Lewis & Clark and Sophia

10:39 18 Palmer so I can see whether or not the facts you

10:39 19 contend that I did wrong are accurate or not. And

10:39 20 I'm trying to find out what we did wrong, as it

10:39 21 relates to the merger, factually.

10:39 22 MR. WIRTHLIN: Asked and answered.

10:40 23 Complaint speaks for itself.

10:40 24 BY MR. WILSON:

10:40 25 Q. And you're here as a 30(b)(6) with the

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10:40 1 obligation -- if you didn't know -- to investigate
 10:40 2 and testify as to what we asked you to testify to.
 10:40 3 So I'm asking you to give me the factual basis of
 10:40 4 what we did wrong.
 10:40 5 MR. WIRTHLIN: Same objections.
 10:40 6 THE WITNESS: And I believe we laid that
 10:40 7 out in the complaint.
 10:40 8 BY MR. WILSON:
 10:40 9 Q. Tell me.
 10:40 10 MR. WIRTHLIN: Same objection.
 10:40 11 THE WITNESS: Exhibit 2 lays out in great
 10:40 12 detail the allegations that we have made against
 10:40 13 your client and the director and officer clients as
 10:40 14 it relates to this transaction and other aspects.
 10:40 15 BY MR. WILSON:
 10:40 16 Q. What did we do wrong?
 10:40 17 Exhibit 2 to what? The complaint?
 10:40 18 A. No. Exhibit 2, the complaint, to this
 10:40 19 deposition.
 10:40 20 Q. I want to know, sir -- because I've looked
 10:40 21 at documents and I'll present you a number of
 10:41 22 documents that show financials were looked at,
 10:41 23 analysis was done, pro formas were done, submissions
 10:41 24 were made to the Department of Insurance, court
 10:41 25 approval was approved for the thing -- where did we

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10:41 1 fail, according to you, so that you're going to sue
 10:41 2 us and seek money from us?
 10:41 3 MR. WIRTHLIN: Same objection. Complaint
 10:41 4 speaks for itself.
 10:41 5 Jon, sorry to interrupt. Would you object
 10:41 6 to me having a standing objection that the complaint
 10:41 7 speaks for itself?
 10:41 8 MR. WILSON: Absolutely.
 10:41 9 MR. WIRTHLIN: Okay. Thank you.
 10:41 10 MR. WILSON: I don't mean to be flippant.
 10:41 11 Because there's so many objections that have been
 10:41 12 made, you can have a standing objection completely,
 10:41 13 really.
 10:41 14 MR. WIRTHLIN: On any basis?
 10:41 15 MR. WILSON: Virtually. I mean, what I'm
 10:41 16 saying is that you don't need to say the complaint
 10:41 17 speaks for itself. You've got a standing objection
 10:41 18 on that. You've got a standing objection on
 10:41 19 everything you've said in your letters that why it
 10:41 20 should be -- I mean, you literally have a standing
 10:42 21 objection. Because it doesn't make sense to keep
 10:42 22 doing it.
 10:42 23 MR. WIRTHLIN: Speculation, document speaks
 10:42 24 for itself, complaint speaks for itself? As to all
 10:42 25 that?

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10:42 1 MR. WILSON: Expert testimony. You can
 10:42 2 have all the standing objections, as far as I'm
 10:42 3 concerned, on this deposition.
 10:42 4 MR. WIRTHLIN: Understood.
 10:42 5 THE WITNESS: We -- and I think this is
 10:42 6 with regard to the entirety of the questions that we
 10:42 7 have here for examination, is we've reviewed the
 10:42 8 documents that were available to us as the receiver
 10:42 9 from the books and records of Lewis & Clark,
 10:42 10 reviewed those with counsel and prepared a complaint
 10:42 11 that we believe accurately reflects our
 10:42 12 understanding of the status of the insurance entity
 10:42 13 and the various transactions that was available to
 10:43 14 us when we filed the complaint.
 10:43 15 Now, I don't recall seeing Exhibit 4 in the
 10:43 16 records that I was provided by Uni-Ter as
 10:43 17 representing the books and records of the
 10:43 18 Lewis & Clark Risk Retention Group when the
 10:43 19 receivership was created, and that's the basis of
 10:43 20 the documents that we have reviewed in preparation
 10:43 21 in advance of filing the complaint.
 10:43 22 We continue to receive and have access to
 10:43 23 additional documents through discovery, which we are
 10:43 24 reviewing.
 10:43 25 ///

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1 BY MR. WILSON:
 10:43 2 Q. You're not suggesting that you did not have
 10:44 3 available for your review and prior to this
 10:44 4 deposition a document that went to you guys, which
 10:44 5 is the Division of Insurance? You could have just
 10:44 6 simply looked at the records of Lewis & Clark from
 10:44 7 the Division of Insurance, couldn't you?
 10:44 8 A. I cannot.
 10:44 9 Q. Why?
 10:44 10 A. Because I am not -- I had that conversation
 10:44 11 as recently as yesterday with the general counsel,
 10:44 12 is that --
 10:44 13 MR. WIRTHLIN: I just want to make sure
 10:44 14 there's no attorney-client privilege that you go
 10:44 15 into.
 10:44 16 THE WITNESS: Records of the regulator are
 10:44 17 not records of the regulated company. And certain
 10:44 18 records in the possession of the insurance
 10:44 19 commissioner are not accessible to me as receiver.
 10:44 20 BY MR. WILSON:
 10:44 21 Q. There was a court order approving the
 10:45 22 merger between Lewis & Clark and Sophia Palmer,
 10:45 23 wasn't there?
 10:45 24 A. I believe there is, based on your question.
 10:45 25 I haven't seen that court order, nor did I review it

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10:45 1 in advance of today's --
 10:45 2 Q. You're not suggesting that a court order in
 10:45 3 the public records is something that you could not
 10:45 4 have reviewed prior to today?
 10:45 5 MR. WIRTHLIN: Outside scope.
 10:45 6 THE WITNESS: I appreciate, sir -- I could
 10:45 7 have reviewed lots of things. I reviewed the
 10:45 8 documents that appeared to me to be responsive to
 10:45 9 the notice that I received. I did not review
 10:45 10 comprehensively all of the documents that have been
 10:45 11 produced to me over time since the inception of the
 10:46 12 receivership. I have not reviewed all of the
 10:46 13 documents that have been produced in discovery in
 10:46 14 this matter, as these are being reviewed by my
 10:46 15 counsel and my expert witnesses.
 10:46 16 BY MR. WILSON:
 10:46 17 Q. And you understand as a 30(b)(6) witness
 10:46 18 you have the ability to say to counsel or to anybody
 10:46 19 else, I'm here to testify as to what was wrong with
 10:46 20 the merger of Lewis & Clark and Sophia Palmer. Tell
 10:46 21 me what you know about that or get me somebody and I
 10:46 22 can testify to it. I'll make notes so I accurately
 10:46 23 reflect it and I can respond to the questions that
 10:46 24 counsel is entitled to have answered.
 10:46 25 You understood you could have done that?

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10:46 1 A. Yeah --
 10:46 2 MR. WIRTHLIN: I would have to object just
 10:46 3 as to --
 10:46 4 BY MR. WILSON:
 10:46 5 Q. You didn't do it, did you?
 10:46 6 MR. WIRTHLIN: -- the scope of the
 10:46 7 deposition was as to receiver.
 10:46 8 THE WITNESS: And there's nothing -- no,
 10:47 9 I -- what I did or didn't do, I told you what I did.
 10:47 10 I reviewed the complaint, the third amended
 10:47 11 complaint, and the exhibits that were attached to
 10:47 12 it. I did not see an order approving the Sophia
 10:47 13 Palmer merger attached to the complaint, nor was it
 10:47 14 attached to any of the documents that were part of
 10:47 15 any of the motions to dismiss or the responses to
 10:47 16 the motions to dismiss. If I've got a copy of it
 10:47 17 today, I'll be glad to take a look at it.
 10:47 18 BY MR. WILSON:
 10:47 19 Q. It's your deposition, not mine. I want to
 10:47 20 find out -- you've talked about damages. You
 10:47 21 understand you're here to talk about damages,
 10:47 22 don't you?
 10:47 23 A. That is included in the notice, yes, sir.
 10:47 24 Q. All right. Tell me what damage was done
 10:48 25 that relief is being sought by the receiver against

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10:48 1 the defendants in this case that relate to the
 10:48 2 merger between Lewis & Clark and Sophia Palmer.
 10:48 3 A. I cannot answer that question as it's part
 10:48 4 of ongoing consultation with expert witnesses and
 10:48 5 counsel.
 10:48 6 Q. So you're not going to answer that
 10:48 7 question?
 10:48 8 A. I can't -- I can't tell you with any degree
 10:48 9 of specificity. I can't tell you a dollar amount
 10:48 10 that relates to Sophia Palmer.
 10:48 11 Q. Are there any damages that relate to
 10:48 12 Sophia --
 10:48 13 A. I'm not sure whether there are any damages
 10:48 14 that specifically relate to Sophia Palmer.
 10:48 15 Q. So the case has been of record now for four
 10:48 16 years almost; correct?
 10:48 17 A. It was filed in 2014.
 10:48 18 Q. December, wasn't it, of 2014?
 10:48 19 A. I'll take your word for it. I don't recall
 10:48 20 exactly. It was on about the two-year anniversary
 10:49 21 of the filing of the receivership proceeding.
 10:49 22 Receivership proceeding initiated in December of
 10:49 23 2012. 2014 is about right. There was a tolling in
 10:49 24 there that may have taken and allowed for a slight
 10:49 25 extension on that.

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10:49 1 Q. So in the four years since the lawsuit has
 10:49 2 been filed, you cannot tell me or respond to what
 10:49 3 damages resulted, if any, from the merger of
 10:49 4 Lewis & Clark and Sophia Palmer?
 10:49 5 MR. WIRTHLIN: Asked and answered.
 10:49 6 THE WITNESS: The damages in this case,
 10:49 7 sir, are related to the deepening of the insolvency.
 10:49 8 What percentage or portion of those relates to any
 10:49 9 one specific transaction I have not broken out at
 10:49 10 this point in time.
 10:49 11 BY MR. WILSON:
 10:49 12 Q. What are the damages being sought by the
 10:50 13 receiver in these proceedings?
 10:50 14 A. We're still working with our experts to
 10:50 15 identify an exact dollar amount, but it's going --
 10:50 16 it's going to bear resemblance to the difference
 10:50 17 between the insolvency in 2012 and the financial
 10:50 18 condition of the company at a point in time in 2009,
 10:50 19 '10 that we thought and believed that the company
 10:50 20 was solvent.
 10:50 21 Q. When was the company solvent? The last
 10:50 22 time you believe it was solvent?
 10:50 23 A. I can't -- as we sit here today, I believe
 10:50 24 probably year-end '08. I can confidently state it
 10:50 25 was solvent at that point in time.

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<p>10:50 1 Q. And why can't you confidently state that as 10:50 2 it relates to the year-end 2009? 10:51 3 A. Well, because I haven't seen an exam report 10:51 4 that states such. There was an examination done as 10:51 5 of December 31st, 2008, and the company was not 10:51 6 deemed to be insolvent at that point in time. 10:51 7 Q. There was an examination done as of the end 10:51 8 of 2005, wasn't there? 10:51 9 A. There was. 10:51 10 Q. And there was no examination after that; 10:51 11 correct? 10:51 12 A. Not that I've been able to find. 10:51 13 Q. But there's been reports by an entity 10:51 14 called Johnson and Lambert, hasn't there? 10:51 15 A. Johnson and Lambert were the -- as I 10:51 16 understand it, the auditors for either Uni-Ter or 10:51 17 U.S. RE. I don't know what their specific role was 10:51 18 as it relates to Lewis & Clark. 10:51 19 Q. You're testifying under oath today that 10:51 20 Johnson and Lambert were employed by either Uni-Ter 10:51 21 or U.S. RE? 10:52 22 MR. WIRTHLIN: Misstates testimony. 10:52 23 THE WITNESS: Yes. 10:52 24 BY MR. WILSON: 10:52 25 Q. You're familiar with the insurance</p>	<p>10:53 1 Q. Was Lewis & Clark a licensed insurance 10:54 2 company? 10:54 3 A. Lewis & Clark is a licensed risk retention 10:54 4 group. 10:54 5 Q. And what is a risk retention group? 10:54 6 A. It's an entity that's created -- and it has 10:54 7 changed over time. Initially it was created under 10:54 8 certain provisions of the U.S. Code for -- as I 10:54 9 understand it, for certain industries that were 10:54 10 unable to find insurance in the admitted or the 10:54 11 nonadmitted markets. 10:54 12 Q. What do you mean by "admitted" and 10:54 13 "nonadmitted markets"? 10:54 14 A. Well, admitted markets are those insurance 10:54 15 companies that are admitted to do business in the 10:54 16 jurisdiction in which the company is writing 10:54 17 business. Back to your car example, that would be a 10:54 18 State Farm or a Nationwide, who is admitted to write 10:54 19 insurance of automobiles in the state of Nevada, 10:55 20 Florida, et cetera. They're licensed in all 50 10:55 21 states. 10:55 22 Q. And did you understand that Lewis & Clark 10:55 23 was a risk retention group incorporated in Nevada? 10:55 24 A. It is. 10:55 25 Q. And did you have any understanding</p>
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<p>10:52 1 industry. Does Lewis & Clark need to have an 10:52 2 auditor, as required by the State of Nevada, to 10:52 3 review things? 10:52 4 A. At some point in time that was required of 10:52 5 Lewis & Clark, yes, sir. 10:52 6 Q. And if Johnson and Lambert were hired by 10:52 7 Uni-Ter and U.S. RE, who was the auditor for 10:52 8 Lewis & Clark? 10:52 9 A. I -- Johnson and Lambert could have been 10:52 10 the auditor for Lewis & Clark as retained by Uni-Ter 10:52 11 and U.S. RE. I have no reason to doubt that they 10:52 12 were. I just didn't review their audit report in 10:52 13 preparation for today's deposition. 10:53 14 Q. What is the purpose, as you understand it, 10:53 15 of an audit report that would be done by an entity 10:53 16 such as Johnson and Lambert? 10:53 17 A. The regulator requires reserve 10:53 18 certification, as we discussed with Milliman and 10:53 19 Robertson, and an audited financial report for 10:53 20 certain types of insurance entities. Whether or not 10:53 21 Lewis & Clark was such an entity and at what point 10:53 22 in time they became such an entity is somewhere in 10:53 23 this time frame. 10:53 24 Q. What type of entities require this? 10:53 25 A. Licensed insurance companies,</p>	<p>10:55 1 that from the time period that it began that it 10:55 2 required to have an actuarial firm and an auditing 10:55 3 firm hired to do those functions on at least a 10:55 4 year-end basis? 10:55 5 A. It's my understanding that that became a 10:55 6 requirement at least by 2011 that they have those 10:55 7 actuarial and audited financials. 10:55 8 Q. What's the basis for that understanding? 10:55 9 A. I -- I've had discussions with counsel, and 10:56 10 I believe that that would be protected under the 10:56 11 attorney-client privilege. 10:56 12 MR. WIRTHLIN: I would object to the 10:56 13 extent that you're seeking that. I didn't interpret 10:56 14 you were. 10:56 15 MR. WILSON: I'm not seeking attorney -- I 10:56 16 don't have any desire to seek attorney-client 10:56 17 privileged communications. 10:56 18 THE WITNESS: I understand. It was part of 10:56 19 a conversation I had with counsel. 10:56 20 BY MR. WILSON: 10:56 21 Q. Now, in the complaint there's an 10:56 22 allegation, do you recall -- and I'll cite you to 10:56 23 the provision in our deposition notice -- that my 10:56 24 client, U.S. RE, inappropriately recommended to 10:56 25 Lewis & Clark the commutation of a reinsurance</p>

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<p>10:56 1 treaty the first ten days of January 2008. Do you</p> <p>10:57 2 recall that?</p> <p>10:57 3 A. Yes.</p> <p>10:57 4 Q. Do you recall that the company was called</p> <p>10:57 5 Imagine Re that was commuted?</p> <p>10:57 6 A. I recall that Imagine Re is one of the</p> <p>10:57 7 reinsurers in this case. I don't know -- I'm not</p> <p>10:57 8 questioning that.</p> <p>10:57 9 Q. And you recall -- and I'll be glad to point</p> <p>10:57 10 them out -- that there were allegations that U.S. RE</p> <p>10:57 11 inappropriately commuted -- had the treaty commuted?</p> <p>10:57 12 A. Okay.</p> <p>10:57 13 Q. Are you aware of that?</p> <p>10:57 14 A. That's in -- I'm familiar with those</p> <p>10:57 15 complaints, yes.</p> <p>10:57 16 Q. What is the basis for the contention that</p> <p>10:57 17 U.S. RE had recommended the commutation of the</p> <p>10:57 18 Imagine Re treaty when it shouldn't have?</p> <p>10:58 19 A. It's my recollection that that</p> <p>10:58 20 recommendation came down in the first ten days of</p> <p>10:58 21 2008 for the coverage period that had just concluded</p> <p>10:58 22 as of 12/31 of 2007, and that this -- I'm not sure</p> <p>10:58 23 how you can recommend the commutation of a</p> <p>10:58 24 reinsurance treaty within days of the conclusion of</p> <p>10:58 25 the insured period because of the time lag that is</p>	<p>11:00 1 A. I don't recall reviewing that in</p> <p>11:00 2 preparation for this deposition today and I don't</p> <p>11:00 3 recall -- I think I've looked at it at one point in</p> <p>11:00 4 time, but I can't tell you specifically why that</p> <p>11:00 5 recommendation was made. If you've got something</p> <p>11:00 6 you want me to look at, I'd be glad to.</p> <p>11:00 7 Q. You sued us, meaning U.S. RE, claiming back</p> <p>11:00 8 in 2014 that we inappropriately recommended the</p> <p>11:01 9 commutation of the Imagine Re reinsurance treaty,</p> <p>11:01 10 and I want to know what we did wrong.</p> <p>11:01 11 MR. WIRTHLIN: Asked and answered.</p> <p>11:01 12 BY MR. WILSON:</p> <p>11:01 13 Q. What did we do wrong?</p> <p>11:01 14 A. I mean, I just went over that. We talked</p> <p>11:01 15 about the fact that within ten days of the period of</p> <p>11:01 16 time that was reinsured U.S. RE recommended that the</p> <p>11:01 17 treaty be commuted without knowledge of whether or</p> <p>11:01 18 not there was any risk in the covered layers.</p> <p>11:01 19 Because the reporting had just -- the insured period</p> <p>11:01 20 had just concluded, the reporting period would have</p> <p>11:01 21 gone on for some period of time.</p> <p>11:01 22 Q. What type of policies were these?</p> <p>11:02 23 A. They're -- except for Sophia Palmer, I'm</p> <p>11:02 24 only aware that they issued nursing home liability</p> <p>11:02 25 policies.</p>
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<p>10:58 1 anticipated in reporting of claims.</p> <p>10:58 2 So Lewis & Clark and -- and to some degree</p> <p>10:59 3 Uni-Ter and U.S. RE, are commuting a reinsurance</p> <p>10:59 4 cover there to protect the company before there's</p> <p>10:59 5 any realistic ability to know whether or not there</p> <p>10:59 6 are claims that would have fallen into that</p> <p>10:59 7 reinsurance layer that might have been covered by</p> <p>10:59 8 that reinsurance treaty. Because this is --</p> <p>10:59 9 Imagine Re is -- my recollection, was an excess of</p> <p>10:59 10 loss reinsurance agreement.</p> <p>10:59 11 Q. Let's get for the record, what does a</p> <p>10:59 12 commutation of the reinsurance treaty mean?</p> <p>10:59 13 A. It means the -- it's, in essence, the</p> <p>10:59 14 termination of the reinsurance agreement between the</p> <p>10:59 15 insurance company who is on the risk and issued the</p> <p>11:00 16 policies with a reinsurance company who has, for a</p> <p>11:00 17 premium, agreed to share in that risk.</p> <p>11:00 18 Q. And who was the insurance company?</p> <p>11:00 19 A. Lewis & Clark is my understanding.</p> <p>11:00 20 Q. So Lewis & Clark had reinsurance with</p> <p>11:00 21 Imagine Re?</p> <p>11:00 22 A. Correct.</p> <p>11:00 23 Q. And do you know why the commutation</p> <p>11:00 24 occurred and was recommended the first ten days</p> <p>11:00 25 of 2008?</p>	<p>11:02 1 Q. Were they claims-made? Were they</p> <p>11:02 2 occurrence policies?</p> <p>11:02 3 A. They're claims-made policies, generally.</p> <p>11:02 4 Q. And what is a claims-made policy?</p> <p>11:02 5 A. A claims-made policy is a policy that has</p> <p>11:02 6 to -- that covers the period of time where a claim</p> <p>11:02 7 is made.</p> <p>11:02 8 Q. So then if the insurance coverage was --</p> <p>11:02 9 I'm using simplistically -- calendar year 2007,</p> <p>11:02 10 meaning January the 1st of 2007 through</p> <p>11:02 11 December 31st of 2007, if you wanted to have -- if</p> <p>11:02 12 that were to be covered, the claim had to be made</p> <p>11:02 13 during that time period; correct?</p> <p>11:02 14 A. I think there's some exceptions to that.</p> <p>11:02 15 Q. What are the exceptions?</p> <p>11:03 16 A. Well, they vary by the state in which they</p> <p>11:03 17 were writing the business.</p> <p>11:03 18 But are you telling me that you believe</p> <p>11:03 19 that Lewis & Clark could have avoided liability for</p> <p>11:03 20 any claim that occurred on December 31st of 2007 by</p> <p>11:03 21 merely claiming that the insured failed to report it</p> <p>11:03 22 within the calendar year 2007?</p> <p>11:03 23 Q. What I'm asking you is what is a</p> <p>11:03 24 claims-made policy? They had to be reported within</p> <p>11:03 25 the year of the policy; correct?</p>

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<p>11:03 1 A. They have to be reported within the time</p> <p>11:03 2 frame as outlined in the policy.</p> <p>11:03 3 Q. Right. And the policy was claims-made and</p> <p>11:03 4 was for the period of time that the insurance was</p> <p>11:03 5 applicable; correct?</p> <p>11:03 6 A. Correct. But not all policies are issued</p> <p>11:03 7 on a calendar year basis.</p> <p>11:03 8 Q. Did you read the policies that applied to</p> <p>11:03 9 the Imagine Re commutation?</p> <p>11:04 10 A. I have read --</p> <p>11:04 11 Q. Did you read them as they applied to the</p> <p>11:04 12 Imagine Re commutation?</p> <p>11:04 13 A. I did not.</p> <p>11:04 14 Q. Okay.</p> <p>11:04 15 A. Not in reference to the Imagine Re. I've</p> <p>11:04 16 read policies that I believe are covered by the --</p> <p>11:04 17 or would have been covered by the Imagine Re</p> <p>11:04 18 reinsurance agreement.</p> <p>11:04 19 Q. Did you read the Imagine Re policy?</p> <p>11:04 20 A. Years ago I read a reinsurance agreement</p> <p>11:04 21 with Imagine Re, yes, sir.</p> <p>11:04 22 Q. Do you know whether there was a detailed</p> <p>11:04 23 memorandum, or memorandums plural, that went to the</p> <p>11:04 24 board of directors of Lewis & Clark as to why</p> <p>11:04 25 U.S. RE was recommending the commutation?</p>	<p>11:05 1 difficult to deal with and if we don't terminate the</p> <p>11:06 2 policy within the first ten days of calendar year</p> <p>11:06 3 2008, we can't terminate it for the next two years?</p> <p>11:06 4 And by the way, we've got Beazley coming aboard</p> <p>11:06 5 who's going to provide coverage for the next two</p> <p>11:06 6 years at a lower rate and cover any risks that are</p> <p>11:06 7 made that would have fallen within the Imagine Re</p> <p>11:06 8 policy?</p> <p>11:06 9 Would you fault them for that?</p> <p>11:06 10 A. Obviously I did. It's in the complaint.</p> <p>11:06 11 Q. I understand. But if when you analyzed it</p> <p>11:06 12 the recommendation saved Lewis & Clark hundreds of</p> <p>11:06 13 thousands of dollars versus staying with Imagine Re,</p> <p>11:06 14 would you still fault them?</p> <p>11:06 15 MR. WIRTHLIN: Form.</p> <p>11:06 16 THE WITNESS: We have not named Imagine Re.</p> <p>11:06 17 We have named U.S. RE in our complaint. And this is</p> <p>11:06 18 one of the allegations that we have brought against</p> <p>11:07 19 U.S. RE.</p> <p>11:07 20 BY MR. WILSON:</p> <p>11:07 21 Q. I understand that's an allegation. I want</p> <p>11:07 22 to know the facts for it. I want to know what they</p> <p>11:07 23 did wrong. That's all I'm asking. Tell me what</p> <p>11:07 24 they did wrong and did it damage Lewis & Clark.</p> <p>11:07 25 MR. WIRTHLIN: Asked and answered.</p>
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<p>11:04 1 A. There could have been. I didn't review</p> <p>11:04 2 those for today's deposition.</p> <p>11:04 3 Q. Before you sue somebody and claim they</p> <p>11:04 4 did something wrong, wouldn't you want to know what</p> <p>11:04 5 the basis of their recommendation for the</p> <p>11:04 6 commutation was?</p> <p>11:04 7 A. I didn't say that we didn't review those in</p> <p>11:05 8 anticipation of bringing the complaint.</p> <p>11:05 9 Q. So what was the basis for the</p> <p>11:05 10 recommendation to commute the treaty?</p> <p>11:05 11 A. That -- after reviewing the documents that</p> <p>11:05 12 we had available to us, we believe that was a</p> <p>11:05 13 questionable action, as outlined in the complaint.</p> <p>11:05 14 Q. Well, would you fault U.S. RE if they</p> <p>11:05 15 recommended commuting the treaty and have the risk</p> <p>11:05 16 of future work handled by Beazley?</p> <p>11:05 17 Do you know who Beazley is?</p> <p>11:05 18 A. I'm not familiar as we sit here today with</p> <p>11:05 19 who Beazley is, no, sir.</p> <p>11:05 20 Q. Don't know they're one of the world's</p> <p>11:05 21 largest reinsurers out of London? You don't know</p> <p>11:05 22 that?</p> <p>11:05 23 A. No.</p> <p>11:05 24 Q. Okay. You certainly wouldn't fault, would</p> <p>11:05 25 you, a recommendation that says Imagine Re has been</p>	<p>11:07 1 THE WITNESS: I don't know how to -- we --</p> <p>11:07 2 I don't know how to answer it any better than I</p> <p>11:07 3 already have, Mr. Wilson. I'm sorry. I answered</p> <p>11:07 4 your question, I believe, to the best of my ability.</p> <p>11:07 5 And your repeated insistence that, you know, I</p> <p>11:07 6 expand on that, I can't expand on that as we sit</p> <p>11:07 7 here today.</p> <p>11:07 8 I have prepared, in consultation with</p> <p>11:07 9 counsel, a complaint. We believe it outlines in</p> <p>11:07 10 specific details the issues that we have. And I</p> <p>11:07 11 have answered your questions even beyond that today.</p> <p>11:07 12 So if you have something else that you want</p> <p>11:08 13 to ask me or show me, I'll be glad to try and</p> <p>11:08 14 respond to your questions.</p> <p>11:08 15 BY MR. WILSON:</p> <p>11:08 16 Q. Did you look at the board minutes on the</p> <p>11:08 17 U.S. RE matter as it relates to the commutation?</p> <p>11:08 18 A. If you've got a copy of them, I'll try and</p> <p>11:08 19 answer your question.</p> <p>11:08 20 Q. I will get them right now.</p> <p>11:08 21 MR. WILSON: Can we take a quick break to</p> <p>11:08 22 get some documents?</p> <p>11:08 23 THE WITNESS: Sure.</p> <p>11:08 24 THE VIDEOGRAPHER: Stand by, please. We're</p> <p>11:08 25 going off the record. The time, 11:05.</p>

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11:09 1 (A break was taken.)
 11:16 2 (Exhibit 5 marked.)
 11:16 3 THE VIDEOGRAPHER: We're back on the
 11:16 4 record. The time, 11:13.
 11:16 5 BY MR. WILSON:
 11:16 6 Q. Let me show you what's been marked as
 11:16 7 Exhibit Number 5. It's the minutes of a meeting of
 11:16 8 the board of directors of Lewis & Clark LTC Risk
 11:16 9 Retention Group, Inc., on January 10, 2008.
 11:16 10 Have you seen that document before?
 11:16 11 A. I've seen documents like this one. So I
 11:17 12 would assume I have seen it before.
 11:17 13 Q. You understood when you came here today
 11:17 14 that you were going to testify to the factual basis
 11:17 15 for contending that U.S. RE did not appropriately
 11:17 16 recommend and commute the 2007 Imagine Re treaty;
 11:17 17 correct?
 11:17 18 A. Let me review the notice as to what I was
 11:17 19 notified that I was going to be testifying about.
 11:17 20 Q. All right.
 11:17 21 A. Because I don't remember with any
 11:17 22 specificity that Imagine Re -- but -- there we go.
 11:18 23 Yes.
 11:18 24 Q. "Yes" what?
 11:18 25 A. Yes, the commutation of the Imagine Re

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11:18 1 treaty in 2008 is one of the things that's contained
 11:18 2 in the complaint and is part of the allegations that
 11:18 3 we've made against U.S. RE.
 11:18 4 Q. And, for example -- you said you didn't
 11:18 5 recall with any specificity that that was contained
 11:18 6 in the notice -- if you look at paragraph 6 of the
 11:18 7 notice, it says "Commutation of the Imagine Re
 11:18 8 treaty in 2008, including, but not limited to," and
 11:18 9 it goes through all these ideas.
 11:18 10 You were fully notified, weren't you, sir,
 11:18 11 that this was going to be a subject matter that we
 11:18 12 wanted detailed testimony?
 11:18 13 A. And that's why I stopped myself and
 11:18 14 reviewed the notice, yes.
 11:18 15 Q. But you had difficulty today remembering
 11:18 16 that we had done that. You said, when you started
 11:18 17 the statement out, you didn't remember ever being
 11:18 18 alerted to that.
 11:18 19 MR. WIRTHLIN: Objection. Argumentative.
 11:18 20 THE WITNESS: If that's what I said, I
 11:18 21 didn't mean to say that.
 11:18 22 BY MR. WILSON:
 11:18 23 Q. Well, you did.
 11:18 24 A. Okay.
 11:18 25 Q. Now, so you understood. And in the

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11:18 1 process, if you look at Exhibit Number 5, you'll see
 11:18 2 it says, on Number 1, "Mr. Shatoff presented a
 11:19 3 report on U.S. RE's efforts to secure insurance for
 11:19 4 the 2008 underwriting year. The Board approved the
 11:19 5 replacement of the Corporation's reinsurance for
 11:19 6 2008 with the Beazley Group, with a commutation of
 11:19 7 the 2007 insurance with Imagine Re, upon the terms
 11:19 8 presented by Mr. Shatoff."
 11:19 9 A. I see that, yes.
 11:19 10 Q. Did you look at the memorandum that
 11:19 11 Mr. Shatoff presented to the board which outlined
 11:19 12 all the details of the commutation of the Imagine Re
 11:19 13 treaty?
 11:19 14 A. I did not review that in preparation for
 11:19 15 today because I did not have it.
 11:19 16 Q. You could have asked for it?
 11:19 17 A. Well, in my experience with these minutes
 11:19 18 is that they have been -- that they were not
 11:19 19 maintained in a fashion, as I understand it, where
 11:20 20 the exhibits to the minutes or the documents that
 11:20 21 were provided to the board members were at least
 11:20 22 produced or maintained by Lewis & Clark and/or their
 11:20 23 agent, Uni-Ter, in a fashion where you could reach
 11:20 24 right out and say this is the file of all of the
 11:20 25 documents that were submitted to all the board

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11:20 1 members on a January 10, 2008, telephonic board
 11:20 2 meeting.
 11:20 3 That's not to say that Mr. Shatoff did not
 11:20 4 provide some kind of a report, because it clearly
 11:20 5 says that he did provide a report. But the minutes
 11:20 6 and the reports, in my experience, have not been
 11:20 7 contained so that you knew which one of his reports
 11:20 8 or which specific report was given to the board at
 11:20 9 this specific meeting.
 11:20 10 And I did not review, nor was it attached
 11:21 11 to anything that I have reviewed, in preparation for
 11:21 12 today's deposition.
 11:21 13 Q. Have you heard the name Donna Dalton?
 11:21 14 A. I have heard the name Donna Dalton, yes.
 11:21 15 Q. Do you know what role, if any, she played
 11:21 16 with Uni-Ter?
 11:21 17 A. She was -- she was employed by Uni-Ter in
 11:21 18 their Alpharetta office, is my understanding.
 11:21 19 Q. My question is not where she was employed.
 11:21 20 My question was what role she had with the company.
 11:21 21 Do you know?
 11:21 22 A. I think I know, but --
 11:21 23 Q. Tell me what you think.
 11:21 24 A. Well, she's -- you have asked me to be as
 11:21 25 specific as I possibly can.

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<p>11:21 1 Q. Correct.</p> <p>11:21 2 A. I would like to review -- I've seen her</p> <p>11:21 3 name here today in some of the documents that I have</p> <p>11:21 4 before me. I would just like to verify that the</p> <p>11:22 5 answer I give you is consistent with what my</p> <p>11:22 6 recollection is. So if you'll give me a moment.</p> <p>11:22 7 Q. I'll give you as much time as you want.</p> <p>11:22 8 A. Thank you very much.</p> <p>11:23 9 Q. If you don't mind, I'll be glad to tell</p> <p>11:23 10 you what her role is, rather than as to guess.</p> <p>11:23 11 She's the chief financial officer. You've heard the</p> <p>11:24 12 term "CFO"?</p> <p>11:24 13 A. I have. And I believe she was responsible</p> <p>11:24 14 for the preparation and filing of the financial</p> <p>11:24 15 statements for Lewis & Clark in her capacity within</p> <p>11:24 16 Uni-Ter for that.</p> <p>11:24 17 Q. And I'm sure you're aware that she prepared</p> <p>11:24 18 and submitted each of the board members a packet</p> <p>11:24 19 prior to the board so they would have the documents</p> <p>11:24 20 that were going to be discussed in their possession</p> <p>11:24 21 when they were talking, for example, telephonically?</p> <p>11:24 22 A. I would hope, without speculating, that she</p> <p>11:24 23 would do that. That would be her role to have</p> <p>11:24 24 provided advance information to board members. But</p> <p>11:24 25 I don't have, as I previously stated, specific</p>	<p>11:26 1 specific documents as it relates to the board</p> <p>11:26 2 minutes as prepared by Mr. -- what's his -- Shatoff.</p> <p>11:26 3 I did not ask that specific question.</p> <p>11:26 4 BY MR. WILSON:</p> <p>11:26 5 Q. Well, you knew -- if you read the board</p> <p>11:26 6 minutes, you would clearly know that there was a</p> <p>11:26 7 written recommendation that outlined why the</p> <p>11:26 8 Imagine Re treaty was recommended to be commuted;</p> <p>11:26 9 correct?</p> <p>11:26 10 A. As we sit here today, having just read</p> <p>11:26 11 that, I assume that Mr. Shatoff provided a report,</p> <p>11:26 12 as the minutes say that he did present a report.</p> <p>11:26 13 But as I testified to initially, these minutes were</p> <p>11:27 14 not attached to the materials that I reviewed in</p> <p>11:27 15 advance of this meeting and my recollection as to</p> <p>11:27 16 these specific minutes I didn't recall. And what I</p> <p>11:27 17 said was I had reviewed board minutes generally. I</p> <p>11:27 18 didn't recall that this particular one was one that</p> <p>11:27 19 I reviewed yesterday.</p> <p>11:27 20 Q. Sir, I'm not faulting you for what you</p> <p>11:27 21 reviewed or didn't review as it relates to</p> <p>11:27 22 Imagine Re. All I'm asking -- or the commutation.</p> <p>11:27 23 All I'm asking you is -- and you may have</p> <p>11:27 24 this totally in your memory, which is fine -- what</p> <p>11:27 25 did my client do wrong with respect to recommending</p>
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<p>11:24 1 contents of what those were for any specific</p> <p>11:24 2 meeting.</p> <p>11:24 3 Q. You understood you were here to talk about</p> <p>11:25 4 the commutation of the Imagine Re treaty, and you</p> <p>11:25 5 understood that it was commuted in early January of</p> <p>11:25 6 2008 because you claim that that was wrong; correct?</p> <p>11:25 7 A. Yes.</p> <p>11:25 8 Q. And you understood that there was a board</p> <p>11:25 9 meeting minutes that reflected and approved the</p> <p>11:25 10 commutation because you're accusing my client of</p> <p>11:25 11 wrongfully recommending to the board that they</p> <p>11:25 12 commute the treaty; correct?</p> <p>11:25 13 A. I think that's consistent with at least the</p> <p>11:25 14 board minutes that you've shown me a copy of here</p> <p>11:25 15 today, yes.</p> <p>11:25 16 Q. Sure. And when you -- did you ask anybody,</p> <p>11:25 17 I'm preparing for deposition. I'm going to be</p> <p>11:25 18 talking about the commutation of the Imagine Re</p> <p>11:25 19 treaty. There's a board meeting minutes. Can I at</p> <p>11:25 20 least see the board meeting minutes? And by the</p> <p>11:25 21 way, if there's any recommendations made by U.S. RE</p> <p>11:26 22 to the board, can I see a copy of that?</p> <p>11:26 23 Did you ask that?</p> <p>11:26 24 MR. WIRTHLIN: Object to form.</p> <p>11:26 25 THE WITNESS: I asked -- I did not ask for</p>	<p>11:27 1 commutation of Imagine Re, and how did that damage</p> <p>11:27 2 Lewis & Clark?</p> <p>11:27 3 MR. WIRTHLIN: Form. Asked and answered.</p> <p>11:27 4 THE WITNESS: And I went over that</p> <p>11:27 5 previously, earlier, before the break, as to how I</p> <p>11:27 6 faulted your client. And my answer with regard to</p> <p>11:28 7 damages was -- I answered, and that answer is the</p> <p>11:28 8 same, which is this company had a deepened</p> <p>11:28 9 insolvency because of the actions of your client and</p> <p>11:28 10 the other defendants as I believe it to be, and I</p> <p>11:28 11 have not yet allocated to specific transactions</p> <p>11:28 12 specific damage amounts yet. And in fact we're</p> <p>11:28 13 working on that with an expert witness who I hope</p> <p>11:28 14 will be able to do that, but I don't know that</p> <p>11:28 15 they'll even be able to do that.</p> <p>11:28 16 BY MR. WILSON:</p> <p>11:28 17 Q. "Deepening insolvency" means what, sir?</p> <p>11:28 18 You used the term. I want to make sure I understand</p> <p>11:28 19 what you're referring to.</p> <p>11:28 20 A. Well, it references the difference between</p> <p>11:28 21 what the insolvency is with what it was at a certain</p> <p>11:29 22 point in time and the fact that it is a larger</p> <p>11:29 23 number -- a bigger red number, if you would let me</p> <p>11:29 24 have that courtesy, so a negative number -- a larger</p> <p>11:29 25 negative number than would have existed but for the</p>

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<p>11:29 1 facts and the actions of the defendants in this</p> <p>11:29 2 case.</p> <p>11:29 3 Q. Assume for a second that the recommendation</p> <p>11:29 4 made by U.S. RE to commute the Imagine Re treaty for</p> <p>11:29 5 2007 during the first ten days of January of 2008</p> <p>11:29 6 resulted in hundreds of thousands of dollars of</p> <p>11:29 7 benefit to Lewis & Clark. Would that still</p> <p>11:29 8 constitute damages under your deepening insolvency</p> <p>11:30 9 theory?</p> <p>11:30 10 MR. WIRTHLIN: Form. Speculation.</p> <p>11:30 11 THE WITNESS: It could. I don't think -- I</p> <p>11:30 12 don't -- you talk about -- you talk about hundreds</p> <p>11:30 13 of thousands of dollars. Okay. Because they</p> <p>11:30 14 commuted this reinsurance treaty, we don't know what</p> <p>11:30 15 losses -- they stopped tracking the losses that</p> <p>11:30 16 would have fallen under that Imagine Re treaty, and</p> <p>11:30 17 we don't know specifically, or I don't know</p> <p>11:30 18 specifically -- maybe your clients do -- how much</p> <p>11:30 19 positive or negative impact that commutation had on</p> <p>11:30 20 Lewis & Clark's overall financial condition.</p> <p>11:30 21 BY MR. WILSON:</p> <p>11:30 22 Q. Assume that the Beazley Group, who had been</p> <p>11:30 23 replaced by Imagine Re in 2007, desperately wanted</p> <p>11:31 24 to get back in and be the reinsurer for Lewis &</p> <p>11:31 25 Clark starting in 2008 and said, We will cover any</p>	<p>11:32 1 deposition.</p> <p>11:32 2 And Beazley, I don't know what the</p> <p>11:32 3 motivation for Beazley was.</p> <p>11:32 4 BY MR. WILSON:</p> <p>11:32 5 Q. You understand you're not being deposed</p> <p>11:32 6 here as the deputy receiver; you're being deposed as</p> <p>11:32 7 the receiver or plaintiff in this case. Correct?</p> <p>11:32 8 A. Correct.</p> <p>11:32 9 Q. And you understood you had an obligation to</p> <p>11:32 10 do whatever you deemed -- whatever was deemed</p> <p>11:32 11 necessary to be able to answer questions that I was</p> <p>11:32 12 going to alert you to by reason of the notice. And</p> <p>11:33 13 I alerted you in specific detail on paragraph 6, I</p> <p>11:33 14 wanted to have you answer -- answer questions about</p> <p>11:33 15 how the commutation of the Imagine Re treaty was</p> <p>11:33 16 wrong by my client U.S. RE. You're aware of that?</p> <p>11:33 17 A. Yes. I'm the person most knowledgeable</p> <p>11:33 18 within the receivership group as to any of these</p> <p>11:33 19 facts.</p> <p>11:33 20 Q. You understand as the 30(b)(6) witness,</p> <p>11:33 21 even if you're not most knowledgeable, you can be</p> <p>11:33 22 presented and you can deem and determine what</p> <p>11:33 23 information others have that would answer the</p> <p>11:33 24 question. You understand that?</p> <p>11:33 25 A. I don't believe anybody else besides myself</p>
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<p>11:31 1 claim that was commuted under the Imagine Re treaty</p> <p>11:31 2 and treat it as if it's under this treaty so that</p> <p>11:31 3 you'll have no additional loss. Would you fault</p> <p>11:31 4 U.S. RE for that recommendation?</p> <p>11:31 5 MR. WIRTHLIN: Form. Speculation.</p> <p>11:31 6 THE WITNESS: That's -- that's not what the</p> <p>11:31 7 minutes say. You have to be --</p> <p>11:31 8 BY MR. WILSON:</p> <p>11:31 9 Q. I'm asking you to assume that. I'm sorry</p> <p>11:31 10 asking you to assume that.</p> <p>11:31 11 A. Okay. And I can't answer the question</p> <p>11:31 12 based on an assumption that I would like to review</p> <p>11:31 13 the document that so stated.</p> <p>11:31 14 Q. You had the opportunity today -- nobody</p> <p>11:31 15 prevented you -- before today, from reviewing each</p> <p>11:32 16 and every document that related to it?</p> <p>11:32 17 A. That's correct.</p> <p>11:32 18 Q. And you didn't do it?</p> <p>11:32 19 MR. WIRTHLIN: Misstates testimony.</p> <p>11:32 20 THE WITNESS: There are thousands of</p> <p>11:32 21 documents that I have acquired in my capacity as</p> <p>11:32 22 deputy receiver for Lewis & Clark, and there are</p> <p>11:32 23 thousands of documents that have only been recently</p> <p>11:32 24 provided to us. I have not reviewed every single</p> <p>11:32 25 piece of paper in anticipation of today's</p>	<p>11:33 1 has information, outside of my attorneys and expert</p> <p>11:33 2 witnesses.</p> <p>11:33 3 Q. And you did not ask to see the documents</p> <p>11:33 4 presented by my client to the board of directors</p> <p>11:33 5 that you contend was inappropriate in preparing to</p> <p>11:34 6 answer my questions today, did you?</p> <p>11:34 7 A. I did not.</p> <p>11:34 8 MR. WIRTHLIN: Attorney-client privilege.</p> <p>11:34 9 Misstates testimony.</p> <p>11:34 10 MR. WILSON: All right. Now let me mark as</p> <p>11:34 11 Exhibit Number 6 a document dated September the</p> <p>11:34 12 15th, 2011, from Praxis Claims Consulting to Mr. Tal</p> <p>11:34 13 Piccione, Sanford Elsass, and Dick Davies, signed by</p> <p>11:34 14 the president of Praxis named Brian Stiefel.</p> <p>11:35 15 (Exhibit 6 marked.)</p> <p>11:35 16 BY MR. WILSON:</p> <p>11:35 17 Q. I ask you, have you seen that document</p> <p>11:35 18 before?</p> <p>11:35 19 MR. WIRTHLIN: Just to clarify, Jon, the</p> <p>11:35 20 one I have is unsigned. Is that the same one you</p> <p>11:35 21 have?</p> <p>11:35 22 MR. WILSON: I have one that's signed.</p> <p>11:35 23 MR. WIRTHLIN: I have one that's not</p> <p>11:35 24 signed.</p> <p>11:35 25 MS. NAKAMURA OCHOA: This one is signed, if</p>

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<p>11:35 1 you want to take it. 2 BY MR. WILSON: 11:35 3 Q. And I'll refer you to Item Number 9 of the 11:35 4 list of questions in the notice of taking 11:35 5 deposition, which is Exhibit 1, where we're going to 11:36 6 inquire about Praxis's report, and particularly the 11:36 7 "allegation that Praxis's September 15, 2011, report 11:36 8 was substantially inaccurate and incomplete as set 11:36 9 forth in paragraphs 106 and 107 of the Complaint." 11:36 10 Do you understand what my questioning area 11:36 11 is going to be, sir? 11:36 12 A. You're going to ask me about Exhibit 6. 11:36 13 Q. Which is the Praxis report, and what I 11:36 14 alerted you to in the notice of taking deposition 11:36 15 under Exhibit Number -- Item Number 9. 11:36 16 A. Okay. Yes. 11:36 17 Q. All right. And it refers to paragraphs 106 11:36 18 and 107 of the third amended complaint, which is 11:36 19 Exhibit Number 2. 11:37 20 Do you have those documents in front 11:37 21 of you? 11:37 22 A. I have paragraphs 106 and 107 up in front 11:37 23 of me, along with the September 15, 2011, letter 11:37 24 from Praxis to the -- Tal Piccione -- 25 Q. Right.</p>	<p>11:39 1 claiming that my client did something wrong as it 11:39 2 relates to the September 15, 2011, letter. 11:39 3 MR. WIRTHLIN: Asked and answered. 11:40 4 Go ahead. 11:40 5 THE WITNESS: In response to your question, 11:42 6 sir, I'm looking at page 8, and this is -- 11:42 7 BY MR. WILSON: 11:42 8 Q. 8 of what, sir? 11:42 9 A. 8 of the September 15th letter. 11:42 10 Q. Which is Exhibit ... 11:42 11 A. Which is Exhibit 6. 11:42 12 Q. Okay. 11:42 13 A. And there is a recitation there of what 11:43 14 Praxis had to say about the reserves, some of what 11:43 15 they were told by Uni-Ter, and there is no reference 11:43 16 in that portion of their report to the -- Uni-Ter's 11:43 17 reserving practices as it related to the intervening 11:43 18 claims adjuster that I discussed earlier. 11:43 19 Q. Intervening claims adjuster? 11:43 20 A. There were three. Ms. Miller, who it's my 11:43 21 understanding was the person that talked to Praxis 11:43 22 in September of 2011. 11:43 23 Q. Right. 11:43 24 A. There was another woman, whose name I have 11:43 25 been unable to recall as we sit here today, who was</p>
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<p>11:37 1 A. -- director and chairman of the board of 11:37 2 Uni-Ter. And he's also director and chairman of the 11:37 3 board of U.S. RE, isn't he? 11:37 4 Q. Yes. 11:37 5 A. So yes. And the notice. 11:37 6 Q. All right, sir. Now, in the complaint you 11:37 7 are saying that my client failed to provide Praxis 11:38 8 with accurate and adequate information. What is the 11:38 9 factual basis for the statement that my client 11:38 10 Uni-Ter failed to provide Praxis with accurate and 11:38 11 adequate information? 11:38 12 A. I believe that that sentence goes on to say 11:38 13 that it was not accurate -- I don't know that it 11:38 14 says adequate. But that Praxis's engagement was 11:38 15 limited by Uni-Ter. 11:38 16 Q. Praxis's overall engagement or Praxis's 11:39 17 September the 15th, 2011, engagement? 11:39 18 A. The complaint reads Praxis's initial 11:39 19 engagement. 11:39 20 Q. And you fault Uni-Ter for limiting Praxis's 11:39 21 initial engagement? 11:39 22 A. We discussed earlier today my concerns 11:39 23 about Praxis and your client's actions with regard 11:39 24 to Praxis, and I stand by those prior statements. 11:39 25 Q. I'm asking you the factual basis for</p>	<p>11:43 1 the claims manager prior to Ms. Miller. 11:43 2 And then there was a gentleman who 11:43 3 Mr. Elsass apparently had worked with for a number 11:43 4 of years who had been the claims adjuster before 11:44 5 that. 11:44 6 Q. Mr. Miller? 11:44 7 A. I don't know if his name was -- I don't 11:44 8 recall that it was Miller. Miller is the last one, 11:44 9 and that's Johanna or Joanna or whatever her first 11:44 10 name is. Johanna. I thought it started with -- 11:44 11 like it was Jim Jordan or something. But, again, I 11:44 12 didn't -- I didn't commit their names to memory 11:44 13 because I don't know that the names are as 11:44 14 important as the actions of the individuals that 11:44 15 were doing it. 11:44 16 And it was her reserving practices, the 11:44 17 intervening claims adjuster who had moved those 11:44 18 reserves up to \$20 million collectively on the 11:44 19 losses, that -- and I don't see any reference in 11:44 20 their report that they were provided with that level 11:44 21 of detail. So I don't know what Uni-Ter provided 11:45 22 them, but it would appear that they omitted or 11:45 23 failed to provide background information as to how 11:45 24 the reserves got to where they were before Praxis 11:45 25 came in in September of 2011 to perform their audit.</p>

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<p>11:45 1 And that's the basis and answer to your</p> <p>11:45 2 question, at least in part.</p> <p>11:45 3 Q. So you're testifying under oath here today</p> <p>11:45 4 that the reserves had been set by the claims manager</p> <p>11:45 5 prior to Johanna Miller at a level of \$20 million?</p> <p>11:45 6 That's your testimony?</p> <p>11:45 7 A. I've seen in my review of documents for</p> <p>11:45 8 this estate, for Lewis & Clark, indication of that,</p> <p>11:45 9 yes, sir.</p> <p>11:45 10 Q. What I'm saying is, so that was the level</p> <p>11:45 11 of reserves that were on the books and records of</p> <p>11:45 12 Lewis & Clark at the time Praxis was retained to do</p> <p>11:46 13 its work?</p> <p>11:46 14 A. That's not what I said.</p> <p>11:46 15 Q. What were the level of reserves?</p> <p>11:46 16 A. I don't know that. I don't know what</p> <p>11:46 17 documents Praxis was provided with. I don't know,</p> <p>11:46 18 outside of their report, what level of access they</p> <p>11:46 19 were given to the Pyramid system, which was the</p> <p>11:46 20 claims recording system that Uni-Ter was using, as I</p> <p>11:46 21 understood it. And I'm --</p> <p>11:46 22 Q. Those two systems?</p> <p>11:46 23 A. And one of them -- one of them only, as I</p> <p>11:46 24 recall, collected -- and this is me in my personal</p> <p>11:46 25 capacity, but also as representative of the -- of</p>	<p>11:48 1 by Uni-Ter's claim staff."</p> <p>11:48 2 A. Yes, I see that.</p> <p>11:48 3 Q. Where does it say they were going to do a</p> <p>11:48 4 complete audit of the claims of Lewis & Clark?</p> <p>11:48 5 A. I don't know that I said that.</p> <p>11:48 6 Q. But this report -- the purpose of this</p> <p>11:48 7 report was Praxis came aboard as an outside expert</p> <p>11:48 8 and was going to look at the reserving practices and</p> <p>11:48 9 procedures of Uni-Ter and comment good, bad, or</p> <p>11:48 10 indifferent on them. Isn't that correct?</p> <p>11:48 11 A. If you say so.</p> <p>11:48 12 Q. But you said -- "you" being the receiver --</p> <p>11:48 13 in your litigation that Uni-Ter gave Praxis wrong</p> <p>11:49 14 information. What wrong information did we give?</p> <p>11:49 15 MR. WIRTHLIN: Asked and answered.</p> <p>11:49 16 THE WITNESS: I believe I've answered that</p> <p>11:49 17 to the best of my ability.</p> <p>11:49 18 BY MR. WILSON:</p> <p>11:49 19 Q. Answer it. Tell me. Tell me -- I forgot</p> <p>11:49 20 if you answered me -- what was the wrong information</p> <p>11:49 21 we gave?</p> <p>11:49 22 You said we didn't give them the</p> <p>11:49 23 \$20 million information that you said existed based</p> <p>11:49 24 upon a prior claims person. I'm asking you --</p> <p>11:49 25 that's omission of information -- what wrong</p>
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<p>11:46 1 the deputy -- of the receiver -- one of them tracked</p> <p>11:46 2 communications and the like and the other one was</p> <p>11:46 3 more of an accounting system. And I don't know, and</p> <p>11:46 4 can't tell from the Praxis report as I reviewed it</p> <p>11:46 5 coming into today, that they had access to the</p> <p>11:47 6 reserves and/or the historic reserves or a snapshot</p> <p>11:47 7 in time.</p> <p>11:47 8 Reserves are -- in most systems are</p> <p>11:47 9 captured as of a point in time. And I don't recall</p> <p>11:47 10 that this system tracked the up and down of the</p> <p>11:47 11 indemnity or liability reserves so that she could</p> <p>11:47 12 see how it went up and down on the electronic side.</p> <p>11:47 13 There's no indication that -- I don't recall that</p> <p>11:47 14 Praxis said that they reviewed that or not.</p> <p>11:47 15 Q. Did you read the report?</p> <p>11:47 16 A. I did.</p> <p>11:47 17 Q. And if you look at the report, what did you</p> <p>11:47 18 understand the purpose of this September 15, 2011,</p> <p>11:47 19 report to be?</p> <p>11:47 20 A. To perform an on-site claims audit.</p> <p>11:47 21 Q. If you look at the third paragraph of</p> <p>11:48 22 page 1, "The core focus of the audit was to review</p> <p>11:48 23 and comment on the current administrative practices</p> <p>11:48 24 and procedures in place, as well as review and</p> <p>11:48 25 comment on the reserving methodology being utilized</p>	<p>11:49 1 information did we give them?</p> <p>11:49 2 MR. WIRTHLIN: Same objection.</p> <p>11:49 3 THE WITNESS: I think we're splitting</p> <p>11:49 4 hairs.</p> <p>11:49 5 BY MR. WILSON:</p> <p>11:49 6 Q. I'm just trying to get the facts.</p> <p>11:49 7 A. If you are -- if you are not accurate, that</p> <p>11:49 8 means you failed to provide all of the information</p> <p>11:49 9 known to you as Uni-Ter and the administrator of</p> <p>11:50 10 this book of business. That's my understanding of</p> <p>11:50 11 the complaint.</p> <p>11:50 12 Now, you know, those are -- the complaint</p> <p>11:50 13 was drafted by counsel. I believe that it states</p> <p>11:50 14 what we believe the issue is with your client.</p> <p>11:50 15 Q. What was the issue of my client?</p> <p>11:50 16 MR. WIRTHLIN: Asked and answered.</p> <p>11:50 17 THE WITNESS: It's contained in the</p> <p>11:50 18 complaint.</p> <p>11:50 19 BY MR. WILSON:</p> <p>11:50 20 Q. I want to know factually. You're here</p> <p>11:50 21 to testify to it, and I'm entitled to have you, as</p> <p>11:50 22 the factual person representing the company who's</p> <p>11:50 23 suing me, to give me the exact facts of what we did</p> <p>11:50 24 wrong.</p> <p>11:50 25 A. Sir, I don't know -- I'm not -- I'm not</p>

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<p>11:50 1 going to blow up. You've asked this question. I</p> <p>11:50 2 have answered it. I have given --</p> <p>11:50 3 Q. I want to know what the facts are.</p> <p>11:50 4 A. -- you the facts as I recall them as I sit</p> <p>11:50 5 here today. These facts -- there may be other facts</p> <p>11:50 6 that I don't recall that are included in both the</p> <p>11:51 7 materials used in preparation of the complaint and</p> <p>11:51 8 in the preparation as we go forward with trial. And</p> <p>11:51 9 I've seen a lot of documents from 2013 forward that</p> <p>11:51 10 I have some but not complete recollection of.</p> <p>11:51 11 Q. I'm entitled to find out from the plaintiff</p> <p>11:51 12 the factual basis of its claims being made against</p> <p>11:51 13 me. And I want to know what inaccurate information</p> <p>11:51 14 that my client allegedly gave to Praxis that caused</p> <p>11:51 15 you to claim in a public document that Praxis's</p> <p>11:51 16 report was wrong because we gave them inaccurate</p> <p>11:51 17 information.</p> <p>11:51 18 MR. WIRTHLIN: Asked and answered.</p> <p>11:51 19 THE WITNESS: All I can say is that I</p> <p>11:52 20 wasn't present, nor was anybody from the receiver</p> <p>11:52 21 present, in September of 2011 when Praxis and</p> <p>11:52 22 presumptively Brian Stiefel --</p> <p>11:52 23 BY MR. WILSON:</p> <p>11:52 24 Q. Stiefel.</p> <p>11:52 25 A. -- Stiefel appeared at the Uni-Ter offices</p>	<p>11:53 1 retained by Uni-Ter who had made -- and this is an</p> <p>11:53 2 accounting term, I don't know -- but material</p> <p>11:53 3 changes in the reserves from prior management.</p> <p>11:54 4 She's not there anymore. And the documents that I</p> <p>11:54 5 recall indicate that Uni-Ter and the new manager,</p> <p>11:54 6 along this time frame, were trying to adjust those</p> <p>11:54 7 reserves downward.</p> <p>11:54 8 Q. So that would be contained in this report?</p> <p>11:54 9 A. What's contained in this report is no</p> <p>11:54 10 reference to that prior reserving practice that I</p> <p>11:54 11 have just described.</p> <p>11:54 12 Q. Okay. Let's read and see if what you've</p> <p>11:54 13 testified is accurate.</p> <p>11:54 14 Under "Reserves" on Document 6, page 8, it</p> <p>11:54 15 says, "Until recently it seems that Uni-Ter was</p> <p>11:54 16 establishing reserves early in the life of the file</p> <p>11:54 17 that reflected the ultimate potential exposure of</p> <p>11:54 18 each case prior to completion of supporting</p> <p>11:54 19 investigation and expert review to determine</p> <p>11:55 20 liability and damages. While this methodology would</p> <p>11:55 21 prevent under-reserving, it may also create reserve</p> <p>11:55 22 redundancy."</p> <p>11:55 23 Isn't it specifically addressed by Praxis</p> <p>11:55 24 that when I looked at the prior reserving</p> <p>11:55 25 methodology, that resulted in reserves being too</p>
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<p>11:52 1 in Alpharetta, Georgia, to perform the agreed-upon</p> <p>11:52 2 procedures or audit or whatever is defined within</p> <p>11:52 3 this letter. So I don't have specific information</p> <p>11:52 4 about what was or was not provided to them outside</p> <p>11:52 5 of what they reported to us in their writings.</p> <p>11:52 6 And September 15th of 2011 is, as I</p> <p>11:52 7 previously stated today, one of several letters that</p> <p>11:52 8 were submitted in this time frame to your client.</p> <p>11:53 9 And as I said, pointing to page 8, I believe that</p> <p>11:53 10 what Uni-Ter provided to -- based upon what's</p> <p>11:53 11 written -- now, Praxis maybe got things they didn't</p> <p>11:53 12 write down, but I don't have that information.</p> <p>11:53 13 Q. What's written? Just show me what's</p> <p>11:53 14 written that you said caused you to conclude that</p> <p>11:53 15 they got inadequate information.</p> <p>11:53 16 MR. WIRTHLIN: Asked and answered.</p> <p>11:53 17 BY MR. WILSON:</p> <p>11:53 18 Q. Just what's written.</p> <p>11:53 19 A. Or what's not written. And what they</p> <p>11:53 20 say --</p> <p>11:53 21 Q. So tell me what's not written that should</p> <p>11:53 22 have been written.</p> <p>11:53 23 A. What's not written is that the reserves of</p> <p>11:53 24 this company, Lewis & Clark, had undergone a</p> <p>11:53 25 situation where there was a new claims manager</p>	<p>11:55 1 high?</p> <p>11:55 2 MR. WIRTHLIN: Form.</p> <p>11:55 3 THE WITNESS: Well, it says that they could</p> <p>11:55 4 be too high.</p> <p>11:55 5 BY MR. WILSON:</p> <p>11:55 6 Q. Right.</p> <p>11:55 7 A. Or they could be too low.</p> <p>11:55 8 Q. You show me one place in there where it</p> <p>11:55 9 says they could be too low. As it relates to the</p> <p>11:55 10 reserving methodology in existence as of September</p> <p>11:56 11 the 15th, 2011.</p> <p>11:56 12 A. I think you've got to read the document in</p> <p>11:56 13 its entirety.</p> <p>11:56 14 Q. You're welcome to sit here and read them.</p> <p>11:56 15 Just point out to where it supports the proposition</p> <p>11:56 16 you just testified to.</p> <p>11:56 17 A. Well, on page 8 it says that Uni-Ter's</p> <p>11:56 18 reserving practices was to place a fixed amount of a</p> <p>11:56 19 thousand dollars on the claim when it was first</p> <p>11:56 20 reported.</p> <p>11:56 21 Q. When did they develop that policy?</p> <p>11:56 22 A. Recently.</p> <p>11:56 23 Q. You talked about the prior policy --</p> <p>11:56 24 A. I --</p> <p>11:57 25 Q. -- and the prior policy created excessive</p>

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<p>11:57 1 reserves; correct?</p> <p>11:57 2 MR. WIRTHLIN: Objection. Misstates.</p> <p>11:57 3 THE WITNESS: I don't believe that's what I</p> <p>11:57 4 said.</p> <p>11:57 5 BY MR. WILSON:</p> <p>11:57 6 Q. I'm saying this is what Praxis says. It</p> <p>11:57 7 could lead to over-reserving; correct?</p> <p>11:57 8 A. That particular sentence says that.</p> <p>11:57 9 Q. All right. Then what he says is, "Uni-Ter</p> <p>11:57 10 has just recently adopted the following reserving</p> <p>11:57 11 approach."</p> <p>11:57 12 And you fault the reserving approach</p> <p>11:57 13 adopted by Uni-Ter that's set forth on page 8 of the</p> <p>11:57 14 Praxis letter?</p> <p>11:57 15 A. Yes.</p> <p>11:57 16 Q. In what way?</p> <p>11:57 17 A. I believe that has the potential to</p> <p>11:57 18 understate the reserves, to set an arbitrary reserve</p> <p>11:57 19 amount on a claim -- on every claim that comes</p> <p>11:57 20 through the door without regard to the available</p> <p>11:57 21 information to the adjuster at the time that the</p> <p>11:58 22 claim arrives.</p> <p>11:58 23 Q. Where does it say that?</p> <p>11:58 24 A. It says it in the first bullet point of</p> <p>11:58 25 the -- Uni-Ter's recently adopted reserving</p>	<p>11:59 1 THE WITNESS: You have read the words, but</p> <p>11:59 2 that's not what I found to be the case.</p> <p>11:59 3 BY MR. WILSON:</p> <p>11:59 4 Q. This is their policy, new policy, at</p> <p>11:59 5 \$1,000. Do you fault them for that?</p> <p>11:59 6 MR. WIRTHLIN: Asked and answered.</p> <p>11:59 7 THE WITNESS: I believe that -- I've</p> <p>11:59 8 explained that. So, yes, I fault them.</p> <p>11:59 9 BY MR. WILSON:</p> <p>11:59 10 Q. Why?</p> <p>11:59 11 A. Because that thousand dollars, when you're</p> <p>11:59 12 dealing with policies of the size that we were</p> <p>11:59 13 dealing with, probably isn't even a fair reflection</p> <p>11:59 14 of what you're going to expend on the allocated loss</p> <p>11:59 15 adjustment expense, to say nothing of your ultimate</p> <p>11:59 16 liability.</p> <p>11:59 17 Q. You reserve allocated loss expense</p> <p>12:00 18 differently than you reserve liability, correct?</p> <p>12:00 19 A. I don't disagree with that. It doesn't</p> <p>12:00 20 say -- and that's why they had a different report on</p> <p>12:00 21 allocated loss adjustment expense. When you read</p> <p>12:00 22 all of these different documents in totality instead</p> <p>12:00 23 of trying to pick one out of context, what you find</p> <p>12:00 24 is is that they have reserves for allocated loss</p> <p>12:00 25 adjustment expense; they have reserves for</p>
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<p>11:58 1 approach.</p> <p>11:58 2 Q. What it says is "Uni-Ter reports that when</p> <p>11:58 3 a claim is reported and there is little information</p> <p>11:58 4 specific to liability of damages." It doesn't say</p> <p>11:58 5 what you said, which is irrespective of what the</p> <p>11:58 6 person knows. It says, if it's very little</p> <p>11:58 7 information on liability and damages, it's set at</p> <p>11:58 8 \$1,000. You can't fault them for that.</p> <p>11:58 9 A. That was not my experience in reviewing the</p> <p>11:58 10 files.</p> <p>11:58 11 Q. You testified under oath what the first</p> <p>11:58 12 paragraph says, and it did not say what you</p> <p>11:58 13 testified to, did it, sir?</p> <p>11:58 14 MR. WIRTHLIN: Misstates testimony.</p> <p>11:58 15 THE WITNESS: Reading the document in the</p> <p>11:58 16 whole, I believe it supports what I testified to.</p> <p>11:58 17 BY MR. WILSON:</p> <p>11:58 18 Q. Listen to my question. You just</p> <p>11:58 19 testified -- I'll be glad to read it back, your</p> <p>11:59 20 testimony -- that Uni-Ter adopted an approach of</p> <p>11:59 21 \$1,000 initially no matter what the documents</p> <p>11:59 22 reflected in terms of liability or damages. And</p> <p>11:59 23 that's not the case; correct?</p> <p>11:59 24 MR. WIRTHLIN: Misstates testimony.</p> <p>11:59 25 Argumentative.</p>	<p>12:00 1 liability. The company's practice had changed as it</p> <p>12:00 2 related to both of those things within this time</p> <p>12:00 3 period. And they're -- in fact, they go on to say</p> <p>12:00 4 that that change in practice needs to be reported to</p> <p>12:00 5 the actuaries and there are other documents besides</p> <p>12:00 6 this one that suggest that some of those things are</p> <p>12:00 7 already incorporated in the actuarial reserves.</p> <p>12:01 8 Q. What are you referring to?</p> <p>12:01 9 A. The incurred but not reported numbers, also</p> <p>12:01 10 known as IBNR numbers, that would have been part and</p> <p>12:01 11 parcel to this.</p> <p>12:01 12 But, yes, in answer to your question, I</p> <p>12:01 13 believe that Uni-Ter's practice and what's stated in</p> <p>12:01 14 our complaint are accurate in that the allegations</p> <p>12:01 15 that we brought are based factually on this and</p> <p>12:01 16 other documents that we have had access to and in</p> <p>12:01 17 our possession.</p> <p>12:01 18 Q. Now, how does what you just read constitute</p> <p>12:01 19 inadequate information?</p> <p>12:01 20 MR. WIRTHLIN: Asked and answered.</p> <p>12:01 21 BY MR. WILSON:</p> <p>12:01 22 Q. How does it constitute wrong information?</p> <p>12:01 23 MR. WIRTHLIN: Asked and answered.</p> <p>12:01 24 THE WITNESS: I don't know how to explain</p> <p>12:01 25 it to you any differently than I already have, sir,</p>

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<p>12:02 1 and I don't want to argue with you. I believe that</p> <p>12:02 2 I have explained it to you to the best of my ability</p> <p>12:02 3 and in my capacity here today.</p> <p>12:02 4 BY MR. WILSON:</p> <p>12:02 5 Q. Now, is reserving an art or a science?</p> <p>12:02 6 A. Depends on who you talk to.</p> <p>12:02 7 Q. I'm talking to you.</p> <p>12:02 8 A. It's both.</p> <p>12:02 9 Q. What do you mean by it's both an art and a</p> <p>12:02 10 science?</p> <p>12:02 11 A. Well, you have to have consistency in the</p> <p>12:02 12 way that the claims operation is handling the</p> <p>12:02 13 reserves, and that has to be communicated accurately</p> <p>12:02 14 to the preparers of the financial statement and to</p> <p>12:02 15 the actuaries.</p> <p>12:02 16 Q. Do you have any basis to contend that</p> <p>12:02 17 Uni-Ter did not accurately and properly convey</p> <p>12:03 18 reserving information to Milliman, the actuary?</p> <p>12:03 19 A. Again, the answer to that is the same. I</p> <p>12:03 20 don't know what they shared with Milliman --</p> <p>12:03 21 Q. Then you don't have --</p> <p>12:03 22 A. -- as we sit here today.</p> <p>12:03 23 Q. You don't have any basis?</p> <p>12:03 24 MR. WIRTHLIN: Misstates testimony.</p> <p>12:03 25 THE WITNESS: No. That's not what I said.</p>	<p>12:04 1 complaining about the way Uni-Ter reserved. What</p> <p>12:04 2 should Uni-Ter have done when they get a claim where</p> <p>12:04 3 there's little information as to liability and</p> <p>12:04 4 damages and they need to set a reserve within</p> <p>12:04 5 24 hours? What should they do?</p> <p>12:04 6 MR. WIRTHLIN: Speculation.</p> <p>12:04 7 THE WITNESS: They should use their -- I</p> <p>12:04 8 mean -- they handled it multiple ways themselves</p> <p>12:05 9 during the period of time that we reviewed.</p> <p>12:05 10 Ms. Miller handled it one way, her predecessor</p> <p>12:05 11 handled it a different way, and her predecessor</p> <p>12:05 12 before handled it a third way.</p> <p>12:05 13 BY MR. WILSON:</p> <p>12:05 14 Q. Tell me all three ways they handled it.</p> <p>12:05 15 How did the first predecessor handle it -- first</p> <p>12:05 16 person handle it? You said they handled it a</p> <p>12:05 17 different way. How did they handle it?</p> <p>12:05 18 A. I believe that he handled it very similarly</p> <p>12:05 19 to the way Ms. Miller did, as referenced in this</p> <p>12:05 20 memorandum.</p> <p>12:05 21 Q. How did the second person handle it?</p> <p>12:05 22 A. She came with a background in, as I</p> <p>12:05 23 understand it, professional liability in the medical</p> <p>12:05 24 field that may or may not have been greater than her</p> <p>12:05 25 predecessor. But she made an effort to, as I</p>
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<p>12:03 1 I said I don't know what specifically was provided</p> <p>12:03 2 to Milliman by Uni-Ter on behalf of Lewis & Clark.</p> <p>12:03 3 I don't know if they gave them full access to their</p> <p>12:03 4 electronic systems or they only prepared and</p> <p>12:03 5 submitted to them financial documents prepared by</p> <p>12:03 6 probably Ms. Dalton's side of the shop. I don't</p> <p>12:03 7 know what Milliman had access to as we sit here</p> <p>12:03 8 today. We could review a Milliman report and it</p> <p>12:03 9 probably would give us some additional information.</p> <p>12:03 10 But I don't have that in front of me.</p> <p>12:03 11 BY MR. WILSON:</p> <p>12:03 12 Q. Are you contending that you did not have</p> <p>12:04 13 access, had you wanted to see them, of the Milliman</p> <p>12:04 14 reports?</p> <p>12:04 15 MR. WIRTHLIN: Misstates testimony.</p> <p>12:04 16 Outside the scope.</p> <p>12:04 17 THE WITNESS: No. In fact, we covered this</p> <p>12:04 18 earlier this morning. I reviewed Milliman reports.</p> <p>12:04 19 BY MR. WILSON:</p> <p>12:04 20 Q. One report?</p> <p>12:04 21 A. I reviewed -- that's --</p> <p>12:04 22 Q. And nothing prevented you from reviewing</p> <p>12:04 23 the rest of the reports?</p> <p>12:04 24 A. And we covered that this morning, yes.</p> <p>12:04 25 Q. All right. Now, you as the receiver are</p>	<p>12:05 1 understand it, place a reserve on a file based upon</p> <p>12:05 2 her experience in dealing with professional</p> <p>12:06 3 liability coverages similar to that which was being</p> <p>12:06 4 underwritten in this case. So she made an effort to</p> <p>12:06 5 use that experience to make what she made -- again,</p> <p>12:06 6 I'm presuming --</p> <p>12:06 7 Q. I'm asking what you know.</p> <p>12:06 8 A. -- was a better estimate of what the</p> <p>12:06 9 liability was going to be based on the facts that</p> <p>12:06 10 she knew at the time that the claim was submitted.</p> <p>12:06 11 Q. Do you know for a fact that's what she did?</p> <p>12:06 12 A. I have seen documentation that suggests</p> <p>12:06 13 that that's what she was doing.</p> <p>12:06 14 Q. And was that done within the first 24 hours</p> <p>12:06 15 of the claim being submitted?</p> <p>12:06 16 A. I don't know when it was being done,</p> <p>12:06 17 whether it was the first 24 hours or the first --</p> <p>12:06 18 it's unlikely it was being done within the first</p> <p>12:07 19 24 hours of the claim, but it may have been being</p> <p>12:07 20 done within the first 24, 48, 72 hours of when a</p> <p>12:07 21 claim was reported.</p> <p>12:07 22 Q. Typically it's 30 days to reserve a matter</p> <p>12:07 23 when it's brought in, correct?</p> <p>12:07 24 MR. WIRTHLIN: Speculation.</p> <p>12:07 25 THE WITNESS: I don't know whether it's --</p>

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<p>12:07 1 I mean, there are no hard-and-fast rules that I'm 12:07 2 aware of that say you have to reserve it within 12:07 3 24 hours or 30 days or -- you know, in my 12:07 4 experience, a claim is reported when it is reported. 12:07 5 And claims come in sometimes almost instantaneously 12:07 6 from the point of a claim, and some of them linger 12:07 7 and you don't see a claim until it's already in full 12:07 8 suit and may well have had discovery take place and 12:08 9 somebody realizes that, oops, there may be some 12:08 10 insurance coverage out there that we need to notify 12:08 11 our insurance carrier about. 12:08 12 So you can't classify each claim. They're 12:08 13 all different. Okay? 12:08 14 BY MR. WILSON: 12:08 15 Q. Correct. 12:08 16 A. And the experience of the claims adjusters 12:08 17 affects their ability to perform the reserving 12:08 18 practice. And the more experienced ones hopefully 12:08 19 are doing a better job of that because they have 12:08 20 more experience in the field. 12:08 21 But if you brought in -- and I don't know 12:08 22 that that occurred in this case. This is just -- 12:08 23 but somebody who had experience in automobile claims 12:08 24 to manage a claims operation for long-term-care 12:08 25 facilities or medical malpractice facilities, they</p>	<p>12:10 1 the tape. What time is it? 12:10 2 MR. WIRTHLIN: 12:10. 12:10 3 MR. WILSON: Do you want to take a quick 12:10 4 lunch break? 12:10 5 MR. WIRTHLIN: Sure. 12:10 6 THE VIDEOGRAPHER: This is the end of 12:10 7 Disc Number 2. The time as indicated on the video 12:11 8 screen is 12:07 and we are off the record. 12:11 9 (The lunch break was taken.) 01:11 10 THE VIDEOGRAPHER: We're back on the 01:12 11 record. This is the beginning of Disc Number 3 in 01:12 12 today's videographed deposition of the 30(b)(6) 01:12 13 witness of Commissioner of Insurance for the State 01:12 14 of Nevada. The time as indicated, 1308. 01:12 15 BY MR. WILSON: 01:12 16 Q. Would you please get in front of you 01:12 17 Exhibit Number 1, which is the notice of deposition, 01:12 18 and Exhibit Number 2, which is the third amended 01:12 19 complaint without attachments. Do you have that? 01:12 20 A. Yes, sir. 01:12 21 Q. I'm going to have you look at the notice. 01:12 22 Going to paragraph number 1, "Subject of 01:12 23 Examinations," the first paragraph being "The 01:12 24 conduct of the Directors and Officers ... including, 01:12 25 but not limited to."</p>
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<p>12:08 1 may not have the same ability to accurately reserve 12:08 2 the claims when they are reported. 12:09 3 Q. Do you know whether or not Brian Stiefel of 12:09 4 Praxis commented on the capabilities and skillsets, 12:09 5 in his September 15, 2011, report, of the claim 12:09 6 staff at Uni-Ter? 12:09 7 A. He gave a brief bio for what I believe to 12:09 8 be the claim staff as it existed at the time of his 12:09 9 appearance for preparation of this report. 12:09 10 Q. Do you know whether he later then commented 12:09 11 that they were qualified people? 12:09 12 A. He may have. I don't recall that. If you 12:09 13 want to point me to that in this report, I'll -- 12:10 14 Q. I said "later." Do you know whether he 12:10 15 later commented? "Later" meaning after the report. 12:10 16 A. He may have. I don't know as we sit here 12:10 17 today. 12:10 18 Q. Last question before we change the tape. 12:10 19 Do you hold yourself out to be an expert in 12:10 20 reserving -- claims reserving? 12:10 21 A. I have -- I have performed claims reserving 12:10 22 in my experience of dealing with financially 12:10 23 troubled and insolvent insurance companies. I have 12:10 24 never testified as an expert on reserving practices. 12:10 25 MR. WILSON: We need to stop here to change</p>	<p>01:12 1 Do you see that at the very top? 01:12 2 A. On page 5? 01:12 3 Q. Page 5, yes. 01:12 4 A. Yes, sir. 01:12 5 Q. Okay. We talked about 1(a) before, this 01:13 6 morning. Do you recall me asking you about grossly 01:13 7 negligent performance? 01:13 8 A. Right. I do recall that. 01:13 9 Q. I'd like to go to 1(b). There's an 01:13 10 allegation that the board placed undue reliance on 01:13 11 Uni-Ter as its manager without properly informing 01:13 12 itself of the information provided. 01:13 13 What facts do you have to support that 01:13 14 allegation that the board of Lewis & Clark placed 01:13 15 undue reliance on Uni-Ter without properly informing 01:13 16 itself of the information? 01:13 17 A. I think it is addressed throughout the 01:13 18 complaint that there are a couple of these 01:13 19 transactions. But the Lewis & Clark board I think 01:14 20 generally placed a great deal of reliance on 01:14 21 Uni-Ter. And I can give you at least one example as 01:14 22 we sit here today is that -- and, again, you're not 01:14 23 going to like it. But towards the end of '11, '12 01:14 24 time frame there was some discussion about the 01:14 25 replacement of Uni-Ter by the board of directors as</p>

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<p>01:14 1 the administrator of this book of business. And</p> <p>01:14 2 then they turned around and asked Uni-Ter to go out</p> <p>01:14 3 and find -- find their own replacement.</p> <p>01:14 4 Q. What's wrong with that?</p> <p>01:14 5 A. Well, I think it sort of goes against</p> <p>01:14 6 common sense. If I need a new lawyer, it's unlikely</p> <p>01:15 7 I'm going to -- but I'm only thinking about it, am I</p> <p>01:15 8 going to ask the lawyer who's currently representing</p> <p>01:15 9 me to go find their own replacement or am I going to</p> <p>01:15 10 go seek an alternative independent source for a</p> <p>01:15 11 recommendation on who might also be a competitor of</p> <p>01:15 12 Uni-Ter in this case who could do the same</p> <p>01:15 13 management skills that Uni-Ter does.</p> <p>01:15 14 And that didn't appear to be the case.</p> <p>01:15 15 Maybe it did. But the records that I've had an</p> <p>01:15 16 opportunity to see did not suggest that the board</p> <p>01:15 17 members of Lewis & Clark reached beyond Uni-Ter to</p> <p>01:15 18 find an alternative administrator.</p> <p>01:15 19 Q. Can you -- I'm sorry. Go ahead.</p> <p>01:15 20 Can you identify any document that supports</p> <p>01:15 21 that position that you've just described?</p> <p>01:16 22 A. I didn't bring any documents with me today,</p> <p>01:16 23 but I recall seeing documents that suggest that</p> <p>01:16 24 that -- the board placed that request upon Uni-Ter.</p> <p>01:16 25 I can't remember exactly who Uni-Ter reached out to,</p>	<p>01:17 1 itself?</p> <p>01:17 2 A. As I said, the complaint I think</p> <p>01:18 3 generally talks about decisions that the board of</p> <p>01:18 4 directors were confronted with that they placed</p> <p>01:18 5 great reliance on Uni-Ter and U.S. RE. But there</p> <p>01:18 6 are -- there are other instances that -- I mean,</p> <p>01:18 7 they retained Uni-Ter to administer the -- their</p> <p>01:18 8 liabilities. So they relied upon their accounting</p> <p>01:18 9 operation. They relied upon their claims operation.</p> <p>01:18 10 They relied upon their underwriting operation. As</p> <p>01:18 11 it relates to Sophia Palmer and Henry Hudson's</p> <p>01:18 12 acquisitions, I think those were both books of</p> <p>01:18 13 business that were administered by Uni-Ter that</p> <p>01:18 14 the board signed off on and merged with that they</p> <p>01:19 15 relied upon Uni-Ter for advice on whether or not it</p> <p>01:19 16 was a good deal or not. And I think there are</p> <p>01:19 17 others that are borne out by the documents that we</p> <p>01:19 18 have had and have reviewed in preparation of the</p> <p>01:19 19 drafting of this complaint.</p> <p>01:19 20 Q. There's a difference, isn't there, between</p> <p>01:19 21 reliance on Uni-Ter and undue reliance on Uni-Ter?</p> <p>01:19 22 A. Maybe, I guess. "Undue reliance" sounds</p> <p>01:19 23 like a legal term and that may be something unique</p> <p>01:19 24 to --</p> <p>01:19 25 Q. What is "undue" -- you people used the term</p>
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<p>01:16 1 but I think they reached out to Praxis and maybe</p> <p>01:16 2 Johnson and Lambert, some other people that they'd</p> <p>01:16 3 worked with in the past, and they couldn't find</p> <p>01:16 4 anybody to -- that's just my recollection of what</p> <p>01:16 5 I saw.</p> <p>01:16 6 Q. Who would be the most knowledgeable person</p> <p>01:16 7 to testify as it relates to the allegations</p> <p>01:16 8 contained in 1(b), which is they placed undue</p> <p>01:16 9 reliance on Uni-Ter?</p> <p>01:16 10 A. That's why I'm here. I'm that person.</p> <p>01:16 11 Q. You are that person.</p> <p>01:16 12 Now, are you sure that the board did not</p> <p>01:16 13 ask Uni-Ter to go out and find somebody who would</p> <p>01:17 14 purchase Lewis & Clark rather than someone to</p> <p>01:17 15 replace it as manager?</p> <p>01:17 16 A. I don't recall that that request was</p> <p>01:17 17 included in the documents that I saw. And I don't</p> <p>01:17 18 know -- I don't recall ever seeing any proposals</p> <p>01:17 19 come forward for anybody willing to purchase the</p> <p>01:17 20 Lewis & Clark block of business.</p> <p>01:17 21 Q. Any other factual basis, since you're the</p> <p>01:17 22 most knowledgeable person in this regard, that</p> <p>01:17 23 supports the proposition as set forth in 1(b) of</p> <p>01:17 24 Exhibit 1 that the board placed undue reliance on</p> <p>01:17 25 Uni-Ter as its manager without properly informing</p>	<p>01:19 1 "undue reliance." What is meant by "undue"?</p> <p>01:20 2 A. I can't answer your question other than to</p> <p>01:20 3 tell you that I'm assuming that it has something to</p> <p>01:20 4 do with the directors and officers law in the state</p> <p>01:20 5 of Nevada as it relates to their interpretation of</p> <p>01:20 6 the facts. The attorneys drafted this document.</p> <p>01:20 7 Q. I'm not talking about the drafting of the</p> <p>01:20 8 document. It's occurred and it was served years</p> <p>01:20 9 ago. I want to know the factual basis for stating</p> <p>01:20 10 that there was undue reliance placed by the board on</p> <p>01:20 11 Uni-Ter. What was undue about it? What was wrong</p> <p>01:20 12 with it? What was bad about it?</p> <p>01:20 13 MR. WIRTHLIN: Asked and answered.</p> <p>01:20 14 BY MR. WILSON:</p> <p>01:20 15 Q. It's just the facts. If the only one you</p> <p>01:20 16 can remember is that one, that's fine. You're here</p> <p>01:20 17 to testify.</p> <p>01:21 18 MR. WIRTHLIN: Same objection.</p> <p>01:21 19 THE WITNESS: I've actually identified</p> <p>01:21 20 several. It's hard -- I don't want to -- your</p> <p>01:21 21 question is very broad. Okay? It's not my -- this</p> <p>01:21 22 particular board appears to be a little light on</p> <p>01:21 23 insurance experience themselves, and so I think</p> <p>01:21 24 that, from my review and in preparation dealing with</p> <p>01:21 25 this receivership, that the board gave a great deal</p>

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<p>01:21 1 of reliance to Uni-Ter and Mr. Elsass and the other</p> <p>01:21 2 individuals that were reporting to them on the</p> <p>01:21 3 day-to-day administration of this company. Is</p> <p>01:22 4 that -- was that undue? That's a legal analysis</p> <p>01:22 5 that I think we believe that we can prove or we</p> <p>01:22 6 wouldn't have alleged it.</p> <p>01:22 7 BY MR. WILSON:</p> <p>01:22 8 Q. Well, I'm trying to figure out what "undue"</p> <p>01:22 9 means and I've Googled it. It says "unwarranted,</p> <p>01:22 10 inappropriate, excessive, or disproportionate,</p> <p>01:22 11 intemperate."</p> <p>01:22 12 Is that your understanding of the term</p> <p>01:22 13 "undue" as it's used in this complaint?</p> <p>01:22 14 A. I assume you're reading from a dictionary</p> <p>01:22 15 or Wikipedia or something off of the internet. They</p> <p>01:22 16 sound like reasonable definitions of the word</p> <p>01:22 17 "undue" in its ordinary context. I don't know if</p> <p>01:22 18 there's any unique component to the word "undue"</p> <p>01:22 19 under the law of the state of Nevada.</p> <p>01:23 20 Q. I'm only asking you factually. Assuming</p> <p>01:23 21 that it's inappropriate -- that is one of the</p> <p>01:23 22 terms -- how was the reliance placed by the board</p> <p>01:23 23 inappropriate?</p> <p>01:23 24 MR. WIRTHLIN: Asked and answered.</p> <p>01:23 25 THE WITNESS: I believe I've explained</p>	<p>01:24 1 were provided by Uni-Ter.</p> <p>01:24 2 BY MR. WILSON:</p> <p>01:24 3 Q. Does the receiver contend that undue</p> <p>01:24 4 reliance and reliance are the same thing?</p> <p>01:24 5 A. I think you'd have to ask my attorneys as</p> <p>01:24 6 to whether or not undue reliance and reliance are</p> <p>01:24 7 the same things.</p> <p>01:24 8 Q. I'm asking you as the witness who was</p> <p>01:24 9 designated to answer the questions associated with</p> <p>01:24 10 this.</p> <p>01:24 11 MR. WIRTHLIN: Asked and answered.</p> <p>01:24 12 THE WITNESS: The word undue influence --</p> <p>01:25 13 BY MR. WILSON:</p> <p>01:25 14 Q. It doesn't say undue influence. It says</p> <p>01:25 15 "undue reliance."</p> <p>01:25 16 A. I stand corrected.</p> <p>01:25 17 The complaint speaks for itself.</p> <p>01:25 18 Q. I'm asking you specific -- if you can't</p> <p>01:25 19 give them to me, tell me -- specific examples,</p> <p>01:25 20 factually, of what you contend was undue reliance by</p> <p>01:25 21 the board on Uni-Ter.</p> <p>01:25 22 MR. WIRTHLIN: Asked and answered multiple</p> <p>01:25 23 times.</p> <p>01:25 24 BY MR. WILSON:</p> <p>01:25 25 Q. You've given me the one.</p>
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<p>01:23 1 that.</p> <p>01:23 2 BY MR. WILSON:</p> <p>01:23 3 Q. You've given me all the details and all the</p> <p>01:23 4 examples of where you contend that the board had</p> <p>01:23 5 undue reliance on Uni-Ter?</p> <p>01:23 6 MR. WIRTHLIN: Misstates testimony.</p> <p>01:23 7 THE WITNESS: That is -- that's not what I</p> <p>01:23 8 said.</p> <p>01:23 9 BY MR. WILSON:</p> <p>01:23 10 Q. Then list them.</p> <p>01:23 11 A. Well --</p> <p>01:23 12 MR. WIRTHLIN: Asked and answered.</p> <p>01:23 13 THE WITNESS: Pick up -- give me a board</p> <p>01:23 14 minute from -- pick one and let me look at it and we</p> <p>01:23 15 can go through it blow by blow.</p> <p>01:23 16 It appears to me that nearly every time</p> <p>01:23 17 they got together as a board, that Uni-Ter and</p> <p>01:24 18 U.S. RE were present, the provider of the</p> <p>01:24 19 information, and, when decisions were being made,</p> <p>01:24 20 was the source of their decision-making process or</p> <p>01:24 21 the background that they had for the</p> <p>01:24 22 decision-making.</p> <p>01:24 23 So I think the record is full of instances,</p> <p>01:24 24 multiple instances, of where they placed reliance,</p> <p>01:24 25 and undue reliance, upon the information that they</p>	<p>01:25 1 A. I've given you more than one. If you</p> <p>01:25 2 want to provide me with copies of the board minutes</p> <p>01:25 3 from 2012, we can go back over each one of them and</p> <p>01:25 4 I can -- my position is that nearly in every one of</p> <p>01:25 5 them there's one or more things that the board is</p> <p>01:25 6 taking action upon based upon reliance, and/or undue</p> <p>01:26 7 reliance to the extent that's different, on Uni-Ter</p> <p>01:26 8 and on U.S. RE in certain circumstances as well.</p> <p>01:26 9 Q. Is it the position of the receiver that</p> <p>01:26 10 undue reliance is different than reliance?</p> <p>01:26 11 MR. WIRTHLIN: Asked and answered.</p> <p>01:26 12 THE WITNESS: That's a question of Nevada</p> <p>01:26 13 law, I believe. So --</p> <p>01:26 14 BY MR. WILSON:</p> <p>01:26 15 Q. You don't know?</p> <p>01:26 16 A. I don't know.</p> <p>01:26 17 Q. Okay. Now, on 1(c) it says, "Your</p> <p>01:26 18 allegation that the Board continued to rely on</p> <p>01:26 19 information provided by Uni-Ter despite clear</p> <p>01:26 20 indication that the information provided by Uni-Ter</p> <p>01:26 21 was incomplete and inaccurate and the</p> <p>01:26 22 recommendations were ill-advised."</p> <p>01:26 23 I want you to identify the factual</p> <p>01:26 24 information provided by Uni-Ter and its affiliates</p> <p>01:27 25 that was incomplete and inaccurate.</p>

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<p>01:27 1 MR. WIRTHLIN: Can I just clarify? Our</p> <p>01:27 2 standing objections, including the complaint speaks</p> <p>01:27 3 for itself, are still in effect; right?</p> <p>01:27 4 MR. WILSON: Yeah. You have them forever.</p> <p>01:27 5 MR. WIRTHLIN: Thank you.</p> <p>01:27 6 THE WITNESS: I've reread paragraph 34, and</p> <p>01:28 7 I believe it accurately states my understanding of</p> <p>01:28 8 the source of the information that the board members</p> <p>01:28 9 of Lewis & Clark were receiving.</p> <p>01:28 10 Uni-Ter was its manager. The board relied</p> <p>01:28 11 upon Uni-Ter as its manager, as stated in the</p> <p>01:28 12 complaint. That continued, the relationship, from</p> <p>01:28 13 2004 right up until the Department of Insurance had</p> <p>01:28 14 to come in and shut down Lewis & Clark due to their</p> <p>01:28 15 insolvency.</p> <p>01:29 16 So the information that the board had came</p> <p>01:29 17 from Uni-Ter. And my review is that if the board</p> <p>01:29 18 knew about it, the source of the information was</p> <p>01:29 19 Uni-Ter. There was no -- I've seen nothing to</p> <p>01:29 20 suggest that the board ever did anything to</p> <p>01:29 21 independently go behind the information they were</p> <p>01:29 22 provided by Uni-Ter to question in the slightest the</p> <p>01:29 23 representations that were made to them by Uni-Ter.</p> <p>01:29 24 BY MR. WILSON:</p> <p>01:29 25 Q. The question dealt with information being</p>	<p>01:31 1 So to the extent that there are</p> <p>01:31 2 shortcomings in any part of the operation of</p> <p>01:31 3 Lewis & Clark's book of business, Uni-Ter is, in my</p> <p>01:31 4 understanding, the source of that information and</p> <p>01:31 5 the directors are relying on it. Now, there may be</p> <p>01:31 6 documentation that I haven't seen that will provide</p> <p>01:31 7 a defense to that. But based upon what I had</p> <p>01:31 8 available, the receiver had available at the time</p> <p>01:31 9 that this complaint was filed, there was reason to</p> <p>01:31 10 believe, upon information and the documentation that</p> <p>01:31 11 we had available to us at the time of the complaint,</p> <p>01:32 12 that that's what was going on.</p> <p>01:32 13 Q. I don't think we're talking about the same</p> <p>01:32 14 thing. Let me see if I can clarify it a little bit.</p> <p>01:32 15 I'm not disagreeing that Uni-Ter provided</p> <p>01:32 16 information. But you are alleging that the</p> <p>01:32 17 information my client provided was inaccurate. And</p> <p>01:32 18 what I want to know is identify what information</p> <p>01:32 19 that you contend is inaccurate.</p> <p>01:32 20 For example, if I provided to the board of</p> <p>01:32 21 Lewis & Clark, You don't need to file a lawsuit in</p> <p>01:32 22 this case until January of 2012, and in fact I was</p> <p>01:32 23 wrong, it was January 2010 and the statute's run,</p> <p>01:32 24 you'd say, You provided this information and the</p> <p>01:32 25 information you provided was inaccurate.</p>
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<p>01:29 1 incomplete and inaccurate and the recommendations</p> <p>01:29 2 ill-advised.</p> <p>01:29 3 What I want to know is what do you contend</p> <p>01:29 4 factually was inaccurate information presented to</p> <p>01:30 5 the board by Uni-Ter.</p> <p>01:30 6 MR. WIRTHLIN: Asked and answered.</p> <p>01:30 7 THE WITNESS: Sir, I have explained that</p> <p>01:30 8 Uni-Ter is the source of the board's information,</p> <p>01:30 9 based upon what I have been able to see. Uni-Ter's</p> <p>01:30 10 board is making decisions --</p> <p>01:30 11 BY MR. WILSON:</p> <p>01:30 12 Q. Not Uni-Ter's board. I don't mean to</p> <p>01:30 13 correct you. It's Lewis & Clark's board.</p> <p>01:30 14 A. And this is the problem with me having to</p> <p>01:30 15 answer the question over and over again.</p> <p>01:30 16 Lewis & Clark's board is relying and is</p> <p>01:30 17 receiving as their source of information whatever</p> <p>01:30 18 information Uni-Ter provides. So if it's providing</p> <p>01:30 19 financial statements, if it's providing reserve</p> <p>01:31 20 information, if it's giving pricing information on</p> <p>01:31 21 what they should be charging for the product that's</p> <p>01:31 22 out there, if they provide them information that</p> <p>01:31 23 says they're short on capital, that all is coming</p> <p>01:31 24 from Uni-Ter. That's not coming, as I understand</p> <p>01:31 25 it, from any other source.</p>	<p>01:32 1 I'm not arguing about providing</p> <p>01:32 2 information. I want to know what was inaccurate in</p> <p>01:32 3 terms of what was purportedly provided.</p> <p>01:32 4 MR. WIRTHLIN: Asked and answered.</p> <p>01:32 5 THE WITNESS: And what I have told you and</p> <p>01:33 6 will continue to tell you is -- and maybe this will</p> <p>01:33 7 help you understand -- is you're citing to</p> <p>01:33 8 introductory language that is followed up by</p> <p>01:33 9 30-some pages of additional factual issues that we</p> <p>01:33 10 have identified that are problematic for purposes of</p> <p>01:33 11 filing this complaint.</p> <p>01:33 12 So to the extent that information about --</p> <p>01:33 13 let's pick one -- the accounting in paragraph 64</p> <p>01:33 14 through 71, which is talking about a renewal in 2001</p> <p>01:33 15 of the management agreement, there was, I believe,</p> <p>01:34 16 information that the board could have. They relied</p> <p>01:34 17 upon Uni-Ter for the information necessary to reach</p> <p>01:34 18 the conclusion that they should renew the contract</p> <p>01:34 19 or to amend it. It was amended several times, the</p> <p>01:34 20 contract.</p> <p>01:34 21 BY MR. WILSON:</p> <p>01:34 22 Q. I think you said 2001.</p> <p>01:34 23 A. I meant 2011.</p> <p>01:34 24 Q. It's really 2011. That was inaccurate.</p> <p>01:34 25 Now, that's a classic example of what I'm talking</p>

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<p>01:34 1 about. You said 2001 and it was 2011. 2001 was 01:34 2 inaccurate. 2011 is accurate. 01:34 3 What I want to find out then is, as it 01:34 4 relates to the matter you just described, what was 01:34 5 inaccurate about what they presented? 01:34 6 MR. WIRTHLIN: Asked and answered multiple 01:34 7 times. 01:34 8 BY MR. WILSON: 01:34 9 Q. You've told me they presented information. 01:34 10 What was not correct about it? 01:35 11 MR. WIRTHLIN: Same objection. 01:35 12 BY MR. WILSON: 01:35 13 Q. If you don't know, tell me. 01:35 14 A. I have told you. 01:35 15 Q. Just tell me what's inaccurate. 01:35 16 MR. WIRTHLIN: Same objection. 01:35 17 THE WITNESS: The information that was 01:35 18 provided to the board as part of the renewal -- part 01:35 19 of the -- going into the agreement in the first 01:35 20 place in 2004, during its renewal in 2011. The 01:35 21 information for the reasons to merge with Sophia 01:35 22 Palmer. The entirety of what we've alleged in the 01:35 23 complaint was based upon information from Uni-Ter, 01:35 24 and we believe that that information was at least in 01:35 25 part inaccurate and/or was incomplete to allow</p>	<p>01:37 1 board. They were the ones that were present. The 01:37 2 receiver didn't exist when those representations 01:37 3 were being made, sir. 01:37 4 Q. Receiver exists today and has had a lot of 01:38 5 documents presented to it, including a million and a 01:38 6 half pages presented in August. And is there 01:38 7 anything in any of the documents presented to it in 01:38 8 this case that you say can support the proposition 01:38 9 that what Uni-Ter presented was inaccurate? 01:38 10 MR. WIRTHLIN: Objection to the extent that 01:38 11 those documents are still being reviewed. 01:38 12 THE WITNESS: But I have no qualms saying 01:38 13 that, yes, there are documents in the multitude of 01:38 14 documents that I believe support this complaint. 01:38 15 BY MR. WILSON: 01:38 16 Q. Identify the documents. 01:38 17 A. I can't do that today. That's beyond what 01:38 18 I was asked to do in preparation for today's 01:38 19 deposition. 01:38 20 Q. Asked to do by whom? 01:38 21 A. By the notice. This does not say bring in 01:38 22 every exhibit that you intend to produce at trial or 01:38 23 every document that supports every allegation. It 01:38 24 says these are the areas that we're going to be -- 01:38 25 Q. Testifying?</p>
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<p>01:35 1 Uni-Ter's board to make a more informed decision and 01:35 2 possibly a different decision. And that's the 01:36 3 reason that we have filed the complaint here, and 01:36 4 that's why Uni-Ter, in addition to the board, are 01:36 5 defendants. 01:36 6 BY MR. WILSON: 01:36 7 Q. You said Uni-Ter's board again. That was 01:36 8 inaccurate; correct? You meant Lewis & Clark? 01:36 9 A. I don't believe that's what I said. I said 01:36 10 Uni-Ter and Lewis & Clark's board. 01:36 11 MR. WILSON: Would you read his answer 01:36 12 back, please. 01:37 13 (The answer was read.) 01:37 14 THE WITNESS: That statement is inaccurate 01:37 15 to the extent that I referenced Uni-Ter's board. 01:37 16 It's Lewis & Clark's board. And the board 01:37 17 references throughout that statement are to 01:37 18 Lewis & Clark's board. 01:37 19 BY MR. WILSON: 01:37 20 Q. Who would be most knowledgeable about what 01:37 21 the inaccuracies were that were allegedly presented 01:37 22 by Uni-Ter to Lewis & Clark's board? You? 01:37 23 A. Within the receiver organization, yes. 01:37 24 Within -- I think the person most knowledgeable 01:37 25 would be a representative of Uni-Ter or of the</p>	<p>01:39 1 A. -- testifying. And I have done that. I 01:39 2 have not identified specific documents, and can't. 01:39 3 Q. I'm asking, can you identify any inaccuracy 01:39 4 presented to the board by Uni-Ter? 01:39 5 A. I think there are several in the complaint 01:39 6 that are specific, yes, sir. 01:39 7 Q. And what are they? 01:39 8 A. They're in the complaint. They're the -- 01:39 9 regard to the 2004 management agreement. The -- 01:39 10 Q. Let's stop right there. 2004. What was 01:39 11 inaccurate that was presented? 01:39 12 A. I'm not going to mince words with you. We 01:39 13 covered this this morning about the 2004 management 01:39 14 agreement. 01:39 15 Q. What's inaccurate? 01:39 16 A. What's inaccurate? 01:39 17 Q. Yeah. Tell me what's inaccurate. I've got 01:39 18 plenty of examples where you inaccurately testified 01:39 19 incorrectly [sic]. 01:39 20 Tell me what's inaccurate about what 01:39 21 Uni-Ter presented. 01:39 22 A. The complaint, sir, as drafted, the section 01:40 23 that you have asked me to testify to with regard to 01:40 24 1(b) and 1(c) is part of the introduction to a 01:40 25 number of different allegations and factual</p>

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<p>01:40 1 identified transactions that Uni-Ter was 01:40 2 involved in. 01:40 3 I am not prepared today to give you a 01:40 4 specific book, page, paragraph number which I 01:40 5 believe to be inaccurate or my attorneys believe to 01:40 6 be inaccurate or my expert witnesses. 01:40 7 I have reviewed documents that suggest that 01:40 8 there are inaccuracies in the information that 01:40 9 Lewis & Clark's board was presented by Uni-Ter. And 01:40 10 they are outlined in the specific allegations, the 01:40 11 specific factual allegations that were contained in 01:40 12 the third amended complaint. 01:40 13 Q. And all I'm asking you is identify what 01:41 14 the inaccuracy was. Just like I identified you 01:41 15 said Uni-Ter board of directors when you meant 01:41 16 Lewis & Clark, nobody has had any doubt what the 01:41 17 inaccuracy was. I want to know what the inaccuracy 01:41 18 was in the documents that you contend were 01:41 19 inaccurate. 01:41 20 MR. WIRTHLIN: Objection. Asked and 01:41 21 answered. 01:41 22 BY MR. WILSON: 01:41 23 Q. What's the subject matter? What was it? 01:41 24 MR. WIRTHLIN: Same objections. Getting 01:41 25 close to harassment here.</p>	<p>01:43 1 my review of the documents and the insolvency, is 01:43 2 that Uni-Ter represented to the board members of 01:43 3 Lewis & Clark that they could manage this book of 01:43 4 business in a profitable manner. 01:43 5 Q. That was inaccurate? 01:43 6 A. Well, de facto it is -- 01:43 7 Q. It turned out inaccurate? 01:43 8 A. -- because it turned out to be an 01:43 9 inaccurate statement. 01:43 10 Q. Right. And Sears thought it could operate 01:43 11 profitably and it's now in bankruptcy. Things 01:43 12 happen along the way; isn't that correct? 01:43 13 A. They do. Sears operated for a much longer 01:43 14 period of time than Lewis & Clark did. 01:43 15 Q. I understand. Are you saying that Uni-Ter 01:44 16 knew at the time it entered into the management 01:44 17 agreement with Lewis & Clark that it could not 01:44 18 perform what it was supposed to do under that 01:44 19 agreement? 01:44 20 A. I believe discovery is ongoing as to what 01:44 21 Uni-Ter knew or didn't know at the time that they 01:44 22 entered into the agreement. 01:44 23 Q. Do you have any factual basis to contend 01:44 24 that they did know? 01:44 25 A. Beyond what I've already stated and that's</p>
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<p>01:41 1 MR. WILSON: It's not harassment. I'm 01:41 2 entitled to find -- if somebody is claiming we 01:41 3 submitted inaccurate information, we're entitled to 01:41 4 find out what it is. 01:41 5 MR. WIRTHLIN: He's answered it multiple 01:41 6 times. 01:41 7 BY MR. WILSON: 01:41 8 Q. You can't answer it any more than you 01:41 9 already have? 01:41 10 A. I've given you my best answer. 01:41 11 (Exhibit 7 marked.) 01:41 12 BY MR. WILSON: 01:41 13 Q. Let me hand you what we will mark as 01:42 14 our next exhibit, the management agreement of 01:42 15 January 1 of 2004. I'd like to have you identify 01:42 16 what is inaccurate about that. 01:42 17 A. The document is the document, sir. I don't 01:42 18 question that the document is signed by the parties 01:42 19 that it was represented to be signed by at this 01:42 20 point in time. 01:42 21 The allegations relate to the information 01:42 22 that we believe was provided in advance of the 01:42 23 signing of the document itself. 01:42 24 Q. What was the inaccuracy? 01:42 25 A. The represent -- I believe, based upon</p>	<p>01:44 1 what I'm prepared to discuss today. I did not bring 01:44 2 with me all of the documents that have been produced 01:44 3 or -- I haven't even been through all the million 01:44 4 and a half documents that -- pages that have been 01:44 5 produced since August personally. 01:44 6 Q. You know I'm not asking that you bring the 01:44 7 documents. I'm asking you to testify to the facts. 01:44 8 A. Well, you're asking me to testify, I 01:45 9 believe, as to my knowledge of why we did what 01:45 10 we did. 01:45 11 Q. Not your knowledge. I'm asking you to 01:45 12 testify to the receiver's knowledge. 01:45 13 A. Correct, to the receiver's knowledge as to 01:45 14 why. And I have done that -- 01:45 15 Q. What did you do -- 01:45 16 A. -- I believe, to the best of my ability. 01:45 17 Q. What did you do in preparation for this 01:45 18 deposition to identify the inaccuracies presented to 01:45 19 the board by Uni-Ter? 01:45 20 MR. WIRTHLIN: Asked and answered. 01:45 21 BY MR. WILSON: 01:45 22 Q. What did you do? 01:45 23 A. All the things that I've described to you 01:45 24 today. 01:45 25 Q. Tell me, specifically on that issue, what</p>

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<p>01:45 1 did you do?</p> <p>01:45 2 MR. WIRTHLIN: Same objection.</p> <p>01:45 3 THE WITNESS: I reviewed the third amended</p> <p>01:45 4 complaint.</p> <p>01:45 5 BY MR. WILSON:</p> <p>01:45 6 Q. Right.</p> <p>01:45 7 A. The exhibits to the third amended</p> <p>01:45 8 complaint.</p> <p>01:45 9 Q. Right.</p> <p>01:45 10 A. And the receiver's responses to the</p> <p>01:45 11 multiple motions to dismiss and the exhibits to</p> <p>01:46 12 those documents.</p> <p>01:46 13 In addition to that, I have reviewed</p> <p>01:46 14 specifically the Praxis documents and the Fishlinger</p> <p>01:46 15 documents and the documents you asked me to review</p> <p>01:46 16 with regard to Items 12, 13, and 14, to the extent</p> <p>01:46 17 that they exist today.</p> <p>01:46 18 Q. And based on that review, can you identify</p> <p>01:46 19 in detail specific inaccuracies that Uni-Ter</p> <p>01:46 20 presented to the board? In detail, what were they?</p> <p>01:46 21 MR. WIRTHLIN: Asked and answered.</p> <p>01:46 22 THE WITNESS: I don't -- I am not in a</p> <p>01:46 23 position to -- I'm not going to change my answer,</p> <p>01:46 24 because then you're going to say that I was</p> <p>01:46 25 inaccurate from one answer to the next.</p>	<p>01:48 1 receiving accurate and complete information from</p> <p>01:48 2 Uni-Ter.</p> <p>01:48 3 Please identify what portion of the</p> <p>01:49 4 minutes, which are identified as Exhibit 8, support</p> <p>01:49 5 the proposition that's alleged. It happens to be</p> <p>01:48 6 Exhibit 1, paragraph 1(g).</p> <p>01:49 7 A. I understand. But 1(g) references</p> <p>01:49 8 paragraph 145 of the complaint, which is one of</p> <p>01:50 9 three or four pages of paragraphs that relate to the</p> <p>01:50 10 board of Lewis & Clark's meeting minutes. So I'm</p> <p>01:50 11 just trying to get it in context so that I can</p> <p>01:50 12 answer your question.</p> <p>01:50 13 Q. Take whatever time you need, please.</p> <p>01:50 14 A. I believe that the fact that there needed</p> <p>01:51 15 to be additional cash contributions of capital to</p> <p>01:51 16 Lewis & Clark at this point in time goes directly to</p> <p>01:51 17 the question of whether they had previously received</p> <p>01:51 18 complete and accurate information as to the</p> <p>01:51 19 liabilities and the financial status of the</p> <p>01:51 20 Lewis & Clark company. Because in a normal,</p> <p>01:52 21 ordinary operating situation for an insurance</p> <p>01:52 22 entity, there would not be the need for additional</p> <p>01:52 23 capital cash contributions unless there was going to</p> <p>01:52 24 be -- for simple solvency purposes.</p> <p>01:52 25 And that's what my understanding of what</p>
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<p>01:46 1 I stand by the answers that I've given you.</p> <p>01:46 2 And I don't know how asking the question again is</p> <p>01:47 3 going to get a different answer. I can't give you a</p> <p>01:47 4 different answer.</p> <p>01:47 5 BY MR. WILSON:</p> <p>01:47 6 Q. I'm not trying to get a different -- I'm</p> <p>01:47 7 just trying to find out what the inaccuracy is.</p> <p>01:47 8 A. Well, I've answered that question.</p> <p>01:47 9 Q. You can't give me any better answer than</p> <p>01:47 10 you've given me.</p> <p>01:47 11 Now, you cite a particular document. I'm</p> <p>01:47 12 going to have this marked as our next exhibit, which</p> <p>01:47 13 is 8, which is "Action By Unanimous Written Consent</p> <p>01:47 14 of the Board of Directors," dated October 5, 2011.</p> <p>01:48 15 (Exhibit 8 marked.)</p> <p>01:48 16 BY MR. WILSON:</p> <p>01:48 17 Q. Have you reviewed that document before?</p> <p>01:48 18 A. I've seen a copy. I don't know that it had</p> <p>01:48 19 all the signatures attached to it.</p> <p>01:48 20 Q. Okay. In the complaint and in my</p> <p>01:48 21 request -- my deposition notice, there's Item 1(g).</p> <p>01:48 22 I want to talk about the allegation made by the</p> <p>01:48 23 receiver that the minutes of the October 5, 2011,</p> <p>01:48 24 action by the board demonstrate the board was</p> <p>01:48 25 unaware it was -- was aware that it was not</p>	<p>01:52 1 this particular action was, was that they were -- in</p> <p>01:52 2 this time period they had received not one, but two</p> <p>01:52 3 notice letters from the Department of Insurance</p> <p>01:52 4 questioning whether or not they had a business plan</p> <p>01:52 5 or an action plan to deal with their deteriorating</p> <p>01:52 6 financial condition and asking for such a plan.</p> <p>01:52 7 A reasonable board would not have allowed</p> <p>01:52 8 themselves to come into that position. And the</p> <p>01:53 9 source of how they allowed that to take place I</p> <p>01:53 10 think is contemplated in paragraph 145 of the</p> <p>01:53 11 complaint as it relates to accurate and complete</p> <p>01:53 12 information from Uni-Ter.</p> <p>01:53 13 Q. So what was inaccurate from Uni-Ter?</p> <p>01:53 14 MR. WIRTHLIN: Asked and answered.</p> <p>01:53 15 THE WITNESS: I have reason to believe that</p> <p>01:53 16 Uni-Ter was advising them that they were solvent and</p> <p>01:53 17 that they could continue to operate in the fashion</p> <p>01:53 18 that they had been doing so in prior years.</p> <p>01:53 19 BY MR. WILSON:</p> <p>01:53 20 Q. And what did the accountant say as of</p> <p>01:53 21 fiscal year-end 2010? Were they solvent?</p> <p>01:53 22 A. I'm unaware that the accountants ever</p> <p>01:53 23 identified that the company was not solvent.</p> <p>01:54 24 Q. And what happened on June the 30th of 2011</p> <p>01:54 25 as it relates to claims? Do you remember?</p>

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<p>01:54 1 A. As it relates to claims?</p> <p>01:54 2 Q. Yes.</p> <p>01:54 3 A. I don't recall what they did with</p> <p>01:54 4 regard to claims. I believe in response to the</p> <p>01:54 5 June 30, 2011 -- and, again, I reviewed them but I</p> <p>01:54 6 didn't bring the documents with me -- but the first</p> <p>01:54 7 Department of Insurance letter I believe resulted in</p> <p>01:54 8 the board of Lewis & Clark determining that they</p> <p>01:54 9 would no longer underwrite new business.</p> <p>01:54 10 Q. When was this?</p> <p>01:54 11 A. After the 1st. It was after the 1st. It</p> <p>01:55 12 was in response to -- if I'm remembering the board</p> <p>01:55 13 minutes correctly -- again, I don't have those in</p> <p>01:55 14 front of me.</p> <p>01:55 15 Q. The portion of the October 5, 2011, board</p> <p>01:55 16 document that's marked as Exhibit 8, which portion</p> <p>01:55 17 demonstrates it was not receiving accurate and</p> <p>01:55 18 complete information?</p> <p>01:55 19 A. I think A1 and C, where they're asking for</p> <p>01:55 20 more frequent financial reporting.</p> <p>01:55 21 Q. Where do you see that in C?</p> <p>01:55 22 A. "The board requests more frequent financial</p> <p>01:55 23 reporting to the board as discussed at the last</p> <p>01:55 24 meeting, preferably monthly."</p> <p>01:55 25 Q. Right. Do you know what the board minutes</p>	<p>01:57 1 adjustment?</p> <p>01:57 2 A. I believe there was a retrospective premium</p> <p>01:57 3 adjustment. What I don't recall is whether or not</p> <p>01:57 4 they were ever able to collect on it or not.</p> <p>01:57 5 Q. Wouldn't that be relevant to know whether</p> <p>01:57 6 or not it was profitable or not based on whether</p> <p>01:57 7 they collected the retrospective payment?</p> <p>01:57 8 A. Well, I don't think, in my experience, you</p> <p>01:57 9 can use the fact that you have the ability to</p> <p>01:58 10 post-claims underwrite, which is what a</p> <p>01:58 11 retrospective premium does, to justify entering into</p> <p>01:58 12 the liability coverage in the first place.</p> <p>01:58 13 Q. You know we're not here to have you testify</p> <p>01:58 14 to your experience when it comes to specific factual</p> <p>01:58 15 matters associated with the case such as a</p> <p>01:58 16 retrospective premium? Whether it was paid or not</p> <p>01:58 17 is factual.</p> <p>01:58 18 A. I'm just trying to answer your questions.</p> <p>01:58 19 You asked me a question about whether it mattered</p> <p>01:58 20 whether there was a retrospective premium or not,</p> <p>01:58 21 and I'm trying to answer your question. If you --</p> <p>01:58 22 Q. I could show you the minutes if you'd like</p> <p>01:58 23 to see it. Country Villas paid a \$1 million</p> <p>01:58 24 retrospective premium back to Lewis & Clark.</p> <p>01:58 25 A. What was the ultimate liability of</p>
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<p>01:56 1 had required prior to this?</p> <p>01:56 2 A. I don't believe they'd ever asked for</p> <p>01:56 3 monthly financial reporting prior to this point.</p> <p>01:56 4 Q. Do you know whether the board, in fact,</p> <p>01:56 5 told Uni-Ter how frequently they wanted the</p> <p>01:56 6 reporting to be?</p> <p>01:56 7 A. I don't, but I think this goes -- I mean,</p> <p>01:56 8 that's the very point, is they were relying on</p> <p>01:56 9 Uni-Ter to tell them when they should receive</p> <p>01:56 10 financial information. Uni-Ter's the insurance</p> <p>01:56 11 experts in the room.</p> <p>01:56 12 Q. Do you know whether or not on the 30th day</p> <p>01:56 13 of June 47 claims were filed by Country Villa, which</p> <p>01:56 14 happened to be the last day of the policy?</p> <p>01:56 15 A. My recollection was --</p> <p>01:56 16 Q. Maybe it was 49. I may be wrong.</p> <p>01:56 17 A. Country Villa is a problem all in itself</p> <p>01:56 18 that's addressed in the complaint. But Country</p> <p>01:57 19 Villa did, in fact, present a huge liability issue</p> <p>01:57 20 to Lewis & Clark. It was underpriced. It was -- it</p> <p>01:57 21 was --</p> <p>01:57 22 Q. How do you know it was underpriced?</p> <p>01:57 23 A. Well, because the premium, as I recall,</p> <p>01:57 24 doesn't match up to the losses.</p> <p>01:57 25 Q. Was there a retrospective premium</p>	<p>01:58 1 Country Villa?</p> <p>01:58 2 Q. It's not my deposition. I'm just asking</p> <p>01:58 3 about retrospective premium.</p> <p>01:58 4 A. Okay.</p> <p>01:59 5 Q. Are you aware that they filed 49 claims?</p> <p>01:59 6 If Uni-Ter followed the --</p> <p>01:59 7 A. I'm sorry.</p> <p>01:59 8 (Telephonic interruption.)</p> <p>01:59 9 BY MR. WILSON:</p> <p>01:59 10 Q. That's fine. If you need to take it,</p> <p>01:59 11 take it.</p> <p>01:59 12 A. Only if I need to replace my health</p> <p>01:59 13 insurance through some --</p> <p>01:59 14 Q. I'm sorry. If you need to take the call,</p> <p>01:59 15 go ahead.</p> <p>01:59 16 A. No. It's a spam call. It's coming from an</p> <p>01:59 17 unidentified place. When I answer them, they</p> <p>01:59 18 generally are trying to sell me health insurance.</p> <p>01:59 19 I'm sure you probably haven't received those.</p> <p>01:59 20 But anyway, the question --</p> <p>01:59 21 Q. I'm so old the government provides my</p> <p>01:59 22 insurance.</p> <p>01:59 23 A. You're a lucky man. I'm not sure they'll</p> <p>01:59 24 be providing mine.</p> <p>01:59 25 What was the question again? I apologize.</p>

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<p>01:59 1 Q. We were talking about issues that you</p> <p>01:59 2 contend were wrongful by my client. What I'm saying</p> <p>02:00 3 to you is there was a retrospective premium</p> <p>02:00 4 adjustment with Country Villas -- and I'll be glad</p> <p>02:00 5 to show you the documents. We'll take a break --</p> <p>02:00 6 that a million dollars was paid back to Lewis &</p> <p>02:00 7 Clark by Country Villas as part of the retrospective</p> <p>02:00 8 premium adjustment.</p> <p>02:00 9 A. And the question actually, if I'm</p> <p>02:00 10 remembering correctly, related to whether or not I</p> <p>02:00 11 knew there was a large influx of claims on the final</p> <p>02:00 12 day of the reporting period under the terms of the</p> <p>02:00 13 policy.</p> <p>02:00 14 The answer to that is I'm generally</p> <p>02:00 15 aware of the claims problems arising out of the</p> <p>02:00 16 Country Villas book of business that was added to</p> <p>02:00 17 Lewis & Clark.</p> <p>02:00 18 Q. And if we followed the receiver's</p> <p>02:00 19 mentality toward reserving, which means you've got</p> <p>02:00 20 to reserve for them when filed, and you had 49 new</p> <p>02:01 21 claims, what would that do to your surplus? It may</p> <p>02:01 22 require you to have more capital or surplus in to</p> <p>02:01 23 cover the reserves on these 49 newly filed claims,</p> <p>02:01 24 wouldn't it?</p> <p>02:01 25 A. It could, yes.</p>	<p>02:02 1 BY MR. WILSON:</p> <p>02:02 2 Q. At least in 2011 did Uni-Ter step up to the</p> <p>02:02 3 mat on capital contributions?</p> <p>02:02 4 MR. CEREGHINO: Form.</p> <p>02:02 5 Go ahead.</p> <p>02:02 6 THE WITNESS: Uni-Ter was one of seven</p> <p>02:02 7 entities that made cash contributions which totaled</p> <p>02:03 8 the \$2.125 million.</p> <p>02:03 9 BY MR. WILSON:</p> <p>02:03 10 Q. Uni-Ter's was the second highest capital</p> <p>02:03 11 contribution?</p> <p>02:03 12 A. Behind Oneida Bank, yes.</p> <p>02:03 13 Q. And Oneida Bank had what kind of</p> <p>02:03 14 relationship? It had a company called Bailey</p> <p>02:03 15 Haskell, didn't it?</p> <p>02:03 16 A. I believe that's correct, yes.</p> <p>02:03 17 Q. You believe that's correct. As a receiver</p> <p>02:03 18 you don't know whether Bailey Haskell was owned by</p> <p>02:03 19 Oneida and was doing the insurance, selling of</p> <p>02:03 20 policies?</p> <p>02:03 21 MR. CEREGHINO: Form.</p> <p>02:03 22 Go ahead.</p> <p>02:03 23 THE WITNESS: Bailey Haskell is severely</p> <p>02:03 24 intertwined in Lewis & Clark at multiple different</p> <p>02:03 25 levels. They are selling the Lewis & Clark</p>
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<p>02:01 1 Q. Right. And so are you then faulting</p> <p>02:01 2 Uni-Ter for saying, We have 49 new claims coming in</p> <p>02:01 3 from Country Villas. We have this occurring and we</p> <p>02:01 4 need more capital in the company?</p> <p>02:01 5 Would you fault them?</p> <p>02:01 6 MR. CEREGHINO: Foundation.</p> <p>02:01 7 Go ahead.</p> <p>02:01 8 THE WITNESS: The minutes don't bear any --</p> <p>02:01 9 don't make any connection between the cash</p> <p>02:01 10 contributions being made and the claims filed by</p> <p>02:01 11 Country Villas.</p> <p>02:02 12 BY MR. WILSON:</p> <p>02:02 13 Q. It doesn't make reference to anything,</p> <p>02:02 14 does it?</p> <p>02:02 15 A. It does not.</p> <p>02:02 16 Q. In fact, it could be just a business</p> <p>02:02 17 decision made by Lewis & Clark. Let's get greater</p> <p>02:02 18 capitalized so we can go out and increase the number</p> <p>02:02 19 of policies?</p> <p>02:02 20 MR. CEREGHINO: Foundation.</p> <p>02:02 21 Go ahead.</p> <p>02:02 22 THE WITNESS: And I don't believe that</p> <p>02:02 23 that's -- in October of 2011 I do not believe that</p> <p>02:02 24 that theory of why they would want additional cash</p> <p>02:02 25 contributions is borne out by the facts.</p>	<p>02:03 1 underwritten product. They are placing the</p> <p>02:03 2 corporate policies for Lewis & Clark as the broker</p> <p>02:04 3 for the -- I believe the D&O and E&O coverages. And</p> <p>02:04 4 they have a relationship with a board member,</p> <p>02:04 5 Mr. Stickels, I believe, as well as some</p> <p>02:04 6 relationship with Oneida Bank.</p> <p>02:04 7 BY MR. WILSON:</p> <p>02:04 8 Q. Aren't they wholly owned by Oneida Bank?</p> <p>02:04 9 A. I wouldn't be surprised to -- I didn't</p> <p>02:04 10 check on whether or not that was in fact the case in</p> <p>02:04 11 preparation for today's deposition.</p> <p>02:04 12 Q. With respect to Items 2, the multisite</p> <p>02:04 13 operators --</p> <p>02:04 14 A. Which document are we looking at now?</p> <p>02:04 15 Q. We're looking at page -- Exhibit 1. We're</p> <p>02:04 16 looking at 2(a). It says it was done without</p> <p>02:05 17 adequate information.</p> <p>02:05 18 Can you identify what information should</p> <p>02:05 19 have been provided that wasn't?</p> <p>02:05 20 A. I thought we had covered this this morning,</p> <p>02:06 21 so that answer may be more complete than the one I'm</p> <p>02:06 22 about to give you. But as it relates to 2(a),</p> <p>02:06 23 paragraphs 55 and 58 relate to the Sophia Palmer</p> <p>02:06 24 book of business, and I think my recollection was</p> <p>02:06 25 is that that book of business was merged into</p>

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<p>02:06 1 Lewis & Clark based upon the representations of 02:06 2 Uni-Ter. 02:06 3 Q. And do you contend that the representations 02:06 4 of Uni-Ter were inaccurate? 02:06 5 A. I believe that the -- I believe whatever I 02:06 6 said this morning. I think the complaint actually 02:07 7 talks about adequate information, and we felt that 02:07 8 they should have received more information about the 02:07 9 book of business than they received. 02:07 10 Q. What did they receive? 02:07 11 A. Whatever Uni-Ter gave to them. 02:07 12 Q. Do you know what it was? 02:07 13 A. I don't know that I have any better 02:07 14 understanding of what was provided to the board at 02:07 15 the board meeting on this subject than I do on the 02:07 16 Imagine Re transaction. Those documents were not 02:07 17 linked to the board minutes in the version that 02:07 18 I've seen. 02:07 19 Q. Did you ask counsel to provide those 02:07 20 documents to you in preparation for this deposition? 02:07 21 MR. CEREGHINO: Objection. It's 02:07 22 attorney-client. 02:07 23 MR. WILSON: It's not attorney-client 02:07 24 whether he asked for it. 02:07 25 MR. CEREGHINO: That's the content of our</p>	<p>02:08 1 instructing him not to answer. 02:08 2 MR. CEREGHINO: I am. That's verbalizing 02:08 3 the content of our conversation. 02:08 4 BY MR. WILSON: 02:08 5 Q. Did you ask anybody for information 02:08 6 associated with that subject? 02:08 7 MR. CEREGHINO: Besides counsel. 02:08 8 Go ahead. 02:08 9 THE WITNESS: All of my preparation for 02:08 10 this deposition were done with counsel. And all the 02:09 11 requests were made in discussions with counsel. 02:09 12 BY MR. WILSON: 02:09 13 Q. Did you review any information that was 02:09 14 presented? 02:09 15 A. By whom? 02:09 16 Q. You're contending the information presented 02:09 17 by Uni-Ter. Did you review the information that was 02:09 18 presented to the board by Uni-Ter? 02:09 19 A. I have to answer no, because I can't 02:09 20 identify what information was provided to the board 02:09 21 by Uni-Ter as it relates to this subject matter, and 02:09 22 I thought that's what I had already stated. 02:09 23 Q. You recall we talked about Donna Dalton. 02:09 24 We talked about Donna Dalton presented packets. Did 02:09 25 you make inquiry of anybody, I'd like to see the</p>
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<p>02:08 1 conversation. 02:08 2 MR. WILSON: I'm entitled to find out -- 02:08 3 MR. CEREGHINO: That's the content of our 02:08 4 conversation. 02:08 5 MR. WILSON: Can I finish mine? 02:08 6 MR. CEREGHINO: Sure. Go ahead. 02:08 7 MR. WILSON: I'm entitled to find out in 02:08 8 preparation for the deposition whether he asked for 02:08 9 something. I'm not entitled to find out if you 02:08 10 didn't give it to him for some legal reason or 02:08 11 didn't do something like this. 02:08 12 But I'm entitled to find out what he 02:08 13 asked for. 02:08 14 MR. CEREGHINO: I think you're entitled to 02:08 15 ask him whether he spoke with me and that's it. And 02:08 16 then the content is what he spoke to me about. So 02:08 17 he's not -- the objection -- 02:08 18 MR. WILSON: Are you instructing him not to 02:08 19 answer? 02:08 20 MR. CEREGHINO: About what he talked to me 02:08 21 about, yes. 02:08 22 MR. WILSON: Not whether he talked. 02:08 23 Whether he asked for the information. 02:08 24 MR. CEREGHINO: That's a -- 02:08 25 MR. WILSON: I'm just asking if you're</p>	<p>02:09 1 packet that was presented to the board prior to the 02:09 2 meeting so I could see what information was 02:09 3 presented to the board before they made the decision 02:09 4 in this regard? 02:09 5 A. To my knowledge, we haven't taken Donna 02:09 6 Dalton's deposition, and -- if you'll let me 02:09 7 finish -- I only learned that she presented those 02:10 8 documents from you today through your questioning. 02:10 9 So I don't even know that that's the case. There's 02:10 10 nothing in the minutes that identify Donna Dalton as 02:10 11 the source of information provided by Uni-Ter to the 02:10 12 board in advance, that I recall. 02:10 13 Q. So you didn't ask for anything that may 02:10 14 have been presented to the board, whether it was by 02:10 15 Donna or otherwise, on this issue? 02:10 16 MR. CEREGHINO: Form. 02:10 17 Go ahead 02:10 18 THE WITNESS: I had no reason to know of 02:10 19 its existence. 02:10 20 BY MR. WILSON: 02:10 21 Q. So do you have any basis for contending 02:10 22 that there was not adequate information if you 02:10 23 haven't looked at what the information was that was 02:10 24 presented? 02:10 25 A. I have no knowledge that any information</p>

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<p>02:10 1 was presented. So that would, in my mind, be</p> <p>02:10 2 inadequate.</p> <p>02:10 3 Q. So you don't know. And if it were</p> <p>02:10 4 presented, you can't say whether it was adequate or</p> <p>02:10 5 not because you haven't reviewed it?</p> <p>02:10 6 MR. CEREGHINO: Form.</p> <p>02:10 7 Go ahead</p> <p>02:10 8 THE WITNESS: The complaint is drafted</p> <p>02:11 9 based upon the information that was available to the</p> <p>02:11 10 receiver at the time through both the documents</p> <p>02:11 11 produced by the board and Uni-Ter when we took over</p> <p>02:11 12 the company and whatever other documents we'd</p> <p>02:11 13 obtained. I did not, and I'm not aware that those</p> <p>02:11 14 packets, as you so call them, were identified as</p> <p>02:11 15 such in the documents that we received.</p> <p>02:11 16 BY MR. WILSON:</p> <p>02:11 17 Q. So there's not a document that you can look</p> <p>02:11 18 at to say, I looked at this document and I conclude</p> <p>02:11 19 that it's inadequate?</p> <p>02:11 20 A. What's worse than that is I can't -- I</p> <p>02:11 21 can't identify that any documents that we have in</p> <p>02:11 22 our possession or had in our possession supported</p> <p>02:11 23 any of the board decisions because the documents</p> <p>02:11 24 that I recall receiving from your client at the time</p> <p>02:11 25 of the receivership did not contain the records that</p>	<p>02:13 1 you that I read every page of the marketing</p> <p>02:13 2 materials that appeared to be duplicative in a</p> <p>02:13 3 particular box. And I won't represent to you that</p> <p>02:13 4 I've read every claim file page for page.</p> <p>02:13 5 I've only identified that we received</p> <p>02:13 6 multiple boxes of underwriting files and multiple</p> <p>02:13 7 boxes of claim files. And to the extent that they</p> <p>02:13 8 relate to the proofs of claims that have been filed</p> <p>02:13 9 against this estate, I have reviewed in detail --</p> <p>02:13 10 greater detail those particular claims.</p> <p>02:13 11 Q. In paragraph 2(b) you say "Your allegation</p> <p>02:13 12 that Lewis & Clark's acceptance of multisite</p> <p>02:13 13 operators was a significant divergence from the</p> <p>02:13 14 established business model of Lewis & Clark."</p> <p>02:14 15 Is there a document that establishes the</p> <p>02:14 16 business model of Lewis & Clark?</p> <p>02:14 17 A. I believe there was attached to the</p> <p>02:14 18 complaint this management agreement that is now</p> <p>02:15 19 Exhibit 7.</p> <p>02:15 20 Q. All right.</p> <p>02:15 21 A. And --</p> <p>02:15 22 Q. Is that a business model?</p> <p>02:15 23 MR. CEREGHINO: Objection. Form.</p> <p>02:15 24 THE WITNESS: No, it's not a business</p> <p>02:15 25 model, but at least it was -- and I could be wrong.</p>
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<p>02:12 1 you seem to be asking me about. So I didn't know</p> <p>02:12 2 that they existed, which in and of itself in my mind</p> <p>02:12 3 would be inadequate.</p> <p>02:12 4 Q. How many boxes were presented to you by</p> <p>02:12 5 Uni-Ter at the time of the receivership?</p> <p>02:12 6 A. I received, I believe, 125 boxes, plus a</p> <p>02:12 7 hard drive that was represented to contain all of</p> <p>02:12 8 the -- all of the electronic correspondence or</p> <p>02:12 9 otherwise documents that had been saved</p> <p>02:12 10 electronically.</p> <p>02:12 11 Q. Did you ever learn that what the</p> <p>02:12 12 receiver has contended was missing from the hard</p> <p>02:12 13 drive was -- in fact part of it was on the hard</p> <p>02:12 14 drive and they couldn't locate it?</p> <p>02:12 15 MR. CEREGHINO: Form.</p> <p>02:12 16 Go ahead.</p> <p>02:12 17 THE WITNESS: I've not been privy to that</p> <p>02:12 18 discussion.</p> <p>02:12 19 BY MR. WILSON:</p> <p>02:12 20 Q. Did you receive the 115 or 125 boxes that</p> <p>02:13 21 were presented?</p> <p>02:13 22 A. I did.</p> <p>02:13 23 Q. In its entirety? So you read through all</p> <p>02:13 24 of them?</p> <p>02:13 25 A. I reviewed all of the boxes. I cannot tell</p>	<p>02:15 1 I've been wrong obviously a couple of times today.</p> <p>02:15 2 But the -- I thought there was reference to an</p> <p>02:15 3 Exhibit C to this management agreement that was</p> <p>02:15 4 intended to lay out the underwriting guidelines of</p> <p>02:15 5 the company, which might be considered a business</p> <p>02:15 6 plan. But it's not attached -- it wasn't attached</p> <p>02:15 7 to the document that I reviewed in preparation for</p> <p>02:15 8 this deposition and it's not attached to Exhibit 7.</p> <p>02:15 9 So I don't know if it exists or not. But --</p> <p>02:15 10 BY MR. WILSON:</p> <p>02:15 11 Q. I'm sorry. Did you ask for a copy of it?</p> <p>02:16 12 A. To my counsel -- as it relates to my</p> <p>02:16 13 counsel, I'm not going to answer that.</p> <p>02:16 14 And I don't mean to be argumentative, but</p> <p>02:16 15 I, in my capacity as assistant to the administrator,</p> <p>02:16 16 receiver, asked Uni-Ter in 2013 for all the</p> <p>02:16 17 documents that related to their administration of</p> <p>02:16 18 Lewis & Clark.</p> <p>02:16 19 Q. Who'd you ask?</p> <p>02:16 20 A. The people that were on-site.</p> <p>02:16 21 Q. Who?</p> <p>02:16 22 MR. CEREGHINO: Let him finish his answer.</p> <p>02:16 23 THE WITNESS: I had personal correspondence</p> <p>02:17 24 and communication daily with Tanya Duggan and Joanna</p> <p>02:17 25 Miller.</p>

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<p>02:17 1 BY MR. WILSON:</p> <p>02:17 2 Q. Johanna.</p> <p>02:17 3 A. Johanna. For what it's worth, I never got</p> <p>02:17 4 her name right when I was there either.</p> <p>02:17 5 There would have been -- there were</p> <p>02:17 6 meetings at the beginning of the receivership where</p> <p>02:17 7 I was present that other representatives of Uni-Ter,</p> <p>02:17 8 including Carolyn Verde and Walter Bush, who was</p> <p>02:17 9 counsel to -- Georgia counsel for Uni-Ter or U.S. RE</p> <p>02:17 10 were present, and we stated from the very beginning</p> <p>02:17 11 of this proceeding that we wanted the corporate</p> <p>02:18 12 records of Lewis & Clark and they were to have been</p> <p>02:18 13 preserved.</p> <p>02:18 14 And that was an ongoing, continuing request</p> <p>02:18 15 that, as I think you're aware, at this point in time</p> <p>02:18 16 we ultimately had to file a motion to compel Uni-Ter</p> <p>02:18 17 to turn over all the records. And we were advised</p> <p>02:18 18 by Uni-Ter, through the agents that had been</p> <p>02:18 19 identified -- Ms. Duggan primarily was our point of</p> <p>02:18 20 contact there -- that this 125 boxes represented --</p> <p>02:18 21 and the documents on the hard drive represented the</p> <p>02:18 22 totality of all of Lewis & Clark's corporate</p> <p>02:18 23 records. Claims, underwriting, accounting,</p> <p>02:18 24 everything.</p> <p>02:18 25 Q. You're not contending Walter Bush was the</p>	<p>02:22 1 standpoint, without viewing the business plan?</p> <p>02:22 2 MR. CEREGHINO: Form and foundation.</p> <p>02:22 3 Go ahead.</p> <p>02:22 4 THE WITNESS: I don't know that this was</p> <p>02:22 5 the business plan. It was never provided to me by</p> <p>02:22 6 either Uni-Ter or the Lewis & Clark representatives</p> <p>02:22 7 and I have not seen it. I have not seen it.</p> <p>02:22 8 MR. WILSON: Mark this as our next exhibit.</p> <p>02:22 9 (Exhibit 10 marked.)</p> <p>02:22 10 BY MR. WILSON:</p> <p>02:22 11 Q. Have you ever seen Exhibit Number 10, which</p> <p>02:22 12 is -- have you ever seen the document that is marked</p> <p>02:23 13 as Exhibit 10, which is the Lewis & Clark LTC Risk</p> <p>02:23 14 Retention Group, Inc., Business Plan, Amended</p> <p>02:23 15 9/11/09, with a stamp, "State of Nevada, Division of</p> <p>02:23 16 Insurance, Approved," dated 19 November 2009?</p> <p>02:24 17 A. I don't believe that that was in the</p> <p>02:24 18 records that we received from Uni-Ter or</p> <p>02:24 19 Lewis & Clark as part of the receivership.</p> <p>02:24 20 Q. Do you have any doubt that this was not in</p> <p>02:24 21 the records of the Division of Insurance, having had</p> <p>02:24 22 a stamp on it that approved it?</p> <p>02:24 23 A. It appears that it was produced by U.S. RE.</p> <p>02:24 24 As far as -- no. I mean, I'm not going to suggest</p> <p>02:24 25 to you --</p>
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<p>02:19 1 attorney of record in the receivership?</p> <p>02:19 2 A. I don't believe that's what I said. I said</p> <p>02:19 3 he attended meetings in Georgia.</p> <p>02:19 4 Q. You said he was counsel for Uni-Ter.</p> <p>02:19 5 A. He was identified as counsel for Uni-Ter.</p> <p>02:19 6 He sat with the Uni-Ter/U.S. RE employees at these</p> <p>02:19 7 initial meetings. So maybe I assumed that he was</p> <p>02:19 8 counsel for Uni-Ter.</p> <p>02:19 9 Q. I'm not saying he wasn't counsel. I said</p> <p>02:19 10 counsel in the receivership.</p> <p>02:19 11 A. And I said no, he was not. That's not what</p> <p>02:19 12 I'm saying.</p> <p>02:19 13 MR. WILSON: Let me have marked as our next</p> <p>02:19 14 exhibit, which is Exhibit 9, a document entitled</p> <p>02:19 15 "Captive Insurance Company Application Business</p> <p>02:19 16 Plan, Section 3."</p> <p>02:19 17 (Exhibit 9 marked.)</p> <p>02:19 18 BY MR. WILSON:</p> <p>02:20 19 Q. Have you ever seen that?</p> <p>02:20 20 A. I don't believe I've ever seen this</p> <p>02:21 21 document before, sir.</p> <p>02:21 22 Q. So the allegations made in the complaint</p> <p>02:21 23 that state that what Uni-Ter was doing as it relates</p> <p>02:22 24 to multisite operators was in divergence to the</p> <p>02:22 25 business plan was based, at least in your</p>	<p>02:24 1 Q. Are you questioning the authenticity of</p> <p>02:24 2 that?</p> <p>02:24 3 A. I'd have to -- as we sit here today, I have</p> <p>02:24 4 not discussed with the Department of Insurance</p> <p>02:24 5 whether or not this document was, in fact, approved</p> <p>02:24 6 on or about November 19, 2009.</p> <p>02:24 7 Q. Were you aware that the business plan of</p> <p>02:24 8 Lewis & Clark was submitted in 2004 to the Division</p> <p>02:25 9 of Insurance and again in 2009 to the Division of</p> <p>02:25 10 Insurance?</p> <p>02:25 11 A. The 2009, I don't recall -- I don't recall.</p> <p>02:25 12 There may be a reference, and I'd have to go back</p> <p>02:25 13 and look at the examination report from 2005, to --</p> <p>02:25 14 it may have referenced a business plan. I just</p> <p>02:25 15 don't recall as I'm sitting here without a document</p> <p>02:25 16 in front of me.</p> <p>02:25 17 Q. Did you ask anybody at the Division of</p> <p>02:25 18 Insurance, Can I see a copy of the business plan for</p> <p>02:25 19 Lewis & Clark?</p> <p>02:25 20 A. I did not.</p> <p>02:25 21 Q. So when you said that what was occurring</p> <p>02:25 22 was divergent with the business plan, what business</p> <p>02:25 23 plan are you talking about?</p> <p>02:25 24 A. The one that was articulated in the minutes</p> <p>02:26 25 of the Lewis & Clark board.</p>

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<p>02:26 1 Q. What was articulated?</p> <p>02:26 2 A. That they were going to be entering into</p> <p>02:26 3 the nursing home long-term-care liability field in</p> <p>02:26 4 certain states. And it was my understanding that</p> <p>02:26 5 they were focused on smaller operations in areas</p> <p>02:26 6 where they thought they could be profitable.</p> <p>02:26 7 Q. "Smaller operations" means what size?</p> <p>02:26 8 A. I don't know that I determined what they</p> <p>02:26 9 thought was small -- met that definition. I think</p> <p>02:26 10 their underwriters had authority to do what their</p> <p>02:26 11 underwriters did. So I'm assuming that they</p> <p>02:26 12 complied with the -- that the underwriters,</p> <p>02:27 13 Uni-Ter's underwriters, complied with the business</p> <p>02:27 14 plan as identified to them or by them.</p> <p>02:27 15 Q. Was the business plan a goal or a</p> <p>02:27 16 requirement, to your knowledge?</p> <p>02:27 17 A. Since I've never seen it before, I don't</p> <p>02:27 18 know that it was a goal or a requirement.</p> <p>02:27 19 MR. CEREGHINO: Real quick, form.</p> <p>02:27 20 But go ahead.</p> <p>02:27 21 BY MR. WILSON:</p> <p>02:27 22 Q. You've talked about a divergence, in 2(b)</p> <p>02:27 23 of Exhibit I, from the established business model.</p> <p>02:27 24 To be clear for me, is there a document that is the</p> <p>02:27 25 established business model that you're referring to?</p>	<p>02:31 1 experiencing losses.</p> <p>02:31 2 Q. They were new people, new entities brought</p> <p>02:31 3 aboard?</p> <p>02:31 4 A. I believe so. I don't think that they were</p> <p>02:31 5 originally authorized to go into some of those</p> <p>02:31 6 states, is my recollection. Even from looking at</p> <p>02:31 7 the business plan that you gave me for the first</p> <p>02:31 8 time only limits it to about 12 states. And I know</p> <p>02:31 9 by 2010, 2011, they were operating in a number of</p> <p>02:31 10 other states.</p> <p>02:31 11 Q. Isn't it accurate that Lewis & Clark was</p> <p>02:31 12 operating in the northwest, Henry Hudson was</p> <p>02:31 13 operating in the northeast, and the two merged and</p> <p>02:31 14 that was one of the reasons they merged, so they</p> <p>02:32 15 could increase the geographic area?</p> <p>02:32 16 MR. CEREGHINO: Objection. Form and</p> <p>02:32 17 foundation.</p> <p>02:32 18 Go ahead.</p> <p>02:32 19 BY MR. WILSON:</p> <p>02:32 20 Q. That's what really happened; isn't that</p> <p>02:32 21 accurate?</p> <p>02:32 22 A. They did merge with Henry Hudson. I'm not</p> <p>02:32 23 questioning that. Why they merged with Henry Hudson</p> <p>02:32 24 I'm not in a position to say at this point in time.</p> <p>02:32 25 Q. You have not reviewed the documents that</p>
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<p>02:27 1 A. Beyond -- I'm not aware of a specific</p> <p>02:27 2 document that was a business model.</p> <p>02:27 3 Q. In Number (c) of 2 it says, "Your</p> <p>02:27 4 allegation that the principal reason for</p> <p>02:27 5 Lewis & Clark's net losses in the first three</p> <p>02:27 6 quarters of 2011 was because the Multisite Operators</p> <p>02:28 7 had passed on significant losses to Lewis & Clark in</p> <p>02:28 8 the two policy years from 2009 to 2011."</p> <p>02:28 9 A. What paragraph are you reading to me from?</p> <p>02:28 10 Q. 2(b) -- 2(c) in Exhibit I.</p> <p>02:28 11 Which multisite operators are you</p> <p>02:28 12 referring to?</p> <p>02:28 13 A. That's why I'm looking at the complaint,</p> <p>02:28 14 because it references paragraph 101 of the</p> <p>02:28 15 complaint.</p> <p>02:30 16 The multisite operators in this paragraph,</p> <p>02:30 17 and it's unclear from the complaint, but I think is</p> <p>02:30 18 in reference to operations like Country Villa that</p> <p>02:30 19 were owned by a single entity and operating in</p> <p>02:30 20 multiple locations. But there were also, as I</p> <p>02:30 21 recall, some other -- by 2010, 2011, they were</p> <p>02:31 22 underwriting a number of corporately owned</p> <p>02:31 23 facilities that operate from multiple sites in</p> <p>02:31 24 California, New York, and I want to say Oregon,</p> <p>02:31 25 maybe even Washington state, and they were</p>	<p>02:32 1 would reflect that; correct?</p> <p>02:32 2 A. Not in quite some time.</p> <p>02:32 3 Q. You're aware --</p> <p>02:32 4 A. They were not documents that I reviewed</p> <p>02:32 5 specifically in preparation for this deposition</p> <p>02:32 6 today.</p> <p>02:32 7 Q. Although you know we're going to ask about</p> <p>02:32 8 multisite operators that caused these problems, you</p> <p>02:32 9 cannot identify which multisite operators are being</p> <p>02:32 10 referred to in the complaint, can you?</p> <p>02:32 11 MR. CEREGHINO: Objection. Form.</p> <p>02:32 12 Go ahead.</p> <p>02:32 13 THE WITNESS: Beyond Country Villas and the</p> <p>02:32 14 multisite operators in New York and Oregon, and to</p> <p>02:32 15 the extent that we've already defined Sophia Palmer</p> <p>02:33 16 as a multisite operator, beyond that, those are the</p> <p>02:33 17 ones that quickly come to mind as I sit here today.</p> <p>02:33 18 BY MR. WILSON:</p> <p>02:33 19 Q. Sophia Palmer is not a multisite operator,</p> <p>02:33 20 is it?</p> <p>02:33 21 A. It was described that way in the complaint.</p> <p>02:33 22 Q. I know it was. But multisite operators are</p> <p>02:33 23 long-term facilities -- care facilities, entities</p> <p>02:33 24 like that, that operate at a number of sites;</p> <p>02:33 25 correct?</p>

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<p>02:33 1 A. That's the way you've defined it in your 02:33 2 exhibit -- 02:33 3 Q. I'm asking you if that is correct. How do 02:33 4 you define multisite operators? 02:33 5 A. I think in our complaint we defined it both 02:33 6 of the ways I just described. Where there is a 02:33 7 common corporate owner -- 02:33 8 Q. Right? 02:33 9 A. -- operating in multiple sites as a 02:33 10 different facility. So you went to Jonesville 02:34 11 versus Smithville. 02:34 12 Q. Got you. I understand that. Next? 02:34 13 A. And we also described the Sophia Palmer as 02:34 14 a multisite operator in the complaint that we talked 02:34 15 about earlier. 02:34 16 Q. Yes. 02:34 17 A. Now, whether or not -- whether or not that 02:34 18 meets your definition or is the appropriate way to 02:34 19 describe that book of business that was merged from 02:34 20 Sophia Palmer -- so the Sophia Palmer book of 02:34 21 business includes a number of different insureds, 02:34 22 nurses, who were located in different locations 02:34 23 around the state of Florida. 02:34 24 Q. Multisite operators were not individual 02:34 25 nurses; correct?</p>	<p>02:36 1 MR. CEREGHINO: Form. 02:36 2 Go ahead. 02:36 3 THE WITNESS: I didn't get into the -- I 02:36 4 believe that those policies of Sophia Palmer are 02:36 5 issued to nurses based upon the location with 02:36 6 which their practice was located, and that the 02:36 7 nurses might have had other coverage at a different 02:36 8 site -- i.e., they were working at a doctor's office 02:36 9 and a hospital -- and the policies were written for 02:36 10 the specific site/risk that was being underwritten. 02:37 11 BY MR. WILSON: 02:37 12 Q. Your testimony is Sophia Palmer risks were 02:37 13 written by site, not by individuals? 02:37 14 MR. CEREGHINO: Form. 02:37 15 Go ahead. 02:37 16 THE WITNESS: They were issued to the 02:37 17 individual nurses, if that's your question. 02:37 18 BY MR. WILSON: 02:37 19 Q. Right. And you may have a freelance nurse, 02:37 20 a nurse that goes to one nursing home today and 02:37 21 another nursing home another day and go to a 02:37 22 personal residence another day; correct? 02:37 23 A. Yes. I mean, the type of nurses that were 02:37 24 underwritten by the Sophia Palmer business were not 02:37 25 limited to nurses that were operating at nursing</p>
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<p>02:34 1 MR. CEREGHINO: Objection. Form. 02:34 2 Go ahead. 02:34 3 THE WITNESS: I think I've answered that 02:34 4 question. The nurses operate from multiple 02:35 5 different sites. For purposes of our complaint, we 02:35 6 may have overly broadly defined the Sophia Palmer 02:35 7 book of business as a multi -- what is the word 02:35 8 now? -- multisite operation. 02:35 9 But I think what we're talking about is 02:35 10 the book of business of Sophia Palmer that has 02:35 11 multiple policyholders operating from different 02:35 12 locations. And as we discussed earlier, we didn't 02:35 13 believe that that book of business was underwritten 02:35 14 by Lewis & Clark or -- I just don't want to 02:35 15 misstate. What I said before I stand by, with 02:35 16 regard to Sophia Palmer. 02:35 17 BY MR. WILSON: 02:35 18 Q. Sophia Palmer were individually written 02:35 19 policies; correct? They were not by site. They 02:35 20 were by person. 02:36 21 A. Okay. 02:36 22 Q. Is that correct? A nurse wants \$50,000, a 02:36 23 hundred thousand dollars' worth of coverage, 02:36 24 applies, and a policy is issued. Isn't that the way 02:36 25 it happened?</p>	<p>02:37 1 homes. 02:37 2 Q. And they were each individual policies? 02:37 3 MR. CEREGHINO: Form. 02:37 4 Go ahead. 02:37 5 BY MR. WILSON: 02:37 6 Q. Issued to the individual. 02:37 7 A. They were issued to the nurse. 02:37 8 Q. And with respect to the long-term-care 02:37 9 facilities, they were issued to the facility 02:37 10 itself; correct? 02:37 11 A. Or their ownership company, correct. 02:37 12 Q. A parent may have, as you say, 14 02:38 13 long-term-care facilities and may have a policy 02:38 14 covering all 14? 02:38 15 A. They might. Or they might have 14 separate 02:38 16 policies on each site. 02:38 17 MR. WILSON: Let's take a break. 02:38 18 MR. CEREGHINO: Sure. 02:38 19 THE VIDEOGRAPHER: This is the end of Disc 02:38 20 Number 3. Going off the record. The time, 1435. 02:38 21 We're off the record. 02:38 22 (A break was taken.) 02:51 23 THE VIDEOGRAPHER: We're back on the 02:51 24 record. This is the beginning of Disc Number 4 in 02:51 25 today's videographed deposition of 30(b)(6) witness</p>

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<p>02:51 1 of Commissioner of Insurance for the State of 02:51 2 Nevada. The time as indicated on the video 02:51 3 screen, 1448. 02:51 4 BY MR. WILSON: 02:51 5 Q. Let me ask one more preliminary question I 02:51 6 think I know the answer to but I want to clarify it. 02:51 7 You had testified, I believe, that you were 02:51 8 the most knowledgeable person on all these subject 02:51 9 matters contained in the Exhibit Number 1, the 02:51 10 deposition notice? 02:51 11 A. To the best of my knowledge, I am, yes. 02:51 12 Q. So I'm not going to ask you on each 02:51 13 question is there someone more knowledgeable than 02:52 14 you. I can take it that you are the person most 02:52 15 knowledgeable on all of these items? 02:52 16 A. That's correct. 02:52 17 Q. Let's go to Exhibit 1, 3(a). It 02:52 18 says, "Uni-Ter's conduct, including, but not 02:52 19 limited to, your allegation that Uni-Ter UMC, 02:52 20 through its employees, negligently misrepresented 02:52 21 the ... financial condition of L&C including the 02:52 22 level of losses and LAE as set forth in paragraph 02:52 23 242 of the Complaint." 02:52 24 I'm looking at paragraph 242 and I don't 02:52 25 see where there's any details that set forth what</p>	<p>02:54 1 that allegation? 02:55 2 A. I believe that we've identified a number 02:55 3 of -- I believe the complaint speaks for what it 02:55 4 says, that there are a number of reports that 02:55 5 showed substantial growth of Lewis & Clark's losses 02:55 6 in late 2011. 02:55 7 Q. What reports? 02:55 8 A. Including, but not limited to, the Praxis 02:55 9 and the Fishingier reports. I assume those are some 02:55 10 of the reports that are referenced here. 02:55 11 Q. I want to know what is the receiver 02:55 12 referring to in paragraph 244, which reports? 02:55 13 A. Well, there were -- they're not attached to 02:55 14 the complaint. I haven't reviewed them specifically 02:55 15 for today, but there were reports that we've talked 02:55 16 about that show that the reserves and the losses of 02:55 17 Lewis & Clark were escalating in that period of 02:55 18 time. They were presented not only to us, but even 02:56 19 the Department of Insurance in their letters of 2010 02:56 20 and 2011 recognized that the losses presented are 02:56 21 escalating, growing, as outlined in the complaint. 02:56 22 And I think it's our belief that those losses are, 02:56 23 in fact, understated. 02:56 24 Q. What's the basis for your belief that 02:56 25 they're understated?</p>
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<p>02:52 1 the misrepresentation was. Do you have any factual 02:52 2 basis to support the proposition or allegation that 02:52 3 Uni-Ter UMC negligently misrepresented the specific 02:52 4 financial condition of Lewis & Clark, including the 02:53 5 level of losses and LAE? 02:53 6 A. Is this beyond the discussion we've already 02:53 7 had about reserving from earlier today? 02:53 8 Q. I'm just asking what's referred to here. 02:53 9 You can incorporate that. However you want to do 02:53 10 it. 02:53 11 A. I think that's at least part of it. And 02:53 12 that's probably at a minimum what we were thinking 02:53 13 of with regard to this count when the complaint was 02:53 14 filed. 02:53 15 Q. Do you have a time period that you're 02:53 16 referring to? 02:53 17 A. I think -- we've already determined or at 02:54 18 least I had thought I stated we're talking generally 02:54 19 about 2010 through the conclusion of Lewis & Clark's 02:54 20 existence. 02:54 21 Q. Go to 3(b), "Your allegation that Uni-Ter 02:54 22 did not present all relevant and accurate 02:54 23 information concerning the financial condition of 02:54 24 L&C to the Board as set forth in paragraph 244." 02:54 25 What factual basis do you have to support</p>	<p>02:56 1 A. Well, because those financial statements 02:56 2 reported losses of a certain level that continued to 02:56 3 grow over the following year and a half to the point 02:56 4 that this company was placed into liquidation. 02:56 5 Q. Do you know why they grew? 02:56 6 A. I could speculate as to why they grew. 02:56 7 We've discussed one of the reasons in the reserving 02:57 8 practices of the company earlier today. But I 02:57 9 assume that they also grew based upon newly reported 02:57 10 claims on policies. The Country Villas losses that 02:57 11 came in as that program was concluded were 02:57 12 substantial. So -- and that's all in this time 02:57 13 frame. 02:57 14 Q. Do you blame all the losses that you've 02:57 15 described in this paragraph on Uni-Ter? 02:57 16 A. This particular paragraph relates to a 02:57 17 claim that is only focused on Uni-Ter UMC. But the 02:57 18 facts that support this claim may well be addressed 02:57 19 in other parts of the complaint as it relates to 02:58 20 other defendants. 02:58 21 Q. For example, a Country Villa case could go 02:58 22 south because of a bad jury verdict, couldn't it, as 02:58 23 a possibility? 02:58 24 A. The list is long of why claims reserves 02:58 25 don't match up with ultimate claim liability. A bad</p>

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<p>02:58 1 jury verdict -- and there was one of those in the 02:58 2 Country Villa -- one or more of those in the Country 02:58 3 Villa book of business, as I recall. You know, 02:58 4 Country Villa is a unique animal unto itself. The 02:58 5 whole idea that they had their own insurance 02:58 6 adjuster on their staff. They didn't report to 02:58 7 Uni-Ter, and thus to Lewis & Clark, with any degree 02:58 8 of regularity. And they -- and I don't know if 02:58 9 it's -- I don't know -- at least there was 02:59 10 speculation in the Uni-Ter documents that there was 02:59 11 maybe some kind of an insider relationship between 02:59 12 this attorney -- 02:59 13 Q. Garcia? 02:59 14 A. I believe that's his name. 02:59 15 -- who was on the payroll of Country 02:59 16 Villas. In fact, they made a push at one point in 02:59 17 time, didn't they, to try and get him on Uni-Ter's 02:59 18 payroll too? But that he was -- he was awfully 02:59 19 fiendly, if not -- I mean, the documents don't 02:59 20 suggest that he was conspiring with the plaintiffs' 02:59 21 attorneys as I recall, but they may have gone that 02:59 22 far. You're more familiar with LA County than I am. 02:59 23 Q. There were some issues with Mr. Garcia and 02:59 24 the way he handled it. In his view wasn't there a 02:59 25 California law as to whether he was to report to the</p>	<p>03:02 1 you the broker of record agreement between U.S. RE 03:02 2 and Lewis & Clark. We'll mark that as our next 03:02 3 exhibit, which is Exhibit 11. 03:02 4 (Exhibit 11 marked.) 03:03 5 THE WITNESS: What was your question? 03:03 6 BY MR. WILSON: 03:03 7 Q. The allegation was "U.S. RE acted as 03:03 8 the agent of Lewis & Clark, as set forth in 03:03 9 paragraph 82." 03:03 10 I'm trying to find out the factual basis 03:03 11 for your contention or allegation that U.S. RE was 03:03 12 the agent for Lewis & Clark. 03:03 13 A. Well, I think the Exhibit 11 -- and I 03:03 14 appreciate you sharing the document with me -- I've 03:03 15 seen this document previously, but this is the 03:03 16 document that states that U.S. RE not only is 03:03 17 agent -- 03:03 18 Q. Where does it say it's agent? 03:04 19 A. -- in the -- if you'll let me finish. 03:04 20 Q. I apologize. 03:04 21 A. -- in the general sense, but I think they 03:04 22 are the exclusive reinsurance intermediary and 03:04 23 broker for Lewis & Clark. 03:04 24 Q. No question about that. The question 03:04 25 is: Where does it say agent?</p>
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<p>03:00 1 insurance company or he was solely to report to the 03:00 2 insured? 03:00 3 A. That tri-part relationship that all defense 03:00 4 attorneys deal with. But whether or not he was the 03:00 5 defense attorney -- yeah, there's a whole bunch of 03:00 6 issues that are sort of rolled into -- and there's 03:00 7 several documents that I've had an opportunity to 03:00 8 review over time that address Country Villas and 03:00 9 Garcia and the causes for those spiraling losses. 03:00 10 Q. Are you aware if one of the head of nursing 03:00 11 of the homes contracted to kill her husband and that 03:00 12 became public and they had some adverse verdicts or 03:00 13 adverse settlements because of that? 03:00 14 A. In the Country Villas book? 03:00 15 Q. No. In a different nursing home. 03:00 16 A. If I knew about that, I have forgotten 03:00 17 that. It's not nearly as -- 03:01 18 Q. As egregious as Country Villas? 03:01 19 A. As memorable, I guess, as what happened in 03:01 20 Country Villas. 03:01 21 Q. Let's go to paragraph 4(a), that U.S. RE 03:01 22 acted as an agent for Lewis & Clark. 03:01 23 What factual basis do you have to support 03:01 24 that U.S. RE was the agent of Lewis & Clark? 03:02 25 MR. WILSON: Before you answer let me show</p>	<p>03:04 1 A. It doesn't say agent. And I don't know why 03:04 2 it shorthanded exclusive reinsurance intermediary 03:04 3 and broker with the word "agent." 03:04 4 And maybe an unsophisticated person in the 03:04 5 insurance would not recognize that there's a 03:04 6 distinction between an intermediary and a broker and 03:04 7 an agent as that term is used within the regulatory 03:04 8 context. 03:04 9 Q. Is it the position of the receiver that 03:04 10 U.S. RE was the agent of Lewis & Clark even though 03:04 11 agent is not referenced in the broker of record 03:04 12 letter agreement? 03:04 13 MR. CEREGHINO: Form. 03:04 14 Go ahead. 03:04 15 THE WITNESS: I think -- the complaint, 03:05 16 again, speaks for itself. But I think the term 03:05 17 "agent" as used in paragraph 82 is in the broad 03:05 18 legal context of agency and agent, not the insurance 03:05 19 parlance of agent being somebody that represents the 03:05 20 insurance company to potential insureds versus 03:05 21 reinsurance intermediary and broker who is the agent 03:05 22 for the company as it relates to the underwriters at 03:05 23 Lloyd's or some other reinsurance entity. 03:05 24 BY MR. WILSON: 03:05 25 Q. If you look at the paragraph 82, it says</p>

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<p>03:05 1 "U.S. RE acted as the agent of Lewis & Clark."</p> <p>03:05 2 What actions did U.S. RE engage in, to your</p> <p>03:05 3 knowledge, that would cause the -- to support the</p> <p>03:06 4 allegation that it was the agent of Lewis & Clark?</p> <p>03:06 5 A. Well, we talked about the commutation</p> <p>03:06 6 that they recommended this morning in the minutes</p> <p>03:06 7 between Lewis & Clark and Imagine Re. U.S. RE was</p> <p>03:06 8 directly involved and was included in the board</p> <p>03:06 9 minutes that we talked about. I have no reason to</p> <p>03:06 10 believe, based on my role and capacity here today,</p> <p>03:06 11 that any other reinsurance intermediary or broker</p> <p>03:06 12 other than U.S. RE placed reinsurance coverage for</p> <p>03:06 13 Lewis & Clark during their entire -- during the life</p> <p>03:06 14 of the company.</p> <p>03:06 15 Q. What difference does that make?</p> <p>03:06 16 A. Well, you asked me a question if they --</p> <p>03:07 17 what documentation have I seen or what is my</p> <p>03:07 18 knowledge or understanding of whether they acted as</p> <p>03:07 19 agent for Lewis & Clark. And U.S. RE is the broker</p> <p>03:07 20 for Lewis & Clark in its attempts to place</p> <p>03:07 21 reinsurance coverage.</p> <p>03:07 22 Q. We don't disagree it's a broker. But do</p> <p>03:07 23 you have any basis that it's the, quote, agent, as</p> <p>03:07 24 well as broker?</p> <p>03:07 25 MR. CEREGHINO: Form.</p>	<p>03:09 1 breached that agreement.</p> <p>03:09 2 A. As I interpret paragraph 92 and 265,</p> <p>03:10 3 "syndicates" to me would suggest Lloyd's was</p> <p>03:10 4 involved, and I thought some of these coverages were</p> <p>03:10 5 placed with Lloyd's. But I think the issue -- and I</p> <p>03:10 6 just don't recall specific syndicates.</p> <p>03:10 7 What I think is articulated in paragraph 92</p> <p>03:10 8 and in 265 is that, at least as it relates to</p> <p>03:10 9 coverage years 2004 through 2008, that the</p> <p>03:11 10 reinsurance placed was -- how do I say this? -- the</p> <p>03:11 11 reinsurance placed in those early years was not</p> <p>03:11 12 penetrated because of the levels established for the</p> <p>03:11 13 retention points, is what's being articulated in the</p> <p>03:11 14 facts. 92 is a factual paragraph, and to some</p> <p>03:11 15 degree 265 is as well, in relation to the claim</p> <p>03:11 16 that's articulated as it relates to U.S. RE.</p> <p>03:12 17 Q. Let's take the first sentence of 92.</p> <p>03:12 18 "U.S. RE intentionally failed to obtain reinsurance</p> <p>03:12 19 through syndicates as required under the U.S. RE</p> <p>03:12 20 Agreement."</p> <p>03:12 21 Are there any syndicates required under the</p> <p>03:12 22 U.S. RE agreement, which is Exhibit Number 11?</p> <p>03:12 23 A. I thought there are not specific</p> <p>03:12 24 insurers -- reinsurers that are required under this</p> <p>03:12 25 particular Exhibit 11. But it is my recollection</p>
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<p>03:07 1 Go ahead.</p> <p>03:07 2 THE WITNESS: I explained my understanding</p> <p>03:07 3 of the use of "agent" in the complaint as being</p> <p>03:07 4 related to agency in the broader legal sense, not in</p> <p>03:07 5 the insurance parlance.</p> <p>03:07 6 BY MR. WILSON:</p> <p>03:07 7 Q. If you go over to paragraph 11(a) of</p> <p>03:07 8 Exhibit 1, which is page 8 of 9, it says, "U.S. RE's</p> <p>03:07 9 handling of reinsurance for Lewis & Clark, including</p> <p>03:07 10 your allegations that U.S. RE failed to obtain</p> <p>03:07 11 reinsurance through syndicates as required under the</p> <p>03:08 12 U.S. RE Agreement as set forth in paragraphs 92 and</p> <p>03:08 13 265."</p> <p>03:08 14 What syndicates are set forth in the</p> <p>03:08 15 U.S. RE agreement that U.S. RE failed to honor or</p> <p>03:08 16 obtain insurance through?</p> <p>03:08 17 A. Are you looking at 11(a)?</p> <p>03:08 18 Q. Yes.</p> <p>03:08 19 A. All right.</p> <p>03:08 20 Q. Paragraph 92 talks about "U.S. RE</p> <p>03:08 21 intentionally failed to obtain reinsurance through</p> <p>03:08 22 syndicates as required under the U.S. RE Agreement."</p> <p>03:08 23 And I'm trying to find out where in the</p> <p>03:08 24 U.S. RE agreement it was required to obtain</p> <p>03:09 25 insurance through specific syndicates and how it</p>	<p>03:12 1 that there are other subsequent arrangements between</p> <p>03:12 2 Lewis & Clark Risk Retention Group and U.S. RE.</p> <p>03:13 3 Q. Do you have an understanding this agreement</p> <p>03:13 4 has been modified?</p> <p>03:13 5 A. Yes. Modified in the sense that it is my</p> <p>03:13 6 understanding that in 2003 U.S. RE was not licensed</p> <p>03:13 7 by the State of Nevada as a reinsurance broker --</p> <p>03:13 8 Q. It became licensed?</p> <p>03:13 9 A. -- and intermediary, and subsequently</p> <p>03:13 10 became licensed after that was called to the</p> <p>03:13 11 attention of either Lewis & Clark or U.S. RE by the</p> <p>03:13 12 Department of Insurance. I think that was the</p> <p>03:13 13 outcome of one of those examination reports that you</p> <p>03:13 14 directed me to in preparation for today.</p> <p>03:13 15 But the answer to your question is -- to</p> <p>03:13 16 the extent I can answer it, is that there are</p> <p>03:14 17 reinsurance agreements between Lewis & Clark and the</p> <p>03:14 18 reinsurers obtained by U.S. RE during that period of</p> <p>03:14 19 time that were syndicates.</p> <p>03:14 20 Q. The allegation is that "U.S. RE</p> <p>03:14 21 intentionally failed to obtain reinsurance through</p> <p>03:14 22 syndicates as required under the U.S. RE Agreement."</p> <p>03:14 23 Do you see anywhere -- do you have any</p> <p>03:14 24 knowledge that there is a requirement that U.S. RE</p> <p>03:14 25 reinsure through a particular syndicate?</p>

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<p>03:14 1 A. No. And I don't know that I agree with you 03:14 2 that that's what that sentence says. 03:14 3 Q. Well, what does it mean, as you 03:14 4 understand it? 03:14 5 A. I think I just described what I interpreted 03:14 6 that paragraph to mean. You know, we parse single 03:14 7 sentences out of particular portions of a pleading, 03:15 8 and I think you can't read that sentence in 03:15 9 isolation from the rest of the sentence any more 03:15 10 than you can read it in isolation from the preceding 03:15 11 paragraphs that state a series of factual bases. 03:15 12 And I think I've explained my interpretation of that 03:15 13 paragraph as it relates to syndicates, U.S. RE, and 03:15 14 U.S. RE's role in obtaining the reinsurance 03:15 15 coverage. 03:15 16 Q. You would agree that there's no syndicates 03:15 17 required to be used by U.S. RE in the engagement 03:15 18 letter? 03:15 19 MR. CEREGHINO: Form, but go ahead. 03:15 20 THE WITNESS: U.S. RE is the exclusive 03:16 21 broker and they have complete and full authority to 03:16 22 negotiate the placement of reinsurance. 03:16 23 BY MR. WILSON: 03:16 24 Q. Right. 03:16 25 A. That would include syndicates as well as</p>	<p>03:17 1 reinsurance agreements for that period of time. 03:17 2 Q. And they say that U.S. RE has to obtain 03:17 3 insurance through these syndicates? 03:17 4 A. I believe the -- do you have the 03:17 5 reinsurance agreements from '04 through '08? 03:18 6 Q. We know that U.S. RE was a broker of 03:18 7 record; correct? 03:18 8 A. I agree. 03:18 9 Q. And that U.S. RE had the exclusive right to 03:18 10 place reinsurance? 03:18 11 A. Exactly. 03:18 12 Q. And U.S. RE would present to the board of 03:18 13 directors recommendations on reinsurance; correct? 03:18 14 A. Yes. They have to -- the company has to 03:18 15 agree to the reinsurance agreement. 03:18 16 Q. Right. And that U.S. RE presented more 03:18 17 than one level of deductible to the company. Are 03:18 18 you aware of that? 03:18 19 A. I would be surprised if they didn't give 03:18 20 them alternatives. 03:18 21 Q. And that if the -- if U.S. RE placed a 03:18 22 lower level of deductible with the reinsurance, that 03:18 23 would benefit U.S. RE, wouldn't it? 03:18 24 MR. CEREGHINO: Form. 03:18 25 ///</p>
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<p>03:16 1 reinsurance companies. So -- 03:16 2 Q. I'm sorry. Go ahead. 03:16 3 A. But what I can't agree with you on is that 03:16 4 this is the -- I mean, this is not attached to the 03:16 5 complaint as it relates to paragraph 92 or 265. And 03:16 6 so I don't know that this is even the -- this is a 03:16 7 broker letter of appointment. This is not 03:16 8 necessarily -- I don't believe this is even the 03:16 9 agreement that we're talking about in paragraph 92. 03:16 10 And I don't know what agreement we're talking about. 03:16 11 Q. That's all I'm asking. I don't see it 03:16 12 in the U.S. RE agreement. I want to know what 03:16 13 agreement you're talking about in paragraph 92 so 03:17 14 I can defend these, quote, intentional acts of 03:17 15 U.S. RE. What agreement? 03:17 16 MR. CEREGHINO: Form. 03:17 17 Go ahead. 03:17 18 THE WITNESS: And as I've stated, I 03:17 19 believe, in the context of paragraph 92 and 265, 03:17 20 which are referenced in the notice, that that 03:17 21 relates to the reinsurance agreements placed by 03:17 22 U.S. RE that covered the years 2004 through 2008. 03:17 23 BY MR. WILSON: 03:17 24 Q. And there's an agreement that states that? 03:17 25 A. I assume there's -- yeah, there's</p>	<p>1 BY MR. WILSON: 03:18 2 Q. Their commission would be higher, their 03:18 3 revenue would be higher, because they get a 03:18 4 commission on percentage of the premium; correct? 03:19 5 MR. CEREGHINO: Same. 03:19 6 Go ahead. 03:19 7 THE WITNESS: I don't know that I 03:19 8 disagree with that generally. I don't know that 03:19 9 that's the specific agreement that they have with 03:19 10 Lewis & Clark. 03:19 11 But if you'll let me answer the -- and this 03:19 12 is why I think that, at least in these paragraphs, 03:19 13 it's my recollection that syndicates and Lloyd's 03:19 14 during the '04 through '08 period of time were -- 03:19 15 and if not through Lloyd's, then through other 03:19 16 syndicates that weren't on Lloyd's, were involved in 03:19 17 the reinsurance program that U.S. RE brought to 03:19 18 Lewis & Clark under the terms of their exclusive 03:19 19 reinsurance brokerage letter. 03:19 20 BY MR. WILSON: 03:19 21 Q. The higher the deductible for reinsurance, 03:19 22 the lower the reinsurance premium; isn't that 03:19 23 correct? 03:19 24 A. You and I understand that. The question is 03:20 25 was that explained to the directors of Lewis & Clark</p>

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<p>03:20 1 sufficiently that they could make an informed 03:20 2 decision about it. 03:20 3 Q. And you'd have to look at the memorandum 03:20 4 that went to them? 03:20 5 A. Which was not attached to the minutes that 03:20 6 I reviewed on the subject matter. 03:20 7 Q. But could have been very well part of the 03:20 8 packet that you didn't review, correct? 03:20 9 MR. CEREGHINO: Form. 03:20 10 THE WITNESS: I think that's consistent 03:20 11 with what I've covered with you today in a number of 03:20 12 circumstances, yes, sir. 03:20 13 BY MR. WILSON: 03:20 14 Q. Now -- 03:20 15 A. But it wasn't in the documents that I -- it 03:20 16 wasn't in the documents that I had to evaluate these 03:20 17 claims. 03:20 18 Q. But you didn't ask for those documents, 03:20 19 did you? 03:20 20 MR. CEREGHINO: Form. 03:20 21 Go ahead. 03:20 22 THE WITNESS: No, I did ask for those 03:20 23 documents. 03:20 24 BY MR. WILSON: 03:20 25 Q. Did you ask for the documents, in</p>	<p>03:22 1 THE WITNESS: I have asked for them from 03:22 2 the parties both before the institution of this 03:22 3 litigation and I believe as part of this litigation. 03:22 4 I did not receive them in advance -- any such 03:22 5 document. If you've got one you want me to look at, 03:22 6 I'll be glad to do that. But I did not receive a 03:22 7 document, as you described, to review in advance of 03:22 8 this deposition. It wasn't attached to the notice, 03:22 9 and it's not attached to the complaint, nor has -- 03:22 10 to my knowledge, has it been produced as an 03:22 11 attachment to any pleading in the two thousand 03:22 12 and -- the director and officer and Uni-Ter asset 03:22 13 recovery litigation, which is why we're here today. 03:23 14 BY MR. WILSON: 03:23 15 Q. Have you asked anybody, I'd like to see in 03:23 16 preparation for my deposition that's going to be 03:23 17 taken today any memorandum that went to the board of 03:23 18 directors by U.S. RE as it relates to reinsurance? 03:23 19 MR. CEREGHINO: Form. 03:23 20 Go ahead. 03:23 21 THE WITNESS: The answer to that question 03:23 22 is yes. About three minutes ago I asked you if you 03:23 23 had a copy of a memorandum, and I have not been 03:23 24 provided it. Other than that, I have not asked, 03:23 25 outside of the standing objection that I believe my</p>
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<p>03:20 1 preparation for this deposition, that would support 03:20 2 the allegations set forth in 92 that certain 03:21 3 syndicates we didn't use were supposed to be used? 03:21 4 MR. CEREGHINO: Form. 03:21 5 Go ahead. 03:21 6 BY MR. WILSON: 03:21 7 Q. Did you? 03:21 8 A. I'm talking about in your question prior to 03:21 9 that. And we've covered this ground. I asked for 03:21 10 the documents that I asked for and received and I 03:21 11 think the record is clear on. And those discussions 03:21 12 that I had with the attorneys are what they are. 03:21 13 I'm referencing, and when you offhandedly 03:21 14 say that I never asked for, I would have expected to 03:21 15 find, if there were such memorandum from U.S. RE, 03:21 16 documents in the records of Lewis & Clark Risk 03:21 17 Retention Group that we obtained at the time of the 03:21 18 receivership to document and show that. And I have 03:21 19 not seen those. 03:21 20 Q. And you've not asked -- 03:21 21 A. And that's the basis for my testimony. 03:21 22 Q. And you've not asked for them in 03:22 23 preparation for your deposition today? 03:22 24 MR. CEREGHINO: Form. 03:22 25 Go ahead.</p>	<p>03:23 1 attorney has placed on the record with regard to 03:23 2 attorney-client privileged communications. 03:23 3 BY MR. WILSON: 03:23 4 Q. Now, is it surprising to you, as the 03:23 5 receiver, that there wouldn't be a claim in 2004 03:23 6 against the reinsurance policy? Since the risk 03:23 7 retention group just started writing policies 03:24 8 beginning of 2004, and if you looked at the records 03:24 9 for 2004, would there have been two claims filed? 03:24 10 A. It's hard -- surprising is a -- am I 03:24 11 surprised that they didn't have claims in the first 03:24 12 year that they underwrote long-term-care nursing 03:24 13 homes? 03:24 14 Q. I didn't say no. I said two claims. 03:24 15 A. Is that two -- you're representing to me 03:24 16 there were only two claims that were filed against 03:24 17 Lewis & Clark in their first year of underwriting? 03:24 18 Q. I'm asking. I saw a document that said two 03:24 19 claims were filed. I don't know if that was all or 03:24 20 not. 03:24 21 A. Well, I'd like to see the document as to 03:24 22 whether or not that is two claims that penetrated 03:24 23 the reinsurance layer or two claims total for the 03:25 24 company. Because I thought they had -- the first 03:25 25 two years that they were in existence they suffered</p>

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<p>03:25 1 losses in excess of their premium, at least 03:25 2 according to the financial statements and the 03:25 3 examination reports for those early years. 03:25 4 Q. Your testimony today is that in years 2004 03:25 5 and 2005 the losses suffered by Lewis & Clark 03:25 6 exceeded the premiums for insurance? 03:25 7 A. No. What I said is that they were losing 03:25 8 money, they were not profitable on an underwriting 03:25 9 basis, based upon what I recall about the 2005 03:25 10 examination report. 03:25 11 Q. Now, through 2008 there was a report done 03:25 12 by the State of Nevada regarding the operation. And 03:26 13 were there any issues with the reinsurance, losses, 03:26 14 et cetera, through that point in time? 03:26 15 A. I'd have to look at it again. The issue 03:26 16 with U.S. RE's not being a licensed reinsurance 03:26 17 intermediary in the state of Nevada I believe came 03:26 18 up in the 2008 examination report, but I -- 03:26 19 Q. That's your testimony? 03:26 20 A. I don't recall specifically. That was an 03:26 21 issue. So your question with regard to 2008, I 03:26 22 can't say without reviewing the documents that 03:26 23 you're referencing. 03:26 24 Q. Do you know who made the decision on the 03:26 25 level of deductible to be agreed to with reinsurers?</p>	<p>03:29 1 A. The minutes, that's correct. 03:29 2 Q. January 10th of 2008. 03:29 3 A. And not any supporting documentation that 03:29 4 would have been presented to the board, which would 03:29 5 have identified the specific reinsurance reinsurers. 03:30 6 If I had the financial statement for 03:30 7 '08-'09 I could give you the specific name of the 03:30 8 reinsurer. 03:30 9 Q. You knew we were going to ask about it, 03:30 10 based upon the notice; correct? 03:30 11 MR. CEREGHINO: Fonn. 03:30 12 Go ahead. 03:30 13 BY MR. WILSON: 03:30 14 Q. We specifically said we were going to make 03:30 15 inquiry about that area and identified it by 03:30 16 paragraph. 03:30 17 A. Well, the paragraph actually talks about 03:30 18 board approval of the commutation. 03:30 19 Q. Right. 03:30 20 A. Does it not? 03:30 21 Q. And you've contended that we breached our 03:30 22 fiduciary duty because we did not get board approval 03:30 23 to commute the 2008 and '09 treaty. 03:30 24 A. And I did not find documentation in the 03:30 25 board minutes that they approved the commutation of</p>
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<p>03:27 1 A. The decision, in consultation with the 03:27 2 intermediary broker, I believe was made by the 03:27 3 directors and officers. It should have been. 03:27 4 Q. Now, on paragraph 7 of Exhibit 1 there's a 03:27 5 reference to commutation of the 2008 and 2009 03:27 6 treaties. "Uni-Ter breached its fiduciary duty to 03:27 7 Lewis & Clark by failing to get Board approval to 03:27 8 commute the 2008-2009 treaty as set forth in 03:27 9 paragraphs 251 and 253." 03:27 10 Do you see that? 03:27 11 A. I do see that. 03:28 12 Q. What treaties are you referring to? 03:28 13 A. I believe those are the -- that includes at 03:29 14 least the Imagine Re in part, as the 2007, but the 03:29 15 other reinsurance coverages placed by U.S. RE for 03:29 16 2008 and 2009. 03:29 17 Q. They replaced with Beazley, didn't they? 03:29 18 Are you referring to the Imagine Re treaty? Beazley 03:29 19 treaty? What treaty? 03:29 20 A. The Imagine Re treaty was in place in '07. 03:29 21 Q. Right. 03:29 22 A. It was replaced in 2008, at least according 03:29 23 to the one document that we looked at earlier today, 03:29 24 by Beazley. 03:29 25 Q. The document called the minutes?</p>	<p>03:30 1 the '08 and '09 treaties. 03:30 2 Q. And did you review the board minutes for 03:30 3 that purpose? 03:30 4 A. I reviewed board minutes in preparation of 03:30 5 this during that period of time. 03:30 6 Q. Did you review board minutes which dealt 03:30 7 with commutation of treaties? 03:30 8 MR. CEREGHINO: Fonn. 03:31 9 Go ahead. 03:31 10 THE WITNESS: I reviewed board minutes for 03:31 11 Lewis & Clark for all matters as it relates to my 03:31 12 claims that have been filed against the directors 03:31 13 and officers. 03:31 14 BY MR. WILSON: 03:31 15 Q. Are you aware that there's board minutes 03:31 16 that state that the board is not going to agree to 03:31 17 commute the 2008 and 2009 treaty, exactly the 03:31 18 opposite of what's stated there? 03:31 19 MR. CEREGHINO: Fonn and foundation. 03:31 20 Go ahead. 03:31 21 THE WITNESS: Well, 251 says that Uni-Ter 03:31 22 failed to gain the board's approval to commute the 03:31 23 '08 and '09 treaties. Isn't that what you just said 03:31 24 the board minute says is that the directors and 03:31 25 officers did not approve of the commutation? I</p>

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<p>03:31 1 think we're wordsmithing there.</p> <p>03:31 2 BY MR. WILSON:</p> <p>03:31 3 Q. What do you fault U.S. RE for doing then?</p> <p>03:31 4 If they didn't get commutation, what's the fault?</p> <p>03:31 5 A. Well, it's part of a breach of fiduciary</p> <p>03:32 6 duty claim against Uni-Ter.</p> <p>03:32 7 Q. Why? What did they do wrong? You're</p> <p>03:32 8 saying they breached a duty to commute the 2007 and</p> <p>03:32 9 then they breached the duty for not computing 2008</p> <p>03:32 10 and 2009.</p> <p>03:32 11 A. If you go on into paragraph 253, it</p> <p>03:32 12 suggests that that was done for the benefit of</p> <p>03:32 13 U.S. RE, the parent company of Uni-Ter.</p> <p>03:32 14 Q. Was there a commutation of 2008 and 2009</p> <p>03:32 15 treaties?</p> <p>03:32 16 A. There have been subsequent commutations</p> <p>03:32 17 done prior to the receivership.</p> <p>03:32 18 Q. My question to you is very simple. You</p> <p>03:32 19 guys have alleged that we did something wrong as it</p> <p>03:32 20 relates to the 2008 and 2009 treaties. I want to</p> <p>03:32 21 know which treaties you're talking about, and you</p> <p>03:32 22 can't identify them; is that correct?</p> <p>03:32 23 A. No. I have identified them.</p> <p>03:32 24 Q. It's the Beazley treaty.</p> <p>03:32 25 A. No. I've identified them as the ones that</p>	<p>03:44 1 THE VIDEOGRAPHER: We're back on the</p> <p>03:45 2 record. The time, 1541.</p> <p>03:45 3 BY MR. WILSON:</p> <p>03:45 4 Q. You asked to look at Exhibit 26 to the</p> <p>03:45 5 complaint. Did you review Exhibit 26?</p> <p>03:45 6 A. I did.</p> <p>03:45 7 Q. What is Exhibit 26?</p> <p>03:45 8 A. Exhibit 26 is the board minutes of a</p> <p>03:45 9 January 26, 2012 -- minutes of a meeting of the</p> <p>03:45 10 directors of Lewis & Clark Risk Retention Group.</p> <p>03:45 11 I believe there is a reference therein</p> <p>03:45 12 to -- in paragraph 3, that Mr. Fedor and Mr. Davies</p> <p>03:46 13 reported on discussions with the corporations.</p> <p>03:46 14 I'm reading from the minutes, if that's</p> <p>03:46 15 okay.</p> <p>03:46 16 Q. What I'd like to do is just mark a copy for</p> <p>03:46 17 the record --</p> <p>03:46 18 A. That's fine.</p> <p>03:46 19 Q. -- as our next exhibit, which would be the</p> <p>03:46 20 January 26, 2012, minutes, as Exhibit 12.</p> <p>03:46 21 (Exhibit 12 marked.)</p> <p>03:46 22 BY MR. WILSON:</p> <p>03:46 23 Q. I'm going to assume that what I handed you</p> <p>03:46 24 is the same as what you were just looking at.</p> <p>03:46 25 A. I'm going to double-check that.</p>
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<p>03:32 1 were placed by U.S. RE, who is not a party to this</p> <p>03:33 2 particular count. Okay? Because they had the</p> <p>03:33 3 exclusive authority to place all coverages, and</p> <p>03:33 4 they did.</p> <p>03:33 5 Q. Let me tell you the reason that I'm asking</p> <p>03:33 6 these questions, to maybe simplify it.</p> <p>03:33 7 The Imagine Re treaty, unlike certain</p> <p>03:33 8 treaties, was a three-year treaty: '7, '8, and '9.</p> <p>03:33 9 What I'm trying to understand is whether the</p> <p>03:33 10 receiver is contending that when we commuted the '7</p> <p>03:33 11 treaty we inappropriately commuted the '08 and '09</p> <p>03:33 12 treaty without board approval, or is the receiver</p> <p>03:33 13 saying, No, I'm dealing with the Beazley treaty.</p> <p>03:33 14 That's all. Trying to find out which</p> <p>03:33 15 treaty I'm defending. I think I'm entitled to know</p> <p>03:33 16 that.</p> <p>03:34 17 A. Can I see Exhibit 26 to the complaint,</p> <p>03:34 18 that's referenced in the complaint, please?</p> <p>03:35 19 Q. There you go.</p> <p>03:35 20 A. Thank you.</p> <p>03:35 21 MR. WILSON: Why don't we take a quick</p> <p>03:35 22 break while he looks at that.</p> <p>03:35 23 THE VIDEOGRAPHER: We're going off the</p> <p>03:35 24 record. The time, 1531.</p> <p>03:35 25 (A break was taken.)</p>	<p>03:46 1 Exhibit 12 of this deposition appears to be</p> <p>03:46 2 Exhibit 26 of the third amended complaint.</p> <p>03:46 3 Q. So we're going to use Exhibit 12 for now.</p> <p>03:46 4 Is that okay?</p> <p>03:46 5 A. Okay. That's fine with me.</p> <p>03:47 6 Q. Go ahead. You were starting to testify.</p> <p>03:47 7 Go ahead.</p> <p>03:47 8 A. Well, the pending question is what</p> <p>03:47 9 reinsurers were involved in those commutation</p> <p>03:47 10 discussions.</p> <p>03:47 11 And the board minutes themselves do not</p> <p>03:47 12 make specific reference to reinsurers involved in</p> <p>03:47 13 those proposed commutations. The minutes talk about</p> <p>03:47 14 Mr. Fedor and Mr. Davies. And Mr. Davies is a</p> <p>03:47 15 U.S. RE employee, I believe. Isn't he?</p> <p>03:47 16 Q. He is. And it is Fedor.</p> <p>03:47 17 A. Fedor, okay.</p> <p>03:47 18 Q. Mr. Fedor is a U.S. RE employee too.</p> <p>03:47 19 A. And Exhibit 26, which is the January 26</p> <p>03:47 20 board meeting minutes, state that the board deferred</p> <p>03:47 21 any action and that they were awaiting a response</p> <p>03:47 22 from the reinsurer, which was expected within the</p> <p>03:47 23 next week. The board deferred approval of a</p> <p>03:48 24 commutation proposed for years '05, '06, '08, and</p> <p>03:48 25 '09, pending receipt from Uni-Ter of the report</p>

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<p>03:48 1 regarding outstanding claims for such periods. 03:48 2 So they're waiting for -- my interpretation 03:48 3 of that is they're waiting not only for a response 03:48 4 from the reinsurer, but they're looking to Uni-Ter 03:48 5 for a report on outstanding claims for the relevant 03:48 6 commutation proposal periods. 03:48 7 Q. Do you fault Uni-Ter or U.S. RE for any of 03:48 8 the things referenced there? Or is that business as 03:48 9 normal when you run a company? 03:48 10 MR. CEREGHINO: Form. 03:48 11 Go ahead. 03:48 12 THE WITNESS: At least as of that point in 03:48 13 time we didn't know what they did or didn't provide 03:49 14 to Lewis & Clark's board vis-a-vis either Uni-Ter or 03:49 15 the -- U.S. RE's -- and I'm assuming U.S. RE is 03:49 16 working with the reinsurer to get the requested 03:49 17 information. 03:49 18 And so do I fault them? I believe that our 03:49 19 complaint alleges that Uni-Ter was in breach of 03:49 20 their fiduciary duty to the corporation, 03:49 21 Lewis & Clark, and what they did or didn't provide 03:49 22 as outlined in the paragraph that we're talking 03:49 23 about, 251 and -- are we still talking about 251 03:49 24 and 253? 03:49 25 ///</p>	<p>03:50 1 took place? 03:50 2 A. There was documentation that was reviewed 03:50 3 in advance of the filing of this complaint, as 03:50 4 referenced in paragraph 253, that said that there 03:51 5 was an unapproved commutation for '08 and '09 treaty 03:51 6 years. 03:51 7 Q. What document is it? 03:51 8 A. I don't have that document here with me 03:51 9 today. 03:51 10 Q. What treaty was it? 03:51 11 A. It was the treaty for the reinsurance for 03:51 12 that period of time as identified on Schedule F of 03:51 13 the financial statement prepared by Uni-Ter for 03:51 14 Lewis & Clark and placed by U.S. RE. I cannot give 03:51 15 you the names as we sit here today. 03:51 16 Q. Now, let's go back to Exhibit 1, 03:51 17 paragraph 10. Fishinger's reports. There's an 03:52 18 allegation that "Fishinger did not conduct an 03:52 19 independent analysis of claims reviewed by Praxis in 03:52 20 late 2011, but instead relied on the work of Praxis 03:52 21 in coming to similar conclusions on the amount of 03:52 22 reserve strengthening needed as set forth in 03:52 23 paragraph 212 of the Complaint." 03:52 24 What is the factual basis for that 03:52 25 allegation?</p>
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<p>03:49 1 BY MR. WILSON: 03:49 2 Q. 251 says, "Uni-Ter breached its fiduciary 03:49 3 duty to Lewis & Clark by recommending to the Board 03:49 4 that the 2007 treaty be commuted too soon and by 03:50 5 failing to gain board approval to commute the 2008 03:50 6 and 2009 treaty such that that treaty was commuted 03:50 7 without authorization to do so from the Board." 03:50 8 That's what that says. 03:50 9 A. That's what that says. 03:50 10 Q. Now, do you -- do you have any documents 03:50 11 that support the commutation of the 2008 and 2009 03:50 12 treaties without board approval? 03:50 13 MR. CEREGHINO: Form. 03:50 14 Go ahead. 03:50 15 BY MR. WILSON: 03:50 16 Q. The allegation is that it was commuted 03:50 17 without board approval. The board minutes say 03:50 18 you're not to commute them. 03:50 19 A. I understand that. Which leads to the 03:50 20 question of whether -- I'm assuming the board 03:50 21 minutes in this case are accurate and that they 03:50 22 didn't authorize the approval of a commutation for 03:50 23 those periods of time and that a commutation did in 03:50 24 fact take place. 03:50 25 Q. Do you know for a fact that a commutation</p>	<p>03:52 1 A. I believe I reviewed reports or summaries 03:53 2 of reports. 03:53 3 Q. Which did you review? 03:53 4 A. I reviewed the Praxis reports. And I 03:53 5 reviewed -- I couldn't find the Fishinger reports. 03:53 6 What I found were cover letters from an attorney in 03:53 7 New York. Fishinger I believe was an attorney in 03:53 8 the Oneida, New York, area that was asked by the 03:53 9 board to perform this evaluation. 03:53 10 Q. What's the basis for that? 03:53 11 A. Documents that I reviewed yesterday in 03:53 12 preparation for this deposition. 03:53 13 Q. The board asked Fishinger to come aboard, 03:53 14 and Fishinger is located in the area where Oneida 03:53 15 is. And Oneida is located where? In Syracuse? 03:53 16 A. I thought Oneida was located in Oneida. 03:54 17 There's an Oneida, New York. I'm assuming that 03:54 18 that's where they were. But they could -- it's near 03:54 19 Syracuse. It's up -- 03:54 20 Q. It's in the Syracuse area? 03:54 21 A. It's what I refer to as Upstate New York. 03:54 22 Maybe over between Syracuse and the Finger Lakes 03:54 23 area would be my best guess. I haven't been up 03:54 24 there for any extended period of time. 03:54 25 Q. And was Fishinger supposed to do an</p>

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<p>03:54 1 independent analysis?</p> <p>03:54 2 MR. CEREGHINO: Form. Foundation.</p> <p>03:54 3 Go ahead.</p> <p>03:54 4 THE WITNESS: That's my understanding.</p> <p>03:54 5 BY MR. WILSON:</p> <p>03:54 6 Q. And you're testifying here under oath that</p> <p>03:54 7 Fishinger did not do an independent analysis?</p> <p>03:54 8 A. The records that we had available to us at</p> <p>03:54 9 the time we prepared this complaint did not indicate</p> <p>03:54 10 that that had in fact occurred.</p> <p>03:54 11 Q. What records are you referring to?</p> <p>03:54 12 A. The records that were produced by Uni-Ter</p> <p>03:54 13 to the receiver at the time of the liquidation.</p> <p>03:54 14 Q. Were they Fishinger reports? Fishinger</p> <p>03:55 15 letters? Or what were they?</p> <p>03:55 16 A. I don't recall if they were Fishinger</p> <p>03:55 17 letters or whether they were references to</p> <p>03:55 18 Fishinger's reports in other letters and records.</p> <p>03:55 19 Q. So you can testify under oath you saw</p> <p>03:55 20 documents that you cannot specifically identify</p> <p>03:55 21 today that indicated that Fishinger did not do an</p> <p>03:55 22 independent analysis but relied upon Praxis's?</p> <p>03:55 23 A. And I believe that's contained in a</p> <p>03:55 24 memorandum that I reviewed that talked about and</p> <p>03:55 25 ultimately led to the determination by Uni-Ter to</p>	<p>03:56 1 certain amount, the Uni-Ter claims adjusters did,</p> <p>03:57 2 without regard to a high or a low.</p> <p>03:57 3 Q. Right. They did. Fishinger's reserve had</p> <p>03:57 4 a high/low; correct?</p> <p>03:57 5 MR. CEREGHINO: Form.</p> <p>03:57 6 Go ahead.</p> <p>03:57 7 Form and foundation.</p> <p>03:57 8 Go ahead.</p> <p>03:57 9 THE WITNESS: The references in the reports</p> <p>03:57 10 would suggest to me that the Fishinger report</p> <p>03:57 11 contained both a high and a low. But the Fishinger</p> <p>03:57 12 reports related to loss adjustment expense, not</p> <p>03:57 13 necessarily to the ultimate indemnification losses.</p> <p>03:57 14 BY MR. WILSON:</p> <p>03:57 15 Q. So your testimony is the Fishinger reports</p> <p>03:57 16 did not deal with ultimate losses under the case but</p> <p>03:57 17 only loss adjustment expenses?</p> <p>03:57 18 A. I don't recall -- I think they worked</p> <p>03:57 19 together with Praxis, which is what's outlined in</p> <p>03:57 20 the complaint. But the memorandum that I recall</p> <p>03:57 21 seeing suggested that they only had worked -- had</p> <p>03:57 22 focused on the reserving of the allocated loss</p> <p>03:58 23 adjustment expense, or LAE, amounts.</p> <p>03:58 24 Q. And did the Praxis report contain a</p> <p>03:58 25 high/low?</p>
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<p>03:55 1 use the low-end reserves, after the Praxis reports</p> <p>03:55 2 and after Fishinger's reports were done. There was</p> <p>03:55 3 a discussion -- there's a memo out there that talks</p> <p>03:55 4 about a high/low determination on the placement of</p> <p>03:55 5 the reserve amounts. And I believe that's the</p> <p>03:56 6 source of this information, but I can't be more</p> <p>03:56 7 specific today.</p> <p>03:56 8 Q. Is it customary in reserving to have</p> <p>03:56 9 a high/low?</p> <p>03:56 10 A. I wouldn't go so far as to say customary.</p> <p>03:56 11 I don't believe -- I think it varies by book of</p> <p>03:56 12 business and by the maturity of the claim.</p> <p>03:56 13 Q. Is it customary in the</p> <p>03:56 14 long-term-healthcare-facility business to have a</p> <p>03:56 15 high/low when they look at claims?</p> <p>03:56 16 MR. CEREGHINO: Form.</p> <p>03:56 17 Go ahead.</p> <p>03:56 18 BY MR. WILSON:</p> <p>03:56 19 Q. Reserving claims.</p> <p>03:56 20 A. I don't believe that that's -- I don't</p> <p>03:56 21 believe so, no.</p> <p>03:56 22 Q. What is the basis for your lack of</p> <p>03:56 23 believing that's the case?</p> <p>03:56 24 A. My experience and in my -- my review of the</p> <p>03:56 25 files of Lewis & Clark. They reserved to a sum</p>	<p>03:58 1 A. I don't believe so, but let me check.</p> <p>03:58 2 That's exhibit -- what exhibit is that? I don't</p> <p>03:58 3 believe that's -- that's not my interpretation of</p> <p>03:59 4 the September 15th report, that it would be what you</p> <p>03:59 5 refer to as a high/low reserving.</p> <p>03:59 6 Q. The September 15th report's purpose was to</p> <p>03:59 7 analyze the methodology used by Uni-Ter in</p> <p>03:59 8 reserving? That was the purpose?</p> <p>03:59 9 A. Yes. That's part of it. They reviewed</p> <p>03:59 10 actual claims as to whether or not they were</p> <p>03:59 11 adequately reserved.</p> <p>03:59 12 Q. And they reviewed seven claims as claims</p> <p>03:59 13 that were typical so they could see whether or not</p> <p>03:59 14 the procedures they were supposed to follow were</p> <p>03:59 15 being followed; correct?</p> <p>03:59 16 MR. CEREGHINO: Form and foundation.</p> <p>03:59 17 Go ahead.</p> <p>03:59 18 THE WITNESS: The letter of September 15th</p> <p>03:59 19 refers to specific claims.</p> <p>03:59 20 BY MR. WILSON:</p> <p>03:59 21 Q. There were seven.</p> <p>03:59 22 A. I'll accept that.</p> <p>03:59 23 Q. That's the one you testified they dealt</p> <p>03:59 24 with Country Villas but in fact they dealt with</p> <p>04:00 25 Brazwell as well.</p>

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<p>04:00 1 A. But they also provided reports dated</p> <p>04:00 2 earlier than September 15th that reviewed other</p> <p>04:00 3 claims that I reviewed in anticipation that I didn't</p> <p>04:00 4 bring with me. But none of them, to my knowledge,</p> <p>04:00 5 include what I understand you're trying to say were</p> <p>04:00 6 high/low reserves.</p> <p>04:00 7 Q. I'm not trying to. I'm just asking.</p> <p>04:00 8 A. Okay. Well, I didn't see that Praxis did</p> <p>04:00 9 high/low reserves as I understand that term.</p> <p>04:00 10 Q. Was Praxis -- did Praxis do reports after</p> <p>04:00 11 September the 15th of 2011?</p> <p>04:00 12 A. I believe there's at least one, maybe two,</p> <p>04:00 13 that I saw yesterday.</p> <p>04:00 14 Q. Did Praxis do anything else on-site?</p> <p>04:00 15 A. I don't know what all Praxis did on-site.</p> <p>04:01 16 I'm not -- I'm not sure that Uni-Ter didn't</p> <p>04:01 17 ultimately hire the adjuster that did the Praxis</p> <p>04:01 18 reports, Mr. -- and I'm going to mispronounce his</p> <p>04:01 19 name again -- Stiefel?</p> <p>04:01 20 Q. Stiefel.</p> <p>04:01 21 A. -- Stiefel. I think he ultimately became</p> <p>04:01 22 employed by Uni-Ter, if I understood correctly.</p> <p>04:01 23 Q. To do what?</p> <p>04:01 24 A. Manage claims, handle claims, reserve</p> <p>04:01 25 claims.</p>	<p>04:02 1 with Praxis.</p> <p>04:02 2 Q. Is there a time that he no longer worked</p> <p>04:02 3 with Praxis?</p> <p>04:02 4 A. It was my understanding that if he -- he</p> <p>04:02 5 either was employed by Uni-Ter or he was working</p> <p>04:02 6 exclusively for Uni-Ter through Praxis. And I just</p> <p>04:02 7 don't -- he was on-site in 2012. He had just left,</p> <p>04:02 8 as I recall, when the receiver showed up in 2013.</p> <p>04:03 9 Q. Do you fault Praxis for his work?</p> <p>04:03 10 A. We did not name Praxis as a defendant. I</p> <p>04:03 11 think our view was that they were part of Uni-Ter</p> <p>04:03 12 and acted by and through Uni-Ter. Do I fault them?</p> <p>04:03 13 It's hard to say. I can't -- I think we're still</p> <p>04:03 14 evaluating what his role was vis-a-vis the complaint</p> <p>04:03 15 that we filed with regard to Uni-Ter's breach.</p> <p>04:03 16 Q. Isn't there simply an independent</p> <p>04:03 17 contractor agreement existing with Praxis, which was</p> <p>04:03 18 fully disclosed to the board and everybody, that</p> <p>04:03 19 Praxis would come in and manage claims for a certain</p> <p>04:03 20 period of time?</p> <p>04:04 21 A. I haven't reviewed such a document in</p> <p>04:04 22 preparation for today's deposition. There could be.</p> <p>04:04 23 I don't know. I'm not arguing with you. I just</p> <p>04:04 24 didn't review it in advance of today.</p> <p>04:04 25 Q. Have you ever talked to anybody at Praxis?</p>
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<p>04:01 1 Q. Do you know when that occurred?</p> <p>04:01 2 A. After -- it's my recollection that it was</p> <p>04:01 3 after these Praxis reports were completed.</p> <p>04:01 4 Q. He was a little more than an adjuster for</p> <p>04:01 5 Praxis, wasn't he? I think he signed the letter as</p> <p>04:01 6 president.</p> <p>04:01 7 MR. CEREGHINO: Form.</p> <p>04:01 8 Go ahead.</p> <p>04:01 9 THE WITNESS: He signed the letter as</p> <p>04:01 10 president and he carries the designation of a CPCU.</p> <p>04:01 11 BY MR. WILSON:</p> <p>04:01 12 Q. What's a CPCU?</p> <p>04:01 13 A. It's a certified property and casualty</p> <p>04:01 14 underwriter, I believe is what the literal --</p> <p>04:02 15 Q. Is it better to refer to him as an</p> <p>04:02 16 adjuster?</p> <p>04:02 17 A. Does the letter refer to him as an</p> <p>04:02 18 adjuster?</p> <p>04:02 19 Q. Is it better, in your terminology, to refer</p> <p>04:02 20 to the president of Praxis with that designation as</p> <p>04:02 21 an adjuster?</p> <p>04:02 22 A. No. I said I think that was the role that</p> <p>04:02 23 he was ultimately brought in by Uni-Ter to fulfill.</p> <p>04:02 24 But I could be wrong. I don't recall seeing exactly</p> <p>04:02 25 what his title was when he was no longer working</p>	<p>04:04 1 A. I may have. I don't recall.</p> <p>04:04 2 Q. Who did you speak with?</p> <p>04:04 3 A. I said I don't recall specifically.</p> <p>04:04 4 Q. Forget the name. Do you have a substance</p> <p>04:04 5 of what you discussed with somebody from Praxis?</p> <p>04:04 6 A. It would have been in the context of</p> <p>04:04 7 their -- of any outstanding billing statements that</p> <p>04:04 8 they would have had during the period of time that</p> <p>04:04 9 the receivership went into place.</p> <p>04:04 10 Q. Nothing substantive about their analysis?</p> <p>04:04 11 A. I don't recall that I ever had a</p> <p>04:04 12 substantive discussion with this gentleman or with</p> <p>04:04 13 anybody at Praxis.</p> <p>04:04 14 Q. Now, you have reviewed the Department of</p> <p>04:05 15 Insurance reports of examination?</p> <p>04:05 16 A. Yes, sir.</p> <p>04:05 17 Q. In those reports was there any -- did they</p> <p>04:05 18 question the way the reserving was done by Uni-Ter?</p> <p>04:05 19 A. I don't believe that those were</p> <p>04:05 20 the questions for the time periods in question,</p> <p>04:05 21 which the examinations were performed as of 12/31/05</p> <p>04:05 22 and 12/31/08.</p> <p>04:05 23 Q. They were performed years later though,</p> <p>04:05 24 weren't they?</p> <p>04:05 25 A. As of the date of the examination, yes.</p>

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<p>04:05 1 Q. For example, one of them was in, I 04:05 2 think, 2010, that covered the period from 2006 04:05 3 through 2008?</p> <p>04:05 4 A. Covered through 2008, and I believe that 04:06 5 that one also has some comment in it for some 04:06 6 subsequent -- as it relates to some subsequent 04:06 7 events that were beyond or more after the 04:06 8 examination period. But examinations are typically 04:06 9 performed as of a date and they look at the 04:06 10 documents as called for under their examination -- 04:06 11 examiners' manuals.</p> <p>04:06 12 Q. To what extent were there communications 04:06 13 between the defendants and the Department of 04:06 14 Insurance, to your knowledge?</p> <p>04:06 15 MR. CEREGHINO: Form. 04:06 16 Go ahead.</p> <p>04:06 17 THE WITNESS: My -- my knowledge of any 04:06 18 such examinations is limited by the documents that 04:06 19 have been produced by the Department of Insurance in 04:06 20 their regulatory capacity in response to discovery 04:06 21 as part of this litigation. It appears that a lot 04:07 22 of that is the normal day-to-day kinds of things 04:07 23 that relate to both the exam reports and other 04:07 24 matters that the Department would raise questions 04:07 25 about from time to time.</p>	<p>04:08 1 Q. How many documents were produced to you?</p> <p>04:08 2 A. Over -- about 650 documents is my 04:08 3 recollection, approximately.</p> <p>04:08 4 Q. Any of them multipage documents?</p> <p>04:09 5 A. Yes.</p> <p>04:09 6 Q. How many pages of documents would you guess 04:09 7 was produced?</p> <p>04:09 8 A. I couldn't say. I really don't know. Not 04:09 9 as many as -- not as many as 1.5 million.</p> <p>04:09 10 Q. I would think that 600 would be less than 04:09 11 1.5 million, but I may be wrong.</p> <p>04:09 12 A. They privileged a number of things that 04:09 13 related to their attorney-client privilege as well 04:09 14 as their work product or what I'll call their exam 04:09 15 work papers. We didn't have access to any of that. 04:09 16 And we didn't have access to anything that they 04:09 17 claimed was covered under their deliberative process 04:09 18 exemption.</p> <p>04:09 19 Q. Have you signed the confidentiality 04:09 20 agreement?</p> <p>04:09 21 A. I believe I signed it at the time that it 04:10 22 was negotiated way back in the beginning. But I 04:10 23 haven't looked at it recently.</p> <p>04:10 24 Q. Have you signed it?</p> <p>04:10 25 A. I will.</p>
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<p>04:07 1 BY MR. WILSON:</p> <p>04:07 2 Q. Did you make any inquiry in preparation for 04:07 3 today's deposition about the extent to which there 04:07 4 were communications between the DOI, Department of 04:07 5 Insurance, and any of the defendants in this 04:07 6 litigation?</p> <p>04:07 7 MR. CEREGHINO: Form. 04:07 8 Go ahead.</p> <p>04:07 9 THE WITNESS: Yes. I made inquiry in that 04:07 10 I reviewed -- asked for and received access to 04:07 11 600-and-some-odd documents that have been produced 04:07 12 by the Department of Insurance that are not 04:07 13 otherwise subject to their various privileges 04:08 14 pursuant to a FOIA request issued by counsel for the 04:08 15 receiver.</p> <p>04:08 16 BY MR. WILSON:</p> <p>04:08 17 Q. What do those documents reflect about the 04:08 18 conversations that occurred between the DOI and the 04:08 19 defendants?</p> <p>04:08 20 A. They -- because you're -- since I didn't 04:08 21 know specifically what you were looking for and I 04:08 22 was pressed for time, I've given them only a cursory 04:08 23 review, but they appear to relate to both the 04:08 24 examinations and to some licensing issues that arose 04:08 25 from time to time.</p>	<p>04:10 1 MR. WILSON: All I'm asking is whether he's 04:10 2 signed the confidentiality agreement.</p> <p>04:10 3 MR. CEREGHINO: Oh, you're asking me?</p> <p>04:10 4 MR. WILSON: Anybody. Anybody. I just 04:10 5 want to know.</p> <p>04:10 6 MR. CEREGHINO: Look, to whatever extent he 04:10 7 hasn't, I'm taking his answer to be absolutely he 04:10 8 would. But I think he answered that his 04:10 9 recollection is he already did.</p> <p>04:10 10 BY MR. WILSON:</p> <p>04:10 11 Q. So you did sign it?</p> <p>04:10 12 A. That's what my recollection is, that when 04:10 13 that was negotiated, I signed it.</p> <p>04:10 14 Q. Now, with reference to the communications 04:10 15 between defendants and DOI as reflected in the 600 04:10 16 or so documents, how much time did you spend 04:10 17 reviewing those documents?</p> <p>04:10 18 A. Well, I was running out of time, so I spent 04:10 19 about an hour looking at those 600 documents.</p> <p>04:10 20 Q. Is it fair to say you could not testify to 04:10 21 all the communications that are contained in those 04:11 22 documents today?</p> <p>04:11 23 MR. CEREGHINO: Form. 04:11 24 Go ahead. 04:11 25 THE WITNESS: I have previously testified</p>

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<p>04:11 1 to you already today about some of the substance of</p> <p>04:11 2 some of those documents. That's where I found the</p> <p>04:11 3 U.S. RE memorandum that we talked about previously.</p> <p>04:11 4 The problem with -- and I hate to take</p> <p>04:11 5 issue -- is that the documents that I reviewed I</p> <p>04:11 6 don't know the source of. They're responsive to the</p> <p>04:11 7 FOIA request. Whether or not they were communicated</p> <p>04:11 8 by defendants in this action to the Department of</p> <p>04:11 9 Insurance or came from some other source, I really</p> <p>04:11 10 couldn't tell you the answer to that.</p> <p>04:11 11 BY MR. WILSON:</p> <p>04:11 12 Q. Did you talk to anybody at the Department</p> <p>04:11 13 of Insurance or make inquiries as to what</p> <p>04:12 14 communications exist between the Department of</p> <p>04:12 15 Insurance and the defendants?</p> <p>04:12 16 A. I had a conversation with the general</p> <p>04:12 17 counsel about the documentation that I was looking</p> <p>04:12 18 at and whether or not -- both as it relates to the</p> <p>04:12 19 examination and the answer to the question.</p> <p>04:12 20 Q. Did you make inquiry as to whether there</p> <p>04:12 21 were conversations between the defendants and the</p> <p>04:12 22 Department of Insurance that were not part of the</p> <p>04:12 23 documents?</p> <p>04:12 24 A. Yes and no, I guess is the only way to</p> <p>04:12 25 answer that question.</p>	<p>04:14 1 with at the Department of Insurance. So it was a</p> <p>04:14 2 Marshall-to-Marshall communication. And that allows</p> <p>04:14 3 me to remember it or help me to remember it. But</p> <p>04:14 4 he's one of the retirees, so he's beyond the scope</p> <p>04:14 5 of -- we're in the process of trying to track him</p> <p>04:14 6 down, but I haven't spoken to him yet.</p> <p>04:14 7 Q. You referred to him as the president of</p> <p>04:14 8 Uni-Ter?</p> <p>04:14 9 A. No. I'm talking about the retired examiner</p> <p>04:14 10 with the last name of Marshall.</p> <p>04:14 11 MR. WILSON: Would you read his answer</p> <p>04:14 12 back?</p> <p>04:14 13 THE WITNESS: Are you talking about Jeff</p> <p>04:14 14 Marshall, who is the president of the board of</p> <p>04:14 15 Lewis & Clark?</p> <p>04:14 16 BY MR. WILSON:</p> <p>04:14 17 Q. You referred to him as the president of</p> <p>04:14 18 Uni-Ter.</p> <p>04:14 19 A. An inadvertent slip. He is not the</p> <p>04:14 20 president of Uni-Ter. I don't know who the</p> <p>04:14 21 president of Uni-Ter is. I don't know who the board</p> <p>04:14 22 members -- so if I refer to officers, I'm referring</p> <p>04:15 23 to the officers of Lewis & Clark and the board of</p> <p>04:15 24 Lewis & Clark. And that's a correction that I would</p> <p>04:15 25 make throughout this deposition.</p>
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<p>04:12 1 Q. Give me the yes and the no.</p> <p>04:12 2 A. We talked about the whereabouts and</p> <p>04:12 3 identity of the people whose names appeared in the</p> <p>04:12 4 documents as representatives of the Department of</p> <p>04:12 5 Insurance, and I learned that a couple are retired,</p> <p>04:13 6 a couple are still there, and one of them was -- I</p> <p>04:13 7 believe she told me had been murdered.</p> <p>04:13 8 But as far as beyond that, as to what</p> <p>04:13 9 specific communications they might have had, she</p> <p>04:13 10 didn't know, and I couldn't ascertain that</p> <p>04:13 11 information beyond what was in the documents.</p> <p>04:13 12 Q. Did you talk to the individuals who did the</p> <p>04:13 13 actual examinations on behalf of the Department of</p> <p>04:13 14 Insurance about their respective reports?</p> <p>04:13 15 A. I have not.</p> <p>04:13 16 Q. Why not?</p> <p>04:13 17 A. Well, one of them is the guy that's no</p> <p>04:13 18 longer with us.</p> <p>04:13 19 Q. Meaning retired or passed away?</p> <p>04:13 20 A. Passed away.</p> <p>04:13 21 Marshall is beyond the control of the</p> <p>04:13 22 Department. The original examination was exchanged</p> <p>04:14 23 between I want to say John Marshall and Jeff</p> <p>04:14 24 Marshall. The president of the -- Uni-Ter has the</p> <p>04:14 25 same last name as the examiner that he was dealing</p>	<p>04:15 1 Q. Item 14 talks about the amount of damages</p> <p>04:15 2 you allege that have been sustained as a result of</p> <p>04:15 3 defendants' acts and omissions and the basis</p> <p>04:15 4 therefor.</p> <p>04:15 5 What is the magnitude of the damages you</p> <p>04:15 6 are seeking in this proceeding?</p> <p>04:15 7 MR. CEREGHINO: Form.</p> <p>04:15 8 Go ahead.</p> <p>04:15 9 THE WITNESS: We don't have a specific</p> <p>04:15 10 dollar amount yet that we have -- we're working on</p> <p>04:15 11 that through an expert witness to identify, as I</p> <p>04:15 12 described earlier, the deepening of the insolvency</p> <p>04:15 13 from the time that we believe it was insolvent</p> <p>04:15 14 through the time that it was placed into</p> <p>04:15 15 liquidation.</p> <p>04:15 16 BY MR. WILSON:</p> <p>04:15 17 Q. What are the elements of damages?</p> <p>04:15 18 A. Just that the losses that came onto</p> <p>04:15 19 Lewis & Clark's books during the period of time that</p> <p>04:16 20 the entity remained in business after it was</p> <p>04:16 21 impaired/insolvent.</p> <p>04:16 22 Q. Is there a guaranty fund for risk</p> <p>04:16 23 retirement groups?</p> <p>04:16 24 A. No.</p> <p>04:16 25 Q. And if losses are filed or claims are filed</p>

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<p>04:16 1 in the state, there's no insurance to pick it up?</p> <p>04:16 2 A. There's no safety net for policyholders and</p> <p>04:16 3 claimants of a risk retention group, or at least of</p> <p>04:16 4 the Lewis & Clark Risk Retention Group.</p> <p>04:16 5 Q. And what is the dollar amount of claims</p> <p>04:16 6 that have been filed, to your knowledge, by insureds</p> <p>04:16 7 under the Lewis & Clark Risk Retention Group?</p> <p>04:16 8 MR. CEREGHINO: Form, but go ahead.</p> <p>04:16 9 THE WITNESS: The -- I can't tell you</p> <p>04:16 10 the answer to that question because the amount</p> <p>04:16 11 of the claims filed in my experience both with</p> <p>04:17 12 Lewis & Clark and other receiverships bears no</p> <p>04:17 13 correlation as to what the ultimate liability is.</p> <p>04:17 14 Because if you're a claimant's attorney and</p> <p>04:17 15 you're representing a deceased nursing home patient,</p> <p>04:17 16 you file a claim for a million dollars, in my</p> <p>04:17 17 experience just because you filed a claim for a</p> <p>04:17 18 million dollars doesn't make that claim worth a</p> <p>04:17 19 million dollars. So we don't incorporate those</p> <p>04:17 20 numbers into our financial statements. And I can't</p> <p>04:17 21 tell you what the -- because they'd have no meaning</p> <p>04:17 22 in that context. And those are not -- those are not</p> <p>04:17 23 the numbers that we're going to be using in this</p> <p>04:17 24 litigation.</p> <p>04:17 25 ///</p>	<p>04:19 1 what was disclosed and we discussed at our</p> <p>04:19 2 mediation.</p> <p>04:19 3 Q. Which is confidential.</p> <p>04:19 4 A. I understand. But so is this --</p> <p>04:19 5 Q. I understand. The mediation I think is a</p> <p>04:19 6 different level of confidentiality.</p> <p>04:19 7 A. Okay. That's fine.</p> <p>04:19 8 Q. I don't think anything should be said</p> <p>04:19 9 about what happened in mediation. I can't -- there</p> <p>04:19 10 were disclosures made that relate to where we are in</p> <p>04:19 11 the SIR.</p> <p>04:19 12 Let me ask it differently.</p> <p>04:19 13 MR. CEREGHINO: Yeah.</p> <p>04:19 14 BY MR. WILSON:</p> <p>04:19 15 Q. Exclusive of mediation, not counting</p> <p>04:19 16 mediation, do you have any knowledge as to the</p> <p>04:19 17 amount of insurance coverage available as it would</p> <p>04:19 18 relate to any alleged damages claimed in these</p> <p>04:19 19 proceedings?</p> <p>04:20 20 A. It's my understanding that the policies</p> <p>04:20 21 that have been triggered by this litigation have</p> <p>04:20 22 been disclosed to counsel and they have reported to</p> <p>04:20 23 me what they believe those policy limits to be.</p> <p>04:20 24 Q. And you know -- do you know the policy</p> <p>04:20 25 limits?</p>
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<p>04:17 1 BY MR. WILSON:</p> <p>04:17 2 Q. What numbers are you going to use?</p> <p>04:17 3 A. We're going to be using the numbers that</p> <p>04:17 4 were prepared by Uni-Ter and Johnson and Lambert and</p> <p>04:17 5 Milliman and the directors of the Lewis & Clark Risk</p> <p>04:18 6 Retention Group, as I understand it.</p> <p>04:18 7 Q. Do you know whether the damages are</p> <p>04:18 8 greater than or less than \$10 million that are</p> <p>04:18 9 being sought?</p> <p>04:18 10 A. I don't know the answer to that</p> <p>04:18 11 question and I don't want to speculate at this point</p> <p>04:18 12 in time.</p> <p>04:18 13 Q. Do you have any bracket that you could put</p> <p>04:18 14 on the damages? It will be at least this amount,</p> <p>04:18 15 probably not more than that amount?</p> <p>04:18 16 A. I believe that the damages that will be</p> <p>04:18 17 alleged are less than what I believe the available</p> <p>04:18 18 insurance coverage is remaining at this point in</p> <p>04:18 19 time for the defendants.</p> <p>04:18 20 MR. WILSON: Read that back, please.</p> <p>04:18 21 (The answer was read.)</p> <p>04:18 22 BY MR. WILSON:</p> <p>04:18 23 Q. How much insurance coverage is remaining</p> <p>04:18 24 for these defendants, as you understand it?</p> <p>04:19 25 A. I think it's been -- well, I mean, only</p>	<p>04:20 1 A. I believe -- yes.</p> <p>04:20 2 Q. What are the policy limits, as you</p> <p>04:20 3 understand them?</p> <p>04:20 4 A. I understand that Uni-Ter has \$5 million of</p> <p>04:20 5 coverage, 2 and a half primary, 2 and a half excess;</p> <p>04:20 6 that the directors and officers may have 5 million</p> <p>04:20 7 primary and 5 million excess; and that U.S. RE has 5</p> <p>04:20 8 million primary and 5 million excess.</p> <p>04:20 9 Q. Do you know how much has been, for lack of</p> <p>04:20 10 a better term, burned to date?</p> <p>04:20 11 A. Not outside of the context that we</p> <p>04:20 12 previously discussed here in the mediation.</p> <p>04:20 13 MR. WILSON: Let's take a break.</p> <p>04:21 14 THE VIDEOGRAPHER: This is the end of</p> <p>04:21 15 Disc Number 4 in today's videographed deposition.</p> <p>04:21 16 The time, 1617. We are off the record.</p> <p>04:21 17 (A break was taken.)</p> <p>04:28 18 THE VIDEOGRAPHER: We're back on the</p> <p>04:29 19 record. This is the beginning of Disc Number 5.</p> <p>04:30 20 The time, 1626.</p> <p>04:30 21 BY MR. WILSON:</p> <p>04:30 22 Q. Once the receiver was appointed, were</p> <p>04:30 23 you the one that took over the operation of</p> <p>04:30 24 Lewis & Clark?</p> <p>04:30 25 MR. CEREGHINO: Form.</p>

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<p>04:30 1 Go ahead.</p> <p>04:30 2 THE WITNESS: When the receiver was</p> <p>04:30 3 appointed, they entered into a contract with Betty</p> <p>04:30 4 Cordial and the Vista Consulting Group. Betty acted</p> <p>04:30 5 as the deputy receiver until the point in time that</p> <p>04:30 6 she retired. I was part of the initial Vista</p> <p>04:30 7 contract, so I was on-site from the very beginning,</p> <p>04:30 8 as part of Vista initially as an assistant to the</p> <p>04:30 9 deputy receiver and then subsequently I was elevated</p> <p>04:31 10 to the role of deputy receiver when Ms. Cordial</p> <p>04:31 11 retired.</p> <p>04:31 12 BY MR. WILSON:</p> <p>04:31 13 Q. Once the receivership took place, who took</p> <p>04:31 14 over the operation of Lewis & Clark from a day-in</p> <p>04:31 15 and day-out standpoint, whether it be claims or</p> <p>04:31 16 whatever?</p> <p>04:31 17 MR. CEREGHINO: Form.</p> <p>04:31 18 Go ahead.</p> <p>04:31 19 THE WITNESS: Initially the Department of</p> <p>04:31 20 Insurance, the order from December 27th, appointed a</p> <p>04:31 21 receiver, and we operated under that initial order</p> <p>04:31 22 until the order of liquidation was entered in</p> <p>04:31 23 February of -- I guess that's '13.</p> <p>04:31 24 BY MR. WILSON:</p> <p>04:31 25 Q. Who operated the company?</p>	<p>04:33 1 Go ahead.</p> <p>04:33 2 BY MR. WILSON:</p> <p>04:33 3 Q. She was president of Uni-Ter --</p> <p>04:33 4 A. She was president of Uni-Ter.</p> <p>04:33 5 Q. -- and you know that all along?</p> <p>04:33 6 A. Well, I understand. She hadn't been</p> <p>04:33 7 president very long.</p> <p>04:33 8 Q. I understand. But you didn't have to guess</p> <p>04:33 9 that she was president of Uni-Ter?</p> <p>04:33 10 MR. CEREGHINO: It's argumentative and</p> <p>04:33 11 irrelevant.</p> <p>04:33 12 BY MR. WILSON:</p> <p>04:33 13 Q. And you continued to use her, correct?</p> <p>04:33 14 A. We attempted to find a way to utilize the</p> <p>04:33 15 staff of Uni-Ter to help us meet our obligations as</p> <p>04:33 16 the receiver and liquidator of Lewis & Clark,</p> <p>04:34 17 without success.</p> <p>04:34 18 Q. Did you pay for the services of Uni-Ter?</p> <p>04:34 19 MR. CEREGHINO: Form.</p> <p>04:34 20 THE WITNESS: That is exactly the issue</p> <p>04:34 21 that was the stumbling block.</p> <p>04:34 22 BY MR. WILSON:</p> <p>04:34 23 Q. You wanted them to work for you, perform</p> <p>04:34 24 all their duties and responsibilities, and you</p> <p>04:34 25 didn't want to pay them, correct?</p>
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<p>04:32 1 A. Uni-Ter.</p> <p>04:32 2 Q. Why would you use Uni-Ter?</p> <p>04:32 3 A. Because I don't know that I had -- I don't</p> <p>04:32 4 know that the deputy receiver or the receiver had</p> <p>04:32 5 authority to shut it down until the order of</p> <p>04:32 6 liquidation was entered. I'd have to go back and</p> <p>04:32 7 look at that order.</p> <p>04:32 8 But it is not uncommon for -- as receivers,</p> <p>04:32 9 and in this case we attempted to find a way to work</p> <p>04:32 10 with Uni-Ter in the -- to effectuate the</p> <p>04:32 11 requirements of the liquidation order.</p> <p>04:32 12 Q. Who did that?</p> <p>04:32 13 A. Who did that? I did. I was involved in</p> <p>04:32 14 that.</p> <p>04:32 15 Q. Who did you deal with at Uni-Ter?</p> <p>04:32 16 A. I dealt primarily with Walter Bush as far</p> <p>04:32 17 as the management. But the day-to-day -- after the</p> <p>04:33 18 initial -- this, again, is my best recollection.</p> <p>04:33 19 After the initial meetings where there -- the then</p> <p>04:33 20 -- I guess she was president of Uni-Ter --</p> <p>04:33 21 Q. You guess? Who?</p> <p>04:33 22 A. Carolyn Verde.</p> <p>04:33 23 Q. You have to guess or do you know?</p> <p>04:33 24 A. I don't have to guess.</p> <p>04:33 25 MR. CEREGHINO: Form.</p>	<p>04:34 1 MR. CEREGHINO: Form and foundation.</p> <p>04:34 2 Go ahead.</p> <p>04:34 3 THE WITNESS: No. Our position was that</p> <p>04:34 4 Uni-Ter's compensation had been paid as part of</p> <p>04:34 5 their premium receipts, and that when the policies</p> <p>04:34 6 were terminated with the order of liquidation, that</p> <p>04:34 7 that generated a large account balance from Uni-Ter</p> <p>04:34 8 with regard to unearned fees under the terms of the</p> <p>04:34 9 agreement, and we tried to find a way to allow them</p> <p>04:34 10 to work some of that off. Those negotiations failed</p> <p>04:35 11 to be effectuated, so they were not utilized in the</p> <p>04:35 12 administration of the receivership.</p> <p>04:35 13 BY MR. WILSON:</p> <p>04:35 14 Q. Who was utilized?</p> <p>04:35 15 A. The consultants of Vista Consulting Group.</p> <p>04:35 16 Q. And they were paid?</p> <p>04:35 17 A. Correct.</p> <p>04:35 18 Q. And those charges are being sought against</p> <p>04:35 19 Uni-Ter and the defendants here?</p> <p>04:35 20 A. No.</p> <p>04:35 21 MR. CEREGHINO: Form and foundation.</p> <p>04:35 22 BY MR. WILSON:</p> <p>04:35 23 Q. They're not being charged?</p> <p>04:35 24 A. No.</p> <p>04:35 25 Q. So none of Vista's expenses are being</p>

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<p>04:35 1 sought here?</p> <p>04:35 2 A. Not based upon my understanding of the</p> <p>04:35 3 damages model.</p> <p>04:35 4 Q. You haven't told us what the damages model</p> <p>04:35 5 is --</p> <p>04:35 6 MR. CEREGHINO: Form and foundation.</p> <p>04:35 7 THE WITNESS: I have told you, but we're</p> <p>04:35 8 talking about a deepening of the insolvency. So the</p> <p>04:35 9 receivership administrative expenses and the claims</p> <p>04:36 10 that are filed against the estate are not included</p> <p>04:36 11 in our measure of damages.</p> <p>04:36 12 MR. WILSON: I have no other questions.</p> <p>04:36 13 Thank you.</p> <p>04:36 14</p> <p>04:36 15 EXAMINATION</p> <p>04:36 16 BY MS. NAKAMURA OCHOA:</p> <p>04:36 17 Q. Mr. -- is it Greer or Geer?</p> <p>04:36 18 A. That's fair. It's Greer.</p> <p>04:36 19 Q. G-r-e-e-r?</p> <p>04:36 20 A. G-r-e-e-r.</p> <p>04:36 21 Q. I'm Angela Ochoa. We represent the</p> <p>04:36 22 director defendants. We may have met before.</p> <p>04:36 23 Explain to me again, you just said that --</p> <p>04:36 24 you had explained a million times but I just want</p> <p>04:36 25 you to explain it to me one more time -- you said</p>	<p>04:38 1 Q. Okay. But you're not trying to do any type</p> <p>04:38 2 of calculation to reconcile what the actual damage,</p> <p>04:38 3 what the actual payout on a claim was; is that</p> <p>04:38 4 correct?</p> <p>04:38 5 A. Not as it relates -- not as it relates to</p> <p>04:38 6 the damages being sought in this action.</p> <p>04:38 7 Q. You had mentioned earlier that you worked</p> <p>04:39 8 on the Lewis & Clark receivership since its</p> <p>04:39 9 inception. I think you had mentioned something</p> <p>04:39 10 about you've worked maybe about 10 to 15 hours a</p> <p>04:39 11 month on what you call the asset recovery portion of</p> <p>04:39 12 the case. Do you remember that?</p> <p>04:39 13 A. Not as -- I worked -- after the initial</p> <p>04:39 14 takeover period, where I worked nearly full-time for</p> <p>04:39 15 about six months, or at least three out of every</p> <p>04:39 16 four weeks full-time and beyond, there has come a</p> <p>04:39 17 point in time where I work about 10 to 15 hours a</p> <p>04:39 18 month on the administration of the receivership, and</p> <p>04:39 19 that's sort of where I am right now, prior to this</p> <p>04:39 20 week. And that includes communications with counsel</p> <p>04:40 21 over the asset recovery litigation as well as</p> <p>04:40 22 administration of claims. And I have an associate</p> <p>04:40 23 still within Vista who prepares the financial</p> <p>04:40 24 statements. And we prepare and file, or deliver to</p> <p>04:40 25 the deputy attorney general for filing, monthly</p>
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<p>04:36 1 the damages model is based on a deepening of the</p> <p>04:36 2 insolvency; is that correct?</p> <p>04:36 3 A. That's correct.</p> <p>04:36 4 Q. And you said you were going to use numbers</p> <p>04:36 5 that were provided by Uni-Ter, Lambert Consulting,</p> <p>04:36 6 et cetera; is that correct?</p> <p>04:36 7 A. Yes.</p> <p>04:36 8 Q. Okay. So what exactly are those numbers?</p> <p>04:37 9 A. Those numbers are the -- are from the books</p> <p>04:37 10 and records of Lewis & Clark as prepared by Uni-Ter</p> <p>04:37 11 as of the date of liquidation and prior periods.</p> <p>04:37 12 Q. So if we're looking at those records, we're</p> <p>04:37 13 looking at reserves; correct?</p> <p>04:37 14 A. We're going to be looking at reserves and</p> <p>04:37 15 IBNR as calculated by Milliman and supported by the</p> <p>04:37 16 records of Lewis & Clark administered by Uni-Ter.</p> <p>04:37 17 Q. So reserves are not actually the end of the</p> <p>04:38 18 claim; right? That doesn't necessarily show what</p> <p>04:38 19 happened to the actual claim; the claim might have</p> <p>04:38 20 resolved for less than what it was reserved for. Is</p> <p>04:38 21 that correct?</p> <p>04:38 22 A. In my experience, yes. Sometimes they</p> <p>04:38 23 resolve themselves or are resolved for less than the</p> <p>04:38 24 reserve, and sometimes they are resolved for more</p> <p>04:38 25 than the reserve amount.</p>	<p>04:40 1 status reports to the receivership court's presiding</p> <p>04:40 2 judge. And I'm involved in all of those. That may</p> <p>04:40 3 not be a comprehensive list, but those are the</p> <p>04:40 4 big-ticket items.</p> <p>04:40 5 Q. Okay. So when you were testifying earlier</p> <p>04:40 6 about working a hundred hours a month, that was</p> <p>04:40 7 probably in reference to earlier in the</p> <p>04:40 8 receivership?</p> <p>04:40 9 A. That's correct.</p> <p>04:40 10 Q. You had testified about talking to some</p> <p>04:41 11 people at the Division of Insurance. If I</p> <p>04:41 12 understand correctly, you only spoke to the attorney</p> <p>04:41 13 general of the Division of Insurance; is that</p> <p>04:41 14 correct?</p> <p>04:41 15 MR. CEREGHINO: Form. But go ahead.</p> <p>04:41 16 THE WITNESS: In preparation for this</p> <p>04:41 17 deposition I spoke with the general counsel for the</p> <p>04:41 18 Department of Insurance. I did not speak to any of</p> <p>04:41 19 the individuals identified in the documents that I</p> <p>04:41 20 reviewed.</p> <p>04:41 21 BY MS. NAKAMURA OCHOA:</p> <p>04:41 22 Q. During your time either working at Vista</p> <p>04:41 23 Consulting on this Lewis & Clark receivership or as</p> <p>04:41 24 the deputy receiver, did you talk to anybody from</p> <p>04:41 25 the Division of Insurance about Lewis & Clark?</p>

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<p>04:41 1 MR. CEREGHINO: Form.</p> <p>04:41 2 Go ahead.</p> <p>04:41 3 THE WITNESS: Yes.</p> <p>04:41 4 BY MS. NAKAMURA OCHOA:</p> <p>04:41 5 Q. Who did you talk to?</p> <p>04:41 6 MR. CEREGHINO: Form.</p> <p>04:41 7 Go ahead.</p> <p>04:41 8 THE WITNESS: I've spoken with the</p> <p>04:41 9 insurance commissioners; the current one and at</p> <p>04:42 10 least one of her predecessors.</p> <p>04:42 11 I have spoken with staff within the legal</p> <p>04:42 12 division, and that includes the general counsel, who</p> <p>04:42 13 was at one point in time the acting insurance</p> <p>04:42 14 commissioner as well. I didn't differentiate in</p> <p>04:42 15 what capacity I was talking to her during that</p> <p>04:42 16 period of time.</p> <p>04:42 17 I don't recall specifically talking to</p> <p>04:42 18 anyone in examination or any of the other -- at</p> <p>04:42 19 least about specific Lewis & Clark issues.</p> <p>04:42 20 BY MS. NAKAMURA OCHOA:</p> <p>04:42 21 Q. So I'm going to just bring up some names.</p> <p>04:43 22 You don't think that you've ever talked to</p> <p>04:43 23 Brett Barrett?</p> <p>04:43 24 A. I have spoken to Brett Barrett. I do not</p> <p>04:43 25 recall speaking to Brett Barrett about Lewis & Clark</p>	<p>04:45 1 that he's retired.</p> <p>04:45 2 Q. And you don't know what is the person's</p> <p>04:45 3 name of the former employee of the Division of</p> <p>04:45 4 Insurance that's now deceased?</p> <p>04:45 5 A. His name -- he was the chief examiner for</p> <p>04:45 6 the 2008 examination report.</p> <p>04:45 7 Q. Can you tell me, what are the other</p> <p>04:45 8 receivership actions that you've worked on in the</p> <p>04:45 9 state of Nevada?</p> <p>04:45 10 MR. CEREGHINO: Form.</p> <p>04:45 11 Go ahead.</p> <p>04:45 12 THE WITNESS: Contractors Liability</p> <p>04:45 13 Insurance Company is the other one that remains open</p> <p>04:45 14 at this point. Health Facilities of California,</p> <p>04:45 15 HFC. Silver States, which is a title company. And</p> <p>04:46 16 First Nevada Insurance Company was the original one.</p> <p>04:46 17 BY MS. NAKAMURA OCHOA:</p> <p>04:46 18 Q. You had testified that you looked at the</p> <p>04:46 19 Division of Insurance documents, approximately</p> <p>04:46 20 650 pages or so -- or 650 documents from a FOIA</p> <p>04:46 21 request; correct?</p> <p>04:46 22 A. I attempted to look at them. I looked at</p> <p>04:46 23 an index and picked some that I thought might be</p> <p>04:46 24 asked about, but I didn't have any real direction as</p> <p>04:46 25 to where -- where we were going with those</p>
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<p>04:43 1 matters.</p> <p>04:43 2 Maybe it will help. I have worked on</p> <p>04:43 3 different -- Lewis & Clark is just one of four or</p> <p>04:43 4 five receiverships that I have worked on for the</p> <p>04:43 5 State of Nevada since 2013, '14. I have worked on</p> <p>04:43 6 other Nevada receiverships in prior periods of time</p> <p>04:43 7 that date back to Commissioner Alice Molasky-Arman</p> <p>04:44 8 in the late 1990, early 2000 period of time.</p> <p>04:44 9 It's my recollection Brett Barrett was on</p> <p>04:44 10 the staff before he became -- but I could be</p> <p>04:44 11 wrong -- before he became the commissioner of</p> <p>04:44 12 insurance in Nevada, and now he's the insurance</p> <p>04:44 13 commissioner, or was last time I checked, in another</p> <p>04:44 14 state. So I know who he is and I have spoken to</p> <p>04:44 15 him, but not specifically about Lewis & Clark, to</p> <p>04:44 16 the best of my recollection.</p> <p>04:44 17 Q. Okay. Well, Bud Breton. Do you</p> <p>04:44 18 remember ever having spoken to Mr. Breton about</p> <p>04:44 19 Lewis & Clark?</p> <p>04:44 20 A. I do not have any recollections of speaking</p> <p>04:44 21 to Mr. Breton.</p> <p>04:44 22 Q. We talked about a John Marshall. Do you</p> <p>04:44 23 remember having ever spoken to John Marshall about</p> <p>04:44 24 Lewis & Clark?</p> <p>04:44 25 A. I have not. It's my understanding, though,</p>	<p>04:46 1 questions.</p> <p>04:46 2 Q. In those documents did you see the order</p> <p>04:46 3 approving the merger of Sophia Palmer with</p> <p>04:46 4 Lewis & Clark?</p> <p>04:47 5 MR. CEREGHINO: Asked and answered.</p> <p>04:47 6 THE WITNESS: I did not.</p> <p>04:47 7 BY MS. NAKAMURA OCHOA:</p> <p>04:47 8 Q. And you saw -- this is what I understand --</p> <p>04:47 9 a FOIA request that was done by plaintiff's counsel</p> <p>04:47 10 there that you looked at?</p> <p>04:47 11 A. Yes.</p> <p>04:47 12 Q. If it were true that the Division of</p> <p>04:47 13 Insurance approved the merger between Sophia Palmer</p> <p>04:47 14 and Lewis & Clark, would you still fault the board</p> <p>04:47 15 of directors for approving that merger?</p> <p>04:47 16 MR. CEREGHINO: Form.</p> <p>04:47 17 Go ahead.</p> <p>04:47 18 THE WITNESS: Yes. It's possible they</p> <p>04:47 19 would still be responsible -- a regulatory approval</p> <p>04:47 20 of a transaction under these circumstances is not</p> <p>04:47 21 necessarily a, for lack of a -- a</p> <p>04:47 22 get-out-of-jail-free card. I would want to know</p> <p>04:47 23 what was disclosed to the Department of Insurance,</p> <p>04:47 24 what was represented to them as the basis for the</p> <p>04:48 25 merger, and I don't know -- you know, we're</p>

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<p>04:48 1 fortunate in some respects of having some hindsight</p> <p>04:48 2 to look back on some of those transactions today,</p> <p>04:48 3 but that particular transaction is problematic</p> <p>04:48 4 enough that we included it in our complaint as a</p> <p>04:48 5 basis for liability against the defendants in this</p> <p>04:48 6 action.</p> <p>04:48 7 BY MS. NAKAMURA OCHOA:</p> <p>04:48 8 Q. So in the 650 or so documents that you</p> <p>04:48 9 looked at from the Division of Insurance, you</p> <p>04:48 10 didn't find anything about what was disclosed to</p> <p>04:48 11 the Division of Insurance to support the request</p> <p>04:48 12 to approve the merger of Sophia Palmer with</p> <p>04:48 13 Lewis & Clark?</p> <p>04:48 14 MR. CEREGHINO: Form.</p> <p>04:48 15 Go ahead.</p> <p>04:48 16 THE WITNESS: There were about 650</p> <p>04:48 17 documents in the database, and I did not, as part of</p> <p>04:49 18 my review, identify or find any documents as they</p> <p>04:49 19 related to Sophia Palmer. I'm not saying they</p> <p>04:49 20 weren't there. I'm not saying it didn't include an</p> <p>04:49 21 order. I did not review those as part of -- as part</p> <p>04:49 22 of this preparation. And I didn't review all the</p> <p>04:49 23 documents. I didn't have time.</p> <p>04:49 24 BY MS. NAKAMURA OCHOA:</p> <p>04:49 25 Q. At the time that you were preparing for</p>	<p>04:51 1 for today's deposition.</p> <p>04:51 2 BY MS. NAKAMURA OCHOA:</p> <p>04:51 3 Q. Okay. So you're relying on the complaint</p> <p>04:51 4 to tell you what caused Lewis & Clark's demise?</p> <p>04:51 5 MR. CEREGHINO: Form.</p> <p>04:51 6 Go ahead.</p> <p>04:51 7 THE WITNESS: No. It's not the way it</p> <p>04:51 8 works. Okay? When the company was placed into</p> <p>04:51 9 liquidation, we as receiver attempted to gather</p> <p>04:51 10 all of the information that was related to the</p> <p>04:51 11 directors, the management, and the company</p> <p>04:51 12 Lewis & Clark LTC RRG.</p> <p>04:52 13 Once we had gathered what we believed or</p> <p>04:52 14 were told were the documents, we performed a review</p> <p>04:52 15 of all of those documents, and that led to retaining</p> <p>04:52 16 counsel and drafting a complaint as it relates to</p> <p>04:52 17 those actions which we believe were recoverable to</p> <p>04:52 18 the estate.</p> <p>04:52 19 Whether or not the claims in the complaint</p> <p>04:52 20 are the causes of this insolvency or were</p> <p>04:52 21 contributing factors to this insolvency, they are</p> <p>04:53 22 the causes of action which, after consultation with</p> <p>04:53 23 counsel, we brought because we believed that they</p> <p>04:53 24 could be proven.</p> <p>04:53 25 And I know that's not a direct answer to</p>
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<p>04:49 1 this deposition, did you think it was important to</p> <p>04:49 2 look for those documents?</p> <p>04:49 3 MR. CEREGHINO: Objection. Form.</p> <p>04:49 4 Go ahead.</p> <p>04:49 5 THE WITNESS: Yes, no. In preparation for</p> <p>04:49 6 this deposition, there were levels of importance.</p> <p>04:50 7 Those documents I didn't think were as important as</p> <p>04:50 8 they related to the communication between the</p> <p>04:50 9 Department and the defendants as the examination</p> <p>04:50 10 reports which were specifically identified in the</p> <p>04:50 11 paragraph right above there.</p> <p>04:50 12 So I made an evaluation of what you were</p> <p>04:50 13 going to be asking me about today, and I apparently</p> <p>04:50 14 guessed wrong.</p> <p>04:50 15 BY MS. NAKAMURA OCHOA:</p> <p>04:50 16 Q. In preparing for this deposition today, did</p> <p>04:50 17 you do any type of research, analysis, as to what</p> <p>04:50 18 particular event caused the Lewis & Clark demise?</p> <p>04:50 19 MR. CEREGHINO: Form.</p> <p>04:50 20 Go ahead.</p> <p>04:50 21 THE WITNESS: I think -- I think the</p> <p>04:51 22 complaint accurately states at least the major</p> <p>04:51 23 reasons why we believe that the company became</p> <p>04:51 24 insolvent. And I reviewed the complaint and the</p> <p>04:51 25 exhibits attached to the complaint in preparation</p>	<p>04:53 1 your question, but it's the analysis that was gone</p> <p>04:53 2 through that brought us to the stage that we are at</p> <p>04:53 3 this point in time. So this litigation is not an</p> <p>04:53 4 attempt to identify the cause or all the causes of</p> <p>04:53 5 the insolvency and liquidation of Lewis & Clark. At</p> <p>04:53 6 least I don't believe that's the purpose of this</p> <p>04:53 7 litigation.</p> <p>04:53 8 BY MS. NAKAMURA OCHOA:</p> <p>04:53 9 Q. What is the purpose of this litigation?</p> <p>04:53 10 A. To recover monies back into the estate to</p> <p>04:53 11 pay the policyholders and claimants of Lewis & Clark</p> <p>04:53 12 Risk Retention Group that would otherwise go unpaid</p> <p>04:53 13 due to the insolvency of the Lewis & Clark Risk</p> <p>04:53 14 Retention Group.</p> <p>04:54 15 Q. And, again, in determining claims that</p> <p>04:54 16 should be paid, you make no efforts to determine</p> <p>04:54 17 what claims are actually valid?</p> <p>04:54 18 MR. CEREGHINO: Form.</p> <p>04:54 19 Go ahead.</p> <p>04:54 20 THE WITNESS: That's not what's going on.</p> <p>04:54 21 I have a separate statutory obligation under the</p> <p>04:54 22 terms of the Nevada Code to evaluate each and every</p> <p>04:54 23 one of those claims that have been submitted in both</p> <p>04:54 24 a timely fashion under a proof-of-claim filing or</p> <p>04:54 25 that I would receive today, tomorrow, or the next</p>

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<p>04:54 1 day, if they came forward with a claim at that point</p> <p>04:54 2 in time. And that evaluation will be done in due</p> <p>04:54 3 course.</p> <p>04:54 4 BY MS. NAKAMURA OCHOA:</p> <p>04:54 5 Q. So it hasn't been completed?</p> <p>04:54 6 A. Has not been completed.</p> <p>04:54 7 Q. Can you estimate what percentage has been</p> <p>04:54 8 done?</p> <p>04:54 9 MR. CEREGHINO: Form.</p> <p>04:54 10 Go ahead.</p> <p>04:54 11 THE WITNESS: 25, 30 percent.</p> <p>04:55 12 BY MS. NAKAMURA OCHOA:</p> <p>04:55 13 Q. You had stated earlier that part of the</p> <p>04:55 14 process is after receivership you collect all the</p> <p>04:55 15 documents you need to understand what's going on in</p> <p>04:55 16 the case or understand what's going on with the risk</p> <p>04:55 17 retention group. Do you recall who you requested</p> <p>04:55 18 documents from?</p> <p>04:55 19 MR. CEREGHINO: Asked and answered.</p> <p>04:55 20 Go ahead.</p> <p>04:55 21 THE WITNESS: We asked the Uni-Ter staff</p> <p>04:55 22 on-site in Alpharetta, Georgia. I believe there was</p> <p>04:55 23 correspondence sent to an attorney by the name of</p> <p>04:55 24 Sitterson who I believe represented the -- or I was</p> <p>04:55 25 told represented the board. And those were the --</p>	<p>04:57 1 THE WITNESS: I've communicated with any</p> <p>04:57 2 insured of Lewis & Clark that have claims pending in</p> <p>04:57 3 the proof-of-claim process for them to provide us,</p> <p>04:57 4 in our receiver -- as receiver, as it relates to any</p> <p>04:57 5 outstanding or pending claims. Those go either to</p> <p>04:57 6 their defense counsel in some instances or sometimes</p> <p>04:57 7 directly to the insureds.</p> <p>04:58 8 And I think I got a call from Robert Chur's</p> <p>04:58 9 defense attorney as recently as week before last</p> <p>04:58 10 asking about the status of the receivership. So I</p> <p>04:58 11 can't tell you -- I don't recall specifically</p> <p>04:58 12 speaking to any of the named defendants. And Harter</p> <p>04:58 13 and Lumpkin are not insureds of Lewis & Clark as I</p> <p>04:58 14 understand it. But I could have and probably did</p> <p>04:58 15 speak to representatives of one or more of the</p> <p>04:58 16 individual officer and director defendants.</p> <p>04:58 17 BY MS. NAKAMURA OCHOA:</p> <p>04:58 18 Q. But as we sit here today, you have no</p> <p>04:58 19 recollection of making a records request to</p> <p>04:58 20 Mr. Chur, Mr. Fogg, Mr. Garber, Ms. Harter,</p> <p>04:59 21 Mr. Hurlbut, Ms. Lumpkin, Mr. Marshall, or</p> <p>04:59 22 Mr. Stickels; is that correct?</p> <p>04:59 23 MR. CEREGHINO: Form. Form.</p> <p>04:59 24 Go ahead.</p> <p>04:59 25 THE WITNESS: Outside of any discovery</p>
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<p>04:56 1 those are the two that stick out in my mind. There</p> <p>04:56 2 may have been other requests that were sent out.</p> <p>04:56 3 I know -- it's my recollection at least</p> <p>04:56 4 that the people in Alpharetta, Georgia, which was</p> <p>04:56 5 the site of the Uni-Ter operation, reached out to</p> <p>04:56 6 their home office in I want to say New York and</p> <p>04:56 7 contacted people there as it related to the</p> <p>04:56 8 electronic data that we were provided that was given</p> <p>04:56 9 to us on a portable hard drive.</p> <p>04:56 10 BY MS. NAKAMURA OCHOA:</p> <p>04:56 11 Q. Did you -- did Mr. Sitterson provide any</p> <p>04:56 12 documents to the receiver?</p> <p>04:56 13 MR. CEREGHINO: Form.</p> <p>04:56 14 Go ahead.</p> <p>04:56 15 THE WITNESS: I don't recall.</p> <p>04:56 16 BY MS. NAKAMURA OCHOA:</p> <p>04:56 17 Q. Did you make any requests to Robert Chur</p> <p>04:57 18 for documents?</p> <p>04:57 19 MR. CEREGHINO: Form.</p> <p>04:57 20 THE WITNESS: Not that I recall.</p> <p>04:57 21 BY MS. NAKAMURA OCHOA:</p> <p>04:57 22 Q. Did you make any requests to Steve Fogg for</p> <p>04:57 23 documents?</p> <p>04:57 24 MR. CEREGHINO: Form again. I assume it's</p> <p>04:57 25 for every one of the directors.</p>	<p>04:59 1 requests that were made by my counsel?</p> <p>04:59 2 BY MS. NAKAMURA OCHOA:</p> <p>04:59 3 Q. Yes.</p> <p>04:59 4 A. That is correct.</p> <p>04:59 5 Q. I've handed you what's entitled Plaintiff</p> <p>04:59 6 Commissioner of Insurance for the State of Nevada as</p> <p>04:59 7 Receiver of Lewis & Clark LTC Risk Retention Group</p> <p>04:59 8 Inc.'s Amended Responses to Defendants' First Set of</p> <p>04:59 9 Interrogatories.</p> <p>05:00 10 Have you seen this document before?</p> <p>05:00 11 A. I don't recall seeing this specific</p> <p>05:01 12 document. And I did work with counsel to provide</p> <p>05:01 13 them access to whatever records we had, which I</p> <p>05:01 14 understood was done in response to some of the</p> <p>05:01 15 discovery requests. Whether it was these or others,</p> <p>05:01 16 I couldn't say.</p> <p>05:01 17 Q. So you didn't take part in the preparation</p> <p>05:01 18 of these responses?</p> <p>05:01 19 MR. CEREGHINO: Form.</p> <p>05:01 20 Go ahead.</p> <p>05:01 21 THE WITNESS: I did not draft them. And</p> <p>05:01 22 I did not review them. I believe that I was asked</p> <p>05:01 23 for -- to provide counsel with records from the</p> <p>05:01 24 receivership that were related to this litigation,</p> <p>05:01 25 the underlying complaint and otherwise and beyond.</p>

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<p>05:02 1 And we did that. So I don't -- I hate to parse, but</p> <p>05:02 2 I assume I was involved.</p> <p>05:02 3 The answer to Question Number 22 says that</p> <p>05:02 4 I did assist. I have no reason to believe that my</p> <p>05:02 5 counsel would misrepresent my role or what I did.</p> <p>05:02 6 BY MS. NAKAMURA OCHOA:</p> <p>05:02 7 Q. Well, I'll represent to you that I don't</p> <p>05:02 8 have a verification page for this. Do you recall</p> <p>05:02 9 having verified these responses?</p> <p>05:02 10 A. No, I don't recall having verified them.</p> <p>05:02 11 Q. So it's just an assumption that you helped</p> <p>05:02 12 prepare these?</p> <p>05:02 13 MR. CEREGHINO: Form. Foundation.</p> <p>05:02 14 Go ahead.</p> <p>05:02 15 THE WITNESS: If you look at page 57,</p> <p>05:02 16 that's my name identified as "all persons who</p> <p>05:02 17 assisted in the preparation of responses to these</p> <p>05:02 18 interrogatories."</p> <p>05:02 19 I communicate with my counsel on a regular</p> <p>05:03 20 basis as it relates to this ongoing asset recovery</p> <p>05:03 21 litigation.</p> <p>05:03 22 BY MS. NAKAMURA OCHOA:</p> <p>05:03 23 Q. All right. Let's look at page 5. It says,</p> <p>05:03 24 "State all facts, incidents, and circumstances that</p> <p>05:03 25 evidence the BOD acted with gross negligence with</p>	<p>05:05 1 acted with gross negligence with the management of</p> <p>05:05 2 Lewis & Clark."</p> <p>05:05 3 So I will not disagree with my counsel that</p> <p>05:05 4 that is not responsive to your question. That's</p> <p>05:05 5 different, as I've previously discussed with you</p> <p>05:05 6 earlier, as to what is or isn't a cause of the</p> <p>05:05 7 insolvency.</p> <p>05:05 8 Q. In your review of the receivership</p> <p>05:05 9 documents, did you believe that there were any</p> <p>05:05 10 interested-party transactions?</p> <p>05:05 11 MR. CEREGHINO: Form.</p> <p>05:05 12 Go ahead.</p> <p>05:05 13 THE WITNESS: Interested-party</p> <p>05:06 14 transactions, and I -- that's not one of the things</p> <p>05:06 15 that was identified on my disclosure to review for</p> <p>05:06 16 today, first of all.</p> <p>05:06 17 Second of all, I think there are some</p> <p>05:06 18 matters that I have testified to today that would</p> <p>05:06 19 suggest, depending upon how you define</p> <p>05:06 20 interested-party transactions, would arise to that</p> <p>05:06 21 level, both vis-a-vis between U.S. RE and Uni-Ter</p> <p>05:07 22 and some of the people that have been retained by --</p> <p>05:07 23 in the administration of Lewis & Clark.</p> <p>05:07 24 I have not -- we did not plead, but I am</p> <p>05:07 25 not convinced that some of the transactions</p>
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<p>05:03 1 the management of Lewis & Clark. For each fact,</p> <p>05:03 2 state the approximate date."</p> <p>05:03 3 And I don't need you to go through</p> <p>05:03 4 everything. I think we talked a lot about some of</p> <p>05:03 5 these things. But I want to go to page 9. If you</p> <p>05:03 6 look at line 14, it says, "On information and</p> <p>05:03 7 belief, the DOI reprimanded the Board for failing to</p> <p>05:03 8 submit a Conflict of Interest Statement as the</p> <p>05:03 9 officers and directors of L&C were required to do</p> <p>05:03 10 pursuant to NAC 694C."</p> <p>05:04 11 Do you see that?</p> <p>05:04 12 A. I do.</p> <p>05:04 13 Q. Do you have a criticism of the board for</p> <p>05:04 14 failing to submit a conflict of interest statement?</p> <p>05:04 15 A. I didn't. I believe that statement says</p> <p>05:04 16 that the Department of Insurance did in their</p> <p>05:04 17 regulatory capacity, not as the receiver.</p> <p>05:04 18 Q. So as we sit here today, you have no</p> <p>05:04 19 opinion that the failure to submit a conflict of</p> <p>05:04 20 interest statement in -- who knows what year this</p> <p>05:04 21 is -- caused -- you don't believe that caused the</p> <p>05:04 22 demise of Lewis & Clark?</p> <p>05:04 23 A. That answer that you focused in on is</p> <p>05:04 24 in response to, "State all facts, incidents,</p> <p>05:04 25 and circumstances that evidence that the BOD</p>	<p>05:07 1 involving Oneida Bank and Bailey and Haskell and the</p> <p>05:07 2 directors who sit on both the boards of the insureds</p> <p>05:07 3 and the board of Lewis & Clark would not meet the</p> <p>05:07 4 definition of, if it were defined for me, as</p> <p>05:08 5 interested-party transactions.</p> <p>05:08 6 BY MS. NAKAMURA OCHOA:</p> <p>05:08 7 Q. I'm just trying to figure out why you would</p> <p>05:08 8 say the failure to submit a conflict of interest</p> <p>05:08 9 statement is evidence of gross negligence. Can you</p> <p>05:08 10 tell me what's the relation there?</p> <p>05:08 11 A. I believe each of those that I've just</p> <p>05:08 12 pointed out are -- if a director of an insurance</p> <p>05:08 13 entity is also the chief financial officer of an</p> <p>05:08 14 insured or of the bank that's holding the funds of</p> <p>05:08 15 the insurance company or has some involvement with</p> <p>05:08 16 the insurance agent that is placing some of the</p> <p>05:08 17 coverages, that those are the kinds of things that</p> <p>05:09 18 would be disclosed in a conflict of interest</p> <p>05:09 19 statement.</p> <p>05:09 20 So Mr. Stickels, for instance, who I</p> <p>05:09 21 believe is employed by Oneida Bank, sits on the</p> <p>05:09 22 board of Lewis & Clark, and may have an -- and I'm</p> <p>05:09 23 not specifically sure of what his role is with</p> <p>05:09 24 Bailey and Haskell, has disclosed his role in all</p> <p>05:09 25 three of those entities as is required by the</p>

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<p>05:09 1 Department of Insurance, that that wouldn't raise 05:09 2 some questions by the Department of Insurance. But 05:09 3 it was never disclosed.</p> <p>05:09 4 The same goes for Chur and Fogg and Hurlbut 05:09 5 as it relates to their insureds, their role with 05:09 6 their company, their nursing home, and the fact that 05:10 7 their nursing homes are placing insurance -- or are 05:10 8 meeting their state obligations in some instances of 05:10 9 being insured by setting up their own risk retention 05:10 10 group.</p> <p>05:10 11 Q. Let me just back up. You've never seen any 05:10 12 conflict of interest statement filed by any of the 05:10 13 board of directors in this action?</p> <p>05:10 14 A. I--</p> <p>05:10 15 MR. WIRTHLIN: Angela, can I just clarify 05:10 16 for the record here? Are you in agreement with the 05:10 17 same standing objections that we had and talked 05:10 18 about with Jon?</p> <p>05:10 19 MS. NAKAMURA OCHOA: Sure, Sure.</p> <p>05:10 20 THE WITNESS: Normally you would attach a 05:10 21 conflict of interest statement to the financial 05:10 22 filing of the company, and so that's part of the 05:11 23 interrogatories to a statutory statement and I did 05:11 24 review some statutory statements, I wasn't 05:11 25 specifically looking for conflicts of interest</p>	<p>05:12 1 letter we discussed.</p> <p>05:12 2 Q. In your review of documents, did you find 05:12 3 any evidence that this letter, in fact, went to Jeff 05:13 4 Marshall?</p> <p>05:13 5 A. I believe there is evidence that he 05:13 6 received it. I don't think it's in documents that 05:13 7 I've been shown today. But it's my recollection 05:13 8 that these exact numbers are included -- and I could 05:14 9 be confusing it with they're cited in the complaint, 05:14 10 but I think there's some reference to numbers 05:14 11 similar to this, if not identical, in the minutes of 05:14 12 the board meetings or some of the correspondence 05:14 13 that was exchanged back and forth between the 05:14 14 Department of Insurance and Lewis & Clark. Or maybe 05:14 15 they were communications with Uni-Ter. I'd have to 05:14 16 go back and ...</p> <p>05:14 17 Q. As we sit here today, you don't have any 05:14 18 particular specific document that you can point to 05:14 19 to show that my client, Jeff Marshall, in fact, 05:14 20 received this letter?</p> <p>05:14 21 MR. WIRTHLIN: Misstates testimony.</p> <p>05:14 22 THE WITNESS: Other than -- I mean, the 05:14 23 document doesn't indicate that it was sent 05:15 24 return-receipt requested or I've not seen a green 05:15 25 card or any of those kinds of things. So I don't</p>
Page 254	Page 256
<p>05:11 1 disclosures.</p> <p>05:11 2 BY MS. NAKAMURA OCHOA:</p> <p>05:11 3 Q. So they could exist?</p> <p>05:11 4 A. They could exist.</p> <p>05:11 5 Q. Okay. You just don't know as we sit here 05:11 6 today?</p> <p>05:11 7 A. Right. That wasn't part of what I prepared 05:11 8 for my deposition today.</p> <p>05:11 9 MS. NAKAMURA OCHOA: We can just mark that 05:11 10 as an exhibit.</p> <p>05:11 11 (Exhibit 13 marked.)</p> <p>05:12 12 BY MS. NAKAMURA OCHOA:</p> <p>05:12 13 Q. I just want to go back to Exhibit 13. You 05:12 14 didn't look at Exhibit 13 prior to today in 05:12 15 preparation for your deposition?</p> <p>05:12 16 A. I did not.</p> <p>05:12 17 MS. NAKAMURA OCHOA: You can all take one. 05:12 18 (Exhibit 14 marked.)</p> <p>05:12 19 BY MS. NAKAMURA OCHOA:</p> <p>05:12 20 Q. Have you reviewed this letter before?</p> <p>05:12 21 A. Yes.</p> <p>05:12 22 Q. We talked a little bit about this 05:12 23 September 2010 letter before with Mr. Wilson; is 05:12 24 that correct?</p> <p>05:12 25 A. Yes. This is the Marshall-to-Marshall</p>	<p>05:15 1 know what evidence I would have looked for. But I 05:15 2 don't -- you know, my assumption is he got this. 05:15 3 They responded to the Department's concerns. And 05:15 4 it became part of the ongoing discussion between 05:15 5 the Department of Insurance and the company, Lewis & 05:15 6 Clark and Uni-Ter.</p> <p>05:15 7 BY MS. NAKAMURA OCHOA:</p> <p>05:15 8 Q. Okay. So you do recall that Lewis & Clark, 05:15 9 whether through counsel or Uni-Ter, did respond to 05:15 10 this September 8, 2010, letter?</p> <p>05:15 11 A. Yeah, but your question is do I have 05:15 12 documentation or recall something that shows that he 05:15 13 received it. And I don't -- you know, as I said 05:15 14 earlier, there are documents that I have seen that 05:15 15 would suggest to me that he did in fact receive it, 05:15 16 based upon what the actions of Lewis & Clark's board 05:15 17 and Uni-Ter were after the fact.</p> <p>05:16 18 Q. Okay. I just wanted to make sure you do 05:16 19 recall seeing correspondence in which Lewis & Clark 05:16 20 or Uni-Ter responded to Exhibit 14.</p> <p>05:16 21 A. Yes. I recall seeing that or something to 05:16 22 that effect or memos in response to it or plans 05:16 23 as to -- but they were not -- one of the things that 05:16 24 I haven't seen is the last paragraph calls for 05:16 25 management to commence preparing a corrective plan</p>

<p style="text-align: center;">Page 257</p> <p>05:16 1 and implementation schedule, and I've not seen one 05:16 2 of those. 05:16 3 Q. And, again, you didn't talk to John 05:16 4 Marshall about any follow-up to this letter? 05:16 5 A. No. I have not spoken to John Marshall 05:16 6 about any follow-up to this letter. 05:16 7 Q. And there's nothing to preclude you from 05:16 8 talking to John Marshall about that letter? 05:17 9 MR. WIRTHLIN: Outside the scope. 05:17 10 THE WITNESS: If I knew where he was, I 05:17 11 could talk to him. 05:17 12 BY MS. NAKAMURA OCHOA: 05:17 13 Q. Did Ms. Parks tell you where he was? 05:17 14 MR. WIRTHLIN: Objection to the extent it 05:17 15 calls for attorney-client privilege. 05:17 16 THE WITNESS: I'm aware that he's retired. 05:17 17 I don't know anything beyond that. 05:17 18 MS. NAKAMURA OCHOA: I have no further 05:17 19 questions. 05:17 20 MR. WILSON: No further questions. 05:17 21 MR. WIRTHLIN: No questions. 05:17 22 THE VIDEOGRAPHER: Stand by, please. This 05:17 23 concludes today's videographed deposition of 05:17 24 30(b)(6) witness of Commissioner of Insurance for 05:17 25 the State of Nevada, consisting of five discs. The</p>	<p style="text-align: center;">Page 259</p> <p>1 CERTIFICATE OF REPORTER 2 STATE OF NEVADA) 3)SS 4 COUNTY OF CLARK) 5 I, Holly Larsen, a duly commissioned and 6 licensed Court Reporter, Clark County, State of 7 Nevada, do hereby certify: That I reported the 8 taking of the deposition of the witness, Robert 9 Greer, commencing on Thursday, November 8, 2018, at 10 9:01 a.m. 11 That prior to being examined, the witness was, 12 by me, duly sworn to testify to the truth. That I 13 thereafter transcribed my said shorthand notes into 14 typewriting and that the typewritten transcript of 15 said deposition is a complete, true, and accurate 16 transcription of said shorthand notes. 17 I further certify that I am not a relative or 18 employee of an attorney or counsel of any of the 19 parties, nor a relative or employee of an attorney 20 or counsel involved in said action, nor a person 21 financially interested in the action. 22 IN WITNESS WHEREOF, I have hereunto set my hand, 23 in my office, in the County of Clark, State of 24 Nevada, this 19th day of November, 2018. 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000</p>
<p style="text-align: center;">Page 258</p> <p>05:17 1 time as indicated on the video screen, 1714, and we 05:17 2 are off the record. 05:17 3 (Proceedings concluded at 5:14 p.m.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: center;">Page 260</p> <p>1 ERRATA SHEET 2 3 I declare under penalty of perjury that I have read 4 the foregoing _____ pages of my testimony, taken on 5 _____ (date) at _____ (city), 6 _____ (state), 7 8 and that the same is a true record of the testimony 9 given by me at the time and place herein above set 10 forth, with the following exceptions: 11 12 Page Line Should read: Reason for change: 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25 _____</p>

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ERRATA SHEET (Continued)

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22	Date: _____	_____	_____
23	_____	Signature of Witness	_____
24	_____	_____	_____
25	_____	Name Typed or Printed	_____

EXHIBIT “B”

EXHIBIT “B”

NOTC

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

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.: XXVII

NOTICE OF TAKING NRCP 30(b)(6)
DEPOSITION OF PLAINTIFF
COMMISSIONER OF INSURANCE FOR
THE STATE OF NEVADA AS RECEIVER
FOR LEWIS AND CLARK LTC RISK
RETENTION GROUP, INC.

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

EXHIBIT	1
WITNESS:	Greer
DATE:	11-8-18
HOLLY LARSEN, CCR NO. 600	

1 PLEASE TAKE NOTICE Defendants, Uni-Ter Underwriting Management Corporation,
2 Uni-Ter Claims Services Corporation and U.S. Re Corporation, will take the NRCP 30(b)(6)
3 deposition of Plaintiff, Commissioner of Insurance for the State of Nevada as Receiver for Lewis
4 and Clark LTC Risk Retention Group, Inc., upon oral examination, on the 8th day of November,
5 at 9 a.m. (Pacific Standard Time), at the offices of McDonald Carano LLP at 2300 West Sahara
6 Avenue, Suite 1200, Las Vegas, Nevada 89102.

7 Plaintiff shall designate one or more officers, directors, or managing agents, or other
8 persons who consent to do so, to testify on its behalf concerning the matters and subjects set forth
9 in Exhibit "A" attached hereto. The deposition(s) will be taken pursuant to Nevada Rules of Civil
10 Procedure 26 and 30(b)(6), before a Notary Public or some other officer authorized by law to
11 administer oaths and shall be recorded by video and stenographic means.

12 Dated this 1st day of October, 2018.

13
14 McDONALD CARANO LLP

15 By: /s/ George Ogilvie

16 George F. Ogilvie III (NSBN 3552)
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21 *Attorneys for Defendants Uni-Ter Underwriting*
22 *Management Corp., Uni-Ter Claims Services*
23 *Corp., and U.S. RE Corporation.*
24
25
26
27
28

EXHIBIT A

DEFINITIONS AND INSTRUCTIONS

For purposes of this Notice, the following terms shall have the meanings indicated below:

1. The terms "Plaintiff" or "You" or "Your" refers to Plaintiff, Commissioner of Insurance for the State of Nevada as Receiver for Lewis and Clark LTC Risk Retention Group.

2. "Lewis & Clark" shall mean Lewis & Clark LTC Risk Retention Group, Inc., including its officers, directors, members, managers, representatives, agents, attorneys, predecessors, successors, assigns, or anyone acting or purporting to act on its behalf.

3. "Uni-Ter UMC" shall mean Uni-Ter Underwriting Management Corp., including its officers, directors, members, managers, representatives, agents, attorneys, predecessors, successors, assigns, or anyone acting or purporting to act on its behalf.

4. "Uni-Ter CS" shall mean Uni-Ter Claims Services Corp., including its officers, directors, members, managers, representatives, agents, attorneys, predecessors, successors, assigns, or anyone acting or purporting to act on its behalf.

5. "U.S. Re" shall mean U.S. Re Corporation, including its officers, directors, members, managers, representatives, agents, attorneys, predecessors, successors, assigns, or anyone acting or purporting to act on its behalf.

6. "Director Defendants" shall mean those persons identified as individual defendants in the Third Amended Complaint in this Action, including: Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels.

7. "Board" shall mean the Board of Directors of Lewis and Clark LTC Risk Retention Group.

8. "DOI" shall refer to the Nevada Division of Insurance.

9. "Elsass" refers to Sanford Elsass.

10. "Multi-Site Operators" refers to multi-site LTC operators.

11. "Milliman" shall mean Milliman, Inc., including its officers, directors, members, managers, representatives, agents, attorneys, predecessors, successors, assigns, or anyone acting

1 or purporting to act on its behalf, including, but not limited to, Richard Lord.

2 12. "Praxis" shall mean Praxis Claims Consulting, including its officers, directors,
3 members, managers, representatives, agents, attorneys, predecessors, successors, assigns, or
4 anyone acting or purporting to act on its behalf, including, but not limited to, Brian Stiefel.

5 13. "Fishlinger" shall mean WRM America or Congdon, Flaherty, O'Callaghan, Reid
6 Donlon, Travis & Fishlinger, including its officers, directors, members, managers, representatives,
7 agents, attorneys, predecessors, successors, assigns, or anyone acting or purporting to act on its
8 behalf, including, but not limited to, William Fishlinger and John Flaherty.

9 14. "County Villa" shall mean Country Villa Health Services, including its officers,
10 directors, members, managers, representatives, agents, attorneys, predecessors, successors,
11 assigns, or anyone acting or purporting to act on its behalf.

12 15. "Sophia Palmer" shall mean Sophia Palmer Nurses Risk Retention Group,
13 including its officers, directors, members, managers, representatives, agents, attorneys,
14 predecessors, successors, assigns, or anyone acting or purporting to act on its behalf.

15 16. "Stearns Weaver" refers to Stearns Weaver Miller Weissler Alhadeff & Sitterson,
16 P.A., including its directors, members, managers, representatives, agents, attorneys, predecessors,
17 successors, assigns, or anyone acting or purporting to act on its behalf, including, but not limited
18 to, Curtis H. Sitterson.

19 17. "Action" means the instant case captioned: *Commissioner of Insurance for the*
20 *State of Nevada as Receiver of Lewis and Clark LTC Risk Retention Group, Inc. v. Robert Chur,*
21 *et al.*, Case No: A-14-711535, pending in the District Court of Nevada, Clark County, Nevada.

22 18. "Complaint" means the Third Amended Complaint filed on August 5, 2016, in
23 *Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark LTC Risk*
24 *Retention Group, Inc. v. Robert Chur, et al.*, Case No: A-14-711535, pending in the District Court
25 of Nevada, Clark County, Nevada.

SUBJECTS OF EXAMINATION

1. The conduct of the Directors and Officers of L&C ("Board"), including, but not limited to:
 - a. Your allegation that the Board was grossly negligent in performing their duties as directors and officers of L&C, which resulted in the receivership action being filed, as set forth in Paragraph 32 of the Complaint.
 - b. Your allegation that the Board placed undue reliance on Uni-Ter as its manager without properly informing itself of the information provided by Uni-Ter and its affiliates as set forth in Paragraph 34 of the Complaint.
 - c. Your allegation that the Board continued to rely on information provided by Uni-Ter despite clear indications that information provided by Uni-Ter was incomplete and inaccurate and that the recommendations were ill advised as set forth in Paragraph 34 of the Complaint.
 - d. Your allegation that the Board failed to exercise diligence in correcting, and worsening, L&C's financial problems outlined in the DOI's September 2010 Letter as set forth in Paragraph 99 of the Complaint.
 - e. Your allegation that the Board knew that information presented to it by, or at the direction of Uni-Ter and U.S. Re, could not be relied on as set forth in Paragraph 104 of the Complaint.
 - f. Your allegation that the Board relied on the reports and recommendations of Elsass and Uni-Ter UMC, despite knowing they were unwarranted as set forth in Paragraph 121 of the Complaint.
 - g. Your allegation that the minutes of the October 5, 2011 action by the Board demonstrate the Board was aware it was not receiving accurate and complete information from Uni-Ter as set forth in Paragraph 145 of the Complaint.
 - h. Your allegation that the Board failed to exercise even slight diligence or scant care and failed to ensure that Uni-Ter provided more complete and accurate reporting of L&C's financial status as set forth in Paragraph 145 of the Complaint.
 - i. Your allegation that the insolvency of L&C was arguably attributable to the directors and officers' failure to promptly identify and address the financial problems as set forth in Paragraph 238 of the Complaint.

2. L&C's acceptance of Multi-Site Operators as policyholders, including, but not limited to:
 - a. Your allegations that the Board accepted Multi-Site Operators, at Uni-Ter's direction, without exercising diligence and without adequate information as set forth in Paragraphs 55 and 58 of the Complaint.
 - b. Your allegation that L&C's acceptance of Multi-Site Operators was a significant divergence from the established business model of L&C as set forth in Paragraph 60 of the Complaint.
 - c. Your allegation that the principal reason for L&C's net losses in the first three quarters of 2011 was because the Multi-Site Operators had passed on significant losses to L&C in the two policy years from 2009-2011 as set forth in Paragraph 101 of the Complaint.
3. Uni-Ter's conduct, including, but not limited to:
 - a. Your allegation that Uni-Ter UMC, through its employees, negligently misrepresented the specific financial condition of L&C including the level of losses and LAE as set forth in Paragraph 242 of the Complaint.
 - b. Your allegation that Uni-Ter did not present all relevant and accurate information concerning the financial condition of L&C to the Board as set forth in Paragraph 244 of the Complaint.
4. U.S. Re Involvement with L&C, including, but not limited to:
 - a. Your allegation that U.S. Re acted as an agent of L&C as set forth in Paragraphs 82 of the Complaint.
 - b. Your allegation that U.S. Re was engaged not only as L&C's exclusive broker, but also as its consultant as set forth in Paragraph 84 of the Complaint.
 - c. Your allegations that U.S. Re was actively involved in the activities and management of L&C as set forth in Paragraphs 90 and 91 of the Complaint.
5. L&C's Financial Condition, including, but not limited to:
 - a. Your allegations that at the end of 2011, there was ample information that clearly showed L&C's financial condition was in dangerous peril as set forth in Paragraphs 222 and 223 of the Complaint.

6. Commutation of the Imagine Re treaty in 2008, including, but not limited to:
 - a. Your allegations that Uni-Ter breached its fiduciary duty to L&C by recommending to the Board that the 2007 treaty be commuted as set forth in Paragraphs 94, 251, 252 and 267 of the Complaint.
 - b. Your allegation that U.S. Re benefited from the commutation of the 2007 treaty as set forth in Paragraph 253 of the Complaint.
7. Commutation of the 2008 and 2009 treaties, including, but not limited to:
 - a. Your allegations that Uni-Ter breached its fiduciary duty to L&C by failing to get Board approval to commute the 2008-2009 treaty as set forth in Paragraphs 251 and 253 of the Complaint.
8. Setting of Claim Reserves, including, but not limited to:
 - a. Your allegation that Uni-Ter understated claim reserves as set forth in Paragraph 115 of the Complaint.
9. Praxis's Reports, including, but not limited to:
 - a. Your allegations that Uni-Ter failed to provide Praxis accurate and adequate information as set forth in Paragraphs 106 and 107 of the Complaint.
 - b. Your allegation that Praxis's September 15, 2011 report was substantially inaccurate and incomplete as set forth in Paragraphs 106 and 107 of the Complaint.
 - c. Your allegation that Praxis concluded that an additional two million dollars in reserve strengthening was needed in July 2012 as set forth in Paragraph 213 of the Complaint.
10. Fishlinger's Reports, including, but not limited to:
 - a. Your allegation that Fishlinger did not conduct an independent analysis of the claims reviewed by Praxis in late 2011, but instead, relied on the work of Praxis in coming to a similar conclusion on the amount of reserve strengthening needed as set forth in Paragraph 212 of the Complaint.
 - b. Your allegation that in 2012, Fishlinger recommended similar reserve strengthening as Praxis had in July 2012 as set forth in Paragraph 214 of the Complaint.
 - c. Your allegation that in 2012, a London based reinsurance broker also reviewed the case reserves and determined that it would be comfortable in

the low end of the ranges of reserves established by Fishlinger as set forth in Paragraph 214 of the Complaint.

11. U.S. Re's handling of Reinsurance for L&C, including, but not limited to:

- a. Your allegations that U.S. Re failed to obtain reinsurance through syndicates as required under the U.S. Re Agreement as set forth in Paragraphs 92 and 265 of the Complaint.
- b. Your allegations that U.S. Re breached its fiduciary duty by intentionally failing to find appropriate reinsurance as set forth in Paragraphs 92, 94, 265 and 267 of the Complaint.
- c. Your allegation that L&C's reinsurance deductible was set too high, especially in years 2009 and 2010, as set forth in Paragraph 185.
- d. Your allegations that the reinsurance policies were not invoked because the deductibles were consistently too high as set forth in Paragraphs 92, 94, 265 and 267 of the Complaint.

12. The DOI's Reports of Examination.

13. All communications between Defendants and the DOI.

14. The amount of damages You allege that You have sustained as a result of each Defendant's acts or omissions and the basis therefor.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on or about the 1st day of October 2018, a true and correct copy of the foregoing **NOTICE OF TAKING NRCP 30(b)(6) DEPOSITION OF PLAINTIFF COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER FOR LEWIS AND CLARK LTC RISK RETENTION GROUP, INC.** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification;

/s/ Jelena Jovanovic

An employee of McDonald Carano LLP

EXHIBIT “C”

EXHIBIT “C”

1 **AMND**
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For the State of Nevada

8
9 **DISTRICT COURT OF NEVADA**
10 **CLARK COUNTY, NEVADA**

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

14 Plaintiff,

15 vs.

16
17 ROBERT CHUR, STEVE FOGG, MARK
GARBER, CAROL HARTER, ROBERT
18 HURLBUT, BARBARA LUMPKIN, JEFF
MARSHALL, ERIC STICKELS, UNI-TER
19 UNDERWRITING MANAGEMENT CORP.,
UNI-TER CLAIMS SERVICES CORP., and
20 U.S. RE CORPORATION,; DOES 1-50,
inclusive; and ROES 51-100, inclusive;

21 Defendants.
22

Case No.: A-14-711535-C

Dept No.: 27

PLAINTIFF COMMISSIONER OF
INSURANCE FOR THE STATE OF
NEVADA AS RECEIVER OF LEWIS AND
CLARK LTC RISK RETENTION GROUP,
INC.'s AMENDED RESPONSES TO
DEFENDANTS' FIRST SET OF
INTERROGATORIES

23 COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER
24 OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC. ("L&C"), amends its
25 answers to Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut,
26 Barbara Lumpkin, Jeff Marshall, and Eric Stickles' ("Director Defendants" or "Board") First Set
27 of Interrogatories. L&C reserves the right to supplement these responses as discovery progresses
28

1 and more information becomes known. Any supplemental or amended answers are in **bold**.

2 **PRELIMINARY STATEMENT AND DEFINITIONS**

3 L&C has not fully completed its investigation of the facts relating to this case, has not
4 completed discovery in this action, and has not completed preparation for trial. All responses
5 contained herein are based only upon such information as is presently available to and
6 specifically known by this responding party and it discloses only those conclusions and
7 contentions which presently occur to this responding party. It is anticipated that further
8 discovery, pending investigation, legal research and analysis will supply additional facts, add
9 meaning to the known facts, and may establish entirely new factual conclusions and legal
10 contentions, all of which may lend substantial additions to, changes, and variations from the
11 responses herein set forth.

12 The following responses are given without prejudice to or waiver of L&C's right to
13 introduce evidence of subsequently discovered and developed conclusions or contentions. The
14 responses contained herein are made in a good faith effort to supply as much factual information
15 and as much specification of legal contentions as is presently known, but in no way should be to
16 the prejudice of these responding parties in relation to discovery, research or analysis.

17 Additionally, in answering the below interrogatories, L&C incorporates all documents or
18 things produced by any other party to this litigation. L&C additionally reserves its right to
19 supplement and/or amend each and every response below.

20 **GENERAL OBJECTIONS**

21 These responses are made solely for the purpose of and use in this litigation. Each
22 response is given subject to all appropriate objections (including, but not limited to, objections
23 concerning competency, relevancy, materiality, propriety and admissibility) which would require
24 the exclusion of any statement contained herein if the request or Interrogatory were asked of, or
25 any statement contained herein were made by, a witness testifying in Court. L&C reserves all
26 such objections and the grounds therefore and may interpose them at the time of trial.

27 L&C has not yet completed its investigation and analysis of the facts relating to this

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lawsuit, has not yet completed discovery in this action, and has not yet completed preparation for trial. Moreover, discovery is still in its initial stages. L&C's responses are based upon the present knowledge, information, and belief of L&C. Consequently, the following responses are given without prejudice to L&C producing evidence of any subsequently discovered facts and L&C reserves the right to modify or supplement these responses as necessary. In the event any of L&C's responses are ever read to the jury or Court, L&C expressly requires that any modifications or supplements to these responses be read as well.

Except for the facts explicitly admitted herein, no admission of any nature whatsoever is to be implied or inferred. The fact that an Interrogatory herein has been answered should not be taken as an admission of, or a concession of the existence of, any facts set forth or assumed by such Interrogatory. All responses must be construed as given on the basis of present recollection. Any Interrogatory deemed as continuing is objected to as overly burdensome, oppressive, and improper and not in compliance with the provisions of the Nevada Rules of Civil Procedure, and will not be regarded as continuing in nature.

L&C objects to the Interrogatories to the extent they seek information or the production of documents subject to the attorney-client privilege and/or work-product doctrine. L&C further objects to any Interrogatory to the extent it seeks information protected or otherwise exempted from disclosure by the Nevada or United States Constitutions, the Federal Rules of Evidence, and/or any other applicable statutory or common law privilege. L&C objects to these Interrogatories to the extent they seek L&C's highly confidential and proprietary business information and invade L&C's right to privacy. The inadvertent production of any privileged information is not a waiver of L&C's rights to assert any applicable privilege with respect to any such information.

L&C objects to these Interrogatories to the extent they are vague and ambiguous and make response impossible without speculation. L&C reserves the right to modify, amend, or add to their responses and objections. L&C objects to these Interrogatories to the extent they seek documents or information that is neither relevant nor reasonably calculated to lead to the

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1 discovery of admissible evidence. L&C further objects to the extent they seek information from
2 persons or entities unrelated and irrelevant to Plaintiffs' claims. L&C objects to these
3 Interrogatories to the extent they seek documents or information already in the possession of or
4 readily available to Plaintiffs. L&C objects to these Interrogatories to the extent they seek
5 documents or information not within L&C's possession, custody, or control.

6 L&C objects to these Interrogatories to the extent they call for Enterprises' legal
7 conclusions, contentions, and/or theories. L&C objects to these Interrogatories to the extent they
8 assume facts which are incorrect or do not exist.

9 L&C objects to these Interrogatories to the extent they exceed the allowed amount pursuant
10 to NRCP 33.

11 These General Objections are hereby incorporated and made a part of each and every
12 response to the Interrogatories set forth below:

13 1. L&C objects to any request which seeks a response protected by the attorney-
14 client privilege or the attorney work product doctrine.

15 2. L&C does not waive any objection set forth herein by interposing these objections
16 or by making any subsequent admission or denial.

17 3. No response, nor subsequent response, constitutes a waiver of any other objection
18 pursuant to these Requests for Admission and responses or to other similar requests that may be
19 propounded at a later time.

20 4. L&C objects to each and every request to the extent that it calls for disclosure of
21 information that is neither relevant to this matter, nor reasonably calculated or likely to lead to the
22 discovery of admissible evidence.

23 5. L&C objects to each and every request to the extent that it seeks to impose an
24 undue burden or expense or is overly broad, annoying or oppressive.

25 6. L&C objects to each and every request to the extent that it is vague, ambiguous, or
26 fails to identify with reasonable particularity the documents and/or information requested.

27 7. The mere fact that any of these objections is not restated below in response to any
28

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specific request is not intended to, and shall not be construed to imply the waiver of any of these objections or any unstated privilege objections to which L&C is entitled. These objections are incorporated by reference into the responses to each specific request set forth below as if set forth fully herein.

8. L&C reserves the right to supplement its objections and responses to these requests.

9. The foregoing objections are incorporated into each and every response to each and every request for admission.

INTERROGATORY NO. 1:

State all facts, incidents and circumstances that evidence the BOD acted with gross negligence with the management of Lewis & Clark. For each fact, state the approximate date.

ANSWER TO INTERROGATORY NO. 1:

L&C objects to the terms “evidence” and “gross negligence” as vague and ambiguous. This Interrogatory is further objected to the extent that it improperly attempts to invade the attorney client and/or attorney work product doctrine and further seeks the premature disclosure of expert opinions, and calls for a legal conclusion. In addition, L&C objects to this interrogatory as broad ranging written discovery is improper when it essentially subsumes every fact in the case. *See Aldapa v. Fowler Packing Co. Inc.*, 310 F.R.D. 583, 591 (E.D. Cal. 2015), reconsideration denied, No. 115CV00420GEBSAB, 2016 WL 81231 (E.D. Cal. Jan. 7, 2016); *Hiskett v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404 (D. Kan. 1998); *Safeco of Am. v. Rawstron*, 181 F.R.D. 441, 447-48 (C.D. Cal. 1998); *Lawrence v. First Kan. Bank & Trust Co.*, 169 F.R.D. 657, 660-63 (D. Kan. 1996); *Hilt v. SFC, Inc.*, 170 F.R.D. 182, 186-87 (D. Kan. 1997).

Without waiving its objections, and without limitation, 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. 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

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1 Washington accounted for a majority of the premiums.

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

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

7 On information and belief, the Director Defendants who were directors and officers of
8 L&C were aware at the time it retained Uni-Ter and its affiliates that they had only recently been
9 formed and had limited operating history. Further, the Board understood that the Board members
10 had not previously organized an insurance company. Thus, on information and belief, the Board
11 placed undue reliance on Uni-Ter as its manager without properly informing itself of the
12 information provided by Uni-Ter and its affiliates. Further, on information and belief, the Board
13 continued to rely on information and recommendations from Uni-Ter despite clear indications
14 that the information was incomplete and inaccurate and the recommendations were ill advised,
15 but the Board failed to exercise even slight diligence or care in verifying or correcting the
16 misinformation provided by Uni-Ter, U.S. RE and others, and to take proper corrective action.

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

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

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

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

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

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

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

10 Immediately upon formation of L&C by Uni-Ter UMC, L&C entered into management
11 agreements with Uni-Ter UMC. In 2011, Uni-Ter entered into a new management agreement
12 with Uni-Ter UMC and Uni-Ter CS.

13 L&C and Uni-Ter UMC entered into a Management Agreement dated January 1, 2004
14 ("2004 Management Agreement") for a period of seven years. In the agreement, L&C appointed
15 Uni-Ter UMC as its exclusive underwriting, administrative, accounting, risk management, and
16 claims manager for the lines of business and territories set forth in Exhibit A to that agreement.

17 The 2004 Management Agreement states that Uni-Ter UMC would "serve L&C in a
18 fiduciary capacity for all legal duties."

19 Uni-Ter UMC's duties under the 2004 Management Agreement expressly included the
20 following: (i) Soliciting of risks and class of risks that meet L&C's underwriting and pricing
21 standards, appointing qualified brokers and agents to sell the insurance, (ii) binding of risks, (iii)
22 issuance, renewal, and cancellation of policies, (iv) collection of premiums, (v) handling of
23 claims, (vi) keeping accurate records and having audits done, (vii) maintaining electronic files,
24 (viii) providing the usual and customary services to insureds, (ix) ensuring compliance with state
25 and federal regulations, (x) determining and setting appropriate premium rates, (xi) compiling and
26 providing the needed statistical reports to L&C, (xii) holding all of L&C's assets in investment
27 custodian accounts as a fiduciary, (xiii) determining and obtaining appropriate reinsurance

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1 authorized by L&C, (xiv) safeguarding and maintaining L&C property, and (xv) accounting to
2 L&C for certain financial and insurance information on a monthly basis (including operating
3 statement, balance sheet, policies written for the month, claims incurred for the month, AR
4 summary, and summary of all claims, reserves, and losses). Article III.

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

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

11 The 2004 Management Agreement also included Exhibit B entitled Claims Management
12 Authority which stated that Uni-Ter UMC "shall handle all aspects of claim processing . . . for all
13 claims and allocated loss adjustment expenses subject to this Agreement." The Exhibit then lists
14 specific claims handling duties of Uni-Ter including monthly reporting of new claims, open
15 reserves, paid claims, and ending reserve balance for both indemnity and expense activity.

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

17 (i) A management fee of 22% of gross written premiums net of cancellations and non
18 renewals up to \$5 million, 20% between \$5 million and \$15 million, and 17.5% above \$15
19 million. Management fees were to be paid monthly.

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

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

25 The 2004 Management Agreement included amendments that modified these payment
26 terms.

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1 The Second Amendment to the 2004 Management Agreement states that for all services
2 under the 2004 Management Agreement other than claims handling, the management fee will be
3 12% of annual gross written premiums net of cancellations and non-renewals plus the amount of
4 agency commissions (at rates approved by L&C) payable to retail and wholesale agents appointed
5 by Uni-Ter.

6 Various amendments raised the hourly rate for claim adjuster/professional time.

7 The Fifth Amendment to the 2004 Management Agreement modified the profit sharing
8 bonus provision to be paid on March 1 of the year following the fourth year after the year at issue.

9 On information and belief, in or around 2009 L&C, at Uni-Ter's direction, accepted
10 multiple multi-site LTC operators ("Multi-site Operators") as policyholders. As noted above, one
11 of these operators was Sophia Palmer.

12 On information and belief, at the time L&C accepted Sophia Palmer, Lumpkin – a director
13 of L&C – also chaired the board of Sophia Palmer.

14 On information and belief, the DOI reprimanded the Board for failing to submit a Conflict
15 of Interest Statement as the officers and directors of L&C were required to do pursuant to NAC
16 694C.

17 On information and belief, the Board accepted Uni-Ter's direction to obtain the Multi-site
18 Operators, including Sophia Palmer, without adequate information. In fact, the Board failed to
19 even exercise a slight degree of diligence in determining whether the acceptance of the Multi-site
20 Operators, including Sophia Palmer, was an appropriate decision.

21 On information and belief, had the Board exercised even scant care in informing itself
22 based upon the information available to it regarding the Multi-site Operators, it would have
23 discovered that in fact the recommendation by Uni-Ter was ill advised.

24 On information and belief, L&C's acceptance of the Multi-site Operators constituted a
25 significant divergence from the established business model of L&C as the Multi-site Operators
26 were large, multi-facility operators and had historical loss records outside L&C's typical
27 underwriting range. Further, on information and belief, one of the contracts at issue contained an

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1 unprecedented provision that limited the claims exposure of L&C on an aggregate level rather
2 than on a claim-specific level.

3 Following L&C's acquisition in 2009 of the Sophia Palmer nurse/nurse practitioner book
4 of business in Florida, the Seventh Amendment stated that the existing profit sharing terms were
5 applicable to L&C's long term care facility/home health care book of business, but that regarding
6 L&C's nurse/nurse practitioner book of business produced by agents, the profit sharing bonus
7 (called "commissions") were to be paid at a rate of 37.5% of the annual gross written premiums
8 net of cancellations and non-renewals. For nurse/nurse practitioner business produced by Uni-Ter
9 UMC, the commission rate was to be 30.0%.

10 The Eighth Amendment to the 2004 Management Agreement stated that management fees
11 were to be paid to Uni-Ter UMC on a continuing basis as premiums are collected or adjusted (as
12 opposed to monthly previously).

13 On information and belief, Uni-Ter received at least \$1,500,000 in management fees in
14 2010.

15 At the expiration of the 2004 Management Agreement, L&C and Uni-Ter UMC (and Uni-
16 Ter's subsidiary Uni-Ter CS) entered into a similar Management Agreement on January 1, 2011
17 ("2011 Management Agreement") for a period of five years.

18 The 2011 Management Agreement was in place when the Order of Liquidation was
19 entered.

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

24 The 2011 Management Agreements included the following revisions to the 2004
25 Management Agreement:

26 (i) The accounting reporting to L&C is to be done on a quarterly basis instead of
27 monthly. Art. III(H).

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(ii) Exhibit A was revised regarding the territory to include all of the U.S. except for Hawaii and Alaska and excluding long term care and home healthcare in Florida.

(iii) The limitations of Uni-Ter's authority in Article III(Y) are revised to delete the limitations set forth in items 2, 6, and 9 of the 2004 agreement. Uni-Ter's new allowed duties (i.e., no longer a limitation) included that it had full authority to settle claims on L&C's behalf or commit L&C to pay claims.

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

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

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

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

Despite the changes to Uni-Ter's management responsibilities, and despite the dire financial circumstances of L&C during 2011, on information and belief Uni-Ter received not less than \$1,000,000.00 in management fees in 2011.

Milliman, Inc. ("Milliman"), an actuarial firm, provided Rate and Loss Reserve analysis to Uni-Ter ("Milliman Reports"). Milliman was engaged by Uni-Ter, and not L&C, in the work

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1 that it did. Milliman did premium rate and professional liability and general liability rate analysis
2 for Uni-Ter. Milliman also did loss reserve analysis for Uni-Ter.

3 In a Broker of Record Letter Agreement between L&C and U.S. RE, L&C appointed U.S.
4 RE as its exclusive reinsurance intermediary/broker for a period of seven years and granted U.S.
5 RE full and complete authority to negotiate the placement of reinsurance on all classes of
6 insurance with unspecified limits of coverage as requested by any underwriter of L&C, *i.e.*, Uni-
7 Ter ("U.S. RE Agreement").

8 The U.S. RE Agreement states that U.S. RE will handle all funds collected for L&C in a
9 fiduciary capacity.

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

13 U.S. RE was not merely hired as some uninvolved third party broker of reinsurance,
14 although acting as a third party broker of reinsurance was included with U.S. RE's duties.

15 On information and belief, Uni-Ter Underwriting Management Corporation ("Uni-Ter
16 Underwriting") and Uni-Ter Claims Services Corporation ("Uni-Ter Claims") were retained as
17 the managers of L&C.

18 On information and belief, both Uni-Ter Underwriting and Uni-Ter Claims are direct or
19 indirect subsidiaries of U.S. RE.

20 U.S. RE was itself engaged as L&C's "exclusive reinsurance intermediary/broker" and as
21 L&C's agent, including being granted "full and complete authority to negotiate the placement of
22 reinsurance or retrocessions on all classes of insurance with unspecified limits of coverage as
23 specifically requested by any underwriter of [L&C]."

24 The U.S. RE Agreement further recognizes U.S. RE's agency with L&C by stating that
25 U.S. RE "will exercise its best efforts in the discharge of its duties **on behalf of the Company.**"

26 The Supreme Court of Nevada has held that "[a]n agency relationship is formed when one
27 who hires another retains a contractual right to control the other's manner of performance."

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1 *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 108 Nev. 811, 815, 839 P.2d 599, 602 (1992)
2 (citation omitted).

3 U.S. RE acted as the agent of L&C, as the U.S. RE Agreement expressly states not only
4 that U.S. RE will act “on behalf of” L&C, but also that L&C has the right to control U.S. RE’s
5 manner of performance as U.S. RE promises to “comply with written standards established by
6 [L&C] for the cession or retrocession of all insured risks.”

7 Further, Nevada law makes clear that “[a]n agent, such as respondent in these
8 circumstances, owes to the principal the highest duty of fidelity, loyalty and honesty in the
9 performance of the duties by the agent on behalf of the principal.” *LeMon v. Landers*, 81 Nev.
10 329, 332, 402 P.2d 648, 649 (1965) (holding that the agent breached her fiduciary obligations)
11 (emphasis added); see also *Chem. Bank v. Sec. Pac. Nat. Bank*, 20 F.3d 375, 377 (9th Cir. 1994)
12 (“The very meaning of being an agent is assuming fiduciary duties to one’s principal.”) (citing
13 *Restatement (Second) of Agency* § 1(1)).

14 Additionally, as noted above, U.S. RE was engaged not only as L&C’s exclusive broker,
15 but also as its consultant. Many courts have recognized that insurance brokers are agents of, and
16 therefore owe fiduciary duties to, their insureds. See *Capitol Indem. Corp. v. Stewart Smith*
17 *Intermediaries, Inc.*, 229 Ill. App. 3d 119, 124-25, 593 N.E.2d 872, 876 (1992) (“An agency
18 relationship is a fiduciary one; insurance brokers employed for a single transaction or series of
19 transactions are agents...”).

20 The Nevada Supreme Court has recognized that insurance brokers may assume additional
21 duties – including through representations by the broker upon which the insured relies – thereby
22 creating a special relationship between the broker and the insured. *Flaherty v. Kelly*, 2013 WL
23 7155078, at *2 (Nev. Dec. 18, 2013).

24 U.S. RE assumed such duties including “substantial and essential efforts expended by
25 U.S. RE and its affiliates in the organization and licensing of [L&C]” and serving as a consultant
26 to U.S. RE.

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1 Further, as recognized in the U.S. RE Agreement, U.S. RE's agency relationship with
2 Plaintiff extended to additional actions and bases with U.S. RE, including but not limited to the
3 "substantial and essential efforts expended by U.S. RE and its affiliates in the organization and
4 licensing of [L&C]" and to state that U.S. RE will "serve as the exclusive intermediary in
5 connection with the placement of all of [L&C's] reinsurance."

6 The U.S. RE Agreement further recognizes U.S. RE's agency with L&C by stating that
7 U.S. RE "will exercise its best efforts in the discharge of its duties on behalf of the Company."
8 The U.S. RE Agreement also states that "[a]ll funds collected for [L&C]'s account will be
9 handled by U.S. RE in a fiduciary capacity in a bank which is a qualified United States financial
10 institution."

11 Thus, U.S. RE was the agent of Plaintiff in multiple aspects, including but not limited to,
12 those set forth above.

13 Further, U.S. RE did more than merely act as some disinterested third party reinsurance
14 broker. In fact, U.S. RE was directly involved in the activities of L&C in its capacity as agent of
15 L&C.

16 Moreover, U.S. RE was actively involved in management related activities, including
17 presenting financial and other pertinent information to L&C's Board.

18 U.S. RE intentionally failed to obtain reinsurance through syndicates as required under the
19 U.S. RE Agreement. No facts were found that reinsurance failed to pay as required. To the
20 contrary, the reinsurance policies seemed not to be invoked because deductible amounts were not
21 reached, especially in the early years of 2004 to 2008.

22 Nevertheless, U.S. RE intentionally represented to L&C that it would act in L&C's best
23 interests, creating additional duties toward L&C other than merely finding and securing
24 reinsurance, including but not limited to, fiduciary duties, as set forth herein.

25 In violation of such duties, U.S. RE intentionally did not find appropriate reinsurance
26 because the deductible rates were consistently too high. This is shown by the fact that
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1 reinsurance did not come into play at all in the early years. Indeed, the Board approved
2 commutation of the 2007 treaty only 10 days into 2008.

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

5 (i) April 1, 2004 to December 31, 2004 Treaty (Commuted).

6 (ii) January 1, 2005-December 31, 2006 Treaty.

- 7 - Applicable to \$750,000 excess of \$250,000 per claim
- 8 - Aggregate limit is lesser of \$3,500,000 or 225% of ceded premium.
- 8 - Ceded premium is 25% of gross net written premium income (GNWPI)

9 (iii) January 1, 2007-December 31, 2007 Treaty (Commuted in early 2008)

- 10 - Applicable to \$750,000 excess of \$250,000 per claim
- 10 - Deductible is 22% of GNWPI.
- 11 - Aggregate limit is 300% of ceded premium.
- 12 - Ceded premium is 20% of GNWPI.

13 (iv) July 1, 2005-December 31, 2006 Treaty.

- 13 - Applicable to \$1,000,000 excess of \$1,000,000 per claim
- 14 - Aggregate limit is \$3,000,000 or 300% of ceded premium.
- 15 - Ceded premium is 100% of gross premiums for policies with limits greater than \$1,000,000 per claim.

16 (v) January 1, 2008-March 31, 2009 Treaty.

- 17 - Applicable to \$650,000 excess of \$350,000 per claim
- 17 - Deductible is greater of 13% of GNWPI or \$1,274,000.
- 18 - Aggregate limit is 300% of ceded premium.
- 19 - Ceded premium is 17.08% of GNWPI for all policies subject to a minimum of \$1,575,000.

20 (vi) April 1, 2009-March 31, 2010 Treaty.

- 21 - Applicable to \$650,000 excess of \$350,000 per claim
- 21 - Deductible is greater of 11% of GNWPI or \$1,100,000.
- 22 - Aggregate limit is 300% of ceded premium.
- 23 - Ceded premium is 17.93% of GNWPI for all policies subject to a minimum of \$1,613,700.

24 (vii) April 1, 2010-May 31, 2011 Treaty.

- 25 - Applicable to \$650,000 excess of \$350,000 per claim
- 25 - Deductible is greater of 11% of GNWPI or \$1,220,000.
- 26 - Aggregate limit is 300% of ceded premium.
- 27 - Ceded premium is 17.00% of GNWPI for all policies subject to a minimum of \$1,890,000.

28 (viii) December 1, 2009-May 31, 2011 Treaty.

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1 - L&C cedes 75% of losses in reinsured layer and retains 25%
2 - Applicable to \$1,000,000 excess of \$1,000,000 per claim
3 - Aggregate limit is greater of \$3,000,000 or 300% of ceded premium.
4 - Ceded premium is 100% of net excess premiums (gross premiums less 20%) for
policies with limits greater than \$1,000,000 per claim

5 (ix) June 1, 2011-May 31, 2012 Treaty.
6 - Applicable to \$650,000 excess of \$350,000 per claim
7 - Deductible is greater of 18.5% of GNWPI or \$1,300,000.
8 - Aggregate limit is 300% of ceded premium.
9 - Ceded premium is 17.00% of GNWPI for all policies subject to a minimum of
\$1,190,000.

10 (x) June 1, 2011-May 31, 2012 Treaty.
11 - L&C cedes 75% of losses in reinsured layer and retains 25%
12 - Applicable to \$1,000,000 excess of \$1,000,000 per claim
13 - Aggregate limit is \$1,500,000
14 - Ceded premium is 100% of net excess premiums (gross premiums less 20%) for
policies with limits greater than \$1,000,000 per claim

15 (xi) June 1, 2012-May 31, 2013 Treaty.
16 - Applicable to \$650,000 excess of \$350,00 per claim
17 Aggregate limit is 300% of ceded premium.

18 On or around September 8, 2010, the DOI sent a letter to Marshall, President of L&C and
19 a member of the Board ("September 2010 Letter") advising the Board of the dangerous financial
20 position of L&C.

21 In the September 2010 Letter, captioned "Lewis & Clark Deteriorating Financial
22 Condition", the DOI states in part the following:

23 Dear President Marshall:

24 The [DOI]'s review of the June 30, 2010 financial statement of [L&C] revealed a
25 deteriorating financial condition which the company's management must address. The following
26 are items that must be considered:

27 Increase in reserves has increased liabilities \$3.1 million above the 12/31/10 pro-forma
28 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....

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1 The September 2010 Letter ended with an admonition from the DOI that “[b]ecause of the
2 company’s capital decline revealed by the June 30, 2010 financial statement, management should
3 commence preparing a corrective action plan and an implementation schedule addressing a means
4 to enhance earnings and surplus, reduce expenses, and improve liquidity.”

5 On information and belief, despite the DOI’s recommendations regarding L&C’s
6 deteriorating financial condition and need for an effective corrective action plan, the Board failed
7 to exercise even slight diligence in correcting the substantial problems L&C was facing, and the
8 alarming financial problems of L&C outlined by the DOI in its September 2010 Letter were not
9 corrected, and in fact were dramatically worsened, by the Board’s actions.

10 On information and belief, in the first three (3) quarters of 2011, L&C experienced a net
11 loss of not less than \$3,100,000.

12 On information and belief, the principal reason for these losses was that the Multi-Site
13 Operators had passed on significant losses to L&C in the two policy years from 2009-2011, as
14 well as increases in claims for other insureds.

15 On information and belief, on or about September 1, 2011, Sanford Elsass and Donna
16 Dalton sent a memorandum to the Board purporting to outline the events causing financial
17 difficulties. Included in that memorandum was a representation that Uni-Ter would hire a
18 consultant to perform a “complete analysis” of the claims process of Uni-Ter Claims Services
19 Corporation.

20 On information and belief, the consultant hired by Uni-Ter was Praxis Claims Consulting
21 (“Praxis”).

22 On information and belief, at this time the Board knew that reliance on information
23 presented to it by, or at the direction of, Uni-Ter and U.S. RE could not be relied on, in part
24 because the decision to accept the Multi-Site Operators was financially devastating to L&C.

25 On information and belief, despite this knowledge of the Board regarding the wholly
26 inadequate and inaccurate information provided by Uni-Ter, the Board’s gross negligence is
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1 manifest in the fact that, the Board failed to exercise even a slight degree of care in verifying
2 whether Praxis was provided accurate information in preparing its reviewing the claims process.

3 On information and belief, in fact Uni-Ter did not provide Praxis with accurate
4 information and, in fact, limited the scope of Praxis's initial engagement to a review of claims-
5 related processes and of a small sample size of only nine (9) specific claims reserves. Praxis's
6 review, which was grossly inadequate due to Uni-Ter's failure to provide adequate and accurate
7 information to Praxis, resulted in a report dated September 15, 2011 ("September 2011 Praxis
8 Report").

9 On information and belief, because Uni-Ter failed to provide accurate and complete
10 information to Praxis, the September 2011 Praxis Report was substantially inaccurate and
11 incomplete.

12 On information and belief, the Board later learned that, in fact, Uni-Ter had not provided
13 Praxis with accurate information and that Uni-Ter had limited the scope of Praxis's engagement
14 to a review of claims-related processes and of a small sample size of only nine (9) specific claims
15 reserves. This is information which the Board, through exercise of even slight diligence or scant
16 care, could have known before the 2011 Praxis Report was issued.

17 Further, on information and belief, on or around September 23, 2011, the DOI sent
18 another letter to Marshall regarding the now disastrous financial condition of L&C ("September
19 2011 Letter").

20 In the September 2011 Letter, the DOI noted several massive financial problems with
21 L&C which the Board had, on information and belief, taken improper or no action to correct,
22 including the following:

23 Of particular concern is the Combined ratio which has increased since prior year-end from
24 99.4% to 153.9% - a 54.8% increase post-merger.

25 A major concern is Risk Based Capital ("RBC") - 208.8%. This RBC calculation results
26 from year-end 2010 financial statement. The RBC is now well below that level considering the
27 reserve (Liability) increases and net loss reducing policyholder surplus by 40.3% for only one-
half (Six Months) of a year of operating activity.

28 ...

Net underwriting loss has deteriorated to \$3.1 million
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1 Net loss = \$1.8 million

2 The September 2011 Letter further noted the following regarding the second quarter of
3 2011:
4

5 Since prior year-end, policyholder surplus has declined by 40.3%. Company is
6 experiencing adverse claims Development and is becoming extremely leveraged. Total
7 Liabilities have increased by 26.5% ... Net Loss is \$1.8 million, a result of \$3.1 million net
8 underwriting loss for six months and \$1.7 million underwriting loss for just the second quarter.
9 Unassigned Funds have deteriorated further to a negative (\$1.4 million). Since prior year-to-date,
10 net premiums earned have improved nominally by 5.8% while net losses incurred has increased
by 117.6% causing a net loss ratio of 114.4% and resulting in a 153.9% combined ratio.
Company is highly leveraged. Cash and invested assets only represent 59.2% of total assets
resulting in a 148.7% liquidity ratio coupled with gross premiums written representing 571.6% of
policyholder surplus and net premiums written representing 499.9% of policyholder surplus ...

11 The September 2011 Letter noted that the DOI had sent "a prior letter advis[ing] the
12 Board of Directors of deteriorating financial condition and admonish[ing] the Board and
13 management to consider a correction plan." The letter required that "[t]he Board and
14 management must now prepare a short-term (3 month) action plan and based on this action plan
15 how they forecast their 12/31/2011 statement to appear."

16 On information and belief, the Board failed to exercise even scant care in addressing the
17 September 2011 Letter, and failed to correct the staggering financial problems L&C was facing.

18 Subsequently, in late November 2011, on information and belief, Uni-Ter conducted what
19 purported to be a full-scale internal review of all claims reserves, and later engaged Uni-Ter to
20 conduct a full review as well.

21 On information and belief, the outcome of the internal review by Uni-Ter, as well as the
22 negative review by Praxis, showed that Uni-Ter had incorrectly understated the sampled claims in
23 the September 2011 Praxis Report by a net of not less than \$1,200,000.

24 On information and belief, Uni-Ter and/or U.S. RE informed the Board on a conference
25 call that, in fact, an increase of \$5,000,000.00 to L&C's claims reserves was necessary. This
26 significantly increased the net loss of Lewis & Clark on a full 2011 year basis and further
27 decreased L&C's capital to an unacceptable level for operational, regulatory, and rating purposes.

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1 On information and belief the Board, through its gross negligence, ignored or improperly
2 responded to the multiple red flags – including communications from the DOI – regarding
3 L&C's financial position, Uni-Ter's management and the representations of Uni-Ter and U.S.
4 RE's, and failed to exercise even a slight degree of diligence or care in fulfilling its obligations,
5 which proximately caused and contributed to the damages suffered by Plaintiff.

6 On information and belief, the Board met generally once per quarter starting in late 2004
7 and continuing to September 2012 related to L&C. Minutes of said meetings were kept by L&C
8 ("Minutes").

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

14 On information and belief, many of the approvals and actions of the Board were done at
15 the recommendation of Mr. Elsass.

16 On information and belief, the Board had knowledge concerning Mr. Elsass and his
17 recommendations that caused reliance on the reports and recommendations of Mr. Elsass and
18 Uni-Ter UMC to be unwarranted.

19 Despite this knowledge, the Board failed to exercise even a slight degree of diligence or
20 care with respect to accepting the information and recommendations provided by Mr. Elsass and
21 Uni-Ter UMC and failed to verify whether this information was accurate and whether the
22 recommendations should be adopted.

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

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1 2004 and 2011 Management Agreements.

2 Item 13 in the March 9, 2005 Minutes states that the Board requested that Uni-Ter provide
3 financial information to the Board monthly. On information and belief, Uni-Ter already had the
4 obligation to provide the information listed in the 2004 Management Agreement to the Board
5 monthly.

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

11 On information and belief, despite these clear indications that Uni-Ter was failing to
12 provide complete and accurate information, the Board remained indifferent to its legal duty to act
13 on an informed basis by ensuring the information and recommendations provided by Uni-Ter and
14 Mr. Elsass were complete and accurate.

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

19 On information and belief, Uni-Ter undertook the fiduciary duty of determining and
20 establishing the appropriate loss reserves for the company. Item 3 in the September 14, 2005
21 Minutes, states that Elsass reported on establishing the appropriate loss reserves for the company.

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

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

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

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

7 Item 3 of the October 20, 2006 Minutes states that the Board directed Donna Dalton of
8 Uni-Ter and L&C's counsel to comment to the Nevada DOI regarding issues including loss
9 reserves and Risk Retention Act requirements.

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

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

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

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

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

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

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

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

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

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

24 On October 5, 2011 the Board held a special meeting and approved capital contributions
25 by shareholders Oneida, Eagle Healthcare, Pinnacle, Marquis, Elderwood, Rohm, and Uni-Ter in
26 exchange for surplus notes. The action of the Board in lieu of a special meeting also noted that
27 depending on the fourth quarter, the same parties other than Oneida would commit to an

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1 additional amount of \$550,000 in the fourth quarter of 2011 and first quarter of 2012 as the stated
2 proportions (with Uni-Ter having 20/55 or 4/11 responsibility). The Minutes also noted approval
3 of the new underwriting philosophy.

4 On information and belief, the minutes of the October 5, 2011 action by the Board
5 demonstrate that the Board was well aware it was not receiving accurate and complete
6 information from Uni-Ter as the Board requested "more frequent financial reporting to the Board
7 as discussed at the last meeting, preferably monthly." On information and belief the Board failed
8 to exercise even slight diligence or scant care and failed to ensure that Uni-Ter did, in fact,
9 provide more complete and accurate reporting of L&C's financial status.

10 Even with the bad financial news in early October, 2011, the Board was indifferent to its
11 legal obligations and did not meet again until December 20, 2011, over two and a half months
12 later. At that meeting, as reflected in the Minutes, Uni-Ter reported that claims reserves may
13 have increased by \$5 million from the November 2011 figures, *i.e.*, in one month.

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

22 On information and belief the Board failed to exercise the slightest degree of diligence
23 and care regarding this information and took no action whatsoever to verify whether the
24 information provided by Uni-Ter suggesting that L&C was "neither impaired nor insolvent" was
25 accurate, despite numerous indications that information provided by Uni-Ter was inaccurate and
26 incomplete.

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1 At the January 16, 2012 meeting the Board was told that capital and surplus was
2 \$1,979,730 as of December 31, 2011. Thus, L&C's surplus dropped over \$2.5 million in one
3 year.

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

6 On information and belief, L&C's Nevada counsel was instructed to contact Nevada DOI
7 regarding the "current inquiry." The Minutes do not say what the current inquiry was.

8 The January 26, 2012 Minutes state in Item 2 that L&C's Nevada counsel reported on her
9 conversations with the Nevada DOI. The Minutes do not include the substance of those
10 discussions. Item 3 states that the Board deferred approval of commutation of reinsurance for
11 years 2005, 2006, 2008, and 2009 pending receipt from Uni-Ter of a report regarding outstanding
12 claims for such periods. Item 5 states that the Board met in executive session to discuss issues
13 involving potential additional capital.

14 Further, the minutes for the January 26, 2012 meeting stated that "Mr. Elsass presented a
15 report on current claims activity in California and New York and discussions with the
16 Corporation's actuaries and auditors." On information and belief the Board failed to exercise the
17 slightest degree of diligence and care regarding this information took no action to verify that Mr.
18 Elsass's report was accurate, despite clear indications that information provided by Mr. Elsass
19 was incomplete and inaccurate.

20 At the February 2, 2012 meeting the Board approved \$480,000 additional capital
21 contributions in exchange for subordinated surplus notes on the same terms used in the fall of
22 2011. On information and belief, Elsass reported to the Board "regarding recent favorable claims
23 activity." The Minutes do not say what the alleged favorable claims activity was. On
24 information and belief, the Board failed to exercise the slightest degree of diligence and care
25 regarding this information and did not verify whether the report by Elsass regarding alleged
26 "favorable claims activity" was accurate or complete.

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1 Notwithstanding the dire financial issues, the Board remained indifferent to its legal
2 obligations and did not meet again until April 30, 2012, almost three (3) months later. At the
3 April 30, 2012 meeting Item 1 provides that L&C's submissions to the Nevada DOI were
4 approved, but do not explain what the submissions were.

5 There is no mention in the April 30, 2012 Minutes of the Milliman Report from April 12,
6 2012 stating that, as of the end of 2011, the company's loss reserves were \$1.4 million under
7 what they need to be when using the mid-range number.

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

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

14 In fact, despite the clear indications that Uni-Ter and U.S. RE were providing inaccurate
15 and/or incomplete information to L&C, the minutes of the June 6, 2012 Board meeting state that
16 the Board approved the renewal of L&C's reinsurance "[f]ollowing a presentation by USRE
17 [sic]". *Id.* There is no indication whatsoever regarding any measures taken by the Board to
18 verify the information provided by Uni-Ter and/or U.S. RE.

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

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

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

5 On information and belief the Board held a telephonic meeting on September 24, 2012.
6 The Board's grossly negligent failure to inform itself of the basic financial condition of the
7 Company was made clear as the Board tacitly acknowledged it was not aware whether the
8 Company was financially solvent at that time, resolving that "a request be made to the Nevada
9 Division [sic] of Insurance that the Corporation be placed in rehabilitation, in view of the fact that
10 the Corporation is or may be insolvent."

11 On information and belief, substantial financial information regarding L&C was available
12 to the Board of which the Board failed entirely to exercise even a slight degree of care to properly
13 inform itself and understand.

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

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

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

24 On information and belief, Uni-Ter's management fees grew from nothing in 2004, to
25 \$120,000 in 2005, to \$126,000 in 2006, to \$760,000 in 2007. Between 2005 and 2007, this is a
26 growth of 633% in three years.

27 On information and belief, the information provided to the directors of L&C for the April
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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%

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.

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.

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.

The 2009 Milliman Report, which supports the corresponding Statement of Actuarial Opinion, 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

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1 prepared for regulatory review. Further, the corresponding Statement of Actuarial Opinion
2 provides that it is reliant on "data and related information prepared by [L&C]" and that "[t]here
3 are a variety of risk factors that expose [L&C's] reserves to significant variability."

4 On information and belief, the information provided to the directors of L&C for the May
5 2010 Board meeting state that Sophia Palmer merged with L&C as of December 3, 2009, and that
6 the written premiums were \$8,340,000 for 2008 and \$10,705,000 for 2009.

7 On information and belief, in or around October 2010, Elsass, Larry Shatoff at U.S. RE,
8 Donna Dalton, John Klaus at Uni-Ter, Curtis Sitterson at Stearns Weaver, and Jim Murphy at the
9 accounting firm Johnson Lambert & Co., through email correspondence, made the decision to
10 record the twenty-five percent (25%) refund payment, in the amount of \$569,600, from the
11 commutation of the January 1, 2008 to April 1, 2009 reinsurance treaty.

12 On information and belief, Mr. Shatoff stated in said email correspondence that the April
13 1, 2004 to December 31, 2004 treaty was commuted, the January 1, 2007 to December 31, 2007
14 treaty was commuted, and the January 1, 2005 to December 31, 2006 treaty was "swing rated"
15 and had been adjusted to the minimum premium. Regarding the January 1, 2008 to April 1, 2009
16 reinsurance treaty, Mr. Shatoff said that it covers all claims reported on occurrence policies up to
17 April 1, 2012. Mr. Shatoff further stated that L&C was subject to a 13% aggregate deductible for
18 an amount of \$1,690,673, and that L&C had paid reinsurance premiums of \$2,278,400, which at a
19 25% refund rate would result in a refund of \$569,600 if no claims were paid by the reinsurers.
20 Further, Mr. Shatoff's communications state that there had been no losses reported under that
21 treaty. Mr. Shatoff noted that L&C could commute at any time before January 1, 2013 to obtain
22 the "profit commission" - how he referred to the 25% refund.

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

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1 On information and belief Elsass directed that the refund for the commutation of the
2 January 1, 2008 to April 1, 2009 reinsurance treaty be recorded at that time in the third quarter of
3 2010.

4 On information and belief, Mr. Shatoff noted that it would be too soon to record any
5 "profit commission" on the April 1, 2009 to April 1, 2010 treaty because the premium for those
6 policies would not be fully earned until April 1, 2011.

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

10 On information and belief, more than half of the policies written by Sophia Palmer were
11 occurrence policies.

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

14 Further, the 2010 Milliman Report opined that the existing risk factors "coupled with the
15 variability that is inherent in any estimate of unpaid loss and loss adjustment expense obligations,
16 could result in material adverse deviation from the carried net reserve amounts." He concluded
17 that based on the calculation shown in Exhibit B that shows that L&C's actual net outstanding
18 losses and LAE exceed L&C's reserves for unpaid losses (\$7,353,289) and unpaid LAE
19 (\$1,798,188) by an amount of more than five percent (5%) of L&C's statutory surplus shown on
20 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 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,

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1 evaluation, and reporting process is recommended. The Praxis Report does not evaluate the level
2 of L&C's loss reserves.

3 On information and belief, the information provided to the directors for the September
4 2011 Board meeting also contains a power point presentation from Milliman which shows that
5 L&C steadily decreased its reinsurance deductible across the years 2008 to 2011, demonstrating
6 that L&C's reinsurance deductible was set too high, especially in years 2009 and 2010.

7 On information and belief, in or around December 19, 2011, Milliman provided a
8 preliminary draft of certain schedules to its actuarial reports ("2011 Milliman Schedules"). The
9 Schedules provide that as of November 30, 2011, L&C's Incurred Loss & ALAE for years 2004
10 through November 2011 was \$17,858,866. That same exhibit states that Paid Loss & ALAE for
11 those same dates was a total of \$11,208,076. The exhibit states that L&C's Paid Loss & ALAE
12 was \$2,230,000.00 for 2009 and \$2,440,000.00 for 2010 but only \$198,711.00 for 2011 through
13 November.

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

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

23 Balance-January 1, 2011 \$9,153,000

24 Incurred related to:

25 Current year	7,418,000
26 2010	3,039,000
2009	2,284,000
2008	747,000
2007	162,000
2006	375,000

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1	2005	(359,000)
2	2004	(1,000)
3	Total Incurred:	13,665,000
4	Paid related to:	
5	Current year	1,878,000
6	2010	3,571,000
7	2009	1,545,000
8	2008	222,000
9	2007	630,000
10	2006	131,000
11	2005	(1,000)
12	2004	(1,000)
13	Total Paid:	7,975,000
14	Balance-December 31, 2011	\$ 14,843,000
15	(emphasis added)	

16 On information and belief, notwithstanding this information, the Board represented in
17 Note 14 at page 14.2 that "[T]he Company's management is not aware of any ongoing litigation
18 which would, individually or collectively, result in judgments for amounts, after considering the
19 established loss reserves, that would be material to the Company's financial condition or results
20 of operations."

21 On February 2, 2012, Milliman provided a preliminary draft of certain schedules to its
22 actuarial reports ("2012 Milliman Schedules"). Exhibit 1 Page 2 states that, as of December 30,
23 2011, L&C's Discounted Net Loss & LAE Reserve (after Ceded Loss and LAE Reserve) was
24 Low Estimate of \$13,019,000, Central Estimate of \$14,973,000, and High Estimate of
25 \$18,635,000. Exhibit 3 of that document shows that Incurred Loss and ALAE had grown
26 substantially from 2005 (\$373,816) to 2010 (\$9,068,552) while showing estimated reserves only
27 growing to \$4,048,241. It also shows that for 2011, Ultimate Loss & ALAE was \$7,620,000 and
28 Incurred Loss & ALAE was \$5,744,385, but estimate reserves was only \$5,938,479, which is
over \$1.6 million less than the Ultimate Loss & ALAE.

The 2011 Milliman Report, in the section entitled "Risk of Material Adverse Deviation",
provides that "[t]he Company's carried reserves are within a reasonable range, however other
points within the reasonable range would cause surplus to be below zero. Therefore I believe that
there are significant risks and uncertainties that could result in material adverse deviation in the

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1 loss and loss adjustment expense reserves, possibly by amounts exceeding surplus.” The report
2 again provides that the current risk factors, “coupled with the variability that is inherent in any
3 estimate of unpaid loss and loss adjustment expense obligations, could result in material adverse
4 deviation from the carried net reserve amounts.” The report concluded that based on the
5 calculation shown in Exhibit B that shows that L&C’s actual net outstanding losses and LAE
6 exceed L&C’s reserves for unpaid losses (\$11,766,924) and unpaid LAE (\$2,259,096) by an
7 amount of more than five percent (5%) of L&C’s statutory surplus shown on the annual
8 statement, which was \$3,625,316. The report states that this materiality standard was selected
9 based on the fact that his opinion was prepared for regulatory review.

10 Further, in the Notes to Financial Statements for Years Ended December 31, 2011 and
11 2010 (“2011 Notes”), the management of L&C stated Uni-Ter “believes that its aggregate
12 provision for losses and loss adjustment expenses is reasonable and adequate to meet the ultimate
13 net cost of covered losses...”. On information and belief, the Board failed to exercise even the
14 slightest degree of care with respect to this information it was receiving concerning Uni-Ter’s
15 opinions and failed to take any action to verify that this information was complete or accurate.

16 The 2011 Notes also provide that “[a]t December 31, 2011 and 2010, management
17 determined that no premium deficiency reserve was required.” On information and belief, the
18 Board failed to exercise even the slightest degree of care with respect to this information it was
19 receiving concerning Uni-Ter’s opinions and failed to take any action to verify that this
20 information was complete or accurate.

21 Further, the 2011 Notes state that was a party to various lawsuits “in the normal course of
22 business” but that “[t]he Company’s management does not believe that any ongoing litigation
23 would, individually or collectively, result in judgments for amounts, after considering the
24 established loss reserves and reinsurance, that would be material to the Company’s financial
25 condition or results of operations.” On information and belief, the Board failed to exercise even
26 the slightest degree of care with respect to this information it was receiving concerning Uni-Ter’s
27 opinions and failed to take any action to verify that this information was complete or accurate.

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1 L&C's "NAIC Property and Casualty Financial Ratio Results for 2011" painted a very
2 bleak picture of the L&C. It has a date stamp of 2/23/2012. It states that Direct Premiums
3 Written in 2011 totaled \$10,224,774. It states that Net Premiums Written for 2011 were
4 \$8,997,524 which was a 25% drop from Net Premiums Written in 2010 of \$11,946,738. It states
5 that Losses and LAE incurred for 2011 totaled \$12,759,779 when Losses and LAE incurred for
6 2010 totaled \$8,183,816, about \$4.6 million less. It states that surplus for 2011 was \$3,625,316
7 when the surplus for 2010 was \$4,579,709, almost a million drop. Finally, it states that L&C's
8 estimated current reserve deficiency was -\$752,997.5.

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

11 A spreadsheet document dated February 2012 and entitled "L&C Loss Ratio Report"
12 shows a substantial reduction of loss payments for 2011. The document states that the
13 information is through 02/29/2012, but says that earned premium for 2011 dropped to \$5,209,362
14 from \$12,798,406 in 2010 and \$11,776,406 in 2009. It also shows that earned premium was only
15 \$240,573 through February which, extrapolated through December, would be only \$1,443,438.
16 Meanwhile, total incurred losses for 2011 were only \$1,573,965 even though total incurred losses
17 were almost \$9.5 million in 2010 and almost \$8 million in 2009.

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

24 L&C's Summary Balance Sheet as of February 29, 2012 states that unpaid losses and loss
25 expenses were \$14,026,019 at the end of 2011 and grew to \$14,607,812 as of the end of February
26 2012. Uni-Ter's management fees for 2011 were only \$87,617.

27 L&C's Comparative Summary Balance Sheet dated through March 2012 shows the
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1 growth of L&C's losses and Uni-Ter's fees. Unpaid losses and LAE was \$3,624,000 as of March
2 2008, \$4,325,000 as of March 2009, \$7,313,000 as of March 2010, \$9,953,000 as of March 2011,
3 and \$12, 381,985 as of March 2012. Uni-Ter's management fees were \$728,000 as of March
4 2008, \$1,329,000 as of March 2009, \$1,607,000 as of March 2010, \$830,000 as of March 2011,
5 and \$104,000 as of March 2012.

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

10 The ultimate loss and ALAE estimates have increased significantly since the prior report
11 as of December 31, 2010. Through report/accident/tail effective year 2010, the selected ultimate
12 loss and ALAE estimates have increased by \$9.2 million. Claims-made nursing home paid and
13 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)

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

17 In the D&O policy application submitted by Uni-Ter on behalf of L&C on or about May
18 23, 2012, Uni-Ter stated in the supplement that "[t]o improve the financial stability of [L&C],
19 UUMC has reviewed the entire book of business and intends to only renew accounts that have
20 maintained a favorable historical loss ratio. This may result in a 35-40% reduction in its premium
21 volume." The underwriting philosophy change completed in late 2011, while stating limitations
22 for loss ratios in soft and hard market facilities, does not state that the policy would apply to
23 renewals and also does not discuss the loss of such a large premium amount. This reduction
24 would apply to the \$6,825,864 total premiums of inforce policies as of February 2012. With no
25 new policies, that would result in total premiums for 2012 in the range of \$4,095,518 to
26 \$4,436,800.

27 The following chart shows relevant information from L&C's Audited Financial
28 Statements for the periods indicated:

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	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)

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.

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

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1 booked in the amount of approximately \$2.2 million.

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

5 On information and belief, in the October 5, 2011 Action by Unanimous Consent of the
6 Board of Directors ("Action") surplus note contributions were agreed to be paid by November 15,
7 2011:

8	Oneida Bank	\$750,000
9	Eagle Healthcare	\$220,000
	Pinnacle Healthcare	\$220,000
10	Marquis Companies	\$220,000
	Elderwood Senior Care	\$220,000
11	Rohm Services	\$220,000
12	Uni-ter	\$300,000

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

17	Eagle Healthcare	\$70,000
18	Pinnacle Healthcare	\$70,000
	Marquis Companies	\$70,000
19	Elderwood Senior Care	\$70,000
	Rohm Services	\$70,000
20	Uni-ter	\$200,000

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

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

26 On information and belief, prior to the second commitment coming due in the first quarter
27 of 2012, the Board determined that they wanted a second review to confirm the conclusion of the

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1 reserve strengthening in late 2011. Fishlinger was hired to conduct an independent analysis of the
2 same claims reviewed by Praxis.

3 On information and belief, using the low end of the ranges of reserves established by
4 Praxis, Fishlinger concluded a low end of strengthening could be approximately a million dollars
5 less than determined by Praxis. Although the Board had requested that Fishlinger conduct its
6 review independently, ultimately it used the work of Praxis in coming to a similar conclusion on
7 the reserve strengthening needed. Based on these two reviews, the additional capitalization of
8 \$480,000 was determined to be adequate by the Board.

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

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

25 On information and belief Milliman, L&C's opining actuary, booked its estimate of
26 reserves at 6/30 and 12/31 of each year, based on its own analysis. During its June 30, 2012
27 analysis, Milliman determined that L&C would most likely need to increase premium rates by 12-

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20% on its current book of business to remain a viable entity. On information and belief this does not include capital needed to raise the current level to minimum requirements. Milliman also estimated that \$6,000,000 - \$6,500,000 million in capital would need to be raised in order to result in \$3.6 million of unimpaired capital.

Discovery is ongoing and L&C reserves the right to supplement this answer as discovery proceeds.

INTERROGATORY NO. 2:

Identify the documents that support your contention that the BOD acted without a slight degree of care as alleged in paragraph 219 of the COMPLAINT.

ANSWER TO INTERROGATORY NO. 2:

L&C objects to this Interrogatory to the extent that it calls for a legal conclusion. This Interrogatory is further objected to the extent that it improperly attempts to invade the attorney client and/or attorney work product doctrine and further seeks the premature disclosure of expert opinions, and calls for a legal conclusion. In addition, L&C objects to this interrogatory as broad ranging written discovery is improper when it essentially subsumes every fact in the case. *See Aldapa v. Fowler Packing Co. Inc.*, 310 F.R.D. 583, 591 (E.D. Cal. 2015), reconsideration denied, No. 115CV00420GEBASAB, 2016 WL 81231 (E.D. Cal. Jan. 7, 2016); *Hiskett v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404 (D. Kan. 1998); *Safeco of Am. v. Rawstron*, 181 F.R.D. 441, 447-48 (C.D. Cal. 1998); *Lawrence v. First Kan. Bank & Trust Co.*, 169 F.R.D. 657, 660-63 (D. Kan. 1996); *Hilt v. SFC, Inc.*, 170 F.R.D. 182, 186-87 (D. Kan. 1997).

Without waiving its objections, and without limitation, see documents including, but not limited to, LC0130822 – LC0130843; **LC0261507 - LC0261526**; LC0130516 – LC0130517; **LC0261491 - LC0261492**; LC0226235 – LC0226250; **LC0261493 - LC0261494**; LC0130923 – LC0130924; LC0130922; LC0130916; LC0130518 – LC0130520; LC0130908; LC0130904; LC0130901 – LC0130902; LC0130899 – LC0130900; LC0130883 – LC0130884; LC0130894 – LC0130895; LC0130883 – LC0130884; LC0130880 – LC0130881; LC0130878 – LC0130879; LC0131318 – LC0131321; LC0130872 – LC0130873; **LC0261527 - LC0261535**; LC0130870;

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1 LC0130533 – LC0130534; LC0130866 – LC0130867; LC0130864 – LC0130865; LC0130863;
2 LC0130535; LC0130860; LC0130859; LC0130858; LC0130856; LC0130855; LC0130536 –
3 LC0130615; LC0130616 – LC0130644; LC0130645 – LC0130649; **LC0261495 - LC0261498**;
4 LC0130650 – LC0130654; LC0131795 – LC0131802; LC0130663 – LC0130755; LC0131202 –
5 LC0131266; **LC0261499 - LC0261502; LC0261503 - LC0261506; LC0261536**; and
6 LC0226394 – LC0226400

7 Discovery is ongoing and L&C reserves the right to supplement this answer as discovery
8 proceeds.

9 **INTERROGATORY NO. 3:**

10 If you contend that Lewis & Clark's reserves were not adequately maintained, identify the
11 specific years in which you believe the reserves were inadequate. For each year state the amount
12 that you believe to be appropriate per claim.

13 **ANSWER TO INTERROGATORY NO. 3:**

14 L&C objects to this Interrogatory as the terms "adequately maintained" and "inadequate"
15 are vague and ambiguous. This Interrogatory is further objected to the extent that it improperly
16 attempts to invade the attorney client and/or attorney work product doctrine and further seeks the
17 premature disclosure of expert opinions, and calls for a legal conclusion. In addition, L&C
18 objects to this interrogatory as broad ranging written discovery is improper when it essentially
19 subsumes every fact in the case. *See Aldapa v. Fowler Packing Co. Inc.*, 310 F.R.D. 583, 591
20 (E.D. Cal. 2015), reconsideration denied, No. 115CV00420GEBSAB, 2016 WL 81231 (E.D. Cal.
21 Jan. 7, 2016); *Hiskett v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404 (D. Kan. 1998); *Safeco of*
22 *Am. v. Rawstron*, 181 F.R.D. 441, 447-48 (C.D. Cal. 1998); *Lawrence v. First Kan. Bank & Trust*
23 *Co.*, 169 F.R.D. 657, 660-63 (D. Kan. 1996); *Hilt v. SFC, Inc.*, 170 F.R.D. 182, 186-87 (D. Kan.
24 1997).

25 Without waiving its objections, and without limitation, the 2012 Milliman Report states
26 that L&C reserves of \$16,333,000 were \$1,367,000 below the Central Estimate of what L&C's
27 loss reserves should be. The report states that L&C's reserves were over \$7 million below the

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1 High Estimate of what L&C's reserves should be. There is no mention of the report in the Board
2 Minutes. The report states as follows:

3 The ultimate loss and ALAE estimates have increased significantly since
4 the prior report as of December 31, 2010. *Through report/accident/tail effective*
5 *year 2010, the selected ultimate loss and ALAE estimates have increased by \$9.2*
6 *million. Claims-made nursing home paid and incurred losses have been higher*
7 *than expected during the past year due to significantly inadequate case reserves at*
8 *December 31, 2010 and exceptionally high loss ratios that were generated by*
9 *three insureds that were non-renewed during 2011. . . .*

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

13 Discovery is ongoing and L&C reserves the right to supplement this answer as discovery
14 proceeds.

15 **INTERROGATORY NO. 4:**

16 Do you contend that the BOD should have increased premiums? If so, state the date that
17 premiums should have been increased and the amount of the premium per insured.

18 **ANSWER TO INTERROGATORY NO. 4:**

19 L&C objects to this Interrogatory as the terms "increased premiums" and "premium" are
20 vague and ambiguous. This Interrogatory is further objected to the extent that it improperly
21 attempts to invade the attorney client and/or attorney work product doctrine and further seeks the
22 premature disclosure of expert opinions, and calls for a legal conclusion. In addition, L&C
23 objects to this interrogatory as broad ranging written discovery is improper when it essentially
24 subsumes every fact in the case. *See Aldapa v. Fowler Packing Co. Inc.*, 310 F.R.D. 583, 591
25 (E.D. Cal. 2015), reconsideration denied, No. 115CV00420GEBSAB, 2016 WL 81231 (E.D. Cal.
26 Jan. 7, 2016); *Hiskett v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404 (D. Kan. 1998); *Safeco of*
27 *Am. v. Rawstron*, 181 F.R.D. 441, 447-48 (C.D. Cal. 1998); *Lawrence v. First Kan. Bank & Trust*
28 *Co.*, 169 F.R.D. 657, 660-63 (D. Kan. 1996); *Hilt v. SFC, Inc.*, 170 F.R.D. 182, 186-87 (D. Kan.
1997).

Without waiving its objections, and without limitation, the Board was made well aware of

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1 the extremely dangerous and deteriorating financial position of L&C at least as early as
2 September 2010 by the DOI in its September 2010 letter. The Board was further made aware of
3 the dire financial position it had allowed L&C to reach due to its failure to exercise a slight
4 degree of care in informing itself of the position of L&C and take effective corrective action, as
5 set forth in the DOI's September 2011 letter. To the extent that Board did review any
6 information, the Board was grossly negligent in taking ineffective actions or in not taking
7 immediate effective corrective action by at least late 2011 (e.g., raising premium rates).

8 Discovery is ongoing and L&C reserves the right to supplement this answer as discovery
9 proceeds.

10 **INTERROGATORY NO. 5:**

11 Do you contend that Lewis & Clark should have been placed in receivership prior to
12 September 24, 2012? If so, state the specific date that you believe that Lewis & Clark should
13 have been placed in receivership.

14 **ANSWER TO INTERROGATORY NO. 5:**

15 L&C objects to this Interrogatory in that it calls for a legal conclusion. This Interrogatory
16 is further objected to the extent that it improperly attempts to invade the attorney client and/or
17 attorney work product doctrine and further seeks the premature disclosure of expert opinions, and
18 calls for a legal conclusion. In addition, L&C objects to this interrogatory as broad ranging
19 written discovery is improper when it essentially subsumes every fact in the case. *See Aldapa v.*
20 *Fowler Packing Co. Inc.*, 310 F.R.D. 583, 591 (E.D. Cal. 2015), reconsideration denied, No.
21 115CV00420GEBSAB, 2016 WL 81231 (E.D. Cal. Jan. 7, 2016); *Hiskett v. Wal-Mart Stores,*
22 *Inc.*, 180 F.R.D. 403, 404 (D. Kan. 1998); *Safeco of Am. v. Rawstron*, 181 F.R.D. 441, 447-48
23 (C.D. Cal. 1998); *Lawrence v. First Kan. Bank & Trust Co.*, 169 F.R.D. 657, 660-63 (D. Kan.
24 1996); *Hilt v. SFC, Inc.*, 170 F.R.D. 182, 186-87 (D. Kan. 1997).

25 Without waiving its objections, and without limitation, the DOI sent correspondence to
26 the BOD on September 8, 2010 and September 23, 2011 advising the Board of the dangerous
27 financial position of L&C and made recommendations to the Board to establish correction plans

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1 however, the Board failed to exercise even scant care in addressing the recommendations and
2 failed to correct the staggering financial problems L&C was facing which forced Lewis & Clark
3 to be placed in receivership.

4 Discovery is ongoing and L&C reserves the right to supplement this answer as discovery
5 proceeds.

6 **INTERROGATORY NO. 6:**

7 Identify every risk retention group registered with the Nevada Division of Insurance
8 during the period of 2004 through 2012.

9 **ANSWER TO INTERROGATORY NO. 6:**

10 L&C objects to this Interrogatory as the term "risk retention group" is vague and
11 ambiguous. L&C further objects to the scope of this Interrogatory as it is overly broad, unduly
12 burdensome and not reasonably calculated to lead to the discovery of admissible evidence.
13 Further, the Interrogatory is overly broad in time and scope, unduly burdensome, harassing, and
14 oppressive insofar as it calls for the identification of "every risk retention group registered with
15 the Nevada Division of Insurance during the period of 2004 through 2012" regardless of
16 relevancy to the facts and information of this litigation.

17 Discovery is ongoing and L&C reserves the right to supplement this answer as discovery
18 proceeds.

19 **INTERROGATORY NO. 7:**

20 Of the risk retention groups identified in response to Interrogatory Number 7, identify
21 every risk retention group providing insurance in the health and/or skilled nursing facility
22 industry.

23 **ANSWER TO INTERROGATORY NO. 7:**

24 L&C objects to this Interrogatory as the term "risk retention group" is vague and
25 ambiguous. L&C further objects to the scope of this Interrogatory as it is overly broad, unduly
26 burdensome and not reasonably calculated to lead to the discovery of admissible evidence.
27 Further, the Interrogatory is overly broad in time and scope, unduly burdensome, harassing, and
28

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1 oppressive insofar as it calls for the identification of "every risk retention group registered with
2 the Nevada Division of Insurance during the period of 2004 through 2012" regardless of
3 relevancy to the facts and information of this litigation.

4 Discovery is ongoing and L&C reserves the right to supplement this answer as discovery
5 proceeds.

6 **INTERROGATORY NO. 8:**

7 Of the risk retention groups identified in response to Interrogatory Number 8, identify the
8 risk retention groups that are registered with the Nevada Division of Insurance and are not placed
9 in receivership as of January 1, 2016.

10 **ANSWER TO INTERROGATORY NO. 8:**

11 L&C objects to this Interrogatory as the term "risk retention group" is vague and
12 ambiguous. L&C further objects to the scope of this Interrogatory as it is overly broad, unduly
13 burdensome and not reasonably calculated to lead to the discovery of admissible evidence.
14 Further, the Interrogatory is overly broad in time and scope, unduly burdensome, harassing, and
15 oppressive insofar as it calls for the identification of "every risk retention group registered with
16 the Nevada Division of Insurance during the period of 2004 through 2012" regardless of
17 relevancy to the facts and information of this litigation.

18 Discovery is ongoing and L&C reserves the right to supplement this answer as discovery
19 proceeds.

20 **INTERROGATORY NO. 9:**

21 Identify all communications from Uniter to the BOD that you contend was incomplete
22 information.

23 **ANSWER TO INTERROGATORY NO. 9:**

24 L&C objects to this Interrogatory as the term "incomplete information" is vague and
25 ambiguous. This Interrogatory is further objected to the extent that it improperly attempts to
26 invade the attorney client and/or attorney work product doctrine and further seeks the premature
27 disclosure of expert opinions, and calls for a legal conclusion. In addition, L&C objects to this

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1 interrogatory as broad ranging written discovery is improper when it essentially subsumes every
2 fact in the case. *See Aldapa v. Fowler Packing Co. Inc.*, 310 F.R.D. 583, 591 (E.D. Cal. 2015),
3 reconsideration denied, No. 115CV00420GEBSAB, 2016 WL 81231 (E.D. Cal. Jan. 7, 2016);
4 *Hiskett v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404 (D. Kan. 1998); *Safeco of Am. v. Rawstron*,
5 181 F.R.D. 441, 447-48 (C.D. Cal. 1998); *Lawrence v. First Kan. Bank & Trust Co.*, 169 F.R.D.
6 657, 660-63 (D. Kan. 1996); *Hilt v. SFC, Inc.*, 170 F.R.D. 182, 186-87 (D. Kan. 1997). The
7 Interrogatory is further objected to the use of the term "communications" is vague and
8 ambiguous.

9 Without waiving its objections, and without limitation, the Board was in a position to see
10 this information and knew that it had an obligation to do so. Further, it knew that the information
11 provided by Uni-Ter, U.S. RE and others was incomplete and inaccurate. Indeed, the Board had
12 the contractual right to receive the information (including on a monthly basis between 2004 and
13 2010). It also knew at least on several occasions that it was not receiving sufficient information
14 from Uni-Ter, but failed to exercise even slight diligence in properly informing itself. On several
15 occasions between 2005 and 2011, the Board asked Uni-Ter to provide more and better financial
16 and other information:

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

21 Discovery is ongoing and L&C reserves the right to supplement this answer as discovery
22 proceeds.

23 **INTERROGATORY NO. 10:**

24 Identify all communications from US RE to the BOD that you contend was incomplete
25 information.

26
27 **ANSWER TO INTERROGATORY NO. 10:**

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1 L&C objects to this Interrogatory as the term "incomplete information" is vague and
2 ambiguous. This Interrogatory is further objected to the extent that it improperly attempts to
3 invade the attorney client and/or attorney work product doctrine and further seeks the premature
4 disclosure of expert opinions, and calls for a legal conclusion. In addition, L&C objects to this
5 interrogatory as broad ranging written discovery is improper when it essentially subsumes every
6 fact in the case. *See Aldapa v. Fowler Packing Co. Inc.*, 310 F.R.D. 583, 591 (E.D. Cal. 2015),
7 reconsideration denied, No. 115CV00420GEBSAB, 2016 WL 81231 (E.D. Cal. Jan. 7, 2016);
8 *Hiskett v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404 (D. Kan. 1998); *Safeco of Am. v. Rawstron*,
9 181 F.R.D. 441, 447-48 (C.D. Cal. 1998); *Lawrence v. First Kan. Bank & Trust Co.*, 169 F.R.D.
10 657, 660-63 (D. Kan. 1996); *Hilt v. SFC, Inc.*, 170 F.R.D. 182, 186-87 (D. Kan. 1997). The
11 Interrogatory is further objected to the use of the term "communications" is vague and
12 ambiguous.

13 Without waiving its objections, and without limitation, the Board was in a position to see
14 this information and knew that it had an obligation to do so. Further, it knew that the information
15 provided by Uni-Ter, U.S. RE and others was incomplete and inaccurate. Indeed, the Board had
16 the contractual right to receive the information (including on a monthly basis between 2004 and
17 2010). It also knew at least on several occasions that it was not receiving sufficient information
18 from Uni-Ter, but failed to exercise even slight diligence in properly informing itself. On several
19 occasions between 2005 and 2011, the Board asked Uni-Ter to provide more and better financial
20 and other information:

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

25 Discovery is ongoing and L&C reserves the right to supplement this answer as discovery
26 proceeds.

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1 **INTERROGATORY NO. 11:**

2 Identify all communications from Uniter to the BOD that you contend was inaccurate
3 information.

4 **ANSWER TO INTERROGATORY NO. 11:**

5 L&C objects to this Interrogatory as the term "inaccurate information" is vague and
6 ambiguous. This Interrogatory is further objected to the extent that it improperly attempts to
7 invade the attorney client and/or attorney work product doctrine and further seeks the premature
8 disclosure of expert opinions, and calls for a legal conclusion. In addition, L&C objects to this
9 interrogatory as broad ranging written discovery is improper when it essentially subsumes every
10 fact in the case. *See Aldapa v. Fowler Packing Co. Inc.*, 310 F.R.D. 583, 591 (E.D. Cal. 2015),
11 reconsideration denied, No. 115CV00420GEBSAB, 2016 WL 81231 (E.D. Cal. Jan. 7, 2016);
12 *Hiskett v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404 (D. Kan. 1998); *Safeco of Am. v. Rawstron*,
13 181 F.R.D. 441, 447-48 (C.D. Cal. 1998); *Lawrence v. First Kan. Bank & Trust Co.*, 169 F.R.D.
14 657, 660-63 (D. Kan. 1996); *Hilt v. SFC, Inc.*, 170 F.R.D. 182, 186-87 (D. Kan. 1997). The
15 Interrogatory is further objected to the use of the term "communications" is vague and
16 ambiguous.

17 Without waiving its objections, and without limitation, the Board was in a position to see
18 this information and knew that it had an obligation to do so. Further, it knew that the information
19 provided by Uni-Ter, U.S. RE and others was incomplete and inaccurate. Indeed, the Board had
20 the contractual right to receive the information (including on a monthly basis between 2004 and
21 2010). It also knew at least on several occasions that it was not receiving sufficient information
22 from Uni-Ter, but failed to exercise even slight diligence in properly informing itself. On several
23 occasions between 2005 and 2011, the Board asked Uni-Ter to provide more and better financial
24 and other information:

- 25
- 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 additional capital the Board requested more frequent financial reports by Uni-Ter, preferably monthly.
- 28

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1 Discovery is ongoing and L&C reserves the right to supplement this answer as discovery
2 proceeds.

3 **INTERROGATORY NO. 12:**

4 Identify all communications from US RE to the BOD that you contend was inaccurate
5 information.

6 **ANSWER TO INTERROGATORY NO. 12:**

7 L&C objects to this Interrogatory as the term "inaccurate information" is vague and
8 ambiguous. This Interrogatory is further objected to the extent that it improperly attempts to
9 invade the attorney client and/or attorney work product doctrine and further seeks the premature
10 disclosure of expert opinions, and calls for a legal conclusion. In addition, L&C objects to this
11 interrogatory as broad ranging written discovery is improper when it essentially subsumes every
12 fact in the case. *See Aldapa v. Fowler Packing Co. Inc.*, 310 F.R.D. 583, 591 (E.D. Cal. 2015),
13 reconsideration denied, No. 115CV00420GEBSAB, 2016 WL 81231 (E.D. Cal. Jan. 7, 2016);
14 *Hiskett v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404 (D. Kan. 1998); *Safeco of Am. v. Rawstron*,
15 181 F.R.D. 441, 447-48 (C.D. Cal. 1998); *Lawrence v. First Kan. Bank & Trust Co.*, 169 F.R.D.
16 657, 660-63 (D. Kan. 1996); *Hilt v. SFC, Inc.*, 170 F.R.D. 182, 186-87 (D. Kan. 1997). The
17 Interrogatory is further objected to the use of the term "communications" is vague and
18 ambiguous.

19 Without waiving its objections, and without limitation, the Board was in a position to see
20 this information and knew that it had an obligation to do so. Further, it knew that the information
21 provided by Uni-Ter, U.S. RE and others was incomplete and inaccurate. Indeed, the Board had
22 the contractual right to receive the information (including on a monthly basis between 2004 and
23 2010). It also knew at least on several occasions that it was not receiving sufficient information
24 from Uni-Ter, but failed to exercise even slight diligence in properly informing itself. On several
25 occasions between 2005 and 2011, the Board asked Uni-Ter to provide more and better financial
26 and other information:

- 27
- March 2005 Minutes request for financial information monthly.
 - April 2005 Minutes note nonreceipt of periodic marketing reports.
- 28

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- At the October 2011 special meeting approving \$2.2 million of additional capital the Board requested more frequent financial reports by Uni-Ter, preferably monthly.

Discovery is ongoing and L&C reserves the right to supplement this answer as discovery proceeds.

INTERROGATORY NO. 13:

What do you contend would have been appropriate action by the BOD upon receipt of the information that L&C's financial condition was in dangerous peril, as alleged in Paragraph 227 of the COMPLAINT.

ANSWER TO INTERROGATORY NO. 13:

L&C objects to this Interrogatory as the terms "appropriate action" and "information" is vague and ambiguous. This Interrogatory is further objected to the extent that it improperly attempts to invade the attorney client and/or attorney work product doctrine and further seeks the premature disclosure of expert opinions, and calls for a legal conclusion. In addition, L&C objects to this interrogatory as broad ranging written discovery is improper when it essentially subsumes every fact in the case. *See Aldapa v. Fowler Packing Co. Inc.*, 310 F.R.D. 583, 591 (E.D. Cal. 2015), reconsideration denied, No. 115CV00420GEBSAB, 2016 WL 81231 (E.D. Cal. Jan. 7, 2016); *Hiskett v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404 (D. Kan. 1998); *Safeco of Am. v. Rawstron*, 181 F.R.D. 441, 447-48 (C.D. Cal. 1998); *Lawrence v. First Kan. Bank & Trust Co.*, 169 F.R.D. 657, 660-63 (D. Kan. 1996); *Hilt v. SFC, Inc.*, 170 F.R.D. 182, 186-87 (D. Kan. 1997).

Without waiving its objections, and without limitation, and without limitation, the DOI sent correspondence to the BOD on September 8, 2010 and, "[b]ecause of the company's capital decline revealed by the June 30, 2010 financial statement, management should commence preparing a corrective plan and implementation schedule addressing a means to enhance earnings and surplus, reduce expenses, and improve liquidity. Then again, on September 23, 2011, the DOI sent additional correspondence advising the Board and management to "prepare a short-term (3 month) action plan and based on this action plan how they forecast their 12/31/2011

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statement to appear.” However, the Board failed to exercise even scant care in addressing the recommendations and failed to correct the staggering financial problems L&C was facing which forced Lewis & Clark to be placed in receivership. Despite the clear and unmistakable indications that the information provided to the BOD was, at best, unreliable and incomplete, the BOD failed to exercise even slight diligence in informing itself of the truth of the financial status of L&C.

Discovery is ongoing and L&C reserves the right to supplement this answer as discovery proceeds.

INTERROGATORY NO. 14:

What do you contend would have been appropriate action by the BOD upon receipt of the information that L&C’s dire financial position as of September 2011, as alleged in Paragraph 228 of the COMPLAINT.

ANSWER TO INTERROGATORY NO. 14:

L&C objects to this Interrogatory as the terms “appropriate action” and “information” is vague and ambiguous. This Interrogatory is further objected to the extent that it improperly attempts to invade the attorney client and/or attorney work product doctrine and further seeks the premature disclosure of expert opinions, and calls for a legal conclusion. In addition, L&C objects to this interrogatory as broad ranging written discovery is improper when it essentially subsumes every fact in the case. *See Aldapa v. Fowler Packing Co. Inc.*, 310 F.R.D. 583, 591 (E.D. Cal. 2015), reconsideration denied, No. 115CV00420GEBSAB, 2016 WL 81231 (E.D. Cal. Jan. 7, 2016); *Hiskett v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404 (D. Kan. 1998); *Safeco of Am. v. Rawstron*, 181 F.R.D. 441, 447-48 (C.D. Cal. 1998); *Lawrence v. First Kan. Bank & Trust Co.*, 169 F.R.D. 657, 660-63 (D. Kan. 1996); *Hilt v. SFC, Inc.*, 170 F.R.D. 182, 186-87 (D. Kan. 1997).

Without waiving its objections, and without limitation, the DOI sent correspondence to the BOD on September 8, 2010 and, “[b]ecause of the company’s capital decline revealed by the June 30, 2010 financial statement, management should commence preparing a corrective plan and

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1 implementation schedule addressing a means to enhance earnings and surplus, reduce expenses,
2 and improve liquidity. Then again, on September 23, 2011, the DOI sent additional
3 correspondence advising the Board and management to "prepare a short-term (3 month) action
4 plan and based on this action plan how they forecast their 12/31/2011 statement to appear."
5 However, the Board failed to exercise even scant care in addressing the recommendations and
6 failed to correct the staggering financial problems L&C was facing which forced Lewis & Clark
7 to be placed in receivership. Despite the clear and unmistakable indications that the information
8 provided to the BOD was, at best, unreliable and incomplete, the BOD failed to exercise even
9 slight diligence in informing itself of the truth of the financial status of L&C.

10 Discovery is ongoing and L&C reserves the right to supplement this answer as discovery
11 proceeds.

12 **INTERROGATORY NO. 15:**

13 Do you contend that any of L&C's agents misrepresented the actual financial position of
14 L&C to the Division of Insurance at any time period prior to January 1, 2013. If so, state the date
15 that such misrepresentation occurred and the form of the communication, whether it be through
16 submission of quarterly reports, emails, verbal statements, etc., and identify the person who made
17 the misrepresentation.

18 **ANSWER TO INTERROGATORY NO. 15:**

19 L&C objects to this Interrogatory in that the term "L&C's agents" as vague and
20 ambiguous. This Interrogatory is further objected to the extent that it improperly attempts to
21 invade the attorney client and/or attorney work product doctrine and further seeks the premature
22 disclosure of expert opinions, and calls for a legal conclusion. In addition, L&C objects to this
23 interrogatory as broad ranging written discovery is improper when it essentially subsumes every
24 fact in the case. *See Aldapa v. Fowler Packing Co. Inc.*, 310 F.R.D. 583, 591 (E.D. Cal. 2015),
25 reconsideration denied, No. 115CV00420GFBSAB, 2016 WL 81231 (E.D. Cal. Jan. 7, 2016);
26 *Hiskett v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404 (D. Kan. 1998); *Safeco of Am. v. Rawstron*,
27 181 F.R.D. 441, 447-48 (C.D. Cal. 1998); *Lawrence v. First Kan. Bank & Trust Co.*, 169 F.R.D.

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657, 660-63 (D. Kan. 1996); *Hilt v. SFC, Inc.*, 170 F.R.D. 182, 186-87 (D. Kan. 1997).

Without waiving its objections, and without limitation, to the extent that the Interrogatory means each of the Defendants in this action and their respective agents, including, but not limited to Praxis. This Interrogatory is further objected to the extent that it calls for a legal conclusion. This Interrogatory is further objected to the extent that it improperly attempts to invade the attorney client and/or attorney work product doctrine and further seeks the premature disclosure of expert opinions. Without waiving its objections, and without limitation, to the extent this Interrogatory means Defendants and each of their agents, including, but not limited to Praxis, Defendants and their agents did misrepresent the actual financial position of L&C to the DOI. See correspondence sent from the DOI in September 2010 and 2011 and the Praxis report.

Discovery is ongoing and L&C reserves the right to supplement this answer as discovery proceeds.

INTERROGATORY NO. 16:

Do you contend that re-insurance premiums paid by L&C were excessive? If so identify the insurance policy that you contend contained an excessively high premium.

ANSWER TO INTERROGATORY NO. 16:

L&C objects to this Interrogatory in that the term "re-insurance premiums" as vague and ambiguous as it is unclear what "re-insurance premiums" are being discussed. L&C further objects to this Interrogatory in that it calls for a legal conclusion. This Interrogatory is further objected to the extent that it improperly attempts to invade the attorney client and/or attorney work product doctrine and further seeks the premature disclosure of expert opinions.

Discovery is ongoing and L&C reserves the right to supplement this answer as discovery proceeds.

INTERROGATORY NO. 17:

Since L&C was placed in receivership, has the receiver been able to secure re-insurance? If so, identify the polic(ies) that have been procured since September, 2012. If not, state why not, including what if any parameters and conditions were placed in the procurement of the same.

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1 **ANSWER TO INTERROGATORY NO. 17:**

2 L&C objects to this Interrogatory in that it misstates and misrepresents the receivership of
3 L&C. L&C further objects to this Interrogatory in that it calls for a legal conclusion. This
4 Interrogatory is further objected to the extent that it improperly attempts to invade the attorney
5 client and/or attorney work product doctrine and further seeks the premature disclosure of expert
6 opinions. Without waiving its objections, and without limitation, pursuant to the Order of
7 Liquidation dated February 28, 2013 in the matter of *State of Nevada, Ex. Rel. Commissioner of*
8 *Insurance, in His Official Capacity as Statutory Receiver for Delinquent Domestic Insurer v.*
9 *Lewis & Clark LTC Risk Retention Group, Inc. et al.*, filed in the Eighth Judicial District Court of
10 Nevada in and for the County of Clark, Case No. A-12-672047-B, the receiver was directed to
11 collect and liquidate the assets of L&C.

12 Discovery is ongoing and L&C reserves the right to supplement this answer as discovery
13 proceeds.

14 **INTERROGATORY NO. 18:**

15 Identify the date that you contend was L&C's initial insolvency as alleged in paragraph
16 236 of the COMPLAINT.

17 **ANSWER TO INTERROGATORY NO. 18:**

18 L&C objects to this Interrogatory in that it calls for a legal conclusion. This Interrogatory
19 is further objected to the extent that it improperly attempts to invade the attorney client and/or
20 attorney work product doctrine and further seeks the premature disclosure of expert opinions, and
21 calls for a legal conclusion. In addition, L&C objects to this interrogatory as broad ranging
22 written discovery is improper when it essentially subsumes every fact in the case. *See Aldapa v.*
23 *Fowler Packing Co. Inc.*, 310 F.R.D. 583, 591 (E.D. Cal. 2015), reconsideration denied, No.
24 115CV00420GEBSAB, 2016 WL 81231 (E.D. Cal. Jan. 7, 2016); *Hiskett v. Wal-Mart Stores,*
25 *Inc.*, 180 F.R.D. 403, 404 (D. Kan. 1998); *Safeco of Am. v. Rawstron*, 181 F.R.D. 441, 447-48
26 (C.D. Cal. 1998); *Lawrence v. First Kan. Bank & Trust Co.*, 169 F.R.D. 657, 660-63 (D. Kan.
27 1996); *Hilt v. SFC, Inc.*, 170 F.R.D. 182, 186-87 (D. Kan. 1997).

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1 Without waiving its objections, and without limitation, following review of the June 30,
2 2010 financial statement of L&C, the DOI sent a letter on September 8, 2010 advising the Board
3 of the dangerous financial position of L&C.

4 Discovery is ongoing and L&C reserves the right to supplement this answer as discovery
5 proceeds.

6 **INTERROGATORY NO. 19:**

7 State all facts and circumstances that support your contention that had the board taken
8 action by late 2011, the substantial losses experienced by L&C would not have occurred or would
9 have been greatly limited.

10 **ANSWER TO INTERROGATORY NO. 19:**

11 This interrogatory is objected to on the basis that it is vague and ambiguous and misstates
12 L&C's position. This Interrogatory is further objected to the extent that it improperly attempts to
13 invade the attorney client and/or attorney work product doctrine and further seeks the premature
14 disclosure of expert opinions, and calls for a legal conclusion. In addition, L&C objects to this
15 interrogatory as broad ranging written discovery is improper when it essentially subsumes every
16 fact in the case. *See Aldapa v. Fowler Packing Co. Inc.*, 310 F.R.D. 583, 591 (E.D. Cal. 2015),
17 reconsideration denied, No. 115CV00420GEB SAB, 2016 WL 81231 (E.D. Cal. Jan. 7, 2016);
18 *Hiskett v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404 (D. Kan. 1998); *Safeco of Am. v. Rawstron*,
19 181 F.R.D. 441, 447-48 (C.D. Cal. 1998); *Lawrence v. First Kan. Bank & Trust Co.*, 169 F.R.D.
20 657, 660-63 (D. Kan. 1996); *Hilt v. SFC, Inc.*, 170 F.R.D. 182, 186-87 (D. Kan. 1997).

21 Without waiving its objections, and without limitation, the DOI sent a letter on September
22 23, 2011 noting several massive financial problems with L&C which the Board had, on
23 information and belief, taken improper or no action to correct, including the following:

- 24 • Of particular concern is the Combined ratio which has increased
25 since prior year-end from 99.4% to 153.9% - a 54.8% increase post-
26 merger.
- 27 • A major concern is Risk Based Capital ("RBC") – 208.8%. This
28 RBC calculation results from year-end 2010 financial statement.
The RBC is now well below that level considering the reserve

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(Liability) increases and net loss reducing policyholder surplus by 40.3% for only one-half (Six Months) of a year of operating activity.

- Net underwriting loss has deteriorated to \$3.1 million
- Net loss = \$1.8 million

The September 2011 Letter further noted the following regarding the second quarter of 2011:

Since prior year-end, policyholder surplus has declined by 40.3%. Company is experiencing adverse claims Development and is becoming extremely leveraged. Total Liabilities have increased by 26.5% ... Net Loss is \$1.8 million, a result of \$3.1 million net underwriting loss for six months and \$1.7 million underwriting loss for just the second quarter. Unassigned Funds have deteriorated further to a negative (\$1.4 million). Since prior year-to-date, net premiums earned have improved nominally by 5.8% while net losses incurred has increased by 117.6% causing a net loss ratio of 114.4% and resulting in a 153.9% combined ratio. Company is highly leveraged. Cash and invested assets only represent 59.2% of total assets resulting in a 148.7% liquidity ratio coupled with gross premiums written representing 571.6% of policyholder surplus and net premiums written representing 499.9% of policyholder surplus ...

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]he 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."

On information and belief, the Board failed to exercise even scant care in addressing the September 2011 Letter, and failed to correct the staggering financial problems L&C was facing.

Discovery is ongoing and L&C reserves the right to supplement this answer as discovery proceeds.

INTERROGATORY NO. 20:

Identify the documents that support your contention that had the board taken action by late 2011, the substantial losses experienced by L&C would not have occurred or would have been greatly limited.

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1 **ANSWER TO INTERROGATORY NO. 20:**

2 This Interrogatory is objected to the extent that it improperly attempts to invade the
3 attorney client and/or attorney work product doctrine and further seeks the premature disclosure
4 of expert opinions, and calls for a legal conclusion. In addition, L&C objects to this interrogatory
5 as broad ranging written discovery is improper when it essentially subsumes every fact in the
6 case. See *Aldapa v. Fowler Packing Co. Inc.*, 310 F.R.D. 583, 591 (E.D. Cal. 2015),
7 reconsideration denied, No. 115CV00420GEBSAB, 2016 WL 81231 (E.D. Cal. Jan. 7, 2016);
8 *Hiskett v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404 (D. Kan. 1998); *Safeco of Am. v. Rawstron*,
9 181 F.R.D. 441, 447-48 (C.D. Cal. 1998); *Lawrence v. First Kan. Bank & Trust Co.*, 169 F.R.D.
10 657, 660-63 (D. Kan. 1996); *Hilt v. SFC, Inc.*, 170 F.R.D. 182, 186-87 (D. Kan. 1997). Without
11 waiving its objections, and without limitation, see documents including, but not limited to,
12 LC0130822 – LC0130843; **LC0261507 - LC0261526**; LC0130516 – LC0130517; **LC0261491 -**
13 **LC0261492**; LC0226235 – LC0226250; **LC0261493 - LC0261494**; LC0130923 – LC0130924;
14 LC0130922; LC0130916; LC0130518 – LC0130520; LC0130908; LC0130904; LC0130901 –
15 LC0130902; LC0130899 – LC0130900; LC0130883 – LC0130884; LC0130894 – LC0130895;
16 LC0130883 – LC0130884; LC0130880 – LC0130881; LC0130878 – LC0130879; LC0131318 –
17 LC0131321; LC0130872 – LC0130873; **LC0261527 - LC0261535**; LC0130870; LC0130533 –
18 LC0130534; LC0130866 – LC0130867; LC0130864 – LC0130865; LC0130863; LC0130535;
19 LC0130860; LC0130859; LC0130858; LC0130856; LC0130855; LC0130536 – LC0130615;
20 LC0130616 – LC0130644; LC0130645 – LC0130649; **LC0261495 - LC0261498**; LC0130650 –
21 LC0130654; LC0131795 – LC0131802; LC0130663 – LC0130755; LC0131202 – LC0131266;
22 **LC0261499 - LC0261502; LC0261503 - LC0261506; LC0261536**; and LC0226394 –
23 LC0226400

24 Discovery is ongoing and L&C reserves the right to supplement this answer as discovery
25 proceeds.

26 **INTERROGATORY NO. 21:**

27 Identify all documents reviewed in preparing responses to these Interrogatories.

28 13458919.1/037881.0001

all
exhibits
from
Third
Amended
complaint

1 **ANSWER TO INTERROGATORY NO. 21:**

2 L&C objects to this Interrogatory to the extent that it calls for a legal conclusion. This
3 Interrogatory is further objected to the extent that it improperly attempts to invade the attorney
4 client and/or attorney work product doctrine and further seeks the premature disclosure of expert
5 opinions. Without waiving its objections, and without limitation, see documents including, but
6 not limited to, LC0130822 – LC0130843; **LC0261507 - LC0261526**; LC0130516 –
7 LC0130517; **LC0261491 - LC0261492**; LC0226235 – LC0226250; **LC0261493 - LC0261494**;
8 LC0130923 – LC0130924; LC0130922; LC0130916; LC0130518 – LC0130520; LC0130908;
9 LC0130904; LC0130901 – LC0130902; LC0130899 – LC0130900; LC0130883 – LC0130884;
10 LC0130894 – LC0130895; LC0130883 – LC0130884; LC0130880 – LC0130881; LC0130878 –
11 LC0130879; LC0131318 – LC0131321; LC0130872 – LC0130873; **LC0261527 - LC0261535**;
12 LC0130870; LC0130533 – LC0130534; LC0130866 – LC0130867; LC0130864 – LC0130865;
13 LC0130863; LC0130535; LC0130860; LC0130859; LC0130858; LC0130856; LC0130855;
14 LC0130536 – LC0130615; LC0130616 – LC0130644; LC0130645 – LC0130649; **LC0261495 -**
15 **LC0261498**; LC0130650 – LC0130654; LC0131795 – LC0131802; LC0130663 – LC0130755;
16 LC0131202 – LC0131266; **LC0261499 - LC0261502; LC0261503 - LC0261506; LC0261536**;
17 LC0226394 – LC0226400; and the papers and pleadings on file in this litigation and the
18 associated Receivership.

19 Discovery is ongoing and L&C reserves the right to supplement this answer as discovery
20 proceeds.

21 **INTERROGATORY NO. 22:**

22 Identify all persons who assisted in the preparation of the responses to these
23 Interrogatories. For each person, identify that person by name, employer and that person's job
24 title.

25 **ANSWER TO INTERROGATORY NO. 22:**

26 Robert L. Greer, CIR-ML,
27 Vista Consulting Group, Inc.
28 c/o Brenoch Wirthlin, Esq.
Fennemore Craig, P.C.

13458919.1/037881.0001

FENNEMORE CRAIG, P.C.

LAS VEGAS

300 S. 4th Street, Suite 1400
Las Vegas, Nevada 89101

Discovery is ongoing and L&C reserves the right to supplement this answer as discovery proceeds.

INTERROGATORY NO. 23:

After L&C was placed in receivership, describe what, if any efforts the Commissioner of Insurance took to collect documents from L&C's attorneys and/or agents. If documents and information were collected, describe what was collected and the source of said documents.

ANSWER TO INTERROGATORY NO. 23:

This Interrogatory is objected to the extent that it improperly attempts to invade the attorney client and/or attorney work product doctrine and further seeks the premature disclosure of expert opinions, and calls for a legal conclusion. In addition, L&C objects to this interrogatory as broad ranging written discovery is improper when it essentially subsumes every fact in the case. *See Aldapa v. Fowler Packing Co. Inc.*, 310 F.R.D. 583, 591 (E.D. Cal. 2015), reconsideration denied, No. 115CV00420GEBSAB, 2016 WL 81231 (E.D. Cal. Jan. 7, 2016); *Hiskett v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404 (D. Kan. 1998); *Safeco of Am. v. Rawstron*, 181 F.R.D. 441, 447-48 (C.D. Cal. 1998); *Lawrence v. First Kan. Bank & Trust Co.*, 169 F.R.D. 657, 660-63 (D. Kan. 1996); *Hilt v. SFC, Inc.*, 170 F.R.D. 182, 186-87 (D. Kan. 1997). Pursuant to the to the Order of Liquidation dated February 28, 2013 in the matter of *State of Nevada, Ex. Rel. Commissioner of Insurance, in His Official Capacity as Statutory Receiver for Delinquent Domestic Insurer v. Lewis & Clark LTC Risk Retention Group, Inc. et al.*, filed in the Eighth Judicial District Court of Nevada in and for the County of Clark, Case No. A-12-672047-B, the receiver sought to secure copies of Lewis & Clark's books and records and received two hard drives, duplicate copies previously produced as LC0261489 and LC0261490, purporting to be the complete copies of L&C's books and records. However, upon review of the, it is evident that documents and information are missing from folders on the hard drives that are subject of a pending discovery dispute.

Discovery is ongoing and L&C reserves the right to supplement this answer as discovery

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1 proceeds.

2 DATED this 30th day of November, 2017.

3 FENNEMORE CRAIG, P.C.

4

5

By: /s/ Brenoch Wirthlin

6

JAMES L. WADHAMS, ESQ.

Nevada Bar No. 1115

7

BRENOCH WIRTHLIN, ESQ.

Nevada Bar No. 10282

8

300 South Fourth Street, Suite 1400

9

Las Vegas, Nevada 89101

10

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

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FENNEMORE CRAIG, P.C.

LAS VEGAS

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1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of Fennemore Craig, P.C., and that on this date, I served
3 the foregoing **PLAINTIFF COMMISSIONER OF INSURANCE FOR THE STATE OF**
4 **NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP,**
5 **INC.'s AMENDED RESPONSES TO DEFENDANTS' FIRST SET OF**
6 **INTERROGATORIES** on the parties set forth below by legally serving via Odyssey electronic
7 service as follows:

8
9 Joseph P. Garin, Esq. *(via e-service)*
Angela Ochoa, Esq.
10 Lipson, Neilson, Cole, Seltzer & Garin, P.C.
9900 Covington Cross Drive, Suite 120
11 Las Vegas, Nevada 89144
Attorneys for Defendants Robert Chur, Steve Fogg,
12 *Mark Garber, Carol Harter, Robert Hurlbut,*
Barbara Lumpkin, Jeff Marshall & Eric Stickels

13
14 George F. Ogilvie III, Esq. *(via e-service)*
McDonald Carano Wilson LLP
15 2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
16 *Attorneys for Defendants Uni-Ter Underwriting*
Management Corp., Uni-Ter Claims Services Corp.,
17 *and U.S. RE Corporation*

18 Jon M. Wilson *(via e-service)*
19 Kimberly Freedman
Broad and Cassel
20 2 South Biscayne Blvd., 21st Floor
Miami Florida 33131
21 *Attorneys for Defendants Uni-Ter Underwriting*
Management Corp., Uni-Ter Claims Services Corp.,
22 *and U.S. RE Corporation*

23 DATED this 30th day of November, 2017
24

25 /s/ Cheryl Landis
26 An Employee of Fennemore Craig, P.C.

27
28 13458919.1/037881.0001

FENNEMORE CRAIG, P.C.

LAS VEGAS

EXHIBIT “D”

EXHIBIT “D”

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BRENOCH WIRTHLIN, ESQ.
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Telephone: (702) 692-8000
Facsimile: (702) 692-8099

*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

**PLAINTIFF COMMISSIONER OF
INSURANCE FOR THE STATE OF
NEVADA. THE COURT-APPOINTED
RECEIVER OF LEWIS & CLARK LTC
RISK RETENTION GROUP, INC.'S
RESPONSES TO DIRECTOR
DEFENDANTS' SECOND SET OF
INTERROGATORIES**

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER
OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC. ("L&C"), answers the
Director Defendants' 2nd Set of Interrogatories. L&C reserves the right to supplement these
responses as discovery progresses and more information becomes known.

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1 **PRELIMINARY STATEMENT AND DEFINITIONS**

2 L&C has not fully completed its investigation of the facts relating to this case, has not
3 completed discovery in this action, and has not completed preparation for trial. All responses
4 contained herein are based only upon such information as is presently available to and
5 specifically known by this responding party and it discloses only those conclusions and
6 contentions which presently occur to this responding party. It is anticipated that further discovery,
7 pending investigation, legal research and analysis will supply additional facts, add meaning to the
8 known facts, and may establish entirely new factual conclusions and legal contentions, all of
9 which may lend substantial additions to, changes, and variations from the responses herein set
10 forth.

11 The following responses are given without prejudice to or waiver of L&C's right to
12 introduce evidence of subsequently discovered and developed conclusions or contentions. The
13 responses contained herein are made in a good faith effort to supply as much factual information
14 and as much specification of legal contentions as is presently known, but in no way should be to
15 the prejudice of these responding parties in relation to discovery, research or analysis. L&C
16 additionally reserves its right to supplement and/or amend each and every response below.

17 **GENERAL OBJECTIONS**

18 These responses are made solely for the purpose of and use in this litigation. Each
19 response is given subject to all appropriate objections (including, but not limited to, objections
20 concerning competency, relevancy, materiality, propriety and admissibility) that would require
21 the exclusion of any statement contained herein if the request were asked of, or any statement
22 contained herein were made by, a witness testifying in Court. L&C reserves all such objections
23 and the grounds therefore and may interpose them at the time of trial.

24 As discovery is still ongoing, L&C's responses are based on its present knowledge,
25 information and belief.

26 1. L&C objects to this discovery to the extent it seeks information other than that
27 which may be obtained through a reasonably diligent search of its records.

28 ///

1 2. L&C objects to this discovery to the extent it seeks information protected by the
2 attorney-client privilege, the work-product doctrine, and/or any other applicable protection or
3 privilege.

4 3. L&C objects to this discovery to the extent it seeks information which is neither
5 relevant nor reasonably calculated to lead to the discovery of admissible evidence or is otherwise
6 beyond the scope of discovery contemplated by the Nevada Rules of Civil Procedure.

7 4. L&C objects to this discovery to the extent it seeks documents or information not
8 in its possession, custody or control.

9 5. L&C objects to this discovery to the extent the Uni-Ter Defendants are seeking
10 documents that should be within their possession and control as the manager of L&C.

11 6. No response, nor subsequent response, constitutes a waiver of any other objection
12 pursuant to these responses or to other similar requests that may be propounded at a later time.

13 7. L&C objects to requests seeking "each and every" or "any and all" documents on
14 the basis that such requests are overbroad for failure to be sufficiently tailored by subject-matter
15 and/or time period or because they otherwise require L&C to speculate as to what the Uni-Ter
16 Defendants are actually requesting.

17 8. L&C reserves the right to supplement its objections and responses to these
18 requests.

19 9. L&C objects to the extent the discovery seeks to impose a duty to respond beyond
20 that provided in the Nevada Rules of Civil Procedure, including without limitation any requests
21 improperly directed to the Department of Business and Industry, Nevada Division of Insurance
22 ("DOI"), rather than to the Plaintiff in this case.

23 **INTERROGATORY NO. 24:**

24 The following report appears in YOUR Fifty-Ninth Status Report filed on March 19,
25 2018 in Case No. A-12-672047-B:

26 "C. Proofs of Claim Filed with Receiver

27 As of the date of this report, three hundred fifty-one (351) Proof of Claim (POC)
28 forms were mailed to the Receiver. **Three hundred forty-four (344) of the POC's were**

1 post marked on or before the August 31, 2014 due date and are considered timely filed
2 and seven (7) POC's were postmarked after August 31, 2014 and at this time are
3 considered late filed. 219 of the 344 timely-filed POC's and 6 of the 7 late-filed POC's
4 are claims potentially covered under the terms of the L&C's insurance policy (i.e.
"loss claims")." (emphasis
supplied)

5 Please IDENTIFY the names and addresses all of the 351 persons or entities who mailed
6 the Proof of Claim forms to YOU, as stated in the above-quoted report.

7 **RESPONSE TO INTERROGATORY NO. 24:**

8 Objection. Interrogatory No. 24 seeks irrelevant information and is not reasonably
9 calculated to lead to the discovery of admissible evidence. According to the provisions of NRS
10 696B, the rights of L&C are fixed as of the date of the order of liquidation. See also Integrity Ins.
11 Co. v. Martin, 105 Nev. 16, 762 P.2d 69 (1989); Order Granting Petition for Appointment of
12 Commissioner of as Receiver; Injunction; Order to Preserve Assets of Insurer ("Liquidation
13 Order"), entered December 26, 2012. The above-referenced Proofs of Claim, all of which
14 occurred subsequent and pursuant to the Liquidation Order and NRS 696B, are immaterial
15 therefore to any issue in dispute in this civil action, separate and independent from the Receiver's
16 administrative duties.

17 Discovery is ongoing. L&C reserves the right to supplement its discovery responses as
18 appropriate.

19 **INTERROGATORY NO. 25:**

20 In Reference to above Interrogatory No. 24, please IDENTIFY by names and addresses
21 the persons or entities who mailed the 344 Proof of Claim forms to YOU that "were post marked
22 on or before the August 31, 2014 due date and are considered timely filed."

23 **RESPONSE TO INTERROGATORY NO. 25:**

24 See Response to Interrogatory No. 24, incorporated herein by reference without limitation
25 including all objections set forth therein, and which requests a broader range of information of
26 which that sought in Interrogatory No. 25 is merely a subset, including any and all objections
27 stated therein.

28 ///

1 **INTERROGATORY NO. 26:**

2 In reference to above Interrogatory No. 24, please IDENTIFY by names and addresses the
3 persons or entities who mailed the "seven (7) Proofs of Claim forms to YOU that "were
4 postmarked after August 31, 2014 and at this time are considered late filed," as stated in the
5 above-quoted report.

6 **RESPONSE TO INTERROGATORY NO. 26:**

7 See Response to Interrogatory No. 24, incorporated herein by reference without limitation
8 including all objections set forth therein, and which requests a broader range of information of
9 which that sought in Interrogatory No. 26 is merely a subset, including any and all objections
10 stated therein.

11 **INTERROGATORY NO. 27:**

12 In reference to above Interrogatory No. 24, please IDENTIFY by names and addresses the
13 219 persons or entities who timely filed their POC's and referred in the above-quoted report as
14 "**219** of the 344 timely-filed POC's are claims potentially covered under the terms of the L&C's
15 insurance policy (i.e. "loss claims").

16 **RESPONSE TO INTERROGATORY NO. 27:**

17 See Response to Interrogatory No. 24, incorporated herein by reference without limitation
18 including all objections set forth therein, and which requests a broader range of information of
19 which that sought in Interrogatory No. 27 is merely a subset, including any and all objections
20 stated therein.

21 **INTERROGATORY NO. 28:**

22 In reference to above Interrogatory No. 24, please IDENTIFY by names and
23 addresses the 6 persons or entities who late-filed their POC's and whom YOU describe as "6 of
24 the 7 late-filed POC's are claims potentially covered under the terms of the L&C's insurance
25 policy (i.e. "loss claims")."

26 **RESPONSE TO INTERROGATORY NO. 28:**

27 See Response to Interrogatory No. 24, incorporated herein by reference without limitation
28 including all objections set forth therein, and which requests a broader range of information of

1 which that sought in Interrogatory No. 28 is merely a subset, including any and all objections
2 stated therein.

3 **INTERROGATORY NO. 29:**

4 The following report appears in YOUR Fifty-Ninth Status Report filed on March 19, 2018
5 in Case No. A-12-672047-B:

6 "D. Adjudication of Filed Proof of Claim Forms

7 "Due to the nature of the underwriting business, the loss claims filed under the
8 POC's are complex and often involve multiple defendants some of which are not insured
9 by Lewis & Clark. **Because of this complexity, a large number if the loss claims are still**
10 **involved in active litigation in many difference jurisdictions.** The Deputy Receiver has
11 determined that it is in the best interest of the estate to allow the claims litigation process to
12 proceed and to defer adjudication of the POC's and allow the claims to develop in the usual
13 course.

14 **RESPONSE TO INTERROGATORY NO. 29:**

15 Objection. Interrogatory No. 29 seeks irrelevant information and is not reasonably
16 calculated to lead to the discovery of admissible evidence. According to the provisions of NRS
17 696B, the rights of L&C are fixed as of the date of the order of liquidation. See also Integrity Ins.
18 Co. v. Martin, 105 Nev. 16, 762 P.2d 69 (1989); Order Granting Petition for Appointment of
19 Commissioner of as Receiver; Injunction; Order to Preserve Assets of Insurer ("Liquidation
20 Order"), entered December 26, 2012. This information, all of which relates to events occurring
21 subsequent and pursuant to the Liquidation Order and NRS 696B, are immaterial therefore to any
22 issue in dispute in this civil action, separate and independent from the Receiver's administrative
23 duties.

24 Discovery is ongoing. L&C reserves the right to supplement its discovery responses as
25 appropriate.

26 **INTERROGATORY NO. 30:**

27 IDENTIFY the policyholders, members of shareholders of L&C on behalf of whom YOU
28 are purportedly prosecuting this action, as alleged in paragraph 2 of YOUR Third Amended
29 Complaint.

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1 **RESPONSE TO INTERROGATORY NO. 30:**

2 Objection. Interrogatory No. 30 seeks irrelevant information and is not reasonably
3 calculated to lead to the discovery of admissible evidence as the provisions of NRS 696B provide
4 for the Receiver's standing and right to pursue claims of relief on the liquidated insurer's behalf.

5 Discovery is ongoing. L&C reserves the right to supplement its discovery responses as
6 appropriate.

7
8 DATED this 7th day of June, 2018.

9 **FENNEMORE CRAIG, P.C.**

10
11 By: /s/ Brenoch Wirthlin
12 JAMES L. WADHAMS, ESQ.
13 Nevada Bar No. 1115
14 BRENOCH WIRTHLIN, ESQ.
15 Nevada Bar No. 10282
16 300 South Fourth Street, Suite 1400
17 Las Vegas, Nevada 89101

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

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Fennemore Craig, P.C.,
3 and that on the 7th day of June, 2018, I caused to be electronically served through the Court's e-
4 service/e-filing system and/or served by U.S. Mail true and correct copies of the foregoing
5 **PLAINTIFF COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA, THE**
6 **COURT-APPOINTED RECEIVER OF LEWIS & CLARK LTC RISK RETENTION**
7 **GROUP, INC.'S RESPONSES TO DIRECTOR DEFENDANTS' SECOND SET OF**
8 **INTERROGATORIES** properly addressed to the following:

9 Joseph P. Garin, Esq.
10 Angela Ochoa, Esq.
11 Lipson, Neilson, Cole, Seltzer & Garin, P.C.
12 9900 Covington Cross Drive, Suite 120
13 Las Vegas, Nevada 89144
14 *Attorneys for Defendants Robert Chur, Steve Fogg,*
15 *Mark Garber, Carol Harter, Robert Hurlbut,*
16 *Barbara Lumpkin, Jeff Marshall & Eric Stickels*

17 George F. Oglive III, Esq.
18 McDonald Carano Wilson LLP
19 2300 West Sahara Avenue, Suite 1200
20 Las Vegas, Nevada 89102
21 *Attorneys for Defendants Uni-Ter Underwriting*
22 *Management Corp., Uni-Ter Claims Services Corp.,*
23 *and U.S. RE Corporation*

24 Jon M. Wilson
25 Broad and Cassel
26 2 South Biscayne Blvd., 21st Floor
27 Miami Florida 33131
28 *Attorneys for Defendants Uni-Ter Underwriting*
Management Corp., Uni-Ter Claims Services Corp.,
and U.S. RE Corporation

29 /s/ Daniel C. Maul
30 An Employee of Fennemore Craig, P.C.

EXHIBIT “E”

EXHIBIT “E”

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

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

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

Plaintiff,

vs.

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

Defendants.

Case No.: A-14-711535-C

Dept. No.: 27

**PLAINTIFF COMMISSIONER OF
INSURANCE FOR THE STATE OF
NEVADA, THE COURT-APPOINTED
RECEIVER OF LEWIS & CLARK LTD
RISK RETENTION GROUP, INC.'S
RESPONSES TO DIRECTOR
DEFENDANTS FIRST SET OF REQUEST
FOR PRODUCTION OF DOCUMENTS**

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER
OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC. ("L&C"), answers the
Director Defendants' First Set of Request for Production. L&C reserves the right to supplement
these responses as discovery progresses and more information becomes known.

///

1 **PRELIMINARY STATEMENT AND DEFINITIONS**

2 L&C has not fully completed its investigation of the facts relating to this case, has not
3 completed discovery in this action, and has not completed preparation for trial. All responses
4 contained herein are based only upon such information as is presently available to and
5 specifically known by this responding party and it discloses only those conclusions and
6 contentions which presently occur to this responding party. It is anticipated that further discovery,
7 pending investigation, legal research and analysis will supply additional facts, add meaning to the
8 known facts, and may establish entirely new factual conclusions and legal contentions, all of
9 which may lend substantial additions to, changes, and variations from the responses herein set
10 forth.

11 The following responses are given without prejudice to or waiver of L&C's right to
12 introduce evidence of subsequently discovered and developed conclusions or contentions. The
13 responses contained herein are made in a good faith effort to supply as much factual information
14 and as much specification of legal contentions as is presently known, but in no way should be to
15 the prejudice of these responding parties in relation to discovery, research or analysis. L&C
16 additionally reserves its right to supplement and/or amend each and every response below.

17 **GENERAL OBJECTIONS**

18 These responses are made solely for the purpose of and use in this litigation. Each
19 response is given subject to all appropriate objections (including, but not limited to, objections
20 concerning competency, relevancy, materiality, propriety and admissibility) that would require
21 the exclusion of any statement contained herein if the request were asked of, or any statement
22 contained herein were made by, a witness testifying in Court. L&C reserves all such objections
23 and the grounds therefore and may interpose them at the time of trial.

24 As discovery is still ongoing, L&C's responses are based on its present knowledge,
25 information and belief.

26 1. L&C objects to this discovery to the extent it seeks information other than that
27 which may be obtained through a reasonably diligent search of its records.

28 ///

2. L&C objects to this discovery to the extent it seeks information protected by the attorney-client privilege, the work-product doctrine, and/or any other applicable protection or privilege.

3. L&C objects to this discovery to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence or is otherwise beyond the scope of discovery contemplated by the Nevada Rules of Civil Procedure.

4. L&C objects to this discovery to the extent it seeks documents or information not in its possession, custody or control.

5. L&C objects to this discovery to the extent the Uni-Ter Defendants are seeking documents that should be within their possession and control as the manager of L&C.

6. No response, nor subsequent response, constitutes a waiver of any other objection pursuant to these responses or to other similar requests that may be propounded at a later time.

7. L&C objects to requests seeking "each and every" or "any and all" documents on the basis that such requests are overbroad for failure to be sufficiently tailored by subject-matter and/or time period or because they otherwise require L&C to speculate as to what the Uni-Ter Defendants are actually requesting.

8. L&C reserves the right to supplement its objections and responses to these requests.

9. L&C objects to the extent the discovery seeks to impose a duty to respond beyond that provided in the Nevada Rules of Civil Procedure, including without limitation any requests improperly directed to the Department of Business and Industry, Nevada Division of Insurance ("DOI"), rather than to the Plaintiff in this case.

REQUESTS FOR PRODUCTION

REQUEST NO. 1:

The following report appears in YOUR Fifty-Ninth Status Report filed on March 19, 2018 in Case No. A-12-672047-B:

"C. Proofs of Claim Filed with Receiver

1 As of the date of this report, three hundred fifty-one (351) Proof of Claim (POC)
2 forms were mailed to the Receiver. **Three hundred forty-four (344) of the POC's** were
3 post marked on or before the August 31, 2014 due date and are considered timely filed
4 and **seven (7) POC's** were postmarked after August 31, 2014 and at this time are
5 considered late filed. **219 of the 344 timely-filed POC's and 6 of the 7 late-filed POC's**
6 **are claims potentially covered under the terms of the L&C's insurance policy (i.e.**
7 **"loss claims")."** (emphasis supplied)

8 Please produce a list of the names and addresses of all the 351 persons or entities who
9 mailed the Proof of Claim forms to YOU, as stated in the above-quoted report.

10 **RESPONSE TO REQUEST NO. 1:**

11 Objection. Request No. 1 seeks irrelevant information and is not reasonably calculated to
12 lead to the discovery of admissible evidence. According to the provisions of NRS 696B, the
13 rights of L&C are fixed as of the date of the order of liquidation. See also Integrity Ins. Co. v.
14 Martin, 105 Nev. 16, 762 P.2d 69 (1989); Order Granting Petition for Appointment of
15 Commissioner of as Receiver; Injunction; Order to Preserve Assets of Insurer ("Liquidation
16 Order"), entered December 26, 2012. The above-referenced Proofs of Claim, all of which
17 occurred subsequent and pursuant to the Liquidation Order and NRS 696B, are immaterial
18 therefore to any issue in dispute in this civil action, separate and independent from the Receiver's
19 administrative duties.

20 Separately, L&C objects to Request No. 1 in that it is not a request for a document, but is
21 instead more properly characterized as an interrogatory (and, in fact, is wholly duplicative of the
22 Director Defendants' simultaneously served 2nd Set of Interrogatories, No. 24).

23 Discovery is ongoing. L&C reserves the right to supplement its discovery responses as
24 appropriate.

25 **REQUEST NO. 2:**

26 Please produce and any all DOCUMENTS in YOUR possession, custody or control that
27 show the amounts being claimed under the 219 timely-filed POC's which are claims potentially
28 covered under the terms of the L&C's insurance policy (i.e. "loss claims"), referred to in YOUR

1 above-quoted report.

2 **RESPONSE TO REQUEST NO. 2:**

3 Objection. Request No. 2 seeks irrelevant information and is not reasonably calculated to
4 lead to the discovery of admissible evidence. According to the provisions of NRS 696B, the
5 rights of L&C are fixed as of the date of the order of liquidation. See also Integrity Ins. Co. v.
6 Martin, 105 Nev. 16, 762 P.2d 69 (1989); Order Granting Petition for Appointment of
7 Commissioner of as Receiver; Injunction; Order to Preserve Assets of Insurer ("Liquidation
8 Order"), entered December 26, 2012. The above-referenced Proofs of Claim, all of which
9 occurred subsequent and pursuant to the Liquidation Order and NRS 696B, are immaterial
10 therefore to any issue in dispute in this civil action, separate and independent from the Receiver's
11 administrative duties.

12 Discovery is ongoing. L&C reserves the right to supplement its discovery responses as
13 appropriate.

14
15 **REQUEST NO. 3:**

16 The following report appears in YOUR Fifty-Ninth Status Report filed on March 19,
17 2018 in Case No. A-12-672047-B:

18 "D. Adjudication of Filed Proof of Claim Forms

19

20 **"The filed POC's relating to a loss claim involve 169 different alleged injured**
21 **parties.** These POC's include claims for indemnity from claimants, insureds and plaintiff
22 attorneys as well as claims for attorney fees and indemnity from defense counsel. **The**
23 **review to date has allowed the Deputy Receiver to complete the review and**
24 **adjudication of thirty-nine (39) personal injury/indemnity claims and the associated**
25 **loss adjustment and defense costs for sixty-two (62) claims.** The Deputy Receiver
26 continues to review various loss claims, prepares correspondence and reaches out by
27 telephone communication to the filer of the POC or counsel to request additional
28 information needed to determine the approved amount of the loss claim. As additional
supplemental claims information is received, the claims will be adjudicated." (emphasis
supplied)

27 Please produce a list, including the names, addresses, and amounts of loss claim,
28 showing that the *"filed POC's relating to a loss claim involve 169 different alleged injured*

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1 parties," as stated in YOUR above-quoted report.

2 **RESPONSE TO REQUEST NO. 3:**

3 Objection. Request No. 3 seeks irrelevant information and is not reasonably calculated to
4 lead to the discovery of admissible evidence. According to the provisions of NRS 696B, the
5 rights of L&C are fixed as of the date of the order of liquidation. See also Integrity Ins. Co. v.
6 Martin, 105 Nev. 16, 762 P.2d 69 (1989); Order Granting Petition for Appointment of
7 Commissioner of as Receiver; Injunction; Order to Preserve Assets of Insurer ("Liquidation
8 Order"), entered December 26, 2012. The above-referenced Proofs of Claim, all of which
9 occurred subsequent and pursuant to the Liquidation Order and NRS 696B, are immaterial
10 therefore to any issue in dispute in this civil action, separate and independent from the Receiver's
11 administrative duties.

12 Separately, L&C objects to Request No. 3 in that it is not a request for a document, but is
13 instead more properly characterized as an interrogatory.

14 Discovery is ongoing. L&C reserves the right to supplement its discovery responses as
15 appropriate.

16
17 **REQUEST NO. 4:**

18 In reference to Request for Production No. 3, please produce a list of claimants and
19 corresponding amount of loss claim of the 39 personal injury/indemnity claims referred to in the
20 quoted report therein that states: "The review to date has allowed the Deputy Receiver to
21 complete the review and adjudication of thirty-nine (39) personal injury/indemnity claims."

22 **RESPONSE TO REQUEST NO. 4:**

23 Objection. Request No. 4 seeks irrelevant information and is not reasonably calculated to
24 lead to the discovery of admissible evidence. According to the provisions of NRS 696B, the
25 rights of L&C are fixed as of the date of the order of liquidation. See also Integrity Ins. Co. v.
26 Martin, 105 Nev. 16, 762 P.2d 69 (1989); Order Granting Petition for Appointment of
27 Commissioner of as Receiver; Injunction; Order to Preserve Assets of Insurer ("Liquidation
28

Order”), entered December 26, 2012. The above-referenced claims, all of which occurred subsequent and pursuant to the Liquidation Order and NRS 696B, are immaterial therefore to any issue in dispute in this civil action, separate and independent from the Receiver’s administrative duties.

Separately, L&C objects to Request No. 4 in that it is not a request for a document, but is instead more properly characterized as an interrogatory.

Discovery is ongoing. L&C reserves the right to supplement its discovery responses as appropriate.

REQUEST NO. 5:

In reference to Request for Production No. 4, please produce any and all DOCUMENTS in YOUR possession, custody or control showing that the Deputy Receiver has completed the review and adjudication of thirty-nine (39) personal injury/indemnity claims, including the results and amounts of adjudication.

RESPONSE TO REQUEST NO. 5:

Objection. Request No. 5 seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence. According to the provisions of NRS 696B, the rights of L&C are fixed as of the date of the order of liquidation. See also Integrity Ins. Co. v. Martin, 105 Nev. 16, 762 P.2d 69 (1989); Order Granting Petition for Appointment of Commissioner of as Receiver; Injunction; Order to Preserve Assets of Insurer (“Liquidation Order”), entered December 26, 2012. The above-referenced claims, all of which occurred subsequent and pursuant to the Liquidation Order and NRS 696B, are immaterial therefore to any issue in dispute in this civil action, separate and independent from the Receiver’s administrative duties.

Discovery is ongoing. L&C reserves the right to supplement its discovery responses as appropriate.

1 **REQUEST NO. 6:**

2 In reference to Request for Production No. 3, please provide a list of the 62 claims with
3 the corresponding amounts of the loss adjustment and defense costs referred to in the quoted
4 report therein that states: *"The review to date has allowed the Deputy Receiver to complete the*
5 *review and adjudication of the associated loss adjustment and defense costs for sixty-two*
6 *(62) claims."*

7 **RESPONSE TO REQUEST NO. 6:**

8 Objection. Request No. 6 seeks irrelevant information and is not reasonably calculated to
9 lead to the discovery of admissible evidence. According to the provisions of NRS 696B, the
10 rights of L&C are fixed as of the date of the order of liquidation. See also Integrity Ins. Co. v.
11 Martin, 105 Nev. 16, 762 P.2d 69 (1989); Order Granting Petition for Appointment of
12 Commissioner of as Receiver; Injunction; Order to Preserve Assets of Insurer ("Liquidation
13 Order"), entered December 26, 2012. The above-referenced claims, all of which occurred
14 subsequent and pursuant to the Liquidation Order and NRS 696B, are immaterial therefore to any
15 issue in dispute in this civil action, separate and independent from the Receiver's administrative
16 duties.

17 Separately, L&C objects to Request No. 6 in that it is not a request for a document, but is
18 instead more properly characterized as an interrogatory.

19 Discovery is ongoing. L&C reserves the right to supplement its discovery responses as
20 appropriate.

21
22 **REQUEST NO. 7:**

23 In reference to Request for Production No. 6, please produce any and all DOCUMENTS
24 in YOUR possession, custody or control showing that the Deputy Receiver has completed the
25 review and adjudication of "the associated loss adjustment and defense costs for sixty-two (62)
26 claims."

27 **RESPONSE TO REQUEST NO. 7:**

28 Objection. Request No. 7 seeks irrelevant information and is not reasonably calculated to

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1 lead to the discovery of admissible evidence. According to the provisions of NRS 696B, the
2 rights of L&C are fixed as of the date of the order of liquidation. See also Integrity Ins. Co. v.
3 Martin, 105 Nev. 16, 762 P.2d 69 (1989); Order Granting Petition for Appointment of
4 Commissioner of as Receiver; Injunction; Order to Preserve Assets of Insurer ("Liquidation
5 Order"), entered December 26, 2012. The above-referenced claims, all of which occurred
6 subsequent and pursuant to the Liquidation Order and NRS 696B, are immaterial therefore to any
7 issue in dispute in this civil action, separate and independent from the Receiver's administrative
8 duties.

9 Discovery is ongoing. L&C reserves the right to supplement its discovery responses as
10 appropriate.

11
12 **REQUEST NO. 8:**

13 The following report appears in YOUR Fifty-Ninth Status Report filed on March 19,
14 2018 in Case No. A-12-672047-B:

15 "D. Adjudication of Filed Proof of Claim Forms

16

17 "Due to the nature of the underwriting business, the loss claims filed under the
18 POC's are complex and often involve multiple defendants some of which are not insured
19 by Lewis & Clark. **Because of this complexity, a large number of the loss claims are**
20 **still involved in active litigation in many different jurisdictions.** The Deputy Receiver
21 has determined that it is in the best interest of the estate to allow the claims litigation
22 process to proceed and to defer adjudication of the POC's and allow the claims to develop
23 in the usual course.

24 Please produce a list of "*loss claims that are still involved in active litigation in many*
25 *different jurisdictions,*" as stated in YOUR above-quoted report, including the names of parties,
26 case numbers, courts where filed, addresses, and amounts of loss claims.

27 **RESPONSE TO REQUEST NO. 8:**

28 Objection. Request No. 8 seeks irrelevant information and is not reasonably calculated to
lead to the discovery of admissible evidence. According to the provisions of NRS 696B, the
rights of L&C are fixed as of the date of the order of liquidation. See also Integrity Ins. Co. v.

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1 Martin, 105 Nev. 16, 762 P.2d 69 (1989); Order Granting Petition for Appointment of
2 Commissioner of as Receiver; Injunction; Order to Preserve Assets of Insurer ("Liquidation
3 Order"), entered December 26, 2012. The above-referenced claims, all of which occurred
4 subsequent and pursuant to the Liquidation Order and NRS 696B, are immaterial therefore to any
5 issue in dispute in this civil action, separate and independent from the Receiver's administrative
6 duties.

7 Separately, L&C objects to Request No. 8 in that it is not a request for a document, but is
8 instead more properly characterized as an interrogatory.

9 Discovery is ongoing. L&C reserves the right to supplement its discovery responses as
10 appropriate.

11
12 DATED this 3 day of May, 2018.

13 FENNEMORE CRAIG, P.C.

14
15 By: 

JAMES L. WADHAMS, ESQ.

Nevada Bar No. 1115

BRENOCH WIRTHLIN, ESQ.

Nevada Bar No. 10282

300 South Fourth Street, Suite 1400

Las Vegas, Nevada 89101

16
17
18
19 *Attorneys for Plaintiff Commissioner of Insurance*
20 *For the State of Nevada*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Fennemore Craig, P.C., and that on the 21 day of May, 2018, I caused to be electronically served through the Court's e-service/e-filing system and/or served by U.S. Mail true and correct copies of the foregoing PLAINTIFF COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA, THE COURT-APPOINTED RECEIVER OF LEWIS & CLARK LTD RISK RETENTION GROUP, INC.'S RESPONSES TO DIRECTOR DEFENDANTS FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS properly addressed to the following:

Joseph P. Garin, Esq.
Angela Ochoa, Esq.
Lipson, Neilson, Cole, Seltzer & Garin, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
*Attorneys for Defendants Robert Chur, Steve Fogg,
Mark Garber, Carol Harter, Robert Hurlbut,
Barbara Lumpkin, Jeff Marshall & Eric Stickels*

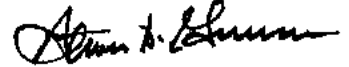
George F. Oglive III, Esq.
McDonald Carano Wilson LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
*Attorneys for Defendants Uni-Ter Underwriting
Management Corp., Uni-Ter Claims Services Corp.,
and U.S. RE Corporation*

Jon M. Wilson
Broad and Cassel
2 South Biscayne Blvd., 21st Floor
Miami Florida 33131
*Attorneys for Defendants Uni-Ter Underwriting
Management Corp., Uni-Ter Claims Services Corp.,
and U.S. RE Corporation*

/s/ Daniel C. Maul
An Employee of Fennemore Craig, P.C.

EXHIBIT “F”

EXHIBIT “F”


CLERK OF THE COURT

1 MTN
2 ADAM PAUL LAXALT
3 Attorney General
4 JOANNA N. GRIGORIEV
5 Senior Deputy Attorney General
6 Nevada Bar No. 5649
7 555 E. Washington Ave., Ste. 3900
8 Las Vegas, NV 89101
9 P: (702) 486-3101
10 Email: jgrigoriev@ag.nv.gov
11 Attorneys for the Division of Insurance

DISTRICT COURT
CLARK COUNTY, NEVADA

10 STATE OF NEVADA, EX REL.
11 COMMISSIONER OF INSURANCE, IN HIS
12 OFFICIAL CAPACITY AS STATUTORY
13 RECEIVER FOR DELINQUENT DOMESTIC
14 INSURER,

Plaintiff,

vs.

14 LEWIS & CLARK LTC RISK RETENTION
15 GROUP INC., a Nevada Domiciled Captive
16 Insurance Company,

Defendant,

17 UNI-TER Underwriting Management
18 Corp. and UNI-TER Claims
19 Services Corp.,

Intervener.

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

MOTION FOR APPROVAL OF FEES AND ACTIONS OF THE RECEIVER

23 COMES NOW Scott J. Kipper, Commissioner of Insurance for the State of Nevada, in
24 his official capacity as Receiver ("Receiver") of Lewis and Clark LTC Retention Group, Inc.
25 ("L&C"), by and through his attorneys, ADAM PAUL LAXALT, Attorney General, and JOANNA
26 N. GRIGORIEV, Senior Deputy Attorney General, and respectfully requests that pursuant to
27 subsection 7 of NRS 696B.290 the Court enter an Order that:

1. Approves, ratifies and confirms the Twenty-Fifth Status Report ("Report") submitted by the Receiver including the interim fees of professionals employed by the Receiver.
2. Approves and ratifies the actions of the Receiver addressed in the Report.

This motion is further based upon chapter 696B of NRS, the following points and authorities and the Report filed on January 23, 2015 with supporting documents.

DATED this 25th day of February, 2015.

ADAM PAUL LAXALT
Attorney General

By: /s/ Joanna N. Grigoriev
JOANNA N. GRIGORIEV
Senior Deputy Attorney General
Nevada Bar No. 5649
555 East Washington Ave., Suite 1900
Las Vegas, NV 89101
(702) 486-3101
Email: jgrigoriev@ag.nv.gov
Attorneys for the Commissioner of Insurance
for the State of Nevada, in his official capacity
as Receiver

NOTICE OF MOTION

TO: JASON B. TRAUTH, ESQ.; and

TO: CONSTANCE AKRIDGE, ESQ.:

YOU AND EACH OF YOU will please take notice that the undersigned will bring the foregoing **MOTION FOR APPROVAL OF FEES AND ACTIONS OF THE RECEIVER**, on hearing in Department XI of the above-entitled court on the 3rd day of April, 2015, at the hour of in Chambers am/pm, or as soon thereafter as counsel may be heard.

Dated this 25th day of February, 2015.

ADAM PAUL LAXALT
Attorney General

By: /s/ Joanna N. Grigoriev
JOANNA N. GRIGORIEV
Senior Deputy Attorney General
Nevada Bar No. 5649
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101

POINTS AND AUTHORITIES

I. INTRODUCTION

On December 26, 2012, pursuant to NRS 696B.250, the Court entered *Order Granting Petition for Appointment of Commissioner as Receiver; Injunction; Order to Preserve Assets of Insurer* ("Order"). On January 23, 2015, Twenty-Fifth Status Report was filed by the Receiver with the Court. Said report included a section pertaining to expenses and fees incurred by Wyatt, Tarrant & Combs, LLP, for the period February, 2014 through November, 2014.

II. ARGUMENT

NRS 696B.290 provides in pertinent parts:

6. In connection with delinquency proceedings, the Commissioner may appoint one or more special deputy commissioners to act for the Commissioner and the Commissioner may employ such counsel, clerks and assistants as the Commissioner deems necessary. The compensation of the special deputies, counsel, clerks or assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the receiver and shall be paid out of the funds or assets of the insurer. Within the limits of duties imposed upon them, special deputies shall possess all the powers given to and, in the exercise of those powers, shall be subject to all of the duties imposed upon the receiver with respect to such proceedings.

7. During such receivership the Commissioner shall file in the court, at regular intervals not less frequently than quarterly, the Commissioner's true reports in summary form of the insurer's affairs under the receivership, and of progress being made in accomplishing the objectives of the receivership. All such reports, together with such additional or special reports as the court may reasonably require, shall be subject to review by the court; and all actions of the receiver therein reported shall be subject to the court's approval, but the court shall not withhold approval or disapprove any such action unless found by the court after a hearing thereon in open court to be unlawful, arbitrary or capricious.

NRS 696B.290 (6), (7).

1 The Receiver retained the law firm of Wyatt, Tarrant & Combs, LLP ("Wyatt") of
2 Nashville, Tennessee to evaluate potential claims against directors, officers of L&C, and other
3 parties after the review of various records of L&C. Wyatt reviewed records, performed legal
4 research necessary to evaluate the potential claims, and issued a legal opinion pertaining to
5 same, based on which the Receiver retained Nevada law firm Fennemore Craig Jones
6 Vargas, who on December 23, 2014 filed a complaint against the former officers and directors
7 of L&C as well as other parties.

8 The fees and costs for legal services performed by Wyatt total \$68,739.64 for February,
9 2014 through November, 2014. The Receiver hereby seeks approval of these fees and
10 expenses, as set forth in the Report. Supporting invoices are submitted herewith as Exhibit A.¹

11 II. CONCLUSION

12 Based on the foregoing, Receiver respectfully requests that the Court grant this Motion
13 for Approval of Fees and Actions of the Receiver as set forth in Report.

14 DATED this 25th day of February, 2015.

15 ADAM PAUL LAXALT
16 Attorney General

17 By: /s/ JOANNA N. GRIGORIEV
18 JOANNA N. GRIGORIEV
19 Senior Deputy Attorney General
20 Nevada Bar No. 5649
21 555 E. Washington Ave., Ste. 3900
22 Las Vegas, NV 89101
23 *Attorney for the Division of Insurance*
24
25
26
27
28

¹ Exhibit A has been redacted to exclude confidential attorney-client information.

WYATT, TARRANT & COMBS, LLP
2525 WEST END AVENUE
SUITE 1500
NASHVILLE, TENNESSEE 37203
F.E.I. # 61-0468003
(615) 244-0020

MAY 6, 2014
610866.000001
ANDREW B. CAMPBELL

INVOICE # 945418

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
MS. BETTY CORDIAL
SPECIAL DEPUTY RECEIVER/LIQUIDATOR
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.
328 WEST VALLEY AVENUE
BIRMINGHAM, AL 35209

RE: RECEIVERSHIP OF LEWIS & CLARK LTC, RISK RETENTION GROUP

FOR PROFESSIONAL SERVICES RENDERED THROUGH APRIL 30, 2014

04/04/14 ABC EMAILS TO AND FROM BETTY CORDIAL AND DICK DARLING RE STATUS.	.20
04/16/14 ABC TELECONFERENCE WITH AND EMAILS TO AND FROM BETTY CORDIAL.	.20
04/18/14 ABC LENGTHY TELECONFERENCE WITH BETTY CORDIAL, DICK DARLING, BOB GREER AND MIKE ANDERSON RE ASSET RECOVERY ISSUES; FOLLOW-UP CONFERENCE WITH GRAHAM MATHERNE RE SAME.	1.60
04/18/14 JGM CONFERENCE WITH CAMPBELL AND TELEPHONE CONFERENCE WITH B. CORDIAL, MIKE ANDERSON, DICK DARLING AND BOE GRIER RE: ASSIST RECOVERY; OUTLINING OF ITEMS NEEDED TO REVIEW REGARDING FURTHER ASSIST RECOVERY ANALYSIS.	1.70
04/21/14 ABC WORK ON MEMO TO BETTY CORDIAL AND DICK DARLING.	.60
04/21/14 JGM DRAFTING AND REVISION OF MEMO RE: INFORMATION NEEDED FOR ASSIST RECOVERY PROJECT; E-MAIL TO B. CORDIAL.	.90

CONTINUE NEXT PAGE

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
MATTER NUMBER: 610866.000001
INVOICE NO.: 945418

May 6, 2014
PAGE 3

TOTAL SERVICES 5.20 \$1,300.00

TOTAL THIS INVOICE \$1,300.00

PREVIOUSLY BILLED AND OUTSTANDING \$50.00

TOTAL AMOUNT DUE \$1,350.00

-----TIME AND FEE SUMMARY-----				
-----TIMEKEEPER-----		RATE	HOURS	FEE
A CAMPBELL	PARTNER	250.00	2.60	650.00
J MATHERNE	PARTNER	250.00	2.60	650.00

From: Campbell, Andrew <ACAMPBELL@wyattfirm.com>
To: Michael FNL <MichaelFNL@aol.com>
Cc: BCordial <BCordial@aol.com>
Subject: Lewis & Clerk
Date: Wed, May 7, 2014 10:00 am
Attachments: Lewis & Clark Receivership Invoice_.pdf (107K)

Mike:

A hardcopy of the invoice also will go out in the mail. Thanks.

Andrew B Campbell

Wyatt, Tarrant & Combs, LLP
2525 West End Avenue, Suite 1500
Nashville TN 37203-1423
Direct: (615) 251-6715
Fax: (615) 256-1726
Email: acampbell@wyattfirm.com
<http://www.linkedin.com/pub/andrew-campbell/11/499/516>



Nashville | Memphis | Jackson | Louisville | Lexington | New Albany | www.wyattfirm.com



=====

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=====

WYATT, TARRANT & COMBS, LLP
2525 WEST END AVENUE
SUITE 1500
NASHVILLE, TENNESSEE 37203
F.B.I. # 61-0468003
(615) 244-0020

JUNE 6, 2014
610866.000001
ANDREW B. CAMPBELL

INVOICE # 948470

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
MS. BETTY CORDIAL
SPECIAL DEPUTY RECEIVER/LIQUIDATOR
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.
328 WEST VALLEY AVENUE
BIRMINGHAM, AL 35209

RE: RECEIVERSHIP OF LEWIS & CLARK LTC, RISK RETENTION GROUP

FOR PROFESSIONAL SERVICES RENDERED THROUGH MAY 31, 2014

REMITTANCE ADVICE PAGE

TOTAL SERVICES	\$725.00
TOTAL THIS INVOICE	\$725.00
PREVIOUSLY BILLED AND OUTSTANDING	\$1,350.00
TOTAL AMOUNT DUE	\$2,075.00

DUE UPON RECEIPT
TO INSURE PROPER CREDIT TO YOUR ACCOUNT PLEASE RETURN THIS
REMITTANCE ADVICE WITH YOUR PAYMENT

WYATT, TARRANT & COMBS, LLP
2525 WEST END AVENUE
SUITE 1500
NASHVILLE, TENNESSEE 37203
F.B.I. # 61-0468003
(615) 244-0020

JUNE 6, 2014
610865.000001
ANDREW B. CAMPBELL

INVOICE # 948470

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
MS. BETTY CORDIAL
SPECIAL DEPUTY RECEIVER/LIQUIDATOR
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.
328 WEST VALLEY AVENUE
BIRMINGHAM, AL 35209

RE: RECEIVERSHIP OF LEWIS & CLARK LTC, RISK RETENTION GROUP

FOR PROFESSIONAL SERVICES RENDERED THROUGH MAY 31, 2014

05/07/14 ABC RECEIPT AND REVIEW OF CORRESPONDENCE FROM MIKE ANDERSON RE EVIDENCE; CORRESPONDENCE TO BETTY CORDIAL.	.60
05/08/14 JGM START REVIEW OF D&O DOCUMENTS FROM CLIENT.	.60
05/12/14 JGM CONTINUED REVIEW OF D&O POLICY AND RE: FINANCIAL REPORTING INFORMATION AS TO RRG AND LISTING OF RRG OFFICERS AND DIRECTORS.	1.70

TOTAL SERVICES

2.90 \$725.00

TOTAL THIS INVOICE

\$725.00

PREVIOUSLY BILLED AND OUTSTANDING

\$1,350.00

CONTINUE NEXT PAGE

DD00395

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
MATTER NUMBER: 610866.000001
INVOICE NO.: 948470

Jun 6, 2014
PAGE 3

TOTAL AMOUNT DUE

\$2,075.00

=====

-----TIME AND FEE SUMMARY-----				
-----TIMEKEEPER-----		RATE	HOURS	FEES
A CAMPBELL	PARTNER	250.00	.60	150.00
J MATHERNE	PARTNER	250.00	2.30	575.00

L&C

Re: Review of Billings from Professionals

Date: June 10, 2014

I have reviewed the billing for professional services and/or expenses indicated below and include the following notes:

I. Billing Information

Name of Firm: Wyatt, Tarrant & Combs, LLP
Date of Statement: June 6, 2014
Invoice #: 948470
Period Covered: May, 2014
Estate(s) Being Billed: Lewis & Clark LTC, Risk Retention Group, Inc.

Services Billed: 725.00
Expenses Billed: _____
Invoice Total: \$725.00

Service Adjustments: _____
Expense Adjustments: _____

Revised Total: \$725.00

*OK to obtain
DOI or Court
Approval for
payment for
B*

II. Review of Billing's Compliance with Procedures

A. Clerical Accuracy

Services and Expenses Agree to Billed Total: _____
Hours Multiplied by Rate Agrees to Service Total: _____

B. Submission of Appropriate Documentation

Appropriate Receipts for Expenses: _____
Signed Affidavit: _____
Detail for Photocopy Charges: _____

C. Billing in Compliance with NY Standards

Allowed Hourly Rate Used for Level of Person Per Agreement: _____
Does Non-Productive Travel Time Comply with Engagement Agreement: _____
No Billing for "Overhead" Related Services or Expenses: _____

D. Billing Prepared with Following Detail

Individual Performing Services: _____
Date Services Performed: _____
Number of Hours Indicated (Rounded to Nearest Tenth of an Hour): _____
Concise Explanation of Services Performed: _____

Correct	Error	Not Applicable
X		
X		
X		
X		
X		
X		
X		
X		
X		

Comments:

Hours	Attorney Secretary	Total Hours Worked	Hourly Rate	Total
0.60	abs	0.60	250.00	150.00
0.60	jgm			
1.70	jgm	2.30	250.00	575.00
				725.00

Ligerson
Wyatt BL2470

WYATT, TARRANT & COMBS, LLP
2525 WEST END AVENUE
SUITE 1500
NASHVILLE, TENNESSEE 37203
F.B.I. # 61-0468003
(615) 244-0020

AUGUST 5, 2014
610866.000001
ANDREW B. CAMPBELL

INVOICE # 954031

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
MS. BETTY CORDIAL
SPECIAL DEPUTY RECEIVER/LIQUIDATOR
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.
328 WEST VALLEY AVENUE
BIRMINGHAM, AL 35209

RE: RECEIVERSHIP OF LEWIS & CLARK LTC, RISK RETENTION GROUP

FOR PROFESSIONAL SERVICES RENDERED THROUGH JULY 31, 2014

REMITTANCE ADVICE PAGE

TOTAL SERVICES	\$9,475.00
OTHER CHARGES AND DISBURSEMENTS	\$881.40
TOTAL THIS INVOICE	\$10,356.40
PREVIOUSLY BILLED AND OUTSTANDING	\$2,075.00
TOTAL AMOUNT DUE	\$12,431.40

DUE UPON RECEIPT
TO INSURE PROPER CREDIT TO YOUR ACCOUNT PLEASE RETURN THIS
REMITTANCE ADVICE WITH YOUR PAYMENT

WYATT, TARRANT & COMBS, LLP
2525 WEST END AVENUE
SUITE 1500
NASHVILLE, TENNESSEE 37203
P.E.I. # 61-0468003
(615) 244-0020

AUGUST 5, 2014
620866.000001
ANDREW B. CAMPBELL

INVOICE # 954031

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
MS. BETTY CORDIAL
SPECIAL DEPUTY RECEIVER/LIQUIDATOR
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.
328 WEST VALLEY AVENUE
BIRMINGHAM, AL 35209

RE: RECEIVERSHIP OF LEWIS & CLARK LTC, RISK RETENTION GROUP

FOR PROFESSIONAL SERVICES RENDERED THROUGH JULY 31, 2014

07/18/14 ABC EMAILS TO AND FROM BETTY CORDIAL; CALL TO BETTY CORDIAL; CONFER WITH GRAHAM MATHERNE.	.20
07/18/14 JGM REVIEW INFORMATION AS TO LEWIS AND CLARK OFFICERS AND DIRECTORS RE: POTENTIAL ACTION AGAINST COVERAGE.	.60
07/21/14 ABC LENGTHY TELECONFERENCE WITH BETTY CORDIAL; REVIEW AND FORWARD TO MS. CORDIAL APPELLATE DECISION COMMISSIONER V. XANTUS HEALTHPLAN.	1.00
07/21/14 JGM REVIEW INFORMATION RE: D&O POLICY AND RELATING TO OFFICERS AND DIRECTORS AND BACKGROUND INFORMATION AS TO SAME; TELEPHONE CONFERENCE WITH B. CORDIAL AND A. CAMPBELL RE: SAME.	2.10
07/22/14 JGM REVIEW OF CORPORATE MINUTES AND RELATED CORPORATE DOCUMENTS RE: POTENTIAL CLAIMS AND IMPACT UPON D&O COVERAGES.	1.90

CONTINUE NEXT PAGE

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
MATTER NUMBER: 610866.000001
INVOICE NO.: 954031

Aug 5, 2014
PAGE 3

07/23/14 JGM CONTINUED REVIEW OF FILE DOCUMENTS INCLUDING 2.80
CORPORATE MINUTES, MANAGEMENT AGREEMENTS, AUDIT
STATEMENTS RE: FACTUAL BACKGROUND FOR POTENTIAL
ACTIONS; CONFERENCE;
LEGAL
RESEARCH RE: SAME; FURTHER REVIEW OF SECTIONS
OF D&O POLICY.

07/23/14 AJP RESEARCH 3.60
REVIEW DIRECTORS AND OFFICERS
LIABILITY POLICY.

07/24/14 ABC CONFER WITH GRAHAM MATHERNE AND ANDY PULLIAM RE .70

07/24/14 JGM FURTHER REVIEW OF D&O POLICY AND OF VARIOUS 4.70
CONTRACTS BETWEEN L&C AND UNDERWRITER, CLAIMS
ADJUSTER AND RELATED ENTITIES AND SERVICE
PROVIDERS; FURTHER REVIEW ACTUAL REPORTS AND
FINANCIAL INFORMATION AS TO L&C ALL RE:
POTENTIAL ASSET RECOVERY/PURSUIT OF D&O CLAIMS
AND BACKGROUND RELATED THERETO.

07/24/14 AJP RESEARCH 5.60

07/25/14 ABC CONFER WITH GRAHAM MATHERNE AND ANDY PULLIAM RE 1.00

07/25/14 JGM FURTHER REVIEW OF RESEARCH 2.90
RECOVERY OPTIONS VIS-A-VIS INSURANCE COVERAGES;
OUTLINING OF MEMO POINTS TO B. CORDIAL;
CONFERENCE WITH CAMPBELL AND PULLIAM RE: SAME.

07/25/14 AJP CONFERENCE WITH GRAHAM MATHERNE AND ANDREW 3.60
CAMPBELL REGARDING MATTER (0.5); RESEARCH

07/28/14 AJP RESEARCH ISSUE OF 3.00

CONFIDENTIAL
ATTORNEY CLIENT
COMMUNICATION
REDACTED

CONTINUE NEXT PAGE

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
MATTER NUMBER: 610866.000003
INVOICE NO.: 954031

Aug 5, 2014
PAGE 4

07/29/14 AJP RESEARCH ISSUE OF \$ 2.40

07/31/14 JGM CONTINUED DRAFTING OF REPORT MEMO RE: PURSUIT 1.80
OF RECOVERIES/POLICIES; REVIEW FILE INFORMATION
AND LEGAL RESEARCH RE: SAME.

TOTAL SERVICES 37.90 \$9,475.00

WESTLAW COMPUTER RESEARCH 876.00
PHOTOCOPIES 5.40

OTHER CHARGES AND DISBURSEMENTS \$881.40

TOTAL THIS INVOICE \$10,356.40

PREVIOUSLY BILLED AND OUTSTANDING \$2,075.00

TOTAL AMOUNT DUE \$12,431.40

-----TIME AND FEE SUMMARY-----

-----TIMEKEEPER-----	RATE	HOURS	FEES
A CAMPBELL PARTNER	250.00	2.90	725.00
J MATHERNE PARTNER	250.00	16.80	4200.00
A PULLIAM PARTNER	250.00	18.20	4550.00

CONFIDENTIAL
ATTORNEY CLIENT
COMMUNICATION
REDACTED

L&C

Re: Review of Billings from Professionals

Date: August 6, 2014

I have reviewed the billing for professional services and/or expenses indicated below and include the following notes:

I. Billing Information

Name of Firm: Wyatt, Tarrant & Combs, LLP
Date of Statement: August 5, 2014
Invoice #: 954031
Period Covered: July, 2014
Estate(s) Being Billed: Lewis & Clark LTC, Risk Retention Group, Inc.

Services Billed: 9,475.00
Expenses Billed: 881.40
Invoice Total: \$10,356.40

Service Adjustments:
Expense Adjustments:
Revised Total: \$10,356.40

*OK to Submit
to DOJ and Court
for approval -
B*

II. Review of Billing's Compliance with Procedures

A. Clerical Accuracy

Services and Expenses Agree to Billed Total:
Hours Multiplied by Rate Agrees to Service Total:

B. Submission of Appropriate Documentation

Appropriate Receipts for Expenses:
Signed Affidavit:
Detail for Photocopy Charges:

C. Billing in Compliance with NV Standards

Allowed Hourly Rate Used for Level of Person Per Agreement:
Does Non-Productive Travel Time Comply with Engagement Agreement:
No Billing for "Overhead" Related Services or Expenses:

D. Billing Prepared with Following Detail

Individual Performing Services:
Date Services Performed:
Number of Hours Indicated (Rounded to Nearest Tenth of an Hour):
Concise Explanation of Services Performed:

Correct	Error	Not Applicable
X		
X		
X		
X		
X		
X		
X		
X		
X		
X		
X		

Comments:



2. Wyatt, Tarrant & Combs Invoice No. 956919
(August 2014)

Hours	Attorney Secretary	Total Hours Worked	Hourly Rate	Total	
0.20	abc	0.20	\$250.00	\$50.00	\$50.00
2.30	jgm				
0.70	jgm				
2.90	jgm				
1.10	jgm				
1.80	jgm	8.80	\$250.00	\$2,200.00	\$2,200.00
9.00		9.00		\$2,250.00	
		8.80		\$2,200.00	

Continued
on L&C

DD00407

BACK UP

WYATT, TARRANT & COMBS, LLP
2525 WEST END AVENUE
SUITE 1500
NASHVILLE, TENNESSEE 37203
F.E.I. # 61-0468003
(615) 244-0020

SEPTEMBER 5, 2014
610866.000001
ANDREW B. CAMPBELL

INVOICE # 956919

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
MS. BETTY CORDIAL
SPECIAL DEPUTY RECEIVER/LIQUIDATOR
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.
328 WEST VALLEY AVENUE
BIRMINGHAM, AL 35209

RE: RECEIVERSHIP OF LEWIS & CLARK LTC, RISK RETENTION GROUP

FOR PROFESSIONAL SERVICES RENDERED THROUGH AUGUST 31, 2014

REMITTANCE ADVICE PAGE

TOTAL SERVICES	\$2,250.00
OTHER CHARGES AND DISBURSEMENTS	\$29.70
TOTAL THIS INVOICE	\$2,279.70
PREVIOUSLY BILLED AND OUTSTANDING	\$12,431.40
TOTAL AMOUNT DUE	\$14,711.10

DUE UPON RECEIPT
TO INSURE PROPER CREDIT TO YOUR ACCOUNT PLEASE RETURN THIS
REMITTANCE ADVICE WITH YOUR PAYMENT

WYATT, TARRANT & COMBS, LLP
2525 WEST END AVENUE
SUITE 1500
NASHVILLE, TENNESSEE 37203
F.E.I. # 61-0468003
(615) 244-0020

SEPTEMBER 5, 2014
610866.000001
ANDREW B. CAMPBELL

INVOICE # 956919

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
MS. BETTY CORDIAL
SPECIAL DEPUTY RECEIVER/LIQUIDATOR
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.
328 WEST VALLEY AVENUE
BIRMINGHAM, AL 35209

RE: RECEIVERSHIP OF LEWIS & CLARK LTC, RISK RETENTION GROUP

FOR PROFESSIONAL SERVICES RENDERED THROUGH AUGUST 31, 2014

08/01/14	JGM REVIEWING OF FILE MATERIALS RE: FACTUAL BACKGROUND INFORMATION AS TO MEMO ON D&O CLAIMS POTENTIAL (.90); FURTHER DRAFTING OF MEMO RE: POTENTIAL D&O CLAIMS (1.40).	2.30
08/08/14	ABC TELECONFERENCE WITH AND EMAILS TO AND FROM BETTY CORDIAL.	.20
08/15/14	JGM FURTHER REVIEW OF LEGAL RESEARCH AS TO POTENTIAL CLAIMS AND LIMITATION PERIODS.	.70
08/27/14	JGM REVISIONS OF PORTIONS OF REPORT MEMO AND DRAFTING OTHER PORTIONS OF REPORT MEMO RE: D & O CLAIMS; REVIEW FILE MATERIAL AND LEGAL RESEARCH MATERIAL RE: SAME.	2.90
08/28/14	JGM FURTHER DRAFTING ON REPORT MEMO ON D & O CLAIM AND REVIEW OF LEGAL RESEARCH RE: SAME.	1.10
08/29/14	JGM FURTHER CLARIFY ON REPORT MEMO TO CORDIAL RE: D&O CLAIM POTENTIAL; REVIEW FILES RE: SAME.	1.80

CONTINUE NEXT PAGE

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
MATTER NUMBER: 610866.000001
INVOICE NO.: 956919

Sep 5, 2014
PAGE 3

TOTAL SERVICES	9.00	\$2,250.00

WESTLAW COMPUTER RESEARCH	29.70	

OTHER CHARGES AND DISBURSEMENTS		\$29.70

TOTAL THIS INVOICE		\$2,279.70

PREVIOUSLY BILLED AND OUTSTANDING		\$12,431.40

TOTAL AMOUNT DUE		\$14,711.10
=====		

-----TIME AND FEE SUMMARY-----

TIMEKEEPER		RATE	HOURS	FEES
A CAMPBELL	PARTNER	250.00	.20	50.00
J MATHERNE	PARTNER	250.00	8.80	2200.00

L&C

Re: Review of Billings from Professionals

Date: September 17, 2014

I have reviewed the billing for professional services and/or expenses indicated below and include the following notes:

I. Billing Information

Name of Firm: Wyatt, Tarrant & Combs, LLP
 Date of Statement: August 5, 2014
 Invoice #: 956919
 Period Covered: August, 2014
 Estate(s) Being Billed: Lewis & Clark LTC, Risk Retention Group, Inc.

Services Billed: 2,250.00
 Expenses Billed: 29.70
 Invoice Total: \$2,279.70

Service Adjustments:
 Expense Adjustments:
 Revised Total: \$2,279.70

*OK to submit to
 DOJ and Court
 for approval*

II. Review of Billing's Compliance with Procedures

A. Clerical Accuracy

Services and Expenses Agree to Billed Total:
 Hours Multiplied by Rate Agrees to Service Total:

Correct	Error	Not Applicable
X		
X		

B. Submission of Appropriate Documentation

Appropriate Receipts for Expenses:
 Signed Affidavit:
 Detail for Photocopy Charges:

X		
X		
X		

C. Billing in Compliance with NV Standards

Allowed Hourly Rate Used for Level of Person Per Agreement:
 Does Non-Productive Travel Time Comply with Engagement Agreement:
 No Billing for "Overhead" Related Services or Expenses:

X		
X		
X		

D. Billing Prepared with Following Detail

Individual Performing Services:
 Date Services Performed:
 Number of Hours Indicated (Rounded to Nearest Tenth of an Hour):
 Concise Explanation of Services Performed:

X		
X		
X		
X		

Comments:



3. Wyatt, Tarrant & Combs Invoice Nos. 960688
(September 2014), 963597 (October 2014), and 965561
(November 2014)

Lewis & Clark	Wyatt, Tarrant & Conbs, LLP	September			
Hours	Attorney Secretary	Total Hours Worked	Hourly Rate	Total	
0.50	abc				
0.30	abc				
0.20	abc				
2.40	abc				
2.00	abc				
1.10	abc	6.50	250.00	1,625.00	1,625.00
1.70	ajp				
5.10	ajp				
2.80	ajp				
2.30	ajp				
1.00	ajp				
0.20	ajp				
0.20	ajp				
1.30	ajp				
0.10	ajp				
2.60	ajp				
5.50	ajp				
0.60	ajp				
0.80	ajp				
1.80	ajp				
1.20	ajp				
1.20	ajp	28.40	250.00	7,100.00	7,100.00
0.90	jgm				
1.10	jgm				
3.00	jgm				
5.80	jgm				
1.40	jgm				
0.80	jgm				
0.80	jgm				
2.30	jgm	16.10	250.00	4,025.00	4,025.00
51.00		51.00		12,750.00	
51.00		51.00		12,750.00	
Total: 12,750.00					

Lewis & Clark	Wyatt, Tarrant & Combs, LLP	October		
Hours	Attorney Secretary	Total Hours Worked	Hourly Rat	Total
1.00	abc			
1.50	abc			
0.40	abc			
0.40	abc			
1.40	abc			
0.40	abc			
0.40	abc			
1.90	abc			
2.30	abc			
0.50	abc			
1.00	abc			
2.20	abc	13.40	250.00	3,350.00
1.70	ajp			
4.80	ajp			
3.40	ajp			
3.70	ajp			
2.10	ajp			
2.90	ajp			
0.20	ajp			
3.60	ajp			
3.50	ajp			
3.90	ajp			
4.40	ajp			
6.90	ajp			
3.80	ajp			
6.20	ajp			
6.00	ajp			
7.80	ajp			
5.40	ajp			
3.50	ajp			
1.60	ajp	75.40	250.00	18,850.00
1.20	jgm			
0.90	jgm			
3.00	jgm			
1.70	jgm			
1.00	jgm			
0.80	jgm			
1.40	jgm			
3.40	jgm			
3.90	jgm			
2.00	jgm			
0.30	jgm			
1.10	jgm			
3.00	jgm			
0.90	jgm	24.60	250.00	6,150.00
1.10		10.40		2,600.00
1.20				300.00
1.00				

Lewis & Clark		Wyatt, Tarrant & Combs, LLP		November		
Hours	Attorney Secretary	Total Hours Worked	Hourly Rate	Total		
0.20	abc	0.50	250.00	125.00		125.00
0.30	abc					
0.10	ajp					
2.20	ajp					
5.10	ajp					
4.50	ajp	25.40	250.00	6,350.00		6,350.00
3.10	ajp					
2.20	ajp					
2.00	ajp					
3.20	ajp					
0.20	ajp					
0.80	ajp					
2.00	ajp					
2.90	jgm					
3.00	jgm					
1.00	jgm	10.00	250.00	2,500.00		2,500.00
3.10	jgm					
35.00						
35.40		35.40		8,975.00		
NEBO: Jackson		35.40		8,975.00		

BACK UP

WYATT, TARRANT & COMES, LLP
2525 WEST END AVENUE
SUITE 1500
NASHVILLE, TENNESSEE 37203
F.B.I. # 61-0468003
(615) 244-0020

OCTOBER 13, 2014
610866.000001
ANDREW B. CAMPBELL

INVOICE # 260628

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
MS. BETTY CORRIAL
SPECIAL DEPUTY RECEIVER/LIQUIDATOR
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.
328 WEST VALLEY AVENUE
BIRMINGHAM, AL 35209

RE: RECEIVERSHIP OF LEWIS & CLARK LTC, RISK RETENTION GROUP

FOR PROFESSIONAL SERVICES RENDERED THROUGH SEPTEMBER 30, 2014

REMITTANCE ADVICE PAGE

TOTAL SERVICES	\$12,750.00✓
OTHER CHARGES AND DISBURSEMENTS	\$843.30✓
TOTAL THIS INVOICE	\$13,593.30✓

DUE UPON RECEIPT

TO INSURE PROPER CREDIT TO YOUR ACCOUNT PLEASE RETURN THIS
REMITTANCE ADVICE WITH YOUR PAYMENT

WYATT, TARRANT & COMBE, LLP
2525 WEST END AVENUE
SUITE 1500
NASHVILLE, TENNESSEE 37203
F.E.T. # 61-0468003
(615) 244-0020

OCTOBER 13, 2014
610866.000001
ANDREW B. CAMPBELL

INVOICE # 960688

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
MS. BETTY CORDIAL
SPECIAL DEPUTY RECEIVER/LIQUIDATOR
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.
328 WEST VALLEY AVENUE
BIRMINGHAM, AL 35209

RECEIVERSHIP OF LEWIS & CLARK LTC, RISK RETENTION GROUP

FOR PROFESSIONAL SERVICES RENDERED THROUGH SEPTEMBER 30, 2014

09/04/14 JGM REVISIONS TO SECTIONS OF REPORT ON	1.90
09/05/14 AJP CONFERENCE WITH GRAHAM MATHERNE REGARDING CASE; RESEARCH;	1.70
09/08/14 ABC E-MAILS TO AND FROM AND TELEPHONE CONFERENCE WITH BETTY CORDIAL.	.50
09/08/14 AJP RESEARCH REVIEW DOCUMENTS.	5.10
09/09/14 AJP RESEARCH REVIEW DOCUMENTS.	2.80
09/10/14 AJP RESEARCH REVIEW DOCUMENTS.	2.30
09/15/14 AJP RESEARCH ISSUES RELATED TO D&O POLICY; CONFERENCE WITH GRAHAM MATHERNE REGARDING ISSUES RELATED TO D&O POLICY.	1.00

CONFIDENTIAL
ATTORNEY CLIENT
COMMUNICATION
REDACTED

CONTINUE NEXT PAGE

THE COMMISSIONER OF INSURANCE FOR THE STATE OF N Oct 13, 2014 PAGE 2
FILE NUMBER: 610866.000001
INVOICE NO.: 960688

09/17/14 ABC CONFER WITH GRAHAM MATHERNE RE POSSIBLE .30
LITIGATION CLAIMS; REVIEW EMAIL TO BETTY
CORDIAL AND DICK DARLING.

09/17/14 JGM E-MAIL TO D. DARLING AND B. CORDIAL RE: STATUS 1.10
AND RE: SUMMARY AS TO ISSUES OF

09/17/14 AJP MEMORANDUM FROM GRAHAM MATHERNE REGARDING .20
MATTER (0.1); CONFERENCE WITH GRAHAM MATHERNE
REGARDING MATTER (0.1).

09/18/14 ABC CONFER WITH GRAHAM MATHERNE RE POSSIBLE .20
LITIGATION CLAIMS; REVIEW EMAIL TO BETTY
CORDIAL AND DICK DARLING.

09/18/14 AJP MEMORANDA TO AND FROM GRAHAM MATHERNE REGARDING .20
MATTER.

09/19/14 AJP REVIEW DOCUMENTS RELATED TO POSSIBLE CLAIMS 1.30
AGAINST THIRD PARTIES.

09/19/14 AJP MEMORANDUM FROM GRAHAM MATHERNE REGARDING .10
MATTER (0.1).

09/21/14 JGM FURTHER DRAFTING OF D&O COVERAGE/CLAIM ANALYSIS 3.00
MEMO; E-MAILS WITH PULLIAM AND CAMPBELL RE:
SAME.

09/21/14 AJP MEMORANDA TO AND FROM GRAHAM MATHERNE AND 2.60
ANDREW CAMPBELL REGARDING MATTER; RESEARCH

09/22/14 ABC REVIEW AND REVISE STATUS MEMO TO BETTY CORDIAL; 2.40
CONFER WITH GRAHAM MATHERNE AND ANDY PULLIAM RE
STRATEGY ISSUES.

09/22/14 JGM REVISIONS AND FINALIZATION OF MEMO RE: D&O 5.80
CLAIMS; E-MAILS AND CONFERENCES WITH COUNSEL
RE: SAME AND FINAL EDITS TO MEMO; CONFERENCE
WITH COUNSEL RE: DOCUMENT REQUESTS AND
LOGISTICS AS TO VIEWING DOCUMENTS; DRAFTING OF
MEMO TO CORDIAL RE: VIEWING DEPARTMENT OF
INSURANCE FILES AND RELATED MATTERS; E-MAIL TO
B. CORDIAL RE: SAME.

09/22/14 AJP RESEARCH 5.50

MEMORANDA TO AND FROM GRAHAM MATHERNE REGARDING
MATTER; CONFERENCES WITH GRAHAM MATHERNE
REGARDING MATTER; REVIEW AND REVISE DRAFT

CONFIDENTIAL
ATTORNEY CLIENT
COMMUNICATION
REDACTED

CONTINUE NEXT PAGE

THE COMMISSIONER OF INSURANCE FOR THE STATE OF N Oct 13, 2014
FILE NUMBER: 610866.000001
INVOICE NO.: 960688

PAGE 3

MEMORANDUM TO BETTY CORDIAL REGARDING THE D&O
POLICY ISSUES: RESEARCH ISSUE OF)
CONFERENCE WITH
~~GRAHAM MATHERNE AND ANDREW CAMPBELL~~ REGARDING
MATTER; DRAFT LIST OF DOCUMENTS TO BE REQUESTED
RELATED TO MATTER.

09/23/14 JGM CONTINUED OUTLINING OF DOCUMENTS TO REVIEW AND 1.40
MATTERS TO FOLLOW-UP ON RE: ASSET RECOVERY
EFFORTS/D&O POLICY.

09/24/14 JGM FURTHER ORGANIZATION RE: REQUESTS FOR .80
ADDITIONAL DOCUMENTS AND TELEPHONE CONFERENCE
WITH M. ANDERSON AND B. CORDIAL RE: SAME.

09/24/14 AJP CONFERENCES WITH GRAHAM MATHERNE REGARDING .60
MATTER; PHONE CONFERENCE WITH GRAHAM MATHERNE
AND MIKE ANDERSON REGARDING MATTER; CONFERENCE
WITH ANDREW CAMPBELL AND GRAHAM MATHERNE
REGARDING MATTER; PHONE CONFERENCE WITH BETTY
CORDIAL, ANDREW CAMPBELL, AND GRAHAM MATHERNE
REGARDING MATTER.

09/25/14 ABC TELECONFERENCES WITH AND EMAILS TO AND FROM 2.00
BETTY CORDIAL REGARDING DOCUMENT REVIEW AND
STATUS OF RECEIVERSHIP; CONFER WITH GRAHAM
MATHERNE RE DOCUMENT REVIEW; REVIEW DOCUMENT
CHECKLIST.

09/25/14 JGM E-MAILS WITH B. CORDIAL RE: DOCUMENT REVIEW AND .80
REVIEW OF L&C INFORMATION AS RELATED TO ASSET
RECOVERY, D&O, POTENTIAL OF

09/25/14 AJP MEMORANDA TO AND FROM GRAHAM MATHERNE AND .80
ANDREW CAMPBELL REGARDING MATTER; DO WORK TO
SCHEDULE TRIP TO BIRMINGHAM TO REVIEW
DOCUMENTS.

09/26/14 ABC MULTIPLE TELECONFERENCES WITH BETTY CORDIAL 1.10
REGARDING DOCUMENT REVIEW AND STATUS OF
RECEIVERSHIP; CONFER WITH GRAHAM MATHERNE AND
ANDY PULLIAM RE DOCUMENT REVIEW.

CONFIDENTIAL
ATTORNEY CLIENT
COMMUNICATION
REDACTED

CONTINUE NEXT PAGE

THE COMMISSIONER OF INSURANCE FOR THE STATE OF N Oct 13, 2014
FILE NUMBER: 610866.000001
INVOICE NO.: 960688

PAGE 4

09/26/14 JGM PREPARE FOR MATTERS RELATING TO DOCUMENT REVIEW 2.30
TRIP TO BIRMINGHAM; OUTLINING ISSUES TO
INVESTIGATE RE: E-MAILS
WITH M. ANDERSON RE:
E-MAILS FROM B. CORDIAL RE:
TELEPHONE CONFERENCE
WITH B. CORDIAL RE:
CONFERENCE WITH A. CAMPBELL AND A. PULLIAM RE:
SAME.

09/26/14 AJP CONFERENCES WITH GRAHAM MATHERNE AND ANDREW 1.80
CAMPBELL REGARDING MATTER; PREPARE FOR TRIP TO
BIRMINGHAM TO REVIEW DOCUMENTS; MEMORANDUM FROM
MIKE ANDERSON REGARDING MATTER; MEMORANDA TO
AND FROM GRAHAM MATHERNE AND ANDREW CAMPBELL
REGARDING MATTER; REVIEW

09/29/14 AJP REVIEW LEWIS & CLARK FINANCIAL DOCUMENTS. 1.20

09/30/14 AJP PHONE CONFERENCE WITH MIKE ANDERSON AND GRAHAM 1.20
MATHERNE REGARDING MATTER; CONFERENCES WITH
GRAHAM MATHERNE REGARDING MATTER.

TOTAL SERVICES

51.00 \$12,750.00 ✓

WESTLAW COMPUTER RESEARCH
PHOTOCOPIES

759.60 ✓
83.70 ✓

OTHER CHARGES AND DISBURSEMENTS

\$843.30 ✓

TOTAL THIS INVOICE

\$13,593.30 ✓

-----TIME AND FEE SUMMARY-----			
*-----	TIMEKEEPER	RATE	HOURS
A CAMPBELL	PARTNER	250.00	6.50
J MATHERNE	PARTNER	250.00	16.10
A PULLIAM	PARTNER	250.00	28.40
			FEEES
			1625.00
			4025.00
			7100.00

CONFIDENTIAL
ATTORNEY CLIENT
COMMUNICATION
REDACTED

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,

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,
PETITION FOR EN BANC RECONSIDERATION

Respondents, and

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 Case
No.: 81857**

**DIRECTOR
DEFENDANTS'
APPENDIX
(VOLUME III OF IV)**

LIPSON NEILSON 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)

*Attorneys for Real Parties in Interest, ROBERT CHUR, STEVE FOGG, MARK
GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN,
JEFF MARSHALL AND ERIC STICKELS*

CHRONOLOGICAL INDEX

Date	Description	Volume	Page Nos.
05/21/2018	Notice of Entry of Order Granting Stipulation to Extend (Third Request)	I	DD0001-DD0012
06/24/2020	Motion for Preferential Trial Setting on OST	I	DD0013-DD0088
07/09/2020	Errata to Proposed Fourth Amended Complaint Exhibit 37	I	DD0089-DD0211
07/16/2020	Notice of Entry of Order Re: Plaintiff's Motion for Preferential Trial Setting and Issuance of New Discovery	I	DD0212-DD0221
07/17/2020	Appendix to Director Defendants' Opposition to the Motion for Leave to File Fourth Amended Complaint	II-III	DD0222-DD0643
07/22/2020	Director Defendants' Motion for Leave to File a Supplemental Brief in Support of the Opposition to the Plaintiff's Motion for Leave to File Amended Complaint on OST	IV	DD0644-DD0732

ALPHABETICAL INDEX

Date	Description	Volume	Page Nos.
07/17/2020	Appendix to Director Defendants' Opposition to the Motion for Leave to File Fourth Amended Complaint	II-III	DD0222-DD0643
07/22/2020	Director Defendants' Motion for Leave to File a Supplemental Brief in Support of the Opposition to the Plaintiff's Motion for Leave to File Amended Complaint on OST	IV	DD0644-DD0732
07/09/2020	Errata to Proposed Fourth Amended Complaint Exhibit 37	I	DD0089-DD0211
06/24/2020	Motion for Preferential Trial Setting on OST	I	DD0013-DD0088
05/21/2018	Notice of Entry of Order Granting Stipulation to Extend (Third Request)	I	DD0001-DD0012

07/16/2020	Notice of Entry of Order Re: Plaintiff's Motion for Preferential Trial Setting and Issuance of New Discovery	I	DD0212-DD0221
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DATED: March 4th, 2021.

LIPSON NEILSON P.C.

/s/ Angela Ochoa

By: _____

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

Attorneys for Real Parties in Interest,
ROBERT CHUR, STEVE FOGG, MARK
GARBER, CAROL HARTER, ROBERT
HURLBUT, BARBARA LUMPKIN, JEFF
MARSHALL AND ERIC STICKELS

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing **DIRECTOR DEFENDANTS' APPENDIX (VOLUME III OF IV)** on the following parties, via the manner of service indicated below, on March 4th, 2021:

Via Electronic Service through E-Flex System:

Mark A. Hutchison, Esq.
Hutchison & Steffen
10080 W. Alta Drive, Suite 200
Las Vegas, NV 89145
mhutchison@hutchlegal.com
Attorneys for Petitioner
Commissioner of Insurance for the
State of Nevada as Receiver of
Lewis and Clark LTC Risk Retention
Group, Inc.

George F. Ogilvie III, Esq.
McDonald Carano LLP
2300 West Sahara Ave., Suite 1200
Las Vegas, NV 89102
gogilve@mcdonaldcarano.com
Attorneys for Defendants
Corp., Uni-Ter Claims Services
Corp. and U.S. RE Corporation

Via US Mail:

The Honorable Nancy Allf
District Court, Dept. 28
Regional Justice Center
200 Lewis Ave.
Las Vegas, Nevada 89155
Respondent

Kimberly Freedman, Esq.
Erin Kolmansberger, Esq.
Broad and Cassel
2 S. Biscayne Blvd., 21st Floor
Miami, FL 33131
jwilson@broadandcassel.com
kfreedman@broadandcassel.com

Jon M Wilson Attorney
200 Biscayne Blvd Way, Suite 5107
Miami, FL 33131
jonwilson@jonmwilsonattorney.com
Attorneys for Real Parties in
Interest, Uni-Ter Underwriting
Management Corp.,
Uni-Ter Claims Services Corp. and
U.S. RE Corporation
Uni-Ter Underwriting Management

/s/ Juan Cerezo

An employee of LIPSON NEILSON P.C.

From: Irmick, Debbie <dirmick@wyattfirm.com>
To: michaelfnl <michaelfnl@aol.com>
Cc: Campbell, Andrew <ACAMPBELL@wyattfirm.com>; Matherne, Graham <gmatherne@wyattfirm.com>
Subject: RE: L&C-Billing for 9/14
Date: Thu, Dec 4, 2014 9:53 am
Attachments: Receivervship_of_Lewis_&_Clark_LTC.PDF (305K)

Attached is the requested copy of the 9/14 billing. Should you have any questions, please do not hesitate to call.

Debbie Irmick
Legal Secretary

Wyatt, Tarrant & Combs, LLP
Direct: (615) 251-6694

Assistant to J. Graham Matherne

Assistant to Andrew B. Campbell

Assistant to William W. Gibson

From: michaelfnl@aol.com [mailto:michaelfnl@aol.com]
Sent: Thursday, December 04, 2014 9:00 AM
To: Irmick, Debbie
Subject: Fwd: L&C-Billing for 9/14

FYI.

-----Original Message-----

From: michaelfnl <michaelfnl@aol.com>
To: acampbell <acampbell@wyattfirm.com>; gmatherne <gmatherne@wyattfirm.com>
Cc: FNL Tammy <FNL.Tammy@aol.com>
Sent: Thu, Dec 4, 2014 8:57 am
Subject: L&C-Billing for 9/14

In reviewing the 10/14 billing and the previously billed balance of \$28,304.40 it appears that there was a billing for 9/14 of \$13,593.39.

We do not have a copy of this 9/14 billing so please provide a copy.

Thanks.

From: Mathema, Graham <gmathema@wyattfirm.com>
To: michaelfnl <michaelfnl@aol.com>; Campbell, Andrew <ACAMPBELL@wyattfirm.com>
Cc: FNL Tammy <FNL Tammy@aol.com>
Subject: RE: L&C-Billing for 9/14
Date: Thu, Dec 4, 2014 8:01 am

Thanks Mike. I will get it to you later today.

J. Graham Matherne

Wyatt, Tarrant & Combs, LLP
2525 West End Avenue, Suite 1500
Nashville TN 37203-1423
Direct: (615) 251-6708
Fax: (615) 256-1726
Email: gmathema@wyattfirm.com



Nashville | Memphis | Jackson | Louisville | Lexington | New Albany | www.wyattfirm.com



From: michaelfnl@aol.com (mailto:michaelfnl@aol.com)
Sent: Thursday, December 04, 2014 8:57 AM
To: Campbell, Andrew; Matherne, Graham
Cc: FNL Tammy@aol.com
Subject: L&C-Billing for 9/14

In reviewing the 10/14 billing and the previously billed balance of \$28,304.40 it appears that there was a billing for 9/14 of \$13,593.30.

We do not have a copy of this 9/14 billing so please provide a copy.

Thanks.

=====

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=====



L&C

Re: Review of Billings from Professionals

Date: December 4, 2014

I have reviewed the billing for professional services and/or expenses indicated below and include the following notes:

I. Billing Information

Name of Firm: Wyatt, Tarrant & Combs, LLP
 Date of Statement: October 13, 2014
 Invoice #: 960688
 Period Covered: September, 2014
 Estate(s) Being Billed: Lewis & Clark LTC, Risk Retention Group, Inc.

Services Billed: 12,750.00
 Expenses Billed: 843.30
 Invoice Total: \$13,593.30

Service Adjustments:
 Expense Adjustments:
 Revised Total: \$13,593.30

Reviewed & work in accordance with assignment/ approved retention by Receiver.

Submit to Dept / Legal

II. Review of Billing's Compliance with ProceduresA. Clerical Accuracy

Services and Expenses Agree to Billed Total:
 Hours Multiplied by Rate Agrees to Service Total:

Correct	Error	Not Applicable
X		
X		

B. Submission of Appropriate Documentation

Appropriate Receipts for Expenses:
 Signed Affidavit:
 Detail for Photocopy Charges:

X		
X		

C. Billing in Compliance with NV Standards

Allowed Hourly Rate Used for Level of Person Per Agreement:
 Does Non-Productive Travel Time Comply with Engagement Agreement:
 No Billing for "Overhead" Related Services or Expenses:

X		
X		
X		

D. Billing Prepared with Following Detail

Individual Performing Services:
 Date Services Performed:
 Number of Hours Indicated (Rounded to Nearest Tenth of an Hour):
 Concise Explanation of Services Performed:

X		
X		
X		
X		

Comments:

[illegible]

Elmington
Walt Brown

WYATT, TARRANT & COMBS, LLP
2525 WEST END AVENUE
SUITE 1500
NASHVILLE, TENNESSEE 37203
F.E.I. # 61-0468003
(615) 244-0020

NOVEMBER 12, 2014
610866.000001
ANDREW B. CAMPBELL

INVOICE #. 963597

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
MS. BETTY CORDIAL
SPECIAL DEPUTY RECEIVER/LIQUIDATOR
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.
328 WEST VALLEY AVENUE
BIRMINGHAM, AL 35209

RE: RECEIVERSHIP OF LEWIS & CLARK LTC, RISK RETENTION GROUP

FOR PROFESSIONAL SERVICES RENDERED THROUGH OCTOBER 31, 2014

REMITTANCE ADVICE PAGE

TOTAL SERVICES	\$28,350.00
OTHER CHARGES AND DISBURSEMENTS	\$1,485.82
TOTAL THIS INVOICE	\$29,835.82
PREVIOUSLY BILLED AND OUTSTANDING	\$28,304.40
TOTAL AMOUNT DUE	\$58,140.22

DUE UPON RECEIPT
TO INSURE PROPER CREDIT TO YOUR ACCOUNT PLEASE RETURN THIS
REMITTANCE ADVICE WITH YOUR PAYMENT

WYATT, TARRANT & COMBS, LLP
2525 WEST END AVENUE
SUITE 1500
NASHVILLE, TENNESSEE 37203
F.E.I. # 61-0468003
(615) 244-0020

NOVEMBER 12, 2014
610866.000001
ANDREW B. CAMPBELL

INVOICE # 963597

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
MS. BETTY CORDIAL
SPECIAL DEPUTY RECEIVER/LIQUIDATOR
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.
328 WEST VALLEY AVENUE
BIRMINGHAM, AL 35209

RE: RECEIVERSHIP OF LEWIS & CLARK LTC, RISK RETENTION GROUP

FOR PROFESSIONAL SERVICES RENDERED THROUGH OCTOBER 31, 2014

09/30/14 JGM TELEPHONE CONFERENCE WITH MIKE ANDERSON AND A. 1.20
PULLIAM RE: DOCUMENTS NEEDED TO REVIEW
REGARDING ASSET RECOVERY / D AND O COVERAGE AND
CONFERENCE WITH A. CAMPBELL RE SAME.

10/01/14 ABC LENGTHY TELECONFERENCES WITH BETTY CORDIAL, AND 1.00
CONFER WITH GRAHAM MATHERNE, REGARDING DOCUMENT
REVIEW AND STRATEGY.

10/01/14 JGM E-MAILS WITH M. ANDERSON RE: .90
TELEPHONE CONFERENCE WITH B. CORDIAL AND A.
CAMPBELL RE:

10/01/14 AJP MEMORANDA TO AND FROM MIKE ANDERSON AND GRAHAM 1.70
MATHERNE REGARDING
SENT BY MIKE ANDERSON (0.5); CONFERENCES WITH
GRAHAM MATHERNE REGARDING
SENT BY MIKE ANDERSON (0.2); REVIEW

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REDACTED

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THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
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10/02/14 ABC CONFERENCE WITH GRAHAM MATHERNE AND ANDY PULLIAM REGARDING: 1.50
LENGTHY EMAIL
TO BETTY CORDIAL RE SAME; FOLLOW UP EMAIL TO
RECEIVERSHIP GROUP REGARDING

10/02/14 JGM REVIEW OF E&O POLICY LANGUAGE AND MEMO FROM 3.00
CAMPBELL TO CORDIAL RE: SAME (.80); CONFERENCE
WITH PULLIAM AND CAMPBELL RE: E&O, RE:4
(.90); OUTLINING ISSUES TO HIGHLIGHT RE:
(.70);
E-MAILS WITH D. DARLING, B. GREER AND B.
CORDIAL RE: FACT INVESTIGATION AND RELATED
MATTERS (.60).

10/02/14 AJP REVIEW DOCUMENTS, SENT BY MIKE 4.80
ANDERSON (2.8); CONFERENCE WITH GRAHAM MATHERNE
AND ANDREW CAMPBELL REGARDING CASE (0.9);
CONFERENCE WITH GRAHAM MATHERNE REGARDING CASE
(0.1); MEMORANDA FROM GRAHAM MATHERNE, ANDREW
CAMPBELL, DICK DARLING, AND BOB GREER REGARDING
MATTER (1.0).

10/03/14 ABC CONFER WITH GRAHAM MATHERNE AND ANDY PULLIAM .40
REGARDING FURTHER INFORMATION FROM MIKE
ANDERSON AND DICK DARLING. AND REGARDING

10/03/14 JGM PREPARE FOR TELEPHONE CONFERENCE WITH D. 1.70
DARLING RE: REVIEW OF MATERIALS RE:
(.30); LENGTHY TELEPHONE CONFERENCE WITH
PULLIAM AND DARLING RE: SAME (1.0); FURTHER
REVIEW (.40).

10/03/14 AJP REVIEW DOCUMENTS, 3.40
CONFERENCE WITH GRAHAM MATHERNE REGARDING
MATTER (0.1); PHONE CONFERENCE WITH GRAHAM
MATHERNE AND DICK DARLING REGARDING MATTER
(1.0); CONFERENCE WITH ANDREW CAMPBELL AND
GRAHAM MATHERNE REGARDING MATTER (0.1);
MEMORANDA FROM GRAHAM MATHERNE REGARDING MATTER
(0.3); MEMORANDUM TO MIKE ANDERSON REGARDING

10/04/14 AJP REVIEW DOCUMENTS 3.70

10/06/14 JGM E&O ANALYSIS WORK AND FURTHER REVIEW OF 1.00

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DD00432

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
MATTER NUMBER: 610866.000001
INVOICE NO.: 963597

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10/06/14	AJP REVIEW DOCUMENTS ON HARD DRIVES.	2.10
10/07/14	ABC EMAILS TO AND FROM BETTY CORDIAL, BOB GREER AND DICK DARLING REGARDING CONFERENCE WITH GRAHAM MATHERNE RE REVIEW OF DEPARTMENT DOCUMENTS.	.40
10/07/14	JGM E-MAILS WITH CORDIAL RE: NEVADA DEPARTMENT OF INSURANCE FILES AND ACCESS TO THEM; OUTLINING ISSUES TO FOLLOW-UP ON RE: D&O, E&O RECOVERY.	.80
10/07/14	AJP REVIEW DOCUMENTS CONFERENCES WITH GRAHAM MATHERNE REGARDING MATTER (0.2); MEMORANDA FROM ANDREW CAMPBELL AND GRAHAM MATHERNE REGARDING MATTER (0.2).	2.90
10/09/14	JGM E-MAIL TO B. CORDIAL RE: FILING OF MOTION IN NEVADA PROCEEDINGS RE DRAFTING ON MEMO TO CLIENT RE:	1.40
10/09/14	AJP MEMORANDA FROM GRAHAM MATHERNE REGARDING MATTER (0.2).	.20
10/10/14	JGM FURTHER REVIEW OF MATERIALS AND DRAFTING AND REVISIONS TO E&O POLICY ANALYSIS AND RELATED MATTERS.	3.40
10/13/14	ABC CALLS TO AND BRIEF TELECONFERENCE WITH BETTY CORDIAL; CONFERENCE WITH GRAHAM MATHERNE AND ANDY PULLIAM RE EVIDENCE; REVIEW AND REVISE MEMO REGARDING INSURANCE COVERAGE.	1.40
10/13/14	JGM FINALIZE DRAFT OF E&O MEMO; COMPILE EXHIBITS TO SAME; CONFERENCE WITH CAMPBELL AND PULLIAM RE:	3.90
10/13/14	AJP REVIEW DOCUMENTS AND PREPARE MEMORANDUM TO GRAHAM MATHERNE AND ANDREW CAMPBELL REGARDING POTENTIAL CLAIMS AGAINST D&O POLICY (3.2); CONFERENCE WITH GRAHAM MATHERNE AND ANDREW CAMPBELL REGARDING MATTER (0.2); REVIEW DRAFT MEMORANDUM FROM GRAHAM MATHERNE TO BETTY CORDIAL RELATED TO POTENTIAL CLAIMS AGAINST E&O POLICY (0.2).	3.60

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COMMUNICATION
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DD00433

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
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10/14/14 ABC TELECONFERENCE WITH BETTY CORDIAL RE: REVIEW MEMO TO BETTY CORDIAL REGARDING INSURANCE COVERAGE. .40

10/14/14 JGM FINALIZATION OF E & O POLICY ANALYSTS MEMO; CONFERENCE WITH PUBLITAM DM. 2.00

E-MAIL TO B. CORDIAL RE: E&O POLICY AND REQUESTS RE: 2.00

10/14/14 AJP REVIEW DRAFT MEMORANDUM FROM GRAHAM MATHERNE REGARDING ISSUE OF CONFERENCES WITH GRAHAM MATHERNE REGARDING MATTER INCLUDING INFORMATION FOR MEMORANDUM ABOUT REVIEW MEMORANDUM REGARDING ISSUE OF REVIEW AND PREPARE MEMORANDUM TO GRAHAM MATHERNE AND ANDREW CAMPBELL REGARDING .30

10/15/14 JGM E-MAILS WITH B. CORDIAL AND A. CAMPBELL RE: .30

10/15/14 AJP REVIEW DOCUMENTS RELATED TO DRAFT MEMORANDUM TO ANDREW CAMPBELL AND GRAHAM MATHERNE REGARDING CONFERENCE WITH ANDREW CAMPBELL REGARDING MATTER (0.1). 3.90

10/16/14 AJP DRAFT MEMORANDUM TO ANDREW CAMPBELL AND GRAHAM MATHERNE REGARDING CONFERENCE WITH GRAHAM MATHERNE REGARDING 4.40

10/17/14 AJP DRAFT MEMORANDUM TO ANDREW CAMPBELL AND GRAHAM MATHERNE REGARDING (6.0); CONFERENCE WITH GRAHAM MATHERNE REGARDING MATTER (0.1); RESEARCH NEVADA LAW REGARDING 6.90

10/18/14 AJP DRAFT MEMORANDUM TO ANDREW CAMPBELL AND GRAHAM MATHERNE REGARDING 3.80

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COMMUNICATION
REDACTED

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DD00434

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
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10/20/14 AJP DRAFT MEMORANDUM TO ANDREW CAMPBELL AND GRAHAM 6.20
MATHERNE REGARDING
RESEARCH

MEMORANDA FROM ANDREW CAMPBELL AND GRAHAM
MATHERNE REGARDING MATTER (0.2).

10/21/14 AJP DRAFT MEMORANDUM TO ANDREW CAMPBELL AND GRAHAM 6.00
MATHERNE REGARDING

10/22/14 AJP DRAFT MEMORANDUM TO ANDREW CAMPBELL AND GRAHAM 7.80
MATHERNE REGARDING
(0.4); RESEARCH

10/23/14 ABC EMAILS TO AND FROM BETTY CORDIAL RE MOTIONS TO .40
RECEIVERSHIP COURT AND STATUS OF CLAIM REVIEW;
CONFER WITH GRAHAM MATHERNE RE SAME.

10/23/14 AJP DRAFT MEMORANDUM TO ANDREW CAMPBELL AND GRAHAM 5.40
MATHERNE REGARDING
MEMORANDA TO AND FROM ANDREW
CAMPBELL AND GRAHAM MATHERNE REGARDING MATTER
(0.2).

10/24/14 ABC REVIEW INTERNAL MEMO REGARDING 1.90

10/24/14 JGM E-MAILS WITH PULLIAM AND CAMPBELL RE: ANALYSIS 1.10
MEMO AS TO INITIAL
SUMMARY REVIEW OF SAME.

10/24/14 AJP DRAFT MEMORANDUM TO ANDREW CAMPBELL AND GRAHAM 3.50
MATHERNE REGARDING
MEMORANDA TO AND FROM GRAHAM
MATHERNE AND ANDREW CAMPBELL REGARDING
MEMORANDUM (0.4).

10/27/14 ABC REVIEW INTERNAL MEMO REGARDING 2.30
AND CONFER WITH ANDY PULLIAM RE SAME;
FORWARD MEMO TO BETTY CORDIAL FOR REVIEW.

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ATTORNEY CLIENT
COMMUNICATION
EXEMPT

CONTINUE NEXT PAGE

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
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10/27/14 AJP CONFERENCES WITH ANDREW CAMPBELL REGARDING 1.60
MEMORANDUM SETTING FORTH ANALYSIS OF
REVISÉ MEMORANDUM
SETTING FORTH ANALYSIS OF
MEMORANDA TO AND FROM
ANDREW CAMPBELL AND GRAHAM MATHERNE REGARDING
MATTER (0.5).

10/28/14 ABC REVIEW OF CLAIMS ANALYSIS. .50

10/28/14 JGM REVIEW/OUTLINING ON ANALYSIS MEMO ON 3.00

10/29/14 ABC REVIEW OF CLAIMS ANALYSIS AND CASE LAW. 1.00

10/30/14 ABC REVIEW OF CLAIMS ANALYSIS AND CASE LAW. 2.20

10/30/14 JGM FURTHER REVIEW OF MATERIALS AND MEMO RE: .90

TOTAL SERVICES

113.40 \$28,350.00 ✓

WESTLAW COMPUTER RESEARCH
PHOTOCOPIES
COLOR PHOTOCOPIES

1220.30 ✓
30.30 ✓
235.22 ✓

OTHER CHARGES AND DISBURSEMENTS

\$1,485.82

TOTAL THIS INVOICE

\$29,835.82

PREVIOUSLY BILLED AND OUTSTANDING

\$28,304.40

TOTAL AMOUNT DUE

\$58,140.22
=====

CONFIDENTIAL
ATTORNEY CLIENT
COMMUNICATION
RECEIVED

-----TIME AND FEE SUMMARY-----				
-----	TIMEKEEPER-----	RATE	HOURS	FEES
A CAMPBELL	PARTNER	250.00	13.40	3350.00
J MATHERNE	PARTNER	250.00	24.60	6150.00
A PULLIAM	PARTNER	250.00	75.40	18850.00

L&C

Re: Review of Billings from Professionals

Date: November 20, 2014

I have reviewed the billing for professional services and/or expenses indicated below and include the following notes:

I. Billing Information

Name of Firm: Wyatt, Tarrant & Combs, LLP
Date of Statement: November 12, 2014
Invoice #: 963597
Period Covered: October August, 2014
Estate(s) Being Billed: Lewis & Clark LTC, Risk Retention Group, Inc.

Services Billed: 28,350.00
Expenses Billed: 1,485.82
Invoice Total: \$29,835.82

Service Adjustments:
Expense Adjustments:
Revised Total: \$29,835.82

II. Review of Billing's Compliance with Procedures

A. Clerical Accuracy

Services and Expenses Agree to Billed Total:
Hours Multiplied by Rate Agrees to Service Total:

B. Submission of Appropriate Documentation

Appropriate Receipts for Expenses:
Signed Affidavit:
Detail for Photocopy Charges:

C. Billing in Compliance with NV Standards

Allowed Hourly Rate Used for Level of Person Per Agreement:
Does Non-Productive Travel Time Comply with Engagement Agreement:
No Billing for "Overhead" Related Services or Expenses:

D. Billing Prepared with Following Detail

Individual Performing Services:
Date Services Performed:
Number of Hours Indicated (Rounded to Nearest Tenth of an Hour):
Concise Explanation of Services Performed:

Comments:

Correct Error No
X X X
X X X
X X X

X
X
X

X
X
X
X

OK - to send to
Dol for
final approval
to file
petition
for
special winding
needed re
fee petition
let's discuss

WYATT, TARRANT & COMBS, LLP
2526 WEST END AVENUE
SUITE 1500
NASHVILLE, TENNESSEE 37203
F.E.I. # 61-0468003
(615) 244-0020

DECEMBER 3, 2014
610866.000001
ANDREW B. CAMPBELL

INVOICE # 965561

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
MS. BETTY CORDIAL
SPECIAL DEPUTY RECEIVER/LIQUIDATOR
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.
328 WEST VALLEY AVENUE
BIRMINGHAM, AL 35209

RE: RECEIVERSHIP OF LEWIS & CLARK LTC, RISK RETENTION GROUP

FOR PROFESSIONAL SERVICES RENDERED THROUGH NOVEMBER 30, 2014

REMITTANCE ADVICE PAGE

TOTAL SERVICES	\$8,975.00
OTHER CHARGES AND DISBURSEMENTS	\$1,624.42
TOTAL THIS INVOICE	\$10,599.42
PREVIOUSLY BILLED AND OUTSTANDING	\$58,140.22
TOTAL AMOUNT DUE	\$68,739.64

DUE UPON RECEIPT
TO INSURE PROPER CREDIT TO YOUR ACCOUNT PLEASE RETURN THIS
REMITTANCE ADVICE WITH YOUR PAYMENT

WYATT, TARRANT & COMBS, LLP
2525 WEST END AVENUE
SUITE 1500
NASHVILLE, TENNESSEE 37203
F.E.I. # 61-0468003
(615) 244-0020

DECEMBER 3, 2014
610866.000001
ANDREW B. CAMPBELL

INVOICE # 965561

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
MS. BETTY CORDIAL
SPECIAL DEPUTY RECEIVER/LIQUIDATOR
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.
328 WEST VALLEY AVENUE
BIRMINGHAM, AL 35209

RECEIVERSHIP OF LEWIS & CLARK LTC, RISK RETENTION GROUP

FOR PROFESSIONAL SERVICES RENDERED THROUGH NOVEMBER 30, 2014

11/03/14 ABC EMAILS TO AND FROM BETTY CORDIAL.	.20
11/03/14 AJP MEMORANDUM FROM ANDREW CAMPBELL REGARDING MATTER (0.1).	.10
11/12/14 ABC EMAIL TO AND TELECONFERENCE WITH BETTY CORDIAL.	.30
11/12/14 AJP DRAFT COMPLAINT AGAINST FORMER DIRECTORS AND OFFICERS AND UNI-TER ENTITIES (2.2).	2.20
11/13/14 AJP CONFERENCE WITH GRAHAM MATHERNE REGARDING MATTER (0.1); MEMORANDUM FROM GRAHAM MATHERNE REGARDING MATTER (0.1); CONFERENCE WITH ANDREW CAMPBELL AND GRAHAM MATHERNE REGARDING MATTER (0.1); DRAFT COMPLAINT AGAINST FORMER OFFICERS AND DIRECTORS AND UNI-TER ENTITIES (4.8).	5.10
11/14/14 AJP DRAFT COMPLAINT AGAINST FORMER OFFICERS AND DIRECTOR AND UNI-TER ENTITIES (4.5).	4.50
11/15/14 AJP DRAFT COMPLAINT AGAINST FORMER OFFICERS AND DIRECTOR AND UNI-TER ENTITIES (3.1).	3.10

CONTINUE NEXT PAGE

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
MATTER NUMBER: 610866.000001
INVOICE NO.: 965561

Dec 3, 2014
PAGE 3

11/17/14 AJP DRAFT COMPLAINT AGAINST FORMER OFFICERS AND DIRECTOR AND UNI-TER ENTITIES (2.2). 2.20

11/18/14 AJP DRAFT COMPLAINT AGAINST FORMER OFFICERS AND DIRECTOR AND UNI-TER ENTITIES (2.0). 2.00

11/19/14 JGM LENGTHY TELEPHONE CONFERENCES WITH CORDIAL AND CONFERENCE CALL WITH A. PARKS, CORDIAL AND GREER RE: NUMEROUS E-MAILS WITH A. CAMPBELL AND TELEPHONE CONFERENCE WITH CAMPBELL RE: SAME; E-MAILS WITH A. PARKS AND B. CORDIAL RE: PERMISSION TO SEND INFORMATION AND SPEAK WITH NEVADA COUNSEL. 2.90

11/19/14 AJP DRAFT COMPLAINT (1.5); MEMORANDA TO AND FROM GRAHAM MATHERNE AND ANDREW CAMPBELL REGARDING MATTER (0.8); PHONE CONFERENCE WITH GRAHAM MATHERNE, AMY PARKS, BETTY CORDIAL, AND BOB GREER REGARDING MATTER (0.3); CONFERENCES WITH GRAHAM MATHERNE REGARDING MATTER (0.3); PREPARE DOCUMENTS AND HARD DRIVES TO BE SENT TO FENEMORE CRAIG FIRM (0.3). 3.20

11/20/14 JGM REVIEWING FILES RE: TRANSFER TO NEVADA COUNSEL; LENGTHY TELEPHONE CONFERENCE WITH J. WADHAUS; E-MAILS WITH A. PARKS RE: STATUS; E-MAIL OF WORK PRODUCT TO JIM WADHAUS. 3.00

11/20/14 AJP MEMORANDA FROM GRAHAM MATHERNE REGARDING MATTER (0.2). .20

11/21/14 JGM CONFERENCES WITH CAMPBELL AND PULLIAM RE: DOCUMENT TRANSFER; COMPILE MATERIALS FROM FILE; LETTER TO WADHAUS RE: TRANSFER OF COUNSEL AND TRANSFER OF DOCUMENT; E-MAILS WITH CAMPBELL, CORDIAL AND PARKS RE: SAME. 1.00

11/21/14 AJP CONFERENCE WITH GRAHAM MATHERNE REGARDING DOCUMENTS TO BE SENT TO FENEMORE CRAIG FIRM (0.1); MEMORANDA TO AND FROM GRAHAM MATHERNE, ANDREW CAMPBELL, AND KARL NIELSON REGARDING MATTER INCLUDING DRAFT COMPLAINT (0.7). .80

11/24/14 JGM REVIEW OF ANALYSIS MEMO AND FILE MATERIALS RE: WORK ON D&O POLICY CLAIM POTENTIAL; PREPARE FOR TELEPHONE CONFERENCE WITH NEVADA COUNSEL; LENGTHY TELEPHONE CONFERENCE WITH NEVADA COUNSEL RE: TRANSITION. 3.10

CONFIDENTIAL
ATTORNEY-CLIENT
COMMUNICATION
REDACTED

CONTINUE NEXT PAGE

THE COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA
MATTER NUMBER: 610866.000001
INVOICE NO.: 965561

Dec 3, 2014
PAGE 4

11/24/14 AJP PHONE CONFERENCE WITH GRAHAM MATHERNE REGARDING 2.00
MATTER (0.1); CONFIRM DELIVERY OF FEDEX
PACKAGES WITH DOCUMENTS TO FENEMORE CRAIG FIRM
(0.1); MEMORANDA TO AND FROM KARL NIELSON AT
FENEMORE CRAIG, GRAHAM MATHERNE, AND ANDREW
CAMPBELL REGARDING MATTER INCLUDING FORWARDING
DRAFT COMPLAINT TO FENEMORE CRAIG (0.6); PHONE
CONFERENCE WITH BETTY CORDIAL, DICK DARLING,
JIM WADHAMS, KARL NIELSON, GRAHAM MATHERNE, AND
ANDREW CAMPBELL REGARDING MATTER (1.2).

TOTAL SERVICES 35.90 \$8,975.00✓

OUTSIDE DELIVERY COSTS 196.87✓
PHOTOCOPIES 1427.55✓

OTHER CHARGES AND DISBURSEMENTS \$1,624.42✓

TOTAL THIS INVOICE \$10,599.42✓

PREVIOUSLY BILLED AND OUTSTANDING \$58,140.22

TOTAL AMOUNT DUE \$68,739.64
=====

-----TIME AND FEE SUMMARY-----

*-----	TIMEKEEPER	*-----	RATE	HOURS	FEES
A CAMPBELL	PARTNER		250.00	.50	125.00
J MATHERNE	PARTNER		250.00	10.00	2500.00
A PULLIAM	PARTNER		250.00	25.40	6350.00

EXHIBIT “G”

EXHIBIT “G”

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

*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

**PLAINTIFF COMMISSIONER OF
INSURANCE FOR THE STATE OF
NEVADA, THE COURT-APPOINTED
RECEIVER OF LEWIS & CLARK LTD
RISK RETENTION GROUP, INC.'S
TWELFTH SUPPLEMENTAL
DISCLOSURE OF DOCUMENTS AND
WITNESSES PURSUANT TO NRCP 16.1
(TWELFTH Supplement)**

Plaintiff, the Court-appointed receiver ("Plaintiff") of Lewis & Clark LTC Risk Retention
Group, Inc. ("L&C"), by and through its attorneys, Fennemore Craig, P.C., hereby provide its
TWELFTH Supplement to its Initial List of Witnesses and Documents pursuant to NRCP 16.1
as follows. Any new or amended information is in **bold**:

1 **II. DOCUMENTS**

2 Pursuant to NRCP 16.1, Plaintiff hereby submits its TWELFTH supplement of documents
3 that may be discoverable pursuant to NRCP 26(b). The documents are identified as: LC0295782-
4 LC0295790.

5 Plaintiff also discloses any and all documents identified and/or disclosed by any other
6 party to this action. In addition, Plaintiff reserves the right to amend and/or supplement this list of
7 documents as discovery proceeds.

8 Neither inclusion of any documents within this disclosure made pursuant to NRCP 16.1,
9 nor acceptance of documents provided by any other party hereto in a disclosure made pursuant to
10 NRCP 16.1, shall be deemed as a waiver by Plaintiff of any evidentiary rights it may have with
11 respect to those documents, including, but not limited to, objections related to authenticity,
12 materiality, relevance, foundation, hearsay, or any other right as may be permitted pursuant to the
13 Nevada Rules of Evidence.

14 **III. COMPUTATION OF DAMAGES**

15 Plaintiff anticipates retaining an expert to analyze and compute damages. Plaintiff will
16 supplement this list when that occurs. At this time Plaintiff asserts that it has been damaged in a
17 principal amount of not less than \$15,000,000 due to Defendants' actions, excluding interest,
18 attorney's fees and costs, which Plaintiff will also seek in addition to the principal damages.
19 Plaintiff expressly reserves the right to supplement and/or amend its computation of damages
20 without any negative inference or presumption.

21 **IV. INSURANCE**

22 Plaintiff is informed and believes that various insurance agreements covering Defendants'
23 actions are in existence and anticipates obtaining these policies from Defendants and
24 supplementing this disclosure as discovery continues. Plaintiff expressly reserves the right to
25 supplement and/or amend this response without any negative inference or presumption.

26 ///

27 ///

28 ///

1 Plaintiff reserves the right to supplement this disclosure to add additional documents
2 and/or name(s) of person(s) who may have relevant information, including expert witnesses, as
3 discovery continues.

4 DATED: September 26, 2018.

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

6
7 By: 

JAMES L. WADHAMS, ESQ.

Nevada Bar No. 1115

BRENOCH WIRTHLIN, ESQ.

Nevada Bar No. 10282

300 South Fourth Street, Suite 1400

Las Vegas, Nevada 89101

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

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Fennemore Craig, P.C.,
3 and that on September 26, 2018, I caused to be electronically served through the Court's e-
4 service/e-filing system and/or served by U.S. Mail true and correct copies of the foregoing
5 PLAINTIFF COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA, THE
6 COURT-APPOINTED RECEIVER OF LEWIS & CLARK LTD RISK RETENTION
7 GROUP, INC.'S TWELFTH SUPPLEMENTAL DISCLOSURE OF DOCUMENTS AND
8 WITNESSES PURSUANT TO NRCP 16.1 (TWELFTH SUPPLEMENT) properly addressed
9 to the following:

10 Joseph P. Garin, Esq.
11 Angela Ochoa, Esq.
12 Lipson, Neilson, Cole, Seltzer & Garin, P.C.
13 9900 Covington Cross Drive, Suite 120
14 Las Vegas, Nevada 89144
*Attorneys for Defendants Robert Chur, Steve Fogg,
Mark Garber, Carol Harter, Robert Hurlbut,
Barbara Lumpkin, Jeff Marshall & Eric Stickels*

15 George F. Oglive III, Esq.
16 McDonald Carano Wilson LLP
17 2300 West Sahara Avenue, Suite 1200
18 Las Vegas, Nevada 89102
*Attorneys for Defendants Uni-Ter Underwriting
Management Corp., Uni-Ter Claims Services Corp.,
and U.S. RE Corporation*

19 Jon M. Wilson
20 Broad and Cassel
21 2 South Biscayne Blvd., 21st Floor
22 Miami Florida 33131
*Attorneys for Defendants Uni-Ter Underwriting
Management Corp., Uni-Ter Claims Services Corp.,
and U.S. RE Corporation*

23
24 /s/ Morganne Westover
25 An employee of Fennemore Craig, P.C.
26
27
28

EXHIBIT “H”

EXHIBIT “H”

MCDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1000 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

SUPP

George F. Ogilvie III, Esq.
Nevada Bar No. 3552
MCDONALD CARANO LLP
2300 West Sahara Avenue, Suite 1000
Las Vegas, NV 89102
Telephone: (702) 873-4100
Facsimile: (702) 873-9966
gogilvie@mcdonaldcarano.com

Jon M. Wilson, Esq. (Appearing *Pro Hac Vice*)
Kimberly Freedman, Esq. (Appearing *Pro Hac Vice*)
Erin Kolmansberger, Esq. (Appearing *Pro Hac Vice*)
NELSON MULLINS BROAD AND CASSEL
2 S. Biscayne Boulevard, 21st Floor
Miami, Florida 33131
Telephone: (305) 373-9400
Facsimile: (305) 373-9443
Jon.Wilson@nelsonmullins.com
Kimberly.Freedman@nelsonmullins.com
Erin.Kolmansberger@nelsonmullins.com

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

**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.: XXVII

**DEFENDANT U.S. RE
CORPORATION'S SUPPLEMENT
TO EARLY CASE CONFERENCE
DISCLOSURES PURSUANT TO
NRCP 16.1 (Sixth Supplement)**

19. Uni-Ter and U.S. Re's Second Privilege Log.

20. **Production LC-USRE_VOL008 (Bates Range: LC-USRE-1725072 - LC-USRE-1732887), was sent via an FTP on October 29, 2018.**

21. U.S. Re reserves the right to supplement this disclosure of documents if necessary.

III. Computation of Damages

None at this time.

IV. Insurance Agreements

U.S. Re hereby provides additional insurance policies pursuant to Rule 16.1. A copy of the Catlin Specialty Insurance Company policy for U.S. Re previously produced is also provided again here with Bates numbering. The policies produced in connection with this supplemental disclosure are identified as LC-USRE-0000799 though LC-USRE-0001069 and will be provided on a CD sent via U.S. mail.

U.S. Re reserves the right to amend or to supplement these disclosures if it appears at any time that omissions or errors have been made or that additional or more accurate information has become available.

DATED this 30th day of October, 2018.

MCDONALD CARANO LLP

By: /s/ George F. Ogilvie III, Esq.
George F. Ogilvie III, Esq. (#3552)
2300 West Sahara Avenue, Suite 1000
Las Vegas, NV 89102

Jon M. Wilson, Esq. (Pro Hac Vice)
Kimberly Freedman, Esq. (Pro Hac Vice)
Erin Kolmansberger, Esq. (Appearing *Pro Hac Vice*)
NELSON MULLINS BROAD AND CASSEL
2 S. Biscayne Boulevard, 21st Floor
Miami, Florida 33131

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on or about the 30th day of October, 2018, a true and correct copy of the foregoing **DEFENDANT U.S. RE CORPORATION'S SUPPLEMENT TO EARLY CASE CONFERENCE DISCLOSURES PURSUANT TO NRCP 16.1 (Sixth Supplement)** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification:

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

EXHIBIT “I”

EXHIBIT “I”

DISTRICT COURT OF NEVADA

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

ROBERT CHUR, STEVE FOGG, MARK
GABER, CAROL HARTER, ROBERT
HURLBUT, BARBARA LUMKIN,
JEFF MARSHALL, ERIC STICKELS,
UN-TER UNDERWRITING
MANAGEMENT CORP., UN-TER
CLAIMS SERVICES CORP., AND
U.S. RE CORPORATION
DOES 1-50, inclusive; and
DOES 51-100, inclusive,
Defendants.

CA A-14-711535-C
Dept: XXI

DEPOSITION OF CONSTANCE L. AKRIDGE, ESQ

Las Vegas, Nevada

Friday, March 1, 2019 at 9:07 a.m

Reported By:

Jill E. Shepherd, RFR, NV CCR 948

Job No.: 35727

Page 2		Page 4	
1	DEPOSITION OF CONSTANCE L. AKRIDGE, ESQ.,	1	I N D E X
2	a witness called on behalf of the Plaintiff, before	2	WITNESS
3	Jill E. Shepherd, RPR, NV-CCR #948, CA-CSR #13275,	3	CONSTANCE L. AKRIDGE, ESQ.
4	at the Law Offices of Fennemore Craig P.C., 300	4	Examination by Mr. Wirthlin
5	South Fourth Street, Suite 1400, Las Vegas, Nevada,	5	Examination by Ms. Ochoa
6	on Friday, March 1, 2019 at 9:07 a.m.	6	Examination by Mr. Wilson
7		7	Examination by Mr. Wirthlin
8	APPEARANCES:	8	
9		9	
10	For the Plaintiff:	10	
11	FENNEMORE CRAIG, P.C.	11	E X H I B I T S
12	BY: Brenoch Wirthlin, Esq.	12	
13	Daniel Cereghino, Esq.	13	NO. DESCRIPTION PAGE
14	300 South Fourth Street, Suite 1400	14	Exhibit 150 Letter dated 1/18/2012 with
15	Las Vegas, Nevada 89101	15	attachment "Summary of Recent
16	702.692.8000	16	Events," Bates numbers
17	bwirthlin@fclaw.com	17	HH_0000491 - HH_0000492
18	dcereghino@fclaw.com	18	
19		19	
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	
1	For the Defendants Robert Chur, Steve Fogg, Mark	1	LAS VEGAS, NEVADA; Friday, March 1, 2019
2	Garber, Carol Harter, Robert Hurlbut, Barbara	2	*****
3	Lumpkin, Jeff Marshall & Eric Stickels:	3	Whereupon,
4		4	CONSTANCE L. AKRIDGE, ESQ.,
5	LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.	5	a witness, called for examination by counsel for
6	By: Angela Ochoa, Esq.	6	Plaintiff, being first sworn, was examined and
7	9900 Covington Cross Drive, Suite 120	7	testified as follows:
8	Las Vegas, Nevada 89144	8	*****
9	702.382.1500	9	EXAMINATION
10	aochoa@lipsonneilson.com	10	BY MR. WIRTHLIN:
11		11	Q. Good morning.
12		12	A. Good morning.
13		13	Q. The time and place set for the deposition
14		14	of Connie Akridge, and am I pronouncing your name
15		15	correctly?
16		16	A. Correctly.
17		17	Q. Okay.
18		18	Would you please state your full name for
19		19	the record?
20		20	A. Constance Lucas Akridge.
21		21	Q. And would you spell your last name?
22		22	A. A-K-R-I-D-G-E.
23		23	Q. And you live here in Las Vegas, correct?
24		24	A. I do, yes.
25		25	Q. And I represent Lewis and Clark, and I know

<p style="text-align: right;">Page 6</p> <p>1 you are familiar with the litigation we're here 2 about today; is that fair to say? 3 A. I saw a complaint I think when it was 4 originally filed, yeah. 5 Q. Okay. 6 A. So I'm familiar. Yeah. 7 Q. Okay. 8 If you have any questions, if I use a name 9 that you are not familiar with or something, please 10 just ask me to clarify. 11 A. Okay. Sure. 12 Q. I might refer to Lewis and Clark, sometimes 13 internally we say L&C, so I will try to make it 14 clear. 15 A. Sure. 16 Q. Have you ever had your deposition taken 17 before? 18 A. I have. 19 Q. How many times? 20 A. Just once. 21 Q. Okay. 22 So I know you are more than familiar with 23 all these procedures, but I will just go through 24 them for the record. 25 A. Sure.</p>	<p style="text-align: right;">Page 8</p> <p>1 you would not be competent or able to give your full 2 and complete deposition today? 3 A. No. 4 Q. Okay. 5 Are you currently under the influence of 6 any drugs or alcohol or medications? 7 A. No. 8 Q. Okay. 9 And I apologize for asking this, but I 10 always have to, it has come up in a deposition 11 before, have you ever been convicted of a crime? 12 A. I have not. 13 Q. Okay. 14 Have you signed or made any written 15 statements about this matter to anyone? 16 A. I don't know what that means. 17 Q. Okay. 18 Have you written any letters about this 19 specific litigation, Lewis and Clark versus Uni-Ter, 20 U.S. RE? 21 A. The only thing I did was when the complaint 22 was filed I e-mailed copies of all of the 23 receivership documents to the defendants, the 24 individual members of the Lewis and Clark or former 25 members of the Lewis and Clark board.</p>
<p style="text-align: right;">Page 7</p> <p>1 Q. A deposition is a question-and-answer 2 session under oath. Even though we're not in court, 3 you are testifying under oath under penalty of 4 perjury. 5 Do you understand what that means? 6 A. Correct. 7 Q. Okay. 8 And the court reporter is going to take 9 down anything anyone says, so speak clearly. I am 10 sure you are aware of that. I will wait for you to 11 finish before I ask a question, and if you would do 12 the same. 13 If you don't understand a question, just 14 ask me to clarify. Make sure that you understand 15 the question before you answer. If you answer, I 16 will assume you understood the question; is that 17 fair? 18 A. Fair. 19 Q. If you need to take a break at any time, 20 let me know. Unless there's a question pending, I 21 will ask you to answer that question and then we can 22 take a break. 23 Do you understand all these procedures? 24 A. Yes. 25 Q. Is there any reason you can think of that</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. Okay. 2 Just the individual members? 3 A. Yes. Just individual members, yes. 4 Q. We can get a list of those if we need to. 5 When was that you did that? 6 A. I think it was January maybe, ish. 7 Q. Okay. 8 And when you say you e-mailed copies of the 9 receivership documents -- 10 A. Well, we mailed a disk -- 11 Q. Okay. 12 A. We mailed a disk of the documents. 13 Q. That's fine. 14 But there's a receivership for Lewis and 15 Clark and then there's this lawsuit, they are 16 separate -- 17 A. Yes. 18 Q. -- and you are aware of those two lawsuits? 19 A. Yeah. And whatever documents I think we 20 e-mailed -- I'm sorry -- put on CD the receivership 21 documents and I think the complaint. 22 Q. The complaint in this matter or in 23 whatever -- 24 A. It was part of it. I could be wrong. 25 That's my memory, we just e-mailed some documents.</p>

<p style="text-align: right;">Page 10</p> <p>1 I think the complaint was part of it.</p> <p>2 Q. Okay.</p> <p>3 And when you say "the complaint," you mean</p> <p>4 in this matter?</p> <p>5 A. In this matter, yes.</p> <p>6 Q. Okay.</p> <p>7 Any other communications? Did you say</p> <p>8 anything in the e-mail, Here's, you know, some</p> <p>9 documents or anything like that?</p> <p>10 A. I might have e-mailed the complaint to some</p> <p>11 people, but I don't remember because I don't have</p> <p>12 any e-mails. I didn't save the e-mails.</p> <p>13 Q. Fair enough.</p> <p>14 Getting to that point -- we will just jump</p> <p>15 into it here -- so you produced the file that you</p> <p>16 had in response to a subpoena duces tecum for this</p> <p>17 deposition today?</p> <p>18 A. I did, yeah.</p> <p>19 Q. Did you produce everything that was in your</p> <p>20 file?</p> <p>21 A. I did.</p> <p>22 Q. Okay.</p> <p>23 What did you do when you got the subpoena</p> <p>24 duces tecum to -- obviously, I'm not looking for</p> <p>25 communications with your attorney here today, but</p>	<p style="text-align: right;">Page 12</p> <p>1 aware of anything being taken out of it?</p> <p>2 A. No.</p> <p>3 Q. Okay.</p> <p>4 A. I'm not even sure I even looked at it</p> <p>5 before it went to storage, to tell you the truth.</p> <p>6 Q. I'm sorry, I didn't --</p> <p>7 A. I said I don't remember even being involved</p> <p>8 in looking at it or anything before it went to</p> <p>9 storage.</p> <p>10 Q. Okay.</p> <p>11 A. Yeah. It would have been an administrative</p> <p>12 task.</p> <p>13 Q. Okay.</p> <p>14 But as far as you know, when you went to go</p> <p>15 get the file in response to the subpoena duces tecum</p> <p>16 in this case, you just produced everything that was</p> <p>17 in there --</p> <p>18 A. That's it.</p> <p>19 Q. -- other than the other clients' documents?</p> <p>20 A. Correct.</p> <p>21 Q. Okay.</p> <p>22 Other than your attorney, have you spoken</p> <p>23 with anybody else about the subpoena duces tecum or</p> <p>24 your deposition today?</p> <p>25 A. The only thing I did was when I got the</p>
<p style="text-align: right;">Page 11</p> <p>1 what did you do to, I guess, obtain the file that</p> <p>2 you then produced?</p> <p>3 A. We had to get it out of storage because it</p> <p>4 had been so long. It was over at --</p> <p>5 Q. Okay.</p> <p>6 Did you produce everything that you had in</p> <p>7 that file?</p> <p>8 A. Yes. The only thing we took out was there</p> <p>9 were -- for whatever reason, there were some</p> <p>10 documents related to other clients in there, and so</p> <p>11 we took those out; otherwise, you've got everything</p> <p>12 we had.</p> <p>13 Q. Okay.</p> <p>14 How was that file created?</p> <p>15 A. I'm not sure what you are asking.</p> <p>16 Q. Sure.</p> <p>17 You said it had been a while, you had to go</p> <p>18 to storage to get it.</p> <p>19 Was that file -- how was it prepared?</p> <p>20 A. Well, I think it was mostly the Jones</p> <p>21 Vargas file. And it was in some folders, and so it</p> <p>22 was just documents in folders.</p> <p>23 Q. Yes.</p> <p>24 A. That's it.</p> <p>25 Q. And before it was put in storage, were you</p>	<p style="text-align: right;">Page 13</p> <p>1 subpoena duces tecum, I asked Steve Peek if he knew</p> <p>2 whether or not the receiver was waiving the</p> <p>3 conflict, and he said he didn't know. So he told me</p> <p>4 to call Angela, which I did. So that's the only</p> <p>5 conversation I've had.</p> <p>6 Q. Sure.</p> <p>7 What did you and Ms. Ochoa talk about?</p> <p>8 A. I just asked her about the conflict, and</p> <p>9 she said she thought it was waived, but I think she</p> <p>10 was in the process of confirming it with you.</p> <p>11 Q. Any other conversations?</p> <p>12 A. No.</p> <p>13 Q. Did you do anything else to prepare for</p> <p>14 your deposition today?</p> <p>15 A. No.</p> <p>16 Q. Okay.</p> <p>17 MR. BRIDSTON: Other than meeting with me.</p> <p>18 A. Yeah. I didn't think you meant --</p> <p>19 THE WITNESS: He said other than meeting</p> <p>20 with you.</p> <p>21 BY MR. WIRTHLIN:</p> <p>22 Q. When is the last time you spoke with anyone</p> <p>23 from Uni-Ter or U.S. RE?</p> <p>24 A. Probably not since 2012.</p> <p>25 Q. And when I say Uni-Ter, the defendants in</p>

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1 this case, which I'm not sure if you are aware,
 2 there's Uni-Ter claims and there's Uni-Ter
 3 management, two different entities?
 4 **A. Right.**
 5 Q. Okay. You are aware of that.
 6 So not since 2012, then?
 7 **A. Well, with respect to this case, right.**
 8 Q. Okay.
 9 With respect to other cases?
 10 **A. I don't remember.**
 11 Q. Do you currently work with Uni-Ter or U.S.
 12 RE?
 13 **A. I do not.**
 14 Q. Okay.
 15 When is the last time you did, that you
 16 know of?
 17 **A. I've never worked with them.**
 18 Q. Okay.
 19 **A. I mean, I've never represented it; is that**
 20 **what you mean?**
 21 Q. No.
 22 **A. Oh.**
 23 Q. Well, I just was wondering when I asked if
 24 you had spoken with them about your deposition
 25 today. I think you said, no, not about this, so I

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1 wondered if there was something else that you had
 2 spoken to them about --
 3 **A. Oh, is that what you are asking about, my**
 4 **deposition? It's not what I understood the question**
 5 **to be either.**
 6 Q. Sure. Let me back up. It may have been a
 7 poorly worded question.
 8 **A. Okay.**
 9 Q. So when I say Uni-Ter and U.S. RE, you know
 10 who I'm talking about?
 11 **A. I do.**
 12 Q. Okay.
 13 Have you ever spoken with anyone from
 14 Uni-Ter or U.S. RE since 2012?
 15 **A. Not about this case.**
 16 Q. That's what made me think, have you spoken
 17 to them about other things?
 18 **A. Well, there was another risk retention**
 19 **group that I was counsel to that I might have spoken**
 20 **with somebody, but I probably spoke with their**
 21 **counsel, not them directly.**
 22 Q. Is that J.M. Woodworth?
 23 **A. Yes. That's who I remember. I can't**
 24 **remember when the last time was with that.**
 25 Q. That's fine.

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1 When was the last time you spoke with
 2 Curtis Sitterson?
 3 **A. It's been years. I haven't spoken with him**
 4 **in years.**
 5 Q. Since 2012, do you recall?
 6 **A. I just can't remember.**
 7 Q. Do you remember the substance of the
 8 conversation that you had the last time you spoke
 9 with him?
 10 **A. I think it just would have been in relation**
 11 **to Lewis and Clark.**
 12 Q. Do you remember what you talked about
 13 specifically?
 14 **A. Well, he was the primary counsel for the**
 15 **company, so it would have just been in the context**
 16 **of the company business.**
 17 Q. Okay.
 18 Would it have been the receivership, or was
 19 it before that?
 20 **A. I don't remember.**
 21 Q. Again, I'm not trying to give you a memory
 22 test. If you don't remember, that's fine.
 23 **A. Yeah, I don't.**
 24 Q. So do you recall when you were retained as
 25 counsel for Lewis and Clark?

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1 **A. When I was with Jones Vargas. I think it**
 2 **was 2005ish.**
 3 Q. Okay.
 4 Around 2005?
 5 **A. Yeah.**
 6 Q. How did it come about that you were
 7 retained as counsel for Lewis and Clark?
 8 **A. I was asked to be their counsel.**
 9 Q. Okay.
 10 **A. Their Nevada counsel.**
 11 Q. Okay.
 12 Who asked you?
 13 **A. I think it was Sandy Elsass.**
 14 Q. Did you know Sandy previously or was that
 15 the first time you had talked to him?
 16 **A. I can't remember.**
 17 Q. So what do you recall was your specific
 18 engagement for Lewis and Clark?
 19 **A. I was their Nevada-required counsel.**
 20 Q. Just like a local counsel?
 21 **A. No. The statute in NRS 694C requires each**
 22 **captive insurer to retain a Nevada licensed counsel**
 23 **that the commissioner deems competent. I think the**
 24 **statute says according to her, the regulation she**
 25 **promulgates about the competency standards, but none**

<p style="text-align: right;">Page 18</p> <p>1 have ever been promulgated.</p> <p>2 Q. Oh, really?</p> <p>3 A. Yeah. I had to be approved by the</p> <p>4 commissioner as competent counsel for the company.</p> <p>5 Q. So competent based on the promulgated</p> <p>6 specifications that weren't actually promulgated?</p> <p>7 A. That's the -- I can tell you that's what</p> <p>8 this legislation says. And there are none, so --</p> <p>9 Q. Okay.</p> <p>10 A. -- I'm not sure if there are any that have</p> <p>11 been informally adopted by any commissioner that has</p> <p>12 been -- that has served, I guess, over the span of</p> <p>13 this matter.</p> <p>14 Q. Okay.</p> <p>15 But as far as you know, at the time you</p> <p>16 were retained in 2005 there weren't any</p> <p>17 specifications promulgated at that point?</p> <p>18 A. Yes. There's never been any regulations</p> <p>19 since the captive chapter was adopted in 1999.</p> <p>20 Q. So was Mr. Elsass the only person at or</p> <p>21 affiliated with Lewis and Clark that you knew at</p> <p>22 that time or did you know anyone else from Lewis and</p> <p>23 Clark or Uni-Ter or U.S. RE?</p> <p>24 A. At what time?</p> <p>25 Q. 2005, when you were retained.</p>	<p style="text-align: right;">Page 20</p> <p>1 main counsel.</p> <p>2 Q. Did anybody on the board ever tell you that</p> <p>3 or express that to you in any way that they saw</p> <p>4 him --</p> <p>5 A. I mean, other than I went to -- I wasn't</p> <p>6 invited to most of the board meetings. I only went</p> <p>7 to, I think, the Nevada board meetings and was only</p> <p>8 asked to perform certain tasks.</p> <p>9 Q. Okay.</p> <p>10 And the Nevada board meetings, you mean</p> <p>11 specifically ones that were held in Nevada?</p> <p>12 A. Correct.</p> <p>13 Q. What about meetings that were held</p> <p>14 telephonically or --</p> <p>15 A. Yeah. Telephone calls with the board,</p> <p>16 yeah.</p> <p>17 Q. You did have a few, you said?</p> <p>18 A. I think I did. It's my memory.</p> <p>19 Q. Okay.</p> <p>20 A. I didn't have many.</p> <p>21 Q. And I think you mentioned that your role</p> <p>22 was limited.</p> <p>23 What did you understand the specific scope</p> <p>24 of your role to be?</p> <p>25 A. To interface with the regulator.</p>
<p style="text-align: right;">Page 19</p> <p>1 A. I don't remember.</p> <p>2 Q. Okay.</p> <p>3 So Mr. Elsass just reached out to you and</p> <p>4 said would you be -- well, what did he say exactly?</p> <p>5 A. He asked us to be counsel, Nevada counsel.</p> <p>6 Q. When you say "us"?</p> <p>7 A. I think he talked to Jim Wadhams, too.</p> <p>8 Q. Okay.</p> <p>9 A. Both of us. Yeah.</p> <p>10 Q. Okay.</p> <p>11 So how was your role, as you understood it</p> <p>12 at that time, different from Curtis Sitterson's</p> <p>13 role?</p> <p>14 A. Curtis was the primary counsel and I was --</p> <p>15 had sort of limited involvement.</p> <p>16 Q. Okay. And I just want to talk a little bit</p> <p>17 about those two terms.</p> <p>18 You said Curtis was primary --</p> <p>19 Mr. Sitterson was primary counsel?</p> <p>20 A. Right. Right.</p> <p>21 Q. What did you understand was his role?</p> <p>22 A. He was the -- I believe he went to all the</p> <p>23 board meetings and was the one they would consult</p> <p>24 with on an ongoing basis. So that why I say</p> <p>25 primary, because I think they looked to him as their</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. The Department of Insurance?</p> <p>2 A. Yes.</p> <p>3 Q. I will just call it the DOI, if that's</p> <p>4 easier.</p> <p>5 A. Yes.</p> <p>6 Q. So when you say interface with the DOI,</p> <p>7 what do you mean by that?</p> <p>8 A. They would ask me to get, for example,</p> <p>9 surplus notes. They asked me to submit those for</p> <p>10 approval. I mean, if there was any sort of</p> <p>11 communication that they wanted to have with the</p> <p>12 Division of Insurance, sometimes I would be</p> <p>13 involved. I think they directly communicated with</p> <p>14 the division as well. So at limited times they</p> <p>15 would have me communicate with the division.</p> <p>16 Q. Who did you talk to over at the DOI, do you</p> <p>17 recall?</p> <p>18 A. I don't really recall. I think I might</p> <p>19 have talked to John Marshall. I think he was their</p> <p>20 analyst.</p> <p>21 Q. Do you have, would you say, specialized</p> <p>22 experience and expertise with the DOI and its</p> <p>23 processes?</p> <p>24 A. Well, I've been -- I started practicing law</p> <p>25 with Jim Wadhams in 1988, and have been sort of</p>

<p style="text-align: right;">Page 22</p> <p>1 working with, doing insurance regulation with him</p> <p>2 for many years.</p> <p>3 Q. So I'm terrible at math. I guess that's</p> <p>4 why I went to law school. But it's 17 years, is</p> <p>5 that? 12 plus five, until 2005? In other words,</p> <p>6 when you were contacted by Mr. Elsass, you had been</p> <p>7 practicing insurance-related law for 17 years?</p> <p>8 A. Yeah. If somebody wants to do the math.</p> <p>9 Q. '88 to '05, right?</p> <p>10 A. Yeah, that's fine.</p> <p>11 Q. I know. Maybe that's why we all went to</p> <p>12 law school.</p> <p>13 And did that involve kind of familiarity</p> <p>14 with DOI regulations?</p> <p>15 A. Did what involve?</p> <p>16 Q. Your practice --</p> <p>17 A. Yes.</p> <p>18 Q. -- before you were retained by Lewis and</p> <p>19 Clark?</p> <p>20 A. Yes.</p> <p>21 Q. Okay.</p> <p>22 And who did retain you specifically? Was</p> <p>23 it Lewis and Clark, the company?</p> <p>24 A. Lewis and Clark.</p> <p>25 Q. Did you have, at the time you were</p>	<p style="text-align: right;">Page 24</p> <p>1 A. I think I might have helped them with</p> <p>2 their -- submitting their certificate of authority</p> <p>3 application.</p> <p>4 Q. Okay.</p> <p>5 A. I don't remember what year that was.</p> <p>6 Q. Okay.</p> <p>7 But is it fair to say that you were</p> <p>8 retained by Sophia Palmer for the same experience</p> <p>9 and expertise that you had that led you to being</p> <p>10 retained by Lewis and Clark?</p> <p>11 A. Probably. I mean, I'm not --</p> <p>12 Q. Familiarity with the DOI and its processes</p> <p>13 and regulations.</p> <p>14 A. I mean, it's hard to speculate what people</p> <p>15 were thinking when they retained me.</p> <p>16 Q. Sure.</p> <p>17 A. But, yeah, I mean I was their Nevada</p> <p>18 statutory counsel.</p> <p>19 Q. Okay.</p> <p>20 Did you practice in multiple areas of law</p> <p>21 between '88 to 2005 or did you focus mostly on</p> <p>22 insurance DOI type issues?</p> <p>23 A. I mean, yeah, I did some other things as</p> <p>24 well.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 23</p> <p>1 retained, experience with the DOI's kind of</p> <p>2 regulations in terms of what was required for</p> <p>3 insurance companies and related companies to comply</p> <p>4 with the DOI's regulations?</p> <p>5 A. You mean captive insurers?</p> <p>6 Q. Yes.</p> <p>7 A. Yes.</p> <p>8 Q. Okay.</p> <p>9 So at the time you were retained by Lewis</p> <p>10 and Clark, had you ever represented a risk retention</p> <p>11 group before?</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 How many would you say?</p> <p>15 A. I don't remember.</p> <p>16 Q. Okay.</p> <p>17 But several?</p> <p>18 A. I don't know if it's several.</p> <p>19 Q. Multiple?</p> <p>20 A. Probably more than one. I don't remember.</p> <p>21 Q. Okay.</p> <p>22 And you were retained, were you not, by</p> <p>23 Sophia Palmer as well; is that right?</p> <p>24 A. I think that's right. Yeah.</p> <p>25 Q. When were you retained by Sophia Palmer?</p>	<p style="text-align: right;">Page 25</p> <p>1 And your engagement with J.M. Woodworth,</p> <p>2 was that related to your interfacing with the DOI as</p> <p>3 well?</p> <p>4 A. I don't have authority to speak on behalf</p> <p>5 of J.M. Woodworth today.</p> <p>6 Q. That's fine. I'm not asking you -- let me</p> <p>7 ask you this: Did you interface with the DOI on</p> <p>8 behalf of J.M. Woodworth?</p> <p>9 A. Again, I don't think I have authority to</p> <p>10 answer any questions with respect to J.M. Woodworth.</p> <p>11 Q. Okay. I think that's fine.</p> <p>12 What's your specific experience as of 2005</p> <p>13 with risk retention groups?</p> <p>14 A. My experience?</p> <p>15 Q. Um-hum.</p> <p>16 A. Well, I think I've helped a few.</p> <p>17 Q. Okay.</p> <p>18 So let me ask you this: How many risk</p> <p>19 retention group clients had you had before you were</p> <p>20 retained by Lewis and Clark?</p> <p>21 A. Yeah. I think you asked me that already,</p> <p>22 and I don't remember.</p> <p>23 Q. Okay.</p> <p>24 With respect to the clients that you did</p> <p>25 have that were risk retention groups, were those</p>

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1 generally -- was it common for risk retention groups
 2 in your experience to be managed by third parties?
 3 **A. There's a statutory requirement that under**
 4 **694C that a captive insurer have a captive manager.**
 5 **It's a statutory requirement.**
 6 Q. Okay.
 7 So that was a requirement, then?
 8 **A. Correct.**
 9 Q. Okay.
 10 So if I understand what you are telling me,
 11 a risk retention group pursuant to the statute that
 12 you reference cannot have its own employees and
 13 employee managers?
 14 MR. WILSON: Object to the form.
 15 **A. I didn't say -- I think there is some --**
 16 **you know, the authority on behalf of the regulator**
 17 **to allow a risk retention group to self-manage if**
 18 **they have -- if they demonstrate sufficient**
 19 **expertise to be able to do so.**
 20 BY MR. WIRTHLIN:
 21 Q. Okay.
 22 And how would they go about doing that?
 23 **A. The same way an admitted carrier would.**
 24 Q. Okay.
 25 And what's that process? If you can just

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1 kind of summarize it for me.
 2 **A. Admitted carriers are required in the state**
 3 **of Nevada to file UCAA; it's a uniform application**
 4 **that's been designed by the NAIC. And it requires**
 5 **bio affidavits and the like to demonstrate**
 6 **experience.**
 7 Q. Okay.
 8 Had you ever heard of Uni-Ter prior to your
 9 retention by Lewis and Clark?
 10 **A. No.**
 11 Q. Do you know what the board of directors of
 12 Lewis and Clark did regarding Uni-Ter's -- you know,
 13 to determine Uni-Ter's qualifications before
 14 retaining Uni-Ter as a manager for Lewis and Clark?
 15 **A. No.**
 16 Q. You weren't involved with that at all?
 17 **A. I think the company was started in 2003 and**
 18 **I wasn't the attorney that was retained at that**
 19 **time.**
 20 Q. So when you came on board in 2005, Uni-Ter
 21 was already up and running as the manager of Lewis
 22 and Clark?
 23 **A. Correct. And I believe it had already been**
 24 **approved by the division as part of the company's**
 25 **application.**

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1 Q. Okay.
 2 And that was the first time you had
 3 encountered Lewis and Clark -- I'm sorry -- Uni-Ter?
 4 **A. I mean, J.M. Woodworth may have been the**
 5 **first, and I just don't remember the timing as**
 6 **between the two companies of when I first heard of**
 7 **them.**
 8 Q. Okay.
 9 Do you know if the board of Lewis and
 10 Clark -- and when I say "the board," I just mean the
 11 board of Lewis and Clark -- do you know if they ever
 12 looked at anybody else, any other entities as being
 13 a possible manager?
 14 **A. Don't know.**
 15 Q. Okay.
 16 What's your familiarity with reinsurance?
 17 **A. I mean, I have some information. I have**
 18 **some knowledge of reinsurance. What in particular**
 19 **are you looking for?**
 20 Q. Sure.
 21 Could you evaluate, for example, a
 22 reinsurance proposal?
 23 **A. Not really, no. I don't have that deep of**
 24 **expertise in terms of evaluating reinsurance**
 25 **policies.**

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1 Q. Okay.
 2 So is it fair to say you wouldn't feel
 3 comfortable opining as to whether there was a
 4 benefit or lack of benefit with respect to a
 5 particular reinsurance program?
 6 **A. Correct.**
 7 Q. Okay.
 8 And when Mr. Elsass contacted you to retain
 9 you to be counsel for Lewis and Clark, did
 10 Mr. Elsass say what company he was affiliated with?
 11 **A. Probably. I don't remember. I don't**
 12 **remember what I was told.**
 13 Q. Okay.
 14 You don't remember if he said Uni-Ter, U.S.
 15 RE, you are just not sure?
 16 **A. I don't remember what card he was carrying.**
 17 Q. Okay.
 18 What's your understanding of what Lewis and
 19 Clark was designed to do?
 20 **A. Well, it's a risk retention group operating**
 21 **under the Federal Liability Risk Retention Act, and**
 22 **so it was to self-insure, I believe, a medical**
 23 **professional liability risk.**
 24 Q. Okay.
 25 And would you agree --

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1 **A. Actually, it was a nursing home, I think.**
 2 **Yeah.**
 3 **Q. Yes.**
 4 **A. J.M. Woodworth was the medical**
 5 **professional, yeah, in nursing home risk.**
 6 **Q. Okay.**
 7 Had you ever had any experience with that
 8 type of risk retention group before Lewis and Clark?
 9 **A. With long-term care --**
 10 **Q. Um-hum.**
 11 **A. -- no.**
 12 **Q. Okay.**
 13 Was it your understanding that the board of
 14 Lewis and Clark put restrictions on the type of
 15 insureds that it would undertake?
 16 **A. I think they did have underwriting**
 17 **guidelines.**
 18 **Q. Were you familiar with those when you were**
 19 **representing Lewis and Clark?**
 20 **A. I believe I had them. I wasn't asked ever**
 21 **to do anything with respect to the underwriting**
 22 **guidelines.**
 23 **Q. Would it be fair to say that the**
 24 **restrictions that were placed required kind of a**
 25 **heightened level of what type of insureds that Lewis**

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1 and Clark would take on?
 2 **MR. WILSON: Object to form. Object to**
 3 **form and foundation.**
 4 **A. Yeah. I mean, I would have to look. I**
 5 **have no idea. And, you know, I'm not an expert at**
 6 **evaluating underwriting guidelines, so --**
 7 **BY MR. WIRTHLIN:**
 8 **Q. Sure. Understood.**
 9 As you sit here today, do you recall any of
 10 the restrictions that the board placed on the --
 11 **A. I do not.**
 12 **Q. -- underwriting guidelines?**
 13 **A. No.**
 14 **Q. Do you recall any type of purpose behind**
 15 **the restrictions? By that, I mean, what was the**
 16 **purpose of those restrictions that the board placed**
 17 **on Lewis and Clark and on Uni-Ter?**
 18 **MR. WILSON: Object. Foundation.**
 19 **A. I don't know. I would be speculating about**
 20 **what was done in creating those because I have no**
 21 **idea how they were created or what people were**
 22 **thinking.**
 23 **BY MR. WIRTHLIN:**
 24 **Q. Okay.**
 25 You weren't involved in that process?

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1 **A. I was not.**
 2 **Q. Okay.**
 3 Would you agree with me that Lewis and
 4 Clark's operating performance from 2005 through 2006
 5 was positive from a financial standpoint?
 6 **A. I don't remember.**
 7 **Q. You don't remember?**
 8 **A. I don't remember.**
 9 **Q. So just kind of on a day-to-day basis --**
 10 **you know, obviously you said, if I understood**
 11 **correctly your testimony, is you were retained by**
 12 **Lewis and Clark to interface with the DOI.**
 13 What did that look like on a day-to-day
 14 basis? What were your duties, functions, that type
 15 of thing?
 16 **A. It wasn't really a day-to-day basis. It**
 17 **would be like particular things they wanted me to**
 18 **do.**
 19 **Q. Okay.**
 20 For example?
 21 **A. I was just going to say getting the surplus**
 22 **notes approved.**
 23 **Q. Okay.**
 24 **A. Yeah.**
 25 **Q. What else?**

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1 **A. I mean, toward the end, before the**
 2 **receivership, there was some communication with the**
 3 **division.**
 4 **Q. Towards the end? What time frame are you**
 5 **talking about?**
 6 **A. 2012.**
 7 **Q. So between '05 and '12, I know that's a big**
 8 **swath of time, but what were your responsibilities**
 9 **other than approval of surplus notes in that time?**
 10 **MR. WILSON: Object to the form.**
 11 **A. They asked me to come to some board**
 12 **meetings in Las Vegas, which I attended. I was on a**
 13 **couple of calls. I think I might have helped with**
 14 **the Sophia Palmer merger. And that's pretty much**
 15 **all I remember.**
 16 **Q. Again, I'm not trying to give you a memory**
 17 **test, but you said some meetings in Nevada during**
 18 **that time frame, '05 to '12.**
 19 How many meetings would you guess you
 20 participated in here in Nevada?
 21 **A. I don't remember.**
 22 **Q. No idea?**
 23 **A. No.**
 24 **Q. Okay.**
 25 And you said it wasn't a daily involvement.

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1 Was it monthly or was it just sporadic,
 2 whenever the board would contact you?
 3 **A. Sporadic.**
 4 Q. Okay.
 5 With respect to underwriting guidelines, is
 6 it your understanding, would you agree with me that
 7 those have to be approved by the DOI?
 8 **A. I don't remember.**
 9 Q. Okay.
 10 So would you know, then, if any material
 11 changes to underwriting guidelines have to be
 12 approved by the DOI?
 13 MR. WILSON: Object to the form.
 14 **A. Yeah. I just don't remember.**
 15 BY MR. WIRTHLIN:
 16 Q. Okay.
 17 Does your practice -- well, that's fine.
 18 Strike that, please.
 19 Well, it sounds like in 2012 you interfaced
 20 with the DOI regarding the receivership that Lewis
 21 and Clark was eventually placed into; is that
 22 correct?
 23 **A. I think the board at some point decided to**
 24 **ask the division to put them into -- the company**
 25 **into receivership.**

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1 Q. Do you remember when that was?
 2 **A. I think it was in 2012.**
 3 Q. Okay.
 4 When did you first become aware that Lewis
 5 and Clark was experiencing financial difficulties?
 6 **A. I don't remember.**
 7 Q. I don't want you to speculate, but can you
 8 give me an estimate of when that was?
 9 **A. I really -- I don't remember.**
 10 Q. Okay.
 11 How about at the time of the Sophia Palmer
 12 merger, were you aware at that time of any financial
 13 problems that Lewis and Clark was experiencing?
 14 MR. WILSON: Object. Foundation.
 15 **A. If I knew what year that was. I don't**
 16 **remember what year it is.**
 17 BY MR. WIRTHLIN:
 18 Q. Okay.
 19 It was 2009, wasn't it? 2009?
 20 **A. 2009.**
 21 Q. So that would have been --
 22 **A. Yeah, I don't remember.**
 23 Q. Okay.
 24 You said the board, if I understood your
 25 testimony, contacted you and asked you about

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1 communicating with the DOI regarding the
 2 receivership or proposed receivership; is that
 3 right?
 4 **A. I think the board at one of their meetings**
 5 **decided to request that the commissioner place the**
 6 **company into receivership.**
 7 Q. Do you remember when that was?
 8 **A. I don't.**
 9 Q. Was that the first that you had heard of a
 10 receivership or were you aware of that potential
 11 issue before that specific meeting?
 12 MR. WILSON: Object to the form.
 13 **A. I don't know what you are asking. I don't**
 14 **understand what you are asking.**
 15 BY MR. WIRTHLIN:
 16 Q. Sounds like you attended a meeting and the
 17 board determined to request that the DOI put them
 18 into receivership; is that accurate?
 19 **A. Yes.**
 20 Q. Okay.
 21 So prior to that board meeting, were you
 22 aware of any financial difficulties that Lewis and
 23 Clark was experiencing?
 24 **A. Oh, I think they were experiencing some**
 25 **issues before that, which they tried to fix by**

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1 **making surplus contributions.**
 2 Q. Okay.
 3 When was that?
 4 **A. I don't remember exactly. Probably 2011, I**
 5 **think is when they made the surplus contributions.**
 6 Q. Okay.
 7 Were you at all kept aware of either
 8 through your own involvement or communications with
 9 the board or Uni-Ter about the growth of Lewis and
 10 Clark --
 11 MR. WILSON: Object to the form.
 12 BY MR. WIRTHLIN:
 13 Q. -- from when you started representing them?
 14 **A. I guess I'm not sure. I'm not**
 15 **understanding the question.**
 16 Q. You said that you would be kind of
 17 sporadically contacted by the board when they wanted
 18 you to interface with the DOI.
 19 Were you at all involved in, you know, I
 20 guess business planning for Lewis and Clark? Hey,
 21 we want to grow this much over the next year; you
 22 know, here are our goals for our financial
 23 condition? Anything like that?
 24 **A. I mean, I wasn't involved with that. I**
 25 **wasn't asked to participate.**

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1 Q. Okay.
 2 Do you have any opinion as to what is
 3 reasonable annual premium growth for an insurance
 4 company like Lewis and Clark?
 5 MR. WILSON: Foundation. Object.
 6 **A. I do not.**
 7 MR. WIRTHLIN: Let's go ahead and mark this
 8 as Exhibit 150.
 9 (Exhibit 150 marked.)
 10 BY MR. WIRTHLIN:
 11 Q. Ms. Akridge, you've been handed an exhibit
 12 that's been marked as Exhibit 150.
 13 Do you recognize that document?
 14 **A. Not really, no.**
 15 Q. I will give you a minute to --
 16 MR. WILSON: It's already been marked as an
 17 exhibit. It's already an exhibit, it's 137.
 18 MR. CEREGHINO: It's actually slightly
 19 different, I think.
 20 MR. WIRTHLIN: We can go off.
 21 (Short recess.)
 22 MR. WIRTHLIN: We can go back on the record
 23 here. Just for the record, we are going to withdraw
 24 Exhibit 150 and strike the marking.
 25 (Exhibit 150 withdrawn.)

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1 BY MR. WIRTHLIN:
 2 Q. Ms. Akridge, if you would look in those
 3 exhibit binders you have in front of you at --
 4 MR. CEREGHINO: Binder Exhibit 2.
 5 **THE WITNESS: What is it?**
 6 MR. CEREGHINO: Binder 2.
 7 **THE WITNESS: What's the number?**
 8 BY MR. WIRTHLIN:
 9 Q. It's 139.
 10 **A. (Witness reviewing document.)**
 11 Q. Have you had a chance to review
 12 Exhibit 139?
 13 **A. I just kind of thumbed through it.**
 14 Q. Does that refresh your recollection at all
 15 about what that document is?
 16 **A. No. I don't remember it.**
 17 Q. Okay.
 18 Do you see on the first page there, it
 19 looks like the formatting is a little strange, but
 20 your name is at the top as an addressee?
 21 MR. WILSON: Object to the form.
 22 **A. Looks my name is up there with my law firm,**
 23 **but no address.**
 24 BY MR. WIRTHLIN:
 25 Q. Okay.

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1 You don't recall getting this letter at
 2 all?
 3 **A. I might have gotten it during a board**
 4 **meeting, but I don't remember if I ever got it.**
 5 Q. I don't want to belabor the point here, but
 6 if you look at page 844, do you see down there, it
 7 looks like right above the -- it says,
 8 "Respectfully, Richard 'Doc' Malone"?
 9 **A. Right.**
 10 Q. And who was Richard "Doc" Malone?
 11 **A. I don't remember.**
 12 Q. It just has your name right before
 13 "respectfully."
 14 Doesn't ring a bell?
 15 **A. Looks very odd.**
 16 Q. You don't recall sending an e-mail or
 17 something?
 18 **A. No. No.**
 19 Q. Okay.
 20 **A. Yeah. I think this is in my file. I just**
 21 **don't know why.**
 22 Q. You don't know why?
 23 **A. Yeah.**
 24 Q. Let's just look and see, just have a couple
 25 of questions about the substance of it.

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1 If you look at page 843 --
 2 MR. WILSON: 843?
 3 MR. WIRTHLIN: 843.
 4 MR. WILSON: Okay.
 5 BY MR. WIRTHLIN:
 6 Q. That first paragraph right next to Roman
 7 numeral three, it says, "We would also like to
 8 change the way we underwrite larger accounts, 15 or
 9 more facilities."
 10 Do you see that?
 11 **A. I do.**
 12 Q. Okay.
 13 Do you recall any discussions at this time
 14 between either Uni-Ter or U.S. RE or the board about
 15 changing the way that they underwrote larger
 16 accounts?
 17 **A. I don't remember.**
 18 Q. Okay.
 19 Is there anything that would jog your
 20 memory on that?
 21 **A. I mean, this is probably part of a board**
 22 **meeting I attended. I just can't remember. I don't**
 23 **have a specific memory about changing the**
 24 **underwriting guidelines.**
 25 Q. Okay. All right.

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1 We'll get into it a little bit later, but
 2 would you believe in your opinion something like
 3 changing underwriting guidelines would be reflected
 4 in a board minute?
 5 MR. WILSON: Foundation. Objection.
 6 MS. OCHOA: Join.
 7 **A. Yeah. Unless I knew the facts and**
 8 **circumstances, I don't have an opinion just out in**
 9 **space about that, no.**
 10 BY MR. WIRTHLIN:
 11 Q. Okay.
 12 Were you aware at any time that the
 13 underwriting guidelines for Lewis and Clark were
 14 changed?
 15 **A. I don't have a specific memory about that,**
 16 **no.**
 17 Q. You said that you helped out Lewis and
 18 Clark with the Sophia Palmer merger?
 19 **A. I did, yeah.**
 20 Q. We'll get into that little bit later, but
 21 what was your involvement with that?
 22 **A. Just helped them get regulatory approval**
 23 **for it.**
 24 Q. What did that involve?
 25 **A. I filed documents with the division and I**

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1 **think there was a hearing required.**
 2 Q. Did you attend that hearing?
 3 **A. I might have attended it by phone, I think.**
 4 Q. Okay.
 5 What occurred at the hearing?
 6 **A. Just, everything that -- all the**
 7 **requirements under, I think it's 693A would have**
 8 **been met.**
 9 Q. Okay.
 10 What kind of documents did you have to
 11 prepare as part of that?
 12 **A. Just the request to have it approved and**
 13 **just kind of walk through the requirements under the**
 14 **statute as to why they were satisfied and -- that's**
 15 **pretty much it.**
 16 Q. Were you involved at all with the decision
 17 to merge with Sophia Palmer?
 18 **A. No.**
 19 MR. WILSON: I didn't hear the answer.
 20 **THE WITNESS: No.**
 21 MR. WILSON: Okay. Thank you.
 22 BY MR. WIRTHLIN:
 23 Q. So it was more once a decision was made,
 24 you were contacted to help make it happen?
 25 **A. Correct.**

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1 Q. Okay.
 2 MR. WIRTHLIN: We've been going for about
 3 an hour. Let's take a quick break, if that's okay.
 4 (Short recess.)
 5 BY MR. WIRTHLIN:
 6 Q. Ms. Akridge, if you could look at your
 7 binder number one, Exhibit 45.
 8 And for the record, you are looking at
 9 Exhibit 45, that's been previously marked.
 10 Do you recognize that document?
 11 MR. WILSON: I just didn't know if I had
 12 the right one or not.
 13 **A. (Witness reviewing document.)**
 14 **No.**
 15 BY MR. WIRTHLIN:
 16 Q. Have you ever -- do you know if you've ever
 17 seen this document before?
 18 **A. I don't remember ever seeing it.**
 19 Q. Okay.
 20 Well, let me ask you to just take a look at
 21 it. If you want to read through it, that's fine,
 22 but let me know -- let me know if you want to read
 23 through it, but I just have a couple questions about
 24 it. If you look at that subject line, "Re: June 30,
 25 2011, Lewis and Clark deteriorating financial

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1 condition."
 2 You see that?
 3 **A. Yes.**
 4 Q. Okay.
 5 Would you agree with me that's not a good
 6 thing, that Lewis and Clark is having a
 7 deteriorating financial condition?
 8 MR. WILSON: Foundation. Object.
 9 **A. Yeah. I'm not really sure what you are**
 10 **asking me.**
 11 BY MR. WIRTHLIN:
 12 Q. Okay.
 13 Well, would you agree with me this is a
 14 letter of a negative financial condition of Lewis
 15 and Clark? And again, if you need some time to read
 16 it, take all the time you need.
 17 **A. Sure.**
 18 (Witness reviewing document.)
 19 Okay.
 20 Q. And what do you understand this letter to
 21 be saying from the Department of Insurance?
 22 **A. Based upon the review of the June 30, 2011**
 23 **financial statement of the company, there are some**
 24 **concerns about the -- solvency concerns.**
 25 Q. Okay.

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1 Did you review any of the June 30, 2011
2 financial statements for Lewis and Clark?
3 **A. No. I didn't review financial statements**
4 **for the company.**
5 Q. At any point?
6 **A. No.**
7 Q. Okay.
8 MR. WILSON: Can you speak up just a little
9 bit?
10 **THE WITNESS: I'm sorry. My voice is not**
11 **the best. It is not a broadcaster's voice, that's**
12 **for sure.**
13 BY MR. WIRTHLIN:
14 Q. And it's your testimony you'd never seen
15 this letter before today?
16 **A. Never.**
17 Q. Okay.
18 Did you review any other documents other
19 than those in your file --
20 **A. No.**
21 Q. -- before your deposition today?
22 **A. No.**
23 Q. Okay.
24 Were you aware that this letter existed
25 before today?

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1 **A. No.**
2 Q. Never heard anybody talk about it?
3 **A. No, I've never seen it before.**
4 Q. Did the board ever tell you, Hey, we
5 received a letter in September 2011 about the
6 financial condition of Lewis and Clark and we need
7 to do something?
8 **A. I mean, I don't remember if they mentioned**
9 **a letter. I mean, I know they were aware of the**
10 **condition; otherwise, they would not have made all**
11 **those surplus contributions in 2011.**
12 Q. Okay.
13 And the timing of this letter, it was
14 received September 23rd, 2011.
15 Does that jog your memory at all about when
16 those surplus contributions were made?
17 **A. I think they were 2011, but I don't**
18 **remember exactly when.**
19 Q. Okay.
20 The latter part of the year? First half of
21 the year?
22 **A. I just can't remember.**
23 Q. Okay.
24 Would you agree with me this letter is --
25 it's Exhibit 45 -- was very significant for Lewis

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1 and Clark?
2 MR. WILSON: Object to the form.
3 **A. Yeah. I'm not really sure what you are**
4 **asking me.**
5 BY MR. WIRTHLIN:
6 Q. Do you think this is something that the
7 board should have seen?
8 **A. Well, the board --**
9 MR. WILSON: Object to the form.
10 **A. -- it was addressed to the president of the**
11 **board.**
12 BY MR. WIRTHLIN:
13 Q. Correct.
14 But do you agree this is a letter that the
15 board should have seen?
16 **A. I have no idea whether or not it was shared**
17 **with them.**
18 Q. That's a little different. My question is
19 a little different than that.
20 **A. Um-hum.**
21 Q. Do you think that this is a letter that
22 would be important for the board to see?
23 MR. WILSON: Foundation. Object.
24 **A. I mean, if I had been the president of the**
25 **board, I probably would have shared it with the**

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1 **board.**
2 BY MR. WIRTHLIN:
3 Q. Okay.
4 **A. Yeah.**
5 Q. But just to clarify, you don't have any
6 knowledge one way or the other as to whether or not
7 the board received this letter?
8 **A. I have no idea.**
9 Q. Okay.
10 Looking through that letter, do you --
11 strike that.
12 You were counsel for Lewis and Clark at the
13 time this letter was issued, September 23, 2011,
14 correct?
15 **A. Correct.**
16 Q. Okay.
17 Have you ever seen a letter like this in
18 your career from the DOI?
19 **A. Yes.**
20 Q. Okay.
21 How many other times?
22 **A. I can't remember.**
23 Q. Okay.
24 Can you tell me the context in which you
25 have seen a letter like this?

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1 **A. My representation of insurers.**
 2 Q. Okay.
 3 And what's your general response when you
 4 receive a letter like this?
 5 MR. WILSON: Object to the form and
 6 foundation.
 7 **A. Well, when you say "letters like this," any**
 8 **letter by an analyst from the division addressing --**
 9 **after the review of a financial statement, I**
 10 **think -- that's how I'm answering it.**
 11 Q. I understand.
 12 **A. I mean, those are letters that the company**
 13 **generally needs to pay attention to.**
 14 Q. When you say "needs to pay attention to,"
 15 what do you mean?
 16 **A. I'm not sure how to further articulate what**
 17 **I've already articulated.**
 18 Q. Well, this letter specifically, if you look
 19 at that last sentence on the first paragraph, "The
 20 board and management must now prepare a short-term
 21 three-month action plan, and based on this action
 22 plan, how they forecast their 12/31/2011 statement
 23 to appear."
 24 Do you see that?
 25 **A. Correct.**

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1 Q. Okay.
 2 Did I read that correctly?
 3 **A. Correct.**
 4 Q. Okay.
 5 Had you ever seen a letter from the
 6 Department of Insurance to an entity stating that it
 7 needed to prepare a three-month action plan?
 8 **A. Well, I will answer that I have seen**
 9 **correspondence from the division applying the**
 10 **risk-based capital requirements to an insurer, and**
 11 **depending on what level of the RBC, the division**
 12 **would be required to take certain action or not**
 13 **required to take certain action.**
 14 Q. Do you ever recall that action being
 15 required to be a three-month action plan?
 16 **A. Yeah. I think that's what the statute**
 17 **requires under certain circumstances.**
 18 Q. Had you ever seen that in any other entity
 19 other than Lewis and Clark?
 20 **A. I've already answered. I've seen -- I've**
 21 **gotten other sort of RBC letters I will call them.**
 22 Q. I understand, and maybe I'm not asking the
 23 question very clearly.
 24 But had you ever seen a letter, an RBC
 25 letter, as you call it, requiring an entity to

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1 prepare a three-month action plan?
 2 **A. Yes.**
 3 Q. Okay.
 4 How often?
 5 **A. I don't remember.**
 6 Q. And you don't remember the number of times
 7 you've seen that?
 8 **A. I don't.**
 9 Q. Okay.
 10 Generally, in your experience, is it
 11 important to prepare that three-month action plan
 12 once the RBC letter directing that it be prepared is
 13 received?
 14 **A. I mean, it depends. By statute, it depends**
 15 **on what RBC level you are at. The regulator can**
 16 **require you to prepare that.**
 17 Q. Okay.
 18 And what, according to the letter, is the
 19 RBC level that Lewis and Clark is at this time?
 20 **A. They don't say.**
 21 Q. Do you recall any type of three-month
 22 action plan being prepared by the board?
 23 **A. I don't remember.**
 24 Q. Were you involved in any way with
 25 preparation of a three-month action plan by the

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1 board?
 2 **A. I don't remember.**
 3 Q. You could have been?
 4 **A. I just don't remember if I was.**
 5 Q. Okay.
 6 **A. If it was in my file, I probably was. I**
 7 **don't remember seeing anything like that in my file.**
 8 Q. Right.
 9 And this letter was not in your file?
 10 **A. That's correct.**
 11 Q. But as you sit here today, you don't recall
 12 any action by the board to prepare a three-month
 13 action plan?
 14 **A. I think there was at least some, at some**
 15 **point a letter was sent in regarding -- you know,**
 16 **addressing the financial and saying that the company**
 17 **thought that by eliminating certain of the risks by**
 18 **making surplus contributions, that they believed**
 19 **they could right the ship. And I don't remember**
 20 **when that was written, but I kind of remember**
 21 **sending something that said something along those**
 22 **lines.**
 23 MR. WIRTHLIN: Go ahead and mark this, if
 24 you could, as Exhibit 150.
 25 (Exhibit 150 marked.)

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1 BY MR. WIRTHLIN:
 2 Q. Ms. Akridge, you've been handed what's been
 3 marked Exhibit 150.
 4 A. Yes.
 5 Q. Do you recognize that exhibit?
 6 A. Yes.
 7 Q. What is that?
 8 A. **This is correspondence we sent in to John**
 9 **Marshall at the division.**
 10 Q. Okay.
 11 And it looks like in the signature line
 12 that's your name there, but the actual signature
 13 looks like it's Ellen Viola?
 14 A. **That's my paralegal.**
 15 Q. Okay.
 16 Did you create this letter --
 17 A. **I did.**
 18 Q. -- Exhibit 150? Okay.
 19 And at whose direction?
 20 A. **The board's direction.**
 21 Q. Okay.
 22 And what did the board tell you with
 23 respect to preparing of this letter?
 24 A. **They gave me the bullet points to put in**
 25 **there.**

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1 Q. "They," meaning the board?
 2 A. Yes.
 3 Q. So if you look at those bullet points there
 4 on page 492, Bates 492, did you have any personal
 5 knowledge of these bullet points or were they sent
 6 to you to include in this letter?
 7 A. **Well, I had personal knowledge about the**
 8 **cash contributions, because I had at some point**
 9 **asked for those surplus notes to be approved by the**
 10 **division.**
 11 Q. To be, I'm sorry, approved?
 12 A. **Approved by the division, yes.**
 13 Q. So let's talk about that. I think you are
 14 referring to number 3 --
 15 A. Yes.
 16 Q. -- "a total of \$2,220,000 in cash has been
 17 contributed to the capital L&C primarily by entities
 18 affiliated with the directors."
 19 How was that number arrived at? The 2.2 --
 20 A. **It's a total of all the surplus**
 21 **contributions that were made.**
 22 Q. Okay.
 23 Do you know how it was determined that that
 24 would be the amount of money that would be
 25 contributed to the capital of Lewis and Clark?

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1 A. **I don't.**
 2 Q. You weren't involved in that discussion at
 3 all?
 4 A. **No.**
 5 Q. In other words, you didn't have any
 6 substantive knowledge about how that number had been
 7 arrived at, just that that was the number that was
 8 the amount of cash that had been contributed to L&C?
 9 A. **Yeah. That number is just the amount**
 10 **that's been contributed.**
 11 Q. Okay.
 12 And when you say there it had been
 13 contributed primarily by entities affiliated with
 14 the directors, who else was there that had made
 15 contributions?
 16 A. **I think it was primarily the directors.**
 17 Q. Do you recall anyone else or any other
 18 entity?
 19 A. **I think Uni-Ter might have made a**
 20 **contribution as well.**
 21 Q. Okay.
 22 Anybody else?
 23 A. **Not that I know of.**
 24 Q. All right.
 25 So if you look at numbered bullet point one

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1 there, did you have any personal knowledge about
 2 that statement?
 3 A. **Just what they -- what was discussed in**
 4 **board meetings.**
 5 Q. Okay.
 6 And what was discussed in board meetings
 7 with respect to bullet point number one?
 8 A. **Just that there had been significant claims**
 9 **by the California nursing home.**
 10 Q. And which one was that in California?
 11 A. **I think it was -- Country Villas was one of**
 12 **them, anyway.**
 13 Q. Okay.
 14 A. **I just remember that name.**
 15 Q. When you say "board meetings," is that
 16 where you learned about that?
 17 A. **Right.**
 18 Q. Okay.
 19 And when were those board meetings? How
 20 many are we talking about? When were they --
 21 A. **Yeah, I don't remember.**
 22 Q. Don't know?
 23 A. **I don't remember when.**
 24 Q. Do you remember who other than the board
 25 would attend and you?

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1 A. Well, the Uni-Ter people would be there,
 2 and then whatever other vendors, auditor sometimes,
 3 I think, maybe the actuary.
 4 Q. Okay.
 5 When you say "Uni-Ter people," who do you
 6 mean?
 7 A. Sandy Elsass.
 8 Q. Okay.
 9 Anyone else?
 10 A. There may have been other Uni-Ter people as
 11 well. I can't remember exactly. It wasn't the same
 12 every time, too, I don't believe.
 13 Q. Okay.
 14 It says "to a lesser degree, New York."
 15 Do you know what that refers to?
 16 A. I do not.
 17 Q. Okay.
 18 I'm just trying to get how you -- you know,
 19 the basis for your personal knowledge to the extent
 20 you had any about this bullet point number one.
 21 Did you review documents that supported
 22 this statement?
 23 A. No.
 24 Q. How did you learn about it, then?
 25 A. During the board meeting.

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1 Q. So just from statements of the people
 2 there?
 3 A. Correct.
 4 Q. Okay.
 5 If you look at bullet point number two
 6 there, "In response, the board of directors of L&C
 7 has met on six occasions since September 2011 and
 8 has taken a number of actions."
 9 Obviously, that references September 2011.
 10 Why did -- in other words, why did you say,
 11 Hey, we've had six meetings, the board has had six
 12 meetings since 2011? Why did you pick that date?
 13 A. I don't remember.
 14 Q. Okay.
 15 And when you say "the board of directors
 16 has met on six occasions," what type of meetings
 17 were those?
 18 A. It could be a phone meeting. It could be
 19 an in-person meeting. I don't remember.
 20 Q. You don't remember?
 21 A. I don't, no.
 22 Q. Okay.
 23 Do you remember if the entire board met
 24 during those times or not?
 25 A. I think maybe the Las Vegas meetings it was

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1 the entire board, or at least most of the board was
 2 there at those meetings.
 3 Q. I'm not trying to put words in your mouth,
 4 but it sounds like you recall there was at least a
 5 Las Vegas meeting in person during that time?
 6 A. You mean, was Carol Harder there?
 7 Q. Well, what do you mean when you say
 8 "Las Vegas meeting"?
 9 A. I mean meetings that would be held in
 10 Las Vegas.
 11 Q. Okay. So that's what I'm asking.
 12 Do you recall during that time any of those
 13 six meetings being held in Las Vegas?
 14 A. I have to look at the records. I don't
 15 remember.
 16 Q. Okay.
 17 A. Probably, but I don't remember
 18 specifically.
 19 Q. What happened during those meetings?
 20 MR. WILSON: Object to the form.
 21 A. Just the discussion of the claims and, you
 22 know, what needs to be done to move forward.
 23 BY MR. WIRTHLIN:
 24 Q. And I think you testified earlier --
 25 correct me if I am wrong -- that you don't recall at

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1 any of those meetings a three-month action plan
 2 being discussed; is that accurate?
 3 A. I don't remember. Could have been. Just
 4 don't remember.
 5 Q. Okay.
 6 And it states in there, in that bullet
 7 point number two, "the board has met on six
 8 occasions since September 2007 and has taken a
 9 number of actions."
 10 What did you mean by -- what are the
 11 actions you had taken?
 12 A. I think that's talking about three, four,
 13 five -- three, four, and five.
 14 Q. Okay.
 15 Anything else that you recall as actions
 16 that the board had taken?
 17 A. That's what I understood the actions were.
 18 Q. And it sounds like three you did have some
 19 involvement with because you sought approval of
 20 those surplus notes in front of the DOI?
 21 A. Correct.
 22 Q. How about four and five, did you have any
 23 personal involvement with those?
 24 A. I just heard them talking about it at the
 25 meeting.

<p style="text-align: right;">Page 62</p> <p>1 Q. Okay.</p> <p>2 Do you recall, with respect to number four,</p> <p>3 who the independent claims consultants were that</p> <p>4 audited the reserves for outstanding claims?</p> <p>5 A. I wasn't familiar with who they are. I</p> <p>6 know it's in the minutes of whatever meeting --</p> <p>7 Q. Okay.</p> <p>8 You just heard the board talking about</p> <p>9 that?</p> <p>10 A. Correct.</p> <p>11 Q. Was Mr. Sitterson at any of those meetings</p> <p>12 or participating?</p> <p>13 A. I think he was at every meeting, yeah.</p> <p>14 Q. Anyone else other than Mr. Sitterson and</p> <p>15 Uni-Ter who was there at all of those meetings?</p> <p>16 A. I mean, there are other vendors that could</p> <p>17 be there as well. I just don't remember.</p> <p>18 Q. That's fine.</p> <p>19 And then number five, "The book of business</p> <p>20 causing the insured losses has been cancelled or</p> <p>21 non-renewed."</p> <p>22 Do you remember which book of business that</p> <p>23 was?</p> <p>24 A. I think it's the Country Villas would be</p> <p>25 included in that. I don't know if that was the</p>	<p style="text-align: right;">Page 64</p> <p>1 and Clark, right? Is that what you said?</p> <p>2 Q. Yes. That's what I'm asking, if that's</p> <p>3 your understanding.</p> <p>4 A. I thought you said Uni-Ter. So, okay.</p> <p>5 I'm sorry, what was the question?</p> <p>6 Q. What I'm getting at, I guess, is did you do</p> <p>7 any independent investigation with respect to</p> <p>8 Country Villas being either cancelled or non-renewed</p> <p>9 or was this just information that had been relayed</p> <p>10 to you?</p> <p>11 A. Yeah. It was relayed to me.</p> <p>12 Q. Okay.</p> <p>13 When I say "relayed to you," I mean in</p> <p>14 those board meetings --</p> <p>15 A. Correct.</p> <p>16 Q. -- after 2011, September 2011.</p> <p>17 A. Correct.</p> <p>18 Q. Okay.</p> <p>19 And then number six, "The remaining book of</p> <p>20 business is historically profitable."</p> <p>21 Did you have personal knowledge of that or</p> <p>22 was that, again, related to you by what you heard in</p> <p>23 the board meetings?</p> <p>24 A. Correct.</p> <p>25 Q. Which one?</p>
<p style="text-align: right;">Page 63</p> <p>1 extent of business that was cancelled.</p> <p>2 Q. Well, you state that "the book of business</p> <p>3 causing the insured losses."</p> <p>4 Who determined that that book of business,</p> <p>5 which you believe -- you said is Country Villas was</p> <p>6 causing the insured losses?</p> <p>7 A. What's the question? I'm sorry.</p> <p>8 Q. In other words, did you undertake any</p> <p>9 independent evaluation of what was causing those</p> <p>10 insured losses?</p> <p>11 A. Did I?</p> <p>12 Q. Yes.</p> <p>13 A. No.</p> <p>14 Q. Did the board, to your knowledge?</p> <p>15 A. As I recall, there were discussions about</p> <p>16 the claims that were causing the losses and how to</p> <p>17 deal with those claims.</p> <p>18 Q. Okay.</p> <p>19 Were you aware that -- was it your</p> <p>20 understanding that Country Villas had been cancelled</p> <p>21 or non-renewed by either Lewis and Clark or Uni-Ter?</p> <p>22 A. That was my understanding.</p> <p>23 Q. And that was based on what had been</p> <p>24 conveyed to you in the board meetings?</p> <p>25 A. I mean, I think it was cancelled by Lewis</p>	<p style="text-align: right;">Page 65</p> <p>1 A. The latter.</p> <p>2 Q. Board meetings?</p> <p>3 A. Yes.</p> <p>4 Q. Okay.</p> <p>5 And the remaining statement there in bullet</p> <p>6 point number six, is that, again, your personal</p> <p>7 knowledge or based on what was conveyed to you in</p> <p>8 the board meetings?</p> <p>9 A. The board meetings.</p> <p>10 Q. Okay.</p> <p>11 So in this letter, if you look at the first</p> <p>12 page there, 491 is dated, it appears, January 18,</p> <p>13 2012?</p> <p>14 A. Right.</p> <p>15 Q. Do you recall when the receivership was put</p> <p>16 in place for Lewis and Clark?</p> <p>17 A. I believe it was later that year.</p> <p>18 Q. Okay.</p> <p>19 Do you recall what the board did, to your</p> <p>20 knowledge, between the date of this letter and the</p> <p>21 receivership being put into place?</p> <p>22 A. Well, one of the things they did is they</p> <p>23 met and decided to ask the commissioner to place the</p> <p>24 company into receivership.</p> <p>25 Q. What went into that decision?</p>

<p style="text-align: right;">Page 66</p> <p>1 A. I'm sorry?</p> <p>2 Q. What went into that decision?</p> <p>3 A. I would be speculating if I tried to</p> <p>4 respond to that question.</p> <p>5 Q. Okay.</p> <p>6 Did the board come to you and say, We made</p> <p>7 a decision to ask the DOI to put us in receivership</p> <p>8 or were you involved in the discussions leading up</p> <p>9 to that decision?</p> <p>10 A. No. I was only asked to communicate that</p> <p>11 to the division.</p> <p>12 Q. So you had no involvement in the decision</p> <p>13 to ask the DOI to do that?</p> <p>14 A. No, I was not.</p> <p>15 Q. All right. Let's go back to Exhibit 45,</p> <p>16 the 2011 letter.</p> <p>17 Had you seen any other letters from the DOI</p> <p>18 to the board or Lewis and Clark expressing concern</p> <p>19 about Lewis and Clark's financial condition prior to</p> <p>20 the 2011 letter?</p> <p>21 A. I don't remember. I think we only received</p> <p>22 what was in our file. I don't remember if there</p> <p>23 were any of those kinds of letters.</p> <p>24 Q. Okay.</p> <p>25 So to your knowledge, if it wasn't in your</p>	<p style="text-align: right;">Page 68</p> <p>1 A. Yes.</p> <p>2 Q. Okay.</p> <p>3 And since you mentioned it, you talked</p> <p>4 about, I think it's on page two -- I'm sorry, 6157,</p> <p>5 something about a pigeon problem?</p> <p>6 A. Yeah.</p> <p>7 Q. What was that?</p> <p>8 A. So when the division was in their prior</p> <p>9 office space, they had a terrible pigeon problem and</p> <p>10 they had to come and spray all sorts of terrible</p> <p>11 chemicals in the place, a bunch of people got sick</p> <p>12 and their files got destroyed, so it was really bad.</p> <p>13 Yeah. I felt bad for them.</p> <p>14 Q. So it looks like the only -- well, I see</p> <p>15 you're copied on the letter from Donna Dalton dated</p> <p>16 September 7, 2010, which is page 6154.</p> <p>17 A. The e-mail?</p> <p>18 Q. Yes, the e-mail.</p> <p>19 A. You said "letter."</p> <p>20 Q. I apologize if I said "letter." The</p> <p>21 e-mail.</p> <p>22 Do you recall, did you read through this</p> <p>23 string of e-mails here that's attached as</p> <p>24 Exhibit 147?</p> <p>25 A. Yeah. I don't know if these were all</p>
<p style="text-align: right;">Page 67</p> <p>1 file that you produced to us, you didn't receive it?</p> <p>2 A. Correct.</p> <p>3 Q. Okay.</p> <p>4 Nothing was taken out or destroyed or</p> <p>5 anything like that?</p> <p>6 A. No.</p> <p>7 Q. And let's look at Exhibit 127. Sorry to</p> <p>8 keep going back and forth between binders.</p> <p>9 Let me know when you've finished reviewing</p> <p>10 that.</p> <p>11 A. (Witness reviewing document.)</p> <p>12 Okay.</p> <p>13 Q. So you've had a chance to review that</p> <p>14 document, Exhibit 127?</p> <p>15 A. Yes.</p> <p>16 Q. And do you recognize that?</p> <p>17 A. I didn't remember it until looking at it.</p> <p>18 Now it looks like my name is on it.</p> <p>19 Q. Okay.</p> <p>20 That's on page -- I'm not going to go</p> <p>21 through the letters -- 6154?</p> <p>22 A. Yes.</p> <p>23 Q. All right.</p> <p>24 And is that your e-mail address,</p> <p>25 cakridge@jonesvargas.com, or was it at the time?</p>	<p style="text-align: right;">Page 69</p> <p>1 attached, you know, to the one I got. I don't have</p> <p>2 any memory particularly of it, no.</p> <p>3 Q. Do you see that subject line on the one you</p> <p>4 are specifically CC'd on?</p> <p>5 A. Yes.</p> <p>6 Q. "Re: Lewis and Clark Post-merger capital</p> <p>7 deterioration," what was your understanding of what</p> <p>8 that meant?</p> <p>9 A. Well, I'm looking through the e-mails. It</p> <p>10 looks like there was some concern by John Marshall</p> <p>11 that the merger contributed to -- the Sophia Palmer</p> <p>12 merger contributed to capital deterioration.</p> <p>13 Q. And you were retained to kind of interface</p> <p>14 with the DOI, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Okay.</p> <p>17 Do you recall getting that letter around</p> <p>18 this time from the DOI talking about --</p> <p>19 A. What letter is that?</p> <p>20 Q. Well, let's take a look at that.</p> <p>21 If you go down to the next e-mail down --</p> <p>22 A. Yes.</p> <p>23 Q. -- from John Marshall to Donna Dalton,</p> <p>24 several CCs?</p> <p>25 A. Yes.</p>

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1 Q. By the way, do you know who Peggy
2 Willard-Ross is?
3 A. I do.
4 Q. Who is that?
5 A. She's in the division's corporate and
6 financial section.
7 Q. How about Bill McCune?
8 A. He passed away. He was murdered in Carson
9 City by a bunch of people, and they threw him in the
10 Truckee River. Tied him up in a blanket and
11 murdered him, so he passed away. Yeah. It was
12 really sad. He was nice guy.
13 Q. How about a Katrina Johnson?
14 A. I don't recognize that name.
15 Q. Okay.
16 So that's an e-mail that appears to be from
17 John Marshall to Donna. "Thanks, Donna. I'm glad
18 to hear the results were not a result of the
19 merger."
20 So if you are looking at -- and, again, I
21 know I gave you a chance to peruse this, but do you
22 recall what the substance of the conversation was
23 with respect to why it was believed by the DOI that
24 the Sophia Palmer merger had affected Lewis and
25 Clark's financial situation?

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1 A. I don't. I don't.
2 Q. When you got this e-mail, did you forward
3 it to the board or anybody else?
4 A. Yeah. Again, I don't know how much of this
5 I received other than the top part. I have no idea
6 whether the rest of this was attached at that point.
7 I have no idea.
8 Q. Okay.
9 So that is your e-mail address or was at
10 the time, cakridge@jonesvargas.com.
11 Do you recall when you got this letter what
12 your reaction was to the subject line, "Lewis and
13 Clark Post-merger Capital Deterioration"?
14 MR. WILSON: Object to the form.
15 A. No. It looks like I'm being copied maybe
16 potentially on that -- the e-mail because there was
17 some issue in the examination report about stock
18 ownership, their methods regarding stock ownership,
19 and they said they wanted a hearing. So maybe
20 that's why they copied me, because if there was
21 going to be a hearing request, I would probably be
22 doing it.
23 BY MR. WIRTHLIN:
24 Q. Did you talk to anybody about this e-mail?
25 A. No. I don't remember.

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1 Q. Okay.
2 And just so I'm clear, no, you didn't or
3 you don't remember?
4 A. I don't remember.
5 Q. Okay.
6 You don't recall calling up Donna and
7 saying, Hey, what's going on here?
8 A. No.
9 Q. The second sentence there, this appears to
10 be from Donna Dalton, "Are you going to amend the
11 letter addressed to Jeff Marshall [verbatim] last
12 week?"
13 What was your understanding of that
14 statement?
15 A. Just looking through, I don't have any
16 memory or any understanding of it, but just looking
17 through the thread, it looks like she was asking
18 John Marshall, the analyst, to amend some letter
19 that was received that made a connection between the
20 capital deterioration and the Sophia Palmer merger.
21 Q. Did you talk to the board at all about that
22 issue?
23 A. No. I never knew it was really an issue.
24 I don't remember it ever being an issue.
25 Q. Okay.

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1 When you got this e-mail, did you ask to
2 see that letter at all that's referenced in the
3 e-mail from Donna that she copied you on?
4 A. Again, I don't know if the rest of it was
5 part of what I got.
6 Q. I understand. I'm just talking about the
7 e-mail specifically, which you were copied on, from
8 Ms. Dalton at the very top of that page where she
9 says, "Are you going to amend the letter addressed
10 to Jeff Marshall last week?"
11 Did you have any understanding as to what
12 that letter was?
13 A. No.
14 Q. Or what the amendment was?
15 A. No.
16 Q. Or why it was a problem, at least from
17 Donna Dalton's perspective?
18 A. No.
19 Q. Go ahead and keep this open, if you would.
20 Going back to what you said before, do you
21 have any reason to believe you did not receive all
22 of these attachments that -- in other e-mails that
23 are contained within this Exhibit 127?
24 A. I just have no idea, because I didn't keep
25 the e-mails. I have no idea.

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1 Q. You didn't keep e-mails, you said?

2 **A. No.**

3 Q. When you say you didn't keep them, what do

4 you mean?

5 **A. Our system doesn't keep e-mails.**

6 Q. It doesn't retain them?

7 **A. Right.**

8 Q. Okay.

9 What happened to them? Were they deleted

10 after a particular amount of time.

11 **A. Yeah. After a particular amount of time.**

12 Q. So as you sit here today, you just don't

13 know if you received the rest of these e-mails back

14 and forth when this top e-mail was forwarded to you?

15 **A. Correct.**

16 Q. Might have been, you just don't know?

17 **A. Correct. I don't remember it.**

18 Q. Okay.

19 But you don't recall any type of

20 communication with the board about this letter from

21 the DOI in 2010?

22 **A. I don't remember.**

23 Q. So let's go to Exhibit 14. You can keep

24 that exhibit open. I know -- oh, Exhibit 46, I'm

25 sorry.

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1 **A. (Witness reviewing document.)**

2 **Okay.**

3 Q. And do you recognize Exhibit 46?

4 **A. I do not.**

5 Q. Okay.

6 Have you ever seen that before, to your

7 knowledge?

8 **A. No.**

9 Q. Okay.

10 Were you aware at all that the DOI -- well,

11 strike that, please.

12 If you look at the Re line, regarding line,

13 on Exhibit 46 there, it says, "Post Sophia Palmer

14 merger deteriorating financial condition."

15 Do you see that?

16 **A. Yes.**

17 Q. And were you aware at any time that the DOI

18 was making the connection between the merger with

19 Sophia Palmer and Lewis and Clark's deteriorating

20 financial condition?

21 **A. I don't remember that being the case.**

22 Q. After you helped out with the Sophia Palmer

23 merger with Lewis and Clark, did you have any other

24 involvement with Sophia Palmer -- strike that.

25 After you helped out with the merger of

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1 Sophia Palmer and Lewis and Clark, what involvement,

2 if any, did you have with respect to Sophia Palmer?

3 **A. It didn't exist anymore after the merger.**

4 Q. Okay.

5 I guess what I'm asking is: Did you

6 monitor in any way the financial condition of Lewis

7 and Clark after its merger with Sophia Palmer?

8 **A. My job wasn't to monitor the financial**

9 **condition of Lewis and Clark at any time.**

10 Q. Were you aware that there was a

11 deteriorating financial condition after the merger

12 with Sophia Palmer?

13 MR. WILSON: Object to the form.

14 **A. I don't remember when I first learned there**

15 **were questions being asked by the division and**

16 **concern by the board about the condition of the**

17 **company and the solvency.**

18 Q. If you look back at 127 at the top line of

19 the e-mail you were copied on directly --

20 **A. Yes.**

21 Q. -- and the regarding line says "Lewis and

22 Clark Post-merger Capital Deterioration," what did

23 you understand that to mean?

24 **A. I think I've already answered that, which I**

25 **didn't -- you know, I didn't have any understanding**

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1 of what that was. If I just got this part, I

2 probably wouldn't have understood what that meant.

3 Q. And you testified, I believe, that to your

4 recollection you didn't forward this e-mail that's

5 Exhibit 127 to anyone?

6 **A. I don't remember doing that.**

7 Q. Do you remember taking any action after

8 receiving Exhibit 127 based upon receipt of that

9 exhibit?

10 **A. Not that I remember.**

11 Q. Did you wonder why you had been copied on

12 it?

13 **A. I think I've already explained why I**

14 **believe I was copied on it.**

15 Q. And can you repeat that for me, please?

16 **A. Because if there was going to be a hearing**

17 **requested on the exam report, they probably would**

18 **have asked me to do it.**

19 Q. As I recall your testimony, that was what

20 you believed may have been a reason; is that right?

21 **A. Yes. That's what you just asked me again.**

22 Q. Right.

23 But I guess the distinction I'm making is

24 it sounds to me like you are saying you weren't sure

25 why you were copied, that may have been a reason,

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1 but you don't recall specifically why you were
 2 copied on it?
 3 **A. That's right. That's right.**
 4 **Q. Okay.**
 5 Did you understand that this e-mail that
 6 you received in Exhibit 127 referenced a negative
 7 financial condition of Lewis and Clark?
 8 **A. It talks about capital deterioration, so --**
 9 **Q. And I know you said you don't remember, but**
 10 **do you think, sitting here today, that this e-mail**
 11 **with that regarding line and the language within the**
 12 **e-mail, would that have been something you would**
 13 **have forwarded to the board?**
 14 **MS. OCHOA: Objection. Form.**
 15 **MR. WILSON: Same objection.**
 16 **A. The board already had it. Looks like Peggy**
 17 **Willard-Ross, Donna Dalton to John Marshall, Sandy**
 18 **Elsass had it, Curtis had it. I wasn't the one that**
 19 **was the main communicator with the board, so I**
 20 **wouldn't have taken it upon myself to do it. It**
 21 **would have been something that either one of those**
 22 **two individuals would have been responsible for, not**
 23 **me.**
 24 **Q. Sandy Elsass or Curtis Sitterson, did you**
 25 **say?**

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1 **A. Yeah.**
 2 **Q. Who was the main communicator with the**
 3 **board?**
 4 **A. I don't know what that means, but it wasn't**
 5 **me. So I don't really know who would primarily**
 6 **communicate with them as between Curtis, anybody at**
 7 **Uni-Ter. I don't know, because I wasn't involved in**
 8 **a lot of communication that occurred.**
 9 **Q. Okay.**
 10 If you can pull out -- well, you don't even
 11 need to look at it if you recall.
 12 We looked earlier at Exhibit 150, this
 13 letter that you prepared and sent to John Marshall,
 14 and you stated there had been six occasions on which
 15 the board had met since September 2011.
 16 Do you recall specifically if it was six or
 17 could it have been more or less?
 18 **A. It was six. That's what's in the letter.**
 19 **Q. Did you attend those six meetings?**
 20 **A. I might have attended some or all of them.**
 21 **I don't remember.**
 22 **Q. Okay.**
 23 So let's go then to Exhibit 14. And in
 24 case you've already left it, Exhibit 46 that we
 25 looked at was dated September 2nd and this letter is

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1 dated September 8th, just for the record. But if
 2 you would take a look at that.
 3 **A. Same year?**
 4 **Q. Yes.**
 5 **A. Just a few days later?**
 6 **Q. Yes.**
 7 **A. Okay.**
 8 (Witness reviewing document.)
 9 Okay.
 10 **Q. And do you recognize this Exhibit 14?**
 11 **A. I don't.**
 12 **Q. Okay.**
 13 You don't recall if you have ever seen it
 14 before?
 15 **A. No.**
 16 **Q. I know I've asked this about the 2011**
 17 **letter, but I'm not sure if I've asked it about**
 18 **these 2010 letters. I know you said you haven't**
 19 **seen either of them.**
 20 Were you aware that they existed?
 21 **A. I don't remember. Yeah. I just don't**
 22 **remember.**
 23 **Q. Okay.**
 24 Do you recall -- it sounds like you were
 25 retained obviously in this Exhibit 150 we looked at,

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1 this letter that you prepared to the board?
 2 **A. Yes.**
 3 **Q. Do you recall preparing anything like that**
 4 **in response or subsequent to the 2010 letters?**
 5 **A. I don't remember having -- yeah. I don't**
 6 **know if that was in response to the 2011 letter.**
 7 **Q. Understood.**
 8 **A. Yeah. I didn't testify that way.**
 9 **Q. That's fine.**
 10 **A. Okay.**
 11 **Q. I understand.**
 12 **A. So I don't know -- oh, I don't remember**
 13 **what communication we had with the division in 2010.**
 14 **Q. Because obviously this bullet point,**
 15 **"Summary of Recent Events with Respect to Lewis and**
 16 **Clark" on this Exhibit 150, if you have that, did**
 17 **you prepare this bullet point list or did someone**
 18 **else prepare that?**
 19 **A. I prepared it based upon the direction of**
 20 **the board.**
 21 **Q. Did they tell you what to put in there?**
 22 **A. Yeah.**
 23 **Q. Okay.**
 24 Do you recall, as you sit here today,
 25 preparing any similar letter before you had prepared

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1 this one?

2 **A. I don't remember.**

3 Q. May have, you just don't remember it?

4 MR. WILSON: Object to the form.

5 **A. I don't remember.**

6 BY MR. WIRTHLIN:

7 Q. Well, let me ask you this: If you had

8 prepared such a letter, would it have been in the

9 files that you produced to us?

10 **A. Yes.**

11 Q. Do you recall any meetings, board meetings

12 or otherwise, prior to preparation of this

13 January 18, 2012 letter and the board meetings that

14 it references -- strike that.

15 It's a poor question.

16 You prepared this letter, January 18, 2012,

17 and it references six board meetings since

18 September 2011.

19 Do you recall any board meetings prior to

20 September 2011 to discuss deteriorating financial

21 conditions of Lewis and Clark?

22 **A. I don't remember when those discussions**

23 **started.**

24 Q. Okay.

25 But as you sit here today, do you have any

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1 specific recollection of any such board meeting

2 prior to September 2011?

3 **A. I just don't remember when those**

4 **discussions -- any deterioration or responding to**

5 **the division, that discussions occurred, one board**

6 **meeting to the next, you know.**

7 Q. So that's a no, you don't have any specific

8 recollection?

9 **A. Correct.**

10 Q. Okay.

11 And do you remember any such meetings in

12 2010?

13 **A. Any board meetings?**

14 Q. Yes. Board meeting discussing, Hey, Lewis

15 and Clark has financial problems, we need to address

16 those.

17 **A. Yeah. I just don't remember when those**

18 **meetings occurred or when that discussion occurred.**

19 Q. I understand that. I'm not trying to

20 belabor the point. I'm just wondering if you have

21 any specific recollection prior to -- in 2010, a

22 meeting with the board and having the board or

23 Uni-Ter or anyone say, Hey, there are financial

24 problems with the Lewis and Clark, we need to

25 address them?

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1 **A. I don't remember.**

2 Q. Okay.

3 And you don't remember the specific point,

4 I believe you said, when you became aware of

5 financial problems for Lewis and Clark?

6 **A. No.**

7 Q. Okay.

8 MR. WIRTHLIN: Let's take a five-minute

9 break.

10 (Short recess.)

11 BY MR. WIRTHLIN:

12 Q. And Ms. Akridge, you realize you are still

13 under oath?

14 **A. (No verbal response.)**

15 Q. And after having taken a couple of breaks,

16 are there any answers that you've given today that

17 you'd like to change or add to or amend in any way?

18 **A. No.**

19 Q. Okay.

20 MR. WIRTHLIN: I think that subject to any

21 questions that may come after the others have

22 questions, I think I'm done for now.

23 **THE WITNESS: Thank you.**

24 MS. OCHOA: Am I going next? I just have a

25 couple of questions.

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1 *****

2 EXAMINATION

3 BY MS. OCHOA:

4 Q. You had mentioned Jim Wadhams?

5 **A. Correct.**

6 Q. That's the gentleman you had worked with at

7 Jones Vargas?

8 **A. Correct.**

9 Q. And you had worked with him at least up

10 until January 18th, 2012? Does that sound accurate?

11 **A. Yeah. Up until May, May of 2012.**

12 Q. Okay.

13 At any time that you were working with

14 Mr. Wadhams, did you ever consult with him about the

15 Lewis and Clark file?

16 **A. I don't remember.**

17 **THE WITNESS: That's it.**

18 MR. WILSON: I just have a couple of

19 questions.

20 *****

21 EXAMINATION

22 BY MR. WILSON:

23 Q. I represent Uni-Ter and U.S. RE.

24 You talked about surplus notes. Tell me

25 what a surplus note is in this situation. What was

Page 86

1 that?

2 **A. A surplus note is basically a loan to an**

3 **insurance company. It's called a surplus note**

4 **because repayment is contingent upon approval by the**

5 **insurance commissioner. And it's treated as equity**

6 **on the balance as opposed to debt.**

7 Q. So when the 2.2 million plus dollars was

8 put into the company, that was cash put in?

9 **A. Correct.**

10 Q. People who put it in received a note --

11 **A. Yes.**

12 Q. -- they would not have been entitled to any

13 interest on that note or repayment of the note --

14 **A. Correct.**

15 Q. -- unless it was approved by the Department

16 of Insurance?

17 **A. That's correct.**

18 Q. What are the criteria for repayment?

19 **A. The criteria are that the regulator has to**

20 **determine that after the payment's made, the company**

21 **would still meet all of the solvency requirements.**

22 Q. Do you recall whether, for example, in 2010

23 you, as counsel for Lewis and Clark, made a request

24 to the insurance commissioner for payment of

25 interest to Oneida Bank, who had a large surplus

Page 87

1 note and it was approved?

2 **A. Yes. In fact, that was -- I don't remember**

3 **specifically that date, but that was something that**

4 **I was normally involved with is they would send me,**

5 **it's time to get the Oneida surplus note approved.**

6 **And they would send me that with the calculations**

7 **and I would send that up to Carson City. I don't**

8 **remember particular dates that occurred, but that**

9 **was something that they -- you know, after I was**

10 **retained, I regularly did.**

11 Q. Generally, that would be in writing, in

12 terms of at least alerting them the surplus note

13 repayment was being requested?

14 **A. You had to get approval before it could --**

15 **yeah, but it could be effective.**

16 Q. That's one of the functions you provided as

17 Nevada counsel?

18 **A. Right. I would, correct, send those up to**

19 **the regulator.**

20 Q. I have one exhibit. I will mark it as

21 Exhibit Number 151, and it deals with the time

22 period when you were asked about the September 2nd,

23 2010 letter and September 8, 2010 letter.

24 **A. Right.**

25 Q. Let's see if this refreshes your

Page 88

1 recollection as to what was involved.

2 **A. Okay.**

3 (Exhibit 151 marked.)

4 BY MR. WIRTHLIN:

5 Q. And if you look at this -- read the

6 document to the extent you need to. But the last

7 e-mail is from you to --

8 **A. You mean the last on the top?**

9 Q. On the top, yes, the most recent one.

10 **A. Okay.**

11 Q. It's a string of e-mails, at least produced

12 by U.S. RE in the second bullet, and you go to the

13 second page and it talks about you speaking of Mike

14 Lynch regarding the exam report and the management

15 letter.

16 Can you review this to see whether it

17 refreshes your recollection --

18 **A. Sure.**

19 Q. -- as to your involvement with respect to

20 the September 2nd --

21 **A. Sure.**

22 Q. Thank you.

23 **A. (Witness reviewing document.)**

24 **Okay.**

25 Q. Is it correct that you were involved to the

Page 89

1 extent of discussions with the Department of

2 Insurance as Nevada counsel for Lewis and Clark and

3 were able to resolve the matter to both parties'

4 satisfaction and the hearing was withdrawn?

5 **A. I can't speculate to whether people were**

6 **happy or not.**

7 Q. I didn't say "happy," but people agreed to

8 the resolution?

9 **A. Yeah. It looks like in one particular**

10 **e-mail I spoke with Mike Lynch, according to this,**

11 **and came up with a resolution which looks like Bill**

12 **McCune, who was the chief insurance examiner, agreed**

13 **with.**

14 Q. And the hearing was withdrawn and request

15 for hearing?

16 **A. Correct.**

17 Q. Okay. Thank you.

18 MR. WILSON: I have no other questions.

19 *****

20 EXAMINATION

21 BY MR. WIRTHLIN:

22 Q. Do you recall what, I guess, that

23 resolution you came up with was?

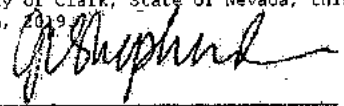
24 **A. It looks like there was a finding in the**

25 **examination report regarding the stock redemption,**

Page 90

1 how the company was doing stock redemption, which
 2 the company objected to. So the resolution was for
 3 the division to move that issue into the management
 4 letter instead of -- and take it out of the exam
 5 report in exchange for us withdrawing our -- Lewis
 6 and Clark withdrawing its hearing request.
 7 Q. That just related to the stock redemption
 8 issue?
 9 A. Yes.
 10 Q. Oh, okay. One other question on the
 11 surplus notes Mr. Wilson asked a couple of questions
 12 about, so I'm just referring to those.
 13 You didn't have any involvement in the
 14 determination of how much would be the amount of
 15 those notes?
 16 A. Correct.
 17 MR. WIRTHLIN: Okay. I think that's it.
 18 MR. WILSON: Thank you very much.
 19 MS. OCHOA: Thank you.
 20 (Whereby the proceedings were concluded at
 21 11:21 a.m.)
 22 *****
 23
 24
 25

Page 91

1
 2 REPORTER'S CERTIFICATE
 3
 4 STATE OF NEVADA)
 5) ss
 6 COUNTY OF CLARK)
 7 I, JILL E. SHEPHERD, NV-CSR 948, RPR, do
 8 hereby certify:
 9
 10 That I reported the taking of the
 11 deposition of CONSTANCE L. AKRIDGE, ESQ. Commencing
 12 on March 1st, 2019, at the hour of 9:07 a.m.
 13
 14 That prior to being examined, the
 15 witness was by me duly sworn to testify to the
 16 truth, the whole truth, and nothing but the truth:
 17
 18 That I thereafter transcribed my
 19 said shorthand notes into typewriting, and that the
 20 typewritten transcript of said deposition is a
 21 complete, true, and accurate transcription of my
 22 said shorthand notes taken down at said time:
 23
 24 I further certify that I am not a
 25 relative or employee of an attorney or counsel of
 any of the parties, nor a relative or employee of
 any attorney or counsel involved in said action, nor
 a person financially interested in the action; that
 a request has been made to review the transcript.
 IN WITNESS WHEREOF, I have hereunto
 set my hand and affixed my official seal of office
 in the County of Clark, State of Nevada, this 8th
 day of March, 2019.

 Jill E. Shepherd, NV-CSR 948

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1
 2 DECLARATION OF DEPONENT
 3
 4 I, CONSTANCE L. AKRIDGE, ESQ., deponent
 5 herein, do hereby declare under penalty of perjury
 6 that I have read the within and foregoing
 7 transcription of my deposition taken on Friday,
 8 March 1st, 2019, in Las Vegas, Nevada, and that the
 9 same is a true record of the testimony given by me
 10 at the time and place hereinabove set forth, with
 11 the following exceptions:
 12
 13 ERRATA SHEET
 14
 15 PAGE LINE SHOULD READ: REASON FOR CHANGE:
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 93

1
 2 ERRATA SHEET
 3
 4 PAGE LINE SHOULD READ: REASON FOR CHANGE:
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 24
 25
 DATE CONSTANCE L. AKRIDGE, ESQ.

JOSEPH W. BROWN
ALBERT F. PASH
JOHN P. SANDE, III
WILLIAM J. RAGGIO
GARY B. GOODHEART
MICHAEL E. BUCKLEY
RICHARD F. JOBT
DOUGLAS M. DOHEN
KEVIN A. STOLWORTHY
JAMES L. WADHAMS
JODI R. GOODHEART
PAUL A. LEMCKE
MICHAEL G. ALONSO
ANN MORGAN
KRIS T. BALLARD

WILLIAM G. DAVIS, JR.
KARL L. NIELSON
PATRICIA J. SHEEHAN
JOHN P. DESMOND
RODNEY M. SCHOENWALD
CONSTANCE L. AKRIDGE
RICHARD M. TRACHOK, II
EDWARD M. GARGIA
ELIZABETH FIELDER
NOLLY MALONE REZAC
BRIAN R. IRVINE
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SHANNON C. WITTERBERGER

MELVIN D. CLOSE, JR.
RICHARD G. BARRIER

JEFFERY S. GEEN
OF COUNSEL

CLIFFORD A. JONES (1912 - 2005)
HERBERT H. JONES (1914 - 2000)
GEORGE L. VARGAS (1909 - 1985)
JOHN C. BARTLETT (1910 - 1982)
LOUIS MEAD DIXON (1919 - 1993)
GARY T. FOREMASTER (1903 - 1998)

January 18, 2012

CATHERINE A. SOURK
EXECUTIVE DIRECTOR

Writer's Direct Line
(702) 862-3378
E-Mail Address
cakridge@jonesvargas.com

John Marshall
Nevada Division of Insurance
1818 East College Parkway, Suite 103
Carson City, NV 89706

Via E-mail: jmarshall@doi.state.nv.us
& U.S. Mail

Re: Lewis & Clark LTC Risk Retention Group, Inc.

Dear John:

Attached please find a summary of recent events pertaining to Lewis & Clark LTC Risk Retention Group, Inc. ("L&C") that we discussed yesterday.

Thank you for your attention to this matter.

Very truly yours,

Jones Vargas

Constance L. Akridge, Esq.

CLA/ev



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HH_0000491

251

**Summary of Recent Events with Respect to
Lewis & Clark LTC Risk Retention Group, Inc. ("L&C")**

- (1) L&C over the course of 2011 has suffered significant losses arising out of claims against insured nursing homes primarily in California and, to a lesser degree, New York.
- (2) In response, the Board of Directors of L&C has met on six occasions since September 2011 and has taken a number of actions.
- (3) A total of \$2,220,000 in cash has been contributed to the capital of L&C, primarily by entities affiliated with the Directors.
- (4) Independent claims consultants have audited the reserves for outstanding claims.
- (5) The book of business causing the insured losses has been cancelled or non-renewed.
- (6) The remaining book of business is historically profitable. L&C expects to report capital and surplus of approximately \$2.0 million as of 12/31/11, which amount should be sufficient to support the continuing reduced book of business within a 3/1 net ratio.

From: Akridge, Constance <CAkridge@jonesvargas.com>
Sent: Monday, October 04, 2010 6:37 PM
To: Bill McCune; John Marshall; Dalton, Donna
Cc: Peggy Willard-Ross; Johnson, Katrina; Elsass, Sandy; Curtis Sitterson; Bud Brittain; Sue Dummar; Michael Lynch
Subject: RE: Lewis & Clark Exam Hearing Request - Finding 2

Bill--Thanks so much. Connie

From: Bill McCune [mailto:bmccune@doi.state.nv.us]
Sent: Monday, October 04, 2010 3:36 PM
To: Akridge, Constance; John Marshall; Dalton, Donna
Cc: Peggy Willard-Ross; Johnson, Katrina; Elsass, Sandy; Curtis Sitterson; Bud Brittain; Sue Dummar; Michael Lynch
Subject: RE: Lewis & Clark Exam Hearing Request - Finding 2

Connie,

Bud Brittain has been out but is scheduled to return tomorrow. He should have all the matters discussed in your email prepared for your review. I will let you know tomorrow if Bud has all these items prepared or not as let you know when you will have them.

Bill

William F. McCune,
MBA, CIA, CQA, CCP, CIPP, CFE (Financial), CIDM, CPCU, CIE, CLU, CBC, CFE (Fraud), LIFA, FLMI, FLHC, RHU, MCM, PAHM, AALU, AIAF,
AIAA, AIRQ, AIC, API, ACS, AIS, ABA, ACS, ARC

Chief Insurance Examiner
State of Nevada Department of Business and Industry, Division of Insurance
788 Fairview Drive, Suite 300
Carson City, Nevada 89701-5491
Tel: 775/687-4270 Ext. 271
Fax: 775/687-3937
Web: <http://doi.state.nv.us/>
Email: bmccune@doi.state.nv.us

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From: Akridge, Constance [mailto:CAkridge@jonesvargas.com]
Sent: Monday, October 04, 2010 3:30 PM
To: John Marshall; Dalton, Donna
Cc: Peggy Willard-Ross; Bill McCune; Johnson, Katrina; Elsass, Sandy; Curtis Sitterson; Bud Brittain; Sue Dummar; Michael Lynch
Subject: RE: Lewis & Clark Exam Hearing Request - Finding 2

John,

After we received your email, I spoke with Mike Lynch regarding the exam report and management letter. We agreed that you would provide us with a draft of the management letter (which would discuss the stock redemption issue) and exam order before we agreed to withdraw our hearing request. To date we have not seen drafts of these documents.

Connie

From: John Marshall [mailto:jcmarshall@doi.state.nv.us]

Sent: Monday, October 04, 2010 3:22 PM

To: 'Dalton, Donna'

Cc: Peggy Willard-Ross; Bill McCune; 'Johnson, Katrina'; 'Elsass, Sandy'; 'Curtis Sitterson'; Akridge, Constance; Bud Brittain; Sue Dummar

Subject: RE: Lewis & Clark Exam Hearing Request - Finding 2

Donna,

Attached is an e-mail from Chief Examiner McCune requesting a formal written withdrawal of the hearing request.

We have had no response to the e-mail. Bud Brittain will return to work tomorrow. Without a formal request by Lewis & Clark RRG, the Legal Section is going to proceed with scheduling the Hearing. Please provide the requested document by Friday, October 7, 2010.

Thank You,

John Marshall
Management Analyst III
Corporate and Financial Section
Nevada Division of Insurance
788 Fairview Drive, Suite 300
Carson City, NV 89701-5491
Phone: 775-687-0751
Fax: 775-687-3937

Donna,

After discussion among Senior Staff and considering the low capital position (RBC = 210%), and continuing soft market conditions, it has been decided that Finding #2 of the examination report will be placed in a management letter and removed from the examination report. The management letter comment will require development of a procedure for the return of capital to the former policyholders within a certain time parameter – 3 years, 5 years, installments, etc. You may have to change the stock offering memorandum and/or the company by-laws. Also required from management will be a formal notice (request) to vacate the Hearing.

We will have the management letter prepared in a few days. Hope this is satisfactory to all.

John Marshall

Management Analyst III
Corporate and Financial Section
Nevada Division of Insurance
788 Fairview Drive, Suite 300
Carson City, NV 89701-5491
Phone: 775-434-9821
Fax: 775-687-3937

From: Dalton, Donna [mailto:ddalton@uni-ter.com]
Sent: Tuesday, September 07, 2010 10:01 AM
To: John Marshall
Cc: Peggy Willard-Ross; Bill McCune; Johnson, Katrina; Elsass, Sandy; Curtis Sitterson; Akridge, Constance
Subject: RE: Lewis & Clark Post Merger Capital Deterioration

John,

If the DOI still disputes our methods regarding stock ownership, we would like a hearing. Are you going to amend the letter addressed to Jeff Marshall last week?

Thanks,
Donna

From: John Marshall [mailto:jcmarshall@doi.state.nv.us]
Sent: Tuesday, September 07, 2010 11:51 AM
To: Dalton, Donna
Cc: Peggy Willard-Ross; Bill McCune; Johnson, Katrina; Elsass, Sandy
Subject: RE: Lewis & Clark Post Merger Capital Deterioration

Thanks, Donna.

I'm glad to hear the results were not a result of the merger. I remember though, it did take a while for L&C to fully integrate Henry Hudson after that merger. I will anxiously anticipate better results for the third quarter.

Do you still request a Hearing on item 2 of the L&C exam?

John Marshall
Management Analyst III
Corporate and Financial Section
Nevada Division of Insurance
788 Fairview Drive, Suite 300
Carson City, NV 89701-5491
Phone: 775-434-9821
Fax: 775-687-3937

From: Dalton, Donna [mailto:ddalton@uni-ter.com]
Sent: Friday, September 03, 2010 8:00 AM
To: John Marshall
Cc: Peggy Willard-Ross; Bill McCune; Johnson, Katrina; Elsass, Sandy
Subject: RE: Lewis & Clark Post Merger Capital Deterioration

Good Morning John,

EXHIBIT “J”

EXHIBIT “J”

ENTITY INFORMATION**ENTITY INFORMATION****Entity Name:**

JONES VARGAS, CHARTERED

Entity Number:

C3038-1969

Entity Type:

Domestic Professional Corporation (89)

Entity Status:

Dissolved

Formation Date:

10/28/1969

NV Business ID:

NV19691002865

Termination Date:

Perpetual

Annual Report Due Date:

10/31/2013

REGISTERED AGENT INFORMATION**Name of Individual or Legal Entity:**

.RESIGNED

Status:

Active

ID00482

CRA Agent Entity Type:**Registered Agent Type:**

Non-Commercial Registered Agent

NV Business ID:

NV20091402243

Office or Position:**Jurisdiction:****Street Address:****Mailing Address:****Individual with Authority to Act:****Fictitious Website or Domain Name:****OFFICER INFORMATION**☐ VIEW HISTORICAL DATA

Title	Name	Address	Last Updated	Status
Director	GARY R GOODHEART	300 S FOURTH STREET, SUITE 1400, LAS VEGAS, NV, 89101, USA	10/02/2012	Active
Director	JOHN P SANDE III	300 E. SECOND ST., STE. 1510, RENO, NV, 89501, USA	10/02/2012	Active
Director	M. ANN MORGAN	300 E. SECOND ST., STE. 1510, RENO, NV, 89501, USA	10/02/2012	Active
Director	JAMES L WADHAMS	300 S FOURTH STREET, SUITE 1400, LAS VEGAS, NV, 89101, USA	10/02/2012	Active

Page 2 of 2, records 6 to 9 of 9

CURRENT SHARES

Class/Series	Type	Share Number	Value
--------------	------	--------------	-------

No records to view.

DD00483

2/3

Number of No Par Value Shares:

10000

Total Authorized Capital:

10,000

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EXHIBIT “K”

EXHIBIT “K”


CLERK OF THE COURT

1 **ACCT**
2 CATHERINE CORTEZ MASTO
3 Attorney General
4 JOANNA N. GRIGORIEV
5 Senior Deputy Attorney General
6 Nevada Bar No. 5649
7 555 E. Washington Avenue, Suite 3900
8 Las Vegas, NV 89101
9 P: (702) 486-3101
10 F: (702) 486-3416
11 Email: jgrigoriev@ag.nv.gov
12 Attorney for the Division of Insurance

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 STATE OF NEVADA, COMMISSIONER OF)
11 INSURANCE, IN HIS OFFICIAL CAPACITY)
12 AS STATUTORY RECEIVER FOR)
13 DELINQUENT DOMESTIC INSURER,)

13 Plaintiff,

14 vs.

15 LEWIS & CLARK LTC RISK)
16 RETENTION GROUP, INC, a Nevada)
17 Domiciled Captive Insurance Company)

17 Defendant,

18 UNI-TER Underwriting Management)
19 Corp. and UNI-TER Claims Services)
20 Corp.,)

20 Intervenor.

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

21 **THIRTEENTH STATUS REPORT**

22 COMES NOW Commissioner of Insurance and Receiver, Scott J. Kipper, and Betty
23 Cordial, Deputy Receiver, and files this Thirteenth Status Report ("Report") in the above-
24 captioned receivership.

25 I.

26 **INTRODUCTION**

27 On December 26, 2012, this Court issued an Order granting the Commissioner's
28 *Petition for Appointment of Commissioner as Receiver Pursuant to NRS 696B.250*, thereby

Office of the Attorney General
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

1 approving the Commissioner as Receiver. *Order Granting Petition for Appointment of*
2 *Commissioner as Receiver; Injunction; Order to Preserve Assets of Insurer* ("Order") was
3 signed December 21, 2012 and entered on December 26, 2012 confirming the same. Included
4 in the Order was the Court's approval for the intervenor UNI-TER Underwriting Management
5 Corp and UNI-TER Claims Services Corp., ("UNI-TER") to present to the Receiver a proposal
6 of rehabilitation of Lewis & Clark LTC Risk Retention Group, Inc. ("L&C"). On December 27,
7 2012, the Commissioner of Insurance, as Receiver, appointed Betty Cordial as Deputy
8 Receiver for L&C. A proposal for rehabilitation was never presented by UNI-TER.

9 On January 25, 2013, the Receiver filed a *Motion for Order of Liquidation* requesting
10 that the Court enter an *Order of Liquidation* based on a finding of fact that L&C was insolvent
11 (as defined in NRS 696B.110(3)) and that pursuant to NRS 696B.220 (2) insolvency
12 constitutes grounds for an *Order of Liquidation*.

13 On February 28, 2013, this Court entered an *Order of Liquidation* which directed the
14 Receiver to liquidate the business of L&C. Any insurance policies that were still in force on
15 March 1, 2013 or after (normal expiration date of policy) were canceled as of the date the
16 *Order of Liquidation* was entered (i.e. February 28, 2013).

17 II.

18 **ACTIONS TAKEN BY RECEIVER AND DEPUTY RECEIVER**

19 **A. Administration of the Estate**

20 The administration of this receivership is proceeding under the supervision of Deputy
21 Receiver Cordial.

22 **B. Retrieval and Review of Records**

23 The Deputy Receiver's staff has completed reviewing the open claim files at the Deputy
24 Receiver's office.

25 The Deputy Receiver's staff also completed a review of all the unpaid bills for loss
26 adjustment services and expenses and general administrative costs and prepared a schedule
27 detailing all the unpaid bills.

28 . . .

C. Proof of Claim (POC) Mailing List for Losses/Claims

The Deputy Receiver's staff completed a review of the available open claim files to locate the names and addresses of actual or potential creditors of the L&C estate. The name and address information has been input into an electronic database that will be used to populate and print the Proof of Claim forms.

D. Proof of Claim (POC) Mailing List for Non-Claim Related Creditors

The Deputy Receiver's staff has completed the preparation of a list of other potential creditors (non-claim related) such as service providers, policyholders/stockholders, trade creditors, reinsurance companies, state agencies potentially due premium taxes, and others. This list has been combined with the names and addresses of claims related creditors and constitutes the POC mailing list.

E. Due Date for Proof of Claim Form

In a minute order entered November 22, 2013, the Court approved August 31, 2014 as the due date for filing the POC form. This due date will be included on the Proof of Claim form that will be mailed to actual or potential creditors of the liquidation estate.

F. Mailing of Proof of Claim Form

The proof of claim form will be mailed out in the next few weeks.

G. Financial Condition

Effective with the Minute Order of December 18, 2012 that appointed the Commissioner as Receiver, the Deputy Receiver's staff has prepared financial statements on a liquidation basis as of various dates. The liquidation basis financial reports more clearly reflect the financial status of the L&C estate for liquidation and distribution purposes than statutory or other financials. Offsetting asset and liability accounts have been noted, as have those amounts that are subject to dispute or litigation. As assets are collected, compromised or written-off, appropriate adjustments will be reflected. As the liquidation process continues, it is anticipated that the liquidation basis financial statements will provide the Liquidator and the Court with an accurate means of projecting the eventual distribution dividend to the various classes of claimants.

1 **1. Liquidation Basis Financial Statements**

2 **A. December 18, 2012 (Exhibit 1)**

3 The unaudited financial statement, compiled on a liquidation basis of accounting for the
4 period ending December 18, 2012, is attached hereto as Exhibit 1 and reflects the financial
5 condition of L&C at that date, according to the books and records of L&C, and the information
6 available to the Deputy Receiver's staff.

7 **B. December 31, 2012 (Exhibit 2)**

8 The unaudited financial statement, compiled on a liquidation basis of accounting for the
9 period ending December 31, 2012, is attached hereto as Exhibit 2 and reflects the financial
10 condition of L&C at that date, according to the books and records of L&C, and the information
11 available to the Deputy Receiver's staff.

12 **C. February 28, 2013 (Exhibit 3)**

13 The unaudited financial statement, compiled on a liquidation basis of accounting for the
14 period ending February 28, 2013, is attached hereto as Exhibit 3 and reflects the financial
15 condition of L&C at that date, according to the books and records of L&C, and the information
16 available to the Deputy Receiver's staff.

17 **D. March 31, 2013 (Exhibit 4)**

18 The unaudited financial statement, compiled on a liquidation basis of accounting for the
19 period ending March 31, 2013 is attached hereto as Exhibit 4 and reflects the financial
20 condition of L&C at that date, according to the books and records of L&C, and the information
21 available to the Deputy Receiver's staff.

22 **E. June 30, 2013 (Exhibit 5)**

23 The unaudited financial statement, compiled on a liquidation basis of accounting for the
24 period ending June 30, 2013, is attached hereto as Exhibit 5 and reflects the financial
25 condition of L&C at that date, according to the books and records of L&C, and the information
26 available to the Deputy Receiver's staff.

27 ...

28 ...

F. September 30, 2013 (Exhibit 6)

The unaudited financial statement, compiled on a liquidation basis of accounting for the period ending September 30, 2013, is attached hereto as Exhibit 6 and reflects the financial condition of L&C at that date, according to the books and records of L&C, and the information available to the Deputy Receiver's staff.

2. Cash Receipts and Disbursements

A. December 18, 2012 through December 31, 2012 (Exhibit 7)

A schedule summarizing the cash receipts and disbursements for the period December 18, 2012 through December 31, 2012 is attached as Exhibit 7. Such disbursements were made as costs of administration and are considered Class (a) claims as defined in NRS 696B.420.1(a).

B. January 1, 2013 through September 30, 2013 (Exhibit 8)

A schedule summarizing the cash receipts and disbursements for the period January 1, 2013 through September 30, 2013 is attached as Exhibit 8. Such disbursements were made as costs of administration and are considered Class (a) claims as defined in NRS 696B.420.1(a).

III.

**INTERIM FEES AND EXPENSES OF PROFESSIONALS EMPLOYED BY THE
LIQUIDATOR**

In accordance with NRS 696B.290(6) and the Liquidation Order, the Liquidator retained certain professionals and firms to assist in performing his duties as Liquidator. The Liquidator hereby seeks approval of the interim fees and expenses detailed below.

A. Vista Consulting Group, Inc.

Ms. Cordial is a Certified Insurance Receiver - Multiple Lines (CIR-ML). The Liquidator agreed to pay \$175 per hour for Ms. Cordial's services and to reimburse her for actual out-of-pocket expenses. In addition, Ms. Cordial was authorized to use other experienced individuals associated with her firm to provide accounting, claims, legal and administrative and supervisory functions at a rate of not more than \$175 per hour for professionals and lesser

1 amounts for other staff. The fees and expenses incurred by Ms. Cordial and other persons
2 associated with Vista are \$18,200.00 for July, 2013 and \$25,698.75 for August, 2013 for a
3 total of \$43,898.75 from July 1, 2013 through August 31, 2013. The Receiver has reviewed
4 and approved these interim fees and expenses pursuant to NRS 696B.255 and awaits
5 approval from this Court before authorizing payment.

6 The invoices for fees and expenses incurred in July, 2013 and August, 2013 including
7 supporting documentation for expenses, is attached as Exhibit 9.

8 **IV.**

9 **CONCLUSION**

10 In view of the foregoing and in compliance with the Court's instructions, the Receiver
11 and Deputy Receiver respectfully request that this Court take the following actions:

- 12 1. Approve this Status Report and the actions taken by the Receiver and Deputy
13 Receiver.
- 14 2. Approve the liquidation basis financial statements as of December 18, 2012,
15 December 31, 2012, February 28, 2013, March 31, 2013, June 30, 2013 and
16 September 30, 2013; and the cash receipts and disbursements schedule for the
17 period December 18, 2012 through December 31, 2012 and January 1, 2013
18 through September 30, 2013.

1 3. Approve the interim fees, expenses and out-of-pocket expenses of
2 Vista Consulting Group, Inc. as set forth herein.

3 DATED this 31st day of January, 2014.

4 Respectfully submitted:

5 Scott J. Kipper, Commissioner of Insurance
6 of the State of Nevada, in his Official Capacity as
Statutory Receiver of Delinquent Domestic Insurers

7 By: /s/ Betty Cordial
8 BETTY CORDIAL
9 Deputy Receiver

10 Submitted by:

11 CATHERINE CORTEZ MASTO
Attorney General

12 By: /s/ Joanna N. Grigoriev
13 JOANNA N. GRIGORIEV
14 Senior Deputy Attorney General
15 Nevada Bar No. 5649
16 555 E. Washington Avenue, Suite 3900
Las Vegas, NV 89101
(702) 486-3101
Attorneys for the Division of Insurance

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General and that on the 31st day of January, 2014, I served a copy of the attached **THIRTEENTH STATUS REPORT** via United States Postal Service, postage prepaid, addressed as follows:

Constance Akridge, Esq.
Holland and Hart
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

Walter H. Bush, Esq.
Carlton Fields
One Atlantic Center
1201 W. Peachtree St. N.W., Suite 3000
Atlanta, GA 30309-3455

/ s / Traci Plotnick

An Employee of the Office of the Attorney General

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Exhibit 1

Exhibit 1

- Unaudited -

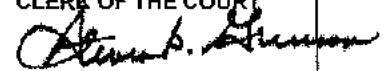
Lewis & Clark LTC, Risk Retention Group, Inc., In Liquidation
Liquidation Basis Balance Sheet
As of December 18, 2012

<u>Assets</u>	<u>Book Value</u>	<u>Adjustments & Offsets</u>	<u>12/18/12 Net Realizable Value</u>	<u>Note</u>
<u>Current Assets</u>				
Cash	1,160,973.32	-	1,160,973.32	1
Accrued Investment Income Due	12,674.49	-	12,674.49	
Prepaid Expenses & Insurance	20,337.50	-	20,337.50	
Investments - Bonds	3,112,810.11	31,343.89	3,144,154.00	2, 15
Subtotal - Current Assets	4,306,795.42	31,343.89	4,338,139.31	
<u>Ceded Reinsurance Recoverable Balances</u>				
Ceded Reinsurance Recoverables for:				3A
- Paid Claims: Loss & ALAE	564,230.00	(49,036.85)	515,193.15	3B, 15
- Case Reserves: Loss & ALAE	310,386.13	-	310,386.13	3B
- IBNR Reserves: Loss & ALAE	1,048,314.49	-	1,048,314.49	3C
- Experience-Rated Premium Adjustment	985,875.00	-	985,875.00	3D
- Unearned Premium Reserve	125,489.88	-	125,489.88	
Subtotal - Ceded Reinsurance	3,034,295.50	(49,036.85)	2,985,258.65	
<u>Various Receivables</u>				
Premium Receivable / Agent Balances	121,736.99	-	121,736.99	
Deductibles Receivable	165,000.00	-	165,000.00	
Receivable from Affiliate	35,257.95	(8,107.74)	27,150.21	15
Miscellaneous Receivables	118.94	-	118.94	
Reserve for Uncollectible Assets	(314,006.14)	-	(314,006.14)	6
Subtotal - Various Receivables	8,107.74	(8,107.74)	0.00	
<u>Other Assets</u>				
Deferred Tax Asset	4,799,880.00	(4,799,880.00)	-	4
Deferred Acquisition Costs (DAC)	625,048.80	(625,048.80)	-	5
Subtotal - Other Assets	5,424,928.80	(5,424,928.80)	0.00	
Total Assets	12,774,127.46	(5,450,729.50)	7,323,397.96	

DD00495

EXHIBIT “L”

EXHIBIT “L”



1 SR
2 AARON D. FORD
3 Attorney General
4 JOANNA N. GRIGORIEV
5 Senior Deputy Attorney General
6 Nevada Bar No. 5649
7 555 E. Washington Avenue, Suite 3900
8 Las Vegas, NV 89101
9 P: (702) 486-3101
10 F: (702) 486-3416
11 Email: jgrigoriev@ag.nv.gov

12 *Attorneys for the Division of Insurance*

13 **EIGHTH JUDICIAL DISTRICT COURT OF NEVADA**

14 **IN AND FOR THE COUNTY OF CLARK**

15 STATE OF NEVADA, COMMISSIONER OF)
16 INSURANCE, IN HIS OFFICIAL CAPACITY)
17 AS STATUTORY RECEIVER FOR)
18 DELINQUENT DOMESTIC INSURERS,)

19 Plaintiff,

Case No. A-12-672047-B

Dept. No. XI

20 vs.

21 LEWIS & CLARK LTC RISK)
22 RETENTION GROUP, INC, a Nevada)
23 Domiciled Captive Insurance Company)

24 Defendant,

25 UNI-TER Underwriting Management)
26 Corp. and UNI-TER Claims Services)
27 Corp.,)

28 Intervenor.

SEVENTY-SECOND STATUS REPORT

29 COMES NOW Commissioner of Insurance for the State of Nevada and Receiver, Barbara D.
30 Richardson, and Deputy Receiver, Robert L. Greer (hereinafter "Receiver") and files this Seventy-
31 Second Status Report ("Report") in the above-captioned receivership.

32 ///

33 ///

I.

INTRODUCTION

On December 26, 2012, this Court issued an Order granting the Commissioner's *Petition for Appointment of Commissioner as Receiver Pursuant to NRS 696B.250*, thereby approving the Commissioner as Receiver. *Order Granting Petition for Appointment of Commissioner as Receiver; Injunction; Order to Preserve Assets of Insurer* ("Order") was signed December 21, 2012 and entered on December 26, 2012 confirming the same. Included in the Order was the Court's approval for the intervenor UNI-TER Underwriting Management Corp. and UNI-TER Claims Services Corp., ("UNI-TER") to present to the Receiver a proposal of rehabilitation of Lewis & Clark LTC Risk Retention Group, Inc. ("L&C"). On December 27, 2012, the Commissioner of Insurance, as Receiver, appointed Betty Cordial ("Cordial") of Vista Consulting Group, Inc. ("Vista") as Deputy Receiver for L&C. A proposal for rehabilitation was never presented by UNI-TER.

On January 25, 2013, the Receiver filed a *Motion for Order of Liquidation* requesting that the Court enter an *Order of Liquidation* based on a finding of fact that L&C was insolvent (as defined in NRS 696B.110(3)) and that pursuant to NRS 696B.220 (2) insolvency constitutes grounds for an *Order of Liquidation*.

On February 28, 2013, this Court entered an *Order of Liquidation* which directed the Receiver to liquidate the business of L&C. Any insurance policies that were still in force on March 1, 2013 or after (normal expiration date of policy) were canceled as of the date the *Order of Liquidation* was entered (i.e. February 28, 2013).

On July 27, 2015, Amy L. Parks, the Acting Commissioner of Insurance, as Receiver, appointed Robert L. Greer (Greer) of Vista Consulting Group, Inc. as Deputy Receiver for L&C, replacing Betty Cordial who resigned and retired.

///

///

1 II.

2 ACTIONS TAKEN BY RECEIVER AND DEPUTY RECEIVER

3 A. Administration of the Estate

4 The Receiver, Deputy Receiver Greer and the professional staff of Vista Consulting Group, Inc.
5 continue to administer the estate.

6 B. Asset Recovery Action

7 On December 23, 2014, a Complaint was filed in the Eighth Judicial District Court of Nevada,
8 Dept. 27 (Case No. A-14-711535-C) by counsel (Fennemore firm) for the Receiver. The complaint was
9 filed against former officers and directors of L&C as well as against L&C's underwriting manager and
10 reinsurance broker. Deputy Receiver and counsel have been working on case matters which are
11 protected by the attorney-client privilege. The Directors initially filed a Third-Party Complaint against
12 various UniTer employees, including Sandy Elsass. However, that aspect of the case was never
13 pursued.

14 On March 15, 2017 the Discovery Commissioner for the Court signed a Scheduling Order. The
15 Deputy Receiver continues to work with counsel to prosecute this asset recovery action. Discovery is
16 ongoing.

17 The Director and Officer (D&O) Defendants filed a renewed Motion for Reconsideration which
18 requested that the Court reconsider its denial of the Director Defendants 12(c) Motion based on a
19 misinterpretation of the applicable statutory and case law. On February 7, 2019 the Motion was
20 denied. However, the Directors filed a Petition for Writ of Mandamus to the Nevada Supreme Court
21 seeking an order directing the District Court to dismiss them under the protection of the business
22 judgment rule. This filing has a significant impact on the procedural posture of the case and will likely
23 change any and all discovery and trial deadlines moving forward. As a related matter, the District
24 Court stayed all proceedings in this case pending the resolution of the Directors' Writ Petition.

25 The Supreme Court set a briefing schedule on the Writ Petition, which has been concluded and
26 fully briefed. The Nevada Supreme Court does not operate under external deadlines and so the timing
27 of its decision cannot be accurately estimated but is entirely within the Court's sole discretion. On
28

1 October 21, 2019, the Nevada Supreme Court issued an order that there would be no oral argument on
2 this appeal.

3 The original attorneys on this case, James Wadhams, Esq. and Brenoch Wirthlin, Esq. have both
4 departed from Fennemore Craig, P.C. Brenoch Wirthlin was the lead trial attorney and at least one of
5 his support staff will be practicing at Kolesar & Leatham in Las Vegas. The Receiver has transferred
6 the litigation case from Fennemore Craig, P.C. to Kolesar & Leatham in the belief that is in the best
7 interest of the Lewis & Clark estate to have the continuity of the lead trial attorney.

8 **C. Proofs of Claim Filed with Receiver**

9 As of the date of this report, three hundred fifty-one (351) Proof of Claim (POC) forms were
10 mailed to the Receiver. Three hundred forty-four (344) of the POC's were post marked on or before
11 the August 31, 2014 due date and are considered timely filed and seven (7) POC's were postmarked
12 after August 31, 2014 and at this time are considered late filed. 219 of the 344 timely-filed POC's and
13 6 of the 7 late-filed POC's are claims potentially covered under the terms of L&C's insurance policy
14 (i.e. "loss claims").

15 **D. Adjudication of Filed Proof of Claim Forms**

16 When the Deputy Receiver began the review of the filed POC's, it was apparent that some of
17 the files lacked adequate information to make a formal adjudication of the claims. On June 10, 2016,
18 the Deputy Receiver started mailing individualized letters to claimants and counsel requesting specific
19 claim information for certain loss claims. The claims submitted are in a broad range of development.
20 Some have not been developed outside of the receivership, by ongoing litigation, while others have
21 been litigated to judgment or a settlement due to the fact that there are either co-defendants or the
22 courts in other states have not stayed the case to allow for the claim to be processed by the
23 Receivership. Additionally the Deputy Receiver has found that in some cases a filed POC included
24 multiple types of claims under 696B.420. An example would be claims for insurance coverage, attorney
25 fees, return premium and capital contributions all filed under a single POC. For purposes of
26 adjudication these POC's have been separated into claims by type and will be adjudicated as such and
27 assigned distinctive POC numbers.

28

1 The filed POC's relating to a loss claim involve 169 different alleged injured parties. These
2 POC's include claims for indemnity from claimants, insureds and plaintiff attorneys as well as claims
3 for attorney fees and indemnity from defense counsel. The Deputy Receiver continues to review
4 various loss claims, prepares correspondence and reaches out by telephone communication to the filer
5 of the POC or counsel to request additional information needed to determine the approved amount of
6 the loss claim. As additional supplemental claims information is received, the claims will be
7 adjudicated.

8 Due to the nature of the underwritten business, the loss claims filed under the POC's are
9 complex and often involve multiple defendants some of which are not insured by Lewis & Clark.
10 Because of this complexity, a large number of the loss claims are still involved in active litigation in
11 many different jurisdictions. The Deputy Receiver has determined that it is in the best interest of the
12 estate to allow the claims litigation process to proceed and to defer adjudication of the POC's and allow
13 the claims to develop in the usual course. Insureds and claimants continue to advise of on-going
14 developments in these underlying claim litigation cases and of settlements which take place which
15 sometimes results in an uncontested claim amount for certain submitted POC's.

16 **E. Financial Condition**

17 Effective with the Minute Order of December 18, 2012 that appointed the Commissioner as
18 Receiver, the Deputy Receiver's staff has prepared financial statements on a liquidation basis as of
19 various dates. The liquidation basis financial reports more clearly reflect the financial status of the L&C
20 estate for liquidation and distribution purposes than statutory or other financials. As the liquidation
21 process continues, it is anticipated that the liquidation basis financial statements will provide the
22 Receiver and the Court with an accurate means of projecting the eventual distribution to the various
23 classes of claimants.

24 **1. Liquidation Basis Balance Sheet**

25 **A. September 30, 2019 (Exhibit 1)**

26 The unaudited balance sheet, compiled on a liquidation basis of accounting for the period
27 ending September 30, 2019, is attached hereto as Exhibit 1 and reflects the financial condition of L&C
28 at that date, according to the books and records of L&C, and the information available to the Deputy

1 Receiver's staff. Pursuant to the Court's Minute Order of February 7, 2014, the attached is submitted
2 for informational purposes only and approval of the Court is not requested at this time.

3 **2. Cash Receipts and Disbursements**

4 **A. January 1, 2019 through September 30, 2019 (Exhibit 2)**

5 A schedule summarizing the cash receipts and disbursements for the period January 1, 2019
6 through September 30, 2019 is attached as Exhibit 2.

7 **CONCLUSION**

8 In view of the foregoing and in accordance with NRS 696B.290 (7), the Receiver respectfully
9 submits this Status report as required under NRS 696B.290 (7).

- 10 1. Approve this Status Report and the actions taken by the Receiver and Deputy Receiver.

11 DATED: February 25 , 2020

12
13 Respectfully submitted:

14 Barbara D. Richardson, Commissioner of Insurance
15 of the State of Nevada, in her Official Capacity as
Statutory Receiver of Delinquent Domestic Insurers

16 By: /s/ Robert L. Greer
17 ROBERT L. GREER
18 Deputy Receiver

19 Submitted by:
20 AARON D. FORD
Attorney General

21 By: /s/ Joanna N. Grigoriev
22 JOANNA N. GRIGORIEV
23 Senior Deputy Attorney General
24 Nevada Bar No. 5649
25 555 E. Washington Avenue, Suite 3900
Las Vegas, NV 89101
(702) 486-3101
Attorneys for the Division of Insurance

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General
3 and that on the 25th day of February, 2020 I served the foregoing **SEVENTY-SECOND STATUS**
4 **REPORT** addressed as follows:

5 Jason B. Trauth, Esq.
6 Lydecker Diaz
7 1221 Brickell Avenue, 19th Floor
8 Miami, FL 33131
(via US Mail)

9 Constance Akridge, Esq.
10 Holland and Hart
11 9555 Hillwood Drive, 2nd Floor
12 Las Vegas, NV 89134
(via electronic service)

13 Robert L. Greer, Deputy Receiver
14 Vista Consulting Group, Inc.
15 439 West Philadelphia Ave.
Bridgeport, WV 26330
Email: greerlaw@aol.com

16 Barbara D. Richardson, Commissioner of Insurance
17 1818 E. College Parkway, Ste. 102
18 Carson City, NV 89706
Email: Bgould@doi.nv.gov

21
22
23 /s/ Marilyn Millam
24 An Employee of the Office of the Attorney General
25
26
27
28

EXHIBIT 1

EXHIBIT 1

- Unaudited -

Lewis & Clark LTC, Risk Retention Group, Inc., In Liquidation

Comparative Liquidation Basis Balance Sheet

As of December 31, 2018 and September 30, 2019

Assets	Book Value	Adjustments & Offsets	09/30/19 Net Realizable Value	Note	12/31/18 Net Realizable Value
<u>Current Assets</u>					
Cash	1,632,097.13	-	1,632,097.13	1	3,191,451.85
Accrued Investment Income Due	-	-	-		146.47
Prepaid Expenses & Insurance	-	-	-		-
Investments - Bonds	200,000.00	-	200,000.00	2, 16	239,615.60
Subtotal - Current Assets	1,832,097.13	0.00	1,832,097.13		3,431,213.92
<u>Ceded Reinsurance Recoverable Balances</u>					
Ceded Reinsurance Recoverables for:				3A.	
- Paid Claims: Loss & ALAE	77,835.68	-	77,835.68	3B, 16	77,835.68
- Case Reserves: Loss & ALAE	518,657.58	-	518,657.58	3B	518,657.58
- IBNR Reserves: Loss & ALAE	1,058,599.41	-	1,058,599.41	3C	1,058,599.41
- Experience-Rated Premium Adjustment	868,610.00	-	868,610.00	3D	868,610.00
- Unearned Premium Reserve	-	-	-		-
- Ceded Premium Balances	658,189.95	-	658,189.95		658,189.95
Subtotal - Ceded Reinsurance	3,181,892.62	0.00	3,181,892.62		3,181,892.62
<u>Various Receivables</u>					
Premium Receivable / Agent Balances	29,135.91	-	29,135.91		29,135.91
Deductibles Receivable	165,000.00	-	165,000.00		165,000.00
Receivable from Affiliate	134,877.09	(8,107.74)	126,769.35	16	126,769.35
Miscellaneous Receivables	118.94	-	118.94		118.94
Reserve for Uncollectible Assets	(321,024.20)	-	(321,024.20)	6	(321,024.20)
Subtotal - Various Receivables	8,107.74	(8,107.74)	0.00		0.00
<u>Other Assets</u>					
Deferred Tax Asset	-	-	-	4	-
Deferred Acquisition Costs (DAC)	-	-	-	5	-
Subtotal - Other Assets	0.00	0.00	0.00		0.00
Total Assets	5,022,097.49	(8,107.74)	5,013,989.75		6,613,106.54

EXHIBIT 2

EXHIBIT 2

- Unaudited -

Lewis & Clark LTC, Risk Retention Group, Inc.
Summary of Cash Receipts and Disbursements
January 1, 2019 - September 30, 2019

Description	01/19	02/19	03/19	04/19	05/19	06/19	07/19	08/19	09/19	Total
G/L Cash Balance @ Beginning of Period	3,191,451.83	2,871,900.50	2,872,675.52	2,873,526.05	2,626,094.66	2,130,971.12	1,893,183.11	1,631,073.41	1,051,601.06	3,191,451.83
Cash Receipts										
Interest Income - Wells Fargo	649.19	546.14	603.68	539.46	456.43	417.69	393.12	399.38	239.58	4,164.67
Collection of Delinquent	-	-	-	-	-	-	-	-	-	-
Collection of Reinsurance Recoverables	-	-	-	-	-	-	40,000.00	-	-	40,000.00
Bonds Maturing or Sold	-	-	-	-	-	-	-	-	236.49	2,659.25
Investment Income - Bonds	447.16	233.88	246.85	273.42	293.26	278.47	426.45	728.27	-	-
Total - Cash Receipts	1,096.35	775.02	850.53	812.88	749.69	696.16	40,819.57	527.65	496.07	46,823.92
Cash Disbursements										
Legal Services & Expenses - General	-	-	-	-	-	-	-	-	-	-
Legal Services & Expenses - Litigation	288,573.77	-	-	133,515.99	316,612.97	-	247,785.75	-	-	986,558.48
Litigation Support-Expert Witnesses	-	-	-	114,118.28	137,155.38	235,934.17	-	-	-	507,207.83
Office Supplies	-	-	-	-	-	-	-	-	-	-
Postage & Express Mail	46.84	-	-	-	-	-	56.77	-	-	103.61
Temporary Employees	-	-	-	-	-	-	-	-	-	-
Management Consulting Fees & Exp	28,467.50	-	-	-	22,634.88	-	54,680.43	-	-	105,772.81
Bank Fees - Wells Fargo	-	-	-	10.00	10.00	-	-	-	-	20.00
Consulting - Tax - Services	2,530.00	-	-	-	-	2,590.00	-	-	-	5,100.00
Record Storage Fees	462.76	-	-	-	-	-	406.32	-	-	869.08
Miscellaneous Expenses	546.83	-	-	-	-	-	-	-	-	546.83
Total - Cash Disbursements	320,647.70	-	-	247,644.27	496,473.23	238,484.17	302,979.27	-	-	1,606,178.64
Net Cash Change	(319,551.35)	775.02	850.53	(246,831.39)	(495,721.54)	(237,788.01)	(202,109.70)	527.65	(496.07)	(7,559,354.72)
G/L Cash Balance @ End of Period	2,871,900.50	2,872,675.52	2,873,526.05	2,626,694.66	2,130,971.12	1,893,183.11	1,631,073.41	1,631,601.06	1,052,097.13	1,632,097.13

EXHIBIT “M”

EXHIBIT “M”

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,

Case No.

A-14-711535-C

vs.

Deft. No.

XXVII

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 DOES 51-100, inclusive, }

Defendants.

VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION
OF
JEFF MARSHALL
VOLUME 1

9:33 A.M.
DECEMBER 11, 2010
307 29TH STREET NE, SUITE 101
PUYALLUP, WASHINGTON

REPORTED BY: SHARIL L. WHEELER, CCR NO. 2396

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APPEARANCES

FOR THE PLAINTIFF:

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UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORP.:

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FOR DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER,
CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, ERIC
STICKELS, and JEFF MARSHALL:

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aochoa@lipsonnelson.com

ALSO PRESENT:

NAGAH EZALDEIN, Legal Assistant
DAVE HANSEN, Videographer

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<p>1 PUYALLUP, WASHINGTON; DECEMBER 11, 2018</p> <p>2 9:33 A.M.</p> <p>3 --oOo--</p> <p>4</p> <p>09:32:52 5 THE VIDEOGRAPHER: We are on the record.</p> <p>09:32:54 6 This begins Volume I and Media I in the</p> <p>09:32:56 7 testimony of Jeff Marshall in the matter of</p> <p>09:33:00 8 Commissioner of Insurance for the State of Nevada</p> <p>09:33:02 9 versus Robert Chur, et al., before the District Court,</p> <p>09:33:05 10 Clark County, Nevada, Case Number A-14-711535-C.</p> <p>09:33:14 11 Today's date is December 11th, 2018. The</p> <p>09:33:16 12 time is 9:33.</p> <p>09:33:18 13 My name is Dave Hansen, with Sound</p> <p>09:33:20 14 Deposition Services, 10350 Santa Monica Boulevard, Los</p> <p>09:33:23 15 Angeles, California. The video deposition today is</p> <p>09:33:29 16 being held at 307 29th Street, Puyallup, Washington.</p> <p>09:33:34 17 Will counsel please identify themselves and</p> <p>09:33:36 18 who they represent?</p> <p>09:33:37 19 MS. OCHOA: My name is Angela Ochoa. I</p> <p>09:33:40 20 represent Robert Chur, Steve Fogg, Mark Garber, Carol</p> <p>09:33:44 21 Harter, Robert Hurlbut, Barbara Lumpkin, Eric Stickels,</p> <p>09:33:47 22 and the witness, Jeff Marshall.</p> <p>09:33:59 23 Do you need me to do that over again? This</p> <p>09:34:01 24 is not going to reach.</p> <p>09:34:02 25 THE VIDEOGRAPHER: We can start over if</p>	<p>09:35:16 1 Q. What town do you reside in, Mr. Marshall?</p> <p>09:35:19 2 A. Bonney Lake, Washington.</p> <p>09:35:20 3 Q. Where is that located?</p> <p>09:35:22 4 A. About ten miles from here.</p> <p>09:35:25 5 Q. And for whom are you employed?</p> <p>09:35:27 6 A. Omega Healthcare Investors, Inc.</p> <p>09:35:31 7 Q. What is Omega Healthcare Investors, Inc.</p> <p>09:35:34 8 A. It is a real estate investment trust. It is</p> <p>09:35:36 9 the nation's largest owner of nursing homes.</p> <p>09:35:41 10 Q. How many nursing homes does it own?</p> <p>09:35:41 11 A. Over 700.</p> <p>09:35:44 12 Q. And in terms of prior employment or occupation,</p> <p>09:35:48 13 what was that, prior to the one you're with now?</p> <p>09:35:52 14 A. That employment started in 2014. Prior to</p> <p>09:35:56 15 that, for 22 years, I was president and CEO of Eagle</p> <p>09:36:01 16 Healthcare, an operator of skilled nursing facilities</p> <p>09:36:04 17 here in the Northwest. Prior to that, three years as</p> <p>09:36:07 18 CFO of Long Term Care Group, a privately held operator</p> <p>09:36:11 19 of skilled nursing facilities. Prior to that, VP of</p> <p>09:36:14 20 finance for six years with Beverly Enterprises, at the</p> <p>09:36:18 21 time, the nation's largest operator of nursing homes.</p> <p>09:36:21 22 Q. What's your educational background?</p> <p>09:36:23 23 A. I have a bachelor of science degree in</p> <p>09:36:26 24 industrial engineering from Stanford University. I'm</p> <p>09:36:30 25 also a CPA, inactive currently, in the state of</p>

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<p>09:36:32 1 California.</p> <p>09:36:34 2 Q. And how do we refer to your company? What</p> <p>09:36:38 3 would be the best way in the deposition?</p> <p>09:36:40 4 A. Which company?</p> <p>09:36:41 5 Q. The one that is involved in this litigation.</p> <p>09:36:44 6 A. Eagle.</p> <p>09:36:45 7 Q. So when I refer to Eagle, that will be the</p> <p>09:36:48 8 company.</p> <p>09:36:48 9 A. Very good.</p> <p>09:36:51 10 Q. And are you familiar with a group called Lewis</p> <p>09:36:54 11 & Clark --</p> <p>09:36:54 12 A. Yes.</p> <p>09:36:55 13 Q. -- Risk Retention Group?</p> <p>09:36:57 14 What is Lewis & Clark?</p> <p>09:36:59 15 A. It is a long-term care risk retention group.</p> <p>09:37:03 16 Q. What is a risk retention group?</p> <p>09:37:06 17 A. It is a company that is established to provide</p> <p>09:37:09 18 insurance to shareholders in a specified industry.</p> <p>09:37:15 19 Shareholders must be insureds and insureds must be</p> <p>09:37:18 20 shareholders, which is a unique characteristic of a</p> <p>09:37:21 21 risk retention group. And it's set up only to provide</p> <p>09:37:24 22 liability insurance, as was the case with Lewis &</p> <p>09:37:28 23 Clark.</p> <p>09:37:28 24 Q. Now, when did you first get involved? "You"</p> <p>09:37:32 25 being Eagle. When did Eagle first get involved with</p>	<p>09:39:12 1 by adverse claims experience in the industry down in</p> <p>09:39:16 2 Florida. That was being spread by insurance companies</p> <p>09:39:19 3 by charging higher premiums throughout the country.</p> <p>09:39:23 4 So we -- or I sought other alternatives during</p> <p>09:39:28 5 2003. And it was in May of 2003 that I attended an</p> <p>09:39:34 6 industry conference, called the LTC 100 conference.</p> <p>09:39:37 7 Mark Garber, who's a principal at Pinnacle Healthcare,</p> <p>09:39:42 8 also attended that conference. We met Sandy Elsass,</p> <p>09:39:47 9 who's the head of Uni-Ter, at that conference, along</p> <p>09:39:53 10 with James Martin, who is the head of claims management</p> <p>09:39:58 11 for Uni-Ter. And we discussed extensively the concept</p> <p>09:40:03 12 of risk retention groups and the alternatives provided</p> <p>09:40:08 13 for us in that context.</p> <p>09:40:10 14 Q. Do you recall what Mr. Elsass said to you about</p> <p>09:40:13 15 risk retention groups?</p> <p>09:40:15 16 A. Just generally, that if provided an</p> <p>09:40:19 17 alternative, in accordance with federal law, for</p> <p>09:40:22 18 industries like ours, that had experienced</p> <p>09:40:26 19 unaffordable -- or unpredictable insurance coverage;</p> <p>09:40:30 20 that you could actually provide insurance for yourself</p> <p>09:40:33 21 under certain regulatory conditions, in capital</p> <p>09:40:38 22 structures.</p> <p>09:40:38 23 Q. Do you know whether or not Mr. Elsass -- do you</p> <p>09:40:40 24 know, at the time you had that conversation,</p> <p>09:40:44 25 Mr. Elsass's experience with risk retention groups?</p>
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<p>09:37:36 1 Lewis & Clark?</p> <p>09:37:36 2 A. Eagle was a founding member of Lewis & Clark,</p> <p>09:37:40 3 along with the similarly sized multi-facility chain</p> <p>09:37:44 4 called Pinnacle Healthcare. When the company first</p> <p>09:37:49 5 started writing -- or issuing policies January 1 of</p> <p>09:37:56 6 2004.</p> <p>09:37:56 7 Q. And how long had you been associated with Eagle</p> <p>09:37:59 8 prior to January 1 of 2004?</p> <p>09:38:02 9 A. Since its founding in 1991.</p> <p>09:38:07 10 Q. Focusing our attention to the time period of</p> <p>09:38:10 11 January of 2004, how many facilities -- skilled nursing</p> <p>09:38:13 12 facilities or nursing homes -- or whatever you want to</p> <p>09:38:16 13 call them -- did Eagle have?</p> <p>09:38:22 14 A. In 2004, 12, I believe.</p> <p>09:38:29 15 Q. What states were they located in?</p> <p>09:38:32 16 A. Washington, Oregon, and Idaho.</p> <p>09:38:38 17 Q. How did you happen to get involved with Lewis &</p> <p>09:38:42 18 Clark?</p> <p>09:38:42 19 A. A year prior, in December of 2002, we were</p> <p>09:38:50 20 surprised to learn, at the end of that month, that our</p> <p>09:38:52 21 renewal for professional liability insurance was going</p> <p>09:38:57 22 to require a six-fold increase in premiums for even a</p> <p>09:39:01 23 reduced amount of coverage, even though we had not had</p> <p>09:39:05 24 any claims experience to speak of. Our research,</p> <p>09:39:08 25 through our brokers, had indicated that that was caused</p>	<p>09:40:46 1 A. He represented that he had extensive</p> <p>09:40:49 2 experience, including having recently established the</p> <p>09:40:53 3 Ponce de Leon Risk Retention Group in Florida for the</p> <p>09:40:58 4 same industry.</p> <p>09:41:00 5 Q. And do you recall anything Mr. Martin may have</p> <p>09:41:02 6 said at that initial meeting?</p> <p>09:41:04 7 A. Yes. He was actually on a panel at the LTC 100</p> <p>09:41:10 8 conference, discussing the rise in claims nationally in</p> <p>09:41:12 9 the skilled nursing facility industry. I was very</p> <p>09:41:15 10 impressed with his approach to handling claims.</p> <p>09:41:20 11 Q. And at that point in time, did you have any</p> <p>09:41:22 12 knowledge of anybody associated with U.S. RE?</p> <p>09:41:26 13 A. At that time, no.</p> <p>09:41:27 14 Q. What was your next involvement with anybody</p> <p>09:41:30 15 from Uni-Ter or U.S. RE, as it relates to the</p> <p>09:41:34 16 establishment of the Lewis & Clark Risk Retention</p> <p>09:41:36 17 Group?</p> <p>09:41:38 18 A. There were follow-up discussions with Sandy</p> <p>09:41:40 19 Elsass regarding how such an organization could be</p> <p>09:41:45 20 established. And I also involved Eagle's corporate</p> <p>09:41:49 21 counsel, Kate Julin, J-U-L-I-N, in that process to</p> <p>09:41:55 22 ensure that Eagle's interests were protected and that</p> <p>09:41:58 23 it was a reasonable venture for us to engage in.</p> <p>09:42:04 24 Q. I skipped right to the fact of whether you've</p> <p>09:42:06 25 ever had your deposition taken before.</p>

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<p>09:42:08 1 A. I have.</p> <p>09:42:09 2 Q. So you know the general parameters of what is</p> <p>09:42:12 3 involved in a deposition?</p> <p>09:42:13 4 A. Yes.</p> <p>09:42:14 5 Q. And obviously, at any point in time, if you</p> <p>09:42:16 6 need to take a break -- we're not in a marathon --</p> <p>09:42:19 7 please let us know, and we'll accommodate that. And if</p> <p>09:42:22 8 you need to speak with any of your counsel or anybody</p> <p>09:42:26 9 else, just let us know, and we'll accommodate you.</p> <p>09:42:27 10 A. Thank you.</p> <p>09:42:27 11 Q. If you don't understand my question, please ask</p> <p>09:42:30 12 me to explain it. I'll assume, if you don't say</p> <p>09:42:34 13 anything, that you understood the question. Fair</p> <p>09:42:35 14 enough?</p> <p>09:42:36 15 A. Fair enough.</p> <p>09:42:37 16 Q. Okay. Now, how did -- how was Lewis & Clark</p> <p>09:42:43 17 established? How did you go about doing it?</p> <p>09:42:47 18 A. We went through the process of setting up the</p> <p>09:42:50 19 legal documents, going through the regulatory process,</p> <p>09:42:56 20 establishing a sufficient base of facilities to be</p> <p>09:42:59 21 insured, including with Mr. Garber at Pinnacle and his</p> <p>09:43:03 22 organization. There were several other smaller</p> <p>09:43:07 23 chains -- or excuse me -- facilities that were also</p> <p>09:43:10 24 involved. And capital had to be raised by those</p> <p>09:43:14 25 insureds, since they had to be shareholders.</p>	<p>09:44:34 1 A. No.</p> <p>09:44:35 2 Q. Was there -- there was not a board for Eagle?</p> <p>09:44:38 3 A. It was privately held company. So there was</p> <p>09:44:40 4 really a management committee that was more operational</p> <p>09:44:43 5 than a board of directors.</p> <p>09:44:45 6 Q. What is the difference between an operational</p> <p>09:44:47 7 management committee, as you understand it, and a board</p> <p>09:44:49 8 of directors?</p> <p>09:44:50 9 A. A management committee would cover detailed</p> <p>09:44:54 10 day-to-day operational aspects, as well as performance.</p> <p>09:44:57 11 A board of directors would provide more oversight.</p> <p>09:45:03 12 Q. There are some people whose names -- I want to</p> <p>09:45:05 13 ask you whether you know them and in what capacity.</p> <p>09:45:08 14 You mentioned Mr. Elsass, and he was the president of</p> <p>09:45:12 15 Uni-Ter?</p> <p>09:45:13 16 A. That's my understanding, yes.</p> <p>09:45:14 17 Q. Donna Dalton. Did you know who Donna Dalton</p> <p>09:45:17 18 was?</p> <p>09:45:17 19 A. Initially, I believe she was the CFO, and was</p> <p>09:45:19 20 later elevated to COO, chief operating officer.</p> <p>09:45:23 21 Q. And Larry Shatoff, he's with U.S. RE. Do you</p> <p>09:45:27 22 know Larry Shatoff?</p> <p>09:45:29 23 A. Just in the course of a couple of conversations</p> <p>09:45:31 24 over the years. U.S. RE typically was in charge of</p> <p>09:45:35 25 placing reinsurance for Lewis & Clark, so we didn't</p>
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<p>09:43:17 1 Q. And who was the one -- what entity or who was</p> <p>09:43:21 2 involved in assembling this initial group that formed</p> <p>09:43:25 3 Lewis & Clark? Was that something --</p> <p>09:43:28 4 A. Sandy Elsass was principally responsible for</p> <p>09:43:31 5 assembling the group.</p> <p>09:43:33 6 Q. And at some point in time, you became chairman</p> <p>09:43:37 7 of the board of Lewis & Clark?</p> <p>09:43:39 8 A. Yes.</p> <p>09:43:39 9 Q. And when was that?</p> <p>09:43:42 10 A. I believe immediately.</p> <p>09:43:44 11 Q. And what was the size, if you recall, of the</p> <p>09:43:47 12 other skilled nursing facilities that were part of the</p> <p>09:43:51 13 risk retention group initially for Lewis & Clark?</p> <p>09:43:56 14 A. Pinnacle had a similar size to Eagle, and the</p> <p>09:43:58 15 others were smaller.</p> <p>09:44:02 16 Q. And in terms of becoming board chairman, you</p> <p>09:44:07 17 were chairman immediately?</p> <p>09:44:08 18 A. I believe that's correct.</p> <p>09:44:10 19 Q. And you continued to serve as chairman through,</p> <p>09:44:13 20 I believe, 2012, when it went into liquidation?</p> <p>09:44:16 21 A. Correct.</p> <p>09:44:21 22 Q. Had you been on a board of directors before?</p> <p>09:44:24 23 A. No.</p> <p>09:44:27 24 Q. Had you been -- had you made presentations to</p> <p>09:44:31 25 board of directors before?</p>	<p>09:45:37 1 have a lot of interaction.</p> <p>09:45:39 2 Q. Do you recall if Mr. Shatoff made presentations</p> <p>09:45:41 3 to the board of directors?</p> <p>09:45:43 4 A. A couple of times, yes.</p> <p>09:45:44 5 Q. Would he typically make the presentation when</p> <p>09:45:49 6 Lewis & Clark was deciding who and what level of</p> <p>09:45:53 7 reinsurance they would retain?</p> <p>09:45:55 8 A. Yes.</p> <p>09:45:58 9 Q. Carol Birdie. Do you know Carol Birdie?</p> <p>09:46:01 10 A. Do not.</p> <p>09:46:02 11 Q. Tal Piccione?</p> <p>09:46:03 12 A. President of U.S. RE, I believe.</p> <p>09:46:05 13 Q. And how -- what kind of involvement did you</p> <p>09:46:07 14 have with Mr. Piccione, P-I-C-C-I-O-N-E?</p> <p>09:46:11 15 A. Virtually none.</p> <p>09:46:16 16 Q. Did he ever attend any board meetings?</p> <p>09:46:18 17 A. No.</p> <p>09:46:20 18 Q. Richard Davies, Dick Davies; do you know him?</p> <p>09:46:24 19 A. Yes. I believe he was the CFO of U.S. RE.</p> <p>09:46:27 20 Q. And what type of interaction did you have with</p> <p>09:46:29 21 him?</p> <p>09:46:30 22 A. He also was involved in the placement of</p> <p>09:46:32 23 reinsurance. I know of one board meeting that he</p> <p>09:46:36 24 attended.</p> <p>09:46:37 25 Q. And Joe Fedor, F-E-D-O-R? Do you know Joe</p>

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<p>09:46:40 1 Fedor?</p> <p>09:46:40 2 A. I do not know him.</p> <p>09:46:43 3 Q. Now, there's an entity known as Henry Hudson.</p> <p>09:46:47 4 Are you familiar with that entity?</p> <p>09:46:49 5 A. Yes.</p> <p>09:46:49 6 Q. What is that?</p> <p>09:46:51 7 A. It was a similar risk retention group structure</p> <p>09:46:54 8 to Lewis & Clark, that was also managed by Uni-Ter.</p> <p>09:47:00 9 Q. And was there a time when there was a merger</p> <p>09:47:02 10 between Lewis & Clark and Henry Hudson?</p> <p>09:47:05 11 A. Yes. I believe it was about the spring of</p> <p>09:47:08 12 2005.</p> <p>09:47:10 13 Q. And were there documents reviewed by both -- by</p> <p>09:47:13 14 at least Lewis & Clark to decide whether or not to do</p> <p>09:47:17 15 that merger?</p> <p>09:47:18 16 A. Yes.</p> <p>09:47:18 17 Q. Who provided the documents?</p> <p>09:47:22 18 A. Sandy Elsass, as well as appropriate executives</p> <p>09:47:27 19 from Henry Hudson.</p> <p>09:47:29 20 Q. And did you review the documents?</p> <p>09:47:31 21 A. Yes, as well as my counsel for Eagle.</p> <p>09:47:35 22 Q. And when you say, your counsel for Eagle, it</p> <p>09:47:37 23 would be your -- can you tell me the law firm again?</p> <p>09:47:40 24 A. Julia & McBride.</p> <p>09:47:42 25 Q. Spell it.</p>	<p>09:48:59 1 & Clark?</p> <p>09:48:59 2 A. Correct.</p> <p>09:49:01 3 Q. And you remained chairman of the board of Lewis</p> <p>09:49:05 4 & Clark?</p> <p>09:49:05 5 A. That's correct.</p> <p>09:49:07 6 Q. In terms of the information provided to you by</p> <p>09:49:11 7 Uni-Ter, with respect to making the decision to have</p> <p>09:49:15 8 the merger between Lewis & Clark and Henry Hudson, did</p> <p>09:49:19 9 you find the information to be adequate?</p> <p>09:49:22 10 A. Yes. It included financial statement</p> <p>09:49:24 11 information.</p> <p>09:49:25 12 Q. And in terms of the performance of the merged</p> <p>09:49:31 13 companies -- let's say in 2005, '6, and '7 -- were you</p> <p>09:49:35 14 satisfied with the operation?</p> <p>09:49:36 15 A. Yes.</p> <p>09:49:38 16 Q. Was there any significant claims experience for</p> <p>09:49:42 17 that group from the time period of, let's say, 2005</p> <p>09:49:46 18 through 2008?</p> <p>09:49:49 19 A. There was significant claims experience, but</p> <p>09:49:51 20 not in excess of expectations.</p> <p>09:49:54 21 Q. And when you say, "not in excess of</p> <p>09:49:57 22 expectations," how did you arrive at what your</p> <p>09:50:01 23 expectations were?</p> <p>09:50:02 24 A. The reserves that were established -- well, the</p> <p>09:50:05 25 expectations were based on a low percentage of premiums</p>
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<p>09:47:43 1 A. J-U-L-I-N and M-C-B-R-I-D-E.</p> <p>09:47:43 2 Q. And --</p> <p>09:47:43 3 A. Kate Julin served initially on the board of</p> <p>09:47:52 4 directors for Lewis & Clark, up to the point of the</p> <p>09:47:54 5 merger.</p> <p>09:47:55 6 Q. Did you -- were you in favor of the merger?</p> <p>09:47:59 7 A. Yes.</p> <p>09:48:00 8 Q. Why?</p> <p>09:48:00 9 A. I performed diligence in the form of calls to</p> <p>09:48:04 10 similar operators of nursing homes, who were insured by</p> <p>09:48:07 11 Henry Hudson, about their experiences with the</p> <p>09:48:10 12 management of Uni-Ter, also about the financing with</p> <p>09:48:19 13 Oneida Savings Bank, that had provided capital to Henry</p> <p>09:48:23 14 Hudson. And I felt that this was a good addition to</p> <p>09:48:27 15 expand the geographical and operator diversification of</p> <p>09:48:32 16 Lewis & Clark. And that diversification --</p> <p>09:48:35 17 diversification, I felt would be healthy for the</p> <p>09:48:37 18 overall merged entity.</p> <p>09:48:39 19 Q. And Henry Hudson was more of a Northeast</p> <p>09:48:43 20 operating company?</p> <p>09:48:45 21 A. That's correct.</p> <p>09:48:46 22 Q. And what size skilled nursing facilities were</p> <p>09:48:49 23 there at Henry Hudson?</p> <p>09:48:50 24 A. Similar to the size of Lewis & Clark.</p> <p>09:48:55 25 Q. And the entity that survived by name was Lewis</p>	<p>09:50:08 1 written.</p> <p>09:50:09 2 Q. Explain that to me, if you would, please.</p> <p>09:50:12 3 A. If claims are in excess of premiums written,</p> <p>09:50:14 4 that would create a substantial loss, and the company</p> <p>09:50:17 5 would not be able to operate. So claims had to be</p> <p>09:50:20 6 sufficiently low to allow for the additional expenses</p> <p>09:50:23 7 being incurred for administrative costs and the other</p> <p>09:50:25 8 operational expenses of the company. Those claims were</p> <p>09:50:28 9 well within those guidelines.</p> <p>09:50:30 10 Q. And from a board standpoint, you, as chairman,</p> <p>09:50:33 11 how frequently -- I'm going from the time period of</p> <p>09:50:38 12 2005 forward, after the merger with Henry Hudson -- did</p> <p>09:50:43 13 you meet?</p> <p>09:50:45 14 A. Usually quarterly.</p> <p>09:50:46 15 Q. And did you meet typically in person?</p> <p>09:50:49 16 A. Yes. There were some telephonic meetings. But</p> <p>09:50:53 17 generally, the quarterly meetings were in person.</p> <p>09:50:56 18 Q. And with respect to --</p> <p>09:50:56 19 A. Excuse me. Let me correct that. The quarterly</p> <p>09:51:00 20 meetings were not all in person. There were some</p> <p>09:51:03 21 telephonic. There were probably at least two per year</p> <p>09:51:06 22 that were in person.</p> <p>09:51:09 23 Q. And did you have an annual meeting?</p> <p>09:51:11 24 A. Yes. In conjunction with one of those board</p> <p>09:51:14 25 meetings.</p>

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<p>09:51:15 1 Q. Were minutes kept of the --</p> <p>09:51:19 2 A. Yes.</p> <p>09:51:19 3 Q. -- meetings?</p> <p>09:51:20 4 Do you know Curtis Sitterson,</p> <p>09:51:22 5 S-I-T-T-E-R-S-O-N?</p> <p>09:51:22 6 A. Yes.</p> <p>09:51:23 7 Q. Who is Curtis Sitterson?</p> <p>09:51:25 8 A. He's an attorney with a law firm in Florida;</p> <p>09:51:28 9 Stearns, Weaver, and a bunch of other names I can't</p> <p>09:51:30 10 remember.</p> <p>09:51:31 11 Q. He's the last name, I think. But he's a named</p> <p>09:51:35 12 partner with the Stearns Weaver firm.</p> <p>09:51:38 13 When did you first meet Mr. Sitterson?</p> <p>09:51:43 14 A. I believe it was post merger.</p> <p>09:51:46 15 Q. And how did he become -- was he general counsel</p> <p>09:51:49 16 to Lewis & Clark?</p> <p>09:51:51 17 A. He was.</p> <p>09:51:52 18 Q. And how did he become general counsel to Lewis</p> <p>09:51:55 19 & Clark?</p> <p>09:51:55 20 A. He was selected by Uni-Ter.</p> <p>09:51:57 21 Q. And did you review his credentials or</p> <p>09:52:00 22 qualifications?</p> <p>09:52:01 23 A. I did.</p> <p>09:52:02 24 Q. Did you discuss that with your attorney?</p> <p>09:52:04 25 A. Yes.</p>	<p>09:53:10 1 A. Sounds reasonable.</p> <p>09:53:11 2 Q. And were you in favor of the merger between</p> <p>09:53:14 3 Sophia Palmer and Lewis & Clark?</p> <p>09:53:17 4 A. Yes.</p> <p>09:53:18 5 Q. Why?</p> <p>09:53:19 6 A. I felt that this was a low-risk type of</p> <p>09:53:22 7 insurance company, in that it was providing insurance</p> <p>09:53:26 8 to individual nurses, and that there was a potential</p> <p>09:53:29 9 expansion of that business, depending upon states that</p> <p>09:53:34 10 actually required individual nurse insurance. It</p> <p>09:53:37 11 wasn't expanded beyond -- significantly beyond that</p> <p>09:53:37 12 point. But I felt the opportunity was there.</p> <p>09:53:42 13 Q. In front of you I've placed a document[sic]</p> <p>09:53:46 14 which contains Exhibits 1 through 73, I believe. I'd</p> <p>09:53:53 15 ask you to look at Exhibit Number 3, which is entitled</p> <p>09:54:01 16 Declaration of Jeff Marshall. And I'll ask if you're</p> <p>09:54:07 17 familiar with that.</p> <p>09:54:08 18 A. I am.</p> <p>09:54:09 19 Q. And what were the circumstances under which</p> <p>09:54:11 20 that was prepared and signed, to your knowledge?</p> <p>09:54:20 21 A. This was executed on October 5th of 2018. It</p> <p>09:54:26 22 covers a lot of the matters that you've just questioned</p> <p>09:54:28 23 me about.</p> <p>09:54:30 24 Q. And was it in response to be -- was it to be</p> <p>09:54:32 25 filed in the courts in Nevada in response to some</p>
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<p>09:52:05 1 Q. I don't need to know any attorney-client</p> <p>09:52:08 2 privileged material. But you did discuss it?</p> <p>09:52:09 3 A. Yes.</p> <p>09:52:10 4 Q. Were you satisfied with Mr. Sitterson as the</p> <p>09:52:12 5 general counsel for Lewis & Clark?</p> <p>09:52:14 6 A. I was.</p> <p>09:52:22 7 Q. And are you familiar with an entity called</p> <p>09:52:28 8 Sophia Palmer?</p> <p>09:52:30 9 A. Yes.</p> <p>09:52:30 10 Q. Who is Sophia Palmer?</p> <p>09:52:32 11 A. Sophia Palmer was a risk retention group that</p> <p>09:52:35 12 provided insurance for nurses and nurse practitioners.</p> <p>09:52:40 13 Q. And --</p> <p>09:52:41 14 A. Liability insurance.</p> <p>09:52:42 15 Q. And were the individual policies to the nurses?</p> <p>09:52:44 16 A. Yes, they were.</p> <p>09:52:46 17 Q. In terms of Sophia Palmer, was there ever a</p> <p>09:52:50 18 time when Lewis & Clark merged with Sophia Palmer?</p> <p>09:52:54 19 A. Yes.</p> <p>09:52:55 20 Q. When did that occur, if you recall?</p> <p>09:52:57 21 A. I do not recall the exact year, but it was</p> <p>09:52:59 22 several years after the merger with Henry Hudson.</p> <p>09:53:03 23 Q. I will show you some documents a little later</p> <p>09:53:06 24 that seem to reflect 2009. Does that sound</p> <p>09:53:09 25 generally --</p>	<p>09:54:36 1 pleading or motion or some document filed?</p> <p>09:54:39 2 A. Yes. It was a countermotion for summary</p> <p>09:54:42 3 judgment.</p> <p>09:54:43 4 Q. By the way, what have you done to prepare</p> <p>09:54:46 5 yourself for today's deposition?</p> <p>09:54:47 6 A. I have reviewed prior emails relating to this</p> <p>09:54:52 7 case and some of these -- some of the exhibits that</p> <p>09:54:57 8 counsel had provided me.</p> <p>09:54:58 9 Q. Did you review the testimony of any of the</p> <p>09:55:00 10 witnesses that have been deposed?</p> <p>09:55:04 11 A. No.</p> <p>09:55:04 12 Q. Are you aware that Mr. Stickels has been</p> <p>09:55:07 13 deposed?</p> <p>09:55:07 14 A. I am aware of that.</p> <p>09:55:09 15 Q. Have you talked to Mr. Stickels about his</p> <p>09:55:11 16 deposition, either before or after?</p> <p>09:55:13 17 A. I have not.</p> <p>09:55:14 18 Q. Do you know Mr. Fogg, F-O-G-G?</p> <p>09:55:17 19 A. Yes.</p> <p>09:55:18 20 Q. Do you know he has been deposed in this case?</p> <p>09:55:20 21 A. I do.</p> <p>09:55:21 22 Q. Have you talked to him, in any way, shape, or</p> <p>09:55:23 23 form, about the substance of the deposition?</p> <p>09:55:25 24 A. I have not.</p> <p>09:55:26 25 Q. And have you reviewed any summaries of these</p>

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<p>09:55:30 1 depositions?</p> <p>09:55:31 2 A. Yes.</p> <p>09:55:32 3 Q. And what was the nature of the summary?</p> <p>09:55:37 4 MS. OCHOA: I'm going to just object to</p> <p>09:55:38 5 attorney-client privilege.</p> <p>09:55:40 6 MR. WILSON: I think I'm entitled to find</p> <p>09:55:42 7 out if there's a -- I'm not asking the content. I'm</p> <p>09:55:45 8 asking what was presented to him, that he reviewed.</p> <p>09:55:50 9 MS. OCHOA: Can we take a break for a</p> <p>09:55:55 10 second?</p> <p>09:55:55 11 MR. WILSON: Absolutely.</p> <p>09:55:56 12 THE VIDEOGRAPHER: We're off the record.</p> <p>09:57:35 13 (Discussion off the record.)</p> <p>09:57:44 14 THE VIDEOGRAPHER: We're back on the</p> <p>09:57:46 15 record.</p> <p>09:57:46 16 Q. (BY MR. WILSON) Can you answer the question?</p> <p>09:57:48 17 A. Could you repeat the question, please?</p> <p>09:57:54 18 MR. WILSON: Read it back, please.</p> <p>09:57:56 19 (The question on page 25, line 3, was</p> <p>09:57:56 20 read.)</p> <p>09:57:56 21 A. It was a summary of impressions of the</p> <p>09:57:59 22 witnesses and their conduct during the deposition.</p> <p>09:58:03 23 Q. (BY MR. WILSON) And I'm not asking for the</p> <p>09:58:03 24 content of what was -- you read. But was it a document</p> <p>09:58:09 25 that somebody prepared to -- prepared and gave to you</p>	<p>09:59:15 1 A. There is. I had reviewed my declaration.</p> <p>09:59:17 2 Q. Which is Exhibit 3?</p> <p>09:59:19 3 A. Correct.</p> <p>09:59:21 4 Q. What else?</p> <p>09:59:36 5 A. I reviewed Exhibit 14.</p> <p>09:59:40 6 Q. 14 is the September 8th letter to -- from</p> <p>09:59:44 7 Nevada Department of Insurance, correct?</p> <p>09:59:49 8 A. That is correct.</p> <p>09:59:49 9 Q. And that was -- that was one of the subjects</p> <p>09:59:51 10 that you addressed in the declaration, which is Exhibit</p> <p>09:59:53 11 3, correct?</p> <p>09:59:54 12 A. Correct.</p> <p>09:59:56 13 Q. And I believe -- let me ask a couple of</p> <p>09:59:58 14 questions about that -- that your declaration indicated</p> <p>10:00:01 15 that you had never received that letter?</p> <p>10:00:03 16 A. That is correct.</p> <p>10:00:04 17 Q. At any point in time, ever?</p> <p>10:00:07 18 A. I do not recall ever seeing that letter, until</p> <p>10:00:10 19 now.</p> <p>10:00:12 20 Q. Did you -- do you know whether or not your</p> <p>10:00:16 21 counsel, Mr. Sitterson, received the letter?</p> <p>10:00:21 22 A. I do not know that.</p> <p>10:00:25 23 Q. If he did, you have no recollection of being --</p> <p>10:00:28 24 of that being sent to you by him?</p> <p>10:00:30 25 A. Correct.</p>
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<p>09:58:12 1 to read?</p> <p>09:58:14 2 A. It did not cover any of the content of the</p> <p>09:58:16 3 depositions themselves, just the impressions of the</p> <p>09:58:20 4 witnesses during the depositions.</p> <p>09:58:21 5 Q. And was that received from counsel?</p> <p>09:58:22 6 A. Yes.</p> <p>09:58:24 7 Q. Once again, I'm not looking for content. I'm</p> <p>09:58:28 8 just asking what the nature was. How much time did you</p> <p>09:58:30 9 spend in preparation for the deposition?</p> <p>09:58:32 10 A. Maybe an hour.</p> <p>09:58:35 11 Q. Did you review any of the board meeting</p> <p>09:58:37 12 minutes?</p> <p>09:58:38 13 A. I did not -- I might have seen one or two of</p> <p>09:58:40 14 them, but not all of them.</p> <p>09:58:42 15 Q. And I have in front of you an exhibit book of</p> <p>09:58:45 16 73 exhibits. Did you review any of those exhibits?</p> <p>09:58:49 17 A. If they are the same as what counsel provided</p> <p>09:58:52 18 to me, I did review a number of them.</p> <p>09:58:55 19 Q. Do you remember which ones, in particular, you</p> <p>09:58:58 20 reviewed or what --</p> <p>09:59:00 21 A. A few of them were board meeting minutes. If I</p> <p>09:59:04 22 saw an index, I could tell you some of the others that</p> <p>09:59:07 23 I reviewed.</p> <p>09:59:10 24 Q. There should be an index. Is there an index</p> <p>09:59:14 25 there?</p>	<p>10:00:31 1 Q. We have a number of documents from</p> <p>10:00:33 2 Mr. Sitterson that go to members of the board, but the</p> <p>10:00:37 3 bulk of the information is blacked out for</p> <p>10:00:39 4 attorney-client privilege reasons. So we can't tell</p> <p>10:00:42 5 what was sent and what wasn't sent. But you don't have</p> <p>10:00:45 6 any recollection of that being sent?</p> <p>10:00:47 7 A. I do not.</p> <p>10:00:48 8 Q. Do you know -- is it Constance Akridge?</p> <p>10:00:53 9 A. Yes.</p> <p>10:00:54 10 Q. Who is she?</p> <p>10:00:56 11 A. Nevada counsel.</p> <p>10:00:58 12 Q. And she was Nevada counsel for what purpose?</p> <p>10:01:02 13 A. Because the -- Lewis & Clark was domiciled in</p> <p>10:01:04 14 the state of Nevada. She was counsel to specifically</p> <p>10:01:08 15 deal with matters involving the Depart- -- Division of</p> <p>10:01:10 16 Insurance of Nevada.</p> <p>10:01:12 17 Q. Do you know whether or not Ms. Akridge dealt</p> <p>10:01:16 18 with the Department of Insurance as it relates to the</p> <p>10:01:21 19 content of the September 8th, 2010, letter?</p> <p>10:01:26 20 A. I do not know that.</p> <p>10:01:30 21 Q. Did you see a September 2nd, 2010, letter that</p> <p>10:01:35 22 came from the Department of Insurance?</p> <p>10:01:37 23 A. No.</p> <p>10:01:38 24 Q. You've never seen that, to date?</p> <p>10:01:40 25 A. I do not recall that, until seeing it here on</p>

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<p>10:01:42 1 the exhibit list.</p> <p>10:01:44 2 Q. And which exhibit is that?</p> <p>10:01:46 3 A. 46.</p> <p>10:01:47 4 Q. And if you look at Exhibit 46, it says, Re:</p> <p>10:02:14 5 Post Sophia Palmer Merger Deteriorating Financial</p> <p>10:02:20 6 Condition.</p> <p>10:02:23 7 Are you aware that there was any changes</p> <p>10:02:23 8 between the September 2nd, 2010, and the September 8th,</p> <p>10:02:27 9 2010, letters from the Department of Insurance?</p> <p>10:02:31 10 A. Since I hadn't seen either one of them, I</p> <p>10:02:34 11 wasn't aware of any changes between them.</p> <p>10:02:35 12 Q. Are you aware today that there were changes?</p> <p>10:02:37 13 A. I did not review them and compare them</p> <p>10:02:40 14 together.</p> <p>10:02:41 15 Q. You have not reviewed any emails that</p> <p>10:02:43 16 would've -- that perhaps related to changes in the</p> <p>10:02:46 17 letter?</p> <p>10:02:47 18 A. That is correct.</p> <p>10:02:48 19 Q. So you don't know whether your counsel, meaning</p> <p>10:02:50 20 either Mr. Sitterson or Ms. Alkridge, participated with</p> <p>10:02:54 21 the Department of Insurance as it relates to changes in</p> <p>10:02:58 22 the letter?</p> <p>10:02:59 23 A. I do not know that.</p> <p>10:03:00 24 Q. Do you know whether or not your counsel has</p> <p>10:03:07 25 scheduled a hearing as it relates to the subject matter</p>	<p>10:04:51 1 A. This was a very important board meeting, in</p> <p>10:04:53 2 that it was held to review what Uni-Ter had called a</p> <p>10:04:58 3 "sudden increase in reserves" and its request that</p> <p>10:05:04 4 board members, as insureds, supply additional capital</p> <p>10:05:11 5 to help restore deficient capital reserves.</p> <p>10:05:17 6 Q. When did you first learn of any possibility of</p> <p>10:05:22 7 additional capital needing to be committed to Lewis &</p> <p>10:05:28 8 Clark because of reserving issues?</p> <p>10:05:30 9 A. Sandy Elsass sent an email to all of the board</p> <p>10:05:34 10 of directors -- actually several emails between August</p> <p>10:05:36 11 25th and September 1st. One of those emails advised</p> <p>10:05:40 12 that there may be a need for additional capital and</p> <p>10:05:43 13 that it would be discussed at the upcoming September</p> <p>10:05:46 14 21st board meeting.</p> <p>10:05:47 15 Q. Now, let me focus your attention on the time</p> <p>10:05:51 16 period before September 21st, 2011. At any point in</p> <p>10:05:59 17 time, did you, as chairman of the board of Lewis &</p> <p>10:06:03 18 Clark, have any issues with respect to the way claims</p> <p>10:06:09 19 were being reserved by Uni-Ter or entities associated</p> <p>10:06:13 20 with Uni-Ter?</p> <p>10:06:17 21 A. Up until August 25th, which was the first email</p> <p>10:06:21 22 of those that I referenced, no.</p> <p>10:06:25 23 Q. You're aware, aren't you, that there were</p> <p>10:06:27 24 claims reports made at virtually every, if not every,</p> <p>10:06:32 25 board meeting?</p>
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<p>10:03:12 1 of the September 8th, 2010, letter?</p> <p>10:03:15 2 A. I do not know that.</p> <p>10:03:19 3 Q. Do you know whether any other board members</p> <p>10:03:23 4 received the 2010 -- September 8th, 2010, letter?</p> <p>10:03:27 5 A. I do not know that.</p> <p>10:03:29 6 Q. Did you ever know of the matters raised in the</p> <p>10:03:33 7 September 8th, 2010, letter, even though you hadn't</p> <p>10:03:37 8 seen it? There was some question being raised by the</p> <p>10:03:40 9 Department of Insurance about the capital structure</p> <p>10:03:44 10 of --</p> <p>10:03:45 11 A. I do not recall that being discussed.</p> <p>10:03:48 12 Q. When did you first become aware that such a</p> <p>10:03:51 13 letter existed?</p> <p>10:03:54 14 A. Upon my counsel reviewing these exhibits with</p> <p>10:03:57 15 me.</p> <p>10:04:00 16 Q. Any other exhibits that you particularly</p> <p>10:04:03 17 review, besides the ones you've identified today, which</p> <p>10:04:06 18 is 3, 14, and, I believe, 46?</p> <p>10:04:17 19 A. 26.</p> <p>10:04:21 20 Q. And 26 is the board minutes of September 21st</p> <p>10:04:24 21 of 2011?</p> <p>10:04:27 22 A. Correct.</p> <p>10:04:28 23 Q. Let's go to those board minutes, if we might.</p> <p>10:04:41 24 Is there anything, in particular, that stands</p> <p>10:04:43 25 out in your mind as to why you reviewed that?</p>	<p>10:06:33 1 A. Correct.</p> <p>10:06:34 2 Q. And who decided the parameters on what would be</p> <p>10:06:38 3 reported to the board, as it relates to claims?</p> <p>10:06:41 4 A. Uni-Ter provided the claims review.</p> <p>10:06:45 5 Q. And were you satisfied with the claims review?</p> <p>10:06:49 6 A. Generally, yes.</p> <p>10:06:50 7 Q. Did the claims review consist of reviewing</p> <p>10:06:54 8 claims that were \$50,000 and above reserved?</p> <p>10:06:57 9 A. That was included, yes.</p> <p>10:06:59 10 Q. And did they review those in detail? Meaning,</p> <p>10:07:04 11 telling you the nature of the claim and things of that</p> <p>10:07:07 12 nature?</p> <p>10:07:07 13 A. Some of those claims, not all of them, were</p> <p>10:07:10 14 reviewed.</p> <p>10:07:11 15 Q. And if they got above 250,000, was there -- in</p> <p>10:07:15 16 terms of reserving, was there any additional level of</p> <p>10:07:17 17 reviewing done?</p> <p>10:07:18 18 A. Generally, we reviewed the status and asked for</p> <p>10:07:22 19 explanations on all of those.</p> <p>10:07:26 20 Q. And in terms of the reviewing process, these</p> <p>10:07:33 21 were claims of the individual members of the Lewis &</p> <p>10:07:37 22 Clark Risk Retention Group, correct?</p> <p>10:07:38 23 A. Correct.</p> <p>10:07:39 24 Q. In fact, you kept a pretty good handle on the</p> <p>10:07:43 25 claims that were filed involving Eagle, correct?</p>

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<p>10:07:46 1 A. Yes.</p> <p>10:07:48 2 Q. And you had your own counsel that you wanted to</p> <p>10:07:49 3 handle those cases?</p> <p>10:07:55 4 A. We would have our own counsel in some of those</p> <p>10:07:59 5 cases.</p> <p>10:08:00 6 Q. Right. In fact, you wrote emails to Uni-Ter</p> <p>10:08:04 7 saying that you'd like to have a certain counsel</p> <p>10:08:07 8 represent you in a specific matter, correct?</p> <p>10:08:09 9 A. Correct.</p> <p>10:08:12 10 Q. And Uni-Ter, to my knowledge, agreed to that,</p> <p>10:08:16 11 correct?</p> <p>10:08:17 12 A. Correct.</p> <p>10:08:18 13 Q. And you were satisfied with your counsel.</p> <p>10:08:21 14 That's why you wanted them to do it. And Uni-Ter was</p> <p>10:08:24 15 satisfied with your counsel representing them?</p> <p>10:08:26 16 A. Correct.</p> <p>10:08:27 17 Q. Now, the claims that involved Eagle were</p> <p>10:08:31 18 reserved. They had reserves, correct?</p> <p>10:08:34 19 A. Correct.</p> <p>10:08:35 20 Q. Did you review the reserves on the cases that</p> <p>10:08:39 21 involved your company?</p> <p>10:08:43 22 A. I reviewed the circumstances -- excuse me -- I</p> <p>10:08:48 23 reviewed the circumstances that created the reserves.</p> <p>10:08:50 24 Q. And when you reviewed the circumstances that</p> <p>10:08:52 25 created the reserves, you then also reviewed what the</p>	<p>10:15:48 1 Q. (BY MR. WILSON) I'll ask if you recognize</p> <p>10:15:52 2 that.</p> <p>10:16:10 3 A. Yes.</p> <p>10:16:18 4 Q. What is it?</p> <p>10:16:22 5 A. These are a series of emails involving the</p> <p>10:16:25 6 suggestion of counsel to handle a particular case,</p> <p>10:16:29 7 subject to the approval of Uni-Ter's head of claims,</p> <p>10:16:34 8 Jim Martin.</p> <p>10:16:35 9 Q. And what was the reason that you wanted this</p> <p>10:16:37 10 counsel to handle the case?</p> <p>10:16:41 11 A. I had used this counsel previously, had</p> <p>10:16:43 12 confidence in their ability to represent us. And I</p> <p>10:16:47 13 wanted Jim Martin to see if he approved using her for</p> <p>10:16:53 14 this matter.</p> <p>10:16:55 15 Q. And you wanted to be sure you could kick some</p> <p>10:16:57 16 greedy plaintiffs' tails, correct?</p> <p>10:17:00 17 A. That's what I wrote in the email.</p> <p>10:17:03 18 Q. I'm not disagreeing with it. But that's one of</p> <p>10:17:05 19 the reasons, is you had confidence in the person?</p> <p>10:17:07 20 A. Correct.</p> <p>10:17:08 21 Q. And you wanted to properly defend the claim</p> <p>10:17:11 22 against you?</p> <p>10:17:12 23 A. That's correct.</p> <p>10:17:25 24 Q. Let me hand you a document -- a multi-page</p> <p>10:17:45 25 document.</p>
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<p>10:08:56 1 reserve was that was set by Uni-Ter?</p> <p>10:09:01 2 MS. OCHOA: Objection.</p> <p>10:09:02 3 A. Correct. But I didn't have the expertise to</p> <p>10:09:04 4 establish what the reserve levels should be.</p> <p>10:09:07 5 Q. (BY MR. WILSON) Well, haven't you written</p> <p>10:09:09 6 emails to Uni-Ter questioning expert witnesses who had</p> <p>10:09:16 7 opined in matters involving Eagle and whether or not</p> <p>10:09:24 8 they were causing some potential liability to Eagle?</p> <p>10:09:29 9 A. I do not recall that.</p> <p>10:09:33 10 Q. You haven't recalled -- you don't recall being</p> <p>10:09:34 11 involved in any way, shape, or form with that?</p> <p>10:09:37 12 A. I do not recall being involved in the</p> <p>10:09:39 13 management of any claims involving Eagle.</p> <p>10:10:20 14 MR. WILSON: Let's take a quick break. I</p> <p>10:14:51 15 just need to get a couple of documents.</p> <p>10:14:51 16 THE VIDEOGRAPHER: Off the record.</p> <p>10:14:51 17 (Discussion off the record.)</p> <p>10:14:54 18 THE VIDEOGRAPHER: We are back on the</p> <p>10:14:54 19 record.</p> <p>10:14:55 20 Q. (BY MR. WILSON) Mr. Marshall, let me hand you</p> <p>10:15:01 21 a document that's three pages in length, Bates-stamped</p> <p>10:15:08 22 BD 0013275 through 277. It's from Jim Martin initially</p> <p>10:15:19 23 to, among others, you, dated February 16, 2011.</p> <p>10:15:48 24 (Deposition Exhibit 74 was marked for</p> <p>10:15:48 25 identification.)</p>	<p>10:18:06 1 MR. WILSON: And hand those to counsel,</p> <p>10:18:06 2 please. Mark it as Exhibit 74(sic). It's a</p> <p>10:18:06 3 document --</p> <p>10:18:07 4 MR. CERECHINO: This is 75.</p> <p>10:18:07 5 MR. WILSON: 75. Excuse me.</p> <p>10:18:07 6 Q. (BY MR. WILSON) It's a document dated 4/4 of</p> <p>10:18:08 7 2011 from Greg Worden to Jeff Marshall, carbon copy</p> <p>10:18:16 8 Colleen Barrett, Bates-stamped BD 0013108 through 111.</p> <p>10:18:36 9 (Deposition Exhibit 75 was marked for</p> <p>10:18:36 10 identification.)</p> <p>10:18:44 11 Q. (BY MR. WILSON) Are you familiar with that,</p> <p>10:18:45 12 sir?</p> <p>10:19:01 13 A. This looks familiar.</p> <p>10:19:03 14 Q. And what was the purpose for your being</p> <p>10:19:06 15 involved in this particular matter?</p> <p>10:19:14 16 A. Allow me to review the email trail.</p> <p>10:19:18 17 Q. Please do.</p> <p>10:19:54 18 A. These emails discuss a medical expert's opinion</p> <p>10:19:58 19 related to insulin, that was a key component of this</p> <p>10:20:00 20 particular case.</p> <p>10:20:01 21 Q. This was a case involving Eagle?</p> <p>10:20:04 22 A. Yes.</p> <p>10:20:05 23 Q. And for example, on page 0013109, there's an</p> <p>10:20:13 24 email from you to Jim Martin, who was what? Head of</p> <p>10:20:16 25 claims at Uni-Ter?</p>

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<p>10:20:19 1 A. Correct.</p> <p>10:20:21 2 Q. Greg Worden -- and Greg Worden is who?</p> <p>10:20:24 3 A. The counsel that was being used in this case.</p> <p>10:20:28 4 Q. And Colleen Barrett was who?</p> <p>10:20:31 5 A. The partner on the -- in the same firm.</p> <p>10:20:35 6 Q. You said, I'm concerned that this expert could</p> <p>10:20:38 7 state one conclusion and later form another. Not a</p> <p>10:20:41 8 good sign for the quality of the expert testimony, if</p> <p>10:20:44 9 sought, regardless of the conclusions reached.</p> <p>10:20:48 10 And you were concerned that -- because this was</p> <p>10:20:53 11 a very large damage case, correct?</p> <p>10:20:56 12 A. Correct.</p> <p>10:20:57 13 Q. How large was it?</p> <p>10:21:00 14 A. Like many plaintiffs, they were requesting</p> <p>10:21:02 15 policy limits.</p> <p>10:21:03 16 Q. What was the reserve at?</p> <p>10:21:06 17 A. I don't know the reserve.</p> <p>10:21:07 18 Q. Wouldn't that be of significance to you, to</p> <p>10:21:10 19 know what the reserve was on a large case that you had</p> <p>10:21:14 20 and, for example, if you thought it was underreserved,</p> <p>10:21:17 21 let Uni-Ter know?</p> <p>10:21:19 22 A. I never formed any conclusions about the</p> <p>10:21:21 23 adequacy of reserves or what reserves should be. We're</p> <p>10:21:24 24 simply providing information that we thought would bear</p> <p>10:21:27 25 upon the case.</p>	<p>10:23:06 1 coverage on a claims made basis for this facility which</p> <p>10:23:09 2 had been closed.</p> <p>10:23:12 3 Q. What is tails -- tail coverage?</p> <p>10:23:15 4 A. Coverage for a period beyond the time frame</p> <p>10:23:19 5 that a claim might have occurred -- or an incident</p> <p>10:23:22 6 might have occurred, rather.</p> <p>10:23:24 7 Q. When did you -- did you sell the company?</p> <p>10:23:27 8 A. The --</p> <p>10:23:27 9 Q. Eagle?</p> <p>10:23:28 10 A. We leased this property from a private</p> <p>10:23:30 11 investor, who sold the property to the University of</p> <p>10:23:34 12 Washington and terminated our lease -- or non-renewed</p> <p>10:23:37 13 the lease.</p> <p>10:23:38 14 Q. And when you -- when was Eagle sold?</p> <p>10:23:42 15 A. In the fall of 2012.</p> <p>10:24:04 16 Q. Let me go back to Exhibit Number 3, if I might,</p> <p>10:24:07 17 your declaration exhibit. I'd like to have you look at</p> <p>10:24:20 18 the last paragraph of the first page of Exhibit Number</p> <p>10:24:26 19 3. And it says: I am aware -- part of it says: I am</p> <p>10:24:30 20 aware that the board always understood the need for</p> <p>10:24:34 21 growth, as it was repeatedly advised to us that in</p> <p>10:24:38 22 order to be competitive, the business had to obtain</p> <p>10:24:40 23 more insureds and diversify. It would not be -- it</p> <p>10:24:46 24 would not surprise me to be presented with suggestions</p> <p>10:24:48 25 for mergers or new insureds, as growth was one of our</p>
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<p>10:21:27 1 Q. So you were not faulting, in any way, shape, or</p> <p>10:21:30 2 form, Uni-Ter in this email, as it relates to the way</p> <p>10:21:33 3 it reserves?</p> <p>10:21:34 4 A. No.</p> <p>10:21:34 5 Q. This was a point that you were making, since it</p> <p>10:21:38 6 was a case filed against Eagle, about the proper</p> <p>10:21:41 7 defense of the case?</p> <p>10:21:44 8 A. Just about what we thought would be information</p> <p>10:21:47 9 that could be relevant to the evaluation of the case.</p> <p>10:21:52 10 Q. Do you remember how it turned out?</p> <p>10:21:55 11 A. I believe the case was settled.</p> <p>10:22:06 12 Q. Let me show you one more email.</p> <p>10:22:15 13 MR. WILSON: We'll mark that as Exhibit</p> <p>10:22:29 14 Number 76.</p> <p>10:22:30 15 (Deposition Exhibit 76 was marked for</p> <p>10:22:32 16 identification.)</p> <p>10:22:32 17 Q. (BY MR. WILSON) It's an email from Donna</p> <p>10:22:34 18 Dalton, dated 6/28/12, to Jonna Miller, carbon copied</p> <p>10:22:41 19 Brian Stiefel and you -- or your company.</p> <p>10:22:47 20 And are you familiar with this email?</p> <p>10:22:52 21 A. Yes.</p> <p>10:22:53 22 Q. And what were the issues involved with respect</p> <p>10:22:55 23 to this particular matter?</p> <p>10:22:59 24 A. As the email indicates, I had requested a loss</p> <p>10:23:02 25 run to determine whether Eagle needed to provide tail</p>	<p>10:24:53 1 goals.</p> <p>10:24:54 2 Was that -- that's an accurate statement?</p> <p>10:24:56 3 A. Yes.</p> <p>10:24:56 4 Q. What type of growth were you looking for at</p> <p>10:24:59 5 this point -- at that point in time?</p> <p>10:25:03 6 A. Reasonable growth that would increase the mass</p> <p>10:25:06 7 of policy premiums, that would allow us to diversify</p> <p>10:25:11 8 our liability risk, in the best interest of the</p> <p>10:25:14 9 company's viability going forward.</p> <p>10:25:17 10 Q. I'm aware of two mergers that occurred during</p> <p>10:25:20 11 your time as chairman of the board. That would be the</p> <p>10:25:24 12 Henry Hudson and the Sophia Palmer. Were there any</p> <p>10:25:27 13 other mergers?</p> <p>10:25:29 14 A. No.</p> <p>10:25:30 15 Q. I'm aware of a lot of issues involving certain</p> <p>10:25:35 16 entities in California, one of which is Country Villas.</p> <p>10:25:39 17 Were you involved in making the decision as to whether</p> <p>10:25:44 18 to include Country Villas as a member and an insured?</p> <p>10:25:49 19 A. Yes.</p> <p>10:25:50 20 Q. And did you agree to bring them aboard as a</p> <p>10:25:56 21 member and an insured?</p> <p>10:25:58 22 A. Yes.</p> <p>10:25:58 23 Q. Why?</p> <p>10:26:01 24 A. There was substantial discussion amongst the</p> <p>10:26:03 25 board of directors about the situations involving</p>

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<p>10:26:07 1 claims with this particular insured. We felt that</p> <p>10:26:13 2 there were two reasons to bring them on board, even</p> <p>10:26:16 3 though they had what might be classified as an outlier</p> <p>10:26:21 4 claim history, a little bit more adverse than our</p> <p>10:26:26 5 typical underwritten potential insureds.</p> <p>10:26:29 6 The two reasons were, first and foremost, that</p> <p>10:26:33 7 there was an additional -- well, there was an agreement</p> <p>10:26:37 8 for an additional contribution by that particular</p> <p>10:26:39 9 insured to cover any excess on their aggregate losses,</p> <p>10:26:44 10 which was a circumstance -- or an arrangement we did</p> <p>10:26:49 11 not have with any previous policyholders, that would</p> <p>10:26:52 12 provide protection for Lewis & Clark against any</p> <p>10:26:55 13 continued adverse claims above a certain level. So</p> <p>10:27:00 14 their insurance was underwritten to a certain level.</p> <p>10:27:03 15 And those premiums were deemed to be adequate, based on</p> <p>10:27:09 16 the presumed and underwritten aggregate. And if it</p> <p>10:27:13 17 exceeded that aggregate, the arrangement would cover us</p> <p>10:27:16 18 for any losses in excess of that.</p> <p>10:27:18 19 The second reason was that they would provide</p> <p>10:27:20 20 us with an entree into the Southern California market,</p> <p>10:27:24 21 which was an attractive market for diversification.</p> <p>10:27:27 22 Q. Were you in California already, meaning Lewis &</p> <p>10:27:31 23 Clark?</p> <p>10:27:31 24 A. We had, I believe, a couple of smaller</p> <p>10:27:37 25 operators in California.</p>	<p>10:28:47 1 A. I don't recall the exact time, but that's</p> <p>10:28:49 2 probably reasonable, in that same frame.</p> <p>10:28:54 3 Q. And at some point in time, Country Villas was</p> <p>10:28:59 4 no longer an insured?</p> <p>10:29:01 5 A. Correct.</p> <p>10:29:01 6 Q. And you talked about an aggregate premium with</p> <p>10:29:05 7 respect to Country Villas?</p> <p>10:29:07 8 A. Correct.</p> <p>10:29:07 9 Q. What is an aggregate premium?</p> <p>10:29:09 10 A. Well, there are specific premiums, and there</p> <p>10:29:11 11 are aggregate premiums. Specific have to do with</p> <p>10:29:13 12 individual claims. Aggregate has to do with the total</p> <p>10:29:16 13 of all specific claims for a company or an insured.</p> <p>10:29:19 14 Q. With respect to Lewis & Clark, as it relates to</p> <p>10:29:22 15 the insured -- and I'll use Eagle as an example -- you</p> <p>10:29:26 16 said you had 12 facilities at one point in time. Did</p> <p>10:29:28 17 you increase the number of facilities or decrease the</p> <p>10:29:32 18 number?</p> <p>10:29:33 19 A. Decreased them as -- I think by two.</p> <p>10:29:38 20 Q. Was the policy written to Eagle, or was it</p> <p>10:29:41 21 written to each of the individual facilities owned or</p> <p>10:29:46 22 operated by Eagle?</p> <p>10:29:51 23 A. I don't recall the exact specifics of that.</p> <p>10:29:54 24 Q. Was the aggregate, as you understand it, as it</p> <p>10:29:56 25 relates to Country Villas, an aggregate for all Country</p>
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<p>10:27:38 1 Q. Mr. Fogg had an operation in California, didn't</p> <p>10:27:41 2 he?</p> <p>10:27:42 3 A. Yes, he did. Assisted living, I believe.</p> <p>10:27:47 4 Q. Now, had you been familiar with Country Villas</p> <p>10:27:51 5 in the industry before it became a member of Lewis &</p> <p>10:27:54 6 Clark?</p> <p>10:27:55 7 A. I had heard of them, but I was not familiar</p> <p>10:27:57 8 with any of their operations in detail.</p> <p>10:28:00 9 Q. And do you recall what documents were presented</p> <p>10:28:02 10 to the board as it relates to Country Villas?</p> <p>10:28:05 11 A. Details about their operations and their</p> <p>10:28:08 12 locations, financial statements about their operations,</p> <p>10:28:15 13 a loss history, from a liability claims standpoint.</p> <p>10:28:18 14 Q. Was it adequate information for you to analyze?</p> <p>10:28:21 15 A. I believe so.</p> <p>10:28:24 16 Q. And they ultimately became a member of the risk</p> <p>10:28:28 17 retention group?</p> <p>10:28:30 18 A. They did.</p> <p>10:28:31 19 Q. And was there a company called Braswell?</p> <p>10:28:34 20 A. Yes.</p> <p>10:28:34 21 Q. Were they a California-based company?</p> <p>10:28:37 22 A. I believe they had some operation in</p> <p>10:28:39 23 California, yes.</p> <p>10:28:40 24 Q. And were they brought in the same time as</p> <p>10:28:46 25 Country Villas?</p>	<p>10:30:02 1 Villas, so --</p> <p>10:30:02 2 A. That was my understanding, yes.</p> <p>10:30:04 3 Q. And then you had -- so there -- I'm sorry. So</p> <p>10:30:07 4 there was -- the aggregate represented what?</p> <p>10:30:10 5 A. The total of all specific claims for Country</p> <p>10:30:14 6 Villa's facilities that were under the policy.</p> <p>10:30:16 7 Q. And then was there what we call a retrospective</p> <p>10:30:20 8 premium, something that looks back to --</p> <p>10:30:24 9 A. That was the arrangement I referred to earlier;</p> <p>10:30:26 10 that if all claims exceeded, during the policy period,</p> <p>10:30:29 11 that certain aggregate level, that they would pay an</p> <p>10:30:34 12 additional premium equal to that excess.</p> <p>10:30:35 13 Q. And they paid that, didn't they?</p> <p>10:30:37 14 A. They did.</p> <p>10:30:38 15 Q. Do you remember your "No mas" email?</p> <p>10:30:42 16 A. I don't recall that.</p> <p>10:30:43 17 Q. Roberto Duran, "No mas." And you were trying</p> <p>10:30:48 18 to make a joke, and people -- I don't know whether they</p> <p>10:30:51 19 understood it or not.</p> <p>10:30:53 20 A. I don't recall that email.</p> <p>10:30:55 21 Q. Well, I'll show it to you.</p> <p>10:31:18 22 Let me mark as our next exhibit, which would be</p> <p>10:31:18 23 Exhibit 77, an email to, among other -- from -- this</p> <p>10:31:21 24 is -- the initial email is from Mark Garber, to, it</p> <p>10:31:24 25 looks like, a number of people, including you,</p>

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<p>10:31:27 1 Bates-stamped BD 0002912 through, it looks like, 16.</p> <p>10:31:26 2 (Deposition Exhibit 77 was marked for</p> <p>10:31:16 3 identification, and later amended to</p> <p>10:31:44 4 remove pages that were marked separately.)</p> <p>10:31:44 5 MS. OCHOA: It looks like these are not</p> <p>10:31:47 6 consecutive. Were these attachments to these emails?</p> <p>10:31:51 7 MR. WILSON: It's my understanding it was,</p> <p>10:31:51 8 but I -- once again, this is the way it got to me.</p> <p>10:31:54 9 MS. OCHOA: Because I don't see attachments</p> <p>10:31:55 10 referred to in these emails.</p> <p>10:32:03 11 MR. WILSON: Let's look at them and see.</p> <p>10:32:05 12 MS. OCHOA: Okay.</p> <p>10:32:31 13 Q. (BY MR. WILSON) Let's take the first two</p> <p>10:32:34 14 pages, which is the 0002912-13 chain, and ask: Are you</p> <p>10:32:42 15 familiar with that?</p> <p>10:32:44 16 A. I'm sorry. Which page?</p> <p>10:32:46 17 Q. The first two pages Bates-stamped 2912 and</p> <p>10:32:51 18 2913. Do you see, at the bottom right-hand corner?</p> <p>10:32:55 19 A. Yes.</p> <p>10:32:56 20 Q. Okay. Do you know what the issue was, as it</p> <p>10:33:01 21 relates to this email, that caused you to say: In that</p> <p>10:33:04 22 event, in the words of the immortal Roberto Duran,</p> <p>10:33:05 23 quote, "No mas," exclamation mark, unquote.</p> <p>10:33:11 24 A. Yes. Those were my words, and I now know the</p> <p>10:33:14 25 context in which they were used.</p>	<p>10:34:35 1 A. That is correct.</p> <p>10:34:36 2 Q. And, in fact -- do you know whether, in fact,</p> <p>10:34:38 3 they did repay the --</p> <p>10:34:40 4 A. It's my understanding that they did pay it.</p> <p>10:34:43 5 Q. Now, if you go to page -- your counsel raised</p> <p>10:34:45 6 the point that they're not consecutively numbered</p> <p>10:34:51 7 emails -- I mean Bates-stamped. If you go to BD</p> <p>10:34:55 8 0012313 --</p> <p>10:34:59 9 MR. WILSON: And perhaps we want to -- do</p> <p>10:35:00 10 we want to separately identify those, Angela? Would</p> <p>10:35:05 11 you prefer that? I can't represent that they were</p> <p>10:35:07 12 attached.</p> <p>10:35:08 13 MS. OCHOA: I think it would be easier to</p> <p>10:35:10 14 follow along in the future. Yeah.</p> <p>10:35:19 15 MR. WILSON: Okay. Let's take a quick</p> <p>10:35:20 16 break. She's going to get us a stapler, and we're</p> <p>10:35:23 17 going to put those together.</p> <p>10:35:31 18 Wait a second. Let's stop. Off the</p> <p>10:35:31 19 record.</p> <p>10:35:32 20 If you look at -- off the record, please.</p> <p>10:35:33 21 THE VIDEOGRAPHER: Off the record.</p> <p>10:37:51 22 (Discussion off the record.)</p> <p>10:37:58 23 THE VIDEOGRAPHER: We are back on the</p> <p>10:38:00 24 record.</p> <p>10:38:03 25 MR. WILSON: Can we get those back? Can</p>
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<p>10:33:16 1 Q. Okay. Explain it, if you would, please.</p> <p>10:33:18 2 A. The "No mas" was "do not renew them,</p> <p>10:33:21 3 particularly if they do not pay the retrospective</p> <p>10:33:25 4 premium."</p> <p>10:33:25 5 Q. Is it fair to say, at the time period that you</p> <p>10:33:29 6 wrote this email, which would be June 3rd of 2011,</p> <p>10:33:37 7 there was a question being raised as to whether or not</p> <p>10:33:40 8 to renew the coverage for Country Villas?</p> <p>10:33:51 9 A. That was a concern. The bigger concern was</p> <p>10:33:53 10 whether they would pay what appeared to be 1 million in</p> <p>10:33:58 11 retrospective premium.</p> <p>10:34:00 12 Q. And it had been computed that there was --</p> <p>10:34:02 13 well, strike that.</p> <p>10:34:03 14 Was there a maximum amount of premium they</p> <p>10:34:06 15 paid, when you take into consideration the aggregate</p> <p>10:34:08 16 and the retrospective premium?</p> <p>10:34:11 17 A. I don't recall what the maximum was. There may</p> <p>10:34:14 18 have been a maximum. But it appears, in this email,</p> <p>10:34:16 19 that they owed 1 million in retrospective premium.</p> <p>10:34:20 20 Q. And is it fair to say that you, as chairman,</p> <p>10:34:23 21 and perhaps the board in its entirety, surely didn't</p> <p>10:34:27 22 want to renew Country Villas if they didn't pay --</p> <p>10:34:31 23 A. Correct.</p> <p>10:34:31 24 Q. -- the 1 million?</p> <p>10:34:32 25 And that's what you were referring to here?</p>	<p>10:38:03 1 you separate them out so -- we're going to mark them</p> <p>10:38:06 2 differently.</p> <p>10:38:09 3 MS. OCHOA: I separated --</p> <p>10:38:12 4 MR. WILSON: Here's a stapler.</p> <p>10:38:12 5 MS. OCHOA: Okay.</p> <p>10:38:12 6 MR. CERFEGHINO: I separated them.</p> <p>10:38:12 7 MR. WILSON: Okay.</p> <p>10:38:12 8 Q. (BY MR. WILSON) Mr. Marshall, we're going to</p> <p>10:38:14 9 note that Exhibit Number 77 is two pages in length.</p> <p>10:38:20 10 The last email is dated June 4th, 2012. It's Exhibit</p> <p>10:38:24 11 77. The Bates stamps are 2912 and 2913. We talked</p> <p>10:38:30 12 about your "No mas" comment, which means that you</p> <p>10:38:33 13 certainly weren't going to renew Country Villas if they</p> <p>10:38:37 14 didn't pay the 1 million retrospective premium.</p> <p>10:38:40 15 A. That's correct.</p> <p>10:38:41 16 Q. And you may not renew them, even if they pay</p> <p>10:38:44 17 the 1 million retrospective premium?</p> <p>10:38:47 18 A. That's correct.</p> <p>10:38:50 19 MR. WILSON: I'm going to mark, as Exhibit</p> <p>10:38:51 20 Number 78, a document that's Bates-stamped BD 0012313</p> <p>10:39:19 21 and 14, entitled Uni-Ter Underwriting Management</p> <p>10:39:24 22 Corporation, General Liability, Professional Liability</p> <p>10:39:29 23 Quotation, for Country Villas for the policy period</p> <p>10:39:34 24 7/1/11 to 7/1/12.</p> <p>10:39:45 25 ///</p>

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<p>10:39:45 1 (Deposition Exhibit 78 was marked for 10:39:45 2 identification.) 10:39:53 3 Q. (BY MR. WILSON) Do you recall ever having seen 10:39:55 4 this document before? 10:39:58 5 A. I don't recall specifically, but we probably 10:40:01 6 did review this as a board. 10:40:05 7 Q. And if you look at the second page of the 10:40:09 8 document, it talks about terms and conditions for the 10:40:17 9 renewal. Do you see that? 10:40:19 10 A. Yes. 10:40:21 11 Q. The Country Villas possible renewal was 10:40:29 12 presented to the board of directors? 10:40:31 13 A. Correct. 10:40:32 14 Q. And did you subsequently learn that Country 10:40:37 15 Villas decided either not to renew, or went with its -- 10:40:40 16 got its own captive or did something different? 10:40:44 17 A. I don't recall if that was the case, or if we 10:40:46 18 simply decided not to renew them. 10:40:47 19 Q. But they were not renewed? 10:40:49 20 A. They were not renewed. 10:41:00 21 MR. WILSON: Let me mark, as Exhibit 79, a 10:41:07 22 document that's Bates-stamped BD 0012315, 16, and 17. 10:41:40 23 (Deposition Exhibit 79 was marked for 10:41:41 24 identification.) 10:41:41 25 Q. (BY MR. WILSON) Have you ever seen this</p>	<p>10:44:16 1 chain is Mark Garber to Jeff Marshall, dated 6/6/2011. 10:44:33 2 (Deposition Exhibit 80 was marked for 10:44:35 3 identification.) 10:44:43 4 MR. CEREGHINO: Sorry to interrupt. What 10:44:43 5 number is this? 10:44:43 6 MS. OCHOA: 80. 10:44:43 7 MR. WILSON: 80. 10:44:50 8 MR. CEREGHINO: Exhibit 80. So we split up 10:44:50 9 the previous one, Jon? 10:44:50 10 MR. WILSON: Yes. 10:44:50 11 MR. CEREGHINO: Okay. Sorry about that. 10:44:50 12 Thank you. 10:44:50 13 Q. (BY MR. WILSON) I'd focus your attention 10:44:52 14 initially, Mr. Marshall, on the email from Mr. Fogg, 10:45:01 15 which is on -- it starts on the bottom of 12273, dated 10:45:12 16 June 4th, 2011, about Country Villas, where he talks 10:45:19 17 about the pros and cons, where you commented: Steve, 10:45:32 18 excellent analysis, as usual. I would emphasize the 10:45:35 19 need to enhance risk management review of operations to 10:45:39 20 determine risk trend. 10:45:40 21 Do you see that? 10:45:41 22 A. Yes. 10:45:42 23 Q. What are you referring to there? 10:45:47 24 A. Part of the benefit that board members can 10:45:51 25 provide in its oversight is to make recommendations, as</p>
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<p>10:41:41 1 document before? 10:42:00 2 A. No. 10:42:01 3 Q. Are you aware of -- there's a reference in the 10:42:04 4 second full paragraph: As of the 2011 renewal 10:42:09 5 approaches -- or as the 2011 renewal approaches, we 10:42:13 6 have some underwriting concerns that will affect the 10:42:15 7 rating of your renewal. These concerns are as 10:42:19 8 follows -- 10:42:20 9 And you understand this was from -- what was 10:42:22 10 it -- Evergreen Insurance Services to Uni-Ter? 10:42:26 11 A. I'm confused by the year date of this memo, 10:42:29 12 being this year. 10:42:31 13 Q. I am, too. 10:42:34 14 A. So I might have seen the context of this, but 10:42:36 15 not in February 2018. 10:42:38 16 Q. I understand. There's a Milliman report that 10:42:42 17 was delivered to the board of directors in 2011 that 10:42:45 18 was dated 2018, also. So people do make mistakes 10:42:49 19 sometimes. 10:42:49 20 But you do not have knowledge of this 10:42:52 21 particular email -- or memorandum? 10:43:01 22 A. Not specifically. 10:44:01 23 MR. WILSON: Let me mark, as Exhibit Number 10:44:04 24 80, an email chain. It's BD 0012272 through 76. The 10:44:13 25 first email -- or the last email -- excuse me -- on the</p>	<p>10:45:56 1 I made here, about risk management enhancement to lower 10:45:59 2 the risk of claims. That's what I was referring to, in 10:46:03 3 the case of Country Villa, which had adverse loss 10:46:07 4 history. 10:46:08 5 Q. Now, risk -- was it risk -- 10:46:11 6 A. Risk management. 10:46:12 7 Q. -- management enhancement? 10:46:13 8 A. Risk management review. 10:46:14 9 Q. Who was providing the risk management review? 10:46:17 10 A. Uni-Ter. 10:46:18 11 Q. And how would they do that, to your knowledge? 10:46:22 12 A. I believe Susan Bugg was the head of risk 10:46:25 13 management for Uni-Ter. She had a protocol of 10:46:29 14 reviewing facilities in the Lewis & Clark portfolio. 10:46:32 15 She was a nurse by background, and she would review 10:46:36 16 their quality assurance operations and protocols within 10:46:40 17 each facility. My recommendation was that those 10:46:45 18 operations and reviews be enhanced in the case of 10:46:49 19 Country Villa facilities. 10:46:50 20 Q. Which is a proper thing for a board member to 10:46:52 21 do; do you agree? 10:46:53 22 A. Correct, because of the loss history. 10:46:54 23 Q. And at this point in time, when there was a 10:46:58 24 consideration as to whether or not to renew the policy, 10:47:02 25 you, as the chairman of the board, wanted to make sure</p>

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<p>10:47:05 1 that the risk management aspect of the operation of</p> <p>10:47:10 2 Country Villas was enhanced, because of prior negative</p> <p>10:47:15 3 claims experience?</p> <p>10:47:16 4 A. Correct.</p> <p>10:47:22 5 Q. Do you know whether that -- that never occurred</p> <p>10:47:23 6 because it was not renewed; is that correct?</p> <p>10:47:25 7 A. I don't know if it was in process at the time</p> <p>10:47:29 8 of the decision to not renew.</p> <p>10:47:48 9 Q. Did you -- you reviewed Mr. Fogg's email,</p> <p>10:47:53 10 because you talked about an excellent analysis. There</p> <p>10:47:58 11 were pros and cons to have Country Villas as a part of</p> <p>10:48:02 12 Lewis & Clark, correct?</p> <p>10:48:04 13 A. Yes.</p> <p>10:48:05 14 Q. And one of the major pros was that they</p> <p>10:48:11 15 provided \$1 million or so to contribute toward the</p> <p>10:48:15 16 overhead, administration, and profit of the company.</p> <p>10:48:26 17 As Mr. Fogg says: If their losses end up being</p> <p>10:48:31 18 2 million, we get an additional 1 million to contribute</p> <p>10:48:33 19 to the overhead, administration, profit, et cetera.</p> <p>10:48:36 20 And that's a plus?</p> <p>10:48:40 21 A. Is that a question?</p> <p>10:48:41 22 Q. Yes.</p> <p>10:48:42 23 A. Yes, it is.</p> <p>10:49:03 24 Q. Let me show you an email dated 7/28/2011, from</p> <p>10:49:27 25 you to a number of people, bearing Bates stamp</p>	<p>10:51:30 1 A. Without further information, I can't tell you</p> <p>10:51:35 2 that.</p> <p>10:51:36 3 Q. Well, I'm going to hand you a document. It's</p> <p>10:51:38 4 not Bates-stamped consecutively with this document.</p> <p>10:51:47 5 But it's been indicated to me that it represents the</p> <p>10:51:49 6 case management analysis, but I can't swear to you I</p> <p>10:51:59 7 know. And we'll mark that as Exhibit Number 82. It's</p> <p>10:51:59 8 an LC-USRE document of 1280246-247.</p> <p>10:52:15 9 (Deposition Exhibit 82 was marked for</p> <p>10:52:31 10 identification.)</p> <p>10:52:31 11 Q. (BY MR. WILSON) I'm not suggesting that that</p> <p>10:52:32 12 was or was not the item referred to in your email. I'm</p> <p>10:52:39 13 asking whether you can look at this and make a</p> <p>10:52:41 14 determination whether this is the case you were talking</p> <p>10:52:45 15 about.</p> <p>10:52:46 16 A. I can't. I cannot. Other than the fact that</p> <p>10:52:50 17 they were close in time frame, I don't see anything</p> <p>10:52:55 18 that ties the email to this case analysis.</p> <p>10:52:57 19 Q. Well, if you look at the current status: Lewis</p> <p>10:53:01 20 & Clark's limit of liability is 1 million, and we stand</p> <p>10:53:03 21 ready to post this amount.</p> <p>10:53:07 22 In other words, a bond in that amount?</p> <p>10:53:10 23 A. Where are you reading?</p> <p>10:53:11 24 Q. I'm reading right from the first page, under</p> <p>10:53:14 25 Current Status.</p>
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<p>10:49:33 1 BD 0002620, as Exhibit Number 81.</p> <p>10:49:47 2 (Deposition Exhibit 81 was marked for</p> <p>10:49:47 3 identification.)</p> <p>10:50:07 4 Q. (BY MR. WILSON) Are you familiar with this</p> <p>10:50:08 5 document?</p> <p>10:50:12 6 A. It's my email. Yes.</p> <p>10:50:14 7 Q. And it looks like you were getting active in</p> <p>10:50:18 8 management of claims?</p> <p>10:50:20 9 A. No. I was asking questions related to a claim.</p> <p>10:50:25 10 Q. And what was the purpose of your questions?</p> <p>10:50:28 11 A. Whether an appeal would be advisable or not.</p> <p>10:50:35 12 Q. And, "If so, have you evaluated the expense,"</p> <p>10:50:39 13 et cetera, correct?</p> <p>10:50:40 14 A. Yes.</p> <p>10:50:40 15 Q. How did you happen to become knowledgeable of</p> <p>10:50:43 16 the event that caused you to make the inquiries that</p> <p>10:50:48 17 you made, as reflected in Exhibit 81?</p> <p>10:50:51 18 A. I don't know to what case or cases this email</p> <p>10:50:55 19 relates.</p> <p>10:51:07 20 Q. Do you remember a case involving the San Marino</p> <p>10:51:11 21 Skilled Nursing and Wellness Centre?</p> <p>10:51:13 22 A. Not specifically.</p> <p>10:51:21 23 Q. How did you happen to become aware of this</p> <p>10:51:25 24 particular claim that caused you to write and make the</p> <p>10:51:29 25 inquiry that you made?</p>	<p>10:53:15 1 A. Okay.</p> <p>10:53:17 2 Q. I didn't know whether or not you recalled that</p> <p>10:53:19 3 your prior email was addressing whether they were going</p> <p>10:53:22 4 to be posting a bond or seeking a --</p> <p>10:53:26 5 A. A 1 million limit of liability was very common,</p> <p>10:53:29 6 so that doesn't necessarily tie this email to this</p> <p>10:53:32 7 case.</p> <p>10:53:34 8 Q. And this was a case involving a verdict of</p> <p>10:53:37 9 \$3,512,805.60. I don't think you had many of those</p> <p>10:53:44 10 that size, probably?</p> <p>10:53:46 11 A. I don't recall that at all.</p> <p>10:53:48 12 Q. And if you look at, that's a fairly big</p> <p>10:53:51 13 verdict?</p> <p>10:53:51 14 A. Correct.</p> <p>10:53:52 15 Q. But you have no recollection whether your email</p> <p>10:53:55 16 was referring to this?</p> <p>10:53:56 17 A. I don't, specifically. I'm sorry.</p> <p>10:53:58 18 Q. That's okay.</p> <p>10:54:13 19 Let me show you another exhibit, perhaps</p> <p>10:54:17 20 dealing with the same matter. It's an email from you</p> <p>10:54:24 21 to Jonna Miller, and it's dated 7/29/2011. It's two</p> <p>10:54:32 22 pages in length, bearing Bates stamps BD 0012424 and</p> <p>10:54:37 23 25. That's 83.</p> <p>10:54:50 24 (Deposition Exhibit 83 was marked for</p> <p>10:54:50 25 identification.)</p>

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<p>10:54:54 1 Q. (BY MR. WILSON) I'd ask you to review that</p> <p>10:54:56 2 email and see whether that's dealing with the San</p> <p>10:55:01 3 Marino case and Country Villa.</p> <p>10:55:15 4 A. There is a reference on the subject line of the</p> <p>10:55:17 5 July 29th, 12:57 p.m., email that says: San Marino --</p> <p>10:55:23 6 Nevarrez versus CV San Marino.</p> <p>10:55:26 7 So this appears to relate to that.</p> <p>10:55:31 8 Q. And under what set of circumstances would you,</p> <p>10:55:34 9 as chairman, get involved in the manner in which you</p> <p>10:55:41 10 did get involved with respect to the, for example, San</p> <p>10:55:46 11 Marino claim?</p> <p>10:55:47 12 A. Given the size of this claim, which could've</p> <p>10:55:49 13 been the largest claim in our history -- who knows, but</p> <p>10:55:53 14 it had to be one of them -- as I had said earlier, any</p> <p>10:55:57 15 of the claims in excess of 250,000, at regular board</p> <p>10:56:00 16 meetings, the board would review. So it was within our</p> <p>10:56:03 17 oversight purview to look at significant claims, and</p> <p>10:56:06 18 that's likely what I was doing here.</p> <p>10:56:08 19 Q. Right. And you did that as the chairman of the</p> <p>10:56:09 20 board, and you did it in a function as a -- providing</p> <p>10:56:14 21 insight, but you're not managing, necessarily, how the</p> <p>10:56:18 22 claim is being handled?</p> <p>10:56:19 23 A. No. Asking questions about how the claim was</p> <p>10:56:22 24 being handled, not providing direction. And as you can</p> <p>10:56:25 25 tell, other board members, such as Mr. Fogg, also</p>	<p>11:07:22 1 you go to that, please.</p> <p>11:07:32 2 Do you recall reviewing any letter from Jones</p> <p>11:07:37 3 Vargas, Constance Akridge, to the Division of</p> <p>11:07:41 4 Insurance, relating to the merger of Sophia Palmer</p> <p>11:07:47 5 Nurses Risk Retention Group and Lewis & Clark?</p> <p>11:07:50 6 A. I recall Ms. Akridge representing our interest</p> <p>11:07:53 7 with the Department of Insurance, but I do not recall</p> <p>11:07:55 8 this specific letter.</p> <p>11:07:56 9 Q. The merger itself -- the proposed merger went</p> <p>11:08:00 10 to the Division of Insurance for the State of Nevada,</p> <p>11:08:03 11 correct?</p> <p>11:08:04 12 A. For approval, yes.</p> <p>11:08:05 13 Q. And, in fact, was there a court order approving</p> <p>11:08:08 14 it?</p> <p>11:08:08 15 A. I don't know if it was a court order, but I</p> <p>11:08:11 16 believe it got approved.</p> <p>11:08:14 17 Q. And there's been some contention that the</p> <p>11:08:16 18 losses of Sophia Palmer -- at least a contention by the</p> <p>11:08:20 19 Department of Insurance -- contributed to the downfall</p> <p>11:08:25 20 of Lewis & Clark.</p> <p>11:08:28 21 Do you have any knowledge, in any way, shape,</p> <p>11:08:30 22 or form, how the merger of Lewis & Clark and Sophia</p> <p>11:08:35 23 Palmer contributed to the downfall of Lewis & Clark?</p> <p>11:08:41 24 A. I don't believe it was a principal reason.</p> <p>11:08:45 25 Q. And you've used the words "principal reason."</p>
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<p>10:56:27 1 provided commentary on claims of this size as well.</p> <p>10:56:30 2 Q. And you would consider that an appropriate</p> <p>10:56:33 3 function of a board of directors?</p> <p>10:56:35 4 A. Yes, I would.</p> <p>10:56:37 5 Q. And did you find Uni-Ter, who was handling --</p> <p>10:56:41 6 responsible for the day-to-day operation of claims,</p> <p>10:56:45 7 generally responsive to your inquiries?</p> <p>10:56:51 8 A. Yes.</p> <p>10:56:53 9 MR. WILSON: Let's take a break.</p> <p>10:56:56 10 THE VIDEOGRAPHER: We're off the record.</p> <p>10:56:59 11 (Recess taken.)</p> <p>11:06:45 12 THE VIDEOGRAPHER: We are back on the</p> <p>11:06:45 13 record at 11:06.</p> <p>11:06:48 14 Q. (BY MR. WILSON) Mr. Marshall, with respect to</p> <p>11:06:51 15 Exhibit 3, did you review that prior to your deposition</p> <p>11:06:57 16 today?</p> <p>11:06:57 17 A. Yes.</p> <p>11:06:59 18 Q. And rather than going through every element of</p> <p>11:07:01 19 Exhibit 3, is there anything, after reviewing it, you</p> <p>11:07:04 20 would change?</p> <p>11:07:05 21 A. No.</p> <p>11:07:06 22 Q. And everything in there is true, accurate, and</p> <p>11:07:08 23 correct, to the best of your knowledge and belief?</p> <p>11:07:12 24 A. Yes.</p> <p>11:07:17 25 Q. Let me show you Exhibit Number 4. I'll have</p>	<p>11:08:48 1 Was there one reason or more than one reason for the</p> <p>11:08:52 2 downfall of Lewis & Clark?</p> <p>11:08:55 3 A. I believe it related to the underreserving of</p> <p>11:09:00 4 claims for nursing homes in the portfolio.</p> <p>11:09:03 5 Q. Now, when you say, "underreserving of claims,"</p> <p>11:09:09 6 what do you mean?</p> <p>11:09:13 7 A. That claims were not adequately reserved by</p> <p>11:09:18 8 Uni-Ter in sufficient time for corrective action to be</p> <p>11:09:25 9 taken.</p> <p>11:09:26 10 Q. Are you aware as to why there was an increase</p> <p>11:09:30 11 in reserves, that you had alluded to earlier, I</p> <p>11:09:36 12 believe, that caused you concern in the September 2011</p> <p>11:09:41 13 time period?</p> <p>11:09:44 14 A. I earlier referenced several emails that Sandy</p> <p>11:09:47 15 Elsass, with or without Donna Dalton, had sent to the</p> <p>11:09:51 16 board of directors in a one-week period of time between</p> <p>11:09:55 17 the 25th of August and the 1st of September, that</p> <p>11:09:59 18 related to -- I believe the term Mr. Elsass used in his</p> <p>11:10:05 19 email was a "surprise" increase, or a spike in the</p> <p>11:10:09 20 reserves as of June 30, 2011, and steps that were taken</p> <p>11:10:16 21 to completely review all open claims throughout the</p> <p>11:10:19 22 month of August, in sort of a roundtable format that</p> <p>11:10:23 23 was run by Donna Dalton, also involved formerly retired</p> <p>11:10:28 24 claims manager, James Martin, and all of the claims</p> <p>11:10:31 25 staff, and finally the employment of a group called</p>

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<p>11:10:37 1 Praxis to perform an independent review of a select</p> <p>11:10:40 2 number of claims. All of which was to be concluded</p> <p>11:10:43 3 before the September 21st board meeting.</p> <p>11:10:46 4 Q. In fact, one of the documents you looked at in</p> <p>11:10:49 5 preparation for today's deposition was the September</p> <p>11:10:52 6 15th, 2011, report of Mr. Stiefel, the president of</p> <p>11:10:58 7 Praxis, correct?</p> <p>11:10:59 8 A. I did not review that report prior to my</p> <p>11:11:02 9 deposition.</p> <p>11:11:02 10 Q. You did not --</p> <p>11:11:03 11 A. But I have seen it previously.</p> <p>11:11:04 12 Q. And if you look at Exhibit Number 6, that is a</p> <p>11:11:16 13 report by Mr. -- by Praxis Claims Consulting, dated</p> <p>11:11:20 14 September 15th of 2011, correct?</p> <p>11:11:23 15 A. Correct.</p> <p>11:11:24 16 Q. Did you understand what the purpose of this</p> <p>11:11:26 17 report was?</p> <p>11:11:28 18 A. This report was to review the processes for</p> <p>11:11:31 19 claims reviewing and reserving, as well as to review a</p> <p>11:11:37 20 small sample -- I believe about 15 specific claims for</p> <p>11:11:41 21 the adequacy of their reserves.</p> <p>11:11:43 22 Q. Did the board have knowledge that Mr. Stiefel's</p> <p>11:11:47 23 group, Praxis Claims Consulting, was being used for</p> <p>11:11:50 24 that purpose?</p> <p>11:11:51 25 A. Yes.</p>	<p>11:13:20 1 A. Yes.</p> <p>11:13:20 2 Q. Who is Richard Lord?</p> <p>11:13:22 3 A. He's the actuary from Milliman assigned to the</p> <p>11:13:26 4 Lewis & Clark account.</p> <p>11:13:28 5 Q. He's been -- he was assigned to the Lewis &</p> <p>11:13:29 6 Clark account as early as 2004, wasn't he?</p> <p>11:13:33 7 A. That's my understanding, yes.</p> <p>11:13:35 8 Q. Did you ever review any of the reports that</p> <p>11:13:39 9 Milliman prepared that constituted year-end reports?</p> <p>11:13:45 10 A. Yes. Milliman presented to the board annual</p> <p>11:13:49 11 reports,</p> <p>11:13:50 12 Q. Did, typically, Mr. Lord either appear</p> <p>11:13:52 13 telephonically or in person to discuss the reports?</p> <p>11:13:56 14 A. He did. He frequently appeared in person.</p> <p>11:13:59 15 Q. And do you recall any discussions with Mr. Lord</p> <p>11:14:04 16 or anybody at Milliman about the reserving practices</p> <p>11:14:10 17 that were employed by Uni-Ter?</p> <p>11:14:16 18 A. Milliman reported upon the general adequacy of</p> <p>11:14:20 19 the reserves but did not address specific claim reserve</p> <p>11:14:24 20 processes. They relied upon Uni-Ter's specific claims</p> <p>11:14:28 21 processes.</p> <p>11:14:31 22 Q. And do you know whether or not in virtually</p> <p>11:14:37 23 every report by Milliman, they had concluded that the</p> <p>11:14:43 24 reserves were appropriate, consistent with the</p> <p>11:14:47 25 applicable rules and regulations that govern actuarial</p>
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<p>11:11:51 1 Q. And how did it get that knowledge?</p> <p>11:11:53 2 A. Through an email from Sandy Elsass in one of</p> <p>11:11:57 3 those -- it could've been the September 1st email,</p> <p>11:12:00 4 about procedures that Uni-Ter was engaging due to the</p> <p>11:12:04 5 spike in reserves.</p> <p>11:12:05 6 Q. Did you have any objection to having Praxis</p> <p>11:12:09 7 come aboard?</p> <p>11:12:10 8 A. No.</p> <p>11:12:11 9 Q. Did you ever review what the conclusion was of</p> <p>11:12:18 10 Praxis Consulting as it relates to the reserving</p> <p>11:12:22 11 practices of Uni-Ter as of the date of the September</p> <p>11:12:26 12 15, 2011, report?</p> <p>11:12:32 13 A. They found no significant problems with the</p> <p>11:12:34 14 reserving practices. Although, again, it appears that</p> <p>11:12:38 15 they just reviewed a small sample of the claims. The</p> <p>11:12:42 16 board was satisfied that because the representation was</p> <p>11:12:47 17 made that Uni-Ter's claim staff, in this roundtable</p> <p>11:12:51 18 meeting I referenced, would review 100 percent of the</p> <p>11:12:54 19 claims, that this Praxis review was a supplement to</p> <p>11:12:58 20 that, in addition to a representation in Mr. Elsass's</p> <p>11:13:04 21 email of September 1st, or perhaps August 26th -- one</p> <p>11:13:09 22 of those emails -- that Milliman had reviewed the</p> <p>11:13:12 23 reserves as of June 30, the independent actuary, and</p> <p>11:13:16 24 found them to be adequate.</p> <p>11:13:19 25 Q. Do you know Richard Lord?</p>	<p>11:14:52 1 analyses?</p> <p>11:14:53 2 A. Generally, that is true.</p> <p>11:14:54 3 Q. Now, is reserving an art or a science or both?</p> <p>11:15:00 4 A. I don't know that I would characterize it as</p> <p>11:15:02 5 either.</p> <p>11:15:02 6 Q. What is it?</p> <p>11:15:04 7 A. It's a process.</p> <p>11:15:05 8 Q. Well, is the process one that you can reach</p> <p>11:15:12 9 mathematical certainty?</p> <p>11:15:13 10 A. No. There's estimation involved.</p> <p>11:15:15 11 Q. So would you say that's more of an art than a</p> <p>11:15:18 12 science?</p> <p>11:15:19 13 A. I don't think I would characterize it as either</p> <p>11:15:21 14 one, again.</p> <p>11:15:24 15 Q. Well, it's not something where you can look at</p> <p>11:15:26 16 a blood sample and do some scientific analysis and</p> <p>11:15:30 17 reach virtual conclusions as to what the heritage of</p> <p>11:15:34 18 somebody is or the -- or some kind of analysis you're</p> <p>11:15:42 19 doing, whether it be from an insulin standpoint, or</p> <p>11:15:47 20 whether it be from a diabetic standpoint, or like that,</p> <p>11:15:50 21 is it?</p> <p>11:15:50 22 A. I don't understand the question.</p> <p>11:15:52 23 Q. In other words, you looked at a claim -- the</p> <p>11:15:56 24 Country Villas claim, and it hit \$3.5 million. How</p> <p>11:16:02 25 does somebody predict that a claim is going to hit</p>

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<p>11:16:07 1 \$3.5 million when it's reserved for something</p> <p>11:16:09 2 significantly less than that?</p> <p>11:16:13 3 A. Could you repeat your question?</p> <p>11:16:15 4 Q. Yeah. If you read the report, as it relates to</p> <p>11:16:17 5 that claim, they talked about the fact that there were</p> <p>11:16:19 6 some potential improprieties with the jury. They</p> <p>11:16:23 7 talked about the fact that -- about some testimony that</p> <p>11:16:25 8 was very negative. They talked about the fact of</p> <p>11:16:29 9 experts and what they did or how they performed. Those</p> <p>11:16:32 10 are factors that occur in any given trial, that may or</p> <p>11:16:37 11 may not negatively or positively impact the result,</p> <p>11:16:40 12 correct?</p> <p>11:16:40 13 A. Understood.</p> <p>11:16:41 14 Q. And, in fact, wasn't the director of nursing</p> <p>11:16:45 15 responsible for ordering the contract killing of her</p> <p>11:16:49 16 husband, Mr. Braswell?</p> <p>11:16:50 17 A. I don't recall that circumstance.</p> <p>11:16:52 18 Q. And during this time period -- and I'll be glad</p> <p>11:16:54 19 to show you a memorandum -- one of the reasons the</p> <p>11:16:59 20 \$600,000 in reserves went up was that it was published</p> <p>11:17:03 21 that the director of nursing had a contract out and</p> <p>11:17:08 22 effectively killed her husband, and it was in the news.</p> <p>11:17:13 23 And the lawyers for Braswell said, We've got to settle</p> <p>11:17:16 24 these cases. That's something that could come into</p> <p>11:17:20 25 effect and affect the results, correct?</p>	<p>11:18:39 1 Q. Correct.</p> <p>11:18:40 2 A. To test hypotheses and things of that nature.</p> <p>11:18:42 3 Q. Sure. I totally agree with that, when it comes</p> <p>11:18:45 4 to large enough samples. Did you look at the</p> <p>11:18:47 5 cautionary language contained in the Milliman actuarial</p> <p>11:18:52 6 report to say, one of the difficulties with respect to</p> <p>11:18:55 7 reserving the Lewis & Clark claims is, we do not have</p> <p>11:19:00 8 large enough samples? It's not been in business long</p> <p>11:19:05 9 enough for us to do the analysis that gives us the</p> <p>11:19:08 10 highest degree of -- a higher degree of certainty? Are</p> <p>11:19:12 11 you aware of that?</p> <p>11:19:13 12 A. I am. I'm also aware that they were heavily</p> <p>11:19:15 13 reliant upon Uni-Ter's specific claims estimates in</p> <p>11:19:18 14 forming their evaluation of the overall reserves.</p> <p>11:19:21 15 Q. And is there -- were there a number of factors</p> <p>11:19:29 16 that caused this increase in reserves during the time</p> <p>11:19:32 17 period of 1990 -- 2011 -- I think it was the September</p> <p>11:19:36 18 time period -- besides the reserving practices of</p> <p>11:19:42 19 Uni-Ter?</p> <p>11:19:43 20 A. I cannot conclude that.</p> <p>11:19:45 21 Q. You don't know? Do you know of any?</p> <p>11:19:49 22 A. I cannot conclude that the substantial increase</p> <p>11:19:51 23 in reserves, in a short period of time in 2011, were</p> <p>11:19:55 24 not the direct result of deficient claims reserving</p> <p>11:19:59 25 practices.</p>
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<p>11:17:22 1 A. If what you're saying is, there can be various</p> <p>11:17:25 2 circumstances that can change the result that might be</p> <p>11:17:29 3 estimated differently, sure.</p> <p>11:17:31 4 Q. Yeah. In fact, I'll show you a memorandum that</p> <p>11:17:33 5 says, That cost us \$600,000 above the reserves, to</p> <p>11:17:37 6 settle the policies, so we didn't have to try the case,</p> <p>11:17:40 7 in light of the negative publicity.</p> <p>11:17:43 8 Are you aware that there was video evidence of</p> <p>11:17:46 9 one of the nursing people abusing one of the patients</p> <p>11:17:50 10 at one of the facilities?</p> <p>11:17:52 11 A. No.</p> <p>11:17:53 12 Q. In fact, it was out in the public that this</p> <p>11:17:56 13 person took -- would do negative things to patients and</p> <p>11:18:02 14 video it. And that could impact the results, couldn't</p> <p>11:18:04 15 it?</p> <p>11:18:05 16 A. Certainly.</p> <p>11:18:07 17 Q. And how does somebody, in the reserving of --</p> <p>11:18:09 18 reserving, let's say, from Uni-Ter's standpoint,</p> <p>11:18:13 19 predict, in the future, that a director of nursing is</p> <p>11:18:16 20 going to contract kill her husband?</p> <p>11:18:20 21 A. One cannot predict that. But if what you're</p> <p>11:18:23 22 implying is that one cannot predict the ultimate</p> <p>11:18:27 23 outcome of cases, with a large enough sample, much like</p> <p>11:18:31 24 science does in many different venues, you can use</p> <p>11:18:36 25 results to give you likely occurrences.</p>	<p>11:20:00 1 Q. Do you know what the nature of the deficiencies</p> <p>11:20:02 2 were?</p> <p>11:20:04 3 A. I don't. But the circumstances of an</p> <p>11:20:08 4 extraordinary spike within a very short period of time</p> <p>11:20:11 5 is questionable.</p> <p>11:20:13 6 Q. Are you familiar with what the economy was like</p> <p>11:20:16 7 during the time period of 2009, '10, and '11 in the</p> <p>11:20:22 8 United States of America?</p> <p>11:20:26 9 MR. CEREGHINO: Form.</p> <p>11:20:26 10 Go ahead.</p> <p>11:20:27 11 A. Yes. We were in a recession caused by a</p> <p>11:20:29 12 housing crisis.</p> <p>11:20:30 13 Q. (BY MR. WILSON) Are you aware that there's</p> <p>11:20:34 14 published -- there's articles published about the</p> <p>11:20:37 15 spiking in the number of claims at skilled nursing</p> <p>11:20:41 16 facilities during hard economic times?</p> <p>11:20:47 17 MR. CEREGHINO: Form and foundation.</p> <p>11:20:48 18 Go ahead.</p> <p>11:20:48 19 A. I'm not aware of specific articles in that time</p> <p>11:20:52 20 frame. And I'm especially not aware that there were</p> <p>11:20:55 21 any greater spike in claims than there were in 2002,</p> <p>11:20:58 22 that caused the -- us to seek the formation of Lewis &</p> <p>11:21:02 23 Clark in the first place.</p> <p>11:21:03 24 Q. (BY MR. WILSON) I'm not saying it was any</p> <p>11:21:04 25 greater. But you had a six-fold increase in 2002 in</p>

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11:21:08 1 the insurance rates, correct?

11:21:10 2 A. Correct.

11:21:10 3 Q. And there was -- because of the economics of

11:21:15 4 the situation, there was an increased number of claims

11:21:18 5 in the skilled nursing facilities during the poor

11:21:21 6 economic times, correct?

11:21:23 7 MR. CEREGHINO: Form and foundation.

11:21:24 8 Go ahead.

11:21:25 9 A. I don't know that. If that's your testimony,

11:21:27 10 that's fine.

11:21:27 11 Q. (BY MR. WILSON) It's not my testimony. I'll

11:21:27 12 show you. Are you aware that on the last day of the

11:21:31 13 year of the Country Villas policy, June the 30th of

11:21:37 14 2011, a significant number of claims were filed?

11:21:41 15 A. No.

11:21:43 16 Q. You didn't read that in the documents?

11:21:46 17 A. Claims filed by Country Villa?

11:21:49 18 Q. Yes.

11:21:50 19 A. Or claims filed in the economy?

11:21:51 20 Q. Claims filed by Country Villas.

11:21:54 21 A. I'm -- I don't recall that. I would have to

11:21:56 22 have my memory refreshed with documentation.

11:22:01 23 Q. So do you know of any particular deficiency, or

11:22:08 24 deficiencies, plural, that you're aware of, that my

11:22:13 25 client, Uni-Ter, did that caused the reserving to be

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11:23:50 1 life of the file that reflected the ultimate potential

11:23:54 2 exposure of the case -- of each case prior to the

11:23:58 3 completion of supporting investigation and expert

11:24:01 4 review to determine liability and damages. While this

11:24:04 5 methodology would prevent underreserving, it may

11:24:08 6 create -- may also create reserve redundancy.

11:24:13 7 Do you understand what Mr. Stiefel is saying

11:24:14 8 there?

11:24:16 9 A. Yes.

11:24:18 10 Q. What do you -- what's your understanding?

11:24:20 11 A. That a practice of establishing an initial

11:24:23 12 reserve on a claim, before its development, could

11:24:26 13 potentially result in overreserving.

11:24:30 14 Q. Do you see anywhere, after his analysis of the

11:24:33 15 reserving practices of Uni-Ter, he concluded anything

11:24:38 16 about underreserving?

11:24:42 17 A. If you look at nine of the 15 claims that were

11:24:47 18 evaluated by Praxis in this report, he defers on the

11:24:53 19 adequacy of the reserves because defense counsel

11:24:57 20 estimates could be substantially higher.

11:25:02 21 Q. And defense counsel estimates on which

11:25:05 22 companies? Country Villa?

11:25:07 23 A. I'm talking about in these individual claims.

11:25:09 24 Q. All right. Why don't you point that out to me,

11:25:12 25 if you would, please.

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11:22:20 1 inadequate?

11:22:21 2 A. The circumstances that raise question about the

11:22:24 3 reserving practices of Uni-Ter relate to the fact that

11:22:30 4 on December 17th of 2011, the board was presented with

11:22:35 5 financial statements, as of 11/30, by Donna Dalton,

11:22:39 6 showing that reserves were estimated to be about

11:22:43 7 \$11 million. Three days later, we had a phone call

11:22:47 8 indicating that an increase in those reserves of

11:22:51 9 \$2 million was necessary and that that was half of the

11:22:53 10 increase that Uni-Ter's own claims company -- or claims

11:22:59 11 staff had determined in November, that had not been

11:23:03 12 disclosed to us. And that wasn't disclosed to us until

11:23:06 13 December 28th.

11:23:07 14 I find it highly doubtful that Uni-Ter was not

11:23:11 15 aware of the increase in those claims until three days

11:23:16 16 after a financial statement that showed much lower

11:23:19 17 reserves.

11:23:21 18 Q. All right. Well, let's look at some documents.

11:23:23 19 A. Okay.

11:23:24 20 Q. Let's look at, first, Exhibit Number 6,

11:23:31 21 Mr. Stiefel's report, page 8, where he talks about

11:23:39 22 reserving. Do you have that in front of you?

11:23:45 23 A. I do.

11:23:45 24 Q. Mr. Stiefel's says: Until recently, it seems

11:23:47 25 that Uni-Ter was establishing reserves early in the

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11:25:17 1 MR. CEREGHINO: Sorry to interrupt. What

11:25:19 2 exhibit are we on now?

11:25:22 3 MR. WILSON: Exhibit Number 6.

11:25:23 4 MR. CEREGHINO: You're on Exhibit 6. Okay.

11:25:48 5 A. I would point you to page 0202581, Claim Number

11:25:55 6 201006280240, Braswell Family.

11:26:02 7 Q. (BY MR. WILSON) Okay. Go ahead. What are you

11:26:04 8 referring to there?

11:26:04 9 A. The indemnity reserve is listed as \$150,000.

11:26:08 10 Q. All right.

11:26:09 11 A. And the page immediately following, the fourth

11:26:14 12 paragraph, the sentence says: However, should that

11:26:17 13 prove to be successful -- referring to the resolution

11:26:20 14 of the matter during mediation -- it is likely that the

11:26:23 15 reserve in this case will need to be raised to at least

11:26:26 16 300,000.

11:26:27 17 Q. All right.

11:26:27 18 A. These are the kind of comments I'm referring to

11:26:29 19 and other claims that were reviewed by Praxis.

11:26:32 20 Q. And do you know at what point in time the

11:26:35 21 information that you're referring to was relayed to

11:26:40 22 Uni-Ter?

11:26:42 23 A. I do not.

11:26:43 24 Q. Are you aware of the relationship that existed

11:26:46 25 between Country Villas and a man named Garcia?

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11:26:51 1 A. I had heard that Mr. Garcia was associated as a
 11:26:56 2 consultant with Country Villa. I don't know the
 11:27:01 3 specifics.
 11:27:02 4 Q. You don't know whether he was defense counsel?
 11:27:04 5 A. I had heard that he was defense counsel, yes.
 11:27:08 6 Q. Are you aware that he took the position that
 11:27:10 7 he, in the state of California, as defense counsel,
 11:27:14 8 owed his duty to the skilled nursing facility and not
 11:27:20 9 necessarily the insurance company; and as a result, he
 11:27:25 10 did not provide information that would've enabled the
 11:27:29 11 insurance company to reserve the particular losses?
 11:27:33 12 A. I don't recall that.
 11:27:34 13 Q. Would that be something that you would like to
 11:27:37 14 have known about?
 11:27:42 15 A. Mr. Elsass, in at least one conversation,
 11:27:47 16 mentioned to me the tactics that Mr. Garcia had
 11:27:53 17 utilized as -- in connection to these types of cases.
 11:28:01 18 I found those tactics objectionable. Mr. Elsass had
 11:28:06 19 suggested that -- or asked what I thought, if he
 11:28:10 20 presented Mr. Garcia to the board as a potential
 11:28:14 21 consultant for Lewis & Clark. And when I heard that he
 11:28:18 22 represented and took money from both defense and
 11:28:21 23 plaintiffs' sides, I said, No, we will never use an
 11:28:26 24 attorney like that.
 11:28:27 25 Q. How did you become aware that he took money

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11:28:31 1 from the --
 11:28:32 2 A. Mr. Elsass represented that to me.
 11:28:34 3 Q. He told you that he took money from both sides?
 11:28:37 4 A. Correct.
 11:28:38 5 Q. Was there ever a recommendation that Mr. Garcia
 11:28:42 6 be sued and that the board decided not to sue him?
 11:28:48 7 A. I don't recall.
 11:28:50 8 Q. Was there ever a recommendation made to you, to
 11:28:53 9 please present to the board a lawsuit against
 11:28:56 10 Mr. Garcia, and we think we can recover 500,000 or more
 11:29:01 11 dollars?
 11:29:03 12 A. There may have been some such action
 11:29:05 13 recommended, but I'd need to have documentation to
 11:29:09 14 refresh my memory.
 11:29:11 15 Q. Now, you've talked about 15 claims in here that
 11:29:18 16 Praxis reviewed, correct?
 11:29:20 17 A. Yes.
 11:29:44 18 Q. Unless I'm miscounting, I don't see 15 claims.
 11:29:48 19 Maybe you could enlighten me on how we got to 15. It
 11:29:53 20 might be my fault, in not being able to review it. The
 11:29:58 21 first claim is Country Villa, involving Allen, correct?
 11:30:10 22 The second claim is a Braswell claim. The third claim
 11:30:16 23 is a Braswell claim. The fourth one's a Braswell. The
 11:30:21 24 fifth one's a Braswell. The sixth one's a Braswell.
 11:30:26 25 The seventh one's Country Villa. The eighth one's

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11:30:29 1 Country Villa. Ninth one's Country Villa. I don't see
 11:30:35 2 any more. Do you know where the other six claims are?
 11:30:59 3 A. I had recalled about 15 were reviewed, but I do
 11:31:05 4 only see nine in this report.
 11:31:06 5 Q. I think really only nine were reviewed.
 11:31:09 6 A. Okay.
 11:31:09 7 Q. And how many of them -- you had a number -- you
 11:31:12 8 had a lot of objections to the 15. When you look at
 11:31:16 9 the nine, how many do you have objection to? Just the
 11:31:19 10 one you pointed out?
 11:31:20 11 A. Well, I do recall -- I do recall, in reviewing
 11:31:22 12 my notes, that back in 2013, I compared the estimated
 11:31:26 13 reserves that Uni-Ter established for these nine claims
 11:31:29 14 to what the reserves were that were recommended in the
 11:31:32 15 Fischlinger report on January 12th of 2012, noting an
 11:31:35 16 increase of 1.2 million for those claims.
 11:32:05 17 MR. WILSON: Read that back. I missed it.
 11:32:05 18 I apologize.
 11:32:05 19 (The previous answer was read.)
 11:32:05 20 Q. (BY MR. WILSON) Where are those notes?
 11:32:08 21 A. I have those notes.
 11:32:09 22 Q. Did you produce them to counsel? Have they
 11:32:13 23 been produced in this proceeding?
 11:32:16 24 A. I believe I did.
 11:32:19 25 MS. OCHOA: We --

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11:32:21 1 MR. WILSON: I don't recall any notes.
 11:32:23 2 MS. OCHOA: Can we --
 11:32:25 3 MR. WILSON: You want to go off the record?
 11:32:28 4 MS. OCHOA: Yes.
 11:32:28 5 THE VIDEOGRAPHER: Off the record.
 11:34:23 6 (Discussion off the record.)
 11:34:33 7 THE VIDEOGRAPHER: We're back on the record
 11:34:34 8 at 11:34.
 11:34:41 9 Q. (BY MR. WILSON) We were discussing some notes,
 11:34:44 10 Mr. Marshall.
 11:34:47 11 THE VIDEOGRAPHER: Sorry. You need to put
 11:34:47 12 that on.
 11:34:47 13 Q. (BY MR. WILSON) We were discussing some notes.
 11:34:50 14 And in an off-the-record discussion, Ms. Ochoa
 11:34:56 15 indicated that those were notes of emails you sent to
 11:35:00 16 your own personal attorney; is that correct?
 11:35:05 17 A. Attorneys in an unrelated case, yes.
 11:35:13 18 MS. OCHOA: Yes. Those were his
 11:35:14 19 attorney -- his --
 11:35:14 20 A. Attorneys for Eagle Healthcare.
 11:35:14 21 MS. OCHOA: His -- Eagle's counsel.
 11:35:16 22 A. Not my personal attorney.
 11:35:18 23 Q. (BY MR. WILSON) They were attorneys for Eagle?
 11:35:21 24 A. Correct.
 11:35:22 25 Q. And you did it in your capacity as chairman of

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11:35:27 1 Lewis & Clark and --
 11:35:30 2 A. President of Eagle.
 11:35:31 3 Q. President of Eagle. You did that analysis?
 11:35:35 4 A. Correct.
 11:35:36 5 Q. And I don't want to know the contents. I want
 11:35:40 6 to know, when did that occur?
 11:35:47 7 A. May of 2013.
 11:35:48 8 Q. Were those then related to counsel for Lewis &
 11:35:54 9 Clark?
 11:35:55 10 A. No.
 11:36:26 11 Q. Let me mark the next exhibit, an email from --
 11:36:36 12 the initial email is from Donna Dalton, to a number of
 11:36:39 13 people, including you, dated December 20th, 2011. It's
 11:36:46 14 LC-USRE 1315546 through 569, with an attachment to it.
 11:37:19 15 It says: Valuation of Open Claims as of November 12th,
 11:37:23 16 2011.
 11:37:36 17 (Deposition Exhibit 84 was marked for
 11:37:36 18 identification.)
 11:37:50 19 Q. (BY MR. WILSON) Do you recall receiving that?
 11:38:02 20 A. Yes.
 11:38:04 21 Q. And do you recall receiving the loss run --
 11:38:08 22 sorry, excuse me -- the valuation of open claims that's
 11:38:12 23 dated November 12, 2011?
 11:38:20 24 A. By the way, what I'm looking at on Exhibit 84
 11:38:23 25 is dated December 20, 2011.

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11:38:26 1 Q. Right. There's an attachment. The attachment
 11:38:29 2 is a run, and the run is dated -- Valuation of Open
 11:38:32 3 Claims as of November 12, 2011 -- 2011, right at the
 11:38:38 4 very back, sir, at the end of the -- this part.
 11:38:42 5 A. Which page number?
 11:38:43 6 Q. It has no page number to it. It's just an
 11:38:46 7 attachment.
 11:38:47 8 A. Okay.
 11:38:53 9 MR. CEREGHINO: There's no Bates reference?
 11:38:55 10 MR. WILSON: There's no Bates reference.
 11:38:57 11 It's an Excel spreadsheet. It was produced in Excel
 11:39:02 12 spreadsheet format.
 11:39:03 13 A. How many pages from the back is it?
 11:39:05 14 Q. (BY MR. WILSON) Just grab anywhere in the
 11:39:08 15 back, just take two-thirds of the way back.
 11:39:11 16 MS. OCHOA: After --
 11:39:12 17 MR. WILSON: Maybe you don't have it.
 11:39:12 18 MS. OCHOA: After 131559.
 11:39:17 19 A. I see it. I just need to get to the front of
 11:39:22 20 it.
 11:39:23 21 Q. (BY MR. WILSON) It says the same thing on
 11:39:24 22 every page.
 11:39:26 23 MS. OCHOA: There you go.
 11:39:27 24 A. I found it.
 11:39:28 25 Q. (BY MR. WILSON) Do you recall Ms. Dalton

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11:39:32 1 presented to you and the board this analysis in
 11:39:37 2 December of 2011?
 11:39:44 3 A. Yes.
 11:39:46 4 Q. Steve had requested certain information. The
 11:39:49 5 Steve would be Steve Fogg, correct?
 11:39:53 6 A. Yes.
 11:39:59 7 Q. If you look at the third paragraph down in
 11:40:07 8 Exhibit Number 84, it says: There are reserves --
 11:40:11 9 There are loss reserves of approximately 2.8 million on
 11:40:14 10 claims received in 2011. Reserves are adjusted as the
 11:40:19 11 claims are worked and discovery progresses. This
 11:40:23 12 process can take several months or even longer.
 11:40:26 13 Do you see that?
 11:40:26 14 A. Yes.
 11:40:27 15 Q. Did you -- do you understand that that process
 11:40:30 16 can take time?
 11:40:31 17 A. Yes.
 11:40:35 18 Q. (Reading) They are based on the facts known on
 11:40:37 19 a case at any given point in time. Steve asked if this
 11:40:41 20 increase in reserves is a result of us wanting to book
 11:40:44 21 to a more conservative loss pick, or was there new
 11:40:48 22 tangible claims evidence that would suggest that a
 11:40:52 23 higher reserve be required. The latter is the accurate
 11:40:56 24 statement.
 11:40:56 25 Which means there was new tangible evidence

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11:40:59 1 that would suggest a higher reserve be required. Did
 11:41:04 2 you understand that that was at least the basis for
 11:41:06 3 that increase, according to Uni-Ter?
 11:41:11 4 A. I did.
 11:41:12 5 Q. And did you find that to be accurate or
 11:41:15 6 inaccurate? Or do you have any opinion or testimony at
 11:41:20 7 all as it relates to that?
 11:41:21 8 A. My opinion, again, is that the entire board was
 11:41:27 9 shocked that on December 20th, the date of this Donna
 11:41:31 10 Dalton email, and the date of our conference call, in
 11:41:35 11 which we were told at least 5.2 million of a reserve
 11:41:39 12 increase was required, was only three days after Donna
 11:41:42 13 Dalton produced a financial statement showing
 11:41:46 14 \$11.0 million of reserves. And this was increasing
 11:41:49 15 that number by 5.2 million within a three-day time
 11:41:52 16 frame. That's what the board was shocked about.
 11:41:55 17 Q. And what was the end date of the financial
 11:41:57 18 statement? During what period of time did it reflect?
 11:42:00 19 Wasn't that June 30th?
 11:42:03 20 A. No. It was projected to be as of 11/30. It
 11:42:05 21 was a pro forma financial statement as of 11/30/2011.
 11:42:09 22 Q. It was a pro forma statement as of 11/30?
 11:42:12 23 A. Correct.
 11:42:13 24 Q. And that was increased, then, by how much?
 11:42:17 25 A. It actually reflected a reduction of 1 million

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<p>11:42:20 1 in reserves from the June 30 financial -- well,</p> <p>11:42:24 2 actually, from the pro forma financial statement that</p> <p>11:42:27 3 was provided to the board on September 21st, at which</p> <p>11:42:30 4 time the board was requested to increase the capital</p> <p>11:42:33 5 contribution.</p> <p>11:42:34 6 Q. Well, the board, in fact, did increase the</p> <p>11:42:36 7 capital contribution before November the 30th, didn't</p> <p>11:42:40 8 it, of 2011?</p> <p>11:42:41 9 A. That's correct. Based on a pro forma financial</p> <p>11:42:43 10 that the expectation was reserves would be 12.0 million</p> <p>11:42:48 11 as of December 30, 2011. That was the pro forma</p> <p>11:42:51 12 financial produced on the September 21st board meeting.</p> <p>11:42:54 13 Q. All right.</p> <p>11:42:54 14 A. The 11/30 financial reflected a 1 million</p> <p>11:42:57 15 reduction from that, down to 11.0 million, and was</p> <p>11:43:00 16 produced three days before the increase of 5.2 million</p> <p>11:43:03 17 was announced.</p> <p>11:43:04 18 Q. And do you know why it went down 1 million?</p> <p>11:43:07 19 A. I do not.</p> <p>11:43:08 20 Q. Do you know why it went up 5.2 million?</p> <p>11:43:14 21 A. Based on the report from Praxis. However, in</p> <p>11:43:18 22 response to my email of December 28th, asking further</p> <p>11:43:22 23 information about additional reserves that might be in</p> <p>11:43:25 24 excess of 5.2 million, Ms. Dalton responded that staff</p> <p>11:43:28 25 had come up with about a \$10 million increase prior to</p>	<p>11:44:35 1 A. I don't recall.</p> <p>11:44:38 2 Q. And did Mr. Fogg --</p> <p>11:44:39 3 A. It might have been Mark Garber.</p> <p>11:44:41 4 Q. And wasn't Mr. Fogg supposed to participate in</p> <p>11:44:44 5 discussions with Fischlinger on its claims analysis on</p> <p>11:44:48 6 reserving?</p> <p>11:44:49 7 A. His -- the purpose for the claims committee</p> <p>11:44:52 8 that Mr. Fogg chaired was to review the process by</p> <p>11:44:55 9 which Fischlinger would review claims.</p> <p>11:44:59 10 Q. And that was the limit to it -- that committee?</p> <p>11:45:05 11 A. That was the ultimate purpose, yes.</p> <p>11:45:07 12 Q. And was that reflected in the board minutes?</p> <p>11:45:18 13 Do you recall? Did you review any minutes of that?</p> <p>11:45:24 14 A. It would've been the end of December of 2011.</p> <p>11:45:30 15 Perhaps Exhibit 28. Let's take a look.</p> <p>11:45:42 16 Q. Item 4?</p> <p>11:45:51 17 A. Yeah. 4-C on the board minutes, Exhibit 28.</p> <p>11:45:56 18 Q. It says: In order to facilitate the board's</p> <p>11:45:59 19 consideration of alternatives, the board claims</p> <p>11:46:02 20 subcommittee should be included in a telephone meeting</p> <p>11:46:04 21 to receive an oral report from Fischlinger at or</p> <p>11:46:08 22 towards the end of the work, before the work is done,</p> <p>11:46:11 23 to finalize his written report.</p> <p>11:46:14 24 Was that done?</p> <p>11:46:18 25 A. To my knowledge, yes.</p>
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<p>11:43:32 1 this Praxis report and had not disclosed that to the</p> <p>11:43:35 2 board.</p> <p>11:43:35 3 Q. And who at staff had done that?</p> <p>11:43:38 4 A. I was told that the staff process -- recall</p> <p>11:43:41 5 that I talked about the roundtable process that Donna</p> <p>11:43:45 6 Dalton established, starting in August, involving all</p> <p>11:43:47 7 claims staff. They had done a subsequent review</p> <p>11:43:50 8 following the initial Praxis report of September. That</p> <p>11:43:52 9 review was conducted in November and resulted in a</p> <p>11:43:56 10 \$10 million recommended increase to reserves.</p> <p>11:43:58 11 Q. And did you see that analysis?</p> <p>11:44:00 12 A. I don't recall if I saw the specific analysis,</p> <p>11:44:03 13 but I was -- she responded to my December 20th email,</p> <p>11:44:07 14 asking of additional reserve information, with that</p> <p>11:44:11 15 statement that an increase of 10 million in reserves</p> <p>11:44:13 16 was their finding, in spite of Praxis's finding of just</p> <p>11:44:18 17 a 5.2 increase.</p> <p>11:44:20 18 Q. And you, as the chairman, then appointed a</p> <p>11:44:21 19 committee, didn't you?</p> <p>11:44:22 20 A. The board, together, appointed two different</p> <p>11:44:25 21 committees as a result of these findings.</p> <p>11:44:27 22 Q. And one of the committees was chaired by</p> <p>11:44:29 23 Mr. Fogg?</p> <p>11:44:29 24 A. Correct.</p> <p>11:44:30 25 Q. And who was the other member of the committee?</p>	<p>11:46:21 1 Q. Did your summary of any depositions indicate</p> <p>11:46:23 2 Mr. Fogg couldn't recall whether that was done?</p> <p>11:46:27 3 A. I didn't receive any summary of Mr. Fogg's</p> <p>11:46:30 4 comments in deposition.</p> <p>11:46:32 5 Q. So what was Mr. Fogg's report back to the</p> <p>11:46:35 6 board?</p> <p>11:46:39 7 A. He didn't have any issues with the process that</p> <p>11:46:41 8 Fischlinger used to review claims.</p> <p>11:46:44 9 Q. And what was the process?</p> <p>11:46:48 10 A. I couldn't describe it in detail, but it was --</p> <p>11:46:51 11 Fischlinger was yet another independent consultant,</p> <p>11:46:55 12 like Praxis, brought in to review claims, and</p> <p>11:46:59 13 specifically to review Praxis's findings on claims.</p> <p>11:47:03 14 Q. Brought in by whom?</p> <p>11:47:07 15 A. I believe Uni-Ter and/or U.S. RE might have</p> <p>11:47:11 16 recommended them.</p> <p>11:47:12 17 Q. Really, it was U.S. RE, was the one at that</p> <p>11:47:15 18 point in time, that recommended Mr. Fischlinger,</p> <p>11:47:18 19 correct?</p> <p>11:47:19 20 A. I'll accept that.</p> <p>11:47:21 21 Q. And Uni-Ter is the one that recommended Praxis,</p> <p>11:47:25 22 correct?</p> <p>11:47:26 23 A. Yes.</p> <p>11:47:27 24 Q. And, in fact, Mr. Stiefel -- you've met</p> <p>11:47:29 25 Mr. Stiefel, haven't you?</p>

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11:47:30 1 A. Yes. He reported at the September 21st board
 11:47:33 2 meeting.
 11:47:34 3 Q. And Mr. Stiefel was then put in as an
 11:47:37 4 independent contractor to head the claims analysis and
 11:47:41 5 reviews for Uni-Ter, correct?
 11:47:46 6 A. I don't recall the time frame for that. He was
 11:47:49 7 in charge of doing the follow-up detail review of
 11:47:52 8 claims in December that resulted in the \$5.2 million
 11:47:56 9 recommended increase to reserves.
 11:48:04 10 Q. Now, if you look at the Exhibit 84, Ms. Dalton
 11:48:10 11 says: I have personally participated in the claims --
 11:48:14 12 in the review of each and every -- sorry -- L&C claim
 11:48:18 13 in the last three weeks and can tell you that L&C has
 11:48:22 14 been hit with some really bad claims; a couple include
 11:48:25 15 criminal activity. There is a video of a DON -- D-O-N,
 11:48:31 16 was that the director of nursing?
 11:48:33 17 A. Yes.
 11:48:34 18 Q. -- admitting to abusing a patient. Another has
 11:48:36 19 a video of the actual abuse by a CNA --
 11:48:40 20 What's a CNA?
 11:48:42 21 A. Certified nursing assistant.
 11:48:44 22 Q. -- those are just to name a few. You will be
 11:48:49 23 able to read some of the details of each claim on the
 11:48:52 24 attached spreadsheets. There are numerous external
 11:48:55 25 factors that we believe are contributing to the adverse

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11:50:18 1 why -- how this could occur in such a short period of
 11:50:21 2 time. Yes, some of these circumstances specific to
 11:50:25 3 particular cases may have been brought to our
 11:50:27 4 attention. But there was never an analysis, that I can
 11:50:31 5 recall, about the impact of those specific
 11:50:34 6 circumstances about criminal activity or abuse of
 11:50:39 7 residents and how much of the claim increase those
 11:50:42 8 circumstances created.
 11:50:43 9 Q. So you never saw an email which identified
 11:50:47 10 \$600,000 of increases as a direct result of the murder
 11:50:54 11 of the husband of one of the employees at Braswell?
 11:50:59 12 A. I'm not saying I didn't. But to generalize
 11:51:02 13 that claims increases, within a three-day time frame,
 11:51:06 14 could be created by the state of the economy is a gross
 11:51:09 15 exaggeration.
 11:51:11 16 Q. Who says that?
 11:51:12 17 A. I do.
 11:51:13 18 Q. Who says that that was the reason? It says,
 11:51:15 19 one of the factors --
 11:51:16 20 A. You just said --
 11:51:17 21 Q. It says, one of the factors, sir. I'm reading
 11:51:19 22 the memorandum. One of several factors is the state of
 11:51:24 23 the economy. One of the other factors --
 11:51:26 24 A. And I'm saying that there has --
 11:51:27 25 Q. -- is criminal activity.

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11:48:58 1 development, and one of the obvious ones would be the
 11:49:01 2 state of our economy.
 11:49:08 3 Uni-Ter provided, in this memorandum, a number
 11:49:11 4 of issues that had arisen during a limited and defined
 11:49:18 5 period of time that caused significant increases in
 11:49:23 6 reserving, correct?
 11:49:26 7 A. I don't have a perspective as to how many of
 11:49:30 8 the instances that you cited actually had -- the impact
 11:49:34 9 that those might have had on the overall reserve
 11:49:37 10 increase that was requested --
 11:49:40 11 Q. You're --
 11:49:40 12 A. -- or recommended.
 11:49:41 13 Q. I'm sorry. You're chairman of the board. You
 11:49:43 14 received this email from Ms. Dalton, and I assume you
 11:49:47 15 read it. And you saw that there was all these other
 11:49:50 16 external factors and reasons. I would assume that you
 11:49:54 17 would've said, Ms. Dalton, tell me how this -- these
 11:49:58 18 external factors or the criminal activity impacted the
 11:50:02 19 actual reserves.
 11:50:04 20 MS. OCHOA: Objection. Form.
 11:50:04 21 Q. (BY MR. WILSON) Did you do that?
 11:50:06 22 A. We -- all of us on the board questioned
 11:50:08 23 extensively, based on these extraordinary results that
 11:50:13 24 were brought to our attention on December 20th in that
 11:50:15 25 telephone conference call with all board members,

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11:51:28 1 A. -- there was no -- there was no analysis that
 11:51:30 2 was produced to the board that showed the impact of the
 11:51:32 3 economy on claims.
 11:51:37 4 Q. All right. Did anybody review the significant
 11:51:40 5 number of claims that were presented by Country Villas
 11:51:44 6 the last day of the policy year to see whether or not
 11:51:47 7 they had merit or not?
 11:51:52 8 A. That would fall within the purview of the
 11:51:55 9 Uni-Ter claims management staff.
 11:51:56 10 Q. And Uni-Ter should reserve them, even
 11:51:59 11 initially, shouldn't they? Put a reserve value to
 11:52:02 12 them?
 11:52:03 13 A. Yes.
 11:52:05 14 Q. What if they were bogus claims?
 11:52:09 15 A. Then the reserves, upon determining that
 11:52:12 16 they're bogus, would be reduced.
 11:52:14 17 Q. It would go down. Yeah. It would go down.
 11:52:14 18 That might account for the reduction between June of
 11:52:20 19 2011 -- 30th of 2011 and the reduction when it comes up
 11:52:25 20 in December of 2011, because a significant number of
 11:52:29 21 claims filed by the largest unit -- number of units of
 11:52:35 22 skilled nursing facilities were bogus.
 11:52:40 23 A. Understood.
 11:52:40 24 Q. That could be a factor, correct?
 11:52:42 25 A. It could be a factor, yes.

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<p>11:52:44 1 Q. Now, did you read the draft report that was</p> <p>11:52:51 2 attached here by Milliman?</p> <p>11:53:34 3 A. Are you referring to page 1315549?</p> <p>11:53:38 4 Q. I'm asking about the entire report that's</p> <p>11:53:42 5 identified as Draft Exhibit Cover Sheet, Preliminary</p> <p>11:53:47 6 Draft, and the report. It's a number of exhibits.</p> <p>11:53:53 7 A. Yes. We would've reviewed this as a board.</p> <p>11:53:57 8 Q. Did you ask Mr. Lord why these significant</p> <p>11:54:03 9 increases occurred?</p> <p>11:54:04 10 A. I believe we did.</p> <p>11:54:05 11 Q. What was his answer?</p> <p>11:54:08 12 A. Based on the representation from Uni-Ter of the</p> <p>11:54:12 13 increase in specific claims reserves.</p> <p>11:54:18 14 Q. Did anybody -- okay. Let me go back. I'll</p> <p>11:54:23 15 withdraw that question.</p> <p>11:54:24 16 So we're now at a time period of when?</p> <p>11:54:29 17 February -- or December -- excuse me -- of 2011. And</p> <p>11:54:34 18 you learn that there was a \$5 million increase in</p> <p>11:54:37 19 reserves needed?</p> <p>11:54:39 20 A. On December 20th, we learned that.</p> <p>11:54:41 21 Q. Right. And how did that impact Lewis & Clark?</p> <p>11:54:50 22 A. Well, you go from three days prior, when the</p> <p>11:54:53 23 financials indicated reserves of 11.0 million, and you</p> <p>11:54:57 24 add almost half again as much in the recommended</p> <p>11:55:00 25 increase of 5.2 million, that would put the surplus in</p>	<p>11:56:20 1 liability, perhaps the capital impact would not be as</p> <p>11:56:23 2 great to the company.</p> <p>11:56:24 3 Q. Had you been involved in stop loss coverage</p> <p>11:56:26 4 before?</p> <p>11:56:27 5 A. I had been involved in placing years and years</p> <p>11:56:30 6 of coverage for my company, Eagle Healthcare, that</p> <p>11:56:33 7 involved stop loss coverages. So I was familiar with</p> <p>11:56:35 8 it.</p> <p>11:56:36 9 Q. Right. So you're familiar that Mr. Tal</p> <p>11:56:39 10 Piccione, of U.S. RE, proposed a stop loss cover?</p> <p>11:56:44 11 A. I know there were a number of discussions,</p> <p>11:56:47 12 including about a stop loss cover, yes.</p> <p>11:56:49 13 Q. And you, as chairman, and being very familiar</p> <p>11:56:51 14 with stop loss coverage, I assume, participated with</p> <p>11:56:54 15 Mr. Piccione in discussing these and understanding the</p> <p>11:56:56 16 nature and extent of the stop loss coverage proposed by</p> <p>11:57:00 17 Mr. Piccione?</p> <p>11:57:02 18 MS. OCHOA: Objection. Form.</p> <p>11:57:02 19 A. It was not my duty or responsibility, as a</p> <p>11:57:05 20 member of the board of directors, or for the board to</p> <p>11:57:08 21 determine exactly what those discussions would be. We</p> <p>11:57:11 22 relied upon the expertise of Uni-Ter and its parent,</p> <p>11:57:15 23 U.S. RE, in that regard.</p> <p>11:57:17 24 Q. (BY MR. WILSON) In regard to the stop loss</p> <p>11:57:19 25 coverage?</p>
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<p>11:55:03 1 capital at an unacceptable level. In fact, negative.</p> <p>11:55:07 2 Because that same financial statement that showed</p> <p>11:55:11 3 11.0 million in reserves showed a 4.0 million capital</p> <p>11:55:14 4 balance.</p> <p>11:55:15 5 Q. You've got a significant problem?</p> <p>11:55:16 6 A. Yes, you do.</p> <p>11:55:17 7 Q. What did you do about it?</p> <p>11:55:19 8 A. That's when we established, as a board, the two</p> <p>11:55:22 9 different committees: the claims committee to review</p> <p>11:55:25 10 the Fischlinger report, that was a review of the Prax's</p> <p>11:55:29 11 report of December; and we also engaged a committee --</p> <p>11:55:33 12 I don't recall if it had a name to it -- that would</p> <p>11:55:36 13 look at alternatives for evaluating how you could -- we</p> <p>11:55:41 14 could handle the deficient capital structure, whether</p> <p>11:55:45 15 it created an insolvent situation or whether there was</p> <p>11:55:49 16 an opportunity for someone, you know, to create a stop</p> <p>11:55:52 17 loss for the reserves that would reduce the liabilities</p> <p>11:55:56 18 for Lewis & Clark, or whether someone could actually</p> <p>11:56:00 19 purchase those reserves.</p> <p>11:56:01 20 Q. What is a stop loss for reserves?</p> <p>11:56:04 21 A. A stop loss is a cap that would minimize the</p> <p>11:56:08 22 risk for Lewis & Clark, above which the stop loss</p> <p>11:56:12 23 carrier would cover. If there were a premium to be</p> <p>11:56:15 24 paid for the stop loss coverage that would be</p> <p>11:56:18 25 reasonably low enough so that you could reduce that</p>	<p>11:57:21 1 A. Our committee was -- Rick Stickels was the</p> <p>11:57:25 2 chairman of this -- or the head of this committee, I</p> <p>11:57:27 3 should say, of the board of directors, to evaluate such</p> <p>11:57:31 4 alternatives. So I was not directly involved in that.</p> <p>11:57:33 5 So Mr. Stickels may have been involved directly in</p> <p>11:57:37 6 talking to Mr. Piccione or other members of U.S. RE</p> <p>11:57:41 7 about stop loss coverage.</p> <p>11:57:42 8 Q. But you would expect Mr. Stickels to report</p> <p>11:57:44 9 back to the board what he learned, correct?</p> <p>11:57:47 10 A. Yes. And as --</p> <p>11:57:47 11 Q. What did he report back?</p> <p>11:57:48 12 A. As I recall, there was not a feasible</p> <p>11:57:50 13 alternative in that regard, after months of review.</p> <p>11:57:55 14 Q. Why wasn't it feasible?</p> <p>11:57:57 15 A. I believe a number of options were considered</p> <p>11:57:59 16 and companies contacted, but none were viable.</p> <p>11:58:05 17 Q. Did you have anybody review the valuation of</p> <p>11:58:11 18 open claims as of November 12, 2011, and then compare</p> <p>11:58:15 19 it to the valuation that was apparently occurring that</p> <p>11:58:19 20 caused the increase?</p> <p>11:58:22 21 A. I believe all board members did that review.</p> <p>11:58:25 22 Q. And what -- did you reach any conclusions after</p> <p>11:58:27 23 that review?</p> <p>11:58:31 24 A. Again, our conclusion was, being stunned at the</p> <p>11:58:36 25 increase in the level of reserves in such a short</p>

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<p>11:58:39 1 period of time; not that any claim couldn't have an</p> <p>11:58:42 2 increase in reserves, but that it would occur in such a</p> <p>11:58:45 3 short period of time, without the knowledge of Uni-Ter,</p> <p>11:58:48 4 such that the board could've been informed earlier and</p> <p>11:58:51 5 perhaps taken corrective action sooner.</p> <p>11:58:53 6 Q. What type of corrective action could you have</p> <p>11:58:55 7 taken?</p> <p>11:58:55 8 A. The same type of corrective action that the</p> <p>11:58:57 9 board engaged in on December 28th, when it learned the</p> <p>11:59:01 10 information that it did, and the December 28th board</p> <p>11:59:06 11 minutes reflected.</p> <p>11:59:07 12 Q. What corrective action was that?</p> <p>11:59:08 13 A. Looked for a stop loss cover. Perhaps we</p> <p>11:59:11 14 could've had more options available to us at a time</p> <p>11:59:14 15 earlier. Let's say earlier in 2011. Had we been able</p> <p>11:59:18 16 to be informed that there was a much greater risk of</p> <p>11:59:21 17 claims reserves being increased, we could've taken</p> <p>11:59:24 18 action to look at those alternatives, perhaps selling</p> <p>11:59:27 19 some of the reserves to another entity, which was an</p> <p>11:59:29 20 alternative considered post December 2011.</p> <p>11:59:32 21 Q. What do you mean by "selling" reserves?</p> <p>11:59:34 22 A. There was an entity called HealthCap, another</p> <p>11:59:37 23 RRG, that was contacted as part of this committee</p> <p>11:59:42 24 process, to look at the potential for their buying our</p> <p>11:59:46 25 reserves at some sort of a discount and looking at</p>	<p>12:00:59 1 Q. Isn't it accurate that Uni-Ter brought Praxis</p> <p>12:01:01 2 on, U.S. RE brought Fischlinger on, and the board</p> <p>12:01:06 3 brought nobody on --</p> <p>12:01:09 4 MS. OCHOA: Objection. Form.</p> <p>12:01:09 5 Q. (BY MR. WILSON) -- as it relates to claims?</p> <p>12:01:10 6 A. No. There was never a time period when no one</p> <p>12:01:12 7 was in charge of claims.</p> <p>12:01:14 8 Q. I'm not saying no one was in charge of claims.</p> <p>12:01:17 9 Uni-Ter was in charge of claims. In order to review</p> <p>12:01:22 10 Uni-Ter's efforts and claims amounts, Uni-Ter, itself,</p> <p>12:01:27 11 brought on Praxis Consulting. And Praxis did an</p> <p>12:01:31 12 analysis of the reserving methodology and the reserves</p> <p>12:01:34 13 set by Uni-Ter, correct?</p> <p>12:01:36 14 A. Yes.</p> <p>12:01:38 15 Q. Then U.S. RE, the parent, brought on a second</p> <p>12:01:41 16 company called Fischlinger to do an analysis both of</p> <p>12:01:47 17 what Praxis did and what Uni-Ter did, to have another</p> <p>12:01:51 18 set of eyes look at the reserves on claims, correct?</p> <p>12:01:56 19 A. Yes. And the board committee determined that</p> <p>12:01:59 20 the process Fischlinger used was appropriate.</p> <p>12:02:03 21 Q. And Mr. Fogg reported that?</p> <p>12:02:06 22 A. Yes.</p> <p>12:02:07 23 Q. To the board?</p> <p>12:02:08 24 A. Yes.</p> <p>12:02:09 25 Q. And what did he say? Because he had a</p>
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<p>11:59:49 1 whether that was a feasible alternative to the</p> <p>11:59:52 2 insolvency that otherwise would face us.</p> <p>11:59:54 3 Q. Wasn't it accurate that Mr. Elsass brought</p> <p>11:59:58 4 HealthCap to the attention of Lewis & Clark?</p> <p>12:00:02 5 A. As part of the process, yes.</p> <p>12:00:04 6 Q. And he was then curtailed in his efforts and</p> <p>12:00:09 7 limited to his ability to talk to them, and he had to</p> <p>12:00:12 8 go through -- get everything cleared with certain</p> <p>12:00:14 9 members of the board?</p> <p>12:00:16 10 MR. CEREGHINO: Form and foundation.</p> <p>12:00:18 11 Go ahead.</p> <p>12:00:18 12 A. Yes, that's true.</p> <p>12:00:20 13 Q. (BY MR. WILSON) And when did that occur?</p> <p>12:00:23 14 A. At that board meeting on December 28th, as a</p> <p>12:00:25 15 result of our being shocked by the increase reserves</p> <p>12:00:28 16 when we were -- that was announced to us on December</p> <p>12:00:31 17 20th. We determined that all the actions of Uni-Ter</p> <p>12:00:34 18 and day-to-day operations had to run through the board</p> <p>12:00:37 19 because we had lost confidence in Uni-Ter at that</p> <p>12:00:40 20 point.</p> <p>12:00:40 21 Q. And who did you bring on to help with the</p> <p>12:00:44 22 reserving process? Fischlinger?</p> <p>12:00:47 23 A. They were reviewing claims. I don't recall who</p> <p>12:00:53 24 actually ran the claims process, 2012 forward,</p> <p>12:00:57 25 specifically.</p>	<p>12:02:11 1 difficult time remembering, at his deposition, what it</p> <p>12:02:15 2 was.</p> <p>12:02:15 3 A. He indicated that he didn't have any problems</p> <p>12:02:17 4 with the Fischlinger process of reviewing the claims</p> <p>12:02:20 5 that Praxis had reviewed -- reviewing the Praxis</p> <p>12:02:24 6 report.</p> <p>12:02:24 7 Q. The process? Or the actual conclusions of</p> <p>12:02:27 8 Fischlinger?</p> <p>12:02:29 9 A. I believe both.</p> <p>12:02:31 10 Q. Do you know?</p> <p>12:02:32 11 A. It's my belief.</p> <p>12:02:34 12 Q. Do you know?</p> <p>12:02:35 13 A. No.</p> <p>12:02:36 14 Q. Okay. Let's go to -- let's mark as our next</p> <p>12:03:29 15 exhibit, which will be Exhibit Number 85, an email</p> <p>12:03:34 16 that's from Donna Dalton to you, among others,</p> <p>12:03:38 17 Bates-stamped LC-USRE 0102821-22.</p> <p>12:03:55 18 (Deposition Exhibit 85 was marked for</p> <p>12:03:55 19 identification.)</p> <p>12:04:24 20 Q. (BY MR. WILSON) Do you recognize this</p> <p>12:04:47 21 document?</p> <p>12:04:48 22 A. Yes.</p> <p>12:04:49 23 Q. I note, in the middle, there's a -- well, on</p> <p>12:04:51 24 the first page, there's an email from you to Donna,</p> <p>12:04:54 25 saying: Please remind me -- had Praxis reviewed or</p>

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<p>12:04:58 1 signed off, as had Richard Lord, on the loss reserve</p> <p>12:05:02 2 numbers incorporated in the projected third quarter</p> <p>12:05:06 3 financials presented to the board in Las Vegas.</p> <p>12:05:09 4 What was that about?</p> <p>12:05:10 5 A. The concern was whether there was an</p> <p>12:05:13 6 independent review by Milliman of the reserves and the</p> <p>12:05:17 7 loss reserve numbers that were presented to the board</p> <p>12:05:20 8 on September 21st.</p> <p>12:05:23 9 Q. September 21st loss reserve numbers would be as</p> <p>12:05:28 10 of what date?</p> <p>12:05:29 11 A. June 30. At that time, I believe the reserve</p> <p>12:05:37 12 was 11.7 million.</p> <p>12:05:40 13 Q. And did you review the response?</p> <p>12:05:44 14 A. Yes.</p> <p>12:05:45 15 Q. That Praxis had reviewed the claims of three</p> <p>12:05:48 16 accounts that were non-renewed, Country Villas,</p> <p>12:05:51 17 Braswell -- and who is HCFA?</p> <p>12:05:54 18 A. Another insured.</p> <p>12:05:56 19 Q. Where were they located?</p> <p>12:05:57 20 A. I don't recall.</p> <p>12:05:58 21 Q. What size?</p> <p>12:06:00 22 A. Not a large size.</p> <p>12:06:02 23 Q. Why were they not renewed?</p> <p>12:06:04 24 A. I do not know that specifically. It was not</p> <p>12:06:08 25 unusual to non-renew selected accounts if they didn't</p>	<p>12:09:01 1 A. Under the headline, Scope.</p> <p>12:09:04 2 Q. I don't find it, so I'm sorry. Let me --</p> <p>12:09:11 3 A. Page --</p> <p>12:09:11 4 MS. OCHOA: It looks like the fourth page</p> <p>12:09:12 5 in.</p> <p>12:09:12 6 A. The fourth page in.</p> <p>12:09:14 7 Q. (BY MR. WILSON) I've got it. Thank you.</p> <p>12:09:15 8 A. Under Scope, the third paragraph, I'll read it:</p> <p>12:09:17 9 In forming my opinion on the loss and loss adjustment</p> <p>12:09:20 10 expense reserves, I relied upon data and related</p> <p>12:09:23 11 information prepared by the company. In this regard, I</p> <p>12:09:26 12 relied on Donna Dalton, COO/CFO of Uni-Ter Underwriting</p> <p>12:09:30 13 Management Company, managing agent of the company, as</p> <p>12:09:32 14 to the accuracy and completeness of the data.</p> <p>12:09:37 15 Further down: In performing this evaluation --</p> <p>12:09:39 16 Q. Wait, wait, wait.</p> <p>12:09:39 17 A. -- I have assumed that the company (a) used its</p> <p>12:09:43 18 best efforts to supply accurate and complete data and</p> <p>12:09:47 19 did not knowingly provide any inaccurate data.</p> <p>12:09:51 20 Q. I see that you omitted reading the following:</p> <p>12:09:53 21 I evaluated the data used directly in my analysis for</p> <p>12:09:56 22 reasonableness and consistency. My evaluation did not</p> <p>12:10:01 23 reveal any data points materially affecting my analysis</p> <p>12:10:05 24 that fell outside of the range of reasonable</p> <p>12:10:08 25 possibilities.</p>
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<p>12:06:12 1 meet underwriting expectations. So they must have been</p> <p>12:06:16 2 one of those.</p> <p>12:06:19 3 Q. Were you -- did you find the response of</p> <p>12:06:23 4 Ms. Dalton to be acceptable to your inquiry?</p> <p>12:06:26 5 A. It was not a direct response. Although, I can</p> <p>12:06:29 6 imply from it that Richard Lord, on behalf of Milliman,</p> <p>12:06:33 7 had only reviewed those three accounts, not all of the</p> <p>12:06:36 8 accounts' reserves, which was consistent with my</p> <p>12:06:39 9 understanding, in reviewing the caveat at the bottom of</p> <p>12:06:41 10 every Milliman report, that they rely upon Uni-Ter's</p> <p>12:06:45 11 reserves in concluding whether the overall reserves are</p> <p>12:06:49 12 adequate or not.</p> <p>12:07:04 13 Q. Would you look at Exhibit Number 59, please?</p> <p>12:07:23 14 Do you recognize that document?</p> <p>12:07:28 15 A. Yes.</p> <p>12:07:28 16 Q. What is it?</p> <p>12:07:30 17 A. It is the actuarial opinion of the reserves, as</p> <p>12:07:34 18 of December 31, 2010, for Lewis & Clark.</p> <p>12:07:36 19 Q. By whom?</p> <p>12:07:37 20 A. By Milliman.</p> <p>12:07:38 21 Q. You just referenced a caveat that Milliman put</p> <p>12:07:42 22 in every report. Could you identify what you're</p> <p>12:07:45 23 referring to in that report?</p> <p>12:08:51 24 A. On page 004531 --</p> <p>12:08:57 25 Q. Just a second. 4531?</p>	<p>12:10:09 1 Doesn't that indicate that he looked at the</p> <p>12:10:11 2 data for reasonableness and consistency, and he found</p> <p>12:10:13 3 that it did not fall outside the range of reasonable</p> <p>12:10:18 4 possibilities?</p> <p>12:10:18 5 A. He did. But it does not indicate that he</p> <p>12:10:20 6 looked at specific claims reserves on individual cases.</p> <p>12:10:23 7 Q. What it says -- why did you omit that?</p> <p>12:10:27 8 MS. OCHOA: Objection. Form.</p> <p>12:10:28 9 MR. WILSON: No. I can ask the question.</p> <p>12:10:29 10 Q. (BY MR. WILSON) Why did you omit it? Because</p> <p>12:10:32 11 you're implying that my client perhaps did not give</p> <p>12:10:35 12 correct information. When, in fact, the person who you</p> <p>12:10:39 13 said relied on it says, I checked it for</p> <p>12:10:44 14 reasonableness, and it fell within the reasonable range</p> <p>12:10:47 15 of possibilities.</p> <p>12:10:49 16 Why did you omit that?</p> <p>12:10:50 17 A. A range of possibilities is all he was</p> <p>12:10:52 18 evaluating, not the specific individual case file</p> <p>12:10:56 19 analysis.</p> <p>12:10:57 20 Q. Well, we know --</p> <p>12:10:57 21 A. He didn't do any such review. If he had, there</p> <p>12:11:00 22 would've been no reason to hire Praxis or Fischlinger</p> <p>12:11:03 23 to review specific claims.</p> <p>12:11:04 24 Q. Nobody ever suggested, in this litigation, that</p> <p>12:11:07 25 I'm aware of, that the actuary looks at each claim and</p>

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<p>12:11:12 1 does an individual assessment of each claim. They</p> <p>12:11:15 2 don't do that, do they -- actuaries?</p> <p>12:11:18 3 A. No, they don't.</p> <p>12:11:19 4 Q. They do an analysis based upon historical data</p> <p>12:11:22 5 that would reflect whether it falls within the</p> <p>12:11:25 6 reasonableness of what you would expect to have in</p> <p>12:11:28 7 these types of situations, correct?</p> <p>12:11:30 8 A. Your question was: Where, in this report, does</p> <p>12:11:32 9 it talk about the reliance upon Uni-Ter data?</p> <p>12:11:36 10 I just pointed it out to you.</p> <p>12:11:37 11 Q. And that they did a testing and found it to be</p> <p>12:11:40 12 reasonable?</p> <p>12:11:42 13 A. They didn't do a testing. They did a</p> <p>12:11:44 14 valuation. That's different than testing.</p> <p>12:11:47 15 Q. You don't know what they did. You don't know</p> <p>12:11:49 16 what their valuation was, whether it was a testing or</p> <p>12:11:52 17 not, do you?</p> <p>12:11:54 18 A. Again, I know, from Mr. Lord's personal</p> <p>12:11:56 19 comments to the board, that they don't do specific</p> <p>12:11:59 20 claims analysis.</p> <p>12:12:01 21 Q. What testing did they do, based upon his</p> <p>12:12:04 22 personal comments to the board?</p> <p>12:12:05 23 A. Exactly what he says. They evaluated the</p> <p>12:12:08 24 reasonableness of the range of claims reserves. It was</p> <p>12:12:10 25 his job to apply what's called an IBNR, or an incurred</p>	<p>12:13:11 1 to other industry insurance groups.</p> <p>12:13:19 2 Q. Do you recognize Milliman as one of the leaders</p> <p>12:13:22 3 in the area of actuarial reporting for insurance</p> <p>12:13:25 4 companies?</p> <p>12:13:25 5 A. I do.</p> <p>12:13:26 6 Q. Do you think they did a good job?</p> <p>12:13:29 7 A. Yes.</p> <p>12:13:50 8 Q. Let me show you another document, we'll mark as</p> <p>12:14:15 9 Exhibit Number 86, which is an email from you to</p> <p>12:14:20 10 Mr. Elsass and Ms. Dalton and others, dated Christmas</p> <p>12:14:26 11 Eve, December 24th, 2011.</p> <p>12:14:40 12 (Deposition Exhibit 86 was marked for</p> <p>12:14:46 13 identification.)</p> <p>12:14:46 14 Q. (BY MR. WILSON) Do you recognize that</p> <p>12:14:47 15 document?</p> <p>12:14:48 16 A. Yes.</p> <p>12:14:49 17 Q. Did you prepare it?</p> <p>12:14:50 18 A. Yes.</p> <p>12:14:51 19 Q. Why?</p> <p>12:14:54 20 A. In a word, I was pissed off.</p> <p>12:14:56 21 Q. Why?</p> <p>12:14:58 22 A. This follows the December 20th announcement of</p> <p>12:15:01 23 the \$5.2 million recommended increase, which was half</p> <p>12:15:04 24 of Uni-Ter's own evaluation, apparently, of 10 million.</p> <p>12:15:10 25 So I had a number of questions about the processes and</p>
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<p>12:12:18 1 but not reported reserve, on top of that --</p> <p>12:12:23 2 THE COURT REPORTER: His job to apply what?</p> <p>12:12:23 3 THE WITNESS: An IBNR.</p> <p>12:12:23 4 THE COURT REPORTER: Thank you.</p> <p>12:12:29 5 THE WITNESS: It's an acronym for "incurred</p> <p>12:12:23 6 but not reported."</p> <p>12:12:23 7 A. (Continuing) -- a reserve on top of that to</p> <p>12:12:23 8 come up with total reserves.</p> <p>12:12:24 9 Q. (BY MR. WILSON) What analysis did he tell you</p> <p>12:12:26 10 he conducted in order to determine reasonableness?</p> <p>12:12:29 11 A. He looks at industry data in order to determine</p> <p>12:12:32 12 the range of potential outcomes.</p> <p>12:12:34 13 Q. Is that what he told you at the board?</p> <p>12:12:36 14 A. He told the board, generally, that's the</p> <p>12:12:38 15 process he follows. Yes.</p> <p>12:12:41 16 Q. And he told you that his conclusions were what?</p> <p>12:12:44 17 A. That it fell within the range of reasonable</p> <p>12:12:47 18 possibilities.</p> <p>12:12:47 19 Q. What fell within the range?</p> <p>12:12:50 20 A. His evaluation of the claims analysis. He</p> <p>12:12:53 21 didn't feel that the claims themselves, in total --</p> <p>12:12:57 22 claims reserves, in total, fell outside the range of</p> <p>12:12:59 23 reasonable possibilities, which, by itself, lends</p> <p>12:13:04 24 itself to potentially a wide range, but an acceptable</p> <p>12:13:10 25 range, nonetheless, from his experience with comparing</p>	<p>12:15:15 1 conclusions, and whether we were still at the tip of</p> <p>12:15:18 2 the iceberg or whether we had been informed about</p> <p>12:15:20 3 everything.</p> <p>12:15:24 4 Q. You say: Curtis has communicated with you that</p> <p>12:15:27 5 the board requests active involvement through two board</p> <p>12:15:30 6 subcommittees, with both the review/determination of</p> <p>12:15:33 7 loss reserves at year-end, and also any proposed</p> <p>12:15:37 8 transaction to raise capital for Lewis & Clark.</p> <p>12:15:41 9 Those are the two you've talked about?</p> <p>12:15:43 10 A. Yes.</p> <p>12:15:45 11 Q. (Reading) Below are a few requests requiring</p> <p>12:15:47 12 your immediate response.</p> <p>12:15:50 13 And you have, what, seven requests?</p> <p>12:15:51 14 A. Yes.</p> <p>12:15:52 15 Q. Did they respond to these requests?</p> <p>12:15:54 16 A. One or two. That's it.</p> <p>12:15:56 17 Q. Which ones did they respond to?</p> <p>12:16:21 18 A. Number 6 and, I believe, Number 4.</p> <p>12:16:47 19 Q. And they did not respond at all to Numbers 1,</p> <p>12:16:50 20 2, 3, 5, and 7?</p> <p>12:16:53 21 A. I don't recall that they did. They could've</p> <p>12:16:56 22 responded to Number 7 well into 2012. But since a</p> <p>12:17:03 23 transaction did not occur with HealthCap RRG, that was</p> <p>12:17:06 24 a moot point.</p> <p>12:17:08 25 Q. How about Number 5? They didn't give you the</p>

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<p>12:17:11 1 deadlines for any relevant reporting requirements?</p> <p>12:17:18 2 A. I don't recall.</p> <p>12:17:26 3 Q. Well, you didn't miss any requirements, did</p> <p>12:17:29 4 you -- reporting requirements?</p> <p>12:17:32 5 A. That wasn't the nature of Number 5.</p> <p>12:17:34 6 Q. What was the nature of Number 5?</p> <p>12:17:37 7 A. To provide deadlines for any relevant reporting</p> <p>12:17:39 8 requirements or capital transactions that relate to</p> <p>12:17:41 9 Lewis & Clark's year-end financial picture.</p> <p>12:17:44 10 Q. What were you seeking?</p> <p>12:17:47 11 A. To find out what kind of time frame we needed</p> <p>12:17:51 12 to report the information and -- you know, the closing</p> <p>12:17:56 13 of books at the end of the year is a very important</p> <p>12:17:59 14 aspect in reporting whether this company would be</p> <p>12:18:02 15 solvent or not, given the recommended increase in</p> <p>12:18:06 16 reserves we had just been informed of.</p> <p>12:18:08 17 Q. Well, you knew there were issues with the</p> <p>12:18:10 18 reserves as early as July of 2011, correct?</p> <p>12:18:15 19 A. We were never informed that issues would impair</p> <p>12:18:17 20 the capital structure, as long as we had contributed</p> <p>12:18:20 21 the capital, which we did in the first week of November</p> <p>12:18:23 22 2011.</p> <p>12:18:23 23 Q. You contributed part of the capital.</p> <p>12:18:26 24 A. The structure of capital contributions that</p> <p>12:18:33 25 were engaged in November of 2011 were represented to be</p>	<p>12:19:55 1 A. Not that I'm aware of.</p> <p>12:19:57 2 Q. So you're not aware that one thing they did was</p> <p>12:20:02 3 bring Praxis aboard to handle the -- handle claims?</p> <p>12:20:08 4 A. I did not get written details, as I'd</p> <p>12:20:11 5 requested, a recommended plan, on how those three</p> <p>12:20:14 6 aspects of operations would be handled going forward.</p> <p>12:20:20 7 Q. And did you ask for a written response versus a</p> <p>12:20:23 8 verbal response?</p> <p>12:20:26 9 A. I didn't get a verbal response either.</p> <p>12:20:29 10 Q. At the board, Mr. Elsass didn't report to you</p> <p>12:20:32 11 that Praxis was being retained to do claims, that they</p> <p>12:20:36 12 were going outside to do a claims analysis and things</p> <p>12:20:39 13 of that nature?</p> <p>12:20:39 14 A. Not subsequent to this email, no.</p> <p>12:21:07 15 Q. Let me mark, as Exhibit Number 87, an email</p> <p>12:21:10 16 from Mr. Sitterson to Mr. Piccione, dated December</p> <p>12:21:15 17 25th, 2011, BD 0003804 and 5.</p> <p>12:21:30 18 (Deposition Exhibit 87 was marked for</p> <p>12:21:30 19 identification.)</p> <p>12:21:45 20 Q. (BY MR. WILSON) Have you ever seen this</p> <p>12:21:46 21 document before, Mr. Marshall?</p> <p>12:21:48 22 A. Yes.</p> <p>12:21:49 23 Q. Did you see it before it was sent?</p> <p>12:21:53 24 A. No.</p> <p>12:21:54 25 Q. Did you discuss this with Mr. Sitterson before</p>
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<p>12:18:37 1 sufficient. And that was evidenced by the -- on</p> <p>12:18:40 2 December 17th, when Donna Dalton produced to the board</p> <p>12:18:44 3 November 30th pro forma financials that reflected a</p> <p>12:18:47 4 capital of 4.0 million, which would've been sufficient</p> <p>12:18:51 5 to meet the Department -- or Division of Insurance</p> <p>12:18:53 6 requirements.</p> <p>12:18:54 7 Q. Well, not everybody put their capital in the</p> <p>12:18:57 8 total capital commitment in November of 2011, correct?</p> <p>12:19:01 9 A. I don't recall people not putting capital in.</p> <p>12:19:04 10 Q. You don't recall people putting capital in in</p> <p>12:19:08 11 February of 2012?</p> <p>12:19:11 12 A. There were commitments made in November,</p> <p>12:19:15 13 executed contractual commitments. Whether the actual</p> <p>12:19:19 14 cash was contributed at that time, I don't recall.</p> <p>12:19:22 15 Q. That was -- those were by way of surplus notes?</p> <p>12:19:25 16 A. Surplus notes, yes.</p> <p>12:19:27 17 Q. And the largest contributor of surplus notes,</p> <p>12:19:31 18 besides Oneida, was who?</p> <p>12:19:33 19 A. Uni-Ter.</p> <p>12:19:40 20 Q. Number 3 says: Please explain your recommended</p> <p>12:19:41 21 plan to ensure appropriate underwriting risk and claims</p> <p>12:19:45 22 management for Lewis & Clark in the future.</p> <p>12:19:48 23 That was never responded to?</p> <p>12:19:49 24 A. Not adequately.</p> <p>12:19:51 25 Q. The question was: Was it ever responded to?</p>	<p>12:21:56 1 he sent it?</p> <p>12:21:58 2 A. Yes.</p> <p>12:21:58 3 Q. Did you review a draft of it before it was</p> <p>12:22:01 4 sent?</p> <p>12:22:03 5 A. I believe so.</p> <p>12:22:04 6 Q. It says -- it talks about: Confirming my</p> <p>12:22:07 7 conversation with you over the last two days. The</p> <p>12:22:10 8 Lewis & Clark board met in executive session.</p> <p>12:22:13 9 What is an executive session?</p> <p>12:22:16 10 A. Without members of Uni-Ter present.</p> <p>12:22:20 11 Q. Only Uni-Ter? U.S. RE could be there?</p> <p>12:22:23 12 A. Without U.S. RE as well.</p> <p>12:22:25 13 Q. Was it without anybody who was not a board</p> <p>12:22:28 14 member or associated with the board, that's not</p> <p>12:22:32 15 invited?</p> <p>12:22:33 16 A. Correct.</p> <p>12:22:34 17 Q. (Reading) ... and approved the following</p> <p>12:22:37 18 resolution.</p> <p>12:22:39 19 It talks about committees.</p> <p>12:22:40 20 (Reading) The first committee (composed of</p> <p>12:22:42 21 Steve Fogg, chair, Bob Hurlbut, and Bob Chur) will</p> <p>12:22:48 22 handle claims and claims reserve matters. This</p> <p>12:22:53 23 committee should, for example, be kept informed of the</p> <p>12:22:56 24 progress of the Fischlinger claims review and</p> <p>12:22:59 25 participate in material discussions with Fischlinger's</p>

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<p>12:23:02 1 firm regarding the outcome of their work.</p> <p>12:23:07 2 Did you disagree with the directive given by</p> <p>12:23:10 3 Mr. Sitterson, that that committee will handle claims</p> <p>12:23:13 4 and claims reserve matters?</p> <p>12:23:25 5 A. No. But his context was not that they would</p> <p>12:23:28 6 actually process the claims. That would still be the</p> <p>12:23:32 7 responsibility of a claims management staff.</p> <p>12:23:35 8 Q. Well, it says, directing my client, from the</p> <p>12:23:41 9 general counsel, based upon what occurred at a meeting</p> <p>12:23:44 10 that they did not attend and were not permitted to</p> <p>12:23:47 11 attend, that Mr. Fogg will chair a group that will</p> <p>12:23:53 12 handle claims and claims reserve matters.</p> <p>12:23:58 13 A. The intention is to handle the oversight of the</p> <p>12:24:00 14 claims.</p> <p>12:24:00 15 Q. Fine. So how are they going to handle the</p> <p>12:24:03 16 oversight of claims reserve matters?</p> <p>12:24:15 17 A. The second sentence basically provides your</p> <p>12:24:18 18 explanation.</p> <p>12:24:19 19 {Reading} This committee should, for example,</p> <p>12:24:20 20 be kept informed of the progress of the Fischlinger</p> <p>12:24:22 21 claims review and participate in material discussions</p> <p>12:24:24 22 with Fischlinger's firm regarding the outcome of their</p> <p>12:24:28 23 work.</p> <p>12:24:28 24 So as I said previously, he was involved in</p> <p>12:24:31 25 reviewing the processes of the Fischlinger work and</p>	<p>12:25:46 1 A. I didn't have a problem with this language. I</p> <p>12:25:49 2 think you're playing semantics here.</p> <p>12:25:52 3 Q. I'm not playing -- I didn't write it. It says</p> <p>12:25:53 4 that they're going to be involved, that the committee</p> <p>12:25:57 5 should --</p> <p>12:25:57 6 A. Look, if the implication is that somehow the</p> <p>12:25:59 7 committee is going to manage all of the claims, that's</p> <p>12:26:03 8 unrealistic. No one would make that interpretation.</p> <p>12:26:05 9 Q. I'm not suggesting that. I'm not suggesting</p> <p>12:26:06 10 that, Mr. Marshall. What I am suggesting is that they</p> <p>12:26:09 11 had a broad assignment as it relates to claims</p> <p>12:26:13 12 reserving, not just limited to Fischlinger.</p> <p>12:26:17 13 A. Okay.</p> <p>12:26:19 14 Q. Because, for example, they were to work with</p> <p>12:26:21 15 Fischlinger. I understand. Nobody is suggesting --</p> <p>12:26:23 16 and I'm not to you -- that they were to replace Uni-Ter</p> <p>12:26:27 17 in the claims reserving process.</p> <p>12:26:30 18 A. That's what I want to make sure is understood.</p> <p>12:26:32 19 Q. No, I'm not suggesting that. But I am</p> <p>12:26:35 20 suggesting that they were mandated, at least according</p> <p>12:26:38 21 to what we were told, to be involved in the claims</p> <p>12:26:42 22 reserving process, in that once the reserves were set,</p> <p>12:26:47 23 we would present it to them, and they would either</p> <p>12:26:51 24 bless it, not bless it, or do something. And they</p> <p>12:26:54 25 didn't do it.</p>
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<p>12:24:34 1 reviewing the outcome of that work.</p> <p>12:24:37 2 Q. Mr. Marshall, the Fischlinger group did an</p> <p>12:24:39 3 analysis of certain claims, correct? Reserves set.</p> <p>12:24:43 4 And their primary focus was on the cost of legal fees</p> <p>12:24:50 5 and things of that nature, correct?</p> <p>12:24:54 6 A. It was my understanding it was a broad based</p> <p>12:24:56 7 review of individual claim reserve analysis.</p> <p>12:24:59 8 Q. Okay. On each-- every claim?</p> <p>12:25:01 9 A. That's my understanding.</p> <p>12:25:02 10 Q. All right. And they also looked at the -- what</p> <p>12:25:08 11 kind of expense -- are they called "LAE"?</p> <p>12:25:12 12 A. Loss adjustment expenses.</p> <p>12:25:12 13 Q. And what was the other? IB --</p> <p>12:25:14 14 A. IBNRs, incurred but not reported.</p> <p>12:25:15 15 Q. So those are two additional expenses on top of</p> <p>12:25:18 16 the claims reserves, correct?</p> <p>12:25:20 17 A. The incurred but not reported is the purview of</p> <p>12:25:22 18 Milliman.</p> <p>12:25:23 19 Q. That's what Milliman does. But where does it</p> <p>12:25:27 20 limit the committee's involvement to just Fischlinger?</p> <p>12:25:35 21 When it says, "the committee, for example"?</p> <p>12:25:39 22 A. It doesn't limit that, but that was its primary</p> <p>12:25:42 23 purpose.</p> <p>12:25:42 24 Q. When you saw it, did you then correct that and</p> <p>12:25:46 25 let --</p>	<p>12:26:59 1 A. I don't know that to be true.</p> <p>12:27:02 2 Q. But you don't know that they did do it, do you?</p> <p>12:27:06 3 MS. OCHOA: Objection. Form.</p> <p>12:27:08 4 A. I don't know over what period of time they</p> <p>12:27:11 5 might have done it, since our concern was evaluating</p> <p>12:27:15 6 the overall adequacy of reserves, based on the</p> <p>12:27:18 7 Fischlinger review, and evaluating what steps needed to</p> <p>12:27:22 8 be taken, given the potential insolvency that we were</p> <p>12:27:25 9 facing.</p> <p>12:28:19 10 (Discussion off the record.)</p> <p>12:28:19 11 THE VIDEOGRAPHER: We're off the record at</p> <p>12:28:20 12 12:28.</p> <p>12:28:23 13 (Deposition recessed at 12:28 p.m.</p> <p>12:28:23 14 to be reconvened at 1:28 p.m.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>12:28:23 1 AFTERNOON SESSION</p> <p>12:28:23 2 1:25 P.M.</p> <p>12:28:23 3 --oOo--</p> <p>12:28:23 4 (Deposition Exhibit 88 was marked for</p> <p>12:28:23 5 identification.)</p> <p>12:28:23 6</p> <p>12:29:53 7 THE VIDEOGRAPHER: We are back on the</p> <p>13:25:50 8 record at 1:25.</p> <p>12:29:52 9 EXAMINATION RESUMED</p> <p>12:28:23 10 BY MR. WILSON:</p> <p>12:28:23 11 Q. Mr. Marshall, do you have in front of you</p> <p>13:26:01 12 Exhibit Number 88?</p> <p>13:26:02 13 A. I do.</p> <p>13:26:03 14 Q. In that exhibit -- do you recognize that</p> <p>13:26:06 15 exhibit?</p> <p>13:26:07 16 A. Yes.</p> <p>13:26:08 17 Q. In the middle of the first page, it says --</p> <p>13:26:17 18 it's an email from you to -- talking about Sandy.</p> <p>13:26:21 19 Would that be Sandy Elsass?</p> <p>13:26:21 20 A. Correct.</p> <p>13:26:24 21 Q. {Reading} ... the board should get an estimate</p> <p>13:26:26 22 of the financial statement impact of the increased</p> <p>13:26:27 23 aggregate deductible going forward, if material.</p> <p>13:26:30 24 What are you referring to?</p> <p>13:26:34 25 A. That would reference a deductible on the</p>	<p>13:28:12 1 didn't always understand all those elements. That's</p> <p>13:28:14 2 why we had experts in U.S. RE.</p> <p>13:28:16 3 Q. How did you -- what was your opinion about the</p> <p>13:28:20 4 performance of U.S. RE, as it relates to its function</p> <p>13:28:24 5 as a reinsurance broker?</p> <p>13:28:26 6 A. I had no problems in the reinsurance area.</p> <p>13:28:29 7 Q. There's a claim made by the State of Nevada,</p> <p>13:28:33 8 that the board of directors inappropriately commuted</p> <p>13:28:36 9 the imagined rate of a reinsurance policy for the first</p> <p>13:28:46 10 ten days of 2008 on the recommendation of U.S. RE.</p> <p>13:28:53 11 Are you familiar with the commutation of the</p> <p>13:28:54 12 imagined rate policy?</p> <p>13:28:57 13 MR. CEREGHINO: Just real quick. Form and</p> <p>13:28:58 14 foundation.</p> <p>13:28:59 15 Go ahead.</p> <p>13:29:00 16 A. I remember commutation being discussed. I</p> <p>13:29:04 17 don't remember the time frame. We relied upon the</p> <p>13:29:08 18 advice of U.S. RE.</p> <p>13:29:09 19 Q. {BY MR. WILSON} And do you know -- do you have</p> <p>13:29:13 20 any knowledge that, as it relates to the commutation of</p> <p>13:29:16 21 the imagined rate treaty, that it caused any damages to</p> <p>13:29:20 22 Lewis & Clark?</p> <p>13:29:22 23 A. I don't.</p> <p>13:29:23 24 MR. CEREGHINO: Form and foundation.</p> <p>13:29:25 25 Q. {BY MR. WILSON} Now, it says: Also, we should</p>
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<p>13:26:46 1 aggregate policy, as opposed to a deductible for</p> <p>13:26:48 2 individual claims.</p> <p>13:26:50 3 Q. How many policies did Lewis & Clark have that</p> <p>13:26:53 4 had an aggregate?</p> <p>13:26:55 5 A. I don't recall that.</p> <p>13:27:03 6 Q. And "aggregate" means what?</p> <p>13:27:05 7 A. It means the combined impact of all claims.</p> <p>13:27:10 8 Q. And if there's an aggregate, would there be a</p> <p>13:27:15 9 limit to the amount of premium that would be paid in an</p> <p>13:27:19 10 aggregate policy?</p> <p>13:27:20 11 A. Yes. I believe this references a policy that</p> <p>13:27:23 12 would provide reinsurance, over and above, you know,</p> <p>13:27:29 13 the policy limits of Lewis & Clark, or a portion of the</p> <p>13:27:31 14 policy limits of Lewis & Clark, and the deductible</p> <p>13:27:35 15 related to that aggregate.</p> <p>13:27:36 16 Q. Well, Larry Shatoff provided a -- an analysis</p> <p>13:27:40 17 of casualty excess reinsurance coverage.</p> <p>13:27:45 18 {Reading} How does the proposed placement</p> <p>13:27:47 19 compare to the placement when L&C originally ran at a</p> <p>13:27:52 20 premium level close to 7 million?</p> <p>13:27:54 21 And additional things, including excess cession</p> <p>13:27:58 22 reinsurance coverage. Do you understand all those</p> <p>13:28:02 23 things about reinsurance?</p> <p>13:28:03 24 A. Reinsurance is very complex. I would need 15</p> <p>13:28:08 25 minutes to read this, to try to remind myself. But I</p>	<p>13:29:32 1 get Uni-Ter's recommendation on whether to restrict</p> <p>13:29:36 2 specific policy limits to no more than 1 million, as I</p> <p>13:29:41 3 believe L&C should consider returning to the coverage</p> <p>13:29:44 4 levels that limit necessary -- unnecessary claims</p> <p>13:29:46 5 exposure and contributed to excellent loss ratios in</p> <p>13:29:50 6 the early years.</p> <p>13:29:51 7 What are you referring to?</p> <p>13:29:53 8 A. There was some history that had been relayed to</p> <p>13:29:58 9 us by Sandy, in the Florida risk retention, or Ponce de</p> <p>13:30:03 10 Leon, that a lot of the risk exposure for nursing homes</p> <p>13:30:08 11 and assisted living facilities in that state were</p> <p>13:30:11 12 abated by reductions in coverage limits, basically</p> <p>13:30:15 13 creating a less attractive market for the plaintiffs'</p> <p>13:30:19 14 bar.</p> <p>13:30:19 15 I was referencing not reducing to the low</p> <p>13:30:25 16 levels that they had down in Ponce de Leon, but to a</p> <p>13:30:29 17 level that would not incentivize plaintiffs' bars to</p> <p>13:30:32 18 going for higher claim values.</p> <p>13:30:34 19 Q. What was the level you recommended, or at least</p> <p>13:30:37 20 were suggesting?</p> <p>13:30:39 21 A. I didn't recommend. But the reason I requested</p> <p>13:30:41 22 looking at 1 million is, we had done an extensive</p> <p>13:30:44 23 amount of research with the Department of Housing and</p> <p>13:30:47 24 Urban Development, which provided mortgage financing to</p> <p>13:30:50 25 a lot of providers who happened to be insured under</p>

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<p>13:30:55 1 Lewis & Clark. And that agency had minimum limits --</p> <p>13:30:58 2 specific limits of \$1 million. So I would not suggest</p> <p>13:31:02 3 going below that if it would create a default in any</p> <p>13:31:06 4 such loans.</p> <p>13:31:07 5 Q. Your last comment was: Seems like there are a</p> <p>13:31:10 6 lot of variables we could examine once we get out of</p> <p>13:31:14 7 this immediate crisis.</p> <p>13:31:16 8 What are you referring to there?</p> <p>13:31:18 9 A. I think it was a broad-based comment related to</p> <p>13:31:27 10 everything from underwriting to claims management to</p> <p>13:31:30 11 the types of companies that we write insurance for and</p> <p>13:31:34 12 the types of insurance, but all predicated upon getting</p> <p>13:31:38 13 out of the potential insolvency crisis that we were</p> <p>13:31:41 14 facing.</p> <p>13:31:42 15 Q. Let me show you a document we'll mark as our</p> <p>13:31:45 16 next exhibit, which is Exhibit 89. It's an email from</p> <p>13:31:50 17 Donna Dalton to Curtis Sitterson, dated September 1st,</p> <p>13:31:57 18 2011. And it attaches additional documentation as it</p> <p>13:32:09 19 relates to the second quarter financial results.</p> <p>13:32:13 20 (Deposition Exhibit 89 was marked for</p> <p>13:32:13 21 identification.)</p> <p>13:32:22 22 Q. (BY MR. WILSON) I'm going to ask you whether</p> <p>13:32:29 23 you have seen the attachment, which is the Uni-Ter</p> <p>13:32:32 24 memorandum to the Lewis & Clark board of directors and</p> <p>13:32:40 25 general counsel.</p>	<p>13:34:55 1 the problem is one of severity of claims, not the</p> <p>13:35:00 2 frequency of claims, and that Richard Lord, of</p> <p>13:35:03 3 Milliman, had confirmed that.</p> <p>13:35:07 4 Q. It also talks about: Over the last few years,</p> <p>13:35:10 5 L&C continued to grow -- which is at the very bottom of</p> <p>13:35:15 6 page 2 -- when other companies were struggling. As a</p> <p>13:35:18 7 result, we achieved increased premium volume, nominal</p> <p>13:35:21 8 additional paid in capital, underwriting profits, and</p> <p>13:35:24 9 better than industry standard loss ratios. However,</p> <p>13:35:26 10 L&C could not be sheltered completely from the</p> <p>13:35:31 11 proverbial economic storms our country has been</p> <p>13:35:34 12 weathering. Combined with the severe softening of</p> <p>13:35:37 13 premium rates over the last five years, we hit an</p> <p>13:35:38 14 unusual raft of large claims that aged rapidly from</p> <p>13:35:43 15 incurred to paid.</p> <p>13:35:46 16 Was that an accurate representation of what</p> <p>13:35:48 17 happened to Lewis & Clark during the period referenced</p> <p>13:35:51 18 in this memorandum?</p> <p>13:35:52 19 A. According to Uni-Ter's representations. And,</p> <p>13:35:56 20 you know, our comfort was in the fact that Milliman had</p> <p>13:35:59 21 reviewed and apparently had thought that the reserves</p> <p>13:36:02 22 were within a reasonable range, as we discussed</p> <p>13:36:06 23 previously, and this quote from Richard Lord, that,</p> <p>13:36:08 24 quote, "the blip of adverse development is not</p> <p>13:36:12 25 indicative of future development," end quote.</p>
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<p>13:32:41 1 A. Yes.</p> <p>13:32:44 2 Q. Did you review this?</p> <p>13:32:57 3 A. I haven't reviewed this since it was -- since</p> <p>13:33:00 4 probably 2013.</p> <p>13:33:04 5 Q. September 1st of 2011 is the date. Was this</p> <p>13:33:08 6 memorandum discussed at the September 21st board</p> <p>13:33:11 7 meeting that you described earlier, that occurred in</p> <p>13:33:16 8 2011?</p> <p>13:33:18 9 A. Yes.</p> <p>13:33:18 10 Q. And it references the fact that -- it says:</p> <p>13:33:23 11 ... the second quarter financials -- I'm reading the</p> <p>13:33:28 12 very top -- filed for Lewis & Clark with the NV DOI</p> <p>13:33:30 13 reflected a large increase in reserves on current</p> <p>13:33:36 14 claims and 46 new claims, of which four were Country</p> <p>13:33:40 15 Villa.</p> <p>13:33:41 16 Now, is this the initial first increase of</p> <p>13:33:44 17 reserves, that you were aware of, that may have a</p> <p>13:33:49 18 negative impact on Lewis & Clark?</p> <p>13:33:51 19 A. This would be covering the increase from -- I</p> <p>13:33:56 20 believe it was 9.2 million in reserves, as of December</p> <p>13:34:01 21 31, 2010, to the 11.7 million of reserves in June 30 of</p> <p>13:34:05 22 2011.</p> <p>13:34:07 23 Q. And did you understand from the memorandum what</p> <p>13:34:11 24 was the cause of these -- of this increase?</p> <p>13:34:13 25 A. Well, the memo relates to -- or alleges that</p>	<p>13:36:15 1 Q. Where is that?</p> <p>13:36:16 2 A. Just below where you were reading, in that last</p> <p>13:36:19 3 paragraph on page 2. I referenced earlier in my</p> <p>13:36:28 4 testimony some of the bullet elements that are outlined</p> <p>13:36:32 5 up above on page 2 regarding steps that were being</p> <p>13:36:34 6 taken.</p> <p>13:36:36 7 Q. Right.</p> <p>13:36:36 8 A. About reviewing all claims, about Jim Martin</p> <p>13:36:39 9 reviewing some of the claims, about Richard Lord doing</p> <p>13:36:42 10 his review, and a consultant being hired, which turned</p> <p>13:36:46 11 out to be Praxis.</p> <p>13:36:48 12 Q. And there's also a section on future solutions</p> <p>13:36:55 13 potentially being considered, correct?</p> <p>13:37:00 14 A. Right.</p> <p>13:37:01 15 Q. So it appears that at least there was a</p> <p>13:37:03 16 proactive position being taken by Uni-Ter and the board</p> <p>13:37:07 17 to resolve any issues?</p> <p>13:37:09 18 A. Right. And then the second bullet also talks</p> <p>13:37:10 19 about, this is the first time the prospect of having to</p> <p>13:37:15 20 increase capital was brought up.</p> <p>13:37:17 21 Q. I'd like you to look at your exhibit book,</p> <p>13:37:28 22 Exhibit Number 34. Do you see that?</p> <p>13:37:52 23 A. Yes.</p> <p>13:37:52 24 Q. It appears you received a copy of it.</p> <p>13:37:54 25 A. I did.</p>

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<p>13:37:55 1 Q. And at least it appears that you were made 13:37:58 2 aware of the fact that approximately \$600,000 of the 13:38:02 3 change from September to November was on Braswell 13:38:05 4 claims? 13:38:07 5 A. Yes. My memory has now been refreshed. 13:38:09 6 Q. (Reading) Trial was to begin on December 22nd 13:38:11 7 for the Braswell director of nursing in the murder of 13:38:15 8 her ex-husband. So the defense counsel advised that 13:38:16 9 the claims needed to be settled quickly, before that 13:38:20 10 hit the media. These claims had the potential to 13:38:23 11 increase substantially otherwise. 13:38:25 12 You don't fault Uni-Ter and defense counsel for 13:38:30 13 settling these claims, in light of the reported trial 13:38:33 14 for the murder of the ex-husband of the director of 13:38:37 15 nursing? 13:38:38 16 A. No. 13:38:40 17 MR. WILSON: I'd like to mark as our next 13:39:16 18 exhibit, which will be Exhibit Number 90, a document 13:39:21 19 that's Bates-stamped LC-USRE 0241228 through 230. 13:39:39 20 (Deposition Exhibit 90 was marked for 13:39:39 21 identification.) 13:39:42 22 MR. WILSON: It's an email from Donna 13:39:43 23 Dalton to Mr. Marshall, among others, dated February 13:39:47 24 7th, 2012. 13:39:47 25 Q. (BY MR. WILSON) And you're making inquiry of</p>	<p>13:41:26 1 What is LTD loss ratios? 13:41:28 2 A. Is that LTD or ITD? 13:41:34 3 Q. It could be ITD. I'm sorry. I misread it. 13:41:36 4 It's ITD. You're right. 13:41:37 5 A. Yeah. I think it is a typo, meant to be year 13:41:40 6 to date. 13:41:41 7 Q. Let me mark as Exhibit 91 an email from you to 13:42:28 8 Curtis Sitterson, dated 7/26/12, being Bates-stamped 13:42:36 9 BD 0007329. 13:42:42 10 (Deposition Exhibit 91 was marked for 13:42:42 11 identification.) 13:42:55 12 Q. (BY MR. WILSON) Now, if you look at the email 13:43:11 13 from Mr. Sitterson to Mr. Piccione, Davies, Dalton, and 13:43:16 14 Elsass, it says: The L&C board today resolved as 13:43:21 15 follows: 13:43:21 16 The board requests that Uni-Ter contact 13:43:24 17 Fischlinger to conduct an independent roll-forward of 13:43:27 18 its last claims reserve review. 13:43:31 19 Are you familiar with that? 13:43:32 20 A. Yes. 13:43:33 21 Q. If you were so concerned about claims, why was 13:43:37 22 this -- it appears to be the first time that the board 13:43:42 23 requested Uni-Ter to conduct such an analysis -- or 13:43:48 24 request Fischlinger to conduct such an analysis. 13:43:51 25 A. Well, leading up to the filing of the second</p>
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<p>13:39:58 1 Ms. Dalton about certain issues. What were you 13:40:01 2 interested in determining at that point in time? 13:40:03 3 A. Well, as I said in the email leading up to 13:40:12 4 that, you know, and what you reviewed with the previous 13:40:15 5 exhibit, is a question about the impact the aggregate 13:40:19 6 deductible might have on the financial statements, and 13:40:23 7 specifically what Milliman would find as a suggested 13:40:28 8 loss pick range, which was the estimate of losses. 13:40:32 9 Q. And you made inquiry, and Donna reported back: 13:40:38 10 Richard -- meaning Richard -- is that Lord? 13:40:41 11 A. That's Richard Lord, yes. 13:40:43 12 Q. -- currently projects no ceded losses -- 13:40:46 13 What are ceded losses? 13:40:48 14 A. I believe those are losses that are ceded or 13:40:53 15 provided under the reinsurance. 13:40:55 16 Q. Those would be items that would be taken care 13:40:58 17 of by reinsurance? 13:41:00 18 A. Yes. 13:41:00 19 Q. -- for the in-force treaty based on the claims 13:41:03 20 reported within its term thus far. I will forward your 13:41:07 21 question on to him to confirm that the increased 13:41:09 22 aggregate deductible doesn't change his range. We 13:41:13 23 currently have five insureds with limits in excess of 13:41:18 24 1 million. One is a director's policy, and the other 13:41:21 25 four have LTD loss ratios.</p>	<p>13:43:54 1 quarter financials, we were -- wanted to make sure that 13:43:57 2 there was an updated review and didn't rely upon their 13:44:01 3 review from -- their prior review. 13:44:04 4 Q. This was the -- 13:44:04 5 A. I think that was a responsible action by the 13:44:06 6 board, to try to update the claims review. 13:44:09 7 Q. Do you know what that reflected? 13:44:12 8 A. Without documentation, I don't recall what the 13:44:26 9 exact findings were. 13:44:27 10 Q. Item 3 says: Until further notice, no new 13:44:30 11 business should be written in L&C and no capital 13:44:34 12 raised. Renewals may be processed for now. 13:44:38 13 What was -- why did the board decide that? 13:44:40 14 A. Well, back in late 2011, following the 13:44:45 15 commitment of additional capital, Uni-Ter had put out 13:44:52 16 an offering memorandum to basically encourage more 13:44:56 17 insureds and more capital be raised from those 13:45:00 18 insureds. We wanted to take the position here that the 13:45:08 19 company, given its capital challenges and insolvency 13:45:13 20 position, should not be taking new capital and should 13:45:16 21 not be writing new insurance that it might not be able 13:45:19 22 to cover in the future. 13:45:21 23 Q. Are you aware that Uni-Ter and U.S. RE 13:45:26 24 expressed concern about writing new insurance to the 13:45:29 25 board of directors?</p>

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<p>13:45:31 1 A. No.</p> <p>13:45:33 2 Q. That never came to your attention as chairman</p> <p>13:45:39 3 of the board?</p> <p>13:45:40 4 A. I -- you know, we basically allowed, in Item</p> <p>13:45:42 5 Number 3, that renewals may be processed. But we</p> <p>13:45:46 6 thought that it was prudent action to stop the growth</p> <p>13:45:51 7 until the capital structure and the potential</p> <p>13:45:54 8 insolvency were resolved in the form of corrective</p> <p>13:45:59 9 action, if it could be.</p> <p>13:46:00 10 Q. I'm going to mark as our next exhibit, which</p> <p>13:47:02 11 will be Exhibit 92, an email from Mr. Sitterson to</p> <p>13:47:07 12 Mr. Elsass and others, carbon copied to you, dated</p> <p>13:47:12 13 August 15, 2012, being BD 0004200.</p> <p>13:47:20 14 (Deposition Exhibit 92 was marked for</p> <p>13:47:20 15 identification.)</p> <p>13:47:20 16 Q. (BY MR. WILSON) Are you familiar with this</p> <p>13:47:48 17 email?</p> <p>13:47:48 18 A. Yes. I was copied on it.</p> <p>13:47:52 19 Q. Why was the board, on August 15th of 2012,</p> <p>13:47:58 20 asking for the specific agenda item that is requested</p> <p>13:48:03 21 here, which is Uni-Ter to present a report regarding</p> <p>13:48:07 22 the rationale for any changes in the loss reserving</p> <p>13:48:11 23 methodologies from those used historically?</p> <p>13:48:16 24 A. We wanted to know what reserve methodologies</p> <p>13:48:20 25 were going to be used and if they have changed from</p>	<p>13:49:30 1 Q. And you knew those had been implemented?</p> <p>13:49:31 2 A. I don't recall specifically what had and had</p> <p>13:49:34 3 not been implemented.</p> <p>13:49:35 4 Q. He made a presentation to the board, didn't he,</p> <p>13:49:36 5 in person?</p> <p>13:49:37 6 A. I don't recall the specific recommendations he</p> <p>13:49:40 7 might have made.</p> <p>13:49:41 8 Q. They're contained in his written report of</p> <p>13:49:43 9 September the 15th of 2011, which is Exhibit 6,</p> <p>13:49:48 10 correct?</p> <p>13:49:49 11 A. I know that there were some recommendations</p> <p>13:49:54 12 included. I don't know what was actually implemented.</p> <p>13:49:57 13 Q. Was this email of Exhibit 92 the result of the</p> <p>13:50:02 14 committee led by Mr. Fogg?</p> <p>13:50:04 15 A. Partly, yes.</p> <p>13:50:10 16 Q. What did he recommend?</p> <p>13:50:11 17 A. I don't know that he made any specific</p> <p>13:50:15 18 recommendation. Again, the board, as a unit, as</p> <p>13:50:19 19 evidenced by this email, was just wanting to know what</p> <p>13:50:22 20 the reserve methodologies were that were going to be</p> <p>13:50:25 21 used going forward.</p> <p>13:50:26 22 Q. And those had been explained a number of times</p> <p>13:50:29 23 to the board of directors, hadn't they?</p> <p>13:50:31 24 A. Again, as I outlined, they had changed several</p> <p>13:50:35 25 times. We wanted to find out if they would change</p>
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<p>13:48:22 1 prior reserving methodologies.</p> <p>13:48:25 2 Q. Well, you were aware, weren't you, of the</p> <p>13:48:27 3 original reserving methodologies used by Uni-Ter?</p> <p>13:48:32 4 A. We had a general understanding of them, yes.</p> <p>13:48:34 5 Q. In fact, they were presented to the board of</p> <p>13:48:35 6 directors by Mr. Elsass, weren't they, and discussed?</p> <p>13:48:40 7 A. At what time frame?</p> <p>13:48:43 8 Q. Way back. I can go back as early as 2005.</p> <p>13:48:46 9 A. The reason I ask is that there was a new</p> <p>13:48:49 10 reserving loss methodology book that was produced,</p> <p>13:48:52 11 dated September 1 of 2010 --</p> <p>13:48:56 12 Q. Right.</p> <p>13:48:56 13 A. -- which engaged some changed processes. That</p> <p>13:49:00 14 was initiated by Christine McCarthy, the then-VP of</p> <p>13:49:04 15 claims.</p> <p>13:49:04 16 Q. Correct.</p> <p>13:49:05 17 A. And then much of that was reinstituted a year</p> <p>13:49:08 18 later with the new roundtable reserving process that</p> <p>13:49:12 19 started August of 2011. So because of some of those</p> <p>13:49:15 20 changes, we wanted to find out if there were going to</p> <p>13:49:17 21 be any further changes in loss reserve methodologies.</p> <p>13:49:20 22 Q. Well, you knew that Mr. Stiefel had made</p> <p>13:49:22 23 recommendations as it relates to work done by Praxis,</p> <p>13:49:26 24 correct?</p> <p>13:49:26 25 A. He had made some recommendations, yes.</p>	<p>13:50:39 1 again.</p> <p>13:50:39 2 Q. Did the board ever express any dissatisfaction</p> <p>13:50:43 3 with the reserving methodologies used by Uni-Ter?</p> <p>13:50:47 4 A. Not when those methodologies were initially</p> <p>13:50:52 5 explained. But the history of these sudden increases</p> <p>13:50:57 6 in the reserve recommendations by independent</p> <p>13:51:00 7 consultants gave us cause to be concerned about those</p> <p>13:51:03 8 methodologies going forward.</p> <p>13:51:04 9 Q. Did you ever reach a conclusion as to whether</p> <p>13:51:07 10 one of the methodologies employed by Uni-Ter, in doing</p> <p>13:51:13 11 reserving of L&C claims, caused the claims to be</p> <p>13:51:18 12 underreserved?</p> <p>13:51:21 13 A. I don't know if any specific methodology would</p> <p>13:51:23 14 cause that.</p> <p>13:51:25 15 Q. Do you have any knowledge, besides what we have</p> <p>13:51:34 16 seen here today, such as the \$600,000 increase as a</p> <p>13:51:39 17 result of the Braswell claims and the murder trial</p> <p>13:51:44 18 coming up, about what caused the \$5 million increase in</p> <p>13:51:50 19 reserves that you've talked about in the past?</p> <p>13:51:53 20 A. I don't know what specifically caused it.</p> <p>13:51:55 21 Again, the board, as a unit, was just very surprised</p> <p>13:52:00 22 that information was disclosed in such a short period</p> <p>13:52:05 23 of time about those increases.</p> <p>13:52:06 24 Q. So your faulting of Uni-Ter is that it was --</p> <p>13:52:11 25 the board -- the board was surprised by the fact that</p>

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<p>13:52:17 1 there was such a significant increase in reserves in</p> <p>13:52:20 2 such a short period of time; is that correct?</p> <p>13:52:23 3 A. Yes, and that that couldn't -- some of those</p> <p>13:52:26 4 increases couldn't have been known sooner than when we</p> <p>13:52:31 5 were actually notified.</p> <p>13:52:33 6 Q. Now, when the board was apprised, at each board</p> <p>13:52:36 7 meeting, of the claims, did the board ever make inquiry</p> <p>13:52:44 8 about how much the claim was reserved for?</p> <p>13:52:48 9 A. We were given a list of what individual claims</p> <p>13:52:51 10 were, that were 50,000 and above, as we've discussed.</p> <p>13:52:54 11 And 250 and over were reviewed in more detail. And</p> <p>13:52:58 12 then there was a summary of claims underneath \$50,000.</p> <p>13:53:02 13 I believe at one time, it was even by state. But we --</p> <p>13:53:07 14 Q. Even by facility, wasn't it?</p> <p>13:53:09 15 A. Excuse me?</p> <p>13:53:10 16 Q. They even did it by facility, at certain times,</p> <p>13:53:13 17 to see whether there was a high incidence of claims</p> <p>13:53:17 18 from Eagle -- I'm not suggesting there were -- but I'm</p> <p>13:53:19 19 saying --</p> <p>13:53:20 20 A. You mean, by operator, not by facility, so --</p> <p>13:53:22 21 Q. Operator. Excuse me. You're correct. I stand</p> <p>13:53:24 22 corrected.</p> <p>13:53:25 23 It was done that way, also, wasn't it?</p> <p>13:53:28 24 A. Right.</p> <p>13:53:28 25 Q. You wanted to see whether there was an operator</p>	<p>13:55:40 1 A. No. Sophia Palmer insured individual nurses</p> <p>13:55:43 2 and nurse practitioners.</p> <p>13:55:45 3 Q. I mean, that's not an accurate statement, is</p> <p>13:55:48 4 it?</p> <p>13:55:48 5 A. No, not directly.</p> <p>13:55:52 6 Q. Now, Number 58 says: Upon information and</p> <p>13:55:59 7 belief, the board accepted Uni-Ter's direction to</p> <p>13:56:03 8 obtain the multi-site operators, including Sophia</p> <p>13:56:06 9 Palmer, without adequate information. In fact, the</p> <p>13:56:10 10 board failed to exercise -- even exercise a slight</p> <p>13:56:13 11 degree of diligence in determining whether the</p> <p>13:56:16 12 acceptance of the multi-site operators, including</p> <p>13:56:19 13 Sophia Palmer, was an appropriate decision.</p> <p>13:56:22 14 Isn't it accurate that extensive material was</p> <p>13:56:27 15 presented to the board, and the board diligently looked</p> <p>13:56:31 16 at it and made a decision, based upon full</p> <p>13:56:34 17 information, --</p> <p>13:56:35 18 MR. CEREGHINO: Form.</p> <p>13:56:35 19 Q. (BY MR. WILSON) -- to take multi-site</p> <p>13:56:37 20 operators?</p> <p>13:56:39 21 MR. CEREGHINO: Form.</p> <p>13:56:40 22 Go ahead.</p> <p>13:56:40 23 A. Well, with respect to Sophia Palmer, we were</p> <p>13:56:43 24 given financial statements of Sophia Palmer, had the</p> <p>13:56:47 25 opportunity to discuss with Barbara Lumpkin, who was</p>
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<p>13:53:31 1 who had a high number of claims and whether the high</p> <p>13:53:35 2 number of claims were significant or not significant,</p> <p>13:53:37 3 correct?</p> <p>13:53:38 4 A. Right.</p> <p>13:53:39 5 Q. Did you ever -- have you reached any conclusion</p> <p>13:53:47 6 or any opinion, as chairman of the board, as to what</p> <p>13:53:52 7 caused the \$5 million increase in claims reserves over</p> <p>13:53:59 8 such a short period of time?</p> <p>13:54:02 9 A. Other than specific anecdotal circumstances</p> <p>13:54:04 10 that you've outlined, I don't have any specific</p> <p>13:54:06 11 reasons.</p> <p>13:54:07 12 Q. Would you turn to Exhibit 2, which is the third</p> <p>13:54:35 13 amended complaint? Have you reviewed -- did you review</p> <p>13:54:44 14 that in preparation for the deposition?</p> <p>13:54:46 15 A. No.</p> <p>13:54:46 16 Q. Have you ever read it?</p> <p>13:54:50 17 A. I reviewed it at some time previously.</p> <p>13:54:55 18 Q. Look at paragraph 55, on page 8. It alleges:</p> <p>13:55:11 19 On information and belief, in or around 2009, L&C, at</p> <p>13:55:17 20 Uni-Ter's direction, accepted multiple-site LTC</p> <p>13:55:24 21 operators as policyholders. As noted above, one of</p> <p>13:55:28 22 these operators was Sophia Palmer.</p> <p>13:55:32 23 Was Sophia Palmer a multi-state [sic] operator?</p> <p>13:55:35 24 A. Multi-site operator?</p> <p>13:55:39 25 Q. Multi-site -- excuse me -- operator.</p>	<p>13:56:51 1 then the president of that entity, about the operations</p> <p>13:56:55 2 of that company and received other information. So we</p> <p>13:56:58 3 performed some diligence on that merger.</p> <p>13:57:05 4 As far as other multi-site operators who were</p> <p>13:57:07 5 allowed to become policyholders, those went through the</p> <p>13:57:12 6 normal underwriting policies and procedures of Uni-Ter.</p> <p>13:57:15 7 And as we've explained with Country Villa, for example,</p> <p>13:57:20 8 we reviewed that particular multi-site operator in</p> <p>13:57:25 9 detail because of its adverse loss history. Others, we</p> <p>13:57:28 10 took the recommendations, of course, and relied upon</p> <p>13:57:32 11 the recommendations of Uni-Ter's underwriting staff as</p> <p>13:57:36 12 to which policyholders to accept, assuming they</p> <p>13:57:40 13 followed standard underwriting guidelines.</p> <p>13:57:42 14 Q. (BY MR. WILSON) Well, Eagle was a multi-site</p> <p>13:57:44 15 operator, wasn't it?</p> <p>13:57:46 16 A. Yes.</p> <p>13:57:46 17 Q. And Mr. Fogg's company was a multi-site</p> <p>13:57:49 18 operator?</p> <p>13:57:51 19 A. Yes.</p> <p>13:57:51 20 Q. So there were a number of multi-site</p> <p>13:57:53 21 operators --</p> <p>13:57:55 22 A. Certainly.</p> <p>13:57:55 23 Q. -- within the Lewis & Clark Risk Retention</p> <p>13:57:58 24 Group?</p> <p>13:57:59 25 A. Yes.</p>

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<p>13:57:59 1 Q. And if you subsequently found one that had a</p> <p>13:58:03 2 high incidence of claims, would you not renew the</p> <p>13:58:07 3 policy?</p> <p>13:58:08 4 A. Correct.</p> <p>13:58:08 5 Q. Now, if you go over to paragraph 92, there's a</p> <p>13:58:38 6 claim being asserted by the Department of Insurance, or</p> <p>13:58:43 7 the receiver, that: U.S. RE intentionally failed to</p> <p>13:58:48 8 obtain reinsurance through syndicates, as required</p> <p>13:58:51 9 under the U.S. RE agreement.</p> <p>13:58:55 10 Do you have any knowledge that that was -- that</p> <p>13:58:59 11 that is true?</p> <p>13:59:01 12 A. I don't recall the U.S. RE agreement.</p> <p>13:59:04 13 Q. If you look at Exhibit Number 11, it's a</p> <p>13:59:12 14 document dated 12/22/03, called Broker of Letter(sic)</p> <p>13:59:22 15 Agreement. It's signed by Jeff Marshall, and I don't</p> <p>13:59:32 16 see another signature. But it's sent by you to</p> <p>13:59:38 17 Mr. Piccione, right?</p> <p>13:59:40 18 A. If that's what's being referred to as the U.S.</p> <p>13:59:42 19 RE agreement, then I understand what it is.</p> <p>13:59:45 20 Q. And there's no reference in there that there</p> <p>13:59:47 21 has to be any specific syndicates -- strike that.</p> <p>13:59:55 22 Do you have any knowledge that that agreement</p> <p>13:59:57 23 required U.S. RE to obtain reinsurance through</p> <p>14:00:00 24 syndicates, as required under the U.S. RE agreement?</p> <p>14:00:03 25 A. I don't see any requirement for syndicate</p>	<p>14:01:55 1 indicated he received full cooperation from Uni-Ter in</p> <p>14:01:59 2 the course of his claims review.</p> <p>14:02:01 3 Q. He received the complete files, didn't he?</p> <p>14:02:04 4 A. Yes.</p> <p>14:02:05 5 MR. CEREGHINO: Form.</p> <p>14:02:06 6 Go ahead.</p> <p>14:02:07 7 A. It's my understanding, as well, that the</p> <p>14:02:11 8 follow-up Fischlinger report, or review, that was done</p> <p>14:02:16 9 in January of 2012, was on-site; and they, too,</p> <p>14:02:18 10 indicated cooperation from Uni-Ter in supplying file</p> <p>14:02:21 11 information.</p> <p>14:02:22 12 Q. (BY MR. WILSON) And, in fact, when Fischlinger</p> <p>14:02:26 13 made a verbal report of its analysis, Mr. Fogg</p> <p>14:02:31 14 participated in that, correct?</p> <p>14:02:34 15 A. Correct.</p> <p>14:02:35 16 Q. And I think you said he did not find any fault</p> <p>14:02:38 17 with the analysis or presentation by Mr. --</p> <p>14:02:41 18 A. He didn't find any fault with the process.</p> <p>14:02:44 19 Q. Now, there was an audit committee -- the board</p> <p>14:03:13 20 had an audit committee, correct?</p> <p>14:03:16 21 MR. CEREGHINO: Form.</p> <p>14:03:17 22 Go ahead.</p> <p>14:03:18 23 A. Be more specific, please.</p> <p>14:03:20 24 Q. (BY MR. WILSON) Well, was Mr. Stickels -- was</p> <p>14:03:23 25 there any -- was there an audit committee that the</p>
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<p>14:00:33 1 placement of reinsurance.</p> <p>14:00:34 2 Q. Now, did U.S. RE, when it made a presentation</p> <p>14:00:42 3 for reinsurance, provide options to the board?</p> <p>14:00:45 4 MR. CEREGHINO: Form.</p> <p>14:00:48 5 Go ahead.</p> <p>14:00:49 6 A. I believe they did, yes.</p> <p>14:00:51 7 Q. (BY MR. WILSON) And the board thoroughly</p> <p>14:00:52 8 reviewed it, relying upon U.S. RE as the expert, to</p> <p>14:00:57 9 reach a conclusion, correct?</p> <p>14:00:59 10 MR. CEREGHINO: Form.</p> <p>14:00:59 11 A. Correct.</p> <p>14:01:00 12 Q. (BY MR. WILSON) Now, in paragraph 105, there's</p> <p>14:01:13 13 an allegation that the board -- it says: ... despite</p> <p>14:01:24 14 this -- it says: On information and belief, despite</p> <p>14:01:26 15 this knowledge of the board, regarding the wholly</p> <p>14:01:28 16 inadequate and inaccurate information provided by</p> <p>14:01:30 17 Uni-Ter, the board's gross negligence is manifest in</p> <p>14:01:36 18 the fact that the board failed to exercise even a</p> <p>14:01:39 19 slight degree of care in verifying whether Praxis was</p> <p>14:01:42 20 provided accurate information in preparing its review</p> <p>14:01:47 21 of the claims process.</p> <p>14:01:48 22 Do you agree with that?</p> <p>14:01:49 23 A. No.</p> <p>14:01:50 24 Q. Why not?</p> <p>14:01:50 25 A. Because Brian Stiefel, from Praxis, had</p>	<p>14:03:27 1 board of directors of Lewis & Clark had that reviewed</p> <p>14:03:30 2 the year-end financials, for example, that were</p> <p>14:03:31 3 prepared by Johnson Lambert?</p> <p>14:03:34 4 A. Yes.</p> <p>14:03:35 5 Q. And the purpose of that audit committee was</p> <p>14:03:37 6 what?</p> <p>14:03:38 7 A. To meet with the auditors, to ensure that their</p> <p>14:03:43 8 audit processes appeared reasonable and to review the</p> <p>14:03:47 9 results of their findings.</p> <p>14:03:48 10 Q. And who chaired that committee; do you recall?</p> <p>14:03:50 11 A. Rick Stickels.</p> <p>14:03:51 12 Q. And Mr. Stickels was associated with the Oneida</p> <p>14:03:56 13 Bank?</p> <p>14:03:58 14 A. Correct.</p> <p>14:03:58 15 Q. And what was Oneida Bank's relationship with</p> <p>14:04:01 16 Lewis & Clark?</p> <p>14:04:02 17 A. They provided capital, I believe initially, in</p> <p>14:04:04 18 the amount of about 1.75 million for, first, Henry</p> <p>14:04:09 19 Hudson, and by the merger, Lewis & Clark.</p> <p>14:04:14 20 Q. And they had a subsidiary called Bailey</p> <p>14:04:17 21 Haskell, didn't they?</p> <p>14:04:18 22 A. Correct. It was a broker subsidiary.</p> <p>14:04:20 23 Q. And they provided valuable services to Lewis &</p> <p>14:04:24 24 Clark?</p> <p>14:04:25 25 A. They brokered all of the transactions for</p>

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<p>14:04:27 1 policyholders into Henry Hudson, and Lewis & Clark</p> <p>14:04:32 2 subsequently, in that region.</p> <p>14:04:35 3 Q. Were you satisfied with the work performed by</p> <p>14:04:37 4 the audit committee in its analysis of the year-end</p> <p>14:04:41 5 financials?</p> <p>14:04:42 6 A. Yes.</p> <p>14:04:44 7 Q. And Johnson Lambert --</p> <p>14:04:46 8 A. The audit committee did not perform the</p> <p>14:04:48 9 year-end financials. They reviewed them --</p> <p>14:04:49 10 Q. In their analysis?</p> <p>14:04:52 11 A. -- through the process of the audit from</p> <p>14:04:53 12 Johnson Lambert.</p> <p>14:04:55 13 Q. Johnson Lambert was not always the auditor, but</p> <p>14:04:58 14 was the auditor for most of the time, correct?</p> <p>14:05:01 15 A. Correct.</p> <p>14:05:01 16 Q. And as it relates to Johnson & Lambert, it</p> <p>14:05:05 17 would present its year-end report to the audit</p> <p>14:05:09 18 committee?</p> <p>14:05:10 19 A. Correct.</p> <p>14:05:11 20 Q. And the audit committee did whatever an audit</p> <p>14:05:14 21 committee does to be satisfied that it was done in a</p> <p>14:05:17 22 fashion consistent with appropriate standards?</p> <p>14:05:19 23 A. Johnson & Lambert -- yes. Johnson & Lambert</p> <p>14:05:23 24 also made a report to the full board annually.</p> <p>14:05:25 25 Q. And both -- and you were satisfied with the</p>	<p>14:13:05 1 mark it as Exhibit Number 93.</p> <p>14:13:16 2 (Deposition Exhibit 93 was marked for</p> <p>14:13:16 3 identification.)</p> <p>14:13:19 4 Q. (BY MR. WILSON) Do you recognize this</p> <p>14:13:27 5 document?</p> <p>14:13:34 6 A. Yes.</p> <p>14:13:35 7 Q. Now, it appears that this was a telephonic</p> <p>14:13:44 8 meeting. It notes who was in attendance. And there</p> <p>14:13:51 9 seems to be somewhat of an agenda, reports from various</p> <p>14:13:56 10 people, particularly from Uni-Ter, that would relate to</p> <p>14:14:01 11 marketing, financial reporting, risk management claims,</p> <p>14:14:05 12 and the like. Is that what typically occurred at a</p> <p>14:14:10 13 meeting?</p> <p>14:14:11 14 A. I don't believe this was a telephonic meeting.</p> <p>14:14:13 15 I believe it was an in-person meeting.</p> <p>14:14:16 16 Q. It says -- I'm sorry -- at the top: A</p> <p>14:14:20 17 telephonic meeting of the board of directors of Lewis &</p> <p>14:14:26 18 Clark was held at 10:00 a.m.</p> <p>14:14:28 19 A. That's not what I'm reading.</p> <p>14:14:29 20 MS. OCHOA: Are we reading something else?</p> <p>14:14:30 21 MR. WILSON: I may be reading a different</p> <p>14:14:30 22 one. What --</p> <p>14:14:30 23 MS. OCHOA: Ours is two pages.</p> <p>14:14:32 24 MR. WILSON: I'm sorry. I picked up the</p> <p>14:14:35 25 wrong one.</p>
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<p>14:05:28 1 work done by the audit committee and the work performed</p> <p>14:05:31 2 by Johnson Lambert?</p> <p>14:05:32 3 A. Yes.</p> <p>14:05:33 4 Q. Now, in paragraph 220, the receiver claims</p> <p>14:06:36 5 that: The board of directors was grossly negligent in</p> <p>14:06:42 6 numerous ways, including, but not limited to, its utter</p> <p>14:06:45 7 failure to properly inform itself of the status of</p> <p>14:06:49 8 Lewis & Clark and its complete failure to properly take</p> <p>14:06:51 9 timely corrective action.</p> <p>14:06:54 10 Do you agree with that?</p> <p>14:06:54 11 A. No.</p> <p>14:06:54 12 Q. It appears -- is it accurate that you people</p> <p>14:06:58 13 reviewed material, performed the functions of a board</p> <p>14:07:02 14 of directors, and took the action you thought</p> <p>14:07:06 15 appropriate?</p> <p>14:07:07 16 A. Yes.</p> <p>14:07:08 17 MR. WILSON: We'll go to another subject.</p> <p>14:07:44 18 Let's take a quick break.</p> <p>14:07:47 19 THE VIDEOGRAPHER: We're off the record.</p> <p>14:07:51 20 (Recess taken.)</p> <p>14:07:52 21 THE VIDEOGRAPHER: Back on the record at</p> <p>14:12:53 22 2:12.</p> <p>14:12:54 23 Q. (BY MR. WILSON) Mr. Marshall, let me show you</p> <p>14:12:59 24 a document, which is a copy of the board of directors</p> <p>14:13:02 25 meeting minutes of February the 10th, 2006. And we'll</p>	<p>14:14:36 1 A. I have the February 10th, 2006.</p> <p>14:14:40 2 Q. (BY MR. WILSON) Right. I had the -- I put it</p> <p>14:14:40 3 inaccurately as November the 10th.</p> <p>14:14:44 4 A. Oh, I see.</p> <p>14:14:44 5 Q. So I'm reading the -- why don't we get that one</p> <p>14:14:53 6 back, so I don't -- we'll withdraw it for a second.</p> <p>14:15:12 7 I've got it now. We'll go back.</p> <p>14:15:33 8 Look at the meeting minutes. This was a</p> <p>14:15:40 9 meeting in person. It was attended by certain people,</p> <p>14:15:47 10 it appears, from Uni-Ter and counsel, Mr. Weaver --</p> <p>14:15:54 11 Mr. Curtis Sitterson of Stearns Weaver. And there</p> <p>14:15:59 12 appears to be various reports made by people from</p> <p>14:16:07 13 Uni-Ter. Was that generally consistent with how the</p> <p>14:16:12 14 meetings ran?</p> <p>14:16:13 15 A. Yes.</p> <p>14:16:14 16 Q. And, for example, Ms. Pepe, in Item Number 6,</p> <p>14:16:18 17 presented a review of the recent claims experience,</p> <p>14:16:20 18 which continues to be favorable.</p> <p>14:16:24 19 And on the next page, Mr. Elsass introduced a</p> <p>14:16:30 20 person who was the new marketing executive. And it</p> <p>14:16:33 21 appears, at least at this point in time, things were</p> <p>14:16:36 22 going pretty well with Lewis & Clark; is that a fair</p> <p>14:16:42 23 statement?</p> <p>14:16:42 24 A. Yes.</p> <p>14:16:43 25 Q. Look at Exhibit Number 42 in the notebook.</p>

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<p>14:17:18 1 This is board of directors meeting minutes of May 14th 14:17:36 2 and 15th, 2009. And if you look at item 2, it appears 14:17:47 3 that Mr. Murphy -- would that be James Murphy? 14:17:51 4 A. Jim Murphy, right. 14:17:53 5 Q. Jim Murphy. And he's from Johnson Lambert? 14:17:56 6 A. Correct. 14:17:57 7 Q. -- made a presentation, and you met with him in 14:18:03 8 an executive session. Why would you meet in an 14:18:05 9 executive session? 14:18:06 10 A. To listen to their recommendations for any 14:18:10 11 improvements that they might have to the accounting or 14:18:12 12 financial statement processes of Uni-Ter. 14:18:15 13 Q. So you didn't have Uni-Ter there. Mr. Murphy 14:18:18 14 was there, and people on the board, and your counsel; 14:18:20 15 and whoever else you wanted there was there? 14:18:23 16 A. Correct. 14:18:24 17 Q. And so you would take that as a -- something 14:18:26 18 you would do -- did you do that annually? 14:18:29 19 A. Yes. 14:18:30 20 Q. And if there was some issue, he could raise it 14:18:33 21 in private. And you could look at it and see what 14:18:37 22 action, if any, should be taken? 14:18:39 23 A. Correct. 14:18:40 24 Q. And do you view that as consistent with good 14:18:44 25 policies and practices of a board?</p>	<p>14:19:49 1 diligence as to whether or not to merge with Sophia 14:19:52 2 Palmer and whether it was in the best interest? 14:19:55 3 A. Correct. And undoubtedly, there was a request, 14:19:58 4 following discussion, for additional information that 14:20:00 5 Uni-Ter was going to provide subsequent to the meeting. 14:20:03 6 Q. Would you look at Number 26 -- Exhibit 26, 14:20:25 7 previously identified? This is the September 21st, 14:20:37 8 2011, board meeting, which you have described was a -- 14:20:41 9 was where you at least had an issue with the way 14:20:47 10 reserving was done, among other things. 14:20:50 11 A. That's not accurate. This was the meeting at 14:20:53 12 which the presentation of the problems with the reserve 14:20:58 13 increase and the potential for increased capital was 14:21:02 14 discussed. 14:21:04 15 Q. Did you have an issue with reserving prior to 14:21:07 16 September 21st of 2011? 14:21:10 17 A. We had no reason to have an issue. No, we 14:21:12 18 didn't. 14:21:12 19 Q. I thought my question -- maybe I inartfully 14:21:15 20 stated it -- was that this was the meeting at which you 14:21:17 21 -- the issue with reserving was put on the table to the 14:21:22 22 board. In other words, there were questions about the 14:21:26 23 reserving that had occurred, and it was discussed at 14:21:29 24 this meeting on September 21st of 2011? 14:21:32 25 A. This was the first time we were discussing</p>
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<p>14:18:46 1 A. Yes, I do. 14:18:47 2 Q. Now, on Item Number 8: The board approved 14:18:49 3 (with Mr. Stickels abstaining) the renewal by the 14:18:52 4 corporation of its D&O insurance upon the terms 14:18:54 5 reviewed by Mr. Elsass. 14:18:57 6 Why did Mr. Stickels abstain? 14:18:59 7 A. Probably because it was placed by Bailey 14:19:01 8 Haskell. 14:19:02 9 Q. Do you think that's an appropriate thing that a 14:19:05 10 board should do, that if somebody has an interest in 14:19:07 11 the outcome, that they should abstain? 14:19:10 12 A. Yes. 14:19:11 13 Q. And he -- and to your knowledge, did 14:19:11 14 Mr. Stickels always abstain on issues like that? 14:19:15 15 A. He did, including issues related to Oneida 14:19:17 16 Bank. 14:19:18 17 Q. Go over to Item 10. It says: The board 14:19:25 18 considered, at length, the prospect of merging Sophia 14:19:27 19 Palmer Nurses Risk Retention Group with and into the 14:19:32 20 corporation. The board approved the concept of the 14:19:34 21 merger in principle, subject to receipt of further 14:19:36 22 relevant information from Uni-Ter and formal 14:19:39 23 consideration thereof at a telephonic meeting to be 14:19:44 24 held within the next two weeks. 14:19:46 25 This was the board engaging in its due</p>	<p>14:21:34 1 procedures related to that and the Praxis report and so 14:21:42 2 on. 14:21:42 3 Q. And then Mr. -- it says: Mr. Lord, of 14:21:43 4 Milliman, presented an actuarial report based upon the 14:21:47 5 corporation's recent claims experience. 14:21:49 6 Did this -- is this something the board 14:21:51 7 requested? Is this something Uni-Ter requested? Or do 14:21:54 8 you know? 14:21:55 9 A. Well, Milliman was retained, as we discussed 14:21:59 10 previously, to provide annual reports -- actuarial 14:22:02 11 reports on year-end reserves. Because of the 14:22:05 12 significant change mid-year, Uni-Ter had requested they 14:22:08 13 come in and do a mid-year review. So he was reporting 14:22:11 14 on the claims reserves as of June 30. 14:22:14 15 Q. There's an allegation in the complaint that 14:22:17 16 Milliman worked for Uni-Ter, not for the state -- or 14:22:22 17 not for Lewis & Clark. Who retained -- 14:22:25 18 MR. CEREGHINO: Form. 14:22:29 19 Q. Who retained Milliman? 14:22:30 20 MR. CEREGHINO: Form. 14:22:30 21 Go ahead. 14:22:31 22 A. Milliman was reporting on behalf of the 14:22:35 23 company, Lewis & Clark, which the board provides 14:22:39 24 oversight for. Uni-Ter, under its management 14:22:43 25 agreement, was within its service duties in hiring</p>

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<p>14:22:47 1 Milliman for that purpose.</p> <p>14:22:49 2 Q. (BY MR. WILSON) But they hired --</p> <p>14:22:49 3 A. Much like they'd be responsible for having</p> <p>14:22:51 4 brought in Johnson & Lambert to perform a duty that</p> <p>14:22:55 5 would report directly to the board.</p> <p>14:22:57 6 Q. But Milliman reported to the board and did not</p> <p>14:23:00 7 report to Uni-Ter?</p> <p>14:23:02 8 A. That's correct.</p> <p>14:23:02 9 Q. For example, we've never contacted Milliman</p> <p>14:23:05 10 because we didn't view, as Uni-Ter, that we had a</p> <p>14:23:08 11 relationship with Milliman. So our position that</p> <p>14:23:10 12 Milliman reported to the board is an accurate position?</p> <p>14:23:15 13 MR. CEREHINO: Form, foundation, and</p> <p>14:23:17 14 testimony.</p> <p>14:23:17 15 Go ahead.</p> <p>14:23:18 16 A. I know that Sandy Elsass had talked with</p> <p>14:23:22 17 Richard Lord. So your statement that you didn't</p> <p>14:23:25 18 contact -- Uni-Ter did not contact Milliman is not</p> <p>14:23:27 19 accurate.</p> <p>14:23:27 20 Q. (BY MR. WILSON) Jon Wilson, as a lawyer, after</p> <p>14:23:30 21 the lawsuit began, did not contact Milliman.</p> <p>14:23:33 22 A. Okay. Fine.</p> <p>14:23:33 23 Q. Because there had been a relationship, as we</p> <p>14:23:36 24 viewed it, between Milliman and the board of directors</p> <p>14:23:39 25 and the Lewis & Clark entity, rather than a</p>	<p>14:25:01 1 of us could do that, rather than doing an offering to</p> <p>14:25:04 2 all of the policyholders.</p> <p>14:25:05 3 Q. How was the amount of capital to be contributed</p> <p>14:25:10 4 by each determined?</p> <p>14:25:11 5 A. An overall amount was determined. I think it</p> <p>14:25:18 6 was about 2.2 million that needed to be raised. And I</p> <p>14:25:22 7 think Oneida Bank and Uni-Ter offered the most amount,</p> <p>14:25:27 8 and the rest was divided up equally amongst five or six</p> <p>14:25:31 9 companies.</p> <p>14:25:32 10 Q. Let me mark as our next exhibit, which is</p> <p>14:26:26 11 Exhibit Number 94, a copy of the board of director</p> <p>14:26:29 12 meeting minutes of December the 20th, 2011.</p> <p>14:26:32 13 (Deposition Exhibit 94 was marked for</p> <p>14:26:32 14 identification.)</p> <p>14:26:32 15 Q. (BY MR. WILSON) Do you recognize that document</p> <p>14:28:19 16 as a copy of the board of directors meeting minutes of</p> <p>14:28:23 17 December the 20th, 2011?</p> <p>14:28:25 18 A. Yes.</p> <p>14:28:25 19 Q. Item Number 1 says: Mr. Elsass presented a</p> <p>14:28:36 20 preliminary report of a material increase in required</p> <p>14:28:39 21 claims reserves from that reported at the board meeting</p> <p>14:28:42 22 in November of 2011. He reported that, subject to</p> <p>14:28:46 23 further review in early January 2012, the claims</p> <p>14:28:49 24 reserves may have increased by \$5 million from November</p> <p>14:28:53 25 2011 figures. The board requested an immediate written</p>
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<p>14:23:41 1 relationship where it was reporting to Uni-Ter.</p> <p>14:23:44 2 A. Okay.</p> <p>14:23:45 3 Q. You viewed Milliman reporting to you?</p> <p>14:23:47 4 A. Correct.</p> <p>14:23:48 5 Q. Now, it says: Mr. Miller presented a recent --</p> <p>14:23:56 6 a report on recent claims experience.</p> <p>14:24:00 7 Ms. Miller. I'm sorry. That's Jonna Miller?</p> <p>14:24:01 8 A. Yes.</p> <p>14:24:03 9 Q. Then it says: The board discussed, in detail,</p> <p>14:24:08 10 the current loss experience of the corporation and the</p> <p>14:24:09 11 need to raise capital on a current basis.</p> <p>14:24:12 12 Do you recall what was discussed?</p> <p>14:24:14 13 A. Yes.</p> <p>14:24:14 14 Q. What was discussed?</p> <p>14:24:17 15 A. Sandy initiated the discussion, that based upon</p> <p>14:24:20 16 the increase in reserves, that he had first notified us</p> <p>14:24:24 17 of on August 25th, that there had been a \$1.8 million</p> <p>14:24:30 18 drop in the capital reserves as of June 30, and that</p> <p>14:24:32 19 there would need to be capital infusion to restore it</p> <p>14:24:36 20 to acceptable levels. So that capital infusion process</p> <p>14:24:39 21 was discussed.</p> <p>14:24:41 22 Q. And what was discussed about capital infusion?</p> <p>14:24:45 23 A. That Oneida Bank, Uni-Ter, and the board's</p> <p>14:24:52 24 companies needed to contribute toward that. That would</p> <p>14:24:57 25 be the most logical way of increasing capital, if all</p>	<p>14:28:57 1 report of such claims activity.</p> <p>14:29:00 2 Did you receive such a report?</p> <p>14:29:01 3 A. Yes.</p> <p>14:29:02 4 Q. And based upon your review of that report, you</p> <p>14:29:08 5 still couldn't conclude exactly what caused the</p> <p>14:29:11 6 specific increase, in terms of whether it was</p> <p>14:29:13 7 underreserving, claims that went bad, economy, or</p> <p>14:29:19 8 things of that nature?</p> <p>14:29:23 9 A. I could not.</p> <p>14:29:26 10 Q. Look at Exhibit Number 56. It's a copy of the</p> <p>14:30:33 11 board of directors meeting minutes of February the 2nd,</p> <p>14:30:54 12 2012. And Item Number 2 talks about: Mr. Elsass</p> <p>14:31:03 13 reported regarding recent favorable claims activity.</p> <p>14:31:08 14 Do you know what that was about?</p> <p>14:31:10 15 A. Not specifically, but I would assume that would</p> <p>14:31:16 16 indicate a reduction in reserves.</p> <p>14:31:19 17 Q. You have no specific recollection?</p> <p>14:31:21 18 A. I have no specific recollection.</p> <p>14:31:23 19 Q. Now, if you look at Item Number 1, it says:</p> <p>14:31:35 20 Mr. Elsass and Ms. Dalton presented a report on the</p> <p>14:31:38 21 preliminary pro forma 12/31/11 financial statement and</p> <p>14:31:43 22 the profit and loss statement for 2012. Assuming</p> <p>14:31:47 23 approval of the reduction in the minimum reinsurance</p> <p>14:31:51 24 premium and additional capital contributions of</p> <p>14:31:55 25 480,000, 12/31/11 capital and surplus was estimated in</p>

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<p>14:32:02 1 excess of \$3.2 million.</p> <p>14:32:04 2 Do you recall that discussion?</p> <p>14:32:05 3 A. Yes.</p> <p>14:32:05 4 Q. What do you recall?</p> <p>14:32:06 5 A. This was a report that indicated, it's possible</p> <p>14:32:14 6 that we could be back to an acceptable level of capital</p> <p>14:32:19 7 and surplus, under certain conditions.</p> <p>14:32:21 8 Q. And what is the acceptable level of capital</p> <p>14:32:24 9 surplus?</p> <p>14:32:25 10 A. It really depends on several ratios, like the</p> <p>14:32:28 11 premium-to-capital ratio, things of that nature. But</p> <p>14:32:30 12 3.2 was -- at that time, given our volume, was</p> <p>14:32:33 13 considered an acceptable level for capital.</p> <p>14:32:37 14 Q. And you said, "under certain circumstances."</p> <p>14:32:40 15 Do you recall what the circumstances were?</p> <p>14:32:42 16 A. He's outlined the circumstances here. Assuming</p> <p>14:32:46 17 there are additional capital contributions and</p> <p>14:32:49 18 reduction of the reinsurance premium, so things that</p> <p>14:32:53 19 had not yet occurred.</p> <p>14:32:55 20 Q. And do you know how the reinsurance premium was</p> <p>14:32:59 21 going to be reduced?</p> <p>14:33:01 22 A. I don't recall specifically.</p> <p>14:33:01 23 Q. Do you know why it was being reduced --</p> <p>14:33:05 24 potentially being reduced?</p> <p>14:33:08 25 A. No.</p>	<p>14:34:41 1 Do you have that in front of you?</p> <p>14:34:55 2 A. I do.</p> <p>14:34:55 3 Q. Look at Item 7, if you would.</p> <p>14:34:57 4 It says: Mr. Elsass introduced Mr. Stiefel,</p> <p>14:35:00 5 who will be managing the claims department on a</p> <p>14:35:04 6 consulting basis. Mr. Stiefel presented a report on</p> <p>14:35:06 7 current claims experience. Mr. Elsass presented a</p> <p>14:35:09 8 report regarding the Country Villa claims.</p> <p>14:35:13 9 Do you recall that occurring?</p> <p>14:35:13 10 A. I now recall that he was hired as an outside</p> <p>14:35:16 11 consultant on a full-time basis. Yes.</p> <p>14:35:19 12 Q. And do you know what interaction, if any,</p> <p>14:35:23 13 Mr. Fogg's group had with Mr. Stiefel?</p> <p>14:35:26 14 A. I don't recall specifically.</p> <p>14:35:28 15 Q. Do you remember anything about his current</p> <p>14:35:33 16 claims experience report? Were you satisfied with the</p> <p>14:35:37 17 current -- his current claims experience --</p> <p>14:35:39 18 Mr. Stiefel's?</p> <p>14:35:40 19 A. For which time period?</p> <p>14:35:43 20 Q. It says: Mr. Stiefel presented a report on</p> <p>14:35:45 21 current claims experience.</p> <p>14:35:47 22 Did you have any questions about his</p> <p>14:35:49 23 experience, as somebody who should be managing the</p> <p>14:35:54 24 claims department for Uni-Ter?</p> <p>14:36:01 25 A. We felt he had sufficient independent</p>
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<p>14:33:08 1 Q. And who was going to make the \$480,000 capital</p> <p>14:33:15 2 contribution?</p> <p>14:33:16 3 A. It wasn't defined at that point in time. But</p> <p>14:33:21 4 it could've been amongst the same set of people who</p> <p>14:33:24 5 made the contributions in November.</p> <p>14:33:25 6 Q. Was there any issue -- and I may have the wrong</p> <p>14:33:28 7 terminology -- with deferred tax credits? Had that</p> <p>14:33:32 8 arisen at this point in time?</p> <p>14:33:36 9 A. I recall the discussion. I don't remember the</p> <p>14:33:37 10 time frame for the deferred tax. But it had an impact</p> <p>14:33:42 11 on capital, based on whether those -- the deferred tax</p> <p>14:33:45 12 asset could be realized or not.</p> <p>14:33:48 13 Q. Do you know when -- at what point in time there</p> <p>14:33:51 14 was a conclusion, I think made by Johnson Lambert, that</p> <p>14:33:53 15 you could not realize the deferred tax credit?</p> <p>14:33:56 16 A. I don't recall, specifically, the time frame</p> <p>14:33:58 17 when that was determined.</p> <p>14:33:59 18 Q. Do you recall that occurring?</p> <p>14:34:01 19 A. Yes.</p> <p>14:34:01 20 Q. Do you know why it occurred?</p> <p>14:34:03 21 A. Well, the level of the deferred tax credit was</p> <p>14:34:07 22 far greater than what would be realized in the future,</p> <p>14:34:12 23 which would require a reduction in the amount of the</p> <p>14:34:15 24 asset and, therefore, a reduction in the capital.</p> <p>14:34:19 25 Q. Would you look at Exhibit Number 57, please?</p>	<p>14:36:04 1 credentials, that we could rely upon his conclusions.</p> <p>14:36:08 2 Q. Do you remember what Mr. Elsass reported on</p> <p>14:36:12 3 Country Villa claims?</p> <p>14:36:14 4 A. I don't recall, at this meeting.</p> <p>14:36:19 5 Q. Let me show you a document that we'll mark as</p> <p>14:36:39 6 our next exhibit, which is Exhibit 95. It's a copy of</p> <p>14:36:43 7 the minutes of July 25th, 2012.</p> <p>14:36:54 8 (Deposition Exhibit 95 was marked for</p> <p>14:36:54 9 identification.)</p> <p>14:36:59 10 Q. (BY MR. WILSON) Are you familiar with those</p> <p>14:37:15 11 minutes, sir?</p> <p>14:37:16 12 A. Yes.</p> <p>14:37:17 13 Q. Item Number 1 says: The board requests that</p> <p>14:37:20 14 Uni-Ter contact the Fischlinger law firm to conduct an</p> <p>14:37:24 15 independent roll-forward of its last claims reserve</p> <p>14:37:28 16 review, preferably by August 7, 2012.</p> <p>14:37:32 17 What prompted that?</p> <p>14:37:33 18 A. We discussed this previously. But it was noted</p> <p>14:37:36 19 above that a significant increase in loss reserves was</p> <p>14:37:40 20 reported.</p> <p>14:37:41 21 Q. A significant increase from when to when?</p> <p>14:37:45 22 A. I assume since either the end of the year or</p> <p>14:37:52 23 the end of the first quarter.</p> <p>14:37:53 24 Q. So this would be based upon either end of year,</p> <p>14:38:01 25 to this date, or end of the first quarter, to this</p>

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<p>14:38:05 1 date, analysis?</p> <p>14:38:05 2 A. Right.</p> <p>14:38:06 3 Q. And you don't recall which one?</p> <p>14:38:08 4 A. I don't recall which one.</p> <p>14:38:09 5 MR. WILSON: Let me have a few minutes. I</p> <p>14:38:36 6 may be done.</p> <p>14:38:38 7 (Recess taken.)</p> <p>14:38:39 8 THE VIDEOGRAPHER: We're off the record at</p> <p>14:38:43 9 2:38.</p> <p>14:38:47 10 (Recess taken.)</p> <p>14:39:44 11 THE VIDEOGRAPHER: We're back on the record</p> <p>14:44:29 12 at 2:44.</p> <p>14:44:31 13 MR. WILSON: I have no other questions.</p> <p>14:44:34 14 Thank you, Mr. Marshall.</p> <p>14:44:35 15 THE WITNESS: Thank you.</p> <p>14:44:39 16 MR. CERECHINO: Actually, real quick, can</p> <p>14:44:49 17 we go off the record?</p> <p>14:44:51 18 THE VIDEOGRAPHER: Sure.</p> <p>14:44:52 19 (Discussion off the record.)</p> <p>14:44:55 20 THE VIDEOGRAPHER: Back on the record at</p> <p>14:46:36 21 2:46.</p> <p>14:46:38 22 EXAMINATION</p> <p>14:46:38 23 BY MR. CERECHINO:</p> <p>14:46:38 24 Q. So, Mr. Marshall, just a couple reminders.</p> <p>14:46:41 25 This is not a marathon. If you need a break, please</p>	<p>14:48:01 1 A. Board minutes, September 21st, 2011.</p> <p>14:48:06 2 Q. Okay. And that's correct?</p> <p>14:48:07 3 A. Yes.</p> <p>14:48:07 4 Q. Anything else?</p> <p>14:48:07 5 A. I also reviewed Exhibit 27, board minutes,</p> <p>14:48:11 6 December 23, 2011.</p> <p>14:48:14 7 Q. Okay. Anything else?</p> <p>14:48:17 8 A. No.</p> <p>14:48:17 9 Q. And you said you prepared for about an hour?</p> <p>14:48:25 10 A. Yes.</p> <p>14:48:26 11 Q. Any reason you didn't look at other documents?</p> <p>14:48:31 12 A. We had talked about an email that --</p> <p>14:48:35 13 Q. Well, I don't want you to get into what you and</p> <p>14:48:38 14 counsel discussed, but --</p> <p>14:48:39 15 A. That was the reason I didn't need to review</p> <p>14:48:42 16 anything else.</p> <p>14:48:43 17 Q. Okay. There have been some Uni-Ter employee</p> <p>14:48:52 18 names tossed around today, so I just want to go through</p> <p>14:48:55 19 a few of those.</p> <p>14:48:57 20 Jenna Miller, who is she?</p> <p>14:49:00 21 A. She was the head of claims, subsequent to</p> <p>14:49:02 22 Christine McCarthy.</p> <p>14:49:04 23 Q. And did the board -- well, specifically you,</p> <p>14:49:07 24 interact with her periodically?</p> <p>14:49:09 25 A. Only as she made preparations to the board.</p>
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<p>14:46:45 1 advise. I'm happy to take one. The only caveat being,</p> <p>14:46:48 2 if there's a question pending, please answer the</p> <p>14:46:50 3 question. Then we'll go ahead and break. And then if</p> <p>14:46:52 4 I ask a question you don't understand, let me know.</p> <p>14:46:56 5 I'll rephrase or attempt to.</p> <p>14:46:59 6 A. Very good. Thank you.</p> <p>14:47:00 7 Q. Okay. So we're going to bounce around a little</p> <p>14:47:03 8 bit the rest of the afternoon, just to clarify some</p> <p>14:47:07 9 things from earlier testimony.</p> <p>14:47:09 10 A. Okay.</p> <p>14:47:10 11 Q. So I'll give you that heads-up in advance.</p> <p>14:47:14 12 First, what I would like to do is -- we started</p> <p>14:47:17 13 going over a list of documents that you reviewed in</p> <p>14:47:20 14 anticipation of today, but I don't think we finished.</p> <p>14:47:26 15 We've got the fact that you reviewed your declaration,</p> <p>14:47:31 16 which is Exhibit 3 in this binder. Exhibit -- and</p> <p>14:47:35 17 that's a yes?</p> <p>14:47:37 18 A. Yes.</p> <p>14:47:37 19 Q. Exhibit 14, which is the September 8th, 2010,</p> <p>14:47:42 20 Division of Insurance letter?</p> <p>14:47:44 21 A. Correct.</p> <p>14:47:45 22 Q. Okay. Exhibit 46, the September 2nd, 2010 --</p> <p>14:47:52 23 A. Correct.</p> <p>14:47:52 24 Q. Okay. Exhibit 26, which I didn't make a note</p> <p>14:47:56 25 of what that is. Let me just take a look here.</p>	<p>14:49:13 1 Q. Okay. So I take it that means there was</p> <p>14:49:18 2 limited interaction with her?</p> <p>14:49:20 3 A. Correct.</p> <p>14:49:20 4 Q. Having said that, is Ms. Miller, in your</p> <p>14:49:26 5 opinion, trustworthy or not trustworthy?</p> <p>14:49:29 6 A. I didn't find evidence that she wasn't</p> <p>14:49:31 7 trustworthy.</p> <p>14:49:34 8 Q. Okay. Ms. Donna Dalton, who is she?</p> <p>14:49:37 9 A. Initially, the CFO, and then elevated to the</p> <p>14:49:42 10 combined position of chief operating officer and CFO.</p> <p>14:49:46 11 Q. Okay. And was your interaction with her more</p> <p>14:49:49 12 extensive than, for example, Ms. Miller?</p> <p>14:49:51 13 A. Yes.</p> <p>14:49:52 14 Q. And was that through email communications, as</p> <p>14:49:56 15 well as in-person communications?</p> <p>14:49:59 16 A. Correct.</p> <p>14:49:59 17 Q. Now, with respect to Ms. Dalton, can you</p> <p>14:50:02 18 characterize, one way or the other, her</p> <p>14:50:04 19 trustworthiness?</p> <p>14:50:07 20 A. I felt she was very professional, and she knew</p> <p>14:50:09 21 her job quite well. However, presentations of</p> <p>14:50:14 22 financials with -- that I questioned earlier in</p> <p>14:50:19 23 testimony, gave me some pause about her performance</p> <p>14:50:23 24 toward the 2011 time frame.</p> <p>14:50:27 25 Q. And do you know whether or not that performance</p>

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<p>14:50:29 1 by Ms. Dalton, with respect to those financials, was</p> <p>14:50:34 2 her own, or perhaps mandated from someone else?</p> <p>14:50:39 3 MR. WILSON: Object to the form of the</p> <p>14:50:41 4 question.</p> <p>14:50:41 5 A. I wouldn't know that, just that she presented</p> <p>14:50:43 6 them.</p> <p>14:50:44 7 Q. (BY MR. CEREGHINO) Okay. Fair enough.</p> <p>14:50:45 8 Do you recall a time when she left employment</p> <p>14:50:50 9 with Uni-Ter?</p> <p>14:50:51 10 A. I believe she did for a short period of time,</p> <p>14:50:56 11 but I don't recall the time frame.</p> <p>14:50:57 12 Q. Okay. You actually raised the name earlier,</p> <p>14:51:01 13 Ms. Christine McCarthy. Who is she?</p> <p>14:51:04 14 A. She was the vice president of claims. So she</p> <p>14:51:06 15 was in charge of the claim department, I believe, from</p> <p>14:51:09 16 April 2010, or thereabouts, to -- for about a year.</p> <p>14:51:18 17 Q. And what happened at the end of that year?</p> <p>14:51:22 18 A. She was terminated.</p> <p>14:51:24 19 Q. Do you know why?</p> <p>14:51:25 20 A. In the May 2011 board meeting, we were informed</p> <p>14:51:28 21 that she was terminated for several reasons: personal</p> <p>14:51:33 22 reasons, lack of work -- strong worth ethic, and</p> <p>14:51:38 23 tendency to overreserve claims.</p> <p>14:51:41 24 Q. Now, I believe you testified earlier that at</p> <p>14:51:46 25 some point in 2011, a roundtable for claims</p>	<p>14:53:30 1 Q. Did he have any function with U.S. RE. that</p> <p>14:53:32 2 you're aware of?</p> <p>14:53:34 3 A. I believe he did. I'm not sure what that</p> <p>14:53:36 4 specific function was. But to my knowledge, he spent</p> <p>14:53:39 5 100 percent of his time on the RRG functions, which</p> <p>14:53:43 6 would include the other RRGs, besides Lewis & Clark,</p> <p>14:53:47 7 that U.S. RE was responsible for.</p> <p>14:53:50 8 Q. Okay. And how did Mr. Elsass's employment with</p> <p>14:53:55 9 Uni-Ter end?</p> <p>14:53:57 10 A. I don't know that specifically.</p> <p>14:54:02 11 Q. So you don't recall receiving, as a board</p> <p>14:54:06 12 member, a copy of a letter of his -- a termination</p> <p>14:54:09 13 letter?</p> <p>14:54:10 14 A. I recall getting a notification that he was no</p> <p>14:54:13 15 longer employed. I don't -- don't know the</p> <p>14:54:16 16 circumstances behind it.</p> <p>14:54:17 17 Q. Okay. Tal Piccione. Does that name mean</p> <p>14:54:24 18 anything to you?</p> <p>14:54:26 19 A. I believe he was the president of U.S. RE and</p> <p>14:54:28 20 Sanford Elsass's boss.</p> <p>14:54:30 21 Q. But other than that position, you didn't have</p> <p>14:54:35 22 any interactions with him directly?</p> <p>14:54:37 23 A. Not directly.</p> <p>14:54:38 24 Q. At least until 2012 sometime?</p> <p>14:54:41 25 A. Correct.</p>
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<p>14:51:51 1 reinstituted some recommendations Ms. McCarthy had; is</p> <p>14:51:57 2 that correct?</p> <p>14:51:58 3 A. Yes. Part of the solution, as Sandy Elsass</p> <p>14:52:04 4 presented to us in those end-of-August emails, was that</p> <p>14:52:07 5 there had been an August roundtable initiated by Donna</p> <p>14:52:11 6 Dalton with the claims department and included the</p> <p>14:52:14 7 formerly retired, former head of claims, James Martin,</p> <p>14:52:19 8 on a limited basis, to review all open claims; and that</p> <p>14:52:24 9 a new policy manual had been instituted, that actually</p> <p>14:52:31 10 mirrored the policy manual that Christine McCarthy had</p> <p>14:52:37 11 put out in September of 2010.</p> <p>14:52:40 12 Q. Okay. And so we know -- well, let me ask it</p> <p>14:52:44 13 this way: So in your opinion, the rationale for</p> <p>14:52:50 14 terminating Ms. McCarthy, that she overreserved files,</p> <p>14:52:53 15 was that correct or incorrect?</p> <p>14:52:58 16 MR. WILSON: Object to the form.</p> <p>14:52:59 17 A. At the time we were notified of the</p> <p>14:53:01 18 termination, we had no reason to believe that it was an</p> <p>14:53:04 19 inappropriate termination. In hindsight, the question</p> <p>14:53:08 20 is raised as to whether she was terminated because she</p> <p>14:53:11 21 was correctly adding additional reserves or suggesting</p> <p>14:53:15 22 the addition of reserves.</p> <p>14:53:17 23 Q. (BY MR. CEREGHINO) Sanford, Sandy, Elsass, who</p> <p>14:53:26 24 is he?</p> <p>14:53:27 25 A. He was the president and CEO of Uni-Ter.</p>	<p>14:54:42 1 Q. Okay. And that was as a result of Mr. Elsass</p> <p>14:54:45 2 no longer being around?</p> <p>14:54:48 3 A. Even prior to that, in discussions about some</p> <p>14:54:51 4 of the solutions to the capital problem, such as</p> <p>14:54:53 5 reinsurance, that we've discussed previously.</p> <p>14:54:56 6 Q. Okay. Let me go back to Mr. Elsass. Is he</p> <p>14:55:02 7 trustworthy?</p> <p>14:55:06 8 A. I believed him to be trustworthy during the</p> <p>14:55:09 9 entire time he was president and CEO of Uni-Ter, yes.</p> <p>14:55:13 10 Q. So I want to go all the way back to sort of the</p> <p>14:55:24 11 beginning of this morning. You testified earlier --</p> <p>14:55:26 12 and I believe it's in your declaration -- that you</p> <p>14:55:28 13 sought out an alternative to sort of traditional</p> <p>14:55:32 14 insurance models because of a six-fold increase in</p> <p>14:55:37 15 premiums that were confronting Eagle.</p> <p>14:55:40 16 A. Yes. For five years, all the way through 2002,</p> <p>14:55:43 17 Eagle had been insured by Ohio Insurance Casualty.</p> <p>14:55:46 18 Because of heavy claims experience in the long-term</p> <p>14:55:50 19 care field, they dropped out of providing that</p> <p>14:55:52 20 insurance, so our broker looked for other options.</p> <p>14:55:56 21 Typically, that process starts -- started for</p> <p>14:55:58 22 us annually in November. We didn't hear back from our</p> <p>14:56:02 23 broker on anything definitive until New Year's Eve of</p> <p>14:56:06 24 2002, in which he located Lloyd's of London as the only</p> <p>14:56:11 25 insurer for us. And that insurance was substantially</p>

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<p>14:56:14 1 changed. It was a six-fold increase, along with a</p> <p>14:56:20 2 \$50,000 per claim deductible, when we didn't have one,</p> <p>14:56:23 3 and significantly moved our insurance from</p> <p>14:56:26 4 occurrence-based to claim -- claims made.</p> <p>14:56:27 5 Q. So that's a good way to ring in the new year --</p> <p>14:56:32 6 A. Yeah.</p> <p>14:56:32 7 Q. -- as an executive.</p> <p>14:56:32 8 A. We became officially self-insured, so to speak.</p> <p>14:56:35 9 I mean, we had to purchase insurance for four of our</p> <p>14:56:39 10 facilities that were HUD-insured mortgages. We had no</p> <p>14:56:42 11 choice but to pay that. That premium, I recall, was</p> <p>14:56:44 12 three times the premium we had previously paid for the</p> <p>14:56:46 13 12 nursing homes. So it was a problem.</p> <p>14:56:49 14 Q. Okay. And you -- I believe you just</p> <p>14:56:53 15 indicated -- in your answer, you referred earlier to</p> <p>14:56:56 16 claims developments in the state of Florida, though --</p> <p>14:57:01 17 A. Yes.</p> <p>14:57:01 18 Q. -- as sort of proliferating industry wide and</p> <p>14:57:05 19 causing these increases?</p> <p>14:57:08 20 A. Our broker investigated the reasons for Ohio</p> <p>14:57:11 21 Insurance Casualty backing out. And they had informed</p> <p>14:57:15 22 him, as well as his association with CNA, another large</p> <p>14:57:20 23 insurance company, that the plaintiff activity in --</p> <p>14:57:22 24 the tort activity, generally, in Florida was a reason</p> <p>14:57:25 25 for the claims going -- well, the claims had gone --</p>	<p>14:59:00 1 at, but it was the first time I had learned about RRGs.</p> <p>14:59:03 2 Q. Okay. But, again, with -- if your expense</p> <p>14:59:12 3 picture is confronted with such a material change, you,</p> <p>14:59:16 4 as an executive, would have some interest in paying</p> <p>14:59:23 5 close attention to that -- to preventing further</p> <p>14:59:35 6 escalation of that sort of line item, going into the</p> <p>14:59:39 7 future, right?</p> <p>14:59:40 8 MS. OCHOA: Objection. Form.</p> <p>14:59:41 9 A. Well, our concern was that we're responsible,</p> <p>14:59:45 10 at Eagle Healthcare, for the losses that we create by</p> <p>14:59:47 11 our actions in performing the services we do. To the</p> <p>14:59:52 12 extent that our premiums were being increased because</p> <p>14:59:55 13 of the actions of others outside the scope of Eagle</p> <p>14:59:57 14 Healthcare, we felt it was appropriate to look for</p> <p>15:00:00 15 another alternative that would appropriately judge our</p> <p>15:00:03 16 risk.</p> <p>15:00:03 17 Q. (BY MR. CEREGHINO) Perfect. And so is a risk</p> <p>15:00:07 18 retention group, besides other differences, but from a</p> <p>15:00:13 19 conceptual standpoint, sort of similar to a credit</p> <p>15:00:17 20 union, where only certain eligible members or</p> <p>15:00:20 21 certain -- there are certain eligibility requirements</p> <p>15:00:24 22 to participate within the RRG structure? That's a bad</p> <p>15:00:30 23 analogy, but --</p> <p>15:00:31 24 A. I don't think the eligibility restrictions are</p> <p>15:00:35 25 any different than, say, a typical indemnity insurance</p>
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<p>14:57:30 1 gotten excessive in that state. And, therefore,</p> <p>14:57:33 2 premiums had been spread across the country, even</p> <p>14:57:36 3 though Eagle, itself, did not have any claims</p> <p>14:57:39 4 experience to speak of.</p> <p>14:57:40 5 Q. So besides the type of risk that's at issue, is</p> <p>14:57:50 6 it fair to say that geographic or other factors could</p> <p>14:57:56 7 be -- could impact the premiums that the insured is</p> <p>14:58:03 8 confronted with?</p> <p>14:58:04 9 MS. OCHOA: Objection. Form.</p> <p>14:58:06 10 MR. WILSON: Same objection.</p> <p>14:58:07 11 A. It could. And even to this day, we find</p> <p>14:58:10 12 geographic concentrations of plaintiffs being active in</p> <p>14:58:15 13 particular markets and not being active in others.</p> <p>14:58:18 14 Q. (BY MR. CEREGHINO) So with that as the</p> <p>14:58:28 15 background, facing -- I'm going to suggest that that's</p> <p>14:58:32 16 a material change to your business model, a six-fold</p> <p>14:58:35 17 increase in premiums?</p> <p>14:58:36 18 A. Yes.</p> <p>14:58:38 19 Q. So with that as the background, you go out and</p> <p>14:58:41 20 search for alternatives, one of which was at this LTC</p> <p>14:58:47 21 100 conference?</p> <p>14:58:48 22 A. Yes.</p> <p>14:58:51 23 Q. And is that the first time you were presented</p> <p>14:58:53 24 with the concept of the risk retention group, RRG?</p> <p>14:58:57 25 A. Yes. It was not the only alternative we looked</p>	<p>15:00:38 1 company, except that the policyholders must be</p> <p>15:00:40 2 shareholders.</p> <p>15:00:41 3 Q. Okay. So --</p> <p>15:00:42 4 A. And also that the insurance provided can only</p> <p>15:00:45 5 be liability insurance. It can't be, for example,</p> <p>15:00:47 6 property insurance, workers compensation, or any number</p> <p>15:00:50 7 of other lines.</p> <p>15:00:51 8 Q. Okay. So in this context, you went out looking</p> <p>15:00:55 9 for a way -- well, let me back up.</p> <p>15:00:59 10 Mr. Fogg testified that the attractiveness of</p> <p>15:01:04 11 Lewis & Clark was that it allowed his company to be</p> <p>15:01:10 12 severed from the impacts of high risk or other, you</p> <p>15:01:16 13 know, negatively characterized entities, so that the</p> <p>15:01:23 14 risk model would be more appropriate. Meaning,</p> <p>15:01:27 15 manifesting in lower premiums; is that fair?</p> <p>15:01:31 16 MR. WILSON: Objection.</p> <p>15:01:33 17 MS. OCHOA: Objection. Form.</p> <p>15:01:33 18 A. I agree with that characterization. I would</p> <p>15:01:37 19 add that the attractiveness is that, as -- a board</p> <p>15:01:41 20 would be established, not just of any board member that</p> <p>15:01:47 21 might be assigned by an owner of a company, but by</p> <p>15:01:51 22 policyholders, who are, themselves, operators of</p> <p>15:01:54 23 nursing facilities; that you have people who are</p> <p>15:01:57 24 interested and have the expertise in the oversight of</p> <p>15:01:59 25 risk management protocols, that could help reduce that</p>

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<p>15:02:03 1 risk, as well as establishing underwriting guidelines</p> <p>15:02:06 2 that would ensure, as Mr. -- as you represent Mr. Fogg</p> <p>15:02:08 3 had said -- to maintain a risk profile of most</p> <p>15:02:13 4 operators who were acceptable risks, based on their</p> <p>15:02:18 5 quality assurance protocols and operating histories.</p> <p>15:02:21 6 Q. (BY MR. CEREGHINO) Okay. And so what did you</p> <p>15:02:24 7 do, as a board member, from the outset, to implement</p> <p>15:02:33 8 sort of checks and balances to make sure that this RRG,</p> <p>15:02:41 9 Lewis & Clark, that you participated in, wasn't going</p> <p>15:02:46 10 to suffer the same type of six-fold increase to</p> <p>15:02:50 11 premiums that Eagle faced in the other context?</p> <p>15:02:55 12 A. As we've reviewed during testimony today, the</p> <p>15:03:00 13 reports that we would regularly get from Uni-Ter, our</p> <p>15:03:05 14 management company -- first, we would hire a management</p> <p>15:03:09 15 company that would be an expert in the field and have</p> <p>15:03:12 16 great levels of experience, that could perform things</p> <p>15:03:14 17 that we, as operators, were not experienced in: the</p> <p>15:03:18 18 underwriting management, the risk management, the</p> <p>15:03:20 19 claims management, the reinsurance, and then other</p> <p>15:03:24 20 related management services, including the accounting</p> <p>15:03:26 21 functions for the company. But we, as a board, could</p> <p>15:03:30 22 have the responsibility for oversight of all of those</p> <p>15:03:35 23 functions as well, which we wouldn't have in any other</p> <p>15:03:38 24 insurance company scenario; and that we would have</p> <p>15:03:41 25 input into general policy guidelines, such as risk</p>	<p>15:04:56 1 care industries, you know, really focused on skilled</p> <p>15:04:59 2 nursing facilities.</p> <p>15:05:00 3 Q. Okay. So you referenced a conversation you had</p> <p>15:05:07 4 with Mr. Elsass and Mr. Martin; is that correct?</p> <p>15:05:12 5 A. Yes. My first association was with Mr. Martin,</p> <p>15:05:16 6 as he appeared on, as I said, a panel discussing the</p> <p>15:05:20 7 alarming rise in the risk and tort environment for</p> <p>15:05:26 8 nursing homes.</p> <p>15:05:28 9 Q. So was the conversation that you eventually had</p> <p>15:05:33 10 with he and Mr. Elsass the same day or a subsequent</p> <p>15:05:38 11 day?</p> <p>15:05:38 12 A. It could've been later that day or the</p> <p>15:05:41 13 subsequent day, but it was first with Mr. Elsass and</p> <p>15:05:44 14 then with the two of them.</p> <p>15:05:46 15 Q. Okay. How long -- well, let's back up.</p> <p>15:05:51 16 So that suggests there was more than one</p> <p>15:05:54 17 conversation.</p> <p>15:05:54 18 A. I believe there were at least two.</p> <p>15:05:57 19 Q. Five?</p> <p>15:05:57 20 A. No. I wouldn't think more than three.</p> <p>15:06:01 21 Q. Okay. And how long was each one, if you</p> <p>15:06:05 22 recall?</p> <p>15:06:05 23 A. Probably 30 minutes to 45 minutes each time.</p> <p>15:06:11 24 Q. Okay. So collectively, an hour and a half to</p> <p>15:06:15 25 two hours?</p>
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<p>15:03:44 1 management protocols, because we all had experience in</p> <p>15:03:46 2 adapting those within our own nursing facilities.</p> <p>15:03:51 3 So we felt that by requiring risk management</p> <p>15:03:53 4 reviews of operators, that you typically didn't see</p> <p>15:03:59 5 with standard indemnity insurance companies, that that</p> <p>15:04:03 6 was an enhanced prospect of what would be performed by</p> <p>15:04:08 7 Lewis & Clark, that would help reduce risk to us.</p> <p>15:04:12 8 Q. Okay. So let's get into what -- how you got to</p> <p>15:04:17 9 Uni-Ter. So you go to this LTC 100 conference. And I</p> <p>15:04:22 10 believe you said it was in May of 2003; is that fair?</p> <p>15:04:26 11 A. Yes.</p> <p>15:04:26 12 Q. You had never met Mr. Elsass before?</p> <p>15:04:29 13 A. Never.</p> <p>15:04:30 14 Q. Mr. Martin before?</p> <p>15:04:31 15 A. No.</p> <p>15:04:32 16 Q. Anyone at Uni-Ter?</p> <p>15:04:34 17 A. No.</p> <p>15:04:34 18 Q. Anyone at U.S. RE?</p> <p>15:04:36 19 A. No.</p> <p>15:04:37 20 Q. How long was the conference?</p> <p>15:04:39 21 A. It's typically a two-and-a-half-day conference.</p> <p>15:04:43 22 Q. Comprised of different workshops, different</p> <p>15:04:46 23 vendor booths, that type of thing?</p> <p>15:04:49 24 A. No, not really vendor booths. More along the</p> <p>15:04:53 25 lines of operator panels and speakers on the long-term</p>	<p>15:06:15 1 A. Sure.</p> <p>15:06:16 2 Q. So what happened after the conference?</p> <p>15:06:24 3 A. I immediately contacted our counsel, Kate</p> <p>15:06:28 4 Julin, and also our broker -- insurance broker and</p> <p>15:06:33 5 talked to them about their experience with risk</p> <p>15:06:35 6 retention groups, and to research the legalities and</p> <p>15:06:39 7 requirements, pitfalls, opportunities associated with</p> <p>15:06:43 8 that, and did a lot of my own research, looking at the</p> <p>15:06:49 9 publications coming out of the risk retention</p> <p>15:06:52 10 association, anything I could get my arms around to</p> <p>15:06:55 11 research about this vehicle for providing liability</p> <p>15:06:59 12 insurance.</p> <p>15:06:59 13 Q. Risk retention groups, in general?</p> <p>15:07:04 14 A. Correct. And I compared them specifically with</p> <p>15:07:06 15 captive insurance opportunities, which of course had</p> <p>15:07:10 16 been out in the field. One of the differences there,</p> <p>15:07:14 17 of course, is captives are pretty much established for</p> <p>15:07:16 18 single entities. So you pretty much had to have</p> <p>15:07:21 19 sizable capital to establish your own captive,</p> <p>15:07:24 20 typically offshore. We weren't, you know, willing --</p> <p>15:07:28 21 or didn't feel like we had enough mass in our</p> <p>15:07:32 22 operations to justify a captive and would benefit from</p> <p>15:07:37 23 the diversification that a risk retention group could</p> <p>15:07:41 24 provide.</p> <p>15:07:41 25 Q. Okay. And with respect to Uni-Ter</p>

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<p>15:07:44 1 specifically, what was the sequence of events after the</p> <p>15:07:51 2 LTC 100 conference? Essentially, how did we arrive at</p> <p>15:07:56 3 picking Uni-Ter?</p> <p>15:07:58 4 MR. WILSON: Objection.</p> <p>15:07:59 5 A. So I followed up with Sandy Elsass and</p> <p>15:08:02 6 requested additional information about their experience</p> <p>15:08:06 7 in running risk retention groups. The only prior one</p> <p>15:08:11 8 he had established, to my knowledge, was the Ponce de</p> <p>15:08:15 9 Leon in Florida, which really piqued my interest</p> <p>15:08:19 10 because we had been told, of course, that a lot of the</p> <p>15:08:23 11 bad tort environment that existed for nursing homes</p> <p>15:08:27 12 started in -- existed in Florida. So the fact that he</p> <p>15:08:32 13 had had experience in that highly adverse claims state</p> <p>15:08:35 14 was significant to us.</p> <p>15:08:38 15 So we subsequently interviewed people who were</p> <p>15:08:41 16 on the Ponce de Leon board. I don't recall their</p> <p>15:08:44 17 names. One was the chairperson of that board. And it</p> <p>15:08:47 18 would've been at least one, maybe two, of the providers</p> <p>15:08:51 19 who were policyholders, to find out their experience</p> <p>15:08:55 20 with Uni-Ter, how the process works, and, basically,</p> <p>15:08:59 21 would they do it again if they had the opportunity?</p> <p>15:09:05 22 We found out a number of things from them, one</p> <p>15:09:07 23 of which was -- one of the keys to -- I think I</p> <p>15:09:10 24 referenced this earlier in testimony -- the keys to</p> <p>15:09:11 25 investing in this was -- and keeping the claims down,</p>	<p>15:10:29 1 industries that had suffered the same kind of</p> <p>15:10:32 2 difficulties we were experiencing at that point in time</p> <p>15:10:34 3 to create their own vehicle for predictable and</p> <p>15:10:38 4 affordable insurance.</p> <p>15:10:40 5 The fact that maybe there hadn't been that need</p> <p>15:10:42 6 in the industry nationally, up until a year or two</p> <p>15:10:46 7 prior to our experience, was not surprising to me.</p> <p>15:10:49 8 Q. Did you ask about any other potential</p> <p>15:10:59 9 management entities, besides Uni-Ter?</p> <p>15:11:02 10 A. I was not aware of any. And our broker we had</p> <p>15:11:07 11 requested to research that was not able to -- was not</p> <p>15:11:11 12 aware of any other risk retention groups around the</p> <p>15:11:14 13 country.</p> <p>15:11:15 14 Q. So you're saying you specifically asked your</p> <p>15:11:17 15 broker, Look for someone, besides Uni-Ter, who</p> <p>15:11:21 16 manages --</p> <p>15:11:23 17 A. Well, broadly, we asked our broker to look for</p> <p>15:11:26 18 any and all vehicles for providing PLGL, professional</p> <p>15:11:30 19 liability and general liability insurance, in the</p> <p>15:11:33 20 long-term care marketplace. And, specifically, if any</p> <p>15:11:37 21 of those are RRGs, let us know where we can find them.</p> <p>15:11:41 22 And he found no others.</p> <p>15:11:43 23 Q. When was Lewis & Clark actually formed?</p> <p>15:11:58 24 A. Well, it was formed during 2003. I don't know</p> <p>15:12:04 25 the exact date of the formation documents, but I know</p>
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<p>15:09:14 1 was reducing policy limits, actually making them --</p> <p>15:09:17 2 those policy limits less attractive to the plaintiffs'</p> <p>15:09:21 3 bar for potential settlements, and that that helped to</p> <p>15:09:25 4 reduce their claim exposure.</p> <p>15:09:27 5 Their capital structure was a little bit</p> <p>15:09:29 6 different, in that we were informed that the State of</p> <p>15:09:32 7 Florida had actually believed so much in the RRG</p> <p>15:09:35 8 structure that they had infused \$6 million of capital</p> <p>15:09:39 9 to start that risk retention group. So we felt there</p> <p>15:09:42 10 was a third party that had actually lent some credence</p> <p>15:09:45 11 to that vehicle.</p> <p>15:09:46 12 Q. (BY MR. CEREGHINO) With respect to Ponce de</p> <p>15:09:48 13 Leon specifically, though, what did Mr. Elsass tell you</p> <p>15:09:52 14 about the length of his experience in Florida?</p> <p>15:09:56 15 A. I believe Ponce de Leon had only been in</p> <p>15:09:59 16 existence for two or three years, so it hadn't been</p> <p>15:10:02 17 that great. But he talked about, you know, the</p> <p>15:10:05 18 experience of U.S. RE and how it had been in the</p> <p>15:10:07 19 insurance business, including the reinsurance business,</p> <p>15:10:10 20 for quite some period of time.</p> <p>15:10:13 21 I wasn't concerned, necessarily, about the lack</p> <p>15:10:15 22 of longevity of experience in an RRG, because I know</p> <p>15:10:20 23 that the -- upon my research, the Federal Risk</p> <p>15:10:23 24 Retention Act of 1986, you know, which was originally</p> <p>15:10:26 25 established for the steel industry, was there to allow</p>	<p>15:12:07 1 that policies began being issued January 1 of 2004. So</p> <p>15:12:12 2 there was a period of time in which to negotiate a</p> <p>15:12:17 3 management agreement with Uni-Ter, the terms of that,</p> <p>15:12:21 4 to go through the legal documents of the formation,</p> <p>15:12:25 5 setting up the board, and so on.</p> <p>15:12:29 6 Q. So I guess my question was, more appropriately:</p> <p>15:12:32 7 Who handled the legal process of forming the Lewis &</p> <p>15:12:37 8 Clark entity?</p> <p>15:12:38 9 A. Well, there were lawyers from Uni-Ter, our</p> <p>15:12:41 10 lawyer for Eagle Healthcare; the lawyer for Mark</p> <p>15:12:45 11 Garber's company, Pinnacle Healthcare. And there might</p> <p>15:12:52 12 have been one other associate there; I can't recall.</p> <p>15:12:54 13 But those were the principals.</p> <p>15:12:56 14 Q. Okay. And so subsequent to the formation of</p> <p>15:13:01 15 the Lewis & Clark entity --</p> <p>15:13:03 16 A. I do believe there was one other counsel.</p> <p>15:13:04 17 Becky Roe, who is a well-known attorney in the Seattle</p> <p>15:13:10 18 area, represented a former minority partner of mine,</p> <p>15:13:17 19 Jim Roe, who had his own outfit. And he was one of the</p> <p>15:13:21 20 initial insureds as well.</p> <p>15:13:22 21 Q. So subsequent to the formation of the Lewis &</p> <p>15:13:26 22 Clark entity, you referenced there was a period of</p> <p>15:13:29 23 negotiation of the management agreement. Who actually</p> <p>15:13:33 24 prepared the management agreement?</p> <p>15:13:36 25 A. I believe it was a draft presented by counsel</p>

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<p>15:13:40 1 for Uni-Ter to us for review. And there was a</p> <p>15:13:44 2 negotiation on the terms and a lot of discussion around</p> <p>15:13:49 3 the different elements of that agreement.</p> <p>15:13:52 4 Q. And --</p> <p>15:13:52 5 A. I know it was not signed with the same language</p> <p>15:13:57 6 that was presented to us. There were changes made.</p> <p>15:13:59 7 Q. Okay. So then on the separate side of the</p> <p>15:14:02 8 house, U.S. RE -- Lewis & Clark had an agreement with</p> <p>15:14:07 9 U.S. RE in late 2003; is that correct?</p> <p>15:14:11 10 A. Yeah. I believe we covered that in previous</p> <p>15:14:13 11 testimony.</p> <p>15:14:14 12 Q. Right. To do what?</p> <p>15:14:15 13 A. To provide reinsurance.</p> <p>15:14:17 14 Q. Okay. Now, were there other reinsurance</p> <p>15:14:20 15 companies available in the domestic or international</p> <p>15:14:27 16 market that could've satisfied Lewis & Clark's needs at</p> <p>15:14:30 17 the time?</p> <p>15:14:31 18 A. Probably.</p> <p>15:14:32 19 Q. Did the Lewis & Clark board look for and</p> <p>15:14:38 20 solicit information from other reinsurance entities?</p> <p>15:14:44 21 A. We had actually tasked Uni-Ter with the</p> <p>15:14:46 22 responsibility for finding reinsurance. So to the</p> <p>15:14:50 23 extent Uni-Ter might have circularized other entities</p> <p>15:14:54 24 to look for reinsurance that might have been</p> <p>15:14:54 25 competitive with their own parent, that would've been</p>	<p>15:16:11 1 A. I don't think there's anything that would</p> <p>15:16:16 2 document whether there were proposals presented for</p> <p>15:16:19 3 different reinsurance brokers, if that's what you're</p> <p>15:16:23 4 asking.</p> <p>15:16:24 5 Q. That is what I'm asking. Okay.</p> <p>15:16:26 6 So now let's go back to these conversations you</p> <p>15:16:40 7 had with Mr. Elsass at the LTC 100 conference. Let's</p> <p>15:16:45 8 take a look at your declaration, Exhibit 3, because I</p> <p>15:16:49 9 believe there's some reference in there.</p> <p>15:17:07 10 So if have the exhibit there, and if you go</p> <p>15:17:09 11 about halfway down, the paragraph beginning:</p> <p>15:17:11 12 Mr. Elsass held himself out as an expert in the</p> <p>15:17:14 13 formation and operation of risk retention groups -- I</p> <p>15:17:20 14 believe you just testified that that was really</p> <p>15:17:22 15 actually with respect to a single risk retention group,</p> <p>15:17:26 16 Ponce de Leon, is that correct?</p> <p>15:17:29 17 MR. WILSON: Object to the form.</p> <p>15:17:30 18 A. At least in the long-term care industry. I</p> <p>15:17:30 19 know subsequently, he had a physicians-based risk</p> <p>15:17:33 20 retention group, but I don't know if that was formed</p> <p>15:17:35 21 before or after.</p> <p>15:17:36 22 Q. (BY MR. CERECHINO) When it comes to being an</p> <p>15:17:42 23 expert in the operation of risk retention groups, what</p> <p>15:17:45 24 are the different elements of the operation of a risk</p> <p>15:17:48 25 retention group, in your mind?</p>
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<p>15:14:58 1 their task.</p> <p>15:14:59 2 Keep in mind that as providers of nursing home</p> <p>15:15:02 3 services full time, we didn't have the experience to go</p> <p>15:15:05 4 out and look for that. Neither did our insurance</p> <p>15:15:07 5 broker, because he wasn't in the reinsurance business.</p> <p>15:15:10 6 He was in the placement of basic insurance, if you</p> <p>15:15:14 7 will.</p> <p>15:15:16 8 Q. Do you recall the board ever being presented a</p> <p>15:15:18 9 series -- you know, a set of options with respect to</p> <p>15:15:23 10 reinsurance, with pricing comparisons, service</p> <p>15:15:25 11 comparisons?</p> <p>15:15:27 12 A. I don't recall initially. I do know that a</p> <p>15:15:30 13 number of options for reinsurance were presented to us</p> <p>15:15:34 14 throughout the course of renewals, different entities</p> <p>15:15:37 15 providing them, you know, whether in the London market</p> <p>15:15:39 16 or elsewhere.</p> <p>15:15:40 17 Q. So I'm not talking about the underlying</p> <p>15:15:41 18 treaty -- the end result treaty. I'm talking about to</p> <p>15:15:45 19 be the broker of record exclusively, like U.S. RE</p> <p>15:15:47 20 turned out to be. Did Uni-Ter, tasked with this</p> <p>15:15:53 21 objective, actually present different candidates for</p> <p>15:15:57 22 being the exclusive broker of record?</p> <p>15:16:01 23 A. I don't recall.</p> <p>15:16:02 24 Q. Would the -- but as a board member, you would</p> <p>15:16:09 25 have a document to that effect, if it existed?</p>	<p>15:17:51 1 A. Underwriting management, claims management,</p> <p>15:17:53 2 risk management, reinsurance management, and financial</p> <p>15:17:58 3 management for the group itself.</p> <p>15:18:00 4 Q. And did Mr. Elsass expressly represent he was</p> <p>15:18:04 5 an expert in each one of those service areas?</p> <p>15:18:06 6 A. He did. And he was very well versed in each of</p> <p>15:18:12 7 those areas.</p> <p>15:18:12 8 Q. Did you do any background check of him,</p> <p>15:18:16 9 personally, to confirm his representations?</p> <p>15:18:20 10 A. As I said, we talked to individuals who -- at</p> <p>15:18:24 11 Ponce de Leon, both the chairman of that group, as well</p> <p>15:18:30 12 as operators who were policyholders, who spoke to the</p> <p>15:18:33 13 proficiency of how the risk retention group vehicle</p> <p>15:18:37 14 worked for them and Uni-Ter's expertise.</p> <p>15:18:40 15 Q. But aside from Ponce de Leon, no one else?</p> <p>15:18:44 16 A. Not that I can recall.</p> <p>15:18:47 17 Q. Do you know if it's industry standard -- or</p> <p>15:18:54 18 perhaps at that time, if it was industry standard for a</p> <p>15:18:58 19 single entity to provide all of those types of services</p> <p>15:19:04 20 under one management agreement?</p> <p>15:19:09 21 MR. WILSON: Objection.</p> <p>15:19:09 22 MS. OCHOA: Objection. Form.</p> <p>15:19:11 23 A. Well, given that prior to the acceleration of</p> <p>15:19:17 24 claims for the skilled nursing facility industry</p> <p>15:19:19 25 generally, across the country, virtually every provider</p>

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<p>15:19:22 1 would be able to obtain affordable -- very affordable</p> <p>15:19:26 2 and predictable insurance through typical indemnity</p> <p>15:19:30 3 carriers like Ohio Casualty or CNA, there wasn't a need</p> <p>15:19:35 4 to invoke more creative opportunities, unless you were</p> <p>15:19:38 5 of such a size and mass that you could afford to do</p> <p>15:19:41 6 captive markets and try to save money in that regard.</p> <p>15:19:44 7 So I don't think there was a vehicle that</p> <p>15:19:47 8 necessitated the use of a management agreement for an</p> <p>15:19:50 9 insurance company on behalf of policyholders.</p> <p>15:19:55 10 Q. But you referenced the steel industry, dating</p> <p>15:20:00 11 back to the '80s and '90s, the risk retention group.</p> <p>15:20:04 12 Do you have any knowledge of when the risk retention</p> <p>15:20:07 13 group model first came up, regardless of industry? So</p> <p>15:20:11 14 not --</p> <p>15:20:12 15 A. I just had understood we were authorized under</p> <p>15:20:15 16 the Federal Risk Retention Group of 1986, as amended.</p> <p>15:20:18 17 I don't know how far back that might have actually</p> <p>15:20:20 18 gone.</p> <p>15:20:21 19 Q. Okay. So there may have been, or may not have</p> <p>15:20:26 20 been sort of standard management agreements or a</p> <p>15:20:34 21 parsing of the different operational aspects of a risk</p> <p>15:20:40 22 retention group in other industries?</p> <p>15:20:42 23 A. Correct.</p> <p>15:20:43 24 MR. WILSON: Objection.</p> <p>15:20:44 25 A. Sure.</p>	<p>15:21:56 1 A. Sometime surplus can be viewed as just a</p> <p>15:21:58 2 portion of capital; i.e., retained earnings. You might</p> <p>15:22:02 3 have other elements, like common stock, depending upon</p> <p>15:22:05 4 the type of entity.</p> <p>15:22:06 5 Q. Okay.</p> <p>15:22:06 6 A. Or additional paid-in capital.</p> <p>15:22:08 7 Q. Is there a proper order in which, when</p> <p>15:22:12 8 preparing the balance sheet, a company is to sort of</p> <p>15:22:17 9 figure out what those different components are?</p> <p>15:22:23 10 MS. OCHOA: Objection.</p> <p>15:22:25 11 Q. (BY MR. CEREGHINO) Do you follow my --</p> <p>15:22:25 12 MS. OCHOA: Objection. Form.</p> <p>15:22:26 13 MR. WILSON: Same objection.</p> <p>15:22:27 14 Q. (BY MR. CEREGHINO) For example -- let me</p> <p>15:22:27 15 rephrase it. When preparing a balance sheet, do you</p> <p>15:22:30 16 plug in a number you want as equity first?</p> <p>15:22:34 17 A. No.</p> <p>15:22:34 18 Q. Would you ever do that?</p> <p>15:22:35 19 A. No.</p> <p>15:22:35 20 Q. How does equity fall out of that formula that</p> <p>15:22:42 21 we talked about: Assets minus liabilities equals</p> <p>15:22:45 22 equity?</p> <p>15:22:45 23 A. I don't understand the question.</p> <p>15:22:46 24 Q. Assets -- so you would have to first plug in</p> <p>15:22:49 25 either assets or liabilities, correct?</p>
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<p>15:20:44 1 Q. (BY MR. CEREGHINO) But you don't know, one way</p> <p>15:20:49 2 or the other?</p> <p>15:20:49 3 A. I didn't research those in other industries.</p> <p>15:20:51 4 Q. And did Mr. Elsass hold himself out as an</p> <p>15:20:59 5 expert in accounting?</p> <p>15:21:00 6 A. Not -- no, not specifically.</p> <p>15:21:04 7 Q. But that was a service to be provided by</p> <p>15:21:08 8 Uni-Tel?</p> <p>15:21:09 9 A. It was part of the management services. But</p> <p>15:21:11 10 that's why he had Donna Dalton as an individual who is</p> <p>15:21:15 11 an expert in financial statement and accounting</p> <p>15:21:19 12 processes.</p> <p>15:21:20 13 Q. So just to do a very quick dive into financial</p> <p>15:21:29 14 statement -- specifically balance sheet analysis, what</p> <p>15:21:34 15 are the three main components of a balance sheet?</p> <p>15:21:39 16 A. Assets, liabilities, and capital.</p> <p>15:21:41 17 Q. Okay. And is there a formula that --</p> <p>15:21:44 18 A. Assets minus liabilities equals equity, or</p> <p>15:21:47 19 capital.</p> <p>15:21:48 20 Q. Okay. And if I say, "surplus," in this context</p> <p>15:21:50 21 of this case, that would be --</p> <p>15:21:52 22 A. The same as capital, yeah.</p> <p>15:21:53 23 Q. Which is the same as equity?</p> <p>15:21:55 24 A. Right.</p> <p>15:21:56 25 Q. Okay.</p>	<p>15:22:51 1 A. Well --</p> <p>15:22:52 2 Q. Or do them both at the same time?</p> <p>15:22:55 3 A. Let me back you up a little bit.</p> <p>15:22:56 4 No one sits down to actually prepare a balance</p> <p>15:22:59 5 sheet from scratch. It is the result of transactions</p> <p>15:23:01 6 that occur over a period of time. The balance sheet is</p> <p>15:23:04 7 a result of those actions. So cash, receivables,</p> <p>15:23:08 8 inventory, fixed assets, deferred tax liabilities,</p> <p>15:23:14 9 prepaid insurance premiums, whatever the asset side</p> <p>15:23:18 10 might contain are a result of activities that create</p> <p>15:23:22 11 those assets.</p> <p>15:23:23 12 On the liabilities side, you might have</p> <p>15:23:25 13 accounts payable, short-term and other long-term</p> <p>15:23:28 14 liabilities, payroll liabilities, things of that</p> <p>15:23:30 15 nature, and reserves, in the case of insurance</p> <p>15:23:36 16 companies. So those are created -- those balances are</p> <p>15:23:41 17 created by the activities that occurred during every</p> <p>15:23:44 18 day that results within a particular period of time.</p> <p>15:23:50 19 At the end of that time period, the balance</p> <p>15:23:51 20 sheet is what it is. Okay? So nobody actually says,</p> <p>15:23:56 21 I'm going to make a particular line item on a balance</p> <p>15:24:00 22 sheet this number.</p> <p>15:24:00 23 It is the result of transactions.</p> <p>15:24:02 24 Q. So let me give you a hypothetical. If someone,</p> <p>15:24:05 25 in fact, did say, I want this number -- this line item</p>

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<p>15:24:09 1 on this balance sheet to be X, what would your</p> <p>15:24:13 2 impression of that person be?</p> <p>15:24:15 3 A. Well, let me back you up a little bit more.</p> <p>15:24:17 4 MS. OCHOA: Objection. Form.</p> <p>15:24:17 5 MR. WILSON: Objection.</p> <p>15:24:18 6 A. I'll just, for instructional purposes -- a lot</p> <p>15:24:21 7 of companies will sign debt documents, for example,</p> <p>15:24:23 8 that include balance sheet covenants in them. They</p> <p>15:24:26 9 might have something like a current ratio in there,</p> <p>15:24:28 10 which is the ratio of current assets to current</p> <p>15:24:31 11 liabilities. So while you're not going to say, I want</p> <p>15:24:33 12 any particular assets to be this number, or liabilities</p> <p>15:24:35 13 to be this number, maybe the ratio in such a debt</p> <p>15:24:38 14 covenant might be two to one. So you have an objective</p> <p>15:24:42 15 that you want current assets to be at least double</p> <p>15:24:44 16 current liabilities. One of many examples. So you can</p> <p>15:24:49 17 create a financial plan that's built around trying to</p> <p>15:24:53 18 maintain or exceed that current ratio.</p> <p>15:24:56 19 Capital could be viewed the same way. We know</p> <p>15:25:00 20 that there are regulatory requirements, for example,</p> <p>15:25:02 21 that the Department of Insurance would tell us, You've</p> <p>15:25:04 22 got to maintain this because we want to maintain</p> <p>15:25:08 23 solvency.</p> <p>15:25:09 24 So our business plan would be, we've got to</p> <p>15:25:12 25 maintain this objective, which is why we had to</p>	<p>15:26:44 1 that we'd be on the board, given that the board should</p> <p>15:26:47 2 be comprised of shareholders who happen to be insureds.</p> <p>15:26:52 3 And we were the largest ones at the time. It made</p> <p>15:26:54 4 sense for us to be on the board.</p> <p>15:26:57 5 Q. Sure. So someone at Eagle decided, Jeff, you</p> <p>15:27:00 6 should be on the board to represent Eagle's interests?</p> <p>15:27:07 7 A. As the president of Eagle, I felt I was the</p> <p>15:27:09 8 appropriate one to be the representative on the board.</p> <p>15:27:12 9 Q. Seems to make sense. Okay.</p> <p>15:27:16 10 So when you get to -- when you realize you're</p> <p>15:27:19 11 going to be on the board of directors, what did that --</p> <p>15:27:23 12 did that spark in you any need to figure out, what does</p> <p>15:27:30 13 it mean to be on the board of directors?</p> <p>15:27:34 14 A. It did. And it was --</p> <p>15:27:35 15 MR. WILSON: Object to the form.</p> <p>15:27:36 16 A. It did. And it was one of the reasons that I</p> <p>15:27:37 17 requested that our counsel, Kate Julin, initially serve</p> <p>15:27:41 18 on the board, which she did, I think, until the merger</p> <p>15:27:44 19 with Henry Hudson. And I actually had a discussion</p> <p>15:27:47 20 with her about what it means to be a board --</p> <p>15:27:50 21 Q. (BY MR. CEREGHINO) Don't get into</p> <p>15:27:51 22 conversations with --</p> <p>15:27:52 23 A. So that was my diligence.</p> <p>15:27:54 24 Q. Okay. And we're obviously here in Washington</p> <p>15:28:00 25 state. Lewis & Clark is domiciled in Nevada, correct?</p>
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<p>15:25:15 1 initially put some capital in at the formation of the</p> <p>15:25:18 2 company. You can't start with no capital. We've got</p> <p>15:25:21 3 to be able to run the business, and we've got to be</p> <p>15:25:23 4 able to maintain sufficient surplus in order to cover</p> <p>15:25:26 5 claims. And that's an ongoing process of evaluation.</p> <p>15:25:30 6 Q. (BY MR. CEREGHINO) So back to my hypothetical.</p> <p>15:25:32 7 If someone actually said, I want my equity to be Y, so</p> <p>15:25:38 8 change your reserves accordingly, what would -- what</p> <p>15:25:44 9 would your impression of that hypothetical be?</p> <p>15:25:50 10 MS. OCHOA: Objection. Form.</p> <p>15:25:50 11 MR. WILSON: Object to the form of the</p> <p>15:25:51 12 question.</p> <p>15:25:51 13 A. I have no problem with the first part of it. I</p> <p>15:25:54 14 have a big problem with the second part of it.</p> <p>15:26:01 15 Q. (BY MR. CEREGHINO) Okay. You said you had no</p> <p>15:26:12 16 prior board of director experience; is that correct?</p> <p>15:26:14 17 A. Correct.</p> <p>15:26:15 18 Q. So who approached you about being on the board</p> <p>15:26:21 19 of Lewis & Clark?</p> <p>15:26:22 20 A. Well, it was a natural consequence of investing</p> <p>15:26:28 21 capital into the company. Similar to Rick Stickels</p> <p>15:26:32 22 being on the board, initially, of Henry Hudson, because</p> <p>15:26:35 23 they provided capital to that entity, Eagle Healthcare</p> <p>15:26:37 24 and Pinnacle were providing similar amounts of capital</p> <p>15:26:40 25 for the formation of Lewis & Clark. It was natural</p>	<p>15:28:03 1 A. Yes.</p> <p>15:28:03 2 Q. So did you, besides your conversation with</p> <p>15:28:06 3 Kate, do any Nevada-specific research as to what it</p> <p>15:28:11 4 would mean to be on the board of directors?</p> <p>15:28:14 5 A. She did.</p> <p>15:28:15 6 Q. She did?</p> <p>15:28:15 7 A. Yes.</p> <p>15:28:15 8 Q. And that's part of your discussion about --</p> <p>15:28:17 9 A. Right.</p> <p>15:28:18 10 Q. Okay. And so what did you understand your</p> <p>15:28:23 11 duties to be as a board member?</p> <p>15:28:26 12 A. Generally, to provide vision, mission, and also</p> <p>15:28:30 13 oversight of the activities of Lewis & Clark.</p> <p>15:28:33 14 Specifically, to review, for reasonableness, the</p> <p>15:28:37 15 policies that were engaged in the difference services</p> <p>15:28:40 16 that were being provided.</p> <p>15:28:42 17 Q. Okay. So if I say, "the duty of care," what</p> <p>15:28:44 18 does that mean to you?</p> <p>15:28:46 19 MS. OCHOA: Objection. Form.</p> <p>15:28:47 20 A. It means the oversight, monitoring the</p> <p>15:28:51 21 performance of the company, pursuant to its management</p> <p>15:28:53 22 agreement. Is it providing appropriate services in</p> <p>15:28:56 23 accordance with policies in those various areas we</p> <p>15:29:00 24 discussed?</p> <p>15:29:00 25 Q. (BY MR. CEREGHINO) Okay. And what about</p>

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<p>15:29:01 1 affirmative decisions to be made by the Lewis & Clark entity? Because I think that's slightly different than the answer you just gave.</p> <p>15:29:04 2</p> <p>15:29:08 3</p> <p>15:29:09 4 So, for example, in the context of a merger,</p> <p>15:29:12 5 which isn't really oversight of practices, it's an affirmative decision. So what does it mean in that context?</p> <p>15:29:17 6</p> <p>15:29:20 7</p> <p>15:29:21 8 A. There's an obligation to perform appropriate due diligence, to ensure that such an action would be in the best interest of the company.</p> <p>15:29:22 9</p> <p>15:29:26 10</p> <p>15:29:28 11 Q. Okay. Did you talk to Rick Stickels at all about what it means to be on the board, when you first got into that position back in 2003?</p> <p>15:29:38 12</p> <p>15:29:41 13</p> <p>15:29:46 14 A. No. I didn't know Rick Stickels at that time.</p> <p>15:29:49 15</p> <p>15:29:52 16 Q. He was just on the Hudson board at the time?</p> <p>15:29:54 17</p> <p>15:29:56 18 A. He was just on the Hudson board at the time.</p> <p>15:29:58 19</p> <p>15:29:59 20 Q. Did you talk to any of the other board members, to see if they had prior experience --</p> <p>15:30:00 21</p> <p>15:30:03 22 A. Well, I talked to --</p> <p>15:30:06 23</p> <p>15:30:08 24 Q. -- besides your attorney?</p> <p>15:30:12 25</p> <p>15:30:00 21 A. I talked to Mark Garber. We discussed the whole concept of the formation, what it might mean for our organizations, and what our responsibilities could be, what the opportunities might be. He had his own counsel provide him advice.</p>	<p>15:31:40 1 fact that they were part of Henry Hudson, would we want those people to be part of our organization as policyholders?</p> <p>15:31:43 2</p> <p>15:31:46 3</p> <p>15:31:47 4 Q. Okay. Did you get --</p> <p>15:31:48 5</p> <p>15:31:51 6 A. So we got, you know, summaries of the underwriting loss histories of those entities, which was very important for us, to know whether there was adverse loss history associated with them. There was not. So we felt they were good entities to add to Lewis & Clark.</p> <p>15:32:01 9</p> <p>15:32:05 10</p> <p>15:32:07 11 Q. So as part of that loss history sort of analysis, did you get a -- anything like the equivalent of the Milliman report, with respect to Hudson?</p> <p>15:32:10 12</p> <p>15:32:13 13</p> <p>15:32:18 14 A. We might have, but I don't recall specifically.</p> <p>15:32:20 15</p> <p>15:32:24 16 Q. Do you know who the actuary was for Hudson?</p> <p>15:32:29 17</p> <p>15:32:31 18 A. I can't tell you. I would've -- I would make an educated guess it was Milliman.</p> <p>15:32:35 19</p> <p>15:32:40 20 Q. What about projections into the future?</p> <p>15:32:42 21</p> <p>15:32:45 22 A. There were projections for, you know, a year into the future, as one might expect in reviewing an acquisition of that nature.</p> <p>15:32:48 23</p> <p>15:32:51 24 Q. So just one, not two, not five years?</p> <p>15:32:55 25</p> <p>15:32:58 26 A. I never place reliance on five-year projections. So I just look at the immediate future and what's happening right now with the operations.</p>
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<p>15:30:14 1 Q. On the Hudson merger, you testified that you were given financial statements in support thereof, is that correct?</p> <p>15:30:24 2</p> <p>15:30:30 3</p> <p>15:30:31 4 A. Correct.</p> <p>15:30:33 5</p> <p>15:30:36 6 Q. Anything else that you were given?</p> <p>15:30:39 7</p> <p>15:30:44 8 A. Well, we provided -- also performed due diligence in the form of talking to members like Bob Hurlbut, who later became a board member of Lewis & Clark, as well as Rick Stickels. I believe those are the only two. And I may have talked to the -- at that time, the outgoing chairman of Henry Hudson as well, for their experiences with Uni-Ter, similar to our due diligence on the Ponce de Leon.</p> <p>15:31:01 13</p> <p>15:31:03 14 Q. And how long had Hudson been in operation at the time of the merger?</p> <p>15:31:07 15</p> <p>15:31:08 16 A. Very close to the time frame of Lewis & Clark, I believe.</p> <p>15:31:11 17</p> <p>15:31:12 18 Q. Which was what, if you recall?</p> <p>15:31:15 19</p> <p>15:31:18 20 A. It had been less than a year and a half.</p> <p>15:31:27 21</p> <p>15:31:29 22 Q. So did you get just historical financial statements? Or did you also get --</p> <p>15:31:31 23</p> <p>15:31:34 24 A. Well, historical financial statements, but we also looked at the entities that were policyholders of Lewis -- of Henry Hudson, as if they might be potential policyholders of Lewis & Clark. So regardless of the</p>	<p>15:33:00 1 Q. So you talked about Hudson's claims experience being within guidelines. What guidelines are those?</p> <p>15:33:08 2</p> <p>15:33:13 3 A. The Hudson claim experience, are you referring to?</p> <p>15:33:17 4</p> <p>15:33:18 5 Q. Uh-huh.</p> <p>15:33:19 6</p> <p>15:33:23 7 A. That they met similar criteria. And we actually had the Uni-Ter people compare the loss experience of the providers underneath Henry Hudson with those under Lewis & Clark, and those loss experiences were similar. There was nothing that was an outlier that caused us to wave a flag over potential concerns.</p> <p>15:33:38 11</p> <p>15:33:43 12 Q. And that was for, again, a one-and-a-half-year period?</p> <p>15:33:46 13</p> <p>15:33:46 14 A. Oh, much prior to that as well. Because each of these companies had loss histories before they started Henry Hudson. Much like Eagle and Pinnacle had loss histories before we started Lewis & Clark.</p> <p>15:33:56 18</p> <p>15:33:59 19 Q. Okay. So --</p> <p>15:34:01 20</p> <p>15:34:05 21 A. Just with other carriers.</p> <p>15:34:08 22</p> <p>15:34:10 23 Q. So you had much longer historical data as to the underlying operators. But within the context of being managed by Uni-Ter, you only had a year and a half?</p> <p>15:34:11 24</p> <p>15:34:11 25 A. Correct. That's correct.</p>

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<p>15:34:14 1 Q. With respect to Sophia Palmer, you testified</p> <p>15:34:23 2 that that was a, quote/unquote, low risk type of</p> <p>15:34:26 3 company. Do you recall that testimony?</p> <p>15:34:28 4 A. Yeah. Low risk type of coverage.</p> <p>15:34:31 5 Q. Coverage, okay.</p> <p>15:34:32 6 A. Because we're not -- they were not insuring</p> <p>15:34:33 7 nursing facilities, with the potential for claims that</p> <p>15:34:38 8 come with those facilities, but just individual nurses</p> <p>15:34:40 9 and their actions. And the loss exposure, on an</p> <p>15:34:46 10 individual basis, was far reduced from a nursing</p> <p>15:34:48 11 facility.</p> <p>15:34:49 12 Q. Okay. And how long had Sophia Palmer been in</p> <p>15:34:52 13 operation at the time of the merger?</p> <p>15:34:55 14 A. Several years. I don't recall the exact time</p> <p>15:34:57 15 frame.</p> <p>15:34:58 16 Q. So if you can look at Exhibit 14 and 46, we're</p> <p>15:35:18 17 going to do a side-by-side here.</p> <p>15:35:21 18 A. I have them.</p> <p>15:35:47 19 Q. Okay. And you testified you never received</p> <p>15:35:48 20 either of these letters?</p> <p>15:35:50 21 A. Not personally, no. I don't recall receiving</p> <p>15:35:55 22 them.</p> <p>15:35:56 23 Q. Why don't you take a look at Number 14?</p> <p>15:36:01 24 A. Okay.</p> <p>15:36:02 25 Q. And after you have a chance to review it, why</p>	<p>15:37:34 1 A. Correct. It's not there.</p> <p>15:37:36 2 Q. And you have -- I think you testified earlier,</p> <p>15:37:39 3 you don't have any personal information or knowledge as</p> <p>15:37:43 4 to why that sentence is omitted?</p> <p>15:37:48 5 A. Correct. I do not.</p> <p>15:37:48 6 Q. Do you have any other examples of Uni-Ter not</p> <p>15:37:54 7 sending material correspondence to the board of</p> <p>15:37:58 8 directors of Lewis & Clark?</p> <p>15:38:00 9 MS. OCHOA: Objection. Form.</p> <p>15:38:00 10 MR. WILSON: Objection.</p> <p>15:38:01 11 A. I wouldn't know that. If they didn't send it</p> <p>15:38:03 12 to me, I wouldn't be able to tell you.</p> <p>15:38:06 13 Q. Okay. So if we turn to -- I think it's maybe</p> <p>15:38:14 14 45. Let me take a look. Yeah, 45. And if you</p> <p>15:38:30 15 could -- we'll just ignore the handwriting. But this</p> <p>15:38:35 16 is a letter dated a year later, September 23rd, 2011.</p> <p>15:38:41 17 Do you see that?</p> <p>15:38:42 18 A. Yes.</p> <p>15:38:42 19 Q. From, again, the Division of Insurance of</p> <p>15:38:44 20 Nevada. Do you see that?</p> <p>15:38:46 21 A. Yes.</p> <p>15:38:47 22 Q. And it's substantially similar to 14 and 46; is</p> <p>15:38:52 23 that fair?</p> <p>15:38:53 24 A. Some differences but the same concepts.</p> <p>15:38:58 25 Q. Okay. Same concepts, correct.</p>
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<p>15:36:07 1 don't you go ahead and tell me whether or not you</p> <p>15:36:09 2 consider this to be a significant letter.</p> <p>15:36:13 3 MS. OCHOA: Objection. Form.</p> <p>15:36:14 4 MR. WILSON: Same objection.</p> <p>15:36:16 5 A. Yes, it is.</p> <p>15:36:32 6 Q. (BY MR. CEREGHINO) And if you flip over to 46,</p> <p>15:36:35 7 you can see it's essentially the same letter, just</p> <p>15:36:41 8 dated a couple days earlier, yes?</p> <p>15:36:49 9 A. Yeah. I don't see differences right now.</p> <p>15:36:52 10 Q. Okay. Well, why don't you go ahead and take a</p> <p>15:36:55 11 look. And tell me if there's any language that's</p> <p>15:36:58 12 removed or omitted in the Exhibit 14 version, that</p> <p>15:37:02 13 exists in the Exhibit 46 version, the earlier version.</p> <p>15:37:06 14 A. There's a second sentence in the initial</p> <p>15:37:08 15 paragraph.</p> <p>15:37:08 16 Q. Which says what?</p> <p>15:37:10 17 A. It says: I realize the merger may have</p> <p>15:37:12 18 involved more expenses and reserving requirements than</p> <p>15:37:15 19 contemplated, but as of June 30, 2010, the synergies</p> <p>15:37:18 20 expected from the merger have not yet materialized.</p> <p>15:37:23 21 Q. And that merger we're referring to is which</p> <p>15:37:25 22 one? Hudson or Sophia?</p> <p>15:37:25 23 A. Sophia Palmer.</p> <p>15:37:26 24 Q. Okay. So Exhibit 14, that sentence -- or</p> <p>15:37:30 25 couple of sentences is removed, correct?</p>	<p>15:39:01 1 If you could read the second sentence for me,</p> <p>15:39:09 2 A. (Reading) A prior letter advised the board of</p> <p>15:39:13 3 directors of deteriorating financial condition and</p> <p>15:39:15 4 admonished the board and management to consider a</p> <p>15:39:18 5 correction plan.</p> <p>15:39:19 6 Q. So did you get this letter?</p> <p>15:39:21 7 A. I don't recall getting this letter.</p> <p>15:39:22 8 Q. So this would be a third example of Uni-Ter not</p> <p>15:39:28 9 sending material correspondence to --</p> <p>15:39:33 10 A. I'm not saying, definitively, I didn't get it.</p> <p>15:39:37 11 I don't recall receiving it.</p> <p>15:39:38 12 Q. So your testimony is that you were shocked and</p> <p>15:39:42 13 stunned at certain events that transpired right around</p> <p>15:39:49 14 the same time. But you don't recall, at all, seeing</p> <p>15:39:52 15 this letter?</p> <p>15:39:54 16 MS. OCHOA: Objection. Form.</p> <p>15:39:55 17 A. No.</p> <p>15:39:55 18 Q. (BY MR. CEREGHINO) So assume for me that you</p> <p>15:40:01 19 did see this letter and you read that second sentence.</p> <p>15:40:05 20 What would you have done?</p> <p>15:40:06 21 A. I would've --</p> <p>15:40:07 22 MR. WILSON: Object to the form.</p> <p>15:40:09 23 MS. OCHOA: Join.</p> <p>15:40:10 24 A. I, along with the board, likely would've</p> <p>15:40:12 25 demanded action by Uni-Ter to recommend actions that</p>

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<p>15:40:17 1 would correct these deficiencies, and whether they</p> <p>15:40:19 2 could be corrected.</p> <p>15:40:21 3 Q. (BY MR. CEREGHINO) And, again, assume you</p> <p>15:40:29 4 received this letter, but not the prior letters. What</p> <p>15:40:31 5 would you do about the language "a prior letter was</p> <p>15:40:34 6 sent to the board"?</p> <p>15:40:35 7 MR. WILSON: Same objection.</p> <p>15:40:37 8 MS. OCHOA: Join.</p> <p>15:40:37 9 A. I would've said, Why didn't I receive that</p> <p>15:40:41 10 letter, and what did that letter say?</p> <p>15:40:43 11 Q. (BY MR. CEREGHINO) Okay. And under the</p> <p>15:40:47 12 management agreement, would this be a terminating -- or</p> <p>15:40:53 13 terminable offense -- not providing correspondence of</p> <p>15:40:57 14 this type in a timely fashion to the Lewis & Clark</p> <p>15:41:00 15 board?</p> <p>15:41:01 16 MS. OCHOA: Objection. Form.</p> <p>15:41:02 17 MR. WILSON: Same objection.</p> <p>15:41:03 18 A. It could be, had we discovered that.</p> <p>15:41:08 19 MR. CEREGHINO: Why don't we just take a</p> <p>15:41:24 20 few-minute break so I can organize here.</p> <p>15:41:27 21 THE VIDEOGRAPHER: Off the record at 3:41.</p> <p>15:41:31 22 (Recess taken.)</p> <p>15:41:31 23 THE VIDEOGRAPHER: We are back on the</p> <p>15:47:40 24 record at 3:47.</p> <p>15:47:49 25 EXAMINATION</p>	<p>15:49:16 1 A. Right.</p> <p>15:49:17 2 Q. So is it your testimony that for a single-day</p> <p>15:49:20 3 meeting minute, it was about an eight-hour event?</p> <p>15:49:24 4 A. Probably more like five or six hours.</p> <p>15:49:27 5 Q. Okay. And am I correct in assuming that</p> <p>15:49:34 6 different topics probably had different lengths of</p> <p>15:49:38 7 discussion?</p> <p>15:49:39 8 A. Correct.</p> <p>15:49:40 9 Q. Okay. How short would the shortest topic be?</p> <p>15:49:47 10 A. Generally, the marketing report would be</p> <p>15:49:53 11 relatively short. Keep in mind that a lot of materials</p> <p>15:49:58 12 were produced for board review prior to the meeting.</p> <p>15:50:02 13 So the expectation was the board members had all</p> <p>15:50:04 14 reviewed those materials in advance. So something like</p> <p>15:50:08 15 marketing didn't take a lot of time to present. Also,</p> <p>15:50:12 16 the risk management report typically was not lengthy,</p> <p>15:50:16 17 unless there were particular problems that cropped up</p> <p>15:50:20 18 from those reviews.</p> <p>15:50:22 19 Q. What are we talking? Ten minutes? 15? An</p> <p>15:50:26 20 hour?</p> <p>15:50:26 21 A. Probably 20 minutes to 30 minutes would be the</p> <p>15:50:30 22 shortest report --</p> <p>15:50:31 23 Q. Okay.</p> <p>15:50:32 24 A. -- from a Uni-Ter member on their topic area.</p> <p>15:50:38 25 Q. And a more lengthy one would be three hours?</p>
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<p>15:47:50 1 BY MR. CEREGHINO:</p> <p>15:47:50 2 Q. All right. So if you could turn to Exhibit 42,</p> <p>15:47:54 3 which is the May 14 - 15, 2009, meeting minutes,</p> <p>15:47:57 4 I just want to talk, sort of generically,</p> <p>15:48:01 5 about meeting minutes. First of all, do you have any</p> <p>15:48:07 6 problem with the accuracy of meeting minutes?</p> <p>15:48:12 7 A. No.</p> <p>15:48:12 8 Q. And if we look at this particular one, we see</p> <p>15:48:18 9 it was a meeting of the board of directors held,</p> <p>15:48:23 10 beginning at 5 p.m. on May 14th, continuing at 8 a.m.</p> <p>15:48:27 11 on May 15th, so -- and then I would note -- and please</p> <p>15:48:35 12 correct me if I'm wrong -- is there a -- anywhere in</p> <p>15:48:40 13 here an indication of stop times, end times, for your</p> <p>15:48:43 14 meetings?</p> <p>15:48:44 15 A. I don't believe those were noted in the</p> <p>15:48:47 16 minutes.</p> <p>15:48:47 17 Q. So -- but am I correct, in that you did not</p> <p>15:48:52 18 meet from 5 p.m., all the way through the remainder of</p> <p>15:48:58 19 the 15th?</p> <p>15:48:59 20 A. That is correct. Typically, we'd meet for a</p> <p>15:49:03 21 couple of hours on a couple of the topics, break for</p> <p>15:49:06 22 dinner, reconvene the next morning at 8 a.m., and go</p> <p>15:49:09 23 for another four or five hours.</p> <p>15:49:11 24 Q. Okay. So that was the -- that's in the context</p> <p>15:49:13 25 of a multi-day meeting, correct?</p>	<p>15:50:40 1 Four hours?</p> <p>15:50:41 2 A. Claims -- no, I wouldn't -- none of the topics</p> <p>15:50:46 3 would occupy that much time. I'd say claims would be</p> <p>15:50:50 4 an hour and a half, kind of average, I would say.</p> <p>15:50:55 5 Q. So we're talking -- correct me if I'm wrong.</p> <p>15:50:57 6 Your answers relate to the recurring topic areas?</p> <p>15:51:04 7 A. Correct. Financial statement review is another</p> <p>15:51:07 8 one that could take an hour, going through those.</p> <p>15:51:09 9 There were different, obviously, reports, specific to</p> <p>15:51:15 10 each meeting, that may not have occurred at every</p> <p>15:51:17 11 meeting. For example, a merger opportunity or a</p> <p>15:51:21 12 reinsurance opportunity, whatever.</p> <p>15:51:23 13 Q. Sure. Well, that's -- you know, now to get</p> <p>15:51:26 14 specific, looking at the second page, Bullet 10, it</p> <p>15:51:29 15 says: The board considered, at length, the prospect of</p> <p>15:51:33 16 merging Sophia Palmer.</p> <p>15:51:36 17 A. Correct.</p> <p>15:51:37 18 Q. So what does "at length" mean?</p> <p>15:51:39 19 A. I suspect that was several hours, in that case.</p> <p>15:51:47 20 I mean, we had a two-day meeting here, so there was</p> <p>15:51:50 21 time to do that.</p> <p>15:51:52 22 Q. And it says: The board approved the concept of</p> <p>15:51:57 23 the merger in principle, subject to receipt of further</p> <p>15:51:59 24 relevant information.</p> <p>15:52:02 25 Do you see that?</p>

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<p>15:52:03 1 A. Yes.</p> <p>15:52:03 2 Q. Do you recall the further relevant information</p> <p>15:52:07 3 that the board wanted?</p> <p>15:52:09 4 A. I would have to know what was provided to the</p> <p>15:52:13 5 board in advance, to know what else we might have</p> <p>15:52:16 6 provided. But we would have wanted to make sure we</p> <p>15:52:18 7 reviewed all financial data, any projections for the</p> <p>15:52:22 8 next year, also loss data, and information about state</p> <p>15:52:28 9 licensure requirements. Because not every state</p> <p>15:52:32 10 required nurses to have -- in fact, there were a number</p> <p>15:52:35 11 of states that didn't require nurses to have insurance.</p> <p>15:52:38 12 And we were, I know, very interested in what that</p> <p>15:52:41 13 perspective business might look like, if we were to</p> <p>15:52:45 14 expand it in different states.</p> <p>15:52:47 15 Q. And we'll go through a more detailed chronology</p> <p>15:52:51 16 of events tomorrow for Sophia. But just real quick, do</p> <p>15:52:54 17 you recall ever getting additional information from</p> <p>15:52:58 18 Uni-Ter?</p> <p>15:52:58 19 A. I believe we did. I don't -- again, without</p> <p>15:53:02 20 knowing what was provided ahead of time -- know what</p> <p>15:53:05 21 that additional information was. But I'm sure we did</p> <p>15:53:08 22 get what we needed.</p> <p>15:53:10 23 Q. So assuming you did, would that have come in</p> <p>15:53:13 24 written form or merely --</p> <p>15:53:16 25 A. It would've been emailed, attachments to email.</p>	<p>15:54:37 1 for Lewis & Clark in Nevada.</p> <p>15:54:41 2 Q. Actually, thank you for reminding me about</p> <p>15:54:47 3 that. If you go to Exhibit 42 again, do you see</p> <p>15:54:53 4 Constance Alridge identified as one of the attendees?</p> <p>15:54:57 5 A. Yes.</p> <p>15:54:58 6 Q. We also see Curtis Sitterson as an attendee?</p> <p>15:55:02 7 A. Yes.</p> <p>15:55:03 8 Q. What was Constance's -- well, we know her as</p> <p>15:55:07 9 Connie. What was Connie's role at this meeting?</p> <p>15:55:10 10 A. To advise of what she might do in</p> <p>15:55:18 11 communication -- or what would be required for</p> <p>15:55:20 12 communication and approval -- communication with and</p> <p>15:55:24 13 approval from the Division of Insurance for such a</p> <p>15:55:26 14 merger.</p> <p>15:55:29 15 Q. And what was Mr. Sitterson's role?</p> <p>15:55:33 16 A. General counsel for Lewis & Clark.</p> <p>15:55:37 17 Q. So he was -- so she was not in that -- in the</p> <p>15:55:41 18 capacity of advising on the specifics of the merger</p> <p>15:55:44 19 with Sophia Palmer at this time?</p> <p>15:55:48 20 A. Well, she was there to discuss with us the</p> <p>15:55:51 21 merger and the legal and regulatory requirements</p> <p>15:55:55 22 associated with that process.</p> <p>15:55:56 23 Q. Okay. And Mr. Sitterson was, as well?</p> <p>15:55:59 24 A. As general counsel, he had obviously an</p> <p>15:56:03 25 interest in that process, too.</p>
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<p>15:53:19 1 Q. So a writing? Some sort of writing?</p> <p>15:53:22 2 A. Yes.</p> <p>15:53:22 3 Q. Not just an oral representation?</p> <p>15:53:23 4 A. Correct.</p> <p>15:53:24 5 Q. So if the documents to date reflect no</p> <p>15:53:28 6 additional written information provided, then can I</p> <p>15:53:33 7 assume that you, in fact, did not get additional</p> <p>15:53:37 8 information?</p> <p>15:53:39 9 MS. OCHOA: Objection. Form.</p> <p>15:53:39 10 MR. WILSON: Object to the form.</p> <p>15:53:41 11 A. Correct.</p> <p>15:53:41 12 Q. (BY MR. CEREGHINO) Okay. You know what?</p> <p>15:53:43 13 Maybe we'll dive into Sophia Palmer right now.</p> <p>15:54:05 14 So there was an exhibit shown to you earlier</p> <p>15:54:07 15 about information given to the Nevada Division of</p> <p>15:54:11 16 Insurance to approve the merger with Sophia Palmer. Do</p> <p>15:54:14 17 you recall that?</p> <p>15:54:15 18 A. Yes.</p> <p>15:54:15 19 Q. Do you recall what information was given to the</p> <p>15:54:17 20 Division of Insurance?</p> <p>15:54:18 21 A. Not without rereading that letter.</p> <p>15:54:21 22 Q. Do you recall who would've given it to the</p> <p>15:54:32 23 Division of Insurance? Was that Uni-Ter or direct from</p> <p>15:54:34 24 the board?</p> <p>15:54:35 25 A. I believe it was Constance Alridge, the counsel</p>	<p>15:56:04 1 Q. And was Mr. Sitterson also counsel for Sophia</p> <p>15:56:07 2 Palmer?</p> <p>15:56:08 3 A. I do not recall that.</p> <p>15:56:11 4 Q. Would you have a problem if he was?</p> <p>15:56:16 5 A. Not necessarily, assuming typical legal</p> <p>15:56:24 6 conflicts had been cleared.</p> <p>15:56:26 7 Q. Had been cleared in advance, correct?</p> <p>15:56:29 8 A. Correct.</p> <p>15:56:30 9 Q. Do you recall, off the top of your head,</p> <p>15:57:00 10 when -- the first time the Sophia merger was raised as</p> <p>15:57:03 11 an opportunity?</p> <p>15:57:03 12 A. I don't recall that. I'm sorry.</p> <p>15:57:05 13 Q. If I said, April 8th, 2009, would that ring a</p> <p>15:57:34 14 bell?</p> <p>15:57:34 15 A. Not specifically. It's within a reasonable</p> <p>15:57:38 16 time frame of the board meeting where we discussed it,</p> <p>15:57:42 17 so --</p> <p>15:57:43 18 Q. I don't see it in here as a meeting minute.</p> <p>15:57:49 19 I'll have to add it as an exhibit tomorrow.</p> <p>15:57:52 20 But if you'd take a look at Exhibit 43, and go</p> <p>15:57:56 21 ahead and take a look at it. And when you're done, why</p> <p>15:58:23 22 don't you tell me what -- what it is to you.</p> <p>15:58:26 23 A. It's a communication to the board relaying an</p> <p>15:58:31 24 attachment that purports to be a summary of the Sophia</p> <p>15:58:36 25 Palmer financial situation and the proposal for the</p>

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<p>15:58:41 1 merger, and that we would be receiving financial data.</p> <p>15:58:45 2 Q. Okay. And so you see the attachment. It says:</p> <p>15:58:57 3 SPNRRG financial notes.dat.</p> <p>15:59:01 4 Do you see that?</p> <p>15:59:02 5 A. Yes.</p> <p>15:59:03 6 Q. And what is SPNRRG?</p> <p>15:59:06 7 A. I assume that's Sophia Palmer Nursing Risk</p> <p>15:59:09 8 Retention Group, financial notes.</p> <p>15:59:12 9 Q. And if you turn to the next page, is that the</p> <p>15:59:23 10 attachment that was sent with this email?</p> <p>15:59:25 11 A. It looks like it would be. Although, I don't</p> <p>15:59:33 12 know specifically.</p> <p>15:59:34 13 Q. Okay. And the BD, at the bottom, with the</p> <p>15:59:40 14 Bates-numbering reference, is a production by the board</p> <p>15:59:42 15 group of defendants. So I'll represent to you that it</p> <p>15:59:46 16 is the attachment that was --</p> <p>15:59:48 17 A. Okay.</p> <p>15:59:49 18 Q. -- included with this email.</p> <p>15:59:51 19 So for purposes of a merger, is this adequate?</p> <p>15:59:54 20 A. I don't see this as the sum total of all due</p> <p>16:00:00 21 diligence that a board would review for the merger, but</p> <p>16:00:03 22 just an initial summary for our review, understanding</p> <p>16:00:07 23 that there would be more information forthcoming.</p> <p>16:00:10 24 Q. Correct. But as it stands, this document, by</p> <p>16:00:12 25 itself, we can agree, there's no disputed, would not</p>	<p>16:02:09 1 A. I see. Yes.</p> <p>16:02:12 2 Q. Okay. I'm just trying to establish that this</p> <p>16:02:15 3 three-page chain starts at the same substantive point.</p> <p>16:02:20 4 Do you buy that?</p> <p>16:02:21 5 A. Yes.</p> <p>16:02:23 6 Q. Okay. So if we move up the chain, we see</p> <p>16:02:31 7 Mr. Steve Fogg sends an email the same day, April 27,</p> <p>16:02:37 8 2009, to Sandy.</p> <p>16:02:44 9 (Reading) I reviewed the attachment and have</p> <p>16:02:47 10 the following questions/comments related to this</p> <p>16:02:50 11 possible merger.</p> <p>16:02:52 12 So I'm guessing the -- he didn't have a time</p> <p>16:02:54 13 machine, and that it must have been the time</p> <p>16:02:56 14 difference, west coast to east coast, that he was able</p> <p>16:03:00 15 to review the attachment and send his comments to</p> <p>16:03:03 16 Sandy?</p> <p>16:03:05 17 A. Yeah. I suspect it's 12:01 p.m. Pacific time,</p> <p>16:03:07 18 where he's headquartered, versus Eastern time.</p> <p>16:03:11 19 Q. The Georgia headquarters of Uni-Ter?</p> <p>16:03:13 20 A. Exactly.</p> <p>16:03:15 21 Q. Okay.</p> <p>16:03:15 22 (Reading) I reviewed the attachment -- meaning</p> <p>16:03:17 23 this one-page notes document. Do you follow me?</p> <p>16:03:21 24 A. Yes.</p> <p>16:03:21 25 Q. -- and have the following questions/comments.</p>
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<p>16:00:14 1 serve as an appropriate basis for making a merger</p> <p>16:00:17 2 decision?</p> <p>16:00:19 3 A. Not by itself.</p> <p>16:00:21 4 Q. So if you turn to the next page in that</p> <p>16:00:29 5 sequence, the third page, at the bottom, you'll see a</p> <p>16:00:34 6 different sequence of Bates numbers, BD 0005437 through</p> <p>16:00:38 7 39.</p> <p>16:00:39 8 What I'd first like to do is draw your</p> <p>16:00:45 9 attention to page 39, at the very bottom, and if you</p> <p>16:00:50 10 can do a side-by-side with page 1, and tell me if that</p> <p>16:00:58 11 looks to be the same email.</p> <p>16:01:04 12 MR. WILSON: Page 1 of what?</p> <p>16:01:06 13 MR. CEREGHINO: The same exhibit,</p> <p>16:01:07 14 BD 0002319, the first page we were looking at.</p> <p>16:01:10 15 MR. WILSON: Got you.</p> <p>16:01:13 16 A. It appears to be.</p> <p>16:01:44 17 Q. (BY MR. CEREGHINO) The only difference, of</p> <p>16:01:44 18 course, being -- well, there's two differences. One</p> <p>16:01:46 19 was sent -- the one on -- 5439 was sent at 6:44 a.m. by</p> <p>16:01:52 20 Mr. Elsass, and the one -- 2319 was sent at 1:44 p.m.</p> <p>16:01:58 21 on the same day. Do you see that?</p> <p>16:02:00 22 A. Yes, I do.</p> <p>16:02:02 23 Q. And that's because the first time Mr. Elsass</p> <p>16:02:03 24 sent it, he did not send the notes attachment. Do you</p> <p>16:02:08 25 see that?</p>	<p>16:03:23 1 And do you see he has several questions? Do</p> <p>16:03:29 2 you see that?</p> <p>16:03:31 3 A. Yes.</p> <p>16:03:31 4 Q. Okay. And if we keep going up the chain, we</p> <p>16:03:35 5 then have, a couple hours later, Rick, at Oneida -- and</p> <p>16:03:40 6 that's Mr. Stickels?</p> <p>16:03:41 7 A. Yes.</p> <p>16:03:42 8 Q. A fellow board member, correct?</p> <p>16:03:45 9 A. Yes.</p> <p>16:03:45 10 Q. And he says: All very pertinent questions --</p> <p>16:03:49 11 referring to Steve's list of five detailed questions,</p> <p>16:03:56 12 with subparts -- All very pertinent questions to</p> <p>16:03:59 13 consider.</p> <p>16:04:00 14 Then he says: I would add that when an</p> <p>16:04:04 15 opportunity is presented, it is certainly in the</p> <p>16:04:06 16 board's fiduciary diligence to consider the opportunity</p> <p>16:04:09 17 and have a complete understanding of the possible</p> <p>16:04:11 18 transaction.</p> <p>16:04:12 19 Do you see that?</p> <p>16:04:13 20 A. Yes.</p> <p>16:04:13 21 Q. Okay. And do you agree with that sentence?</p> <p>16:04:16 22 A. Yes.</p> <p>16:04:19 23 Q. Okay. And by "fiduciary diligence," is it fair</p> <p>16:04:24 24 to insert a synonym there, "fiduciary duty"?</p> <p>16:04:29 25 MS. OCHOA: Objection. Form.</p>

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<p>16:04:32 1 MR. WILSON: Same objection.</p> <p>16:04:32 2 A. Yes.</p> <p>16:04:33 3 Q. (BY MR. CEREGHINO) And it's not a debatable</p> <p>16:04:38 4 point. Mr. Stickels uses the word "certainly." Do you</p> <p>16:04:43 5 see that? And do you agree with that?</p> <p>16:04:46 6 A. Yes.</p> <p>16:04:46 7 Q. Okay. And then if we go up the chain, from</p> <p>16:04:55 8 eaglechalet@hotmail, I believe -- correct me if I'm</p> <p>16:05:01 9 wrong --</p> <p>16:05:02 10 A. That's mine.</p> <p>16:05:02 11 Q. -- that refers to Eagle?</p> <p>16:05:04 12 A. Yes.</p> <p>16:05:04 13 Q. And that's your -- that's from you personally?</p> <p>16:05:07 14 A. Yes.</p> <p>16:05:07 15 Q. (Reading) Excellent questions, Steve. I would</p> <p>16:05:09 16 add that, regardless of the manner in which Lewis &</p> <p>16:05:16 17 Clark -- it's actually "L&C," but "L&C" refers to Lewis</p> <p>16:05:22 18 & Clark, right?</p> <p>16:05:22 19 A. Correct.</p> <p>16:05:22 20 Q. -- might enter the home health liability market</p> <p>16:05:24 21 (merger, start-up, et cetera), we should evaluate</p> <p>16:05:29 22 whether the potential for this market around the</p> <p>16:05:31 23 country -- particularly in states in which Lewis &</p> <p>16:05:34 24 Clark currently insures SNFs -- skilled nursing</p> <p>16:05:38 25 facilities; is that correct?</p>	<p>16:07:32 1 Subject to receipt of further relevant information.</p> <p>16:07:38 2 Do you recall receiving responses to the</p> <p>16:07:39 3 questions that Mr. Fogg posed in between those two</p> <p>16:07:46 4 dates?</p> <p>16:07:46 5 A. I don't know if they came in between or</p> <p>16:07:48 6 subsequent to the board meeting, but I think we did get</p> <p>16:07:51 7 them.</p> <p>16:07:51 8 Q. Okay. Sorry for jumping around on you.</p> <p>16:08:04 9 If you go back to 43, that notes document,</p> <p>16:08:11 10 Bullet 1 says: Surplus Note - Ponce is owed --</p> <p>16:08:19 11 "owned," but it's, I believe, "owed" --</p> <p>16:08:22 12 A. Typo.</p> <p>16:08:23 13 Q. -- right?</p> <p>16:08:23 14 -- 758,000, but will accept 500,000 in</p> <p>16:08:28 15 satisfaction.</p> <p>16:08:28 16 So this is the Ponce entity that is also</p> <p>16:08:31 17 managed by Uni-Ter?</p> <p>16:08:32 18 A. Correct.</p> <p>16:08:33 19 Q. And they provided a surplus note to Sophia</p> <p>16:08:39 20 Palmer in -- and are owed 758,000 on that note; is that</p> <p>16:08:44 21 correct?</p> <p>16:08:45 22 A. Yes.</p> <p>16:08:45 23 Q. But it says here that they're willing to take a</p> <p>16:08:49 24 discount, 66 cents on the dollar, about?</p> <p>16:08:52 25 A. Yes.</p>
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<p>16:05:39 1 A. Correct.</p> <p>16:05:39 2 Q. -- creates a compelling reason for L&C to</p> <p>16:05:42 3 invest. (As one small example, I'm not aware that</p> <p>16:05:48 4 liability issues exist in Pacific Northwest home health</p> <p>16:05:52 5 markets but would be interested in dynamics that might</p> <p>16:05:56 6 change the picture.)</p> <p>16:05:57 7 Do you see that?</p> <p>16:05:58 8 A. Yes.</p> <p>16:05:58 9 Q. Okay. And so as of April 27, 2009, would you</p> <p>16:06:06 10 agree with me that you, Mr. Stickels, and Mr. Fogg, at</p> <p>16:06:12 11 least, all have remaining questions as to the</p> <p>16:06:18 12 appropriateness of this merger transaction?</p> <p>16:06:21 13 A. And about supporting documentation, yes.</p> <p>16:06:26 14 Q. Okay. And by the way, we see here -- if you go</p> <p>16:06:30 15 back down to Mr. Stickels' email, his parenthetical, at</p> <p>16:06:35 16 the very end: (as the attachment sent was a one-page,</p> <p>16:06:41 17 quote/unquote, "notes" page, without the referenced</p> <p>16:06:45 18 financials.)</p> <p>16:06:46 19 And that's this document, Bates BD 2320.</p> <p>16:06:49 20 A. Agreed. And I took that as an implication,</p> <p>16:06:54 21 he's not accepting this as documentation for the deal</p> <p>16:06:59 22 either, by itself.</p> <p>16:07:01 23 Q. Okay. So if we go back to 42, I believe it is,</p> <p>16:07:12 24 May 14 - 15, '09, which is two weeks after the April</p> <p>16:07:28 25 27th emails we were just looking at, and it says:</p>	<p>16:08:53 1 Q. Do you know why?</p> <p>16:08:57 2 A. Well, I imagine -- I don't know the answer. I</p> <p>16:09:02 3 can speculate.</p> <p>16:09:04 4 Q. If you look at Bullet 3, especially subpart</p> <p>16:09:19 5 (b): Prepaid expenses and other assets of 88,000 --</p> <p>16:09:24 6 88K -- and you understand the "K" to be thousands?</p> <p>16:09:26 7 A. Yes.</p> <p>16:09:27 8 Q. -- is principally the computer software for</p> <p>16:09:29 9 online system for Palmer.</p> <p>16:09:30 10 And "Palmer" refers to Sophia Palmer, correct?</p> <p>16:09:33 11 A. Correct.</p> <p>16:09:36 12 Q. So is this Uni-Ter, in a very summarized</p> <p>16:09:42 13 fashion, telling Lewis & Clark that they would, as part</p> <p>16:09:46 14 of the deal to acquire Sophia Palmer, obtain an asset,</p> <p>16:09:51 15 roughly, 80-something thousand, for a computer system?</p> <p>16:09:55 16 MR. WILSON: Objection. Object to the</p> <p>16:09:57 17 form.</p> <p>16:09:57 18 A. Part of the assets? Yes.</p> <p>16:10:00 19 Q. (BY MR. WILSON) And then 44 is the meeting</p> <p>16:10:37 20 minutes of May 28, 2009. Do you see that?</p> <p>16:10:45 21 A. Yes.</p> <p>16:10:49 22 Q. And Bullet 1 says that the board, upon</p> <p>16:10:55 23 Uni-Ter's recommendations, approved the merger with</p> <p>16:10:58 24 Sophia Palmer.</p> <p>16:11:00 25 Do you see that?</p>

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<p>16:11:01 1 MR. WILSON: What number is that, please?</p> <p>16:11:03 2 MR. CEREGHINO: 44.</p> <p>16:11:04 3 A. Yes. And I also notice the conflict issue with</p> <p>16:11:09 4 Mr. Sitterson is addressed.</p> <p>16:11:12 5 Q. (BY MR. CEREGHINO) It's addressed on May 28th,</p> <p>16:11:14 6 right? But we did not see it addressed on May 14th or</p> <p>16:11:19 7 15th, correct?</p> <p>16:11:20 8 A. I did not see it then, no.</p> <p>16:11:22 9 Q. And you don't recall anyone raising it, do you,</p> <p>16:11:24 10 at the time -- May 14th or May 15th?</p> <p>16:11:27 11 A. I don't recall.</p> <p>16:11:28 12 Q. And you don't recall, as you sit here today,</p> <p>16:11:30 13 receiving the additional information -- relevant</p> <p>16:11:41 14 information that the board had expressly requested in</p> <p>16:11:45 15 the May 14th - 15th minutes?</p> <p>16:11:47 16 A. I don't specifically recall what information we</p> <p>16:11:49 17 might have received.</p> <p>16:11:51 18 MR. CEREGHINO: Sorry, Jon. What, if you</p> <p>16:12:28 19 recall, exhibit was the Milliman report that we looked</p> <p>16:12:31 20 at?</p> <p>16:12:33 21 MR. WILSON: Which one?</p> <p>16:12:35 22 MR. CEREGHINO: The Milliman report with</p> <p>16:12:35 23 the cautionary language. If you don't recall, I can --</p> <p>16:12:39 24 I marked it as one of these. PII --</p> <p>16:12:42 25 MR. WILSON: There's two Milliman reports.</p>	<p>16:14:17 1 next page, under Relevant Comments, do you see the</p> <p>16:14:24 2 heading Risk of Material Adverse Deviation?</p> <p>16:14:27 3 A. Yes.</p> <p>16:14:28 4 Q. Do you know what that means?</p> <p>16:14:29 5 A. He's addressing the risk that there can be</p> <p>16:14:34 6 deviation. In a statistical sense, it's almost like,</p> <p>16:14:38 7 you know, statistical deviation from a mean. It's that</p> <p>16:14:46 8 type of analysis.</p> <p>16:14:48 9 Q. Are you familiar with terms of art in the</p> <p>16:14:55 10 actuarial setting?</p> <p>16:14:59 11 A. Only enough to be dangerous. I'm not an</p> <p>16:15:03 12 expert, by any means.</p> <p>16:15:05 13 Q. Okay. So if -- so in this -- these sequence of</p> <p>16:15:07 14 paragraphs, under the heading Risk of Material Adverse</p> <p>16:15:09 15 Deviation, does that fall under that category of</p> <p>16:15:15 16 knowing only enough to be dangerous and doesn't --</p> <p>16:15:18 17 don't really know what Mr. Lord is saying or not saying</p> <p>16:15:21 18 here?</p> <p>16:15:22 19 MR. WILSON: Object to the form of the</p> <p>16:15:23 20 question.</p> <p>16:15:24 21 MS. OCHOA: Join.</p> <p>16:15:24 22 A. I think I understand the context of what he's</p> <p>16:15:26 23 saying. But the specific analysis is very highly</p> <p>16:15:30 24 technical, and that's out of my league.</p> <p>16:15:34 25 Q. (BY MR. CEREGHINO) And so are you aware of --</p>
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<p>16:12:45 1 MR. CEREGHINO: Actually, I found it.</p> <p>16:12:47 2 Thanks, though.</p> <p>16:12:48 3 Q. (BY MR. CEREGHINO) Exhibit 59. If you can</p> <p>16:12:51 4 take a look at Exhibit 59. And I believe there was</p> <p>16:13:05 5 previous discussion with Mr. Wilson about some</p> <p>16:13:15 6 cautionary or caveat language inserted by Mr. Lord on</p> <p>16:13:22 7 page 1 of 9, MI, underscore, et cetera, et cetera,</p> <p>16:13:28 8 4531. Do you recall that?</p> <p>16:13:31 9 A. Correct.</p> <p>16:13:31 10 Q. And if you could just refresh me again. What</p> <p>16:13:36 11 was the caveat that Mr. Lord was making here?</p> <p>16:13:39 12 A. That he relied upon the accuracy and</p> <p>16:13:43 13 completeness of data supplied by Uni-Ter in forming his</p> <p>16:13:46 14 conclusions.</p> <p>16:13:47 15 Q. Have you heard the phrase, "garbage in, garbage</p> <p>16:13:52 16 out"?</p> <p>16:13:52 17 A. I have.</p> <p>16:13:53 18 Q. And I don't -- I'm not suggesting, necessarily,</p> <p>16:13:57 19 that that's what happened here. But is it possible</p> <p>16:13:59 20 that what Mr. Lord is saying, in a nutshell, is, I was</p> <p>16:14:02 21 given certain information, and depending on the quality</p> <p>16:14:07 22 of that information, my end result is affected thereby?</p> <p>16:14:13 23 MR. WILSON: Object to the form.</p> <p>16:14:15 24 A. I agree.</p> <p>16:14:16 25 Q. (BY MR. WILSON) Okay. So if you turn to the</p>	<p>16:15:38 1 if an actuary inserts certain language into a report,</p> <p>16:15:46 2 what additional language or documents or other acts by</p> <p>16:15:55 3 the actuary are typical in the industry when one sees</p> <p>16:16:00 4 certain terms of art?</p> <p>16:16:03 5 MR. WILSON: Object to the form.</p> <p>16:16:04 6 A. I'm not used to reading actuarial reports.</p> <p>16:16:08 7 That's why I can't say that I'm an expert in this. But</p> <p>16:16:12 8 I understand English. And if he's saying that there's</p> <p>16:16:16 9 something that lends credence to what he's saying or</p> <p>16:16:25 10 lends doubt to what he's saying, I think I would</p> <p>16:16:29 11 recognize that.</p> <p>16:16:30 12 Q. (BY MR. CEREGHINO) Okay.</p> <p>16:16:31 13 A. I also recognize that whether it's in an</p> <p>16:16:33 14 actuarial context, a financial statement context, risks</p> <p>16:16:40 15 are commonly discussed.</p> <p>16:16:43 16 Q. And there's --</p> <p>16:16:46 17 A. It does not necessarily mean there's an error</p> <p>16:16:48 18 in the statements being presented.</p> <p>16:16:51 19 Q. Sure. An issue that arises is different kinds</p> <p>16:16:55 20 of risks?</p> <p>16:16:56 21 A. Correct.</p> <p>16:16:56 22 Q. Right. For example, auto insurance risk is</p> <p>16:16:59 23 different than long-term care facility risk; is that</p> <p>16:17:03 24 fair?</p> <p>16:17:04 25 A. Sure.</p>

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<p>16:17:04 1 Q. Okay. And would you agree with me, that even</p> <p>16:17:10 2 within long-term care facility -- in that sector, there</p> <p>16:17:17 3 are different risk levels?</p> <p>16:17:19 4 MS. OCHOA: Objection. Form.</p> <p>16:17:23 5 MR. WILSON: Objection.</p> <p>16:17:23 6 A. Yes.</p> <p>16:17:24 7 Q. (BY MR. CEREGHINO) For example, Lewis & Clark</p> <p>16:17:28 8 was premised on the notion of high-quality, low-risk,</p> <p>16:17:34 9 operators banding together to protect themselves. But</p> <p>16:17:40 10 within the same long-term care sector, there were</p> <p>16:17:43 11 high-risk, low-quality operators; is that fair?</p> <p>16:17:49 12 A. Yes.</p> <p>16:17:51 13 Q. And Country Villa, is that -- would that fall</p> <p>16:17:56 14 into the high-risk, low-quality?</p> <p>16:17:59 15 MR. WILSON: Object to the form.</p> <p>16:18:02 16 A. From the adverse claim history, I can say that</p> <p>16:18:06 17 they were high risk, not necessarily low quality. And</p> <p>16:18:09 18 there were compensating factors that allowed us to</p> <p>16:18:13 19 write their insurance.</p> <p>16:18:13 20 Q. (BY MR. CEREGHINO) Okay. Do you know if the</p> <p>16:18:17 21 differences in the claims histories would have an</p> <p>16:18:22 22 impact on what Mr. Milliman -- what Mr. Lord's analysis</p> <p>16:18:26 23 would be with respect to Lewis & Clark's financials?</p> <p>16:18:31 24 MR. WILSON: Object to the form.</p> <p>16:18:32 25 A. Can you repeat that question?</p>	<p>16:19:52 1 question.</p> <p>16:19:53 2 MS. OCHOA: Join.</p> <p>16:19:53 3 MR. WILSON: Calls for pure speculation.</p> <p>16:19:56 4 A. Agreed.</p> <p>16:19:58 5 Q. (BY MR. CEREGHINO) With me?</p> <p>16:19:59 6 A. Yes.</p> <p>16:19:59 7 Q. Okay. Thank you.</p> <p>16:20:04 8 So there was a little discussion earlier, too,</p> <p>16:20:12 9 about whether or not there was underreserving or</p> <p>16:20:17 10 overreserving at Lewis & Clark. What is your position</p> <p>16:20:20 11 on that?</p> <p>16:20:22 12 MR. WILSON: Object to the question as</p> <p>16:20:25 13 framed.</p> <p>16:20:26 14 A. Well, obviously, at some point, there was</p> <p>16:20:28 15 underreserving, which necessitated some large increases</p> <p>16:20:31 16 to the reserves in the 2011 time period.</p> <p>16:20:35 17 Q. (BY MR. CEREGHINO) And we know that for a</p> <p>16:20:38 18 number of reasons, right? One being, Sandy Elsass told</p> <p>16:20:43 19 you Lewis & Clark was underreserved, correct?</p> <p>16:20:46 20 A. He told us that there were -- there was a</p> <p>16:20:49 21 requirement to add reserves as of June 30, and again as</p> <p>16:20:55 22 of December -- in the December time frame.</p> <p>16:21:00 23 Q. And if we have to add reserves, doesn't that</p> <p>16:21:04 24 mean it's underreserved?</p> <p>16:21:08 25 MR. WILSON: Object to the question as</p>
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<p>16:18:34 1 Q. (BY MR. CEREGHINO) Sure. So Mr. Lord is</p> <p>16:18:35 2 retained, on an annual basis, to provide an assessment,</p> <p>16:18:40 3 from an actuarial standpoint, of risk facing the</p> <p>16:18:44 4 company; is that fair?</p> <p>16:18:45 5 A. Yes.</p> <p>16:18:45 6 Q. Okay. But the risk profile changes, depending</p> <p>16:18:52 7 on what Lewis & Clark does, correct?</p> <p>16:18:55 8 A. Correct.</p> <p>16:18:56 9 Q. Okay.</p> <p>16:18:57 10 A. But in the course of his report, he</p> <p>16:18:59 11 incorporates varying risk levels to reach an overall</p> <p>16:19:04 12 conclusion.</p> <p>16:19:05 13 Q. Okay. So were you part of the process of the</p> <p>16:19:12 14 information that was gathered by Mr. Lord as part of</p> <p>16:19:17 15 his analysis? Or did you just see the end result?</p> <p>16:19:21 16 A. Just saw the end result report. I was not part</p> <p>16:19:24 17 of the --</p> <p>16:19:24 18 Q. Okay.</p> <p>16:19:24 19 A. -- information supplying.</p> <p>16:19:26 20 Q. So if Uni-Ter did not give Mr. Milliman a -- or</p> <p>16:19:32 21 Mr. Lord an appropriate explanation of the different</p> <p>16:19:39 22 types of risk confronting Lewis & Clark, the Milliman</p> <p>16:19:43 23 report would say one thing, but not necessarily reflect</p> <p>16:19:48 24 the accurate -- the accuracies of Lewis & Clark?</p> <p>16:19:52 25 MR. WILSON: Object to the form of the</p>	<p>16:21:09 1 framed.</p> <p>16:21:10 2 A. Generally, that's correct.</p> <p>16:21:11 3 Q. (BY MR. CEREGHINO) In a certain sense, we know</p> <p>16:21:27 4 that, just by the fact that we're sitting here today?</p> <p>16:21:31 5 MS. OCHOA: Objection. Form.</p> <p>16:21:32 6 MR. WILSON: Same objection.</p> <p>16:21:33 7 A. Can you repeat the question?</p> <p>16:21:36 8 Q. (BY MR. CEREGHINO) Sure. We know that Lewis &</p> <p>16:21:38 9 Clark was underreserved, to a certain extent, by the</p> <p>16:21:42 10 collapse of the entity, yes or no?</p> <p>16:21:44 11 MR. WILSON: Object to the question as</p> <p>16:21:46 12 framed.</p> <p>16:21:47 13 A. Correct.</p> <p>16:21:47 14 Q. (BY MR. CEREGHINO) And there was some</p> <p>16:21:51 15 discussion about whether reserving is an art or a</p> <p>16:22:00 16 science or both. But setting that aside, there are</p> <p>16:22:07 17 insurers who are able to accurately estimate reserves,</p> <p>16:22:15 18 yes?</p> <p>16:22:16 19 MR. WILSON: Object to the question as</p> <p>16:22:18 20 framed.</p> <p>16:22:19 21 MS. OCHOA: Join.</p> <p>16:22:21 22 A. I wouldn't have any way to tell that.</p> <p>16:22:22 23 Q. (BY MR. CEREGHINO) The continuing viability of</p> <p>16:22:23 24 a host of insurers doesn't indicate that they have</p> <p>16:22:26 25 figured out how to properly reserve?</p>

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<p>16:22:30 1 MR. WILSON: Objection.</p> <p>16:22:30 2 MS. OCHOA: Objection. Form.</p> <p>16:22:31 3 A. Yes. But similarly, the Ohio Casualty example</p> <p>16:22:35 4 of a company that -- and there were others, such as St.</p> <p>16:22:38 5 Paul Insurance Company, who terminated issuing policies</p> <p>16:22:44 6 in the marketplace because they were underreserved and</p> <p>16:22:47 7 had excessive claims.</p> <p>16:22:49 8 Q. (BY MR. CEREGHINO) Okay. That May 14th and</p> <p>16:23:40 9 15th, 2009, meeting, Exhibit 42, where Ms. Akridge was</p> <p>16:23:47 10 present, do you know if that's the only time she was</p> <p>16:23:56 11 present at a board meeting? Or were there others?</p> <p>16:23:54 12 A. I don't think she was present at only one</p> <p>16:23:57 13 meeting, but I can't recall the others, or other.</p> <p>16:24:01 14 Q. Okay. Fair enough. But you're comfortable</p> <p>16:24:06 15 that she would be identified as an attendee. So all we</p> <p>16:24:09 16 have to do is look at the meeting minutes to tally up</p> <p>16:24:11 17 the number of times she appeared?</p> <p>16:24:14 18 A. Yes.</p> <p>16:24:15 19 MS. OCHOA: Objection. Form.</p> <p>16:24:16 20 Q. (BY MR. CEREGHINO) On the issue of</p> <p>16:24:31 21 reinsurance, what is your understanding of the</p> <p>16:24:34 22 different kinds of reinsurance?</p> <p>16:24:36 23 A. I already testified I'm not an expert in</p> <p>16:24:41 24 reinsurance. But I know that its purpose is to provide</p> <p>16:24:44 25 a layer of insurance above the level that the basic</p>	<p>16:26:25 1 Q. Okay. So it's not, per se, industry specific.</p> <p>16:26:28 2 It's a generic financial --</p> <p>16:26:30 3 A. Correct.</p> <p>16:26:33 4 Q. -- condition?</p> <p>16:26:32 5 A. In financial audits, you'd see it listed as a</p> <p>16:26:36 6 going-concern problem, for example.</p> <p>16:26:38 7 Q. And so I think earlier in your testimony, you</p> <p>16:26:50 8 mentioned different ratios or financial metrics. If</p> <p>16:26:53 9 you wanted to get a quick glance at whether something</p> <p>16:27:02 10 was -- whether an entity was insolvent or not, or</p> <p>16:27:06 11 heading towards insolvency or not, what are some of the</p> <p>16:27:09 12 metrics or ratios you might look at?</p> <p>16:27:12 13 MS. OCHOA: Objection. Form.</p> <p>16:27:14 14 MR. WILSON: Same objection.</p> <p>16:27:14 15 A. I'd look at the surplus. I'd want to know</p> <p>16:27:18 16 whether it was positive, rather than negative. I'd</p> <p>16:27:21 17 look at the operating statements to see whether they</p> <p>16:27:23 18 were net income or net loss. I'd look at the working</p> <p>16:27:26 19 capital, which is current assets minus current</p> <p>16:27:28 20 liabilities, to see if it has the capacity to meet its</p> <p>16:27:32 21 current obligations. Those would be some of the big</p> <p>16:27:34 22 ones. And then I'd look at the leverage, which is the</p> <p>16:27:37 23 long-term debt to total equity.</p> <p>16:27:40 24 Q. (BY MR. CEREGHINO) Okay. Do all of those</p> <p>16:27:41 25 apply to the Lewis & Clark context? Or is that a</p>
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<p>16:24:48 1 insurance company, in this case, Lewis & Clark, is</p> <p>16:24:52 2 comfortable providing within its capital constraints</p> <p>16:24:56 3 and financial capabilities. It's a way of capping</p> <p>16:25:07 4 risk --</p> <p>16:25:07 5 Q. Sure.</p> <p>16:25:08 6 A. -- for the company.</p> <p>16:25:09 7 Q. But you're not aware of the different forms</p> <p>16:25:12 8 that reinsurance can take?</p> <p>16:25:15 9 A. I'm not specifically aware of different types</p> <p>16:25:19 10 of reinsurance, no.</p> <p>16:25:21 11 Q. Do you recall U.S. RE or Uni-Ter explaining to</p> <p>16:25:27 12 you, as a board member, the different kinds of</p> <p>16:25:29 13 reinsurance that are available?</p> <p>16:25:31 14 A. Yes. There were several times when there were</p> <p>16:25:33 15 explanations of different types of arrangements. But</p> <p>16:25:37 16 it being so many years ago, I couldn't recall, since I</p> <p>16:25:42 17 also have not been associated with it since.</p> <p>16:25:45 18 Q. In the insurance context, what does</p> <p>16:26:09 19 "insolvency" mean?</p> <p>16:26:13 20 MS. OCHOA: Objection. Form.</p> <p>16:26:14 21 MR. WILSON: Same objection.</p> <p>16:26:15 22 A. Insufficient capital to meet obligations.</p> <p>16:26:18 23 Q. (BY MR. CEREGHINO) And is that a regulatory or</p> <p>16:26:21 24 a statutory definition?</p> <p>16:26:23 25 A. I think it's a generic financial --</p>	<p>16:27:45 1 generic financial discussion?</p> <p>16:27:46 2 A. I don't think the long-term debt applies, just</p> <p>16:27:48 3 because the debt that existed was a surplus note.</p> <p>16:27:51 4 Q. Right. Okay.</p> <p>16:27:52 5 A. Subordinated.</p> <p>16:27:53 6 Q. And so what's the difference between insolvency</p> <p>16:27:56 7 and impairment?</p> <p>16:28:00 8 MS. OCHOA: Objection. Form.</p> <p>16:28:01 9 THE COURT REPORTER: Insolvency and what?</p> <p>16:28:01 10 MR. CEREGHINO: Impairment.</p> <p>16:28:01 11 THE COURT REPORTER: Thank you.</p> <p>16:28:02 12 MR. WILSON: Same objection.</p> <p>16:28:02 13 A. Impairment refers to an asset being impaired,</p> <p>16:28:06 14 below the value on which it's being carried. For</p> <p>16:28:12 15 example, if you have an amount that's owed from one</p> <p>16:28:15 16 company to another, an accounts receivable, if you're</p> <p>16:28:18 17 the one that's owed money from another entity, and you</p> <p>16:28:22 18 find out that that entity doesn't have the capacity to</p> <p>16:28:25 19 pay you the money, your receivable balance would be</p> <p>16:28:28 20 impaired by the amount by which you think you won't --</p> <p>16:29:31 21 or the amount you don't think you'll collect, for</p> <p>16:28:33 22 example.</p> <p>16:28:33 23 It can also be -- in the context of Lewis &</p> <p>16:28:37 24 Clark, it could have to do with a deferred tax asset on</p> <p>16:28:40 25 the books. If the amount, which nevertheless was</p>

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<p>16:28:44 1 recorded in accordance with generally accepted</p> <p>16:28:46 2 accounting principles, is determined, under IRS</p> <p>16:28:49 3 regulations, that it can't be fully realized, you have</p> <p>16:28:53 4 to write it down, because it's been impaired below that</p> <p>16:28:56 5 recorded value.</p> <p>16:28:57 6 Q. (BY MR. CEREGHINO) Okay. And just to step</p> <p>16:28:59 7 back, still into the generic sort of context, that</p> <p>16:29:03 8 notes document that we looked at, which mentioned that</p> <p>16:29:06 9 Ponce was willing to take 500,000 in lieu of the</p> <p>16:29:11 10 758,000 owed -- when, generally, does a lender take</p> <p>16:29:13 11 less than what it's owed?</p> <p>16:29:23 12 MS. OCHOA: Objection. Form.</p> <p>16:29:25 13 MR. WILSON: Objection. Same objection.</p> <p>16:29:26 14 A. Well, what I was -- when I mentioned I might</p> <p>16:29:28 15 speculate as to a reason, because I don't really know,</p> <p>16:29:31 16 is a couple of cases. One would be if they believe</p> <p>16:29:35 17 that the long-term collectability is impaired below the</p> <p>16:29:40 18 present value number that they've supplied as the</p> <p>16:29:42 19 discounted amount they would take. I would assume that</p> <p>16:29:45 20 they would've done some analysis to say, Okay, I think</p> <p>16:29:50 21 the present value of what we will collect over time is</p> <p>16:29:53 22 equal to the amount we want today. And that's 500,000</p> <p>16:29:56 23 in this case.</p> <p>16:29:58 24 The other thing might be that because it is</p> <p>16:29:58 25 a -- presumably a subordinated note, that that forces</p>	<p>16:31:28 1 was a presumption that significant changes, from month</p> <p>16:31:32 2 to month, would not occur, that couldn't be reflected</p> <p>16:31:35 3 in quarterlies.</p> <p>16:31:36 4 Q. Okay. Do you know what the period in which</p> <p>16:31:44 5 accounting reports were to be provided to the board,</p> <p>16:31:49 6 according to the Uni-Ter management agreement?</p> <p>16:31:51 7 A. Quarterly financial statements.</p> <p>16:31:54 8 Q. Not monthly?</p> <p>16:31:54 9 A. I believe they were quarterly.</p> <p>16:31:55 10 Q. So if the management agreement -- well, let me</p> <p>16:31:59 11 just turn to it. Exhibit 7. Does this appear to you</p> <p>16:32:30 12 to be an accurate representation of the management</p> <p>16:32:32 13 agreement by and between Uni-Ter and Lewis & Clark?</p> <p>16:32:38 14 A. Yes.</p> <p>16:32:38 15 Q. And if you look on page 2, the Bates is 1306 --</p> <p>16:32:57 16 sorry -- 823, Part H, Accounting -- do you see that?</p> <p>16:33:05 17 A. Yes.</p> <p>16:33:05 18 Q. And Bullet 1 says: Manager shall prepare and</p> <p>16:33:09 19 forward to L&C -- Lewis & Clark -- on a monthly basis,</p> <p>16:33:13 20 within 20 calendar days of the end of each calendar</p> <p>16:33:15 21 month, a complete set of financial statements.</p> <p>16:33:18 22 Do you see that?</p> <p>16:33:19 23 A. I do.</p> <p>16:33:19 24 Q. Does that change your recollection as to when</p> <p>16:33:22 25 Uni-Ter was supposed to provide the board with</p>
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<p>16:30:01 1 it to be in second position, in terms of being paid its</p> <p>16:30:05 2 debt obligations over time. So they would rather get a</p> <p>16:30:10 3 payout of a lump sum of a less amount than take the</p> <p>16:30:13 4 risk that the stream of payments would be reduced,</p> <p>16:30:15 5 based on the operations of the company, as a</p> <p>16:30:18 6 subordinated obligation would be treated.</p> <p>16:30:21 7 Q. (BY MR. CEREGHINO) Generally speaking, again,</p> <p>16:30:26 8 you'd agree with me that a company doesn't want to wake</p> <p>16:30:31 9 up one morning and realize it's insolvent, but would</p> <p>16:30:36 10 rather evaluate its financial condition over time and</p> <p>16:30:45 11 see the direction it's trending, yes or no?</p> <p>16:30:52 12 MS. OCHOA: Objection. Form.</p> <p>16:30:53 13 MR. WILSON: Same objection.</p> <p>16:30:54 14 A. Agreed.</p> <p>16:30:55 15 Q. (BY MR. CEREGHINO) Okay. And for that reason,</p> <p>16:30:56 16 and for other reasons, we close our books, generally,</p> <p>16:31:01 17 monthly, as companies, right?</p> <p>16:31:04 18 MS. OCHOA: Objection. Form.</p> <p>16:31:06 19 MR. WILSON: Same objection.</p> <p>16:31:07 20 A. Correct.</p> <p>16:31:07 21 Q. (BY MR. CEREGHINO) Is there anything, with</p> <p>16:31:11 22 respect to Lewis & Clark specifically, that prevented</p> <p>16:31:12 23 monthly reports to the board -- monthly accounting</p> <p>16:31:17 24 reports to the board?</p> <p>16:31:20 25 A. Nothing specifically, except I believe there</p>	<p>16:33:24 1 accounting reports?</p> <p>16:33:26 2 A. Well, I'm also reading Item 2 below, which</p> <p>16:33:29 3 talks about the production of quarterly and calendar</p> <p>16:33:32 4 year statements, to ensure that they met both</p> <p>16:33:36 5 financial -- GAAP requirements and statutory standards</p> <p>16:33:39 6 of the Department of Insurance.</p> <p>16:33:41 7 And I believe, in spite of the requirement in</p> <p>16:33:44 8 I, the board decided that quarterly financial review,</p> <p>16:33:47 9 for that reason, would be appropriate.</p> <p>16:33:50 10 Q. Did there come a time when the Lewis & Clark</p> <p>16:34:07 11 board changed its mind and said, We want monthly</p> <p>16:34:10 12 financial statements?</p> <p>16:34:12 13 A. No. But as you can tell, during the time frame</p> <p>16:34:15 14 of the latter half of 2011, we didn't stand on timing</p> <p>16:34:20 15 guidelines in requesting documentation about reserves.</p> <p>16:34:24 16 Q. And that was based on what?</p> <p>16:34:27 17 A. Based on the fact that the reserves had</p> <p>16:34:30 18 increased.</p> <p>16:34:31 19 Q. Had increased by 50-something percent within a</p> <p>16:34:40 20 supposed three-month window; is that correct?</p> <p>16:34:43 21 A. Correct. Well, even before then, back when the</p> <p>16:34:46 22 August 25th memo came out from Sandy Elsass, informing</p> <p>16:34:52 23 us about the -- what he called a surprise of the</p> <p>16:34:54 24 reserve level of 11.7 million on June 30, 2011, up from</p> <p>16:34:58 25 9.2 million in December of 2010.</p>

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<p>16:35:03 1 They -- Uni-Ter initiated the corrective action</p> <p>16:35:06 2 for the Praxis report, the full claims review in</p> <p>16:35:09 3 August, and the request of the board for additional</p> <p>16:35:12 4 capital. So we started to look at stuff on a more</p> <p>16:35:16 5 frequent basis than just quarterly throughout the rest</p> <p>16:35:20 6 of the year.</p> <p>16:35:20 7 Q. Right. And so the board, in fact, did have</p> <p>16:35:24 8 knowledge of reserve concerns, problems, whatever you</p> <p>16:35:30 9 want to call them, prior to August of 2011, correct?</p> <p>16:35:37 10 A. No.</p> <p>16:35:37 11 Q. When did they hire Praxis to do the report?</p> <p>16:35:43 12 A. Uni-Ter hired Praxis on or about September 1st.</p> <p>16:35:48 13 Q. And are --</p> <p>16:35:50 14 A. Or it could've been the week prior to that.</p> <p>16:35:53 15 Q. So are reserves and changes in reserves --</p> <p>16:35:55 16 material changes in reserves, would those be reflected</p> <p>16:35:58 17 in the quarterly financial statements that we were just</p> <p>16:36:00 18 talking about?</p> <p>16:36:02 19 A. Yes.</p> <p>16:36:02 20 Q. And so it's your testimony that through June</p> <p>16:36:06 21 2011, there was no material changes to reserves that</p> <p>16:36:13 22 were reflected and visible in the quarterly financial</p> <p>16:36:18 23 statements?</p> <p>16:36:19 24 A. Well, we would've last seen the March 31</p> <p>16:36:22 25 quarterly financials, and we did not see a material</p>	<p>16:37:47 1 A. Correct.</p> <p>16:37:49 2 Q. So Uni-Ter absolutely knew there were financial</p> <p>16:37:53 3 condition problems with Lewis & Clark all the way back</p> <p>16:37:56 4 in September of 2010, correct?</p> <p>16:37:59 5 MR. WILSON: Object to the form.</p> <p>16:38:00 6 A. In the opinion of the Division of Insurance,</p> <p>16:38:02 7 yes.</p> <p>16:38:02 8 Q. (BY MR. CEREGHINO) Is the opinion of the</p> <p>16:38:05 9 Division of Insurance wrong in this context?</p> <p>16:38:08 10 A. I'm not saying it's wrong.</p> <p>16:38:09 11 Q. So when you testified that the delay of an</p> <p>16:38:21 12 additional ten days was because Uni-Ter was somehow</p> <p>16:38:24 13 surprised, Uni-Ter was, in fact, not surprised,</p> <p>16:38:27 14 right --</p> <p>16:38:28 15 MR. WILSON: Object to the question.</p> <p>16:38:29 16 Q. (BY MR. CEREGHINO) -- based on the available</p> <p>16:38:31 17 documents we have?</p> <p>16:38:32 18 MS. OCHOA: Join.</p> <p>16:38:33 19 A. I don't have any basis for knowing that they</p> <p>16:38:34 20 were not surprised.</p> <p>16:38:38 21 (Discussion off the record regarding timing</p> <p>16:38:38 22 of the video.)</p> <p>16:38:38 23 Q. (BY MR. CEREGHINO) So if a company is impaired</p> <p>16:39:04 24 and/or heading towards insolvency, is that an issue</p> <p>16:39:13 25 that requires board attention and action?</p>
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<p>16:36:25 1 change. But it was -- the August 25th memo from Sandy</p> <p>16:36:31 2 Elsass reported the just released June 30 financial</p> <p>16:36:34 3 statements that reflected the increased reserves.</p> <p>16:36:37 4 Q. Okay. So just so I understand the timing</p> <p>16:36:40 5 correctly, so obviously, we don't know how long it took</p> <p>16:36:43 6 Uni-Ter to provide monthly accounting reports because</p> <p>16:36:46 7 they were never required. But on a quarterly basis,</p> <p>16:36:49 8 how long after the close of the quarter would you, as a</p> <p>16:36:52 9 board, typically get the most recent completed</p> <p>16:36:56 10 quarterly?</p> <p>16:36:57 11 A. A reasonable time frame would be 45 days. This</p> <p>16:36:59 12 exceeded that by about ten days or so, and I think</p> <p>16:37:04 13 because of the extra review that Uni-Ter engaged.</p> <p>16:37:07 14 Because they were surprised themselves, and then they</p> <p>16:37:11 15 announced to the board, on the 25th of August, this is</p> <p>16:37:14 16 the result.</p> <p>16:37:15 17 Q. So if you turn back to Exhibit 14, that DOI</p> <p>16:37:18 18 letter from 2010 -- September 2010. Do you see that?</p> <p>16:37:30 19 A. Yes.</p> <p>16:37:30 20 Q. It's addressed to you, but you testified you</p> <p>16:37:34 21 don't recall physically receiving it. But I noticed --</p> <p>16:37:37 22 A. I was in Washington state. This was sent to</p> <p>16:37:40 23 Atlanta, Georgia, which was the Uni-Ter headquarters.</p> <p>16:37:43 24 Q. Thank you. That was my question.</p> <p>16:37:45 25 So in reality, the letter was sent to Uni-Ter?</p>	<p>16:39:15 1 A. Yes.</p> <p>16:39:16 2 Q. And what would be some of the things that a</p> <p>16:39:19 3 board might do in the circumstances of its entity being</p> <p>16:39:24 4 insolvent or heading towards insolvency?</p> <p>16:39:28 5 MS. OCHOA: Objection. Form.</p> <p>16:39:30 6 MR. WILSON: Same objection.</p> <p>16:39:30 7 A. The first step is to understand what the</p> <p>16:39:32 8 problem is and what created the insolvency. So there's</p> <p>16:39:35 9 a lot of information gathering, which, in this case,</p> <p>16:39:37 10 would have to come from Uni-Ter: financial data,</p> <p>16:39:37 11 claims data, reserves processes, anything that might</p> <p>16:39:41 12 have an impact on that insolvency. And then develop,</p> <p>16:39:44 13 you know, corrective action from that point forward,</p> <p>16:39:48 14 including recommendations from the management company</p> <p>16:39:50 15 on steps that could be taken, whether it's correcting</p> <p>16:39:53 16 the level of capital, if, in fact, that would just</p> <p>16:39:57 17 solve a one-time problem on an ongoing basis; or if</p> <p>16:40:01 18 there are other issues related to specific</p> <p>16:40:03 19 policyholders, maybe changing who those are,</p> <p>16:40:07 20 terminating contracts, perhaps changing reserve</p> <p>16:40:11 21 methodologies, if that's a problem.</p> <p>16:40:13 22 There could be a variety of issues that open</p> <p>16:40:16 23 themselves up to corrective action.</p> <p>16:40:20 24 Q. (BY MR. CEREGHINO) And so, like, BK,</p> <p>16:40:21 25 bankruptcy protection would be one option? Depending</p>

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<p>16:40:28 1 on the circumstances, bankruptcy protection would be an</p> <p>16:40:31 2 option?</p> <p>16:40:31 3 A. I don't see why it wouldn't be considered as an</p> <p>16:40:34 4 option if, in fact, other options were not available.</p> <p>16:40:38 5 Q. Okay. Selling assets, is that wrapped up in</p> <p>16:40:43 6 your prior discussion?</p> <p>16:40:44 7 A. I think bankruptcy would always be a last</p> <p>16:40:47 8 resort.</p> <p>16:40:47 9 Q. Sure.</p> <p>16:40:47 10 A. Because if there's an opportunity to preserve a</p> <p>16:40:49 11 business operation and all the relationships that go</p> <p>16:40:53 12 along with it, including vendor relationships,</p> <p>16:40:56 13 reinsurance relationships, and the like, bankruptcy</p> <p>16:40:58 14 would preclude that.</p> <p>16:41:01 15 Q. I think you testified earlier that you were</p> <p>16:41:06 16 shocked, stunned, and pissed off, by December 2011,</p> <p>16:41:13 17 with respect to Uni-Ter's management?</p> <p>16:41:16 18 A. Specifically, December 20th.</p> <p>16:41:19 19 Q. Okay. And I believe you also testified that</p> <p>16:41:21 20 you had no basis for relying on Uni-Ter after that</p> <p>16:41:25 21 point; is that correct? Do you recall that?</p> <p>16:41:27 22 MR. WILSON: Objection to the question as</p> <p>16:41:29 23 framed.</p> <p>16:41:29 24 A. I believe what I said was, I had a basis for</p> <p>16:41:32 25 challenging, or not trusting, perhaps, their</p>	<p>16:42:59 1 there's availability to retain a consultant to come in</p> <p>16:43:03 2 and -- shadow, perhaps, is a word --</p> <p>16:43:07 3 MS. OCHOA: Objection. Form.</p> <p>16:43:09 4 MR. WILSON: Same objection.</p> <p>16:43:10 5 A. Potentially. But remember that one of the</p> <p>16:43:12 6 actions the board did take was to take some authority</p> <p>16:43:15 7 out of Uni-Ter's hands, as of our board meeting at the</p> <p>16:43:19 8 end of December, and saying all of the day-to-day</p> <p>16:43:21 9 actions have to come through board member approval. So</p> <p>16:43:26 10 we were combining increased oversight by the board with</p> <p>16:43:29 11 the use of independent consultants.</p> <p>16:43:31 12 Q. (BY MR. CEREGHINO) Did Eagle have any prior</p> <p>16:43:53 13 connection to Oneida?</p> <p>16:43:56 14 A. No.</p> <p>16:43:56 15 Q. So Lewis & Clark was the first connection to</p> <p>16:44:02 16 Oneida in any way, shape, or --</p> <p>16:44:05 17 A. Correct.</p> <p>16:44:05 18 Q. I think you also earlier testified to the</p> <p>16:44:13 19 note -- or the idea that not all growth is good; that</p> <p>16:44:23 20 growth has to be within the context of continuing</p> <p>16:44:27 21 viability for the business. Is that correct? Am I</p> <p>16:44:29 22 stating that correctly?</p> <p>16:44:31 23 A. That's a fair statement.</p> <p>16:44:32 24 Q. So when you, in your declaration, talk about,</p> <p>16:44:42 25 there was always an eye for growth at Lewis & Clark,</p>
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<p>16:41:34 1 conclusions as to reserves going forward, something</p> <p>16:41:37 2 along those lines.</p> <p>16:41:39 3 Q. (BY MR. CEREGHINO) Was there any reason -- or</p> <p>16:41:42 4 did the board explore -- let me put it that way -- did</p> <p>16:41:44 5 the board explore, at all, retaining a separate</p> <p>16:41:49 6 consultant, with no affiliation to Uni-Ter, not chosen</p> <p>16:41:54 7 by Uni-Ter, to come in and assist with this information</p> <p>16:41:58 8 gathering and alternative development?</p> <p>16:42:00 9 A. We felt that the -- the fact that Praxis was an</p> <p>16:42:06 10 independent company, Fischlinger was independent,</p> <p>16:42:09 11 whether it was recommended by Uni-Ter or U.S. RE or</p> <p>16:42:14 12 otherwise, and that Milliman was also providing</p> <p>16:42:17 13 information on a global basis, although be it reliant</p> <p>16:42:21 14 upon individual case reserves, that we had -- and</p> <p>16:42:24 15 adding to that, the complexity of bringing in</p> <p>16:42:28 16 somebody -- if you're suggesting, for example,</p> <p>16:42:30 17 completely replacing Uni-Ter and having somebody else</p> <p>16:42:33 18 come in and learn the business or take over the entire</p> <p>16:42:36 19 file, I would have found that problematic. But I felt,</p> <p>16:42:40 20 with the independent consultants associated with</p> <p>16:42:43 21 reviewing, that that was the right approach to take in</p> <p>16:42:46 22 looking toward corrective action.</p> <p>16:42:47 23 Q. Would you agree with me that there's somewhere</p> <p>16:42:50 24 in between totally replacing Uni-Ter, keeping Uni-Ter</p> <p>16:42:57 25 to do all functions -- that somewhere in between,</p>	<p>16:44:46 1 was that enunciated in writing in any way -- in any</p> <p>16:44:56 2 document, that I can point to, that shows a strategic</p> <p>16:44:59 3 plan for growth, the type of growth? Or does that not</p> <p>16:45:02 4 exist?</p> <p>16:45:02 5 A. I don't believe we put that into writing.</p> <p>16:45:06 6 Q. So it was more on an ad hoc sort of basis? If</p> <p>16:45:10 7 an opportunity arose, the board would consider it?</p> <p>16:45:13 8 A. Correct.</p> <p>16:45:14 9 Q. Okay.</p> <p>16:45:17 10 (Deposition Exhibit 96 was marked for</p> <p>16:45:17 11 identification.)</p> <p>16:45:54 12 Q. (BY MR. CEREGHINO) If you could take a look at</p> <p>16:45:56 13 this and tell me when you're done looking at it.</p> <p>16:46:05 14 A. I've read it.</p> <p>16:46:14 15 Q. You've read it. Okay. Sorry.</p> <p>16:46:17 16 So it's not -- there's no wet signature on</p> <p>16:46:19 17 here. But do you know if this letter actually went out</p> <p>16:46:54 18 to the shareholders?</p> <p>16:46:55 19 A. I believe it did.</p> <p>16:46:56 20 Q. Okay. Any reason to think it didn't?</p> <p>16:46:59 21 A. No.</p> <p>16:47:00 22 Q. So in the first paragraph, it talks about:</p> <p>16:47:10 23 Lewis & Clark is one of the first of its kind in the</p> <p>16:47:12 24 U.S., and we have been a "learning by doing" group of</p> <p>16:47:15 25 directors, supported by Uni-Ter and U.S. RE.</p>

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<p>16:47:19 1 Do you see that?</p> <p>16:47:20 2 A. Yes.</p> <p>16:47:20 3 Q. So what did the board do, separate from just</p> <p>16:47:28 4 relying on Uni-Ter, to learn the risk retention group</p> <p>16:47:37 5 business?</p> <p>16:47:37 6 A. As I discussed, from my standpoint, a lot of</p> <p>16:47:42 7 individual research, counsel research, discussion with</p> <p>16:47:47 8 others who were already in risk retention groups and</p> <p>16:47:54 9 their experiences therein, including experience with</p> <p>16:47:57 10 Uni-Ter.</p> <p>16:47:58 11 Q. Are you referring to the time period before</p> <p>16:48:02 12 deciding to start a risk retention group and selecting</p> <p>16:48:08 13 Uni-Ter in the 2003-2004 time frame? Or are you</p> <p>16:48:12 14 talking about, that's what you would do throughout this</p> <p>16:48:14 15 entire --</p> <p>16:48:15 16 A. Well, yeah. The time period before we started,</p> <p>16:48:18 17 the due diligence associated with the two mergers that</p> <p>16:48:21 18 we engaged in, and the experience gathered over the</p> <p>16:48:24 19 course of operations of the company.</p> <p>16:48:26 20 Q. Let's see here. The second paragraph: Your</p> <p>16:48:38 21 directors are pleased to report a healthy company.</p> <p>16:48:42 22 Do you see that?</p> <p>16:48:47 23 A. I do.</p> <p>16:48:47 24 Q. Do you believe that was the case?</p> <p>16:48:50 25 A. Yes.</p>	<p>16:50:18 1 A. Okay.</p> <p>16:50:19 2 Q. Okay. And so -- and then the Sophia Palmer</p> <p>16:50:23 3 merger occurred when?</p> <p>16:50:27 4 A. In 2009.</p> <p>16:50:28 5 Q. And it didn't close -- it was approved prior to</p> <p>16:50:32 6 June 30, 2009, correct, on the May 28th meeting</p> <p>16:50:35 7 minutes?</p> <p>16:50:36 8 A. Correct.</p> <p>16:50:37 9 Q. Okay. But it didn't close until after June 30,</p> <p>16:50:43 10 2009, correct?</p> <p>16:50:43 11 A. That's likely correct.</p> <p>16:50:45 12 MR. CEREGHINO: Okay. Do you want to just</p> <p>16:50:48 13 end right there, and we'll be back at 8:30 tomorrow?</p> <p>16:50:54 14 MS. OCHOA: How long have you -- can we go</p> <p>16:50:54 15 off the record, please?</p> <p>16:50:56 16 THE VIDEOGRAPHER: Off the record.</p> <p>16:50:58 17 (Discussion off the record.)</p> <p>16:51:00 18 THE VIDEOGRAPHER: This marks the end of</p> <p>16:57:00 19 Day 1, the deposition of Jeff Marshall. The time is</p> <p>16:57:03 20 4:57.</p> <p>16:57:05 21 (The deposition concluded at 4:57 p.m.)</p> <p>22 (Signature was not requested; the deponent</p> <p>23 will receive notice to read and sign</p> <p>24 the deposition pursuant to Washington</p> <p>25 Court Rule 30(e).)</p>
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<p>16:48:50 1 Q. As of June 30th, 2009, correct?</p> <p>16:48:54 2 A. Correct.</p> <p>16:48:54 3 Q. Because this letter is dated November. But at</p> <p>16:48:58 4 that point, you would've only -- you were only</p> <p>16:49:02 5 commenting on --</p> <p>16:49:04 6 A. I'm reporting on the period through June 30,</p> <p>16:49:04 7 2009, correct.</p> <p>16:49:07 8 Q. Okay. Fair enough. So there's no dispute that</p> <p>16:49:09 9 this entity was humming along prior to June -- well,</p> <p>16:49:17 10 through June 30th, 2009?</p> <p>16:49:19 11 A. It was doing well.</p> <p>16:49:21 12 Q. And there's no dispute that subsequent to June</p> <p>16:49:26 13 30th, 2009, things materially changed?</p> <p>16:49:28 14 A. Particularly in 2011.</p> <p>16:49:33 15 Q. Okay. And when was Country Villa first</p> <p>16:49:49 16 actually insured by Lewis & Clark?</p> <p>16:49:54 17 A. I believe commencing July 1, 2010.</p> <p>16:49:56 18 Q. Are you sure about that?</p> <p>16:49:58 19 A. Not 100 percent sure.</p> <p>16:50:01 20 Q. If I said, July 1, 2009, would that make more</p> <p>16:50:06 21 sense?</p> <p>16:50:06 22 A. I could be corrected, if I saw the</p> <p>16:50:14 23 documentation.</p> <p>16:50:15 24 Q. Well, we'll get to it tomorrow. Just for</p> <p>16:50:16 25 time's sake --</p>	<p>1 CORRECTION & SIGNATURE PAGE</p> <p>2</p> <p>3 RE: COMMISSIONER OF INSURANCE vs. ROBERT CHUR, et al.</p> <p>4 CLARK COUNTY; A-14-711535-C</p> <p>5 JEFF MARSHALL; TAKEN DECEMBER 11, 2018</p> <p>6 Reported by Shari L. Wheeler, CCR 2396</p> <p>7</p> <p>8 I, JEFF MARSHALL, have read the within</p> <p>9 transcript taken December 11, 2018, and the same is</p> <p>10 true and accurate except for any changes and/or</p> <p>11 corrections, if any, as follows:</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Signed at: _____, Washington,</p> <p>24 on this date: _____</p> <p>25 _____</p> <p>JEFF MARSHALL</p>

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1 REPORTER'S CERTIFICATE

2
3 I, SHARI L. WHEELER, the undersigned Certified
4 Court Reporter, pursuant to RCW 5.28.010, authorized to
5 administer oaths and affirmations in and for the State
6 of Washington, do hereby certify that the testimony
7 and/or proceedings, a transcript of which is attached,
8 was given before me at the time and place stated
9 therein; that any and/or all witness(es) were duly
10 sworn to tell the truth; that the sworn testimony
11 and/or proceedings were by me stenographically recorded
12 and transcribed under my supervision, to the best of my
13 ability; that the foregoing transcript contains a full,
14 true, and accurate record of all the sworn testimony
15 and/or proceedings given and occurring at the time and
16 place stated in the transcript; that a review of which
17 was not requested; that I am in no way related to any
18 party to the matter, nor to any counsel, nor do I have
19 any financial interest in the event of the cause.
20 WITNESS MY HAND AND SIGNATURE this 14th day of
21 December, 2018.
22
23 _____
24 SHARI L. WHEELER,
25 Washington State Certified Court Reporter, #2396

EXHIBIT “N”

EXHIBIT “N”

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,) Case No.
) A-14-711535-C
v.)
)
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.)
_____)

VIDEO DEPOSITION OF STEVEN CHARLES FOGG

Taken on behalf of the Defendant

November 15, 2018

* * *

BE IT REMEMBERED THAT the video deposition
of STEVEN CHARLES FOGG was taken according to the
Nevada Rules of Civil Procedure before Jennifer Marie
Roland, a Notary Public and Professional Court
Reporter for the State of Oregon, on November 15,
2018, commencing at the hour of 9:05 a.m., at 520 SW
Yamhill Street, Suite 444, Portland, Oregon.

1 some general questions for process.

2 A Okay.

3 Q As a board member did you typically receive
4 before the meeting an agenda of what would be
5 presented to the board at the meeting?

6 A I don't recall exactly, but I believe so.

7 Q And then it says I'm preparing three-ring
8 binders with the meeting contents and would like to
9 email these binders out to everyone in advance. This
10 is what the email said.

11 Do you recall that you would get on
12 occasion or regularly get, or however you would want
13 to describe it, binders of things that would be
14 presented to the board?

15 A Yes.

16 Q And those would come from Uni-Ter?

17 A Yes.

18 Q Did you typically review those before the
19 meeting?

20 A Yes.

21 Q Did you generally think that you had
22 sufficient information from Uni-Ter to make a
23 decision?

24 MS. ADAMS: Form.

25 THE WITNESS: From the entire time?

1 BY MR. WILSON:

2 Q No, just generally. I'm asking generally.

3 You can tell exceptions if there's exceptions.

4 A I would say from the start to mid 2010, yes.

5 But after that, no.

6 Q After that, no, in what way did you fault or
7 what way did you say you didn't have information from
8 Uni-Ter?

9 A I would say that we didn't have accurate
10 information from Uni-Ter related to losses.

11 Q And in terms of not accurate information as
12 it relates to losses, what is the basis for that?
13 Your statement that it was not accurate.

14 A What transpired from September of -- am I
15 getting the years right? September of '11 through
16 December of '11, when losses were understated and we
17 were informed that we had significant additional
18 amounts that we had to book.

19 Q And that would be the time period that
20 you've described as September of '11 through December
21 of '11?

22 A Correct.

23 Q Okay. And we'll get to those areas.
24 Exclusive of that time period -- withdraw the
25 question. Let me ask it differently.

1 for options.

2 Q And the reason that it was put into
3 rehabilitation, slash, liquidation was why?

4 A Again, because at that point in time we
5 finally reached a point where we didn't see a
6 solution. We didn't see an outcome that allowed the
7 enterprise to continue on.

8 Q And the people were not prepared to put
9 additional capital in the company?

10 A At that point in time?

11 Q Yes.

12 A I can only speak for myself, but I wasn't
13 prepared to.

14 Q And so is it fair to say that your major
15 issue with Uni-Ter was the reserving that you've
16 described between the -- I'm talking general time
17 tables.

18 A Um-hmm.

19 Q The September 2011 -- okay. The reserving
20 that caused the issues to arise in September of 2011
21 through the time period let's say of February 2012.

22 A I would say my major issues with Uni-Ter are
23 twofold.

24 Q Okay.

25 A One would be the process of bringing Country

1 Villa on, how that was communicated, how that process
2 went through, went through the process of deciding to
3 do that. And then two would be, as I've said many
4 times already today, it's not just September through
5 December, I don't recall the starting point, but at
6 some point prior to September of 2011 there was a
7 period where there was what I've described, the
8 deficit in timely posting reserves.

9 Q Okay. You don't know the dates, but you
10 know it occurred you say?

11 A I do. And I know the dates would be on the
12 report that I've referenced a couple, three times.
13 The spreadsheet.

14 Q Now, with respect to Country Villas, you
15 would agree that the Country Villas, taking them on
16 was presented to you as a board member?

17 A Yes.

18 Q And you reviewed the potential of bringing
19 them on in terms of the pros and cons?

20 A (The witness nods.)

21 Q And you did not vote against it or voice
22 objection against it, did you?

23 A I voiced objection against.

24 Q And to whom did you voice objection?

25 A In the board meeting when we talked about it

1 CERTIFICATE
2 STATE OF OREGON)
) ss:
3 COUNTY OF MULTNOMAH)
4
5 I, Jennifer Marie Roland, a professional
6 shorthand reporter and Notary Public for the State of
7 Oregon, hereby certify that STEVEN CHARLES FOGG
8 personally appeared before me at the time and place
9 set forth in the caption hereof; that at said time and
10 place I reported in stenotype all testimony adduced
11 and other oral proceedings had in the foregoing
12 matter; that thereafter my notes were reduced to a
13 computer-aided transcript under my direction; and the
14 foregoing transcript constitutes a full, true, and
15 accurate record of such testimony adduced and oral
16 proceedings had and of the whole thereof.
17 I further certify that I am not a relative
18 or employee or attorney or counsel for any of the
19 parties, or financially interested in said case.
20 Witness my hand at Portland, Oregon, this
21 20th day of November 2018.
22
23
24 _____
Jennifer Marie Roland
Professional Court Reporter
25

226

EXHIBIT “O”

EXHIBIT “O”

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,

CERTIFIED COPY

Case No. A-14-711535-C

Dept. No.: XXVII

v.

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

Video-recorded Deposition Upon Oral Examination of:

Robert W. Hurlbut

Location: 120 East Avenue, Suite 200
Rochester, New York 14604

Date: January 30, 2019

Time: 9:00 a.m.

Reported By: KIMBERLY A. BONSIGNORE

1

1 ROBERT W. HURLBUT - BY MR. WILSON

2 Q. They owned them the entire period of time
3 that you were on the board?

4 A. Well, U.S. RE ran or owned Uni-Ter, yeah.

5 Q. Are you sure that U.S. RE owned Uni-Ter
6 during the entire period of time?

7 A. That's the way it was explained to me.

8 Q. By whom?

9 A. Sandy.

10 Q. And who were the key, do you remember,
11 Uni-Ter employees dealing with Lewis & Clark?

12 A. Oh, there was Sandy. There was Nadine.
13 There was Donna. There was -- then Doc left, retired,
14 and then there was Dwight.

15 And the claims adjusters were rotating
16 like a revolving door. They didn't last too long. So
17 I don't really remember the claims adjusters.

18 Q. Do you remember Janna Miller?

19 A. Not really.

20 Q. And how would you describe your
21 relationship with Sandy Elsass?

22 A. From when to when?

23 Q. From the time you were on the board till
24 the time it went into receivership.

25 A. It was fine until it went into

25

1 ROBERT W. HURLBUT - BY MR. WILSON

2 receivership.

3 Q. And what happened when it went into
4 receivership that caused it not to be fine?

5 A. He lied.

6 Q. He lied in what way?

7 A. He gave us false information starting in
8 2011.

9 Q. False information --

10 A. He's --

11 Q. I'm sorry. Go ahead.

12 A. He's one of the reasons -- the main
13 reasons why it tanked.

14 Q. So he gave you false information?

15 A. Uh-huh.

16 Q. Do you recall when he left the company?

17 A. My understanding, he was fired. I don't
18 remember when, but it should have happened a lot
19 sooner.

20 Q. Do you recall whether you and others wrote
21 emails to Mr. Marshall, feeling bad about Sandy being
22 fired and wished he hadn't been fired?

23 A. I never wrote one.

24 Q. Do you know whether others did?

25 A. I have no idea.

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C E R T I F I C A T I O N

STATE OF NEW YORK:

COUNTY OF MONROE:

I, KIMBERLY A. BONSIGNORE, do hereby
certify that I reported in machine shorthand the
above-styled cause; and that the foregoing pages were
produced by computer-aided transcription (CAT) under
my personal supervision and constitute a true and
accurate record of the testimony in this proceeding;

I further certify that I am not an
attorney or counsel of any parties, nor a relative or
employee of any attorney or counsel connected with the
action, nor financially interested in the action;

WITNESS my hand in the City of Rochester,
County of Monroe, State of New York.



KIMBERLY A. BONSIGNORE
Freelance Court Reporter and
Notary Public No. 01B06032396
in and for Monroe County, New York

EXHIBIT “P”

EXHIBIT “P”

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,)

vs.)

Case No.
A-14-711535-C

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.)

DEPOSITION OF CAROL HARTER

Monday, December 17, 2018
655 West Broadway, Suite 880
San Diego, California 92101

Reported by: JAMIE MOLINAR, CSR
Certificate Number 14116
Job Number: 516525

1 don't know if they were involved with Henry Hudson, which
2 was a precursor to Lewis & Clark. So I can't be certain
3 if they did. And I don't know if they did other -- other
4 business external to Lewis & Clark.

5 Q What oversight did the board have in place to
6 make sure that the board was getting reliable and
7 competent information from Uni-Ter?

8 MS. OCHOA: Objection. Form.

9 MR. WILSON: Same objection.

10 THE WITNESS: They saw the work.

11 BY MS. ADAMS:

12 Q So you reviewed the work --

13 A Oh, yeah.

14 Q -- of Uni-Ter?

15 A Yes.

16 Q And it was self-evident that the work was done
17 correctly?

18 A In my view, yes.

19 Q Sorry. Bear with me. I'm just going to find
20 one other exhibit. Okay. If you would turn to
21 Exhibit 96. Have you seen this letter before?

22 A Probably.

23 Q And if you could just read the first paragraph
24 to yourself. It says that Lewis & Clark is one of the
25 first of its kind in the US. What is your

REPORTER'S CERTIFICATE

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I, Jamie Molinar, a Certified Shorthand Reporter in and for the State of California, do hereby certify:

That the witness in the foregoing deposition was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth.

That the deposition was taken before me at the time and place herein named; that said deposition was reported by me in shorthand and transcribed, through computer-aided transcription, under my direction; and that the foregoing transcript is a true record of the testimony elicited at proceedings had at said deposition.

I further certify that I am a disinterested person and am not related to any of the parties thereto.

Dated this 18th day of December, 2018.



Jamie Molinar, CSR No. 14116

EXHIBIT “Q”

EXHIBIT “Q”

AFFIDAVIT OF JEFF C. MARSHALL

STATE OF WASHINGTON)
COUNTY OF KING) ss

Jeff C. Marshall being duly sworn, deposes and says:

1. I make this affidavit of my own personal knowledge except as to those matters stated on information and belief, and, as to those matters, I believe them to be true.
2. I am a resident of the State of Washington.
3. The long term care facilities which I operate are stockholder/insureds of Lewis & Clark Risk Retention Group ("L&C") and I am Chair of the Board of Directors of L&C.
4. L&C, a Nevada corporation, is a Nevada domiciled captive insurance company and operates as risk retention group pursuant to the Liability Risk Retention Act of 1986, 15 USC § 3901-3906 (1981, as amended 1986) ("LRRRA") to cover general and professional liability risks of its skilled nursing and long-term care facility owners. L&C received its certificate of authority (#14909) on December 31, 2003 and its NAIC ID Number is 11947 (Exhibit A).
5. The Board of Directors of L&C on May 28, 2009 voted to approve the Merger Agreement ("the Agreement") under which Sophia Palmer Nurses Risk Retention Group ("Sophia Palmer") a Nevada domiciled captive insurance company operating as a risk retention group agreed to merge with and into L&C (Exhibit B). At a meeting on July 8, 2009 the Sophia Palmer stockholders approved the Agreement.
6. Action by the L&C stockholders is not required under NRS 92A.130 based upon the following:
 - (a) The articles of incorporation of L&C as the surviving domestic corporation will not differ from its articles before the merger;

(b) Each stockholder of L&C whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations and relative rights immediately after the merger;

(c) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issued as a result of the merger to the Sophia Palmer stockholders, by the conversion of securities issued pursuant to the merger, will not exceed by more than 20 percent the total number of voting shares of L&C outstanding immediately before the merger; and

(d) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, by the conversion of securities issued pursuant to the merger will not exceed by more than 20 percent the total number of participating shares outstanding immediately before the merger.

7. On August 7, 2009 notices of hearing and a copy of the Request for Order

Approving Merger Agreement were mailed to all of the L&C stockholders to inform them of the September 30, 2009 Division of Insurance hearing (Exhibit C). To date, no L&C stockholders have communicated any opposition to the Agreement.

8. The Agreement is fair and equitable to the 628 stockholders of Sophia Palmer and the 185 L&C stockholders since each issued and outstanding share of Sophia Palmer stock (except for dissenting shares) will be converted into one eighth of one fully paid nonassessible share of L&C common stock. The Sophia Palmer stockholders will benefit from being part of a larger company with a stronger balance sheet. After the merger, Barbara Lumpkin, the current Chair of the Sophia Palmer Board of Directors, will serve on the L&C Board of Directors. Dr Carol Harter, who currently serves on both the L&C Board and the Sophia Palmer Board will continue to serve on the L&C Board. A Sophia Palmer Advisory Council will be created and will include other current Sophia Palmer Board members to provide advice and counsel to the L&C Board of Directors.

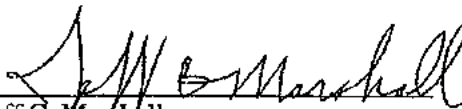
9. The Agreement, if effectuated, will improve the security of and service rendered to policyholders of Sophia Palmer. The pro-forma financial analysis of the separate entities and of the combined entity shows there will be cost savings for the combined entity as compared to

the expenses of the two entities operating separately (Exhibit D). L&C will be able to provide professional liability to nurses working in skilled nursing facilities. While L&C does not currently write nurses professional liability in any state, once the merger is effectuated, L&C plans to begin offering this coverage nationwide assuming L&C's amended business plan is approved by the Division. L&C is registered in 47 states.


10. No director, officer, agent or employee of L&C shall receive any fee, commission, special compensation or other valuable consideration whatsoever for in any manner aiding, promoting or assisting in connection with the Agreement.

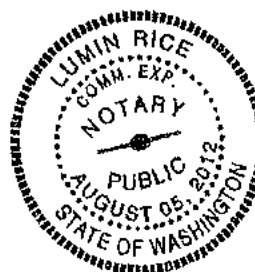
Further your Affiant sayeth naught.

DATED this 29th day of September, 2009.


Jeff C. Marshall

Subscribed and Sworn to before me
this 29 day of Sept, 2009.

 KING WA.
Notary Public in and for said County and State



**MINUTES OF A MEETING OF THE
BOARD OF DIRECTORS OF
SOPHIA PALMER NURSES RISK RETENTION GROUP, INC.
ON MAY 29, 2009**

A telephonic meeting of the Board of Directors of Sophia Palmer Nurses Risk Retention Group, Inc. (the "Corporation") was held at 1:00 p.m. EST on May 29, 2009.

The Board noted that all directors were present (with the exception of Mr. Taylor), in addition to Sanford Elsass, Donna Dalton, Dwain Chamberlain, Linda Knowles and Nadeene Wood-Clater of Uni-Ter Underwriting Management Corporation, and Curtis Sitterson of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

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

1. After discussion, the Board (with Dr. Harter and Mr. Johnson abstaining), upon Uni-Ter's recommendations, approved the terms of the merger agreement with Lewis & Clark LTC Risk Retention Group, Inc. The Board, having discussed this matter at its last meeting with Mr. Sitterson and Ms. Akridge, and with Dr. Harter abstaining, further waived in any conflicts of interest in connection with Mr. Sitterson representing the Corporation and Ms. Akridge representing Lewis & Clark LTC Risk Retention Group, Inc. in connection with this merger.
2. The Board set the reconvening of the annual meeting of the shareholders to consider the merger for July 8, 2009 at 2:00 p.m. at the offices of Uni-Ter at 500 Northridge Road, Suite 330, Atlanta, Georgia. The record date for the shareholders entitled to vote at such reconvened meeting was set at June 1, 2009.

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

Raymond Johnson, Secretary

L:\W-AGT\38260\000\Minutes 5-29-09.doc

EXHIBIT “R”

EXHIBIT “R”

LEWIS & CLARK LTC RISK RETENTION GROUP, INC.

BUSINESS PLAN

Amended July 14, 2007

1. Overview

During the past year, the traditional insurance market offering liability insurance to long-term care facilities in The Northwest has shrunk dramatically. There are a few admitted insurers willing to entertain this type of business. The excess and surplus lines market is still offering coverage, but with reduced limits and rapidly increasing premiums. Availability and affordability of such insurance in The Northwest is clearly jeopardized. As the litigation juggernaut continues to grow, the crisis continues to worsen. The Northwest facilities are being forced to accept severely reduced coverage at increased costs; and elderly residents are left with little to recover in the event of serious injury or loss of life.

The Northwest's long-term care system has two insurance-related problems it must address:

- (1) How can liability insurance be made available and affordable?
- (2) How can facilities prevent/reduce injuries to their residents?

One of the few practical solutions is for the facilities to take control of their destiny by creating their own insurance vehicle in the form of a Risk Retention Group. That is the purpose of the Business Plan contained herein.

While creating a risk retention group insurance company will make such liability insurance available and affordable for those who qualify for insurance under its guidelines, this will not, by itself, improve the quality of care and reduce injuries. No matter what type of impact results from tort reform, long-term care facilities must improve residents' quality of care if injuries, claims and suits are to be reduced. Accordingly, this plan includes a meaningful risk management component.

The Lewis & Clark LTC Risk Retention Group, Inc. L&C will be a stock insurance company created as a risk retention group under the Federal Risk Retention Act of 1986 (the "Act"). It will be domiciled and licensed in the State of Nevada and is being established to underwrite non-assessable liability insurance policies for long-term care facilities (skilled nursing facilities, assisted living facilities and independent living facilities) located in the Northwest. As a stock insurance company it will be owned by its policyholders, who will also be the shareholders of L&C.

L&C as a risk retention group, will be limited by law to writing liability insurance. It will write specialized liability coverage for long-term care facilities characterized and reported as Professional Liability Insurance and Other Liability Insurance. Initial marketing of the coverage will begin the same day L&C receives its Certificate of Authority from the Nevada Department of Insurance (the "DOI").

2. Program Summary

The application provides three-year pro-forma financial projections for L&C on a Statutory and Generally Accepted Accounting Principals (GAAP) accounting basis in the format prescribed by the DOI. Such projections are based on the assumption that L&C will, within the first year of operations, be insuring an estimated at 38 facilities (skilled nursing facilities). Initial net capital of L&C at the time of licensing will consist of approximately \$890,000 by the shareholders. This total capital is developed by multiplying the initial census of 3800 beds times an estimated \$234 each bed. This total capital contribution is in excess of the minimum amount of \$500,000 required by the DOI. The total of capital and surplus projected at the end of each of the first three-years is set forth in the pro-forma financial statements accompanying the Application.

Following are the key assumptions underlying the financial projections:

1. 38 Skilled Nursing Facilities insured during the first year, with each Skilled Nursing Facility having an average number of 100 beds per facility. While limits of \$250,000/\$500,000 will be offered for purposes of the pro-forma projections, due to current market conditions, it is assumed that the Skilled Nursing Facilities will purchase limits of \$500,000/\$1,000,000.
2. For Skilled Nursing Facilities in Washington for example, average premium is based on \$327.00 per bed. These amounts multiplied times 100 beds per facility generate an average premium per facility of \$32,700.
3. 38 facilities generate gross annualized written premiums by the end of the first year of \$1,231,000. These premiums will be received by L&C as policies are written during the course of the year.
4. Each Skilled Nursing Facility insured will make a one time capital investment consisting of \$300.00 (\$234.00 capital and \$66.00 incorporation expense) per bed upon inception of the insured's first year of coverage times the total number of beds contained in each facility operated by such insured. The total capital investment by each skilled nursing facility insured as of the inception of coverage shall be approximately \$30,000 per each 100-bed facility consisting of capital \$23,400 and \$6,600 incorporation expense. Those insureds who join L&C at a later date will pay \$50.00 a bed, or such amount, as L&C should subsequently determine.

5. L&C will enter into a management contract with Uni-Ter Underwriting Management Corporation ("UUMC") to handle all management and administrative services, except for investment management services.
6. Loss and loss adjustment expense estimates are provided by Milliman USA.
7. The annual yield on invested assets, net of investment expenses, is assumed to equal 4.5% over the projection period.
8. Policies shall be claims-made policies with limits per the table below. Coverage of Loss Adjustment Expenses arising from the defense of claims is inclusive of the policy limits.

Per Incident / Aggregate	
\$250,000	/ \$500,000
\$500,000	/ \$1,000,000

3. Operational Plan

L&C will enter into a 7-year renewable general management contract with UUMC. Under this contract, except for investment management, audit, actuarial, legal and reinsurance services, UUMC or its sub-contractors will provide all management and administrative services for L&C, including underwriting, policy administration, marketing, billing, collection, claims administration, risk management, accounting/financial, regulatory compliance, information technology and other general administrative services. Accordingly, L&C will not have employees to handle the various aspects of its business. Investment management services will be contracted with an outside manager. Other services will be contracted by L&C for audit, actuarial, legal and reinsurance. A copy of the general management contract is contained in the Section 12 of the Application.

UUMC's duties as the manager of L&C necessarily include the functions of a managing general agent.

L&C expects to use the following firms for certain consulting services:

Actuarial:	<u>Milliman USA, Pasadena, California</u>
Accounting:	<u>Marcum & Kliegman, Melville, NY</u>
Reinsurance Intermediary:	<u>U.S. RE Corporation, New York, New York</u>
Investment Management:	<u>Logan Capital, Philadelphia, PA</u>

Risk Management

As part of L&C management contract with UUMC, risk management services are to be provided by UUMC. Such services shall have the primary goal of reducing the frequency of medical and other incidents that give rise to policy claims.

L&C being a group insurance vehicle will emphasize long-term relationships with its insureds. This is expected to provide the insureds with a more stable market, while also providing L&C with stable revenues. This synergy will work to the benefit of the insureds and L&C, and is necessary to enhance the prospects for L&C's long-term success.

In sum, L&Cs will manage and diversify its business and operational risks through the careful underwriting of applications for insurance, by active claims management, by implementing and monitoring an effective risk management program, and by the purchase of its own reinsurance if and when such reinsurance becomes available in the market. By these techniques, L&C believes that it can accomplish its business objective and goals set forth above.

Investment Strategy

L&C will follow a conservative investment strategy, which will emphasize maintaining a high quality investment portfolio with maximized current income levels. The type of investments will be governed by the Nevada insurance statutes and L&C will, of course, make its investments within these parameters. L&C will contract with an investment manager to manage its investment activities and to perform the day-to-day investment transactions and record keeping. They will provide discretionary fixed income asset management advisory services and investment management services primarily to small and medium sized institutional clients, as well as others.

Claims Administration

As part of L&C's management contract with UUMC, claims administration services are to be provided by Uni-Ter Claims Services Corp (UCS). In providing these services, UCS will rely on its own staff of experienced claims handlers and, for those claims requiring outside legal services, UCS will select, monitor and supervise the most experienced and most efficient defense attorneys for a particular type of claim.

Marketing

As part of L&C's management contract with UUMC, marketing services are to be provided by UUMC. The intended distribution is going to be through the independent agents who specialize in long-term care insurance.

Reinsurance

Reinsurance consulting and procurement services is provided by U.S. RE Corporation, the parent of UUMC, under an exclusive services contract (Section 9) with L&C subject to an initial term of seven (7) years and a renewal option for a second term of seven (7) years. U.S. RE Corporation is an international reinsurance broker which designs and places reinsurance for insurance and reinsurance companies throughout the world. Such placements include all forms of reinsurance and retrocessional covers, both proportional and excess of loss, for all classes of business. Reinsurance in place as of the date of this amended Business Plan is as follows:

- \$750K x \$250K Excess of Loss Contract
- Effective January 1, 2007 for three year term
- Maximum deductible in the underlying policies is \$100,000
- Effected with Imagine Insurance Company LTD (80%) and Imagine International Re Ltd. (20%)

Actuarial Support

L&C has relied upon the actuarial firm of Milliman USA in calculating the loss and loss adjustment expense estimates, as well as the resulting premium rates it proposes to charge. The claims-made form has been selected as the most suitable type of policy for this line of business, with defense costs inside the limits and an exclusion of punitive damages from coverage. In light of the tort reform recently signed into law in some states, L&C believes that exposure to the risk of punitive damages may be reduced. However, this will not be known until the new punitive damages statutory provisions are tested in actual litigation. Therefore, L&C believes that it is more prudent at the current time to exclude such damages from coverage and thereby avoid the high level of uncertainty as to costs and premiums that would result if punitive damages were covered.

Information Systems and Technology

L&C, under its management contract with UUMC, will rely upon UUMC for data systems and computer systems in handling all aspects of its business. UUMC or its subcontractors will provide computer hardware and software to perform all administrative, claims, risk management and accounting functions. It will create and maintain a risk management and claims database, and provide management reports as needed.

4. Program Objectives

L&C's business objective will be to provide a group insurance vehicle to write general and professional liability insurance for long-term care facilities in states listed below.

Alabama	Arkansas	Arizona	Colorado	Connecticut	Georgia
Iowa	Idaho	Illinois	Indiana	Kansas	Kentucky
Louisiana	Massachusetts	Maryland	Maine	Montana	Mississippi
Montana	N. Carolina	N. Dakota	Nebraska	New Hampshire	
New Jersey	New Mexico	Nevada	New York	Ohio	Oklahoma
Oregon	Pennsylvania	Rhode Island	S. Carolina	S. Dakota	Tennessee
Texas	Utah	Virginia	Vermont	Washington	Wisconsin
Wyoming					

Filings are pending in California, Michigan, and West Virginia.

Among its goals will be:

1. to fill the gap in availability of such insurance for facilities which meet its underwriting guidelines; and
2. to make such insurance affordable for them by providing the type of coverage and policy limits which can be offered at a reasonable premium rates; and
3. to provide meaningful risk management services which should lead to reduced frequency and severity of liability claims; and
4. to operate at a profit so that L&C can provide a long-term, stable market to its shareholders/insureds.

5. Captive Structure Chart

See attached

6. Key Providers

Please refer to Application

7. Underwriting Guidelines

See Attached

8. Risk Management Program Guidelines and Incident Reporting Protocols

See Attached

9. Reinsurance Agreement

See Attached

EXHIBIT “S”

EXHIBIT “S”

JIM GIBBONS
Governor

STATE OF NEVADA

SCOTT J. KIPPER
Commissioner of Insurance

DIANNE CORNWALL
Director



DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

788 Fairview Drive, Suite 300
Carson City, Nevada 89701-5491
(775) 687-4270 • Fax (775) 687-3937
Website: doi.state.nv.us
E-mail: insinfo@doi.state.nv.us

November 19, 2009

Donna Dalton
Uni-Ter Underwriting Management Corporation
500 Northridge Road, Suite 330
Atlanta, GA 30350

RE: Lewis & Clark LTC Risk Retention Group
NV ID# 14909

Dear Ms. Dalton:

We are in receipt of the amended business plan for Lewis & Clark RRG, Inc. dated September 11, 2009.

The amended business plan has been approved.

If you have any questions, please do not hesitate to contact me at (775) 687-4270 ext. 265 or by email at mlynch@doi.state.nv.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael S. Lynch".

Michael S. Lynch, Deputy Commissioner
Division of Insurance
Captive Insurance Program

CC: Peggy Willard-Ross, Insurance Examiner
Jenni Eisenbarth-Porter, Captive Administrative Assistant
Bud Brittain, Management Analyst III

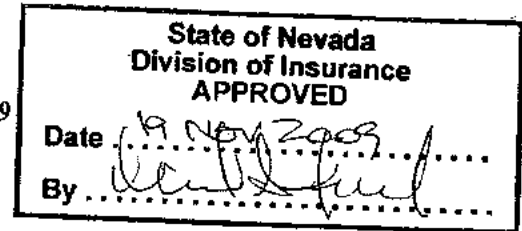
LC000537

DD00598

LEWIS & CLARK LTC RISK RETENTION GROUP, INC.

BUSINESS PLAN

Amended September 11, 2009



1. Overview

During the past year, the traditional insurance market offering liability insurance to long-term care facilities in The Northwest has shrunk dramatically. There are a few admitted insurers willing to entertain this type of business. The excess and surplus lines market is still offering coverage, but with reduced limits and rapidly increasing premiums. Availability and affordability of such insurance in The Northwest is clearly jeopardized. As the litigation juggernaut continues to grow, the crisis continues to worsen. The Northwest facilities are being forced to accept severely reduced coverage at increased costs; and elderly residents are left with little to recover in the event of serious injury or loss of life.

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- (1) How can liability insurance be made available and affordable?
- (2) How can facilities prevent/reduce injuries to their residents?

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While creating a risk retention group insurance company will make such liability insurance available and affordable for those who qualify for insurance under its guidelines, this will not, by itself, improve the quality of care and reduce injuries. No matter what type of impact results from tort reform, long-term care facilities must improve residents' quality of care if injuries, claims and suits are to be reduced. Accordingly, this plan includes a meaningful risk management component.

The **Lewis & Clark LTC Risk Retention Group, Inc.** L&C will be a stock insurance company created as a risk retention group under the Federal Risk Retention Act of 1986 (the "Act"). It will be domiciled and licensed in the State of Nevada and is being established to underwrite non-assessable liability insurance policies for long-term care facilities (skilled nursing facilities, assisted living facilities and independent living facilities) located in the Northwest. As a stock insurance company it will be owned by its policyholders, who will also be the shareholders of L&C.

L&C as a risk retention group, will be limited by law to writing liability insurance. It will write specialized liability coverage for long-term care facilities characterized and reported as Professional Liability Insurance and Other Liability Insurance. Initial marketing of the coverage will begin the same day L&C receives its Certificate of Authority from the Nevada Department of Insurance (the "DOI"). On May 28, 2009, the Board of L&C approved the merger of Sophia Palmer Nurses RRG, Inc. into L&C. L&C will write nurses professional liability once the merger is effectuated.

2. Program Summary

The application provides three-year pro-forma financial projections for L&C on a Statutory and Generally Accepted Accounting Principals (GAAP) accounting basis in the format prescribed by the DOI. Such projections are based on the assumption that L&C will, within the first year of operations, be insuring an estimated at 38 facilities (skilled nursing facilities). Initial net capital of L&C at the time of licensing will consist of approximately \$890,000 by the shareholders. This total capital is developed by multiplying the initial census of 3800 beds times an estimated \$234 each bed. This total capital contribution is in excess of the minimum amount of \$500,000 required by the DOI. The total of capital and surplus projected at the end of each of the first three-years is set forth in the pro-forma financial statements accompanying the Application.

Following are the key assumptions underlying the financial projections:

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Georgia	Iowa	Idaho	Illinois	Indiana	Kansas
Kentucky	Louisiana	Massachusetts	Maryland	Maine	Michigan
Montana	Mississippi	N. Carolina	N. Dakota	Nebraska	New Hampshire
New Jersey	New Mexico	Nevada	New York	Ohio	Oklahoma
Oregon	Pennsylvania	Rhode Island	S. Carolina	S. Dakota	Tennessee
Texas	Utah	Virginia	Vermont	Washington	West Virginia
Wisconsin	Wyoming				

The above states will apply for approval to write nurses liability once the merger is effectuated. This will be a new line added to the existent approval of professional and general liability of long term care facilities. Filings are pending in Florida for L&C to write Nurses Liability only. L&C has no plans to write P/L-G/L of long term care facilities in Florida as it would compete against Ponce de Leon LTC RRG, Inc.; another Uni-Ter Group managed risk retention group.

Among its goals will be:

1. to fill the gap in availability of such insurance for facilities which meet its underwriting guidelines; and
2. to make such insurance affordable for them by providing the type of coverage and policy limits which can be offered at a reasonable premium rates; and
3. to provide meaningful risk management services which should lead to reduced frequency and severity of liability claims; and
4. to operate at a profit so that L&C can provide a long-term, stable market to its shareholders/insureds.

5. Captive Structure Chart

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6. Key Providers

Please refer to Application

7. Underwriting Guidelines

See Attached

8. Risk Management Program Guidelines and Incident Reporting Protocols

See Attached

9. Reinsurance Agreement

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LEWIS & CLARK LTC RISK RETENTION GROUP, INC.

BUSINESS PLAN

Amended June 3, 2009

1. Overview

During the past year, the traditional insurance market offering liability insurance to long-term care facilities in The Northwest has shrunk dramatically. There are a few admitted insurers willing to entertain this type of business. The excess and surplus lines market is still offering coverage, but with reduced limits and rapidly increasing premiums. Availability and affordability of such insurance in The Northwest is clearly jeopardized. As the litigation juggernaut continues to grow, the crisis continues to worsen. The Northwest facilities are being forced to accept severely reduced coverage at increased costs; and elderly residents are left with little to recover in the event of serious injury or loss of life.

The Northwest's long-term care system has two insurance-related problems it must address:

- (1) How can liability insurance be made available and affordable?
- (2) How can facilities prevent/reduce injuries to their residents?

One of the few practical solutions is for the facilities to take control of their destiny by creating their own insurance vehicle in the form of a Risk Retention Group. That is the purpose of the Business Plan contained herein.

While creating a risk retention group insurance company will make such liability insurance available and affordable for those who qualify for insurance under its guidelines, this will not, by itself, improve the quality of care and reduce injuries. No matter what type of impact results from tort reform, long-term care facilities must improve residents' quality of care if injuries, claims and suits are to be reduced. Accordingly, this plan includes a meaningful risk management component.

The **Lewis & Clark LTC Risk Retention Group, Inc.** L&C will be a stock insurance company created as a risk retention group under the Federal Risk Retention Act of 1986 (the "Act"). It will be domiciled and licensed in the State of Nevada and is being established to underwrite non-assessable liability insurance policies for long-term care facilities (skilled nursing facilities, assisted living facilities and independent living facilities) located in the Northwest. As a stock insurance company it will be owned by its policyholders, who will also be the shareholders of L&C.

L&C as a risk retention group, will be limited by law to writing liability insurance. It will write specialized liability coverage for long-term care facilities characterized and reported as Professional Liability Insurance and Other Liability Insurance. Initial marketing of the coverage will begin the same day L&C receives its Certificate of Authority from the Nevada Department of Insurance (the "DOI"). On May 28, 2009, the Board of L&C approved the merger of Sophia Palmer Nurses RRG, Inc. into L&C. L&C will write nurses professional liability once the merger is effectuated.

2. Program Summary

The application provides three-year pro-forma financial projections for L&C on a Statutory and Generally Accepted Accounting Principals (GAAP) accounting basis in the format prescribed by the DOI. Such projections are based on the assumption that L&C will, within the first year of operations, be insuring an estimated at 38 facilities (skilled nursing facilities). Initial net capital of L&C at the time of licensing will consist of approximately \$890,000 by the shareholders. This total capital is developed by multiplying the initial census of 3800 beds times an estimated \$234 each bed. This total capital contribution is in excess of the minimum amount of \$500,000 required by the DOI. The total of capital and surplus projected at the end of each of the first three-years is set forth in the pro-forma financial statements accompanying the Application.

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See Attached

EXHIBIT “T”

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Jenni Eisenbarth-Porter

From: Dalton, Donna [ddalton@uni-ter.com]
Sent: Sunday, April 25, 2010 3:00 PM
To: Jenni Eisenbarth-Porter
Cc: Michael Lynch; Bud Brittain; Elsass, Sandy; Akridge, Constance; Curtis Sitterson
Subject: Lewis & Clark LTC RRG, Inc
Attachments: Business Plan -Amended April 16, 2010.DOC

Please find attached an amended business plan for Lewis & Clark LTC RRG, Inc. with a section added regarding fronting arrangements and an update to the reinsurance in place.

Please do not hesitate to contact me if you have any questions.

Donna Dalton
COO/CFO
Uni-ter Underwriting Management Corp.
(678) 781-2444

4/26/2010

LC000500

DD00613

LEWIS & CLARK LTC RISK RETENTION GROUP, INC.

BUSINESS PLAN

Amended April 16, 2010

1. Overview

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S.A. Meacock & Company Ltd. (SAM0727)	25.00%
Amlin Underwriting Ltd. (AML2001)	25.00%

L&C has not to date, but may from time to time, enter into so-called "fronting" arrangements with other insurers. In each such case, each insured will still be an eligible long term care facility which will be required to purchase L&C common stock. The minimum amount of such purchase may be adjusted by L&C. Such arrangements will in all cases involve the same type of liability risks currently covered by L&C with respect to its member/insureds. Any reinsurance placed with non-admitted/non-approved reinsurers will be subject to letter of credit/funds withheld/or trust arrangements in amounts determined by L&C to establish security for L&C's reinsurance recoveries.

Actuarial Support

L&C has relied upon the actuarial firm of Milliman USA in calculating the loss and loss adjustment expense estimates, as well as the resulting premium rates it proposes to charge. The claims-made form has been selected as the most suitable type of policy for this line of business, with defense costs inside the limits and an exclusion of punitive damages from coverage. In light of the tort reform recently signed into law in some states, L&C believes that exposure to the risk of punitive damages may be reduced. However, this will not be known until the new punitive damages statutory provisions are tested in actual litigation. Therefore, L&C believes that it is more prudent at the current time to exclude such damages from coverage and thereby avoid the high level of uncertainty as to costs and premiums that would result if punitive damages were covered.

Information Systems and Technology

L&C, under its management contract with UUMC, will rely upon UUMC for data systems and computer systems in handling all aspects of its business. UUMC or its subcontractors will provide computer hardware and software to perform all administrative, claims, risk management and accounting functions. It will create and maintain a risk management and claims database, and provide management reports as needed.

4. Program Objectives

L&C's business objective will be to provide a group insurance vehicle to write general and professional liability insurance for long-term care facilities in states listed below.

Alabama	Arkansas	Arizona	California	Colorado	Connecticut
Georgia	Iowa	Idaho	Illinois	Indiana	Kansas
Kentucky	Louisiana	Massachusetts	Maryland	Maine	Michigan
Montana	Mississippi	N. Carolina	N. Dakota	Nebraska	New Hampshire
New Jersey	New Mexico	Nevada	New York	Ohio	Oklahoma
Oregon	Pennsylvania	Rhode Island	S. Carolina	S. Dakota	Tennessee
Texas	Utah	Virginia	Vermont	Washington	West Virginia
Wisconsin	Wyoming				

The above states will apply for approval to write nurses liability once the merger is effectuated. This will be a new line added to the existent approval of professional and general liability of long term care facilities. Filings are pending in Florida for L&C to write Nurses Liability only. L&C has no plans to write P/L-G/L of long term care facilities in Florida as it would compete against Ponce de Leon LTC RRG, Inc.; another Uni-Ter Group managed risk retention group.

Among its goals will be:

1. to fill the gap in availability of such insurance for facilities which meet its underwriting guidelines; and
2. to make such insurance affordable for them by providing the type of coverage and policy limits which can be offered at a reasonable premium rates; and
3. to provide meaningful risk management services which should lead to reduced frequency and severity of liability claims; and
4. to operate at a profit so that L&C can provide a long-term, stable market to its shareholders/insureds.

5. Captive Structure Chart

See attached

6. Key Providers

Please refer to Application

7. Underwriting Guidelines

See Attached

8. Risk Management Program Guidelines and Incident Reporting Protocols

See Attached

9. Reinsurance Agreement

See Attached

Jenni Eisenbarth-Porter

From: Bud Brittain
Sent: Friday, April 23, 2010 3:44 PM
To: 'Dalton, Donna'
Subject: RE: Lewis & Clark LTC RRG, Inc.

Donna, email will be fine. Please send to jporter@doi.state.nv.us, with a CC to mlynch@doi.state.nv.us and me. Thanks!

From: Dalton, Donna [mailto:ddalton@uni-ter.com]
Sent: Friday, April 23, 2010 1:58 PM
To: Bud Brittain
Subject: Lewis & Clark LTC RRG, Inc.

Good Afternoon Bud,

I have an amended Business Plan to send to the NV DOI. To whose attention should I direct it and is it appropriate for me to email it?

Thanks for your help.

Donna

Donna Dalton
COO/CFO
Uni-ter Underwriting Management Corp.
500 Northridge Rd., Suite 330
Atlanta, GA 30350
(678) 781-2444
(678) 781-2450 fax

4/26/2010

LC000509

DD00622

EXHIBIT “U”

EXHIBIT “U”

Bud Brittain

From: Bud Brittain
Sent: Tuesday, August 23, 2011 8:28 AM
To: Jenni Eisenbarth-Porter; Sherri Abeyta
Subject: FW: Amended Business Plan-Lewis & Clark LTC RRG, Inc.
Attachments: Business Plan -Amended August 23, 2011.pdf

FYI

From: Dalton, Donna [<mailto:ddalton@uni-ter.com>]
Sent: Tuesday, August 23, 2011 4:59 AM
To: Michael Lynch; Bud Brittain
Subject: Amended Business Plan-Lewis & Clark LTC RRG, Inc.

Please find attached an amended business plan for Lewis & Clark LTC RRG, Inc.

If you have any questions, please let me know.

Donna Dalton
COO/CFO
Uni-ter Underwriting Management Corp.
3655 Brookside Parkway, Suite 200
Alpharetta, GA 30022
(678) 781-2444
(678) 781-2450 fax

LEWIS & CLARK LTC RISK RETENTION GROUP, INC.

BUSINESS PLAN

Amended August 23, 2011

1. Overview

During the past year, the traditional insurance market offering liability insurance to long-term care facilities in The Northwest has shrunk dramatically. There are a few admitted insurers willing to entertain this type of business. The excess and surplus lines market is still offering coverage, but with reduced limits and rapidly increasing premiums. Availability and affordability of such insurance in The Northwest is clearly jeopardized. As the litigation juggernaut continues to grow, the crisis continues to worsen. The Northwest facilities are being forced to accept severely reduced coverage at increased costs; and elderly residents are left with little to recover in the event of serious injury or loss of life.

The Northwest's long-term care system has two insurance-related problems it must address:

- (1) How can liability insurance be made available and affordable?
- (2) How can facilities prevent/reduce injuries to their residents?

One of the few practical solutions is for the facilities to take control of their destiny by creating their own insurance vehicle in the form of a Risk Retention Group. That is the purpose of the Business Plan contained herein.

While creating a risk retention group insurance company will make such liability insurance available and affordable for those who qualify for insurance under its guidelines, this will not, by itself, improve the quality of care and reduce injuries. No matter what type of impact results from tort reform, long-term care facilities must improve residents' quality of care if injuries, claims and suits are to be reduced. Accordingly, this plan includes a meaningful risk management component.

The **Lewis & Clark LTC Risk Retention Group, Inc.** L&C will be a stock insurance company created as a risk retention group under the Federal Risk Retention Act of 1986 (the "Act"). It will be domiciled and licensed in the State of Nevada and is being established to underwrite non-assessable liability insurance policies for long-term care facilities (skilled nursing facilities, assisted living facilities and independent living facilities), nurses and allied healthcare professionals across the country. As a stock insurance company it will be owned by its policyholders, who will also be the shareholders of L&C.

L&C as a risk retention group, will be limited by law to writing liability insurance. It will write specialized liability coverage for long-term care facilities characterized and reported as Professional Liability Insurance and Other Liability Insurance. Initial marketing of the coverage will begin the same day L&C receives its Certificate of Authority from the Nevada Department of Insurance (the "DOI"). On May 28, 2009, the Board of L&C approved the merger of Sophia Palmer Nurses RRG, Inc. into L&C. L&C will write professional liability for nurses and allied healthcare professionals once the merger is effectuated.

2. Program Summary

The application provides three-year pro-forma financial projections for L&C on a Statutory and Generally Accepted Accounting Principals (GAAP) accounting basis in the format prescribed by the DOI. Such projections are based on the assumption that L&C will, within the first year of operations, be insuring an estimated at 38 facilities (skilled nursing facilities). Initial net capital of L&C at the time of licensing will consist of approximately \$890,000 by the shareholders. This total capital is developed by multiplying the initial census of 3800 beds times an estimated \$234 each bed. This total capital contribution is in excess of the minimum amount of \$500,000 required by the DOI. The total of capital and surplus projected at the end of each of the first three-years is set forth in the pro-forma financial statements accompanying the Application.

Following are the key assumptions underlying the financial projections:

1. 38 Skilled Nursing Facilities insured during the first year, with each Skilled Nursing Facility having an average number of 100 beds per facility. While limits of \$250,000/\$500,000 will be offered for purposes of the pro-forma projections, due to current market conditions, it is assumed that the Skilled Nursing Facilities will purchase limits of \$500,000/\$1,000,000.
2. For Skilled Nursing Facilities in Washington for example, average premium is based on \$327.00 per bed. These amounts multiplied times 100 beds per facility generate an average premium per facility of \$32,700.
3. 38 facilities generate gross annualized written premiums by the end of the first year of \$1,231,000. These premiums will be received by L&C as policies are written during the course of the year.
4. Each Skilled Nursing Facility insured will make a one time capital investment consisting of \$300.00 (\$234.00 capital and \$66.00 incorporation expense) per bed upon inception of the insured's first year of coverage times the total number of beds contained in each facility operated by such insured. The total capital investment by each skilled nursing facility insured as of the inception of coverage shall be approximately \$30,000 per each 100-bed facility consisting of capital \$23,400 and \$6,600 incorporation expense. Those insureds who join L&C at a later date will pay \$50.00 a bed, or such amount, as L&C should subsequently determine. Nurses will pay in capital equal to 40% of the claims made mature premium with a minimum of \$50.00.

5. L&C will enter into a management contract with Uni-Ter Underwriting Management Corporation ("UUMC") to handle all management and administrative services, except for investment management services.
6. Loss and loss adjustment expense estimates are provided by Milliman USA.
7. The annual yield on invested assets, net of investment expenses, is assumed to equal 2.0%.
8. Policies shall be written on a claims-made or occurrence form with limits per the tables below. Coverage of Loss Adjustment Expenses arising from the defense of claims is inclusive of the policy limits.

Professional Liability for Nursing homes

Per Incident / Aggregate

\$250,000 / \$500,000

\$500,000 / \$1,000,000

\$1,000,000 / \$3,000,000

Professional Liability for Nurses and Allied Healthcare Professionals

Per Incident / Aggregate

\$100,000 / \$300,000

\$250,000 / \$750,000

\$1,000,000 / \$3,000,000 (all approved states excluding Florida)

3. Operational Plan

L&C will enter into a 7-year renewable general management contract with UUMC. Under this contract, except for investment management, audit, actuarial, legal and reinsurance services, UUMC or its sub-contractors will provide all management and administrative services for L&C, including underwriting, policy administration, marketing, billing, collection, claims administration, risk management, accounting/financial, regulatory compliance, information technology and other general administrative services. Accordingly, L&C will not have employees to handle the various aspects of its business. Investment management services will be contracted with an outside manager. Other services will be contracted by L&C for audit, actuarial, legal and reinsurance. A copy of the general management contract is contained in the Section 12 of the Application. L&C renewed its general management contract with UUMC on January 1, 2011 for a period of five years.

UUMC's duties as the manager of L&C necessarily include the functions of a managing general agent.

L&C expects to use the following firms for certain consulting services:

Actuarial: Milliman USA, Pasadena, California
Accounting: Johnson & Lambert LLC, Jacksonville, FL
Reinsurance Intermediary: U.S. RE Corporation, New York, New York
Investment Management: Logan Capital, Philadelphia, PA

Risk Management

As part of L&C management contract with UUMC, risk management services are to be provided by UUMC. Such services shall have the primary goal of reducing the frequency of medical and other incidents that give rise to policy claims.

L&C being a group insurance vehicle will emphasize long-term relationships with its insureds. This is expected to provide the insureds with a more stable market, while also providing L&C with stable revenues. This synergy will work to the benefit of the insureds and L&C, and is necessary to enhance the prospects for L&C's long-term success.

In sum, L&Cs will manage and diversify its business and operational risks through the careful underwriting of applications for insurance, by active claims management, by implementing and monitoring an effective risk management program, and by the purchase of its own reinsurance if and when such reinsurance becomes available in the market. By these techniques, L&C believes that it can accomplish its business objective and goals set forth above.

Investment Strategy

L&C will follow a conservative investment strategy, which will emphasize maintaining a high quality investment portfolio with maximized current income levels. The type of investments will be governed by the Nevada insurance statutes and L&C will, of course, make its investments within these parameters. L&C will contract with an investment manager to manage its investment activities and to perform the day-to-day investment transactions and record keeping. They will provide discretionary fixed income asset management advisory services and investment management services primarily to small and medium sized institutional clients, as well as others.

Claims Administration

As part of L&C's management contract with UUMC, claims administration services are to be provided by Uni-Ter Claims Services Corp (UCS). In providing these services, UCS will rely on its own staff of experienced claims handlers and, for those claims requiring outside legal services, UCS will select, monitor and supervise the most experienced and most efficient defense attorneys for a particular type of claim.

Marketing

As part of L&C's management contract with UUMC, marketing services are to be provided by UUMC. The intended distribution is going to be through the independent agents who specialize in long-term care insurance and liability for nurses and allied healthcare professionals.

Reinsurance

Reinsurance consulting and procurement services is provided by U.S. RE Corporation, the parent of UUMC, under an exclusive services contract (Section 9) with L&C subject to an initial term of seven (7) years and a renewal option for a second term of seven (7) years. U.S. RE Corporation is an international reinsurance broker which designs and places reinsurance for insurance and reinsurance companies throughout the world. Such placements include all forms of reinsurance and retrocessional covers, both proportional and excess of loss, for all classes of business. Reinsurance in place as of the date of this amended Business Plan is as follows:

- \$650K x \$350K Excess of Loss Contract
- Effective April 1, 2011 for a one year term
- Effected with Underwriters at Lloyd's as follows:

Beazley Furlonge LTD (AFB 2623)	40.50%
Beazley Furlonge LTD (AFB 0623)	9.5%
S.A. Meacock & Company Ltd. (SAM0727)	25.00%
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L&C's business objective will be to provide a group insurance vehicle to write general and professional liability insurance for long-term care facilities in states listed below.

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Georgia	Iowa	Idaho	Illinois	Indiana	Kansas
Kentucky	Louisiana	Massachusetts	Maryland	Maine	Michigan
Montana	Mississippi	N. Carolina	N. Dakota	Nebraska	New Hampshire
New Jersey	New Mexico	Nevada	New York	Ohio	Oklahoma
Oregon	Pennsylvania	Rhode Island	S. Carolina	S. Dakota	Tennessee
Texas	Utah	Virginia	Vermont	Washington	West Virginia
Wisconsin	Wyoming				

The above states will apply for approval to write nurses and allied healthcare professional liability once the merger is effectuated. This will be a new line added to the existent approval of professional and general liability of long term care facilities. ~~Filings are pending in Florida for L&C to write Nurses Liability only.~~ L&C has no plans to write P/L-G/L of long term care facilities in Florida as it would compete against Ponce de Leon LTC RRG, Inc.; another Uni-Ter Group managed risk retention group.

Among its goals will be:

1. to fill the gap in availability of such insurance for facilities which meet its underwriting guidelines; and
2. to make such insurance affordable for them by providing the type of coverage and policy limits which can be offered at a reasonable premium rates; and
3. to provide meaningful risk management services which should lead to reduced frequency and severity of liability claims; and
4. to operate at a profit so that L&C can provide a long-term, stable market to its shareholders/insureds.

5. Captive Structure Chart

See attached

6. Key Providers

Please refer to Application

7. Underwriting Guidelines

See Attached

8. Risk Management Program Guidelines and Incident Reporting Protocols

See Attached

9. Reinsurance Agreement

See Attached

EXHIBIT “V”

EXHIBIT “V”

Ken D. Stern

From: Curtis Sitterson <CSitterson@stearnsweaver.com>
Sent: Wednesday, September 26, 2012 12:57 PM
To: Ken D. Stern
Subject: FW: Scanned document
Attachments: 4737_001.pdf

Ken, Attached are the minutes discussed. Please call with questions.

Curtis H. Sitterson
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 W. Flagler St., Suite 2200
Miami, FL 33130
Direct: (305) 789-3550
Main: (305) 789-3200
Fax: (305) 789-2667
csitterson@stearnsweaver.com
www.stearnsweaver.com

From: Canon23East@stearnsweaver.com [mailto:Canon23East@stearnsweaver.com]
Sent: Wednesday, September 26, 2012 3:56 PM
To: Curtis Sitterson
Subject: Scanned document

CONFIDENTIALITY NOTICE: The information contained in this e-mail message is attorney privileged and confidential information intended only for the use of the individual(s) named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of the communication is strictly prohibited. If you have received this communication in error, please contact the sender by reply E-mail and delete all copies of the original message. Thank you.

CIRCULAR 230 DISCLOSURE: To ensure compliance with recently-enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication (including any attachments), is not intended or written by us to be used, and cannot be used, by anyone for the purpose of avoiding federal tax penalties that may be imposed by the federal government or for providing, in whole or in part, to another party any tax-related matters addressed herein.

**MINUTES OF A MEETING
OF THE BOARD OF DIRECTORS OF
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.
ON SEPTEMBER 24, 2012**

A telephonic meeting of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held at 12:00 p.m. EST on September 24, 2012.

The Chairman noted that all members were present in addition to Curtis H. Sitterson of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. and Constance Akridge of Holland & Hart.

The following matters were presented to the Board and were discussed and/or approved as set forth below.

1. The Board (with Eric Stickels abstaining) reaffirmed its approval of the revised custodial agreement and investment advising agreement.
2. The Board reviewed and approved the minutes of the Board meetings of August 15, 2012, August 22, 2012, and September 17, 2012.
3. The Board formally approved its waiver of all director fees for all meetings commencing with the Board meeting of July 25, 2012 until further notice.
4. The Board resolved that a request be made to the Nevada Division of Insurance that the Corporation be placed in rehabilitation, in view of the fact that the Corporation is or may be insolvent.

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

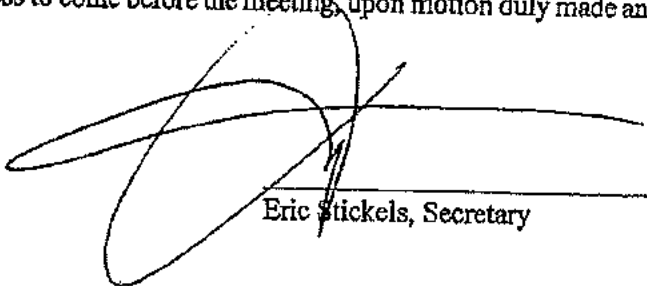

Eric Stickels, Secretary

EXHIBIT “W”

EXHIBIT “W”

BYLAWS
OF
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.

(a Nevada corporation)

ARTICLE I

STOCKHOLDERS

1. **CERTIFICATES REPRESENTING STOCK.** Every holder of stock in the corporation shall be entitled to have a certificate signed by, or in the name of, the corporation by the Chairman or Vice-Chairman of the Board of Directors, if any, or by the President or a Vice-President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the corporation or by agents designated by the Board of Directors, certifying the number of shares owned by him in the corporation and setting forth any additional statements that may be required by the General Corporation Law of the State of Nevada (General Corporation Law). If any such certificate is countersigned or otherwise authenticated by a transfer agent or transfer clerk, and by a registrar, a facsimile of the signature of the officers, the transfer agent or the transfer clerk or the registrar of the corporation may be printed or lithographed upon the certificate in lieu of the actual signatures. If any officer or officers who shall have signed, or whose facsimile signature or signatures shall have been used on any certificate or certificates shall cease to be such officer or officers of the corporation before such certificate or certificates shall have been delivered by the corporation, the certificate or certificates may nevertheless be adopted by the corporation and be issued and delivered as though the person or persons who signed such certificate or certificates, or whose facsimile signature or signatures shall have been used thereon, had not ceased to be such officer or officers of the corporation.

Whenever the corporation shall be authorized to issue more than one class of stock or more than one series of any class of stock, the certificates representing stock of any such class or series shall set forth thereon the statements prescribed by the General Corporation Law. Any restrictions on the transfer or registration of transfer of any shares of stock of any class or series shall be noted conspicuously on the certificate representing such shares.

The corporation may issue a new certificate of stock in place of any certificate theretofore issued by it, alleged to have been lost, stolen, or destroyed, and the Board of Directors may require the owner of any lost, stolen, or destroyed certificate, or his legal representative, to give the corporation a bond sufficient to indemnify the corporation against any claim that may be made against it on account of the alleged loss, theft, or destruction of any such certificate or the issuance of any such new certificate.

2. **FRACTIONAL SHARE INTERESTS.** The corporation is not obliged to but may execute and deliver a certificate for or including a fraction of a share. In lieu of executing and delivering a certificate for a fraction of a share, the corporation may proceed in the manner prescribed by the provisions of Section 78.205 of the General Corporation Law.

3. STOCK TRANSFERS. Upon compliance with provisions restricting the transfer or registration of transfer of shares of stock, if any, transfers or registration of transfers of shares of stock of the corporation shall be made only on the stock ledger of the corporation by the registered holder thereof, or by his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary of the corporation or with a transfer agent or a registrar, if any, and on surrender of the certificate or certificates for such shares of stock properly endorsed and the payment of all taxes, if any, due thereon.

4. RECORD DATE FOR STOCKHOLDERS. For the purpose of determining the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or the allotment of any rights, or entitled to exercise any rights in respect of any change, conversion, or exchange of stock or for the purpose of any other lawful action, the directors may fix, in advance, a record date, which shall not be more than sixty days nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action. If a record date is not fixed, the record date is at the close of business on the day before the day on which notice is given or, if notice is waived, at the close of business on the day before the meeting is held. A determination of stockholders of record entitled to notice of or to vote at any meeting of stockholders applies to an adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting. The directors must fix a new record date if the meeting is adjourned to a date more than sixty days later than the date set for the original meeting.

5. MEANING OF CERTAIN TERMS. As used in these Bylaws in respect of the right to notice of a meeting of stockholders or a waiver thereof or to participate or vote thereat or to consent or dissent in writing in lieu of a meeting, as the case may be, the term "share" or "shares" or "share of stock" or "shares of stock" or "stockholder" or "stockholders" refers to an outstanding share or shares of stock and to a holder or holders of record of outstanding shares of stock when the corporation is authorized to issue only one class of shares of stock, and said reference is also intended to include any outstanding share or shares of stock and any holder or holders of record of outstanding shares of stock of any class upon which or upon whom the Articles of Incorporation confers such rights where there are two or more classes or series of shares of stock or upon which or upon whom the General Corporation Law confers such rights notwithstanding that the articles of incorporation may provide for more than one class or series of shares of stock, one or more of which are limited or denied such rights thereunder; provided, however, that no such right shall vest in the event of an increase or a decrease in the authorized number of shares of stock of any class or series which is otherwise denied voting rights under the provisions of the Articles of Incorporation.

6. STOCKHOLDER MEETINGS.

- TIME. The annual meeting shall be held on the date and at the time fixed, from time to time, by the directors, provided, that the first annual meeting shall be held on a date within thirteen months after the organization of the corporation, and each successive annual meeting shall be held on a date within thirteen months after the date of the preceding annual meeting. A special meeting shall be held on the date and at the time fixed by the directors.

- PLACE. Annual meetings and special meetings shall be held at such place, within or without the State of Nevada, as the directors may, from time to time, fix.

- CALL. Annual meetings and special meetings may be called by the directors or by any officer instructed by the directors to call the meeting.

- NOTICE OR WAIVER OF NOTICE. Notice of all meetings shall be in writing and signed by the President or a Vice-President, or the Secretary, or an Assistant Secretary, or by such other person or persons as the directors must designate. The notice must state the purpose or purposes for which the meeting is called and the time when, and the place, where it is to be held. A copy of the notice must be either delivered personally or mailed postage prepaid to each stockholder not less than ten nor more than sixty days before the meeting. If mailed, it must be directed to the stockholder at his address as it appears upon the records of the corporation. Any stockholder may waive notice of any meeting by a writing signed by him, or his duly authorized attorney, either before or after the meeting; and if notice of any kind is required to be given under the provisions of the General Corporation Law, a waiver thereof in writing and duly signed whether before or after the time stated therein, shall be deemed equivalent thereto.

- CONDUCT OF MEETING. Meetings of the stockholders shall be presided over by one of the following officers in the order of seniority and if present and acting - the Chairman of the Board, if any, the Vice-Chairman of the Board, if any, the President, a Vice-President, or, if none of the foregoing is in office and present and acting, by a chairman to be chosen by the stockholders. The Secretary of the corporation, or in his absence, an Assistant Secretary, shall act as secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present the Chairman of the meeting shall appoint a secretary of the meeting.

- PROXY REPRESENTATION. At any meeting of stockholders, any stockholder may designate another person or persons to act for him by proxy in any manner described in, or otherwise authorized by, the provisions of Section 78.355 of the General Corporation Law.

- INSPECTORS. The directors, in advance of any meeting, may, but need not, appoint one or more inspectors of election to act at the meeting or any adjournment thereof. If an inspector or inspectors are not appointed, the person presiding at the meeting may, but need not, appoint one or more inspectors. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the directors in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, if any, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the person presiding at the meeting, the inspector or

inspectors, if any, shall make a report in writing of any challenge, question or matter determined by him or them and execute a certificate of any fact found by him or them.

- QUORUM. A majority of the voting power, which includes the voting power that is present in person or by proxy, regardless of whether the proxy has authority to vote on all matters, constitutes a quorum at a meeting of stockholders for the transaction of business unless the action to be taken at the meeting shall require a greater proportion. The stockholders present may adjourn the meeting despite the absence of a quorum.

- VOTING. Each share of stock shall entitle the holder thereof to one vote. In the election of directors, a plurality of the votes cast shall elect. Any other action is approved if the number of votes cast in favor of the action exceeds the number of votes cast in opposition to the action, except where the General Corporation Law, the Articles of Incorporation, or these Bylaws prescribe a different percentage of votes and/or a different exercise of voting power. In the election of directors, voting need not be by ballot; and, except as otherwise may be provided by the General Corporation Law, voting by ballot shall not be required for any other action.

Stockholders may participate in a meeting of stockholders by means of a conference telephone or similar method of communication by which all persons participating in the meeting can hear each other.

7. STOCKHOLDER ACTION WITHOUT MEETINGS. Except as may otherwise be provided by the General Corporation Law, any action required or permitted to be taken at a meeting of the stockholders may be taken without a meeting if, before or after the action, a written consent thereto is signed by stockholders holding at least a majority of the voting power; provided that if a different proportion of voting power is required for such an action at a meeting, then that proportion of written consents is required. In no instance where action is authorized by written consent need a meeting of stockholders be called or noticed.

ARTICLE II

DIRECTORS

1. FUNCTIONS AND DEFINITION. The business and affairs of the corporation shall be managed by the Board of Directors of the corporation. The Board of Directors shall have authority to fix the compensation of the members thereof for services in any capacity. The use of the phrase "whole Board" herein refers to the total number of directors which the corporation would have if there were no vacancies.

2. QUALIFICATIONS AND NUMBER. Each director must be at least 18 years of age. A director need not be a stockholder or a resident of the State of Nevada. The initial Board of Directors shall consist of six persons. Thereafter the number of directors constituting the whole board shall be at least one. Subject to the foregoing limitation and except for the first Board of Directors; such number may be fixed from time to time by action of the stockholders or of the directors, or, if the number is not fixed, the number shall be six. The number of directors may be increased or decreased by action of the stockholders or of the directors.

3. ELECTION AND TERM. Directors may be elected in the manner prescribed by the provisions of Sections 78.320 through 78.335 of the General Corporation Law of Nevada. The first Board of Directors shall hold office until the first election of directors by stockholders and until their successors are elected and qualified or until their earlier resignation or removal. Any director may resign at any time upon written notice to the corporation. Thereafter, directors who are elected at an election of directors by stockholders, and directors who are elected in the interim to fill vacancies and newly created directorships, shall hold office until the next election of directors by stockholders and until their successors are elected and qualified or until their earlier resignation or removal. In the interim between elections of directors by stockholders, newly created directorships and any vacancies in the Board of Directors, including any vacancies resulting from the removal of directors for cause or without cause by the stockholders and not filled by said stockholders, may be filled by the vote of a majority of the remaining directors then in office, although less than a quorum, or by the sole remaining director.

The members of the Board shall be divided into three classes as follows. There shall initially be two Class 1 directors, two Class 2 directors, and two Class 3 directors. The Class 1 directors shall serve an initial term of one year and thereafter shall serve three year terms. The Class 2 directors shall serve an initial two year term, and three years thereafter. The Class 3 directors shall serve terms of three years.

4. MEETINGS.

- TIME. Meetings shall be held at such time as the Board shall fix, except that the first meeting of a newly elected Board shall be held as soon after its election as the directors may conveniently assemble.

- PLACE. Meetings shall be held at such place within or without the State of Nevada as shall be fixed by the Board.

- CALL. No call shall be required for regular meetings for which the time and place have been fixed. Special meetings may be called by or at the direction of the Chairman of the Board, if any, the Vice-Chairman of the Board, if any, of the President, or of a majority of the directors in office.

- NOTICE OR ACTUAL OR CONSTRUCTIVE WAIVER. No notice shall be required for regular meetings for which the time and place have been fixed. Written, oral, or any other mode of notice of the time and place shall be given for special meetings in sufficient time for the convenient assembly of the directors thereat. Notice if any need not be given to a director or to any member of a committee of directors who submits a written waiver of notice signed by him before or after the time stated therein.

- QUORUM AND ACTION. A majority of the directors then in office, at a meeting duly assembled, shall constitute a quorum. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting to another time and place. Except as the Articles of Incorporation or these Bylaws may otherwise provide, and except as otherwise provided by the General Corporation Law, the act of the directors holding a majority of the

directors, present at a meeting at which a quorum is present, is the act of the Board. The quorum and voting provisions herein stated shall not be construed as conflicting with any provisions of the General Corporation Law and these Bylaws which govern a meeting of directors held to fill vacancies and newly created directorships in the Board or action of disinterested directors.

Members of the Board or of any committee which may be designated by the Board may participate in a meeting of the Board or of any such committee, as the case may be, by means of a telephone conference or similar method of communication by which all persons participating in the meeting hear each other. Participation in a meeting by said means constitutes presence in person at the meeting.

- CHAIRMAN OF THE MEETING. The Chairman of the Board, if any and if present and acting, shall preside at all meetings. Otherwise, the Vice-Chairman of the Board, if any and if present and acting, or the President, if present and acting, or any other director chosen by the Board, shall preside.

5. REMOVAL OF DIRECTORS. Any or all of the directors may be removed for cause or without cause in accordance with the provisions of the General Corporation Law.

6. COMMITTEES. Whenever its number consists of two or more, the Board of Directors may designate one or more committees which have such powers and duties as the Board shall determine. Any such committee, to the extent provided in the resolution or resolutions of the Board, shall have and may exercise the powers and authority of the Board of Directors in the management of the business and affairs of the corporation and may authorize the seal or stamp of the corporation to be affixed to all papers on which the corporation desires to place a seal or stamp. Each committee must include at least one director. The Board of Directors may appoint natural persons who are not directors to serve on committees.

7. WRITTEN ACTION. Any action required or permitted to be taken at a meeting of the Board of Directors or of any committee thereof may be taken without a meeting if, before or after the action, a written consent thereto is signed by all the members of the Board or of the committee, as the case may be.

ARTICLE III

OFFICERS

1. The corporation must have a President, a Secretary, and a Treasurer, and, if deemed necessary, expedient, or desirable by the Board of Directors, a Chairman of the Board, a Vice-Chairman of the Board, an Executive Vice-President, one or more other Vice-Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other officers and agents with such titles as the resolution choosing them shall designate. Each of any such officers must be natural persons and must be chosen by the Board of Directors or chosen in the manner determined by the Board of Directors.

2. QUALIFICATIONS. Except as may otherwise be provided in the resolution choosing him, no officer other than the Chairman of the Board, if any, and the Vice-Chairman of

the Board, if any, need be a director. Any person may hold two or more offices, as the directors may determine.

3. TERM OF OFFICE. Unless otherwise provided in the resolution choosing him, each officer shall be chosen for a term which shall continue until the meeting of the Board of Directors following the next annual meeting of stockholders and until his successor shall have been chosen or until his resignation or removal before the expiration of his term.

Any officer may be removed, with or without cause, by the Board of Directors or in the manner determined by the Board.

Any vacancy in any office may be filled by the Board of Directors or in the manner determined by the Board.

4. DUTIES AND AUTHORITY. All officers of the corporation shall have such authority and perform such duties in the management and operation of the corporation as shall be prescribed in the resolution designating and choosing such officers and prescribing their authority and duties, and shall have such additional authority and duties as are incident to their office except to the extent that such resolutions or instruments may be inconsistent therewith.

ARTICLE IV

REGISTERED OFFICE

The location of the initial registered office of the corporation in the State of Nevada is the address of the initial resident agent of the corporation, as set forth in the original Articles of Incorporation.

The corporation shall maintain at said registered office a copy, certified by the Secretary of State of the State of Nevada, of its Articles of Incorporation, and all amendments thereto, and a copy, certified by the Secretary of the corporation, of these Bylaws, and all amendments thereto. The corporation shall also keep at said registered office a stock ledger or a duplicate stock ledger, revised annually, containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, if known, and the number of shares held by them respectively or a statement setting out the name of the custodian of the stock ledger or duplicate stock ledger, and the present and complete post office address, including street and number, if any, where such stock ledger or duplicate stock ledger is kept.

ARTICLE V

CORPORATE SEAL OR STAMP

The corporate seal or stamp shall be in such form as the Board of Directors may prescribe.

ARTICLE VI

FISCAL YEAR

The fiscal year of the corporation shall be fixed, and shall be subject to change, by the Board of Directors.

ARTICLE VII

CONTROL OVER BYLAWS

The power to amend, alter, and repeal these Bylaws and to make new Bylaws shall be vested in the Board of Directors subject to the Bylaws, if any, adopted by the stockholders.

I HEREBY CERTIFY that the foregoing is a full, true, and correct copy of the Bylaws of Lewis & Clark LTC Risk Retention Group, Inc., a Nevada corporation, as in effect on the date hereof.

WITNESS my hand and the seal or stamp of the corporation.

Dated: _____, 200__

Secretary of Lewis & Clark LTC Risk Retention
Group, Inc.

(SEAL)

l:\w-agt\37086\001\Bylaws-L&C.doc

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,

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,
PETITION FOR EN BANC RECONSIDERATION

Respondents, and

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 Case
No.: 81857**

**DIRECTOR
DEFENDANTS'
APPENDIX
(VOLUME IV OF IV)**

LIPSON NEILSON P.C.
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GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN,
JEFF MARSHALL AND ERIC STICKELS

CHRONOLOGICAL INDEX

Date	Description	Volume	Page Nos.
05/21/2018	Notice of Entry of Order Granting Stipulation to Extend (Third Request)	I	DD0001-DD0012
06/24/2020	Motion for Preferential Trial Setting on OST	I	DD0013-DD0088
07/09/2020	Errata to Proposed Fourth Amended Complaint Exhibit 37	I	DD0089-DD0211
07/16/2020	Notice of Entry of Order Re: Plaintiff's Motion for Preferential Trial Setting and Issuance of New Discovery	I	DD0212-DD0221
07/17/2020	Appendix to Director Defendants' Opposition to the Motion for Leave to File Fourth Amended Complaint	II-III	DD0222-DD0643
07/22/2020	Director Defendants' Motion for Leave to File a Supplemental Brief in Support of the Opposition to the Plaintiff's Motion for Leave to File Amended Complaint on OST	IV	DD0644-DD0732

ALPHABETICAL INDEX

Date	Description	Volume	Page Nos.
07/17/2020	Appendix to Director Defendants' Opposition to the Motion for Leave to File Fourth Amended Complaint	II-III	DD0222-DD0643
07/22/2020	Director Defendants' Motion for Leave to File a Supplemental Brief in Support of the Opposition to the Plaintiff's Motion for Leave to File Amended Complaint on OST	IV	DD0644-DD0732
07/09/2020	Errata to Proposed Fourth Amended Complaint Exhibit 37	I	DD0089-DD0211
06/24/2020	Motion for Preferential Trial Setting on OST	I	DD0013-DD0088
05/21/2018	Notice of Entry of Order Granting Stipulation to Extend (Third Request)	I	DD0001-DD0012

07/16/2020	Notice of Entry of Order Re: Plaintiff's Motion for Preferential Trial Setting and Issuance of New Discovery	I	DD0212-DD0221
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DATED: March 4th, 2021.

LIPSON NEILSON P.C.

/s/ Angela Ochoa

By: _____

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Nevada Bar No. 6653

Angela T. Nakamura Ochoa, Esq.

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HURLBUT, BARBARA LUMPKIN, JEFF
MARSHALL AND ERIC STICKELS

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing **DIRECTOR DEFENDANTS' APPENDIX (VOLUME IV OF IV)** on the following parties, via the manner of service indicated below, on March 4th, 2021:

Via Electronic Service through E-Flex System:

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Corp., Uni-Ter Claims Services
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Via US Mail:

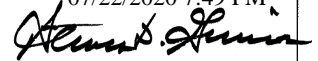
The Honorable Nancy Allf
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Uni-Ter Claims Services Corp. and
U.S. RE Corporation
Uni-Ter Underwriting Management

/s/ Juan Cerezo

An employee of LIPSON NEILSON P.C.



CLERK OF THE COURT

LIPSON NEILSON P.C.
JOSEPH P. GARIN, ESQ.
Nevada Bar No. 6653
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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

**DIRECTORS' MOTION FOR LEAVE TO
FILE A SUPPLEMENTAL BRIEF IN
SUPPORT OF THE OPPOSITION TO
THE PLAINTIFF'S MOTION FOR
LEAVE TO FILE AMENDED
COMPLAINT ON ORDER SHORTENING
TIME**

Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert
Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels by and through their counsel,
Lipson Neilson P.C., pursuant to EDCR 2.20(i), hereby file their Motion for Leave to File
a Supplemental Brief in Support of the Opposition to the Plaintiff's Motion for Leave to
File Amended Complaint on Order Shortening Time based on misstatements made in

the Plaintiff's Omnibus Reply filed on July 22, 2020.

This Motion is made and based on the papers and pleadings on file, the following Memorandum of Points and Authorities, and any oral argument as may be heard by the Court.

DATED this 22nd day of July, 2020.

LIPSON NEILSON P.C.

/s/ Angela Ochoa

By: _____

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

ORDER SHORTENING TIME

The Court, having examined Defendants' Motion for Leave to File a Supplemental Brief in Support of the Opposition to the Plaintiff's Motion for Leave to File Amended Complaint on Order Shortening Time ("Defendants' Motion"), being fully advised in the premises, and for good cause appearing, finds that Defendants' Motion should be heard on order shortened time. This Court therefore ORDERS that the hearing on Defendants' Motion shall be shortened to July 23, 2020 at 10:00 a.m. a.m./p.m., or as soon thereafter as counsel may be heard in Department 27 of the above entitled court, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada.

DATED this ____ day of July, 2020.

Dated this 22nd day of July, 2020

Nancy L Allf

THE HONORABLE NANCY ALLF

E9A BB9 BABD 1C86 JD
Nancy Allf
District Court Judge

DECLARATION OF ANGELA NAKAMURA OCHOA, ESQ.

Angela Nakamura Ochoa, declares as follows:

1. I am an attorney licensed to practice in the State of Nevada. I am counsel in the above captioned matter for Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels ("Defendants").

2. I make this declaration upon personal knowledge, and if called as a witness, I could and would competently testify to the facts contained in this declaration.

3. On July 21, 2020, Plaintiff filed its Omnibus Reply in Support of the Motion for Leave to File Fourth Amended Complaint ("Reply"), in which the hearing is set for July 23, 2020 at 10:00 a.m.

4. The Reply included a number of inaccuracies and misstatements of the law, but the most egregious lapse in candor to the court included a citation to a Federal District Court Case entitled *Wilmington Trust Co. v. SFR Investments Pool 1, LLC*, Case No. 2:16-cv-00326-RFB-PAL (D. Nev. 2017) for which no electronic cite was provided and no copy of the case was attached.

5. Plaintiff contended that in *Wilmington Trust Co.*, Judge Boulware "dealt with this exact issue" and expressly "recognized that the purpose of FRCP 15." Reply, P.6. LI. 25-28. Plaintiff provides a lengthy quote which gives the appearance of being the words of Judge Boulware. This is not the case.

6. As a copy of the case shows, the issues were not the same, Wilmington Trust Co.'s motion was granted as unopposed and Judge Boulware affixed "IT IS SO ORDERED," on the motion. No findings or analysis were entered.

7. Attached hereto as **Exhibit A** is a true and correct copy of the Docket from *Wilmington Trust Co. v. SFR Investments Pool 1, LLC* and attached hereto as **Exhibit B** is a true and correct copy of the Order from Wilmington Trust Co.'s Motion for Leave.

1 8. Good cause exists for this Motion to File a Supplemental Brief on Order
2 Shortening Time, given the hearing on the Motion for Leave to File Amended Complaint
3 is July 23, 2020 at 10:00 a.m.

4 I declare under penalty of perjury that the foregoing is true and correct.

5 DATED this 22nd day of July, 2020.

6
7 */s/ Angela Ochoa*

8 _____
ANGELA NAKAMURA OCHOA

MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGAL AUTHORITY

Pursuant to EDCR 2.20(i) a supplemental brief may be filed by order of the Court.

II. LEGAL ARGUMENT

Plaintiff's Omnibus Reply in Support of the Motion for Leave to File Fourth Amended Complaint contains flagrant misstatements of *Wilmington Trust Co. v. SFR Investments Pool 1, LLC*, for which the Court has no ability to confirm, except with access to the Federal Pacer program.

Starting on P6.LI. 25 of the Omnibus Reply in Support of the Motion for Leave to File Fourth Amended Complaint, Plaintiff stated Judge Boulware "dealt with this exact issue" and expressly "recognized that the purpose of FRCP 15," in the case entitled *Wilmington Trust Co. v. SFR Investments Pool 1, LLC*, Case No. 2:16-cv-00326-RFB-PAL (D. Nev. 2017). As noted from Exhibit A and B, Judge Boulware made no findings. The Motion was granted as unopposed. Judge Boulware's Order was an administrative function of the Court.

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III. CONCLUSION

Based on the foregoing, Defendants respectfully request that this Court grant them leave to file this instant supplemental brief and that the instant exhibits be made part of the record on the hearing on Plaintiff's Motion for Leave to Amend Complaint scheduled for July 23, 2020 at 10:00 a.m.

Dated this 22nd day of July, 2020.

LIPSON NEILSON, P.C.

/s/ Angela Ochoa

By: _____

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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 22nd day of July, 2020, I electronically transmitted the foregoing **DIRECTORS' MOTION FOR LEAVE TO FILE A SUPPLEMENTAL BRIEF IN SUPPORT OF THE OPPOSITION TO THE PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED COMPLAINT ON ORDER SHORTENING TIME** to the Clerk's Office using the Odyssey E-File & Serve System for filing and transmittal to the following Odyssey E-File & Serve registrants:

E-Service Master List For Case

Attorney General's Office	
Contact	Email
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Terri Verbrugghen	verbrug@doi.nv.gov

/s/ Juan Cerezo

An employee of LIPSON NEILSON P.C.

EXHIBIT “A”

EXHIBIT “A”

**United States District Court
District of Nevada (Las Vegas)
CIVIL DOCKET FOR CASE #: 2:16-cv-00326-RFB-BNW**

Wilmington Trust Company v. SFR Investments Pool 1, LLC et al
Assigned to: Judge Richard F. Boulware, II
Referred to: Magistrate Judge Brenda Weksler
Case in other court: 9th Circuit Court of Appeals, 19-16724
Cause: 28:1332 Diversity-Petition to Quiet Title

Date Filed: 02/17/2016
Date Terminated: 08/01/2019
Jury Demand: None
Nature of Suit: 290 Real Property: Other
Jurisdiction: Diversity

Plaintiff

Wilmington Trust Company
as Trustee
on behalf of
Bear Stearns ALT-A Trust, Mortgage Pass-
Through Certificates, Series 2007-1

represented by **Melanie D Morgan**
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ATTORNEY TO BE NOTICED

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TERMINATED: 04/16/2018

V.

Defendant

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Email: jason@kgelegal.com
ATTORNEY TO BE NOTICED

Defendant

**Club at Madeira Canyon Unit Owners'
Association**
TERMINATED: 04/24/2019

Defendant

Nevada Association Services, Inc.

Cross Claimant

SFR Investments Pool 1, LLC

represented by **Karen L. Hanks**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Diana S. Ebron
(See above for address)
ATTORNEY TO BE NOTICED

Jacqueline A. Gilbert
(See above for address)
ATTORNEY TO BE NOTICED

Jason G. Martinez
(See above for address)
ATTORNEY TO BE NOTICED

V.

Cross Defendant

Hamlet McNeace
TERMINATED: 08/24/2016

Cross Defendant

**Mortgage Electronic Registration
Systems, Inc,**
on behalf of
Pulte Mortgage, LLC

represented by **Donna M. Wittig**
(See above for address)
ATTORNEY TO BE NOTICED

Melanie D Morgan
(See above for address)
ATTORNEY TO BE NOTICED

Rebekkah B Bodoff
(See above for address)

ATTORNEY TO BE NOTICED

Rock K. Jung

(See above for address)

ATTORNEY TO BE NOTICED

Cross Defendant

Shawn McNeace

TERMINATED: 08/24/2016

Cross Defendant

Nationstar Mortgage LLC

represented by **Donna M. Wittig**

(See above for address)

ATTORNEY TO BE NOTICED

Karen A Whelan

(See above for address)

TERMINATED: 10/19/2018

Melanie D Morgan

(See above for address)

ATTORNEY TO BE NOTICED

Rebekkah B Bodoff

(See above for address)

ATTORNEY TO BE NOTICED

Rock K. Jung

(See above for address)

ATTORNEY TO BE NOTICED

Counter Claimant

SFR Investments Pool 1, LLC

represented by **Karen L. Hanks**

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Diana S. Ebron

(See above for address)

ATTORNEY TO BE NOTICED

Jacqueline A. Gilbert

(See above for address)

ATTORNEY TO BE NOTICED

Jason G. Martinez

(See above for address)

ATTORNEY TO BE NOTICED

V.

Counter Defendant

Wilmington Trust Company

represented by **Melanie D Morgan**

as Trustee

(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Dana Jonathon Nitz
 (See above for address)
TERMINATED: 04/16/2018

Donna M. Wittig
 (See above for address)
ATTORNEY TO BE NOTICED

Edgar C Smith
 (See above for address)
TERMINATED: 04/16/2018

Karen A Whelan
 (See above for address)
TERMINATED: 10/19/2018

Rebekkah B Bodoff
 (See above for address)
ATTORNEY TO BE NOTICED

Rock K. Jung
 (See above for address)
TERMINATED: 04/16/2018

Date Filed	#	Docket Text
02/17/2016	<u>1</u>	COMPLAINT against All Defendants (Filing fee \$400 receipt number 0978-4003305), filed by Wilmington Trust Company, as Trustee for the Bear Sterns Alt-A Trust, Mortgage Pass-Through Certificates, Series 2007-1. Certificate of Interested Parties due by 2/27/2016. Proof of service due by 6/16/2016. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Exhibit 1, # <u>3</u> Exhibit 2, # <u>4</u> Exhibit 3, # <u>5</u> Exhibit 4, # <u>6</u> Exhibit 5, # <u>7</u> Exhibit 6, # <u>8</u> Exhibit 7, # <u>9</u> Exhibit 8, # <u>10</u> Exhibit 9) (Nitz, Dana) (Entered: 02/17/2016)
02/17/2016		Case assigned to Judge Richard F. Boulware, II and Magistrate Judge Peggy A. Leen. (MMM) (Entered: 02/18/2016)
02/18/2016	<u>2</u>	<p>NOTICE PURSUANT TO LOCAL RULE IB 2-2: In accordance with 28 USC § 636(c) and FRCP 73, the parties in this action are provided with a link to the "AO 85 Notice of Availability, Consent, and Order of Reference - Exercise of Jurisdiction by a U.S. Magistrate Judge" form on the Court's website - www.nvd.uscourts.gov. AO 85 Consent forms should NOT be electronically filed. Upon consent of all parties, counsel are advised to manually file the form with the Clerk's Office. (A copy of form AO 85 has been mailed to parties not receiving electronic service.)</p> <p>NOTICE OF GENERAL ORDER 2013-1 AND OPPORTUNITY FOR EXPEDITED TRIAL SETTING: The parties in this action are provided with a link to General Order 2013-1 and the USDC Short Trial Rules on the Court's website - www.nvd.uscourts.gov. If the parties agree that this action can be ready for trial within 180 days and that a trial of this matter would take three (3) days or less, the parties should consider participation in the USDC Short Trial Program. If the parties wish to be considered for entry into the Court's</p>

		Short Trial Program, they should execute and electronically file with USDC Short Trial Form 4(a)(1) or Form 4(a)(2). (no image attached) (MMM) (Entered: 02/18/2016)
02/18/2016	<u>3</u>	CERTIFICATE of Interested Parties filed by Wilmington Trust Company. There are no known interested parties other than those participating in the case . (Nitz, Dana) (Entered: 02/18/2016)
02/18/2016	<u>4</u>	NOTICE of Lis Pendens by Plaintiff Wilmington Trust Company. (Nitz, Dana) (Entered: 02/18/2016)
02/18/2016	<u>5</u>	PROPOSED SUMMONS to be issued , filed by Plaintiff Wilmington Trust Company. (Nitz, Dana) (Entered: 02/18/2016)
02/18/2016	<u>6</u>	PROPOSED SUMMONS to be issued , filed by Plaintiff Wilmington Trust Company. (Nitz, Dana) (Entered: 02/18/2016)
02/18/2016	<u>7</u>	Summons Issued as to Club at Madeira Canyon Unit Owners' Association, SFR Investments Pool 1, LLC. (MMM) (Entered: 02/18/2016)
03/10/2016	<u>8</u>	CERTIFICATE OF SERVICE by Plaintiff Wilmington Trust Company. (Nitz, Dana) (Entered: 03/10/2016)
03/10/2016	<u>9</u>	CERTIFICATE OF SERVICE by Plaintiff Wilmington Trust Company. (Nitz, Dana) (Entered: 03/10/2016)
03/16/2016	<u>10</u>	MOTION for Demand for Security of Costs; filed by Defendant SFR Investments Pool 1, LLC. (Cline Ebron, Diana) (Entered: 03/16/2016)
03/18/2016	<u>11</u>	Submission of PROPOSED ORDER on <u>10</u> Motion for Demand for Security of Costs ; filed by Plaintiff Wilmington Trust Company . (Nitz, Dana) (Entered: 03/18/2016)
04/08/2016	<u>12</u>	CERTIFICATE of Interested Parties filed by SFR Investments Pool 1, LLC that identifies all parties that have an interest in the outcome of this case. Corporate Parent SFR Investments, LLC for SFR Investments Pool 1, LLC added. . (Cline Ebron, Diana) (Entered: 04/08/2016)
05/12/2016	<u>13</u>	ORDER that <u>10</u> Motion for Demand for Security of Costs is GRANTED. Signed by Judge Richard F. Boulware, II on 5/12/16. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 05/13/2016)
05/16/2016	<u>14</u>	NOTICE of Intent to take Default Against Club at Madeira Canyon Unit Owners' Association by Wilmington Trust Company. (Jung, Rock) (Entered: 05/16/2016)
05/16/2016	<u>15</u>	CERTIFICATE of Cash Deposit as to Wilmington Trust: \$ 500, receipt number NVLAS042389. Legal Owner: Wright, Finlay & Zak, LLP. (MMM) (Entered: 05/17/2016)
05/18/2016	<u>16</u>	NOTICE of Posting Bond by Wilmington Trust Company. (Jung, Rock) (Entered: 05/18/2016)
06/13/2016	<u>17</u>	ANSWER to <u>1</u> Complaint,, (, Discovery Plan/Scheduling Order due by 7/28/2016.), CROSSCLAIM against Hamlet McNeace, Mortgage Electronic Registration Systems, Inc., Shawn McNeace, Nationstar Mortgage LLC, COUNTERCLAIM against Wilmington Trust Company filed by SFR Investments Pool 1, LLC.(Cline Ebron, Diana) NOTICE of Certificate of Interested Parties requirement: Under Local Rule 7.1-1, a party must <u>immediately</u> file its disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court. (Entered: 06/13/2016)
06/16/2016	<u>18</u>	NOTICE of Lis Pendens by Counter Claimant SFR Investments Pool 1, LLC. (Cline Ebron, Diana) (Entered: 06/16/2016)

06/16/2016	<u>19</u>	PROPOSED SUMMONS to be issued, filed by Cross Claimant SFR Investments Pool 1, LLC. (Cline Ebron, Diana) (Entered: 06/16/2016)
06/16/2016	<u>20</u>	PROPOSED SUMMONS to be issued, filed by Cross Claimant SFR Investments Pool 1, LLC. (Cline Ebron, Diana) (Entered: 06/16/2016)
06/16/2016	<u>21</u>	PROPOSED SUMMONS to be issued, filed by Cross Claimant SFR Investments Pool 1, LLC. (Cline Ebron, Diana) (Entered: 06/16/2016)
06/16/2016	<u>22</u>	Summons Issued as to Hamlet McNeace, Shawn McNeace, Nationstar Mortgage LLC. (JM) (Entered: 06/16/2016)
07/08/2016	<u>23</u>	CERTIFICATE of Interested Parties filed by Mortgage Electronic Registration Systems, Inc., Nationstar Mortgage LLC, Wilmington Trust Company. There are no known interested parties other than those participating in the case . (Jung, Rock) (Entered: 07/08/2016)
07/11/2016	<u>24</u>	ANSWER to <u>17</u> Answer to Complaint,,, Crossclaim,,, Counterclaim,,, filed by Mortgage Electronic Registration Systems, Inc., Nationstar Mortgage LLC, Wilmington Trust Company.(Jung, Rock) (Entered: 07/11/2016)
08/03/2016	<u>25</u>	MOTION for Entry of Clerks Default; filed by Plaintiff Wilmington Trust Company. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3)(Jung, Rock) (Entered: 08/03/2016)
08/04/2016	<u>26</u>	Clerk's ENTRY OF DEFAULT as to Club at Madeira Canyon Unit Owners' Association re <u>25</u> Motion for Entry of Clerks Default. (TR) (Entered: 08/04/2016)
08/12/2016	<u>27</u>	SCHEDULING ORDER. Discovery due by 12/12/2016. Motions due by 1/9/2017. Proposed Joint Pretrial Order due by 2/8/2017. Signed by Magistrate Judge Peggy A. Leen on 8/11/2016. (Copies have been distributed pursuant to the NEF - TR) (Entered: 08/12/2016)
08/12/2016	<u>28</u>	NOTICE PURSUANT TO LOCAL RULE IB 2-2: In accordance with 28 USC § 636(c) and FRCP 73, the parties in this action are provided with a link to the "AO 85 Notice of Availability, Consent, and Order of Reference - Exercise of Jurisdiction by a U.S. Magistrate Judge" form on the Court's website - www.nvd.uscourts.gov . AO 85 Consent forms should NOT be electronically filed. Upon consent of all parties, counsel are advised to manually file the form with the Clerk's Office. (A copy of form AO 85 has been mailed to parties not receiving electronic service.) NOTICE OF GENERAL ORDER 2013-1 AND OPPORTUNITY FOR EXPEDITED TRIAL SETTING: The parties in this action are provided with a link to General Order 2013-1 and the USDC Short Trial Rules on the Court's website - www.nvd.uscourts.gov . If the parties agree that this action can be ready for trial within 180 days and that a trial of this matter would take three (3) days or less, the parties should consider participation in the USDC Short Trial Program. If the parties wish to be considered for entry into the Court's Short Trial Program, they should execute and electronically file with USDC Short Trial Form 4(a)(1) or Form 4(a)(2). (no image attached) (TR) (Entered: 08/12/2016)
08/16/2016	<u>29</u>	NOTICE re: Supplemental Authority, filed by Mortgage Electronic Registration Systems, Inc, Nationstar Mortgage LLC, Wilmington Trust Company. (Attachments: # <u>1</u> Exhibit 1) (Jung, Rock) (Entered: 08/16/2016)
08/23/2016	<u>30</u>	CERTIFICATE of Compliance re <u>27</u> Scheduling Order, Set/Reset Deadlines filed by Mortgage Electronic Registration Systems, Inc., Nationstar Mortgage LLC, Wilmington Trust Company . (Jung, Rock) (Entered: 08/23/2016)
08/23/2016	<u>31</u>	PROPOSED Discovery Plan/Scheduling Order filed by Cross Defendants Mortgage

		Electronic Registration Systems, Inc., Nationstar Mortgage LLC, Counter Defendant Wilmington Trust Company, Plaintiff Wilmington Trust Company . (Jung, Rock) (Entered: 08/23/2016)
08/24/2016	<u>32</u>	STIPULATION of Dismissal <i>as to Hamlet McNeace and Shawn McNeace</i> by Cross Claimant SFR Investments Pool 1, LLC. (Gilbert, Jacqueline) (Entered: 08/24/2016)
08/27/2016	<u>33</u>	ORDER Granting <u>32</u> STIPULATION of Dismissal without prejudice as to Hamlet McNeace and Shawn McNeace. Signed by Judge Richard F. Boulware, II on 8/27/16. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 08/29/2016)
09/01/2016	<u>34</u>	SCHEDULING ORDER.(Discovery due by 12/12/2016., Motions due by 1/9/2017., Proposed Joint Pretrial Order due by 2/8/2017.), Motions terminated: Signed by Magistrate Judge Peggy A. Leen on 9/1/16. (Copies have been distributed pursuant to the NEF - ADR) (Entered: 09/01/2016)
09/12/2016	<u>35</u>	MOTION to Amend/Correct Complaint re <u>1</u> Complaint,, by Plaintiff Wilmington Trust Company. Responses due by 9/29/2016. (Attachments: # <u>1</u> Exhibit A - Proposed Amended Complaint)(Jung, Rock) (Entered: 09/12/2016)
10/11/2016	<u>36</u>	Interim STATUS REPORT by Cross Defendants Mortgage Electronic Registration Systems, Inc., Nationstar Mortgage LLC, Counter Defendant Wilmington Trust Company, Plaintiff Wilmington Trust Company. (Jung, Rock) (Entered: 10/11/2016)
10/27/2016	<u>37</u>	NOTICE of Non-Opposition re <u>35</u> Motion to Amend/Correct Complaint, filed by Wilmington Trust Company. (Jung, Rock) (Entered: 10/27/2016)
11/17/2016	<u>38</u>	MOTION to Certify a Question of Law to Nevada's Supreme Court by Defendant SFR Investments Pool 1, LLC. Responses due by 12/4/2016. (Cline Ebron, Diana) (Entered: 11/17/2016)
12/05/2016	<u>39</u>	RESPONSE to <u>38</u> Motion, filed by Plaintiff Wilmington Trust Company. Replies due by 12/15/2016. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Jung, Rock) (Entered: 12/05/2016)
12/12/2016	<u>40</u>	REPLY to Response to <u>38</u> Motion filed by Defendant SFR Investments Pool 1, LLC, Counter Claimant SFR Investments Pool 1, LLC, Cross Claimant SFR Investments Pool 1, LLC. (Cline Ebron, Diana) (Entered: 12/12/2016)
01/06/2017	<u>41</u>	FIRST STIPULATION FOR EXTENSION OF TIME to Stay Dispositive Motion Deadline, filed by Defendant SFR Investments Pool 1, LLC, Counter Claimant SFR Investments Pool 1, LLC. (Gilbert, Jacqueline) (Entered: 01/06/2017)
01/09/2017	<u>42</u>	ORDER Granting <u>41</u> Stipulation to Stay Dispositive Motions Deadlines. Signed by Magistrate Judge Peggy A. Leen on 1/9/17. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 01/10/2017)
05/04/2017	<u>43</u>	ORDER Granting <u>35</u> Motion to Amend Complaint. Signed by Judge Richard F. Boulware, II on 5/4/17. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 05/05/2017)
05/05/2017	<u>44</u>	AMENDED COMPLAINT (<i>FIRST</i>) against All Defendants, filed by Wilmington Trust Company. Adds new parties. Proof of service due by 8/3/2017. (Attachments: # <u>1</u> Exhibit 1 - Deed of Trust, # <u>2</u> Exhibit 2 - Corporation Assignment of Deed of Trust, # <u>3</u> Exhibit 3 - Assignment of Deed of Trust, # <u>4</u> Exhibit 4 - Notice of Delinquent Assessment Lien, # <u>5</u> Exhibit 5 - Notice of Default and Election to Sell, # <u>6</u> Exhibit 6 - Notice of Foreclosure Sale, # <u>7</u> Exhibit 7 - Foreclosure Deed, # <u>8</u> Summons Proposed Summons as to Defendant Nevada Association Services, Inc.)(Jung, Rock) (Entered: 05/05/2017)

05/10/2017	<u>45</u>	Summons Issued as to Nevada Association Services, Inc.. (MMM) (Entered: 05/10/2017)
05/17/2017	<u>46</u>	SUMMONS Returned Executed by Wilmington Trust Company, Mortgage Electronic Registration Systems, Inc., Nationstar Mortgage LLC re <u>44</u> Amended Complaint,, Nevada Association Services, Inc. served on 5/10/2017, answer due 5/31/2017. (Jung, Rock) (Entered: 05/17/2017)
05/19/2017	<u>47</u>	ANSWER to <u>44</u> Amended Complaint,, filed by SFR Investments Pool 1, LLC.(Cline Ebron, Diana) (Entered: 05/19/2017)
06/09/2017	<u>48</u>	<p>MINUTE ORDER IN CHAMBERS of the Honorable Richard F. Boulware, II, on 6/9/2017.</p> <p>On August 12, 2016, the Ninth Circuit issued its decision on appeal in <u>Bourne Valley Court Tr v. Wells Fargo Bank, N.A.</u>, 832 F.3d 1154, 1159-60 (9th Cir. 2016), holding that NRS 116 violates the Due Process Clause and is facially unconstitutional. The Court of Appeals issued its mandate in the appeal on December 14, 2016, vacating and remanding the judgment to the United States District Court, District of Nevada. The parties in <u>Bourne Valley</u> are seeking review in the United States Supreme Court. Bourne Valley filed its petition for writ of certiorari in the United States Supreme Court on April 3, 2017. This Court has additionally certified an issue regarding NRS 116's notice requirement to the Nevada Supreme Court. 2:16-cv-02561-RFB-PAL, ECF No. 41. As the ultimate mandate in these cases may affect issues in the instant litigation, this proceeding is hereby STAYED.</p> <p>IT IS FURTHER ORDERED that <u>38</u> Motion to Certify is denied as moot, as this Court has already certified the relevant question to the Nevada Supreme Court.</p> <p>(Copies have been distributed pursuant to the NEF - BEL) (Entered: 06/09/2017)</p>
04/13/2018	<u>49</u>	MOTION to Substitute Attorney by Cross Defendant Mortgage Electronic Registration Systems, Inc., Counter Defendant Wilmington Trust Company, Plaintiff Wilmington Trust Company. (Wittig, Donna) Modified event on 4/13/2018 (TR). (Entered: 04/13/2018)
04/16/2018	<u>50</u>	ORDER. IT IS ORDERED that <u>49</u> the Substitution of Attorney is GRANTED. Melanie D. Morgan and Karen A. Whelan of Akerman LLP are substituted in the place of Edgar C. Smith, Rock Jung, and Dana J. Nitz of Wright, Finlay & Zak, LLP for plaintiff/counter defendant Wilmington Trust Company, subject to the provisions of LR IA 11-6(c) and (d). Signed by Magistrate Judge Peggy A. Leen on 4/16/2018. (Copies have been distributed pursuant to the NEF - ADR) (Entered: 04/17/2018)
09/07/2018	<u>51</u>	CERTIFICATE of Interested Parties by Nationstar Mortgage LLC that identifies all parties that have an interest in the outcome of this case. Corporate Parent Sub1 LLC, Corporate Parent Sub2 LLC, Other Affiliate Nationstar Mortgage Holdings Inc., Other Affiliate KKR Wand Investors Corporation, Other Affiliate WMIH Corp. for Nationstar Mortgage LLC added. (Whelan, Karen) (Entered: 09/07/2018)
10/17/2018	<u>52</u>	MOTION to remove attorney Karen A. Whelan from the Electronic Service List in this case by Cross Defendants Mortgage Electronic Registration Systems, Inc., Nationstar Mortgage LLC, Counter Defendant Wilmington Trust Company, Plaintiff Wilmington Trust Company. (Bodoff, Rebekkah) (Entered: 10/17/2018)
10/19/2018	<u>53</u>	ORDER granting <u>52</u> Motion to Remove Attorney Karen A Whelan from Electronic Service List. Signed by Magistrate Judge Peggy A. Leen on 10/19/2018. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 10/19/2018)
11/13/2018	<u>54</u>	CERTIFICATE of Interested Parties by Mortgage Electronic Registration Systems, Inc., Nationstar Mortgage LLC that identifies all parties that have an interest in the outcome of

		this case. Corporate Parent Nationstar Sub1 LLC, Corporate Parent Nationstar Sub2 LLC, Other Affiliate Nationstar Mortgage Holdings Inc, Other Affiliate KKR Wand Investors Corporation, Other Affiliate Mr. Cooper Group Inc. for Mortgage Electronic Registration Systems, Inc., Nationstar Mortgage LLC added. (Bodoff, Rebekkah) (Entered: 11/13/2018)
04/08/2019	<u>55</u>	<p>MINUTE ORDER IN CHAMBERS of the Honorable Judge Richard F. Boulware, II on 4/8/2019.</p> <p>The Court has reviewed the record and finds there is no longer a basis to keep this case stayed. The Ninth Circuit and the Nevada Supreme Court have issued several decisions regarding issues in this case.</p> <p>IT IS THEREFORE ORDERED that the stay in this matter is lifted.</p> <p>The Court further finds that extended discovery is not necessary in this case as most if not all of the discovery is in the form of readily available public documents or correspondence exchanged between the parties.</p> <p>IT IS THEREFORE ORDERED that the parties shall have until May 6, 2019 to complete outstanding discovery. The parties shall file dispositive motions, if any, by May 13, 2019; responses shall be filed by May 22, 2019; and replies shall be filed by no later than May 29, 2019. The Court will not entertain motions to extend or to continue the deadlines absent extraordinary circumstances.</p> <p>(Copies have been distributed pursuant to the NEF - CVL) (Entered: 04/08/2019)</p>
04/10/2019	<u>56</u>	NOTICE of intent to dismiss pursuant to FRCP 4(m). The * Amended Complaint* in this action was filed on* 05/05/2017.* To date no proper proof of service has been filed as to*Club at Madeira Canyon Unit Owners' Association.* FRCP 4(m) dismissal deadline set for 5/10/2019. (TR) (Entered: 04/10/2019)
04/24/2019	<u>57</u>	NOTICE of Voluntary Dismissal by Plaintiff Wilmington Trust Company. - of <i>Club at Madeira Canyon Unit Owners' Association</i> (Wittig, Donna) (Entered: 04/24/2019)
04/24/2019		Party Club at Madeira Canyon Unit Owners' Association terminated pursuant to <u>57</u> Notice of Voluntary Dismissal. (JM) (Entered: 04/25/2019)
05/02/2019	<u>58</u>	CLERK'S NOTICE that this case is reassigned to Magistrate Judge Brenda Weksler for all further proceedings. All further documents must bear the correct case number 2:16-cv-00326-RFB-BNW. (no image attached) (MMM) (Entered: 05/02/2019)
05/13/2019	<u>59</u>	MOTION for Summary Judgment by Cross Defendant Nationstar Mortgage LLC, Plaintiff Wilmington Trust Company. Responses due by 6/3/2019. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K) (Wittig, Donna) (Entered: 05/13/2019)
05/13/2019	<u>60</u>	MOTION for Summary Judgment by Defendant SFR Investments Pool 1, LLC, Counter Claimant SFR Investments Pool 1, LLC, Cross Claimant SFR Investments Pool 1, LLC. Responses due by 6/3/2019. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B) (Gilbert, Jacqueline) (Entered: 05/13/2019)
05/22/2019	<u>61</u>	RESPONSE to <u>59</u> Motion for Summary Judgment, by Defendant SFR Investments Pool 1, LLC, Counter Claimant SFR Investments Pool 1, LLC, Cross Claimant SFR Investments Pool 1, LLC. Replies due by 6/5/2019. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B) (Gilbert, Jacqueline) (Entered: 05/22/2019)
05/22/2019	<u>62</u>	RESPONSE to <u>60</u> Motion for Summary Judgment, by Cross Defendant Nationstar

		Mortgage LLC, Plaintiff Wilmington Trust Company. Replies due by 6/5/2019. (Attachments: # <u>1</u> Exhibit 1) (Wittig, Donna) (Entered: 05/22/2019)
05/29/2019	<u>63</u>	REPLY to Response to <u>59</u> Motion for Summary Judgment, by Cross Defendant Nationstar Mortgage LLC, Plaintiff Wilmington Trust Company. (Wittig, Donna) (Entered: 05/29/2019)
05/29/2019	<u>64</u>	REPLY to Response to <u>60</u> Motion for Summary Judgment, by Defendant SFR Investments Pool 1, LLC, Counter Claimant SFR Investments Pool 1, LLC, Cross Claimant SFR Investments Pool 1, LLC. (Ebron, Diana) (Entered: 05/29/2019)
06/21/2019	65	<p>MINUTE ORDER IN CHAMBERS of the Honorable Richard F. Boulware, II on 6/21/2019.</p> <p>IT IS ORDERED that a hearing regarding <u>59</u> , <u>60</u> MOTIONS for Summary Judgment is set for July 31, 2019 at 8:30 AM in LV Courtroom 7C before Judge Richard F. Boulware, II.</p> <p>A stacked hearing is set for July 31, 2019. Counsel for the parties are ordered to appear at this hearing. Failure to appear at the scheduled hearing time may result in the imposition of sanctions, including but not limited to monetary sanctions, granting of the opposing party's motion or case-dispositive sanctions. Each party shall have three days to notify the Courtroom Administrator by email at blanca_lenzi@nvd.uscourts.gov if unable to attend and propose an alternative hearing time after consulting with opposing counsel.</p> <p>(no image attached) (Copies have been distributed pursuant to the NEF - BEL) (Entered: 06/21/2019)</p>
07/31/2019	66	<p>MINUTES OF PROCEEDINGS - Motion Hearing held on 7/31/2019 before the Honorable Richard F. Boulware, II. Crtrm Administrator: <i>Blanca Lenzi</i>; Pla Counsel: <i>Donna Wittig, Esq.</i>; Def Counsel: <i>Jason Martinez, Esq.</i>; Court Reporter: <i>Patty Ganci</i>; Time of Hearing: 9:27 AM- 9:44 AM; Courtroom: 7C.</p> <p>The Court makes its findings of undisputed facts regarding <u>59</u> Motion for Summary Judgment and <u>60</u> Motion for Summary Judgment. The Court then makes preliminary statements and hears representations from the parties.</p> <p>For the reasons stated on the record, IT IS ORDERED that <u>60</u> Motion for Summary Judgment is GRANTED. The Court finds in favor SFR Investments Pool I, LLC on claim one and counterclaim one. The Court declares that the deed of trust was extinguished by the foreclosure sale and that SFR Investments Pool I, LLC acquired the property free and clear of the deed of trust.</p> <p>IT IS FURTHER ORDERED that <u>59</u> Motion for Summary Judgment is DENIED.</p> <p>IT IS FURTHER ORDERED that claim two and counterclaim/crossclaim two are DISMISSED as the claims seek a form of relief instead of stating a stand-alone claim.</p> <p>IT IS FURTHER ORDERED that claims three, four, five, and six are DISMISSED.</p> <p>IT IS FURTHER ORDERED that counterclaim three is DISMISSED as moot in light of the declaratory judgment issued herein.</p> <p>IT IS FURTHER ORDERED that the lis pendens against the property is expunged.</p> <p>IT IS FURTHER ORDERED that the Clerk of the Court is instructed to close this matter accordingly.</p>

		The transcript of the hearing shall serve as the written Opinion and Order of the Court. (no image attached) (Copies have been distributed pursuant to the NEF - BEL) (Entered: 07/31/2019)
08/01/2019	<u>67</u>	CLERK'S JUDGMENT in favor of SFR Investments Pool 1, LLC. Signed by Clerk of Court Debra K. Kempf on 8/1/2019. (Copies have been distributed pursuant to the NEF - ADR) (Entered: 08/01/2019)
08/09/2019	<u>68</u>	Submission of PROPOSED ORDER on 66 Order on Motion for Summary Judgment,,,,,,,,,,,,, Motion Hearing,,,,,,,,, Terminate Deadlines/Hearings,,,,,,,, <u>67</u> Judgment by Defendant SFR Investments Pool 1, LLC, Counter Claimant SFR Investments Pool 1, LLC, Cross Claimant SFR Investments Pool 1, LLC. (Martinez, Jason) (Entered: 08/09/2019)
08/09/2019	<u>69</u>	AMENDED JUDGMENT. Signed by Clerk of Court Debra K. Kempf on 8/9/2019. (Copies have been distributed pursuant to the NEF - ADR) (Entered: 08/09/2019)
08/15/2019	<u>70</u>	BILL OF COSTS by Counter Claimant SFR Investments Pool 1, LLC. Objection to Bill of Costs due by 8/29/2019. Tax Bill of Costs by 9/5/2019. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B) (Martinez, Jason) (Entered: 08/15/2019)
08/27/2019	<u>71</u>	OBJECTION to <u>70</u> Bill of Costs by Cross Defendant Nationstar Mortgage LLC, Counter Defendant Wilmington Trust Company, Plaintiff Wilmington Trust Company. Response to Objection to Bill of Costs due by 9/3/2019. (Wittig, Donna) (Entered: 08/27/2019)
08/29/2019	<u>72</u>	TRANSCRIPT of Proceedings, 66 Order on Motion for Summary Judgment, Motion Hearing, held on 7/31/2019, before Judge Richard F. Boulware, II. Court Reporter: Patricia Ganci, PG@nvd.uscourts.gov. Any Redaction Request is due by 9/19/2019. Redacted Transcript Deadline is set for 9/29/2019. Release of the Transcript Restriction is set for 11/27/2019. Before release date, the transcript may be viewed at the court public terminal or purchased through the reporter. Transcript Order form is available on court website. After that date it may be obtained through the court reporter or PACER. (PG) (Entered: 08/29/2019)
09/03/2019	<u>73</u>	RESPONSE to <u>71</u> Objection to Bill of Costs by Defendant SFR Investments Pool 1, LLC. (Gilbert, Jacqueline) (Entered: 09/03/2019)
09/03/2019	<u>74</u>	NOTICE OF APPEAL as to 66 Order, <u>67</u> Judgment, <u>69</u> Amended Judgment by Cross Defendants Mortgage Electronic Registration Systems, Inc., Nationstar Mortgage LLC, Counter Defendant Wilmington Trust Company, Plaintiff Wilmington Trust Company. Filing fee \$ 505, receipt number 0978-5688094. E-mail notice (NEF) sent to the US Court of Appeals, Ninth Circuit. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C) (Morgan, Melanie) (Entered: 09/03/2019)
09/03/2019	<u>75</u>	Designation of Transcripts and Transcript Order forms and instructions for <u>74</u> Notice of Appeal,. The forms may also be obtained on the Court's website at www.nvd.uscourts.gov . (Attachments: # <u>1</u> Transcript Order Form) (MMM) (Entered: 09/03/2019)
09/04/2019	<u>76</u>	USCA ORDER for Time Schedule as to <u>74</u> Notice of Appeal. USCA Case Number 19-16724 . (Copies have been distributed pursuant to the NEF - SLD) (Entered: 09/04/2019)
09/10/2019	<u>77</u>	COSTS TAXED in the amount of \$2,063.90 against Plaintiff Wilmington Trust. (ADR) (Entered: 09/10/2019)
09/10/2019	<u>78</u>	CLERK'S MEMORANDUM regarding taxation of costs. (ADR) (Entered: 09/10/2019)
09/10/2019	<u>79</u>	NOTICE of Entry of Clerk's Taxation of Costs & Clerk's Memorandum re Taxation of Costs by SFR Investments Pool 1, LLC re <u>77</u> Costs Taxed, <u>78</u> Clerks Memorandum of

Costs Taxed. (Ebron, Diana) (Entered: 09/10/2019)

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Description:	Docket Report	Search Criteria:	2:16-cv-00326-RFB-BNW
Billable Pages:	12	Cost:	1.20

EXHIBIT “B”

EXHIBIT “B”

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11 *Stearns ALT-A Trust, Mortgage Pass-Through Certificates, Series 2007-1; and Cross-*
12 *Defendants, Nationstar Mortgage, LLC and Mortgage Electronic Registration Systems, Inc.*

13 **IN THE UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 WILMINGTON TRUST COMPANY, AS
16 TRUSTEE FOR THE BEAR STEARNS ALT-
17 A TRUST, MORTGAGE PASS-THROUGH
18 CERTIFICATES SERIES 2007-1,

19 Plaintiff,

20 vs.

21 SFR INVESTMENTS POOL 1, LLC, a Nevada
22 limited liability company; CLUB AT
23 MADEIRA CANYON UNIT OWNERS'
24 ASSOCIATION; DOES I through X, inclusive;
25 and ROE CORPORATIONS I through X,
26 inclusive,

27 Defendants.

28 SFR INVESTMENTS POOL 1, LLC, a Nevada
limited liability company,

Counter/Cross-Claimant,

vs.

WILMINGTON TRUST COMPANY, AS
TRUSTEE FOR THE BEAR STEARNS ALT-
A TRUST, MORTGAGE PASS-THROUGH
CERTIFICATES SERIES 2007-1;
NATIONSTAR MORTGAGE, LLC, a
Delaware limited liability company;

Case No.: 2:16-cv-00326-RFB-PAL

**PLAINTIFF'S MOTION TO AMEND
COMPLAINT AND CAPTION**

MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., a
Delaware corporation, as nominee beneficiary
for PULTE MORTGAGE, LLC; HAMLET
McNEACE, an individual; and SHAWN
McNEACE, an individual,

Counter/Cross-Defendants.

MOTION TO AMEND COMPLAINT AND CAPTION

I. INTRODUCTION

Plaintiff/Counterdefendant Wilmington Trust Company, as Trustee for the Bear Stearns ALT-A Trust, Mortgage Pass-Through Certificates, Series 2007-1, by and through their attorneys of record, Edgar C. Smith, Esq., and Rock K. Jung, Esq., of the law firm of Wright, Finlay & Zak, LLP, hereby moves for leave to amend its Complaint and to amend the caption to reflect the new parties.

II. ARGUMENT

Federal Rules of Civil Procedure (“F.R.C.P.”) 15(a)(2), 15(d) and 20 in federal court permits a party to amend its pleading by leave of court and states that “leave shall be freely given when justice so requires.” F.R.C.P. 15(a). The Ninth Circuit has similarly held that the policy of freely granting leave to amend “is to be applied with extreme liberality.” *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001). “In exercising its discretion a court must be guided by the underlying purpose of Rule 15 — to facilitate decision on the merits rather than on the pleadings or technicalities.” *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987)). Therefore, a party shall be given leave to amend freely provided there is no existing bad-faith factors such as undue delay, bad faith or dilatory motive on the part of the movant seeking leave. 3 MOORE'S FEDERAL PRACTICE - CIVIL § 15.14 (2011) (analyzing F.R.C.P. 15(a) and stating that “[d]enial of leave to amend is disfavored; and a district judge should grant leave absent a substantial reason to deny”).

Here, applying these well-established principles, the Court should grant Plaintiff's request for leave to amend. Justice requires leave to amend, as the subject HOA and its sales

1 trustee Nevada Association Services, Inc. (“NAS”) proceeded to sell the Property without, *inter*
2 *alia*, proper notice and also including improper fees. Further, the Nevada Supreme Court’s recent
3 decision in Horizons at Seven Hills Homeowners Association v. Ikon Holdings, LLC, 132 Nev.
4 Adv. Op. 35 (April 28, 2016) (“Ikon”) and Shadow Wood Homeowners Association, Inc. v. New
5 York Community Bancorp, Inc., 132 Nev. Adv. Op. 5 (Jan. 28, 2016) (“Shadow Wood”) has
6 substantially changed the law of HOA sales, regarding recitals, amounts that comprise the super-
7 priority lien portion, and the pleadings should appropriately be amended to reflect the state of the
8 law after that decision. Plaintiff’s current action against just Defendant SFR INVESTMENTS
9 POOL 1, LLC (“SFR”), and Defendant CLUB AT MADEIRA CANYON UNIT OWNERS’
10 ASSOCIATION (the “HOA”) is untenable as it stands, as colorable claims also exist against the
11 HOA’s sales trustee/agent NAS. In the Shadow Wood case, an end was brought to the past
12 arguments by buyers that relied solely on the recitals in an HOA foreclosure deed to establish
13 quiet title in favor of the buyer. Plus the Shadow Wood decision demonstrates genuine issues of
14 material fact related to fees and costs, commercial reasonableness, and the circumstances
15 surrounding the HOA Sale need to be explored in discovery. Meanwhile, in the Ikon case, the
16 Nevada Supreme court stated that the super-priority lien is ONLY 9 months of dues and nothing
17 more. Thus, the Court soundly rejected the HOA’s argument that they must be able to have
18 collection fees and costs.

19 These recent developments as well as the fact that Plaintiff, HOA and the HOA Trustee
20 are still waiting to have a NRED mediation scheduled, makes vital the allegations in Plaintiff’s
21 Amended Complaint that NAS- failed to properly notify Plaintiff that it was foreclosing on the
22 superpriority portion of its lien, that it further failed to identify or provide the super-priority
23 amount in any of its notices, and even went as far as to refuse providing any payoff information
24 regarding the alleged delinquent HOA account *See* attached as Exhibit “A”, Plaintiff’s proposed
25 Amended Complaint. Moreover, the Court stated that lenders should have a right to pay off an
26 HOA delinquent assessment lien to protect its interest. *Id.* at 414 (“U.S. Bank could have paid
27 off the [HOA] lien to avert loss of its security.”).

1 As discussed earlier, in evaluating a request for leave to amend, courts examine such
2 factors as undue delay, bad faith, or dilatory motive and whether they are present. Those factors
3 or reasons are simply not present here. Plaintiff's request to amend the pleadings is timely as
4 only limited discovery has been commenced, settlement negotiations have or will soon be
5 commencing between Plaintiff and SFR, and Plaintiff did not unreasonably delay in bringing this
6 motion as it was first seeking to complete the NRS Ch. 38 mediation. Furthermore, this request
7 is not made in bad faith or for any dilatory motive. To the contrary, Plaintiff is seeking leave to
8 amend to ensure that this case may be evaluated on its merits in light of a recent change in
9 circumstances and in the law. *See* 3 MOORE'S FEDERAL PRACTICE - CIVIL § 15.14 (discussing
10 F.R.C.P. 15(a) and noting that "a court should allow amendments to ensure that all the issues are
11 before the court").

12 In addition, the clear benefits of streamlining adjudication of common facts and related
13 issues weigh heavily in favor of permitting amendment, as joining all of the relevant parties and
14 adjudicating all claims in one action will benefit judicial economy, save the parties time and
15 resources, and enable a thorough and conclusive determination of the parties' contentions.

16 Plaintiff also requests that the Court amend the caption to reflect the change in parties as
17 shown in Plaintiff's proposed Amended Complaint, attached hereto as Exhibit "A".

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EXHIBIT A

Proposed First Amended Complaint

EXHIBIT A

EXHIBIT A

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11 *Stearns ALT-A Trust, Mortgage Pass-Through Certificates, Series 2007-1; and Cross-*
12 *Defendants, Nationstar Mortgage, LLC and Mortgage Electronic Registration Systems, Inc.*

13 **IN THE UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 WILMINGTON TRUST COMPANY, AS
16 TRUSTEE FOR THE BEAR STEARNS ALT-
17 A TRUST, MORTGAGE PASS-THROUGH
18 CERTIFICATES SERIES 2007-1,

19 Plaintiff,

20 vs.

21 SFR INVESTMENTS POOL 1, LLC, a Nevada
22 limited liability company; CLUB AT
23 MADEIRA CANYON UNIT OWNERS'
24 ASSOCIATION; DOES I through X, inclusive;
25 and ROE CORPORATIONS I through X,
26 inclusive,

27 Defendants.

28 SFR INVESTMENTS POOL 1, LLC, a Nevada
limited liability company,

Counter/Cross-Claimant,

vs.

WILMINGTON TRUST COMPANY, AS
TRUSTEE FOR THE BEAR STEARNS ALT-
A TRUST, MORTGAGE PASS-THROUGH
CERTIFICATES SERIES 2007-1;
NATIONSTAR MORTGAGE, LLC, a
Delaware limited liability company;

Case No.: 2:16-cv-00326-RFB-PAL

**PLAINTIFF'S FIRST AMENDED
COMPLAINT**

1 MORTGAGE ELECTRONIC
2 REGISTRATION SYSTEMS, INC., a
3 Delaware corporation, as nominee beneficiary
4 for PULTE MORTGAGE, LLC; HAMLET
McNEACE, an individual; and SHAWN
McNEACE, an individual,

5 Counter/Cross-Defendants.

6
7 COMES NOW Plaintiff/Counter-defendant, Wilmington Trust Company, as Trustee for
8 the Bear Stearns ALT-A Trust, Mortgage Pass-Through Certificates, Series 2007-1 (hereinafter
9 "Plaintiff"), by and through their attorneys of record, Edgar C. Smith, Esq. and Rock K. Jung,
10 Esq., of the law firm of WRIGHT, FINLAY & ZAK, LLP, and hereby submits its First
11 Amended Complaint.

12 **INTRODUCTION**

13 1. The real property that is the subject of this civil action consists of a residence
14 commonly known as 2745 King Louis Street, Henderson, Nevada 89044 (Parcel No.190-19-810-
15 122) (hereinafter the "Property").

16 **JURISDICTION AND VENUE**

17 2. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §
18 1332, as Plaintiff is a "citizen of a different States" from all defendants and the amount in
19 controversy exceeds \$75,000, exclusive of interest and costs.

20 3. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1)-(2)
21 because Defendants reside in this district; a substantial part of the events or omissions giving rise
22 to Plaintiff's claims occurred in this district; and the property that is the subject of this action is
23 situated in this district, in North Las Vegas, Clark County, Nevada.

24 4. The Court has personal jurisdiction over SFR INVESTMENTS POOL I, LLC
25 (hereinafter "Buyer" or "SFR") because this lawsuit arises out of and is connected with its
26 purposeful purchase of an interest in real property situated in the County of Clark, State of
27 Nevada, and upon information and belief, SFR is a Nevada limited liability company.

5. The Court has personal jurisdiction over MADEIRA CANYON UNIT OWNERS' ASSOCIATION (hereinafter "HOA") because this lawsuit arises out of and is connected with the HOA's foreclosure of real property located in the County of Clark, State of Nevada, and upon information and belief, the HOA is a Nevada non-profit corporation.

6. The Court has personal jurisdiction over NEVADA ASSOCIATION SERVICES, INC. (hereinafter “HOA Trustee” or “NAS”) because this lawsuit arises out of and is connected with the NAS’s acts or omissions in relation to the foreclosure of real property located in the County of Clark, State of Nevada, and upon information and belief, NAS is a Nevada domestic corporation.

PARTIES

7. Plaintiff is a Delaware corporation and authorized to do business in the State of Nevada.

8. Plaintiff is now and at all times relevant herein the assigned Beneficiary under the Deed of Trust signed by Hamlet McNeace and Shawn L. McNeace (hereinafter “McNeace”), as husband and wife, recorded on November 1, 2006, (hereinafter “Deed of Trust”), which encumbers the Property and secures a promissory note.

9. Upon information and belief, SFR is a Nevada limited-liability company. Public records show SFR is the current owner of record for the Property.

10. Upon information and belief, the HOA, is a Nevada non-profit corporation licensed to do business in the state of Nevada.

11. Upon information and belief, the HOA Trustee, is a Nevada domestic corporation licensed to do business in the State of Nevada.

GENERAL ALLEGATIONS

12. On or about October 31, 2006, McNeace purchased the Property.

13. To purchase the Property, McNeace borrowed \$683,528.00 from originating lender Pulte Mortgage, LLC. To obtain the loan, McNeace executed a Note secured by a Deed of Trust recorded on November 1, 2006. The Deed of Trust identified Pulte Mortgage, LLC, as the Lender; Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for Plaintiff's

1 successors and assigns, and Lawyers Title as the Trustee.¹

2 **14.** On May 5, 2014, a Corporate Assignment of Deed of Trust was recorded against
3 the Property conveying the beneficial interest under the Deed of Trust to Nationstar Mortgage,
4 LLC.²

5 **15.** On June 24, 2014, an Assignment of Deed of Trust was recorded against the
6 Property conveying the beneficial interest under the Deed of Trust to Plaintiff.³

7 **16.** On August 21, 2012, a Notice of Delinquent Assessment Lien was recorded
8 against the Property by the HOA Trustee on behalf of the HOA.⁴

9 **17.** On October 31, 2012, a Notice of Default and Election to Sell was recorded
10 against the Property.⁵

11 **18.** On October 4, 2013, the HOA Trustee recorded a Notice of Foreclosure Sale with
12 the Clark County Recorder on behalf of the HOA.⁶

13 **19.** Upon information and belief, a non-judicial foreclosure sale is alleged to have
14 occurred on March 28, 2014 (the "HOA Sale"), whereby the HOA conveyed its interest in the
15 Property, if any, to Buyer for the sum of \$17,000.00.

16 **20.** Public records show that on March 31, 2014, a Foreclosure Deed was recorded by
17
18

19 ¹ A true and correct copy of the Deed of Trust recorded as Book and Instrument Number
20 20061101-0004451 with the Clark County Recorder on March 9, 2009, is attached hereto as
21 **Exhibit 1.**

22 ² A true and correct copy of the Corporation Assignment of Deed of Trust recorded as
23 Book and Instrument Number 20090924-0002868 with the Clark County Recorder on September
24 24, 2009, is attached hereto as **Exhibit 2.**

25 ³ A true and correct copy of the Assignment of Deed of Trust recorded as Book and
26 Instrument Number 20140624-0000200 with the Clark County Recorder is attached hereto as
27 **Exhibit 3.**

28 ⁴ A true and correct copy of the Notice of Delinquent Assessment Lien recorded as Book
and Instrument Number 20120821-0002043 is attached hereto as **Exhibit 4.**

⁵ A true and correct copy of the Notice of Default and Election to Sell Under Homeowners
Association Lien recorded as Book and Instrument Number 20121031-0001396 with the Clark
County Recorder is attached hereto as **Exhibit 5.**

⁶ A true and correct copy of the Notice of Foreclosure Sale recorded with the Clark County
Recorder as Book and Instrument Number 20131004-0001613, is attached hereto as **Exhibit 6.**

1 which Buyer claims its interest.⁷

2 **21.** None of the aforementioned notices identified above and attached as Exhibits 4-6
3 identified what portion of the claimed lien was for alleged late fees, interest, fines/violations, or
4 collection fees/costs.

5 **22.** None of the aforementioned notices identified above and attached as Exhibits 4-6
6 specified what portion of the lien, if any, that the HOA claimed constituted a “super-priority”
7 lien.

8 **23.** None of the aforementioned notices identified above and attached as Exhibits 4-6
9 specified whether the HOA was foreclosing on the “super-priority” portion of its lien, if any, or
10 under the non-super-priority portion of the lien.

11 **24.** None of the aforementioned notices identified above and attached as Exhibits 4-6
12 provided any notice of a right to cure.

13 **25.** A homeowner’s association sale conducted pursuant to NRS Chapter 116 must
14 comply with all notice provisions as stated in NRS 116.31162 through NRS 116.31168 and NRS
15 107.090.

16 **26.** A lender or a holder of a beneficial interest in a senior deed of trust, such as
17 Plaintiff, has a right to cure a delinquent homeowner’s association lien in order to protect its
18 interest.

19 **27.** Upon information and belief, the HOA and its agent, the HOA Trustee, did not
20 comply with all mailing and noticing requirements stated in NRS 116.31162 through NRS
21 116.31168, or as required by the CC&R’s.

22 **28.** A recorded notice of default must “describe the deficiency in payment.”

23 **29.** The HOA Sale occurred without notice to Plaintiff, what portion of the lien, if
24 any, that HOA and HOA Trustee claimed constituted a “super-priority” lien.

25 **30.** The HOA Sale occurred without notice to Plaintiff, whether HOA was foreclosing
26 on the “super-priority” portion of its lien, if any, or under the non-super-priority portion of the
27

28 ⁷ A true and correct copy of the Foreclosure Deed recorded with the Clark County
Recorder as Book and Instrument Number 20140331-0002267, is attached hereto as **Exhibit 7**.

1 lien.

2 **31.** The HOA Sale occurred without notice to Plaintiff, of a right to cure the
3 delinquent assessment and the super-priority lien, if any.

4 **32.** The HOA Sale violated Plaintiff's rights to due process because Plaintiff was not
5 given proper, adequate notice and the opportunity to cure the deficiency or default in the
6 payment of the HOA's assessments and the super-priority lien, if any.

7 **33.** The HOA Sale was an invalid sale and could not have extinguished Plaintiff's
8 secured interest because of defects in the notices given to Plaintiff, or its predecessors, agents,
9 servicers or trustees, if any.

10 **34.** Under NRS Chapter 116, a lien under NRS 116.3116(1) can only include costs
11 and fees that are specifically enumerated in the statute.

12 **35.** A homeowner's association may only collect as a part of the super priority lien (a)
13 nuisance abatement charges incurred by the association pursuant to NRS 116.310312 and (b)
14 nine months of common assessments which became due prior to the institution of an action to
15 enforce the lien (unless Fannie Mae and Freddie Mac regulations require a shorter period of not
16 less than six months).

17 **36.** Upon information and belief, the HOA Foreclosure Notices included improper
18 fees and costs in the amount demanded.

19 **37.** The attorney's fees and the costs of collecting on a homeowner's association lien
20 cannot be included in the super-priority lien.

21 **38.** Upon information and belief, the HOA assessment lien and foreclosure notices
22 included fines, interest, late fees, dues, attorney's fees, and costs of collection that are not
23 properly included in a super-priority lien under Nevada law and that are not permissible under
24 NRS 116.3102 et seq.

25 **39.** The HOA Sale did not comply with NRS 116.3102 et seq. because none of the
26 aforementioned notices, identified above, identified what portion of the claimed lien were for
27 alleged late fees, interest, fines/violations, or collection fees/costs.

28 **40.** The HOA Sale is unlawful and void under NRS 116.3102 et seq.

1 **41.** The HOA Sale is unlawful and void because the “opt-in” provision in NRS
2 116.3116 does not satisfy Constitutional Due Process safeguards under the 5th and 14th
3 Amendment to the United States Constitution, nor Article 1, Section 8, of the Nevada
4 Constitution, so that the statute is unconstitutional on its face.

5 **42.** Alternatively, the HOA Sale is unlawful and void because the statutory scheme
6 set forth in NRS 116.3116, et seq. constitutes a regulatory taking of private property without
7 adequate compensation so the statute is unconstitutional on its face.

8 **43.** NRS 116.31162 through NRS 116.31168 do not contain any provision requiring
9 notice of a foreclosure to the Plaintiff, beneficiary or holder of a first mortgage or deed of trust,
10 thus violating their constitutional right to due process.

11 **44.** Alternatively, NRS Chapter 116 is unconstitutional on its face as it lacks any
12 express right by the Plaintiff, beneficiary or holder, or their respective trustees, servicers, agents,
13 or representatives, to obtain payoff information for the super-priority portion, if any, of the
14 homeowner’s association lien or the express right to cure the default and protect the Deed of
15 Trust, and it lacks an express obligation for a homeowner’s association or its agents to accept a
16 tendered payoff and release the super-priority portion of the lien.

17 **45.** Alternatively, NRS Chapter 116 is unconstitutional on its face due to vagueness
18 and ambiguity.

19 **46.** The HOA Sale deprived Plaintiff of its right to due process because the
20 foreclosure notices failed to identify the super-priority amount, or to adequately describe the
21 deficiency in payment, to provide Plaintiff notice of the correct super-priority amount, or to
22 provide a reasonable opportunity for Plaintiff to protect its priority by payment to satisfy that
23 amount.

24 **47.** Either the HOA Sale, which violated Plaintiff’s constitutional rights was
25 ineffective to displace Plaintiff’s first position under its Deed of Trust such that Buyer took its
26 interest subject to that Deed of Trust, or the HOA Sale was invalid and must be set aside.

27 **48.** A homeowner’s association sale must be done in a commercially reasonable
28 manner.

1 **49.** The HOA Sale was not commercially reasonable, and the HOA Sale not done in
2 good faith, in light of the sales price when compared to the debt owed to Plaintiff on the
3 McNeace Loan (\$683,342.88) and the fair market value of the property, along with the errors
4 alleged above.

5 **50.** Upon information and belief, at the time of the HOA Sale, the fair market value of
6 the Property exceeded \$473,166.00.

7 **51.** The amount paid at the HOA Sale allegedly totaled \$17,000.00.

8 **52.** The circumstances of the HOA Sale of the Property breached the HOA's
9 obligations of good faith under NRS 116.1113 and its duty to act in a commercially reasonable
10 manner.

11 **53.** The HOA Sale by which Buyer, eventually, took its interest was commercially
12 unreasonable if it extinguished Plaintiff's Deed of Trust.

13 **54.** In the alternative, the HOA Sale was an invalid sale and could not have
14 extinguished Plaintiff's secured interest because it was not a commercially reasonable sale.

15 **55.** Without providing Plaintiff notice of the correct super-priority amount and a
16 reasonable opportunity to tender payment to satisfy that amount, including the failure to set out
17 the super-priority amount and the failure to adequately describe the deficiency in payment as
18 required by Nevada law, the HOA Sale is commercially unreasonable and deprived Plaintiff of
19 its right to due process.

20 **56.** Because the CC&Rs contained a Mortgagee Protection Clause and because
21 Plaintiff was not given proper notice that the HOA intended to foreclose on the super-priority
22 portion of the dues owing, Plaintiff did not know that it had to attend the HOA Sale to protect its
23 security interest.

24 **57.** Because the CC&Rs contained a Mortgagee Protection Clause, and because
25 proper notice that the HOA intended to foreclose on the super-priority portion of the dues owing
26 was not given, prospective bidders did not appear for the HOA Sale, making the HOA Sale
27 commercially unreasonable.

28 **58.** The circumstances of the HOA Sale of the Property breached the HOA's and the

1 HOA Trustee's obligations of good faith under NRS 116.1113 and their duty to act in a
2 commercially reasonable manner.

3 **59.** Plaintiff is informed and believes that SFR was a professional foreclosure sale
4 property purchaser.

5 **60.** The circumstances of the HOA Sale of the Property and their status as a
6 professional property purchaser mean SFR cannot be deemed a bona fide purchaser for value.

7 **61.** Upon information and belief, SFR had actual, constructive or inquiry notice of
8 Plaintiff's first Deed of Trust, which prevents SFR from being deemed a bona fide purchaser or
9 encumbrancer for value.

10 **62.** In the event Plaintiff's interest in the Property is not reaffirmed nor restored,
11 Plaintiff suffered damages in the amount of the fair market value of the Property or the unpaid
12 balance of the Manzo Loan and Deed of Trust, at the time of the HOA Sale, whichever is greater,
13 as a proximate result of Defendant's acts and omissions.

14 **FIRST CAUSE OF ACTION**

15 **(Quiet Title/Declaratory Relief versus SFR, HOA, and HOA Trustee)**

16 **63.** Plaintiff incorporates and re-alleges all previous paragraphs, as if fully set forth
17 herein.

18 **64.** Pursuant to NRS 30.010 et seq. and NRS 40.010, this Court has the power and
19 authority to declare Plaintiff's rights and interests in the Property and to resolve Defendants'
20 adverse claims in the Property.

21 **65.** Further, pursuant to NRS 30.010 et seq., this Court has the power and authority to
22 declare the rights and interest of the parties following the acts and omissions of the HOA and
23 HOA Trustee in foreclosing the Property.

24 **66.** Plaintiff's Deed of Trust is a first secured interest on the Property as intended by
25 NRS 116.3116(2)(b).

26 **67.** As the current beneficiary under the Deed of Trust and the Plaintiff entitled to
27 enforce the Loan, Plaintiff's interest still encumbers the Property and retains its first position
28 status in the chain of title for the Property after the HOA Sale and is superior to the interest, if

1 any, acquired by Defendant, or held or claimed by any other successor in interest to any of them,
2 for the reasons alleged herein.

3 **68.** Upon information and belief, Defendant SFR dispute Plaintiff's claims and assert
4 priority, so that their claims are adverse to Plaintiff's claims.

5 **69.** Upon information and belief, the HOA, the HOA Trustee and the fictitious
6 Defendants failed to provide proper, adequate and sufficient notices required by Nevada statutes,
7 the CC&R's and assure due process to Plaintiff, and therefore the HOA Sale is void and should
8 be set aside or rescinded.

9 **70.** Based on the adverse claims being asserted by the parties, Plaintiff is entitled to a
10 judicial determination regarding the rights and interests of the respective parties to the case.

11 **71.** For all the reasons set forth, Plaintiff is entitled to a determination from this
12 Court, pursuant to NRS 40.010, that Plaintiff is the beneficiary of a Deed of Trust that still
13 encumbers the Property as of the date of the court's determination, and that Plaintiff's rights
14 under the deed of trust are superior in the chain of title to the interest of all Defendants.

15 **72.** In the alternative, if it is found under state law that Plaintiff's interest could have
16 been extinguished by the HOA sale, for all the reasons set forth above and in the Factual
17 Background, Plaintiff is entitled to a determination from this Court, pursuant to NRS 30.010 and
18 NRS 40.010, that the HOA Sale is unlawful and void and conveyed no legitimate interest to
19 Defendant.

20 **73.** Plaintiff has furthermore been required to retain counsel and is entitled to recover
21 reasonable attorney's fees for having brought the underlying action.

22 **SECOND CAUSE OF ACTION**

23 **(Preliminary and Permanent Injunctions versus SFR)**

24 **74.** Plaintiff incorporates by reference the allegations of all previous paragraphs, as if
25 fully set forth herein.

26 **75.** As set forth above, Defendant may claim an ownership interest in the Property
27 that is adverse to Plaintiff.

28 **76.** Any sale or transfer of the Property, prior to a judicial determination concerning

1 the respective rights and interests of the parties to the case, may be rendered invalid if Plaintiff's
2 Deed of Trust still encumbered the Property in first position and was not extinguished by the
3 HOA Sale.

4 77. Plaintiff has a reasonable probability of success on the merits of the Complaint,
5 for which compensatory damages will not compensate Plaintiff for the irreparable harm of the
6 loss of title to a bona fide purchaser or loss of the first position priority status secured by the
7 Property.

8 78. Plaintiff has no adequate remedy at law due to the uniqueness of the Property
9 involved in the case.

10 79. Plaintiff is entitled to a preliminary and permanent injunction prohibiting
11 Defendant, their successors, assigns, and agents from conducting a sale, transfer or encumbrance
12 of the Property if Defendant or its transferee claims or will claim the sale, transfer or
13 encumbrance to be made free and clear of Plaintiff's Deed of Trust.

14 80. Plaintiff is entitled to a preliminary injunction requiring Defendant to pay all
15 taxes, insurance and homeowner's association dues during the pendency of this action.

16 81. Plaintiff is entitled to a preliminary injunction requiring Defendant to segregate
17 and deposit all rents with the Court or a Court-approved trust account over which Defendant has
18 no control during the pendency of this action.

19 82. Plaintiff is entitled to a mandatory injunction that the HOA and HOA Trustee be
20 compelled to deliver to the Clerk of the Court and deposit all funds collected at the HOA Sale
21 pending determination by the Court of the validity of the sale and the respective rights of the
22 parties to the sale proceeds.

23 83. Plaintiff has been required to retain counsel to prosecute this action and is entitled
24 to recover reasonable attorney's fees to prosecute this action.

25 **THIRD CAUSE OF ACTION**

26 **(Unjust Enrichment versus Defendants)**

27 84. Plaintiff incorporates and re-alleges all previous paragraphs, as if fully set forth
28 herein.

85. Plaintiff has been deprived of the benefit of its secured deed of trust by the actions of Defendant.

86. Defendants have benefitted from the unlawful HOA Sale and nature of the real property.

87. SFR has benefitted from Plaintiff's payment of taxes, insurance or homeowner's association assessments since the time of the HOA Sale.

88. Should Plaintiff's Complaint be successful in quieting title against Defendants, Defendants will have been unjustly enriched by the difference in amount between the price paid at the HOA Sale and the fair value of the Property, together with interest thereon.

89. Plaintiff will have suffered damages if SFR or the HOA or HOA Trustee are allowed to retain its interests in the Property and the funds received from the HOA Sale.

90. Plaintiff will have suffered damages if SFR is allowed to retain its interests in the Property and Plaintiff's payment of taxes, insurance or homeowner's association assessments since the time of the HOA Sale.

91. Plaintiff is entitled to general and special damages in excess of \$10,000.00.

92. Plaintiff has furthermore been required to retain counsel and is entitled to recover reasonable attorney's fees for having brought the underlying action.

FOURTH CAUSE OF ACTION

(Wrongful Foreclosure versus the HOA and the HOA Trustee)

93. Plaintiff incorporates by reference the allegations of all previous paragraphs, as if fully set forth herein.

94. Upon information and belief, no payoff information, including the amount of the alleged super-priority amount, was provided to Plaintiff or to its predecessors-in-interest, prior to the HOA Sale.

95. The HOA and HOA Trustee improperly proceeded with the HOA Sale.

96. The HOA foreclosure sale was wrongfully conducted and completed, and therefore, the Court should set aside the HOA Sale to the extent that it purports to have

1 extinguished Plaintiff's first Deed of Trust and delivered free and clear title of the Property to
2 SFR.

3 **97.** The HOA Sale was not done in accordance with the Nevada statutes, and as such,
4 the HOA Sale was wrongfully conducted and should be set aside.

5 **98.** The HOA assessment lien and foreclosure notices included improper fees and
6 costs in the amount demanded, and thus, the HOA Sale was wrongfully conducted and should be
7 set aside.

8 **99.** As a direct and proximate result of the HOA and HOA Trustee's wrongful
9 foreclosure of the Property by the HOA Sale, Plaintiff suffered general and special damages.

10 **100.** Plaintiff has been required to retain counsel to prosecute this action and is entitled
11 to recover reasonable attorney's fees to prosecute this action.

12 **FIFTH CAUSE OF ACTION**

13 **(Negligence versus the HOA and HOA Trustee)**

14 **101.** Plaintiff incorporates by reference the allegations of all previous paragraphs, as if
15 fully set forth herein.

16 **102.** The HOA and HOA Trustee owed a duty to Plaintiff and other lienholders to
17 allow Plaintiff or its predecessors-in-interest and their respective agents, servicers or trustees, if
18 any, an opportunity to protect their interest and cure the super-priority lien threatening their
19 security interests.

20 **103.** The HOA and HOA Trustee breached their duty by rejecting the tendered super-
21 priority lien amount and naming the incorrect HOA in their notices but yet still proceeding with
22 the HOA Sale on the super-priority lien.

23 **104.** As a direct and proximate result of the HOA and HOA Trustee's breaches of
24 their duties, Plaintiff's security interest has been threatened.

25 **105.** As a direct and proximate result of the HOA and HOA Trustee's breaches of
26 their duties, Plaintiff has incurred general and special damages.

27 **106.** If Plaintiff is found to have lost its first security interest in the Property, it was
28 the direct and proximate result of the HOA and HOA Trustee's breaches of their duties, and

1 Plaintiff has thereby suffered general and special damages.

2 **107.** Plaintiff has been required to retain counsel to prosecute this action and is
3 entitled to recover reasonable attorney's fees to prosecute this action.

4 **SIXTH CAUSE OF ACTION**

5 **(Negligence Per Se versus the HOA and HOA Trustee)**

6 **108.** Plaintiff incorporates by reference the allegations of all previous paragraphs, as if
7 fully set forth herein.

8 **109.** The HOA and HOA Trustee breached the statutory duties by rejecting the
9 tendered super-priority lien amount and naming the incorrect HOA in the notices but yet still
10 proceeding with the HOA Sale, which SFR claims extinguished Plaintiff's security interest.

11 **110.** Plaintiff is a member of the class of person whom NRS Chapter 116 is intended
12 to protect.

13 **111.** The injury that Plaintiff faces – extinguishment of its first position Deed of Trust
14 – is the type against which NRS Chapter 116 is intended to protect.

15 **112.** As a direct and proximate result of the HOA and HOA Trustee's breaches of
16 their statutory duties, Plaintiff's security interest is threatened.

17 **113.** As a direct and proximate result of the HOA and HOA Trustee's breaches of
18 their duties, Plaintiff has incurred general and special damages.

19 **114.** If Plaintiff is found to have lost its first secured interest in the Property, it was
20 the direct and proximate result of the HOA and HOA Trustee's breaches of their statutory
21 duties, and Plaintiff has thereby suffered general and special damages.

22 **115.** Plaintiff has been required to retain counsel to prosecute this action and is
23 entitled to recover reasonable attorney's fees to prosecute this action.

24 **PRAYER**

25 Wherefore, Plaintiff prays for judgment against the Defendants, jointly and severally, as
26 follows:

27 1. For a declaration and determination that Plaintiff's interest is secured against the
28 Property, and that Plaintiff's first Deed of Trust was not extinguished by the HOA Sale as

- 1 Plaintiff's predecessor-in-interest paid the super-priority portion of the HOA lien;
- 2 2. For a declaration and determination that Plaintiff's interest is superior to the
- 3 interest of SFR, and any and all successors;
- 4 3. For a declaration and determination that the HOA Sale was invalid to the extent
- 5 it purports to convey the Property free and clear to SFR;
- 6 4. In the alternative, for a declaration and determination that the HOA Sale was
- 7 invalid and conveyed no legitimate interest to SFR;
- 8 5. For a preliminary injunction that SFR, and its successors, assigns, and agents are
- 9 prohibited from conducting a sale or transfer of the Property and representing the sale is free
- 10 and clear of the Deed of Trust;
- 11 6. For a preliminary injunction that SFR, and its successors, assigns, and agents pay
- 12 all taxes, insurance and homeowner's association dues during the pendency of this action;
- 13 7. For a preliminary injunction that SFR, and its successors, assigns, and agents be
- 14 required to segregate and deposit all rents with the Court or a Court-approved trust account over
- 15 which SFR has no control during the pendency of this action;
- 16 8. If it is determined that Plaintiff's Deed of Trust has been extinguished by the
- 17 HOA Sale, for special damages in the amount of the fair market value of the Property or the
- 18 unpaid balance of the Manzo Loan and Deed of Trust, at the time of the HOA Sale, whichever
- 19 is greater;
- 20 9. For general and special damages;
- 21 10. In the alternative, for restitution;
- 22 11. For attorney's fees;

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

12. For costs of incurred herein, including post-judgment costs; and

13. For any and all further relief deemed appropriate by this Court.

Dated: September 12, 2016.

WRIGHT, FINLAY & ZAK, LLP

/s/ Rock K. Jung, Esq.

Rock K. Jung, Esq.

Nevada Bar No. 10906

7785 W. Sahara Ave., Suite 200

Las Vegas, NV 89117

*Attorneys for Plaintiff/Counter-Defendant,
Wilmington Trust Company, as Trustee for the Bear
Stearns ALT-A Trust, Mortgage Pass-Through
Certificates, Series 2007-1; and Cross-Defendants,
Nationstar Mortgage, LLC and Mortgage
Electronic Registration Systems, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of WRIGHT, FINLAY & ZAK, LLP and that service of the foregoing **PLAINTIFF'S FIRST AMENDED COMPLAINT** was made on this 12th day of September, 2016, to all parties and counsel as identified on the CM/ECF System via Electronic Notification, and/or by depositing a true and correct copy in the United States Mail, addressed as follows:

/s/ Allison Zeason

An Employee of WRIGHT, FINLAY & ZAK, LLP

EXHIBIT LIST

1. Deed of Trust, Doc. No. 20061101-0004451 Exhibit 1
2. Corporation Assignment of Deed of Trust, Doc. No. 20090924-0002868 Exhibit 2
3. Assignment Deed of Trust, Doc. No. 20140624-0000200 Exhibit 3
4. Notice of Delinquent Assessment Lien, Doc. No. 20120821-0002043 Exhibit 4
5. Notice of Default and Election to Sell, Doc. No. 20121031-0001396 Exhibit 5
6. Notice of Foreclosure Sale, Doc. No. 20131004-0001613 Exhibit 6
7. Foreclosure Deed, Doc. No. 20140331-0002267 Exhibit 7

Exhibit 1

Deed of Trust, Doc. No. 20061101-0004451

Exhibit 1

Exhibit 1



20061101-0004451

Assessor's Parcel Number:
190-19-810-122
Return To: Pulte Mortgage, LLC

7475 S. Joliet St.
Englewood, CO 80112
Attn: Sales & Acquisitions

Prepared By: Pulte Mortgage, LLC

7475 South Joliet Street Englewood,
Co 80112

Fee: \$35.00

N/C Fee: \$0.00

11/01/2006

14:25:15

T20060193786

Requestor:

LAWYERS TITLE OF NEVADA

Charles Harvey

SOL

Clark County Recorder

Pgs: 22

~~Recording Requested By:~~ Pulte Mortgage, LLC

7475 South Joliet Street
Englewood, Co 80112

Escrow # 01904844 BA

[Space Above This Line For Recording Data]

DEED OF TRUST

MIN 100057400002700930

VRU# 1-888-679-6377

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated October 24, 2006, together with all Riders to this document.

(B) "Borrower" is Hamlet McNeace and Shawn L McNeace Husband and Wife

Borrower is the trustor under this Security Instrument.

(C) "Lender" is Pulte Mortgage LLC

NEVADA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
WITH MERS

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(Rev. 05/06)

VMP Mortgage Solutions, Inc.

Lender is a Limited Liability Company
organized and existing under the laws of Delaware
Lender's address is 7475 South Joliet Street Englewood, CO 80112

(D) "Trustee" is Lawyers Title

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated October 24, 2006

The Note states that Borrower owes Lender Six Hundred Eighty-three Thousand Five

Hundred Twenty-eight And 00/100

Dollars

(U.S. \$683,528.00

) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than November 1, 2036

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|---|--|---|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input checked="" type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> VA Rider | <input type="checkbox"/> Biweekly Payment Rider | <input type="checkbox"/> Other(s) [specify] |

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to

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time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County [Type of Recording Jurisdiction] of Clark [Name of Recording Jurisdiction]:

All that certain real property situated in the County of Clark, State of Nevada, described as follows: PARCEL ONE (1): Lot Two Hundred Sixteen (216) in Block Seven (7) of PROVENCE COUNTRY CLUB PARCEL 1 as shown by map thereof on file in Book 121 of Plats, Page 93 in the Office of the County Recorder of Clark County, Nevada. PARCEL TWO (2): A non-exclusive easement for utilities, ingress, egress and of enjoyment in, to and over the Common Elements as set forth in the Declaration of Covenants, Conditions and Restrictions for CLUB AT MADEIRA CANYON recorded May 24, 2005 in Book 20050524 as Document No. 02413 of Official Records. Official Records.

Parcel ID Number: 190-19-810-122

2745 King Louis St

Henderson

("Property Address"):

which currently has the address of

[Street]

[City], Nevada 89044

[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

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of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.

Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives

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Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the



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lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with

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the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

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attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.


10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

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(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

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12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be

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one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option, and without further demand, may invoke the power of sale, including the right to accelerate full payment of the Note, and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$ currency which does not exceed the amount set by HUD.

 MNV41MFORM77-01438
6A(NV) (0510)

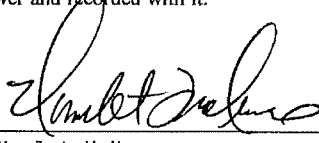
Page 13 of 15

Initials: 

Form 3029 1/01

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:


_____ (Seal)
Hamlet McNeace -Borrower


_____ (Seal)
Shawn L McNeace -Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

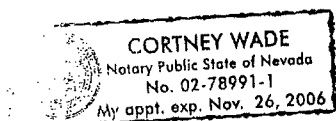
_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

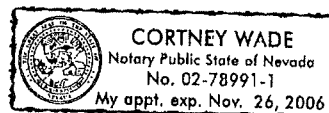
STATE OF NEVADA
COUNTY OF ClarkThis instrument was acknowledged before me on
Hamlet McNeace and Shawn L McNeace

October 31, 2006

by



A handwritten signature of Cortney Wade in cursive script, written over a horizontal line.

Mail Tax Statements To:
Hamlet McNeace
2745 King Louis St, Henderson, NV 89044

VMP-6A(NV) (0510)

MNV410FORM77-01438

Page 15 of 15

Initials:

Handwritten initials 'HSL' in cursive script, written over a horizontal line.

Form 3029 1/01

PLANNED UNIT DEVELOPMENT RIDER

VRU# 1-888-679-6377 MIN# 100057400002700930

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 24th day of October, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to Pulte Mortgage LLC

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at: 2745 King Louis St, Henderson, NV 89044

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in Declarations of Covenants, Conditions, and Restrictions of record

(the "Declaration"). The Property is a part of a planned unit development known as Provence Country Club

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

PUDIFORM77-01438 (Rev. 08/06)

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3150 1/01

Wolters Kluwer Financial Services
VMP®-7R (0411).01

Page 1 of 3

Initials: 

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

PUD2FORM77-01438

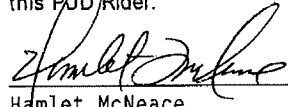
VMP®-7R (0411).01

Page 2 of 3

Initials: 

Form 3150 1/01

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.


Hamlet McNeace (Seal)
-Borrower


Shawn L McNeace (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

PUD3FORM77-01438
VMP®-7R (0411).01

Page 3 of 3

Form 3150 1/01

After Recording Return To: **Pulte Mortgage LLC**
7475 South Joliet Street
Englewood, CO 80112
Attn: Sales & Acquisitions

Prepared By: **Pulte Mortgage LLC**

DOC/Parcel ID#: **190-19-810-122**

(Space Above This Line For Recording Data)

FIXED/ADJUSTABLE RATE RIDER

(LIBOR One-Year Index (As Published in *The Wall Street Journal*) - Rate Caps)

THIS FIXED/ADJUSTABLE RATE RIDER is made **October 24, 2006**, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to **Pulte Mortgage LLC** ("Lender") of the same date and covering the property described in the Security Instrument and located at:

**2745 King Louis St
Henderson, NV 89044**

[Property Address]

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

Conv

MULTISTATE FIXED/ADJUSTABLE RATE RIDER - WSJ One-Year LIBOR - Single Family INTEREST ONLY

FE-4266 (0603)

P-29ARA (05/06)

Page 1 of 4

Initials: 

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of **6.500 %**. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of **November, 2011**, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding **Two And One-quarter** percentage points (**2.250 %**) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than **11.500 %** or less than **2.250 %**. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than **11.500 %** or less than **2.250 %**.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

Conv

MULTISTATE FIXED/ADJUSTABLE RATE RIDER - WSJ One-Year LIBOR - Single Family INTEREST ONLY

FE-4266 (0603)

P-29ARB

Page 2 of 4

Initials: 

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER**1. UNTIL BORROWER'S INITIAL FIXED INTEREST RATE CHANGES TO AN ADJUSTABLE INTEREST RATE UNDER THE TERMS STATED IN SECTION A ABOVE, UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT SHALL READ AS FOLLOWS:**

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date of notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

2. WHEN BORROWER'S INITIAL FIXED INTEREST RATE CHANGES TO AN ADJUSTABLE INTEREST RATE UNDER THE TERMS STATED IN SECTION A ABOVE, UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT DESCRIBED IN SECTION B1 ABOVE SHALL THEN CEASE TO BE IN EFFECT, AND THE PROVISIONS OF UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT SHALL BE AMENDED TO READ AS FOLLOWS:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

Conv

MULTISTATE FIXED/ADJUSTABLE RATE RIDER - WSJ One-Year LIBOR - Single Family INTEREST ONLY

FE-4266 (0603)

P-29ARC

Page 3 of 4

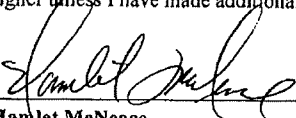
Initials: MS

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.


If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider.

I understand that for the Interest Only Period my monthly payments will not reduce the Principal balance on my loan. My monthly payments after the Interest Only Period will consist of both Principal and interest and will be higher unless I have made additional payments to reduce the Principal balance.


Hamlet McNeace

(Seal)
- Borrower


Shawn L. McNeace

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

Conv
MULTISTATE FIXED/ADJUSTABLE RATE RIDER - WSJ One-Year LIBOR - Single Family INTEREST ONLY
FE-4266 (0603)
P-29ARD

Page 4 of 4

Exhibit 2

Corporation Assignment of DOT, Doc. No.
20090924-0002868

Exhibit 2

Exhibit 2

Inst#:200909240002868 Fees:\$14.00 N/C Fee:\$25.00 09/24/2009 12:23:58 PM
 Receipt#:69530 Requestor:TITLE COURT SERVICE INC Recorded By:BGN Pgs:1 DEBBIE
 CONWAY CLARK COUNTY RECORDER

RECORDING REQUESTED BY:
 RECONTRUST COMPANY, N.A.
 AND WHEN RECORDED MAIL DOCUMENT TO:
 BAC Home Loans Servicing, LP
 400 COUNTRYWIDE WAY SV-35
 SIMI VALLEY, CA 93065

TS No. 09-0127823

TITLE ORDER#: 4240641

APR 190 19 810 120

CORPORATION ASSIGNMENT OF DEED OF TRUST NEVADA

FOR VALUE RECEIVED, THE UNDERSIGNED HEREBY GRANTS, ASSIGNS AND TRANSFER TO:
 BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING LP

ALL BENEFICIAL INTEREST UNDER THAT CERTAIN DEED OF TRUST DATED 10/24/2006,
 EXECUTED BY: HAMLET MCNEACE AND SHAWN L MCNEACE HUSBAND AND
 WIFE, TRUSTOR: TO LAWYERS TITLE, TRUSTEE AND RECORDED AS INSTRUMENT NO.
 0004451 ON 11/01/2006, IN BOOK 20061101, OF OFFICIAL RECORDS IN THE COUNTY
 RECORDER'S OFFICE OF CLARK COUNTY, IN THE STATE OF NEVADA.

DESCRIBING THE LAND THEREIN: AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST.

TOGETHER WITH THE NOTE OR NOTES THEREIN DESCRIBED OR REFERRED TO, THE
 MONEY DUE AND TO BECOME DUE THEREON WITH INTEREST, AND ALL RIGHTS
 ACCRUED OR TO ACCRUE UNDER SAID DEED OF TRUST/MORTGAGE.

DATED: September 09, 2009

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,
 INC.

State of: Texas

County of: Dallas

BY:

Angela Nava

Angela Nava, Assistant Secretary

On 9-12-09, before me ANGELA SERATO, personally appeared Angela Nava
 Assistant Secretary, know to me (or proved to me on the oath of _____ or through
 _____) to be the person whose name is subscribed to the foregoing instrument and
 acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.
 Witness my hand and official seal.

Angela Serato

Notary Public's Signature

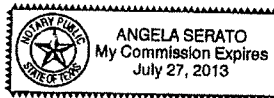


Exhibit 3

Assignment of Deed of Trust, Doc. No. 20140624-0000200

Exhibit 3

Exhibit 3

Inst #: 20140624-0000200

Fees: \$18.00

N/C Fee: \$0.00

06/24/2014 08:31:40 AM

Receipt #: 2086333

Requestor:

CORELOGIC

Recorded By: MAT Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

Recording Requested By:
Bank of America, N.A.
Prepared By: Ralph Flores
800-444-4302

When recorded mail to:
CoreLogic
Mail Stop: ASGN
1 CoreLogic Drive
Westlake, TX 76262-9823



DocID# 11313195169291168

Tax ID: 190-19-810-122

Property Address:
2745 King Louis St
Henderson, NV 89044-0309

NV0-ADT 26998834 6/12/2014 NSB0830

This space for Recorder's use

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is 1800 TAPO CANYON ROAD, SIMI VALLEY, CA 93063 does hereby grant, sell, assign, transfer and convey unto WILMINGTON TRUST NATIONAL ASSOCIATION, SUCCESSOR TRUSTEE TO CITIBANK, N.A., AS TRUSTEE FOR THE BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-1 whose address is C/O BAC, M/C: CA6-914-01-43, 1800 Tapo Canyon Road, Simi Valley, CA 93063 all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Beneficiary: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE
FOR PULTE MORTGAGE LLC, ITS SUCCESSORS AND ASSIGNS

Made By: HAMLET MCNEACE AND SHAWN L MCNEACE HUSBAND AND WIFE

Trustee: LAWYERS TITLE

Date of Deed of Trust: 10/24/2006 Original Loan Amount: \$683,528.00

Recorded in Clark County, NV on: 11/1/2006, book N/A, page N/A and instrument number 20061101-0004451

I the undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons.

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Deed of Trust to be executed on

JUN 13 2014

Bank of America, N.A., successor by merger to BAC
Home Loans Servicing, LP, fka Countrywide Home Loans
Servicing LP

By: 

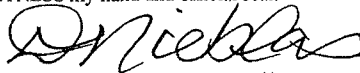
Talisha Wallace
Assistant Vice President

State of California
County of Ventura

On JUN 13 2014 before me, D. Nieblas, Notary Public, personally appeared Talisha Wallace, who proved to me on the basis of satisfactory evidence to be the person (s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

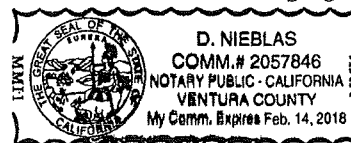
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public: D. Nieblas
My Commission Expires: Exp. 2/14/2018

(Seal)



DocID# 11313195169291168

Exhibit 4

Notice of Delinquent Assessment Lien, Doc. No.
20120821-0002043

Exhibit 4

Exhibit 4

Inst #: 201208210002043

Fees: \$17.00

N/C Fee: \$0.00

08/21/2012 09:42:50 AM

Receipt #: 1279105

Requestor:

NORTH AMERICAN TITLE COMPAN

Recorded By: RNS Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN # 190-19-810-122

N72035

Accommodation

NOTICE OF DELINQUENT ASSESSMENT LIEN

In accordance with Nevada Revised Statutes and the Association's declaration of Covenants Conditions and Restrictions (CC&Rs), recorded on May 24, 2005, as instrument number 0002413 BK 20050524, of the official records of Clark County, Nevada, the Club at Madeira Canyon, a planned community has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as 2745 King Louis Street Henderson, NV 89044 particularly legally described as: PROVENCE CNTRY CLUB PARCEL 1, PLAT BOOK 121, PAGE 93, LOT 216, BLOCK 7 in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are):
Hamlet McNeace, Shawn L McNeace

Mailing address(es):

2540 Purple Heather Place Henderson, NV 89052

2540 Purple Heather Place Henderson, NV 89052

2540 Purple Heather Place Henderson, NV 89052

2540 Purple Heather Place Henderson, NV 89052

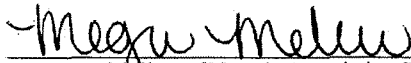
*Total amount due as of today's date is \$2,175.69.

This amount includes late fees, collection fees and interest in the amount of \$709.69

* Additional monies will accrue under this claim at the rate of the claimant's regular assessments or special assessments, plus permissible late charges, costs of collection and interest, accruing after the date of the notice.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Dated: August 17, 2012



By Megan Molina, of Nevada Association Services, Inc., as agent for Club at Madeira Canyon, a planned community

When Recorded Mail To:

Nevada Association Services

TS # N72035

6224 W. Desert Inn Rd, Suite A

Las Vegas, NV 89146

Phone: (702) 804-8885 Toll Free: (888) 627-5544

Exhibit 5

Notice of Default & Election to Sell, Doc. No. 20121031-0001396

Exhibit 5

Exhibit 5

Inst #: 201210310001396

Fees: \$18.00

N/C Fee: \$0.00

10/31/2012 08:40:51 AM

Receipt #: 1364377

Requestor:

NORTH AMERICAN TITLE SUNSET

Recorded By: JACKSM Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN# 190-19-810-122

NAS # N72035

North American Title #

Property Address: 2745 King Louis Street

38409

Accommodation

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

IMPORTANT NOTICE

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS
NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT
IS IN DISPUTE!**

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION and you may have the legal right to bring your account in good standing by paying all your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. No sale date may be set until ninety (90) days from the date this notice of default was mailed to you. The date this document was mailed to you appears on this notice.

This amount is \$3,643.19 as of October 29, 2012 and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and Restrictions. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property or pay other obligations as required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and Restrictions, Club at Madeira Canyon, a planned community (the Association) may insist that you do so in order to reinstate your account in good standing. In addition, the Association may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes and hazard insurance premiums.

Upon your request, this office will mail you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your Association may mutually agree in writing prior to the foreclosure sale to, among other things, 1) provide additional time in which to cure the default by transfer of the property or otherwise; 2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your Association permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your Association.

To find out about the amount you must pay, or arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact: Nevada Association Services, Inc. on behalf of Club at Madeira Canyon, a planned community, 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146. The phone number is (702) 804-8885 or toll free at (888) 627-5544.

If you have any questions, you should contact a lawyer or the Association which maintains the right of assessment on your property.

NAS # N72035

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

**REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT
TAKE PROMPT ACTION.**

**NOTICE IS HEREBY GIVEN THAT NEVADA ASSOCIATION
SERVICES, INC.**

is the duly appointed agent under the previously mentioned Notice of Delinquent Assessment Lien, with the owner(s) as reflected on said lien being Hamlet McNeace, Shawn L McNeace, dated August 17, 2012, and recorded on August 21, 2012 as instrument number 0002043 Book 20120821 in the official records of Clark County, Nevada, executed by Club at Madeira Canyon, a planned community, hereby declares that a breach of the obligation for which the Covenants Conditions and Restrictions, recorded on May 24, 2005, as instrument number 0002413 BK 20050524, as security has occurred in that the payments have not been made of homeowner's assessments due from 4/1/2012 and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, trustee's fees and costs, attorney's fees and costs and Association fees and costs.

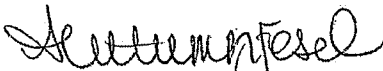
That by reason thereof, the Association has deposited with said agent such documents as the Covenants Conditions and Restrictions and documents evidencing the obligations secured thereby, and declares all sums secured thereby due and payable and elects to cause the property to be sold to satisfy the obligations.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Nevada Associations Services, Inc., whose address is 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146 is authorized by the association to enforce the lien by sale.

Legal Description: PROVENCE CNTRY CLUB PARCEL 1, PLAT BOOK 121, PAGE 93, LOT 216, BLOCK 7 in the County of Clark

Dated: October 29, 2012



By: Autumn Fesel, of Nevada Association Services, Inc.
on behalf of Club at Madeira Canyon, a planned community

When Recorded Mail To:
Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
(702) 804-8885
(888) 627-5544

Exhibit 6

Notice of Foreclosure Sale, Doc. No. 20131004-0001613

Exhibit 6

Exhibit 6

Inst #: 201310040001613

Fees: \$18.00

N/C Fee: \$0.00

10/04/2013 11:42:06 AM

Receipt #: 1798777

Requestor:

TITLE SOLUTIONS, INC.

Recorded By: ECM Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

RECORDING COVER PAGE

(Must be typed or printed clearly in BLACK ink only
and avoid printing in the 1" margins of document)

APN# 190-19-810-122

(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrrealprop/ownr.aspx>)

TITLE OF DOCUMENT
(DO NOT Abbreviate)

Notice of Foreclosure Sale

Document Title on cover page must appear EXACTLY as the first page of the
document to be recorded.

RECORDING REQUESTED BY:

Nevada Association Services

RETURN TO: Name Nevada Association Services

Address 6224 W. Desert Inn Road

City/State/Zip Las Vegas, NV 89146

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name _____

Address _____

City/State/Zip _____

This page provides additional information required by NRS 111.312 Sections 1-2.

An additional recording fee of \$1.00 will apply.

To print this document properly—do not use page scaling.

APN # 190-19-810-122
Club at Madeira Canyon, a planned community

NAS # N72035

NOTICE OF FORECLOSURE SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL NEVADA ASSOCIATION SERVICES, INC. AT (702) 804-8885. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

YOU ARE IN DEFAULT UNDER A DELINQUENT ASSESSMENT LIEN, August 17, 2012. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NOTICE IS HEREBY GIVEN THAT on 11/1/2013 at 10:00 am at the front entrance to the Nevada Association Services, Inc. 6224 West Desert Inn Road, Las Vegas, Nevada, under the power of sale pursuant to the terms of those certain covenants conditions and restrictions recorded on May 24, 2005 as instrument number 0002413 BK 20050524 of official records of Clark County, Nevada Association Services, Inc., as duly appointed agent under that certain Delinquent Assessment Lien, recorded on August 21, 2012 as document number 0002043 Book 20120821 of the official records of said county, will sell at public auction to the highest bidder, for lawful money of the United States, all right, title, and interest in the following commonly known property known as: 2745 King Louis Street, Henderson, NV 89044. Said property is legally described as: PROVENCE CNTRY CLUB PARCEL 1, PLAT BOOK 121, PAGE 93, LOT 216, BLOCK 7, official records of Clark County, Nevada.

The owner(s) of said property as of the date of the recording of said lien is purported to be: Hamlet McNeace, Shawn L McNeace

The undersigned agent disclaims any liability for incorrectness of the street address and other common designations, if any, shown herein. The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, or encumbrances, or obligations to satisfy any secured or unsecured liens. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$7,507.76. Payment must be in cash or a cashier's check drawn on a state or national bank, check drawn on a state or federal savings and loan association, savings association or savings bank and authorized to do business in the State of Nevada. The Notice of Default and Election to Sell the described property was recorded on 10/31/2012 as instrument number 0001396 Book 20121031 in the official records of Clark County.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

October 2, 2013

Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146 (702) 804-8885, (888) 627-5544

When Recorded Mail To:
Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146

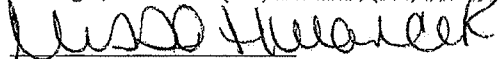

By: Elissa Hollander, Agent for Association and employee of
Nevada Association Services, Inc.

Exhibit 7

Foreclosure Deed, Doc. No. 20140331-0002267

Exhibit 7

Exhibit 7

Inst #: 20140331-0002267

Fees: \$18.00 N/C Fee: \$0.00

RPTT: \$2414.85 Ex: #

03/31/2014 12:03:32 PM

Receipt #: 1978053

Requestor:

TITLE SOLUTIONS, INC.

Recorded By: RYUD Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

Please mail tax statement and
when recorded mail to:
S F R Investments Pool 1, LLC
5030 Paradise Road, B-214
Las Vegas, NV 89119

FORECLOSURE DEED

APN # 190-19-810-122

North American Title #38409

NAS # N72035

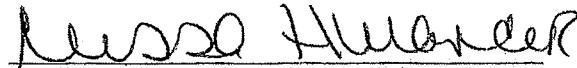
The undersigned declares:

Nevada Association Services, Inc., herein called agent (for the Club at Madeira Canyon, a planned community), was the duly appointed agent under that certain Notice of Delinquent Assessment Lien, recorded August 21, 2012 as instrument number 0002043 Book 20120821, in Clark County. The previous owner as reflected on said lien is Hamlet McNeace, Shawn L McNeace. Nevada Association Services, Inc. as agent for Club at Madeira Canyon, a planned community does hereby grant and convey, but without warranty expressed or implied to: S F R Investments Pool 1, LLC (herein called grantee), pursuant to NRS 116.31162, 116.31163 and 116.31164, all its right, title and interest in and to that certain property legally described as: PROVENCE CNTRY CLUB PARCEL 1, PLAT BOOK 121, PAGE 93, LOT 216, BLOCK 7 Clark County

AGENT STATES THAT:

This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Club at Madeira Canyon, a planned community governing documents (CC&R's) and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 10/31/2012 as instrument # 0001396 Book 20121031 which was recorded in the office of the recorder of said county. Nevada Association Services, Inc. has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Club at Madeira Canyon, a planned community at public auction on 3/28/2014, at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale, became the purchaser of said property and paid therefore to said agent the amount bid \$17,000.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: March 28, 2014



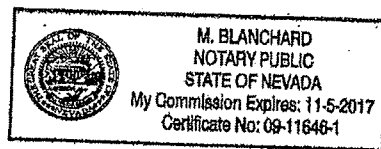
By Elissa Hollander, Agent for Association and Employee of Nevada Association Services

STATE OF NEVADA)
COUNTY OF CLARK)

On March 28, 2014, before me, M. Blanchard, personally appeared Blissa Hollander personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.
WITNESS my hand and seal.

(Seal)

(Signature)



M. Blanchard

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

a. 190-19-810-122
b. _____
c. _____
d. _____

2. Type of Property:

a. ☐ Vacant Land b. ☒ Single Fam. Res.
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
i. ☐ Other

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3.a. Total Value/Sales Price of Property

\$ 17,000.00

b. Deed in Lieu of Foreclosure Only (value of property) (_____)

c. Transfer Tax Value: \$ 473,166.00

d. Real Property Transfer Tax Due \$ 2,414.85

4. **If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature [Signature] Capacity: NAS Employee/Agent for HOA

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION

(REQUIRED)

Print Name: Nevada Association Services

Address: 6224 W. Desert Inn Road

City: Las Vegas

State: NV Zip: 89146

BUYER (GRANTEE) INFORMATION

(REQUIRED)

Print Name: S F R Investments Pool 1, LLC

Address: 5030 Paradise Road, B-214

City: Las Vegas

State: NV Zip: 89119

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Title Solutions Inc Escrow # _____

Address: 2552 W. ALVARADO AVE #220

City: TUSTIN State: CA Zip: 92780

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

1 **CSERV**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 Commissioner of Insurance for
7 the State of Nevada as Receiver
8 of Lewis and Clark, Plaintiff(s)

CASE NO: A-14-711535-C

DEPT. NO. Department 27

9 vs.

10 Robert Chur, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Shortening Time was served via the court's electronic eFile
15 system to all recipients registered for e-Service on the above entitled case as listed below:

16 Service Date: 7/22/2020

17 Adrina Harris .

aharris@fclaw.com

18 Angela T. Nakamura Ochoa .

aochoa@lipsonneilson.com

19 Ashley Scott-Johnson .

ascott-johnson@lipsonneilson.com

20 Brenoch Wirthlin .

bwirthli@fclaw.com

21 CaraMia Gerard .

cgerard@mcdonaldcarano.com

22 George F. Ogilvie III .

gogilvie@mcdonaldcarano.com

23 Jessica Ayala .

jayala@fclaw.com

24 Joanna Grigoriev .

jgrigoriev@ag.nv.gov

25 Jon M. Wilson .

jwilson@broadandcassel.com

26 Kathy Barrett .

kbarrett@mcdonaldcarano.com

1	Marilyn Millam .	mmillam@ag.nv.gov
2	Nevada Attorney General .	wiznetfilings@ag.nv.gov
3	Paul Garcia .	pgarcia@fclaw.com
4	Renee Rittenhouse .	rrittenhouse@lipsonneilson.com
5	Rory Kay .	rkay@mcdonaldcarano.com
6	Susana Nutt .	snutt@lipsonneilson.com
7	Yusimy Bordes .	ybordes@broadandcassel.com
8	Jelena Jovanovic .	jjovanovic@mcdonaldcarano.com
9	Christian Orme	corne@hutchlegal.com
10	Patricia Lee	plee@hutchlegal.com
11	Kimberly Freedman	kfreedman@broadandcassel.com
12	Danielle Kelley	dkelley@hutchlegal.com
13	Karen Surowiec	ksurowiec@mcdonaldcarano.com
14	Jonathan Wong	jwong@lipsonneilson.com
15	Erin Kolmansberger	erin.kolmansberger@nelsonmullins.com
16	Melissa Gomberg	melissa.gomberg@nelsonmullins.com
17	Betsy Gould	bgould@doi.nv.gov
18	Juan Cerezo	jcerezo@lipsonneilson.com
19	Stuart Taylor	staylor@hutchlegal.com
20	Heather Bennett	hshepherd@hutchlegal.com
21	Brenoch Wirthlin	bwirthlin@klnevada.com
22	Jon Linder	jlinder@klnevada.com
23	S. Dianne Pomonis	dpomonis@klnevada.com
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Daniel Maul	dmaul@hutchlegal.com
Brenoch Wirthlin	bwirthlin@hutchlegal.com
Jon Linder	jlinder@hutchlegal.com