

Case No. 82467 and 82552

IN THE SUPREME COURT OF NEVADA

UNITE HERE HEALTH, etc.; et al.,

Electronically Filed
Jul 28 2021 05:18 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appellants,

vs.

STATE OF NEVADA EX REL. COMMISSIONER OF INSURANCE,
BARBARA D. RICHARDSON, IN HER OFFICIAL CAPACITY AS
STATUTORY RECEIVER FOR DELINQUENT DOMESTIC INSURER,
NEVADA HEALTH CO-OP; AND GREENBERG TRAUIG, LLP,

Respondents,

UNITE HERE HEALTH, etc.; et al.,

Petitioners,

vs.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN
AND FOR THE COUNTY OF CLARK, AND THE HONORABLE TARA D.
CLARK NEWBERRY, DISTRICT JUDGE,

Respondents, and

STATE OF NEVADA EX REL. COMMISSIONER OF INSURANCE,
BARBARA D. RICHARDSON, IN HER OFFICIAL CAPACITY AS
STATUTORY RECEIVER FOR DELINQUENT DOMESTIC INSURER,
NEVADA HEALTH CO-OP; AND GREENBERG TRAUIG, LLP,

Real Parties in Interest.

District Court Case No. A-15-725244-C, Department XXI

RESPONDENTS' APPENDIX

<p>MARK E. FERRARIO, ESQ. Nevada Bar No. 1625 TAMI D. COWDEN, ESQ. Nevada Bar No. 8994 DONALD L. PRUNTY, ESQ. Nevada Bar No. 8230 GREENBERG TRAURIG, LLP 10845 Griffith Peak Drive, Suite 600 Las Vegas, Nevada 89135</p> <p><i>Attorneys for Barbara Richardson, In Her Official Capacity As Statutory Receiver For Delinquent Domestic Insurer Nevada Health Co-Op and Greenberg Traurig, LLP</i></p>	<p>DANIEL F. POLSENBERG, ESQ. Nevada Bar No. 2376 JOEL D. HENRIOD, ESQ. Nevada Bar No. 8492 ABRAHAM G. SMITH, ESQ. Nevada Bar No. 13250 LEWIS ROCA ROTHGERBER CHRISTIE LLP 3993 Howard Hughes Parkway Suite 600 Las Vegas, Nevada 89169</p> <p><i>Attorneys for Barbara Richardson, In Her Official Capacity As Statutory Receiver For Delinquent Domestic Insurer Nevada Health Co-Op</i></p>
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CHRONOLOGICAL INDEX OF APPELLANT'S APPENDIX

DATE FILED	DESCRIPTION	PAGES
01/10/17	Hearing Transcript on Defendant's Motion to Engage held 1/10/17	RA001-011
09/25/19	Objection to Motion to Approve Sale of Receivables	RA012-15
10/11/19	Reply ISO Motion to Approve Sale of Receivables	RA016-023
10/16/19	Notice of Entry of Order Approving Sale of Receivables Interest and Permitting Distribution of Certain Funds	RA024-031
10/16/19	Order Approving Sale of Receivables Interest and Permitting Distribution of Certain Funds	RA032-034
10/16/19	Hearing Transcript on Plaintiff's Motion for Determination of Good Faith Sale of Interest in Receivables	RA035-050
12/14/20	Declaration of Barbara Richardson in Support of Greenberg Traurig's Opposition to Motion to Disqualify Greenberg Traurig and Disgorge Attorney's Fees	RA051-052
12/16/20	Minute Order re Motion to Disqualify Greenberg Traurig and Disgorge Attorney's Fees	RA053

ALPHABETICAL INDEX OF APPELLANT'S APPENDIX

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10/16/19	Order Approving Sale of Receivables Interest and Permitting Distribution of Certain Funds	RA032-034
10/11/19	Reply ISO Motion to Approve Sale of Receivables	RA016-023

CERTIFICATE OF SERVICE

I certify that on July 28, 2021, I submitted the foregoing *Respondent's Appendix* for filing *via* the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

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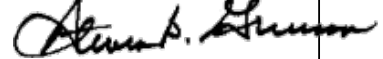
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Respondent

/s/ Andrea Lee Rosehill
An Employee of Greenberg Traurig, LLP



1 **RTRAN**

2
3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**
6

7 STATE OF NEVADA, EX REL)
8 COMMISSIONER OF INSURANCE,)

9 Plaintiff,)

CASE NO. A-15-725244-C
DEPT. NO. 1

10 vs.)

11 NEVADA HEALTH CO-OP,)

12 Defendant.)
13

14 BEFORE THE HONORABLE KENNETH C. CORY, DISTRICT JUDGE

15 TUESDAY, JANUARY 10, 2017 AT 9:41 A.M.

16 **RECORDER'S TRANSCRIPT RE:**
17 **DEFENDANT'S MOTION TO APPROVE PROFESSIONAL FEE RATES ON AN**
18 **ORDER SHORTENING TIME**

19 **APPEARANCES:**

20 FOR THE PLAINTIFF:

JOANNA N. GRIGORIEV
(Senior Deputy Attorney General)
JAMES E. WHITMIRE, III, ESQ.
MARK E. FERRARIO, ESQ.

22 ALSO PRESENT:

MARK BENNETT
Special Deputy Receiver

24
25 Recorded by: LISA A. LIZOTTE, COURT RECORDER

1 (TUESDAY, JANUARY 10, 2017 AT 9:41 A.M.)
2 THE CLERK: Page 10, State of Nevada versus Nevada Health CO-
3 OP, Case Number A725244.
4 MS. GRIGORIEV: Good morning, Your Honor.
5 THE COURT: Good morning.
6 MS. GRIGORIEV: Joanna Grigoriev for the Commissioner of
7 Insurance.
8 MR. BENNETT: Mark Bennett as the authorized representative for
9 the Special Deputy Receiver.
10 THE COURT: Good morning.
11 MR. WHITMIRE: Good morning, Your Honor. Jim Whitmire also
12 appearing on behalf of the Commissioner.
13 MR. FERRARIO: Mark Ferrario, Your Honor, on behalf of the
14 Commissioner as well.
15 THE COURT: Good morning. Thank you all for coming. I put this
16 back on, I think – this was going to be in chambers originally, was it not?
17 MS. GRIGORIEV: No. This was a motion on the – we requested
18 order shortening time and the Court scheduled it for – for today in open court.
19 There was no other date. This – this is Receiver’s motion to – to get the Court’s
20 approval of engagement of certain professionals under 696B.290, and two of the
21 – two of the proposed parties to be retained are here.
22 THE COURT: I had no problem signing this, and I see that – I don’t
23 remember the exact verbiage, but it says the Court is supposed to do it or can’t
24 be -- unreasonably refused to or some such thing, but the thing – the only
25 question I had was I don’t know – I don’t have a feel for how far is this going to

1 go. I mean these are – this is a whole phalanx of highly qualified and – I mean
2 you even have, let's see, the top – the top one in the hourly department, I think,
3 was Mr. Ferrario. They're highly qualified, and obviously they're going to cost
4 money but I don't know where is that coming from, and I don't want to set up a
5 situation where it just goes on ad infinitum and this tremendously important
6 matter gets resolved basically by winding up with, gee, there's no monies left
7 because we had to pay all these folks to try and administer it. Do you
8 understand what I'm saying?

9 MS. GRIGORIEV: I understand, Your Honor, very well, and I think
10 maybe Mr. Bennett, Special Deputy Receiver, can give a better overview of how
11 he sees the case proceeding.

12 THE COURT: Thank you. Mr. Bennett?

13 MR. BENNETT: Yes, Your Honor. In the receivership estate we
14 have currently about 10 million dollars of assets and we have in excess of 40
15 million dollars of claims, and that claim tally continues to rise. We have very
16 substantial recoveries that we should be able to make from the Center of
17 Medicaid and Medicare Services, but they are refusing to pay those amounts
18 under different legal theories and –

19 THE COURT: A bunch of obfuscation or –

20 MR. BENNETT: Yes. A good part of it is, some of it are just difficult
21 issues and so forth, but –

22 THE COURT: Do you – when you say that, you're talking about
23 some of the federal involvement here, I assume.

24 MR. BENNETT: That is right. That is right.

25

1 THE COURT: Are we likely – I saw the notice, I think, on this very
2 motion it went to look like everybody in Washington D.C. as well as Nevada -- I'm
3 exaggerating – U.S. Department of Health and Human Services, U.S.
4 Department of Justice, so are we going to wind up with contested hearings on
5 this matter involving you folks against the government, the federal government?

6 MR. BENNETT: We – we may but we may not wind up with that in
7 this court.

8 THE COURT: But that's a potential at least?

9 MR. BENNETT: Jurisdictional issues, yes.

10 THE COURT: Okay.

11 MR. BENNETT: We might wind up in federal court with the United
12 States government or in the Court of Federal Claims in D.C., and one of the
13 attributes of the Greenberg Traurig firm is that they have offices in the
14 Washington D.C. area, so that's a help to us.

15 THE COURT: Let me – I want to hear more about what you're
16 saying, but let me just as this question occurs to me pop it out there. It would be
17 easy with this many parties, cumbersome parties to even deal with and counsel,
18 not only local but now all over the place, to wind up spending untoward amounts
19 of money in trying to litigate this stuff out rather than having anything for the
20 claimants, and part of my concern is, and I guess part of my question is, is there
21 anything I can do as a Judge, a little old State District Court Judge here, to try
22 and get the issues themselves flushed out so that we don't get a bunch of --
23 whether you call it obfuscation or whether it's the federal government doing what
24 it does best which is delay -- did I say that -- and we never really get down to the
25 issues because it's just a staying action, it's just, you know, we never really get

1 down to the issues and resolve them so that whatever monies are available can
2 go to those who need it the most?

3 MR. BENNETT: I understand, Your Honor. First, the Center of
4 Medicaid and Medicare Services owes approximately 57 million to the
5 receivership estate and they have some theories, and there's some recent
6 appellate case law where the federal government may be able to diminish some
7 of that amount but even if some of that amount is diminished there is still a very
8 substantial amount that is owed by CMS.

9 The problem is that this is a very highly political issue in
10 Congress where Republicans have been fighting with Democrats, and no one
11 wants to let any money be squeezed out to pay any of these poor CO-OPS that
12 are owed sizable amounts of money and so the United States Department of
13 Justice has dug in and is not doing anything, and so I don't see where there
14 would be something at least –

15 THE COURT: I'm sure Senator Sessions would be very quick to
16 pay the money out as soon as he gets the job, don't you think? These are all
17 jokes, by the way. There's nothing serious intended here.

18 MR. BENNETT: Well, I was going to say that maybe so, but
19 knowing President Elect Trump they'd want to negotiate substantially –
20 substantially down, but Your Honor –

21 THE COURT: Well, so I guess maybe you can tell where I'm kind of
22 coming from. This – this is a matter that deserves the best of the professional
23 help that can be assembled on behalf of these claimants, but my fear is that
24 we've got 10 million now, there's 40 million so far in claimants and it's going to be
25 on the rise and how much of that 10 million are we going to spend in what really

1 amounts to a losing cause not because of justice but because you can't – you
2 can't get the ball across the goal line?

3 Is there any – is there any reason – this is – I know how you
4 have to answer this, but is there any reason for this Court to just say, no, let's not
5 spend the money on chasing those dollars and just spend the money on a more
6 curtailed aspect of the claimants, the claims in paying off what can be paid? I
7 don't think you even have to answer that question. That's –

8 MR. BENNETT: Well, I'm tracking what you're saying. We've spent
9 a lot of time thinking about that, and if we were to just do the status quo and not
10 engage outside counsel to try to pursue asset recovery actions -- and incidentally
11 it's not just the federal government but there are other private entities and parties
12 that we believe may have some culpability for the downfall of this company and
13 that they should be held accountable for that, so there's more potential asset
14 recovery litigation than just CMS which as I said is 57 million dollars, but if we
15 don't pursue that track of trying to get those asset recoveries we know that we
16 are probably going to pay maybe 5 to 10 cents on the dollar for these claims
17 which is a very paltry amount. If we –

18 THE COURT: And that's even if we just stopped the drain now? In
19 other words, that's even if the Court said, oh, no, don't hire all the expensive
20 lawyers and consultants, just pay what you can, it's going to be –

21 MR. BENNETT: It could be – it could be that low. It could be that
22 low. It might be a little higher but it could be that low, and then we could do – we
23 have the possibility of doing a lot better if we engage counsel to pursue these
24 actions and to try to bring money into the receivership estate.

25

1 THE COURT: Yeah. I don't know that, in any event, the Court even
2 has the power to say, no, don't hire these people. It's really not for me to say,
3 but I just have felt like this is such an important matter and a critical failing in our
4 state that it's worth at least counting the cost before we set out to slay the giant
5 leaving you, of course.

6 MR. BENNETT: Understood.

7 THE COURT: All right. I think you've satisfied me that I don't see
8 any reason why I shouldn't just grant your request.

9 MS. GRIGORIEV: Your Honor, I will prepare the order. Just one –
10 one other matter that I wanted to bring up. In February the Court granted the
11 Receiver's motion to allow certain hardship payments, it was the February 25th
12 order, and the Receiver just wanted to clarify that from time to time these
13 payments will still be made with the Court approval.

14 THE COURT: Remind me, if you would, who the hardship payment
15 went to.

16 MS. GRIGORIEV: Some hardship payments have to be made to
17 providers or members depending on the circumstances, and in February the
18 Receiver had submitted a motion describing – these are sporadic payments on a
19 case-by-case basis.

20 THE COURT: Are these to claimants or are these to –

21 MS. GRIGORIEV: These are to potential claimants and now with
22 the liquidation in process to claimants, so we just wanted to clarify that these will
23 continue from time to time.

24 THE COURT: And inasmuch as the Court's not going to hold up – I
25 mean you've asked for the Court to not require you to come in and ask the

1 Court's permission to make payments each time but rather to make the
2 payments and then in the regular filings or the quarterly?

3 MS. GRIGORIEV: Reports, yeah. Submit the – the statute requires
4 the Court's approval of the engagement of certain parties and the one time rate
5 approval, thereafter the Receiver pays and submits the invoices and summary
6 reports quarterly.

7 THE COURT: All right. I understand what you're saying.

8 MS. GRIGORIEV: Thank you, Your Honor.

9 MR. WHITMIRE: Your Honor, one other housekeeping item. In
10 terms of submitting invoices and backup to the Court, anecdotally Mr. Bennett
11 and I have worked on another matter in front of Judge Gonzalez, and what we
12 did was submitted all of the backup for the attorney fee bills in camera so that we
13 didn't have, you know, other parties seeing work product and privileged
14 information. We wanted to make sure that we had the blessing of the Court
15 concerning that issue.

16 THE COURT: I think that's a reasonable approach.

17 MR. WHITMIRE: And then the second issue anecdotally for what
18 it's worth in response to Your Honor's questions to Mr. Bennett a few moments
19 ago, the receivership case that we've been litigating since, I guess, 2013
20 involving NCIC, Nevada Contractors Insurance Company and Builders Insurance
21 Company, the fuel tank was very minimally full in terms of assets. We pursued
22 asset recoveries. Unquestionably it costs money to make money, but I think at
23 the end of the day the money was well invested in terms of the return on
24 investment.

1 Obviously there's no reps and warranties, what have you, in
2 connection with this case of what will ultimately happen, but the Court's
3 questions certainly are – we're cognizant of the issues, and, you know, who
4 knows what will happen but hopefully it will be – it will bear fruit.

5 THE COURT: Am I correct that for these claimants who submit
6 claims and ultimately they don't – it doesn't get paid at least on a hundred
7 percent, whether it's 10 cents on the dollar or it's 75 cents on the dollar, that
8 those claimants then are going to have to pay the medical services out of their
9 pocket – pay their share of the medical services out of their pocket?

10 MR. BENNETT: That will happen in some circumstances, Your
11 Honor, where there is not a Hold Harmless Agreement that the CO-OP has with
12 the provider to not bill the members. In other circumstances there is no Hold
13 Harmless, so there will be some direct billing from members, and then, of course,
14 there will be those situations where members just owe the money because it was
15 over the reimbursable amount that the CO-OP would pay.

16 THE COURT: Okay. All right. Thank you.

17 MR. BENNETT: Your Honor, if I may also clarify one thing about
18 the in camera submission. Mr. Whitmire mentioned about attorney bills. We
19 would also like to submit the detailed billing of the experts in camera as well so
20 that we don't –

21 THE COURT: Very good.

22 MR. BENNETT: -- reveal expert detail.

23 THE COURT: What do I need as a basis under our statute in order
24 to do this? I assume you have that all worked out from before when you did this
25 with Judge Gonzalez.

1 MR. WHITMIRE: We do in terms of case cites or statutory authority.

2 I do not have that –

3 THE COURT: Will you submit that when –

4 MR. WHITMIRE: Sure.

5 THE COURT: -- you know, at whatever point you begin doing this
6 there better be – have been the Court looking to see that it satisfies the statute. I
7 have no doubt it will but that's what needs to take place.

8 MR. BENNETT: Your Honor, if we may since the next time we're
9 going to submit those bills would be with the next status report, we could include
10 those case cites with the next status report.

11 THE COURT: Great. That would be great. Mr. Ferrario?

12 MR. FERRARIO: Your Honor, I think your points are well taken. I
13 just wanted to tell you that the lawyers that are being retained and the lawyers
14 that have already been on this are keenly aware of the balance that needs to be
15 struck, so no one is looking at this –

16 THE COURT: Are you guys ready to go out and slay the giant?

17 MR. FERRARIO: Well, we're –

18 MR. BENNETT: They promised.

19 MR. FERRARIO: You raised some good points. They're fascinating
20 issues that have arisen because this is a – as Your Honor knows, it's a unique
21 situation. There's no shortage of ground that's already been plowed around the
22 country, so there's a lot of work product that we can – we can benefit from, but
23 we're all aware of the balance in these constructs.

24 THE COURT: How many other states are in the same boat? I
25 mean do you recall?

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MR. BENNETT: Just about everyone is.

MR. FERRARIO: Yeah.

MR. BENNETT: There's twenty something other CO-OPS that are
in the same boat.

THE COURT: Okay. Thank you.

MR. FERRARIO: Thank you, Your Honor.

MR. BENNETT: Thank you.

MS. GRIGORIEV: Thank you, Your Honor.

THE COURT: Thank you.

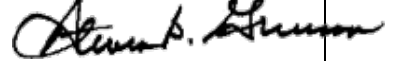
(Whereupon, the proceedings concluded.)

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the
audio/visual proceedings in the above-entitled case to the best of my
ability.



LISA A. LIZOTTE
Court Recorder



1 **OBJ (CIV)**

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10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 STATE OF NEVADA, EX REL.
13 COMMISSIONER OF INSURANCE,
14 BARBARA D. RICHARDSON, IN HER
15 OFFICIAL CAPACITY AS STATUTORY
16 RECEIVER FOR DELINQUENT
17 DOMESTIC INSURER,

Plaintiff,

16 v.

17 NEVADA HEALTH CO-OP,

18 Defendant.

Case No. A-15-725244-C

Dept. No. I

Date of Hearing: 9/26/2019

Time of Hearing: In Chambers

**CREDITOR AND INTERESTED
PARTY UNITE HERE HEALTH'S
OBJECTION TO MOTION FOR
DETERMINATION OF GOOD FAITH
SALE OF INTEREST IN
RECEIVABLES BY PLAINTIFF,
ORDER APPROVING SALE AND
PERMITTING DISTRIBUTION OF
CERTAIN FUNDS**

21
22 Unite Here Health ("UHH"), a creditor of Defendant Nevada Health CO-OP ("NHC" or the
23 "Co-Op") and an interested party in this matter as a result of a lawsuit filed against it by Plaintiff,
24 State of Nevada, Ex. Rel. Commissioner of Insurance, in her Official Capacity as Statutory Receiver
25 for Nevada Health CO-OP ("Plaintiff" or "Receiver") on behalf of the Co-Op in a matter styled
26 *Plaintiff, State of Nevada, Ex. Rel. Commissioner of Insurance, in her Official Capacity as Statutory*
27 *Receiver for Nevada Health CO-OP v. Milliman, Inc., et. al.*, Case No. A-17-760558-C, Dept. No.
28 XVI, by and through its attorneys, hereby files this objection to Plaintiff's Motion for Determination

1 of Good Faith Sale of Interest in Receivables, Order Approving Sale and Permitting Distribution of
2 Certain Funds (“Sale Motion”).

3 UHH is a creditor of Co-Op. Moreover, on or about September 24, 2018, the Receiver filed
4 a lawsuit against UHH on behalf of the Co-Op (*Plaintiff, State of Nevada, Ex. Rel. Commissioner of*
5 *Insurance, in her Official Capacity as Statutory Receiver for Nevada Health CO-OP v. Milliman,*
6 *Inc., et. al.*, Case No. A-17-760558-C, Dept. No. XVI) alleging several causes of action against
7 UHH, including Professional Malpractice, Negligence, Gross Negligence, Breach of Consulting
8 Agreement, Breach of UHH Administrative Services Agreement, Tortious Breach of Implied
9 Covenant, Breach of Implied Covenant of Good Faith and Fair Dealing, Negligent Performance of
10 Undertaking, and Unjust Enrichment (the “Lawsuit”). Included within the damages being sought by
11 the Receiver in the Lawsuit are the loss of federal receivables - and specifically the Risk Corridor
12 Receivables - it claims it should have received from the Department of Health and Human Services
13 and the Centers for Medicare & Medicaid Services in the amount of \$43,042,673.80 (“Risk Corridor
14 Receivables”), but allegedly failed to receive as a result of the actions of UHH and other defendants.
15 The Receiver seeks the same Risk Corridor Receivables in the amount of \$43,042,673.80 against the
16 United States (on the basis of actions of the Department of Health and Human Services and the
17 Centers for Medicare & Medicaid Services and unrelated to UHH) in another lawsuit pending before
18 the United States Court of Federal Claims entitled *Barbara D. Richardson, in her capacity as*
19 *Receiver of Nevada Health CO-OP v. United States*, Case No. 18-1731C (the “CFC Lawsuit”).

20 Thus, the Risk Corridor Receivables and the amount that the Receiver is entitled to recover
21 by law on behalf of the Co-Op for those Receivables has a direct impact on the Lawsuit with regard
22 to the damages the Receiver may be entitled to seek and/or recover against UHH in the Lawsuit.
23 Moreover, a sale of the Co-Op’s interest in the Risk Corridor Receivables for a small fraction of the
24 full amount of those Receivables will negatively impact all of the Co-Op’s creditors, including
25 UHH, while benefiting the Receiver’s counsel as a result of a likely payment of its attorney fees in
26 the Lawsuit from the \$5,000,000.00 in distributions also requested in the Sale Motion, thereby
27 raising a potential conflict of interest in this sale and any distributions to counsel from the sale.
28

1 Thus, in order to preserve its defenses in the Lawsuit with respect to the claims filed against it and
2 the damages sought by the Receiver in the Lawsuit, and to prevent the Receiver from selling the
3 Co-Op's interest in the Risk Corridor Receivables for an amount that would not constitute a good
4 faith sale and is not in the best interest of the Co-Op's creditors, UHH files this Objection to the Sale
5 Motion.

6 Specifically, the Receiver seeks approval to sell the Co-Op's interest in the Risk Corridor
7 Receivables for about 25% to 30% of what the Risk Corridor Receivables are allegedly worth (i.e.
8 \$10 million upfront payment plus additional nominal amounts pursuant to the Waterfall payment
9 distribution formula described by the Receiver in the Sale Motion). Lacking from the Receiver's
10 Sale Motion is evidence of due diligence on this sale, including the amount of the purchase price.
11 A loss of approximately 75% or about \$32,000,000 of the Risk Corridor Receivables is unreasonable
12 based on the lack of due diligence and evidence provided and will have a significant impact on the
13 money available for payments due to the Co-Op's creditors. Further, the Receiver has not
14 demonstrated that it has the legal right and ability to assign its claims against the Federal
15 Government relating to the Risk Corridor Receivables.

16 CONCLUSION

17 For the foregoing reasons, UHH requests that this Court enter an order denying the Plaintiff
18 Receiver's Sale Motion and granting any other further relief that it considers fair and just.

19 DATED this 25th day of September, 2019.

20 Respectfully submitted,

21 BAILEY ♦ KENNEDY

22
23 By: /s/ Joseph A. Liebman
JOHN BAILEY
Nevada Bar No. 137
JOSEPH A. LIEBMAN
Nevada Bar No. 10125

24
25
26 *Attorneys for Creditor and Interested Party*
Unite Here Health

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 25th day of September, 2019, service of the foregoing **CREDITOR AND INTERESTED PARTY UNITE HERE HEALTH'S OBJECTION TO MOTION FOR DETERMINATION OF GOOD FAITH SALE OF INTEREST IN RECEIVABLES BY PLAINTIFF, ORDER APPROVING SALE AND PERMITTING DISTRIBUTION OF CERTAIN FUNDS** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system on all parties with an email address on record in this case.

/s/ Sharon L. Murnane
Employee of BAILEY ♦ KENNEDY

CLERK OF THE COURT

*Counsel for Barbara D. Richardson, Commissioner of Insurance,
as the Permanent Receiver for Nevada Health CO-OP*

DATE OF HEARING: October 16, 2019
TIME OF HEARING: 9:00 a.m.

her Motion for Determination of Good Faith Sale of Interest in Receivables, Order Approving Sale and Permitting Distribution of Certain Funds pursuant to NRS 696B.290 and NRS 696B.420, on order shortening time (“Reply”). This Reply is based upon the following Memorandum of Points and Authorities, the papers and pleadings on file herein, and any oral argument to be entertained by the Court.

DATED this 11th day of October, 2019.

GREENBERG TRAURIG, LLP

By: /s/ Donald L. Prunty
MARK E. FERRARIO, ESQ.
Nevada Bar No. 1625
ERIC W. SWANIS, ESQ.
Nevada Bar No. 6840
DONALD L. PRUNTY, ESQ.
Nevada Bar No. 8230
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135
Counsel for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff is currently engaged in extensive litigation and other efforts to marshal NHC’s assets for the benefit of its creditors. Among these efforts are claims against the federal government for amounts the Receiver believes are owed to NHC under the ACA (the “Federal Claims”), and separately, an action pending in Department XVI against NHC’s vendors, directors, officers, and consultants, including Unite Here Health (“UHH”) (the “Asset Recovery Action”). After extensive efforts and negotiations with several parties, the Receiver has entered into an agreement, subject to this Court’s approval, to sell a portion of its federal receivables for a cash payment without recourse of \$10 million and an additional potential payment depending on the outcome of the underlying litigation of the Federal Claims. The sale of the interest in Federal Claims is explicitly contingent on prompt approval.

Perhaps seeking to obstruct the ongoing litigation against it, UHH has raised cursory and unsubstantiated objections to Plaintiff’s sale of the federal receivables, hoping that if such a sale is prevented from going forward, and the Asset Recovery Action against it is sufficient stalled, a resultant future liquidity problem will force Plaintiff to discontinue her claims. UHH’s weak and meritless

1 objections, which are provided without factual or legal basis, cannot overcome the Receiver's broad
2 authority to proceed with a sale of NHC's assets on such terms and conditions as she deems
3 appropriate, nor should UHH prevent recovery on behalf of the medical service providers and other
4 creditors of NHC. There is substantial risk of litigation for the underlying claims against the United
5 States, and the sales price was negotiated at market prices and at arm's length with an unrelated party.
6 As such, the sale of the receivables should proceed unhindered.

7 **I. LEGAL ARGUMENTS**

8 In spite of Plaintiff's broad statutory authority to assign NHC's interests against the federal
9 government as to the risk corridor receivables, UHH has objected to Plaintiff's request for this Court's
10 determination of good faith sale. Pursuant to NRS 696B.290 and this Court's own order, the Receiver
11 has broad authority and discretion to administer the assets of NHC, including, *inter alia*, express
12 authority to: (1) "[i]nstitute and to prosecute...any and all suits and other legal proceedings..., to
13 abandon the prosecution or defense of such suits, legal proceedings and claims which she deems
14 inappropriate, to pursue further and to compromise suits, legal proceedings or claims on such terms
15 and conditions as she deems appropriate;" (2) "sell, transfer, abandon, or otherwise dispose of or deal
16 with any asset or property of CO-OP...upon such terms and conditions as she deems to be fair and
17 reasonable, irrespective of the value at which such property was last carried on the books of CO-OP;"
18 (3) "execute, acknowledge, and deliver any and all deeds, assignments, releases and other instruments
19 necessary or proper to effectuate any sale of property or other transaction in connection with the
20 receivership;" and (4) "[e]nter into such contracts as are necessary to carry out" the Receivership
21 Order. *See* Permanent Injunction and Order Appointing Commissioner as Permanent Receiver of
22 Nevada Health CO-Op, dated October 14, 2015 ("Receivership Order"), ¶¶ 14(c), (e), (h). It is
23 indisputable that the sale of the receivables in Plaintiff's action before the Court of Federal Claims
24 would fall within this broad authority.

25 Although the Receiver must report to this Court as to the progress of the NHC's affairs under
26 the receivership, the Receiver's discretion is paramount, and "the court shall not withhold approval or
27 disapprove any such action unless found by the court after a hearing thereon in open court to be
28 unlawful, arbitrary or capricious." NRS 696B.290(7). While UHH questions Plaintiff's authority to sell

1 the receivables, it has provided no legal basis to dispute the same, nor has UHH shown how the
2 proposed sale of the receivables is otherwise “unlawful, arbitrary or capricious.”

3 As stated in the Motion, this decision was made by the Receiver, and pursuant to her authority,
4 after careful review of the receivership’s current financial position, the status and uncertainty of
5 pending litigation, the creditors’ collective interests in obtaining distributions, and the Receiver’s past
6 experience regulating insolvent insurers. However, UHH objects to the sale, stating that the sale:
7 (1) could affect UHH’s damages in Plaintiff’s civil action against UHH; (2) that the proposed sale is a
8 “small fraction” of the potential amount collectable, diminishing UHH’s collection as a creditor; and
9 (3) that a potential conflict of interest exists, as monies from the sale will be distributed to pay counsel.
10 Each of these arguments is without merit and should be dismissed.

11 First, UHH’s position as a party in an unrelated action does not prohibit Plaintiff from selling
12 the federal receivables. Plaintiff is not suing UHH for recovery of the same risk corridor receivables
13 that she is seeking to recover from the federal government. Plaintiff is suing the federal government for
14 NHC’s claimed, but unpaid, receivables. By contrast, she is suing UHH, in relevant part, as to the loss
15 of additional receivables, which NHC did not claim from the government, which Plaintiff cannot – and
16 is not – claiming in the federal action, and which losses resulted from UHH’s own actions. Moreover,
17 even if Plaintiff was seeking the same damages as against the federal government and UHH – which
18 she is not – as with settlements involving joint and several liability of multiple defendants, the extent
19 of the damages caused by UHH’s actions is a question of fact for a jury, not for this Court, and when
20 the time arises, UHH can argue whether a sale of the federal receivables was warranted or whether it
21 affected Plaintiff’s ability to claim certain damages against UHH.

22 Second, UHH provides no support to show how the terms of the Sale Contract are unreasonable
23 or unfair. No other potential buyer, including UHH itself, has made a better offer. While the proposed
24 sale is for approximately 25% of the potential recovery, such recovery is not certain, and it is possible
25 that Plaintiff could recover nothing in the federal action. As stated in the Receivership Order,
26 prosecution of claims and sale of NHC’s assets shall be on such terms and conditions as the Receiver –
27 not third parties – deems appropriate, fair, or reasonable. *See* Receivership Order, ¶¶ 14(c), (e), (h). As
28 UHH is well aware, litigation is uncertain, and it would set a dangerous precedent to prevent the

1 Receiver from reaching an agreement to sell or to settle for less than the full amount of potential
2 damages on a claim. Indeed, UHH's arguments place it in an awkward position, as it is unlikely that
3 UHH would wish to raise similar arguments against any potential settlement it may reach with Plaintiff
4 as to Plaintiff's claims against UHH. If this sale of the receivables is prevented from going forward due
5 to UHH's objections herein, UHH should be held accountable for Plaintiff's losses, in the event that
6 her recovery in the federal action is less than the proposed sale price.

7 Finally, it is perfectly reasonable for Plaintiff to use NHC's assets to cover unpaid or future
8 expenses of receivership administration, including payment of attorney fees. Indeed, this Court
9 envisioned and authorized such payments to be made, stating, "All costs, expenses, fees or any other
10 charges of the Receivership, including but not limited to fees and expenses of...attorneys...shall be
11 paid from the assets of the CO-OP." *Id.*, ¶ 20. Counsel's work on behalf of the Receiver has been
12 substantial, and has included appearing before this Court, as well litigating actions, both against the
13 federal government and against certain of NHC's vendors, directors, officers, and consultants,
14 including UHH. Payment of such legal fees from the sale of the receivables is not a conflict of interest,
15 as the undersigned counsel did not make the decision to sell the receivables, nor do they have any
16 vested interest in the federal receivables through a contingency fee arrangement. By the sale of the
17 federal receivables, the Receiver is seeking, in part, to minimize the risk of future liquidity problems as
18 the receivership progresses and litigation continues against these various parties. It is unreasonable to
19 expect counsel to be unpaid for such work, or to prevent recovery of far more substantial sums sought
20 against UHH due to NHC's financial limitations to proceed with such litigation.

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II. CONCLUSION

Given the foregoing, Plaintiff requests that the Court grant all relief requested within her underlying Motion and allow the sale of the receivables to move forward, pursuant to the terms of the Sale Contract.

DATED this 11th day of October, 2019.

GREENBERG TRAURIG, LLP

By: /s/ Donald L. Prunty
MARK E. FERRARIO, ESQ.
Nevada Bar No. 1625
ERIC W. SWANIS, ESQ.
Nevada Bar No. 6840
DONALD L. PRUNTY, ESQ.
Nevada Bar No. 8230
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this **11th day of October, 2019**, and pursuant to NEFCR 9, NRCP 5(b), and EDCR 7.26, a true and correct copy of the **REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR DETERMINATION OF GOOD FAITH SALE OF INTEREST IN RECEIVABLES BY PLAINTIFF, ORDER APPROVING SALE AND PERMITTING DISTRIBUTION OF CERTAIN FUNDS, ON ORDER SHORTENING TIME** was filed with the Clerk of the Court using the Odyssey eFileNV Electronic Service system and served on all parties with an email address on record in this case, pursuant to Administrative Order 14.2 and Rule 9 of the N.E.F.C.R. The date and time of the electronic proof of service is in place of the date and place of deposit in the United States mail.

Such motion was also served electronically through the Odyssey efileNV Electronic Service system and served on all parties with an email address on record in Clark County District Court, Case No. A-17-760558-B and was served electronically on counsel for the United States in the United States Court of Federal Claims, Case No. 1:18-cv-01731-MBH, to the following:

Frances M. McLaughlin
Senior Trial Counsel
United States Department of Justice
Civil Division, Commercial Litigation Branch
Frances.McLaughlin@usdoj.gov

Kirk Manhardt
Deputy Director
United States Department of Justice
Civil Division, Commercial Litigation Branch
Kirk.Manhardt@usdoj.gov

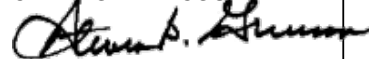
Such motion was also served on counsel for the United States in United States Court of Federal Claims, Case No. 1:18-cv-01731-MBH, by UPS overnight delivery to the following:

Frances M. McLaughlin
Senior Trial Counsel
United States Department of Justice
Civil Division, Commercial Litigation Branch
1100 L Street, NW, Room 7230
Washington, D.C. 20005

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Kirk Manhardt
Deputy Director
United States Department of Justice
Civil Division, Commercial Litigation Branch
1100 L Street, NW, Room 7000
Washington, D.C. 20005

/s/ Evelyn Escobar-Gaddi
An employee of Greenberg Traurig LLP



1 **NEOJ**

2 MARK E. FERRARIO, ESQ.

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4 ERIC W. SWANIS, ESQ.

5 Nevada Bar No. 6840

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11 Telephone: (702) 792-3773

12 Facsimile: (702) 792-9002

13 Email: ferrariom@gtlaw.com

14 swanise@gtlaw.com

15 *Counsel for Barbara D. Richardson,*

16 *Commissioner of Insurance, as the*

17 *Permanent Receiver for Nevada Health CO-OP*

18 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 STATE OF NEVADA, EX REL.)

21 COMMISSIONER OF INSURANCE, IN HER)

22 OFFICIAL CAPACITY AS STATUTORY)

23 RECEIVER FOR DELINQUENT DOMESTIC)

24 INSURER,)

25 Plaintiff,)

26 vs.)

27 NEVADA HEALTH CO-OP,)

28 Defendant.)

CASE NO.: A-15-725244-C

DEPT. NO.: 1

NOTICE OF ENTRY

[ORDER APPROVING SALE OF RECEIVABLES INTEREST AND
PERMITTING DISTRIBUTION OF CERTAIN FUNDS]

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the Order Approving Sale
of Receivables Interest and Permitting Distribution of Certain was entered in the above-captioned
matter on October 16, 2019.

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A copy of said Order is attached hereto as **Exhibit A.**

DATED this 16th day of October, 2019.

GREENBERG TRAURIG, LLP

/s/ Donald L. Prunty
MARK E. FERRARIO, ESQ.,
Nevada Bar No. 1625
ERIC W. SWANIS
Nevada Bar No. 6840
DONALD L. PRUNTY, ESQ.
Nevada Bar No. 8230
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135

*Counsel for Barbara D. Richardson,
Commissioner of Insurance, as the
Permanent Receiver for Nevada Health
CO-OP*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this **16th day of October 2019**, a true and correct copy of the foregoing
3 **NOTICE OF ENTRY OF ORDER** was filed with the Clerk of the Court using the Odyssey eFileNV
4 Electronic Service system and served on all parties with an email-address on record, pursuant to
5 Administrative Order 14-2 and Rule 9 of the N.E.F.C.R.

6 The date and time of the electronic proof of service is in place of the date and place of deposit
7 in the United States mail.

8 **(SERVICE ON NON-REGISTERED RECIPIENTS)**

9 Pursuant to N.E.F.C.R. Rule 9(d), the above-referenced document was served by causing a
10 full, true and correct copy thereof to be sent by the following indicated method(s):

- 11 ☒ via **United States first class mail** postage-prepaid envelope, addressed to the last known
12 office address of the attorney, and deposited with the United States Postal Service at Las
13 Vegas, Nevada
14 ☐ via **Hand Delivery**
15 ☒ via **electronic mail** to the last known email address.

16 John Bailey, Esq.
17 JBailey@BaileyKennedy.com
18 Joseph Liebman, Esq.
19 JLiebman@BaileyKennedy.com
20 BAILEY KENNEDY
21 8984 Spanish Ridge Avenue
22 Las Vegas, Nevada 89148-1302
23 *Attorneys for Creditor and Interested Party*
24 *UNITE HERE HEALTH*

25 Such motion was also served electronically through the Odyssey efileNV Electronic Service
26 system and served on all parties with an email address on record in Clark County District Court,
27 Case No. A-17-760558-B and was served electronically on counsel for the United States in the
28 United States Court of Federal Claims, Case No. 1:18-cv-01731-MBH, to the following:

29 Frances M. McLaughlin
30 Senior Trial Counsel
31 United States Department of Justice
32 Civil Division, Commercial Litigation Branch
33 Frances.McLaughlin@usdoj.gov

34 Kirk Manhardt

1 Deputy Director
2 United States Department of Justice
3 Civil Division, Commercial Litigation Branch
4 Kirk.Manhardt@usdoj.gov

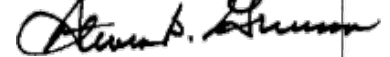
5 Such motion was also served on counsel for the United States in United States Court of Federal
6 Claims, Case No. 1:18-cv-01731-MBH, via United States first class mail:

7 Frances M. McLaughlin
8 Senior Trial Counsel
9 United States Department of Justice
10 Civil Division, Commercial Litigation Branch
11 1100 L Street, NW, Room 7230
12 Washington, D.C. 20005

13 Kirk Manhardt
14 Deputy Director
15 United States Department of Justice
16 Civil Division, Commercial Litigation Branch
17 1100 L Street, NW, Room 7000
18 Washington, D.C. 20005

19 /s/ Evelyn Gaddi
20 An employee of Greenberg Traurig, LLP
21
22
23
24
25
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28

EXHIBIT A



1 **ORD**

2 MARK E. FERRARIO, ESQ.
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4 ERIC W. SWANIS, ESQ.
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6 DONALD L. PRUNTY, ESQ.
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15 pruntyd@gtlaw.com

16 *Counsel for Barbara D. Richardson, Commissioner of Insurance,*
17 *as the Permanent Receiver for Nevada Health CO-OP*

18 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 STATE OF NEVADA, EX REL.)
21 COMMISSIONER OF INSURANCE, IN HER)
22 OFFICIAL CAPACITY AS STATUTORY)
23 RECEIVER FOR DELINQUENT DOMESTIC)
24 INSURER,)
25 Plaintiff,)

26 vs.)

27 NEVADA HEALTH CO-OP,)
28 Defendant.)

CASE NO.: A-15-725244-C
DEPT. NO.: 1

**ORDER APPROVING SALE OF
RECEIVABLES INTEREST AND
PERMITTING DISTRIBUTION OF
CERTAIN FUNDS**

29 This Court having held a hearing on 09/16, 2019 on Plaintiff's Motion for Determination of
30 Good Faith Sale of Interest in Receivables by Plaintiff, Order Approving Sale and Permitting
31 Distribution of Certain Funds, On Order Shortening Time ("Motion")¹. The Court having reviewed
32 the filings made herein and having considered the arguments made by counsel at the hearing and the

33 ¹ Any capitalized term used but not defined herein shall have the meaning ascribed to it in the Motion.

1 evidence in the record, and upon adequate notice of the Motion and the hearing thereon, and good
2 cause appearing,

3 **IT IS HEREBY ORDERED, ADJUDGED, and DECREED** that:

4 1. The proposed Sale Contract contemplated by the Motion (the "Sale Contract"), and as
5 attached as Exhibit A to the Motion, was negotiated and entered-into in good faith and at arms' length,
6 and is fair and reasonable under the circumstances and in the best interests of the Receivership estate;

7 2. The Sale Contract is approved in all respects, and the Receiver and the Purchaser are
8 authorized to execute all documents necessary to effectuate the Sale Contract and complete the
9 transaction, and the Sale Contract shall be binding on the Purchaser and the Receiver in accordance
10 with the terms thereof;

11 3. The Receiver has authority and discretion, pursuant to NRS 696B.290 and the orders
12 of this court, to engage in sale transactions like those contemplated by the Motion;

13 4. The Receiver is authorized to make as much as \$5 million in distributions to estate
14 claimants from the \$10 million in proceeds resulting from the sale contemplated by the Sale Contract,
15 with the other \$5 million of proceeds to be used or made available for unpaid or future expenses of
16 receivership administration; provided, that, for the avoidance of doubt, nothing herein shall be
17 deemed to authorize the Receiver to use any of the Claims Proceeds allocable to the Purchaser
18 pursuant to the Sale Contract for any of the foregoing purposes;

19 5. Pursuant to the terms of the Sale Contract, at all times during the term of the Sale
20 Contract, the Receiver is prohibited from making, and shall not make, any other sale, transfer,
21 assignment, conveyance, hypothecation, encumbrance or pledge of the Claims Proceeds or Claims
22 (as such terms are defined in the Sale Contract) to anyone other than Purchaser;

23 6. Pursuant to the terms of the Sale Contract, Claims Proceeds (as defined by the Sale
24 Contract) shall be held, by legal counsel engaged by Seller, or an escrow agent mutually agreed to by
25 the parties for the benefit of Purchaser;

26 7. Pursuant to the terms of the Sale Contract, counsel engaged by Seller or the escrow
27 agent, as applicable, shall pay to the Purchaser the Investment Return within 10 business days of
28 receipt of cleared funds;

1 8. In the event of any future successful challenge to the validity of the Sale Contract,
2 Purchaser's claim to payment under the Sales Contract shall be treated as an administrative expense
3 entitled to the Priority of Distributions set forth in NRS 696B.420(1)(a) and be due and payable from
4 the Receivership estate as may be further authorized by this Court;

5 9. In the event of a dispute between the Receiver and Purchaser with respect to the Sale
6 Contract, this Court shall retain jurisdiction to resolve such disputes; and

7 10. This is a Final Order pursuant to NRS 696B.190(5).


8 **IT IS SO ORDERED.**

9 DATED this 16th day of October 2019.

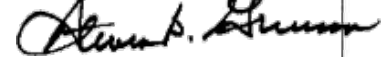
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11
12 
13 THE HONORABLE KENNETH CORY
14 DISTRICT COURT JUDGE

15 Respectfully submitted this 16th day of
16 October 2019 by:

17 GREENBERG TRAURIG, LLP

18 
19 MARK E. FERRARIO, ESQ.,
20 Nevada Bar No. 1625
21 ERIC W. SWANIS
22 Nevada Bar No. 6840
23 DONALD L. PRUNTY
24 Nevada Bar No. 8230
25 10845 Griffith Peak Drive, Suite 600
26 Las Vegas, NV 89135

27 *Attorneys for the Plaintiff*



1 **ORD**

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16 *Counsel for Barbara D. Richardson, Commissioner of Insurance,*
17 *as the Permanent Receiver for Nevada Health CO-OP*

18 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 STATE OF NEVADA, EX REL.)
21 COMMISSIONER OF INSURANCE, IN HER)
22 OFFICIAL CAPACITY AS STATUTORY)
23 RECEIVER FOR DELINQUENT DOMESTIC)
24 INSURER,)

25 Plaintiff,)

26 vs.)

27 NEVADA HEALTH CO-OP,)

28 Defendant.)

CASE NO.: A-15-725244-C
DEPT. NO.: 1

**ORDER APPROVING SALE OF
RECEIVABLES INTEREST AND
PERMITTING DISTRIBUTION OF
CERTAIN FUNDS**

29 This Court having held a hearing on 09/16, 2019 on Plaintiff's Motion for Determination of
30 Good Faith Sale of Interest in Receivables by Plaintiff, Order Approving Sale and Permitting
31 Distribution of Certain Funds, On Order Shortening Time ("Motion")¹. The Court having reviewed
32 the filings made herein and having considered the arguments made by counsel at the hearing and the

33 ¹ Any capitalized term used but not defined herein shall have the meaning ascribed to it in the Motion.

1 evidence in the record, and upon adequate notice of the Motion and the hearing thereon, and good
2 cause appearing,

3 **IT IS HEREBY ORDERED, ADJUDGED, and DECREED** that:

4 1. The proposed Sale Contract contemplated by the Motion (the "Sale Contract"), and as
5 attached as Exhibit A to the Motion, was negotiated and entered-into in good faith and at arms' length,
6 and is fair and reasonable under the circumstances and in the best interests of the Receivership estate;

7 2. The Sale Contract is approved in all respects, and the Receiver and the Purchaser are
8 authorized to execute all documents necessary to effectuate the Sale Contract and complete the
9 transaction, and the Sale Contract shall be binding on the Purchaser and the Receiver in accordance
10 with the terms thereof;

11 3. The Receiver has authority and discretion, pursuant to NRS 696B.290 and the orders
12 of this court, to engage in sale transactions like those contemplated by the Motion;

13 4. The Receiver is authorized to make as much as \$5 million in distributions to estate
14 claimants from the \$10 million in proceeds resulting from the sale contemplated by the Sale Contract,
15 with the other \$5 million of proceeds to be used or made available for unpaid or future expenses of
16 receivership administration; provided, that, for the avoidance of doubt, nothing herein shall be
17 deemed to authorize the Receiver to use any of the Claims Proceeds allocable to the Purchaser
18 pursuant to the Sale Contract for any of the foregoing purposes;

19 5. Pursuant to the terms of the Sale Contract, at all times during the term of the Sale
20 Contract, the Receiver is prohibited from making, and shall not make, any other sale, transfer,
21 assignment, conveyance, hypothecation, encumbrance or pledge of the Claims Proceeds or Claims
22 (as such terms are defined in the Sale Contract) to anyone other than Purchaser;

23 6. Pursuant to the terms of the Sale Contract, Claims Proceeds (as defined by the Sale
24 Contract) shall be held, by legal counsel engaged by Seller, or an escrow agent mutually agreed to by
25 the parties for the benefit of Purchaser;

26 7. Pursuant to the terms of the Sale Contract, counsel engaged by Seller or the escrow
27 agent, as applicable, shall pay to the Purchaser the Investment Return within 10 business days of
28 receipt of cleared funds;

1 8. In the event of any future successful challenge to the validity of the Sale Contract,
2 Purchaser's claim to payment under the Sales Contract shall be treated as an administrative expense
3 entitled to the Priority of Distributions set forth in NRS 696B.420(1)(a) and be due and payable from
4 the Receivership estate as may be further authorized by this Court;

5 9. In the event of a dispute between the Receiver and Purchaser with respect to the Sale
6 Contract, this Court shall retain jurisdiction to resolve such disputes; and

7 10. This is a Final Order pursuant to NRS 696B.190(5).


8 **IT IS SO ORDERED.**

9 DATED this 16th day of October 2019.

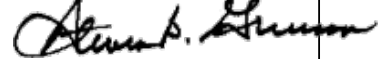
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13 THE HONORABLE KENNETH CORY
14 DISTRICT COURT JUDGE

15 Respectfully submitted this 16th day of
16 October 2019 by:

17 GREENBERG TRAURIG, LLP

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19 MARK E. FERRARIO, ESQ.,
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25 10845 Griffith Peak Drive, Suite 600
26 Las Vegas, NV 89135

27 *Attorneys for the Plaintiff*



1 **RTRAN**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA
5

6 STATE OF NEVADA, ex rel)
7 COMMISSIONER OF INSURANCE,)
8 Plaintiff,)
9 vs.)
10 NEVADA HEALTH CO-OP, et al.,)
11 Defendants.)
12

CASE NO. A725244
DEPT. NO. 1

13 BEFORE THE HONORABLE KENNETH C. CORY, DISTRICT JUDGE
14 WEDNESDAY, OCTOBER 16, 2019 AT 10:17 A.M.

15 **RECORDER'S TRANSCRIPT RE:**
16 **PLAINTIFF'S MOTION FOR DETERMINATION OF GOOD FAITH SALE OF**
17 **INTEREST IN RECEIVABLES BY PLAINTIFF, ORDER APPROVING SALE**
18 **AND PERMITTING DISTRIBUTION OF CERTAIN FUNDS ON ORDER**
19 **SHORTENING TIME**

20 **APPEARANCES:**

21 FOR RECEIVER BARBARA
22 RICHARDSON:

MARK E. FERRARIO, ESQ.
DONALD L. PRUNTY, ESQ.

23 FOR OBJECTOR UNITE HERE
24 HEALTH:

JOSEPH A. LIEBMAN, ESQ.

25 ALSO PRESENT:

MARK BENNETT
Special Deputy Receiver

Recorded by: LISA A. LIZOTTE, COURT RECORDER

1 (WEDNESDAY, OCTOBER 16, 2019 AT 10:17 A.M.)

2 THE CLERK: Page 8, State of Nevada versus Nevada Health CO-
3 OP, Case Number A725244.

4 MR. LIEBMAN: Good morning, Your Honor. Joseph Liebman on
5 behalf of Unite Here Health.

6 THE COURT: Good morning.

7 MR. LIEBMAN: Good morning.

8 MR. FERRARIO: Good morning, Your Honor. Mark Ferrario, Don
9 Prunty for the Receiver and Special Deputy Receiver Mark Bennett with us in the
10 courtroom today.

11 THE COURT: Good morning. Welcome to the lion's den. Mr.
12 Ferrario, I haven't had the chance to beat you up for some time.

13 MR. FERRARIO: Well, here I am.

14 THE COURT: Yeah.

15 MR. FERRARIO: Commence beating.

16 THE COURT: Okay. It's your motion.

17 MR. FERRARIO: It is, and in going through this preparing for
18 today's hearing, Your Honor, you know, I think we've adequately set forth
19 everything that transpired. We have a very detailed affidavit, we've cited to the
20 appropriate statutes, we've cited to the appropriate orders, and I don't know that
21 there's a whole lot left to say. You know, this is really to me a very simple matter.
22 The Special Deputy Receiver negotiated a deal to compromise a disputed claim,
23 and it's going to result in substantial funds coming in to the estate.

24 I don't have to tell Your Honor because I'm sure you've read
25 the pleadings that the estate is badly in need of funds, and, you know, this is

1 something that happens every day in this courthouse in almost every case.
2 People weigh risk and return and cases settle and somebody can always come
3 back and say, well, you should have held out and you've got another dollar or
4 you should have held and got a little more. That's not how it works, and I guess
5 – you know, one thing that was really troubling to me, Judge, is that as I was
6 reading the opposition which, you know, I know the firm very well, we're fighting
7 them in front of Judge Williams, they came in and asked for a stay, they want to
8 put the brakes on, you know what blew me away when I read the opposition is
9 there's a standard in the statute that the Court has to consider.

10 You have to determine whether or not our action is arbitrary
11 and capricious or in bad faith. They do not utter those words in their opposition.
12 They do not tell this Court based on XYZ facts or XYZ considerations that what
13 we are requesting is arbitrary and capricious or in bad faith. Their opposition is
14 really nothing more than a transparent attempt to get what they're trying to get in
15 front of Judge Williams, okay. They want to stop this estate from pursuing the
16 claims that we filed against them in front of Judge Williams, and they're going to
17 any steps possible to do that including trying –

18 THE COURT: Including –

19 MR. FERRARIO: -- to choke off the estate.

20 THE COURT: Including choking off the attorneys' fees necessary to
21 pursue that.

22 MR. FERRARIO: Absolutely, Judge. There is no doubt about it.

23 THE COURT: Is that – I wondered what your comeback would be
24 for that when they – I don't recall the exact words but it was fairly direct.

1 MR. FERRARIO: They were tap-dancing around my conflict of
2 interest, shall I say.

3 THE COURT: Yeah. Okay.

4 MR. FERRARIO: And really, you know, I guess I could have given
5 the argument some respect had they tied it to the statute, had they actually
6 considered what the legislature said should be considered here but they did none
7 of that. They came with no facts, nothing, and it ties into exactly what we're
8 dealing with with Judge Williams. They came in and asked for a year-long stay.
9 Let's wait and see what happens at the Supreme Court. Don't go forward
10 anymore. They don't want the scrutiny visited upon them that we're trying to do
11 in front of Judge Williams because they can't withstand the hit. They know they
12 didn't do what they were supposed to do. So to –

13 THE COURT: What is the nature of that lawsuit?

14 MR. FERRARIO: That's the lawsuit that we have filed against the
15 various providers to the CO-OP where we contend, you know, against the
16 officers and directors, against the people that provide the services, that they fell
17 down on the job essentially. You know, we've sued the CPA firm, we've sued
18 Mr. Liebman's client who was in charge of processing claims, we've sued – and I
19 see officers and directors' counsel in the back of the room, we've sued the
20 officers and directors, so, yes, that's a kind of traditional liability case dealing with
21 a failed venture.

22 But all of that has nothing to do with what we're doing here,
23 and I want to – I want this Court to understand that we have been fighting, okay,
24 here in state court but also in the Court of Claims, okay, as have other failed CO-
25 OPS, to get the government to pay this money, okay. I'm not going to go into the

1 history of the Affordable Care Act and why this didn't happen, but suffice to say
2 that the funding pipeline was choked off by congress, okay, and that issue was
3 decided against the CO-OPS in the Court of Claims, okay, and then our case
4 was stayed, we were a related case, and then it was – went up to the Supreme
5 Court and now the Supreme Court may tell us that the funds may flow but the
6 Supreme Court may say they don't flow, and that won't be the end of the inquiry
7 as we articulated in our pleadings. There's a rather substantial offset issue that
8 we'll have to address.

9 So even if the Supreme Court reverses the Court of Claims in
10 Moda and everything comes back this pipeline may still yield nothing, so to say
11 there is substantial litigation risk associated with this payment is an
12 understatement, an absolute understatement. Neither this Court, neither Mr.
13 Liebman's client or the officers and directors can guarantee that we will get at
14 least 10 million dollars from fighting that battle. They can't and they won't do it.
15 So to bring this fact full circle we had been approached off and on and we had
16 searched for someone that might be interested in doing just what we're here to
17 ask this Court to do, will you compromise or take this claim and we will take a
18 discounted value. It happens really every day in one form or another in this
19 courthouse.

20 We were fortunate enough -- after initial forays in reaching out
21 we were fortunate enough to then find the company CB -- what's the name of it --
22 CM Squared, and negotiations ensued and it wasn't just cookie cutter. Mr.
23 Bennett here, he's been in this courtroom, in this courthouse a lot, there were
24 extensive negotiations back and forth and it got to the point where, hey, this is
25 the best deal that is going to be cut. The risk of litigation were weighed against

1 the immediate recovery of that 10 million dollars especially in light of what was
2 happening here, you know, with the estate proceeding and the litigation and the
3 cost of just administering all of this for the benefit of the creditors.

4 All of those factors were taken into account, all of them, and
5 after weighing all of that it was concluded that it would be in the best interest of
6 the estate to take this essential bird in the hand now and move on, benefit the
7 creditors and continue to be able to fund the operations of the estate and the
8 litigation where we think we will get substantial recovery. So that is what
9 happened, the traditional analysis, Your Honor, nothing more, nothing less, and I
10 will point out in this feeble opposition that was filed they do not ever cite to the
11 statute and say that what was done was arbitrary or capricious because they
12 can't.

13 So they hint at and throw some little arguments out here to try
14 to stop this, to try to derail it because that's what their goal is. They want to
15 choke off the estate, and I submit, Your Honor, you can't do that by filing an
16 opposition that misses the statutory mark and doesn't even speak to the relevant
17 standards. So at this stage based on the record I submit Your Honor should
18 approve the sale to CM Squared so that we can get about doing this, and there's
19 some time sensitivity to this because if it's delayed at all and there is some
20 alteration of what's going on now at the Supreme Court which you don't – I can't
21 predict, neither can you, the deal may go away, that will be devastating to the
22 estate, it will be devastating, I think, to this Court because you're administering
23 the estate and devastating to the creditors, so I would request that Your Honor
24 approve our request.

25 THE COURT: All right.

1 MR. LIEBMAN: Good morning, Your Honor.

2 THE COURT: Good morning. Well, you got him fired up.

3 MR. LIEBMAN: I did apparently. The main issue that we had and
4 the reason we filed the objection was due to the lack of information that was
5 provided with respect to the due diligence that went into this process and how
6 they ultimately determined to take less than 25 percent of the amount that they
7 were seeking with respect to these risk corridor payments. They are seeking 43
8 million dollars from the federal government. Mr. Ferrario stood up here and said,
9 hey, we lost on all these issues in front of the Court of Federal Claims. That's not
10 entirely accurate. Many CO-OPS won on this particular issue, some CO-OPS
11 lost on this particular issue.

12 There's a very big dispute going on and that's why it's in front
13 of the United States Supreme Court. The United States Supreme Court doesn't
14 take cases that don't have merit to both sides, and the fact that -- the fact that
15 they've decided to resolve this for merely 10 million dollars -- and it's not just 10
16 million, Your Honor, they've also agreed to continue litigating the case and pay
17 up to a million dollars in attorneys' fees to keep litigating the case therefore
18 taking that amount down to 9 million dollars which is a fraction of the amount that
19 they could get from the United States government with respect to these particular
20 claims.

21 Now, Mr. Ferrario stands up here and says, hey, we're trying to
22 force them to stop litigating the case against us. That's not correct, Your Honor.
23 The reason we filed an objection, and this has been discussed many times in
24 front of Judge Williams, is they have submitted an expert report that specifically
25 says, hey, if we get 43 million dollars from the federal government our damages

1 against Unite Here Health and all these other defendants are X. If we get 20
2 million dollars from the federal government our damages go up by 20 million
3 dollars against Unite Here Health. They have all these alternative damages
4 scenarios based on this idea that it changes depending on what they can get
5 from the federal government.

6 We significantly dispute that, but the fact is they are making
7 that argument in that particular court, so what they're trying to do here and the
8 reason we've objected is they're going to then go to the other court and say, this
9 court over here approved this sale for 10 million dollars as being reasonable and
10 in good faith, and, therefore, we want another 33 million dollars from Unite Here
11 Health because we didn't get it from the federal government. That's the main
12 issue with what we're dealing with here.

13 I mean specifically if you look at the requested relief, they're
14 not just asking you to approve the sale and let the sale go forward, they want an
15 affirmative order from you saying that the proposed sale contract between the
16 receiver and purchaser was negotiated and entered into good faith – in good faith
17 and is reasonable which they will then try to use in this other case to seek further
18 damages against us.

19 That's the main issue of why we filed the objection, and them
20 coming in here and saying, hey, you didn't say that this was arbitrary or
21 capricious or in bad faith, we don't know anything about the sale. All we have is
22 a copy of the contract. We weren't involved in any of this process. That's why
23 we filed the objection, the significant lack of information about the due diligence
24 that we're going through to determine exactly whether or not this was an
25 appropriate sale and that's the reason we filed the objection, Your Honor.

1 THE COURT: Mr. Ferrario, what's the due –

2 MR. FERRARIO: Absolutely, Your Honor.

3 THE COURT: -- diligence that was engaged in?

4 MR. FERRARIO: I have Mr. Bennett sitting right here. There was
5 extensive due diligence. We were shopping this for a period of time. It's not like
6 there's a lot of people lining up out there to take these litigation risks. And you
7 know what, if I was going to file this motion I probably would have gone out and
8 found an expert to come in and say, hey, you know, there's a bunch of people
9 lining up out there that are willing to pay 50 cents on the dollar or 30 cents on the
10 dollar, okay. We've sent out extensively -- and the Court is free to query Mr.
11 Bennett on what was done, but at the end of the day we found one suitor and it
12 didn't start out at 10 million dollars, okay.

13 It started out much lower. There were negotiations back and
14 forth. Other receivers quite frankly have gotten less for the sale of risk corridor
15 payments. We know that. We don't have to have a public auction. What's
16 required is that we go out and we make a good faith effort and that's what's done
17 here. The real problem with what they're arguing is they want to invade the
18 province of the receiver, okay. That's why that arbitrary capricious language is in
19 there, okay. They want to come in and say -- they just say, well, we don't know
20 so, therefore, it must be arbitrary and capricious. He still hasn't argued that.

21 We set out in great detail in our affidavit what happened. I can
22 tell Your Honor, okay, and Mr. Prunty made a good point, the – we lost our
23 argument essentially not only in the Court of Claims but at the appellate level as
24 well, at the Court of Appeals level which is why it went to the Supreme Court, so
25 we're 0 for 2, okay. So in the face of that –

1 THE COURT: How many are involved in that litigation, how many
2 entities?

3 MR. LIEBMAN: There's three different appeals that are in front of
4 the U.S. Supreme Court.

5 MR. FERRARIO: But there's a number of CO-OPS –

6 MR. LIEBMAN: Yes.

7 MR. FERRARIO: -- that are affected by this. There's a lot of people
8 looking at this. And the other point that I want to make clear to Your Honor and
9 we didn't address is it's not the end of the battle. If the Supreme Court comes
10 back and says, hey, federal, you know, government, if you do promise to pay
11 stuff you can't flip the appropriation switch and cut it off, then we have a pitched
12 battle on offset and if we lose that battle zero comes to us. So it's not the end of
13 the litigation fight, okay. It ends up being the beginning of the next fight and
14 there are other ways – I'm not going to bore the Court with our analysis – there
15 are other ways the government still may try to avoid paying.

16 It's not an easy task when you're going after this kind of
17 money, so all of that was taken into account, okay, all of those risks were
18 weighed and the conclusion was that it's in the best interest of this estate, as we
19 set forth in the affidavit that was presented -- and, again, if the Court has any
20 questions of Mr. Bennett feel free to ask -- that all the risk, all the gambles are
21 out there, take the money now, shore up the estate, pursue the claims that are
22 here that are more than viable, okay, and they're wrong and they need to argue
23 this – they've argued this motion in front of Judge Williams. That's where it
24 belongs.

25

1 We're not dinging them for these payments. That's just a
2 misunderstanding on their part. In some respect if you got by a less than clear
3 expert opinion on our part, which we are amending, okay, so that will be clarified,
4 we've addressed that in the pleadings, but that's something they've argued in
5 front of Judge Williams. That will shake out there. That's just damage law, okay.
6 For this Court today what Your Honor has to determine is whether or not we met
7 our statutory obligation in the constructs of your order. They have given you
8 nothing to counter that and this – this Court should not weigh in on the damage
9 claims in the other case.

10 The estate is in need of these funds. Mr. Bennett doesn't
11 continue to work for free. We're getting low. They want to – no mystery as to
12 what they want to do. They want to run out the clock and hope that everybody
13 packs up and goes home and that will be the practical result if this is denied.
14 Sooner or later money is going to run out. That benefits nobody but the
15 defendants in the other lawsuit that we're pursuing. It doesn't benefit any of the
16 people that this Court needs to safeguard, the creditors that are going to benefit
17 from this as we've articulated today.

18 Now, this case, this receivership because of the federal
19 overlay and what we've done in this state, very complicated. I mean I don't have
20 to tell Your Honor we're litigating in, you know, Court of Claims, now the case is
21 going to the Supreme Court. We've got a multi-party case here with Judge
22 Williams, you know, projected to go six to eight weeks, maybe longer, so I don't
23 have to tell Your Honor –

24 THE COURT: When is that set for?
25

1 MR. FERRARIO: It's a shifting target because they've asked for
2 delays because – I'm not going to get into it. They've asked for delays. I suspect
3 the case will be tried probably the Fall, about a year from now, maybe just a little
4 less than a year is what the best guess is. Somewhere in that time. We go back
5 in front of Judge Williams, I believe, November 5th, is that it?

6 MR. PRUNTY: Around that time.

7 MR. FERRARIO: Somewhere in the beginning of November for a
8 status check. So – and then we still have administration obligations. We still
9 have to manage the data. We still have to deal with the things that come up.
10 That's where Mr. Bennett comes in, so Your Honor, I can't emphasize enough
11 how critical this deal is to the viability of the state, to the – to protect the
12 claimants, and I would request that Your Honor, based on the record we've
13 submitted, approve the sale and eliminate the risk that we face at the Supreme
14 Court and then when it comes back down which, by the way, will require further
15 funds to litigate, the government is not going to give up on the offset issue,
16 where is that money going to come from, you may end up winning, have no
17 money to litigate and get nothing.

18 THE COURT: Mr. Bennett, let me ask you a question if I may and if
19 you don't know the answer to it that's fine. I'm curious after Mr. Ferrario paints
20 the picture of what's going on in the Court of Claims and the appeal to the
21 Supreme Court, et cetera, et cetera, versus what's going on in front of Judge
22 Williams, which of those two endeavors would you say is more likely to produce
23 funds for the creditors of the – of this state or this CO-OP?

24 MR. BENNETT: The two endeavors, being the federal action or the
25 state court action –

1 THE COURT: Yes.

2 MR. BENNETT: -- that we have filed?

3 THE COURT: Yes.

4 MR. BENNETT: We believe we're going to get money from both,
5 Your Honor, but if you're asking me to rank them I would say more likely in the
6 state court action that we're going to get money than in the federal court action.
7 Federal court actions are a maze. We're not selling all of our receivables, only a
8 part of them. There's still 12 ½ million of receivables that we have for non-risk
9 corridor claims. We've been litigating that with the government. We filed a
10 motion for summary judgment. Judge Warren has stayed that action until the
11 decision is rendered in Moda which we would anticipate March of next year.
12 When that stay is lifted we will resume our motion for summary judgment, but it is
13 a maze because the offset issues are very difficult.

14 The government has its claims, its defenses, and on the risk
15 corridor side Mr. Ferrario is correct that there's a lot of uncertainty not only about
16 what the Supreme Court might do but if the matter comes back and the
17 government has lost the legis – the congress could actually amend the loss.
18 They could amend the judgment fund laws so that no claimant has the right to
19 get any money from the judgment fund, and that is the sole source of recovery
20 for anyone to get risk corridor payments if they're successful in the litigation.

21 So it may end up that your – everyone is successful in litigation
22 but then congress comes in and just simply amends the judgment fund and
23 nobody gets anything anyway, so there is a lot of uncertainty, and that Moda
24 decision, case, is scheduled for oral argument on December the 10th, okay. If
25 that goes badly, that oral argument, the CM Squared representatives are telling

1 me that they're not going to pay 10 million. They may not pay anything. They
2 may pay a little but we're not going to get 10 million if the argument goes badly.
3 Why would they?

4 THE COURT: Yeah.

5 MR. BENNETT: There's a lot of uncertainty in the federal action.

6 THE COURT: So this sounds like pretty much a desperation move,
7 then.

8 MR. BENNETT: It's taking some chips off the table and taking the
9 sure thing rather than gambling on the potential outcome of what might happen
10 at the Supreme Court level but also legislative risks that might occur there after
11 the politics.

12 MR. FERRARIO: Your Honor, I wouldn't characterize it as a
13 desperation move. I think it's a calculated risk, and I told you before there's a lot
14 of issues that the federal – Mr. Bennett has gone to the next level, and we could
15 bore you all day with all the ways the government could try to mess with us, the
16 point is we're not giving up everything. We're giving up this one pipeline that
17 there's been two adverse decisions, okay. I don't know what the Supreme Court
18 is going to do and I don't think you do and I don't think Mr. Liebman does.

19 MR. LIEBMAN: I don't, Your Honor.

20 MR. FERRARIO: Okay, and so the one thing I know is if they come
21 back and they uphold those rulings then 43 million is off the table and our 10
22 million is off the table. Again, this is classic weighing litigation risk and all the
23 things that go with it, that's all we've done, and Mr. Bennett has supplemented
24 the record with other considerations that I alluded to, so this wasn't something
25 that was willy-nilly entered into. The negotiations went on for a number of weeks

1 back and forth, a lot of pressure testing, a lot of assessment, and it was
2 concluded it's in the best interest –

3 THE COURT: Sure. I understand.

4 MR. FERRARIO: -- of the creditors – I mean of the claimants, and it
5 is so far from arbitrary and capricious and bad faith I can't tell you.

6 THE COURT: Okay. Thank you, Mr. Bennett. The motion is
7 granted –

8 MR. FERRARIO: Thank you, Your Honor.

9 THE COURT: -- for the reasons articulated.

10 MR. FERRARIO: I have an order here that I'd like to present.

11 THE COURT: Okay.

12 MR. FERRARIO: May I approach, Your Honor?

13 THE COURT: You may.

14 MR. FERRARIO: Thank you.

15 THE COURT: Thank you.

16 MR. FERRARIO: Thanks.

17 THE COURT: What is it, the 16th today?

18 MR. FERRARIO: I think it is.

19 Thank you, Your Honor.

20 THE COURT: If you would log that with my JEA by going through
21 Door B --

22 MR. FERRARIO: I will do that.

23 THE COURT: -- and she will be right there.

24 MR. LIEBMAN: Thank you, Your Honor.

25 THE COURT: Thank you.

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MR. FERRARIO: Thank you, Your Honor.

THE COURT: Thank you all for attending.

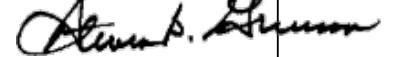
(Whereupon, the proceedings concluded.)

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.

A handwritten signature in cursive script, reading "Lisa A. Lizotte", followed by a horizontal line.

LISA A. LIZOTTE
Court Recorder



DECL (CIV)

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Nevada Bar No. 1625

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DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, EX. REL.

COMMISSIONER OF INSURANCE,

BARABARA D. RICHARDSON, IN HER

OFFICIAL CAPACITY AS STATUTORY

RECEIVER FOR DELINQUENT DOMESTIC

INSURER,

Plaintiff,

v.

NEVADA HEALTH CO-OP,

Defendant.

Case No. A-15-725244-C

Dept. No. I

**DECLARATION OF
COMMISSIONER OF INSURANCE
BARBARA RICHARDSON IN
SUPPORT OF GREENBERG
TRAURIG, LLP'S OPPOSITION TO
MOTION TO DISQUALIFY
GREENBERG TRAURIG AND
DISGORGE ATTORNEY'S FEES**

Hearing Date: December 15, 2020

Hearing Time: 9:00 a.m.

1 I, Barbara D. Richardson, declare as follows:

2 1. I am the Commissioner of Insurance for the State of Nevada ("Commissioner")
3 and have served in this capacity since approximately March 2016, when I replaced the former
4 Acting Commissioner Amy L. Parks.

5 2. One of the responsibilities of the Commissioner is serving as Receiver in
6 delinquency proceedings for Nevada insurers under Nevada Revised Statute 696B.290.

7 3. On October 14, 2015—prior to my employment as Commissioner—Ms. Parks
8 was appointed as Permanent Receiver of Nevada Health Co-op ("NHC") and Cantilo & Bennett
9 was appointed as SDR pursuant to NRS § 696B.290. (See October 14, 2015 Permanent
10 Injunction and Order Appointing Commissioner as Permanent Receiver of Nevada Health Co-Op.)
11 On April 6, 2016, via Notice of Substitution of Receiver, I substituted as Receiver for NHC in
12 place of Ms. Parks.

13 4. I have reviewed (1) Greenberg Traurig LLP's Opposition to Unite Here Health
14 and Nevada Health Solutions, LLC's Motion to Disqualify Greenberg Traurig and Disgorge
15 Attorneys' Fees; and (2) the Declaration of Mark Bennett in Support of Greenberg Traurig's
16 Opposition; and (3) the Receiver's joinder of Greenberg Traurig's opposition. These filings
17 represent the position of the Receiver.

18 I declare under penalty of perjury under the law of the State of Nevada that the foregoing
19 is true and correct.

20
21 Executed on: December 14, 2020



22 Barbara D. Richardson
23 *Nevada Commissioner of Insurance, in Her*
24 *Official Capacity as Statutory Receiver for*
25 *Delinquent Domestic Insurer Nevada*
26 *Health CO-OP*
27
28

A-15-725244-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

December 16, 2020

A-15-725244-C State of Nevada, ex rel Commissioner of Insurance, Plaintiff(s)
vs.
Nevada Health CO-OP, Defendant(s)

December 16, 2020 Chambers Motion to Disqualify Attorney

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

JOURNAL ENTRIES

COURT ORDERS, Unite Here Health and Nevada Health Solutions, LLC's Motion to: (1) Disqualify Greenberg Traurig, LLP as Counsel for the Statutory Receiver of Nevada Health Co-Op; and (2) Disgorge Attorney's Fees Paid by Nevada Health Co-Op to Greenberg Traurig, LLP DENIED. The Movants have not been able to point to any binding authority that mandates the Receiver and her counsel, Greenberg Traurig, disclose all possible conflicts to the Court. Because there is no explicit rule requiring disclosure, the Court cannot disqualify Greenberg Traurig on that basis.

The Court also cannot find a clear and substantial enough possible conflict to justify disqualifying Greenberg Traurig as counsel in this Receivership matter. At this point, there are no related matters where the CO-OP is adverse to Xerox. If the Movants truly and reasonably believe that Xerox has some liability in those other related matters, the Movants are free to attempt to bring in Xerox as a Third Party Defendant and seek whatever relief they believe they are entitled to with the Judges overseeing those matters. This Court is not in the best position to determine whether there are conflicts in other suits.

Mr. Ferrario to prepare the Order, distribute a copy to all parties, and submit to Chambers within 10 days. All orders are to be submitted to DC1Inbox@ClarkCountyCourts.us

CLERK'S NOTE: A copy of this minute order was distributed via the E-Service list. / mlt

PRINT DATE: 12/31/2020

Page 1 of 1

Minutes Date: December 16, 2020