

Case No. _____

IN THE SUPREME COURT OF NEVADA

UNITE HERE HEALTH, a multi-employer health and welfare ERISA Section 3(37); and NEVADA HEALTH SOLUTIONS, LLC, a Nevada limited liability company,

Petitioners,

vs.

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

Respondent,

- 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 TRAURIG, LLP,

Real Parties in Interest.

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

**APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF
VOLUME 19 OF 19**

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February 25, 2021

APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF
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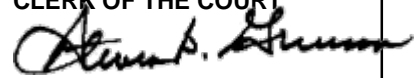
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TAB 45

TAB 45



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17 **IN THE EIGHTH JUDICIAL DISTRICT COURT**
18 **CLARK COUNTY, NEVADA**

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

24 Plaintiff,)

25 vs.)

26 NEVADA HEALTH CO-OP,)

27 Defendant.)
28)
29)
30)

Case No. A-15-725244-C
Department 21

31 **TWENTY-FIRST STATUS REPORT**

32 COME NOW, Commissioner of Insurance Barbara D. Richardson in her capacity as
33 Receiver of Nevada Health CO-OP (“NHC,” or the “CO-OP”), and CANTILO & BENNETT,
34 L.L.P., Special Deputy Receiver (“SDR” - SDR and the Commissioner as Receiver are referred

1 to collectively herein as “Receiver”) and file this Twenty-First Status Report in the above-
2 captioned receivership.

3 **I. INTRODUCTION AND HISTORICAL BACKGROUND**

4 The CO-OP is a state-licensed health insurer, formed in 2012 as a Health Maintenance
5 Organization, with a Certificate of Authority granted by the State of Nevada Division of
6 Insurance effective January 2, 2013. NHC was an Internal Revenue Code 501(c)(29) Qualified
7 Non-Profit Health Insurance Issuer, entitled to tax exemption by the Internal Revenue Service.
8 NHC was formed under a provision of the Patient Protection and Affordable Care Act (“ACA”)
9 providing for the formation of Consumer Operated and Oriented Plans. Having received from
10 the Centers for Medicare and Medicaid Services (“CMS”) of the United States Department of
11 Health and Human Services (“HHS”) a start-up loan of \$17,080,047, and a “solvency” loan of
12 \$48,820,349, NHC was required to operate as a non-profit, consumer-driven health insurance
13 issuer for the benefit of the public. The CO-OP’s primary business was to provide ACA-
14 compliant health coverage to residents of Nevada, and it operated its business for the benefit of
15 Nevadans within the state, save for certain arrangements to provide nationwide health coverage
16 to Nevadans traveling outside the state in certain circumstances. NHC began selling products
17 on and off the Silver State Health Insurance Exchange (the “Exchange”) on January 1, 2014. Its
18 products included individual, small group, and large group health care coverages.

19 On October 1, 2015, this Court issued its Order Appointing the Acting Insurance
20 Commissioner, Amy L. Parks as Temporary Receiver of NHC Pending Further Orders of the
21 Court and Granting Temporary Injunctive Relief Pursuant to NRS 696B.270. Further, on
22 October 14, 2015, the Receivership Court entered its Permanent Injunction and Order
23 Appointing Commissioner as Permanent Receiver of Nevada Health CO-OP, appointing the law
24 firm of CANTILO & BENNETT, L.L.P. as SDR of NHC, in accordance with Chapter 696B of the
25 Nevada Revised Statutes.

26 Via a Notice of Substitution of Receiver dated April 6, 2016, Deputy Attorney General
27 Joanna N. Grigoriev informed interested parties of the substitution of Commissioner Barbara D.
28 Richardson, in place and stead of former Acting Commissioner Amy L. Parks, as the Receiver

1 of NHC. This substitution of Receiver was subsequent to Commissioner Richardson's
2 appointment as Commissioner of Insurance for the State of Nevada.

3 This Court, through its Final Order Finding and Declaring Nevada Health CO-OP to be
4 Insolvent and Placing Nevada Health CO-OP into Liquidation (the "Final Order") dated
5 September 20, 2016, adjudged NHC to be insolvent on grounds that it was unable to meet
6 obligations as they mature. The Final Order also authorized the Receiver to liquidate the
7 business of NHC and wind up its ceased operations pursuant to applicable Nevada law. The
8 Receiver has since transitioned the receivership estate from rehabilitation to liquidation.

9 The Receiver continues to file quarterly status reports as ordered by this Court.

10 II. RECEIVERSHIP ADMINISTRATION

11 Receivership Administrative Services and Oversight

12 CANTILO & BENNETT, L.L.P., as SDR of NHC, manages the receivership estate and
13 conducts its affairs. PALOMAR FINANCIAL, LC ("Palomar"), an affiliate of the SDR, performs
14 administration, information technology, and other related services for the Receiver under the
15 supervision of the SDR. The Receiver has included an informational copy, as **Exhibit 1** to this
16 Twenty-First Status Report, of the invoices paid to the SDR and other receivership consultants
17 since the last status report to this Court.¹

18
19 ¹ The *in camera* materials are being submitted in a separate envelope that reflect paid invoices.

20 Certain billings submitted to the Court are appropriate for *in camera* review (as opposed to being
21 made part of a public filing). More particularly, and as discussed in further detail below, certain
22 consultants in this matter are providing expert witness related services. As such, the billing entries
relating thereto should be considered confidential and/or otherwise not subject to discovery.

23 In this regard, courts have held that the bills of legal counsel and experts may be withheld from
24 legal discovery and are not subject to legal disclosure, as this information may provide indications or
25 context concerning potential litigation strategy and the nature of the expert services being provided. *See*,
26 *e.g., Avnet, Inc. v. Avana Technologies Inc.*, No. 2:13-cv-00929- GMN-PAL, 2014 WL 6882345, at *1
(D. Nev. Dec. 4, 2014) (finding that billing entries were privileged because they reveal a party's strategy
27 and the nature of services provided); *Fed. Sav. & Loan Ins. Corp. v. Ferm*, 909 F.2d 372, 374-75 (9th
28 Cir. 1990) (considering whether or not fee information revealed counsel's mental impressions
concerning litigation strategy). Other courts that have addressed this issue have recognized that the
"attorney-client privilege embraces attorney time, records and statements to the extent that they reveal
litigation strategy and the nature of the services provided." *Real v. Cont'l Grp., Inc.*, 116 F.R.D. 211,
213 (N.D. Cal. 1986).

Resolution of Outstanding Receivership Matters

Claims Adjudications & Distributions

Notices of Claim Determination (“NCDs”) were mailed for healthcare claims previously submitted by providers to NHC’s Javelina Claims Processing Database (the “Provider Claims”). The total allowed amount of these approved Provider Claims is approximately \$33.7 million. The NHC members also received NCDs that showed them the amount that the SDR has approved to be paid to their providers, and the amount of member responsibility (*i.e.*, the co-pays, deductibles, and coinsurance), if any, that they may owe on their providers’ outstanding claims. The SDR has received approval from the Court to make a distribution of certain estate assets for the partial payment of these Provider Claims, which have been classified by the SDR as claims made under NHC policies pursuant to NRS 696B.420(1)(b)).²

As previously reported, the SDR must collect U.S. Internal Revenue Service W-9 forms and other necessary documentation from the providers in advance of making any claim payments, to assure that the estate can meet any mandatory federal tax reporting requirements. Four hundred seventy-seven (477) providers have submitted the necessary documentation, and have received a distribution payment. However, the remaining 1,306 providers either did not respond or sent back defective paperwork. The SDR will follow-up with these providers to collect the necessary paperwork.

The *in-camera* review should apply not only to documentation concerning attorneys’ fees, but it also extends to “details of work revealed in [an] expert’s work description [which] would relate to tasks for which she [or he] was compensated[,]” a situation which is “analogous to protecting attorney-client privileged information contained in counsel’s bills describing work performed.” *See, DaVita Healthcare Partners, Inc. v. United States*, 128 Fed. Cl. 584, 592-93 (2016); *see also Chaudhry v. Gallerizzo*, 174 F.3d 394, 402 (4th Cir. 1999) (recognizing that “correspondence, bills, ledgers, statements, and time records which also reveal the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as researching particular areas of law,” are protected from disclosure) (quoting, *Clarke v. Am. Commerce Nat’l Bank*, 974 F.2d 127, 129 (9th Cir. 1992)).

² As detailed in the Receiver’s Seventeenth Status Report, within the section of the report titled “Sale of Risk Corridors Receivable,” the Court entered an order permitting the distribution of certain funds on October 16, 2019.

1 The SDR also mailed NCDs for those Proofs of Claim submitted to the SDR relating to
2 Policy Claims (*i.e.*, Class B claims pursuant to NRS 696B.420(1)(b)). The total allowed amount
3 for the members' claims, \$5,102.64, is subject to a potential small increase as two NCD appeals
4 have been filed and remain pending.

5 In addition to the two member appeals described above, there are forty-two (42)
6 outstanding appeals sent by NHC members of the NCDs that were mailed for outstanding
7 healthcare claims submitted by providers to NHC's Javelina Claims Processing Database.³ The
8 SDR is not requesting that hearings be set on these appeals at this time, but may do so in the near
9 future (*i.e.*, upon the resolution of COVID-19 issues – which in addition to preventing in-person
10 appearances could also make it difficult for claimants to prepare for hearings). Once all appeals
11 have been reviewed by the SDR, the SDR will inform the Receivership Court of any unresolved
12 appeals so that a hearing or hearings may be set. The SDR is working on a resolution of any
13 outstanding appeals.

14 There are fifty-one proofs of claim ("POC") assigned to a priority Class "C" (*i.e.*,
15 NRS 696B.420(1)(c)) or lower.⁴ The SDR has now issued NCDs to nearly all of these claimants
16 (*i.e.*, forty-two (42) out of fifty-one (51) NCDs have been sent).⁵ It appears unlikely at this time
17 that the estate will have sufficient assets to make distributions to claims assigned priority below
18 Class B. The Receiver has included as **Exhibit 2** to this Twenty-First Status Report, an updated
19

20 ³ Members received a copy of the claim determinations that were sent to their providers, so that
21 the members could see any denied claims, and the deductible, co-pay, and coinsurance that was applied
22 to each of the allowed provider claims (*i.e.*, the amount of the member's responsibility on each claim)
and have an opportunity to appeal.

23 ⁴ This does not include a claim by the U.S. Department of Health and Human Services, which
24 the SDR has previously reported to this Court. That claim was denied by the SDR, and the government
did not file an appeal of the SDR's determination. This determination is now final and non-appealable.

25 ⁵ One of the "NCDs" relates to a very late-filed POC, and as such the notice sent to that claimant
26 does not provide a claim determination but instead advises that the claim cannot be processed due to
27 having been filed after the bar date. The Receiver does not process late-filed claims, due to the limited
28 assets and resources of the estate – and this forms part of the rationale for having a Claims Filing
Deadline in place – to provide a stopping point for the work of resolving the claims of the estate so that
the Receiver can wind down the estate and bring it to a closure. Late filed claims (*i.e.*, if allowed or
approved) may (and likely will) also diminish distributions for timely filed claims.

1 report on the determination of the Receiver on each claim, assigned to a Class C-L, that has been
2 approved in whole or in part to date.

3 On August 24, 2020, the Silver State Health Insurance Exchange (the “Exchange”)
4 submitted a POC. The Receiver sent a letter in response to advise that the POC cannot be
5 processed due to having been filed after the Claims Filing Deadline. The Exchange filed a
6 Motion to Intervene in the receivership proceeding, for the purpose of having its claim allowed
7 irrespective of this Court’s order entered on September 21, 2019, that “no claim received after
8 the Claims Filing Deadline may share in the assets of the estate and NHC shall have no liabilities
9 as to any such late-filed claims.” On November 4, 2020, this Court denied the Exchange’s
10 Motion to Intervene and to file a late-filed claim.

11 ***CMS Receivables***

12 As explained in prior status reports, and throughout the pendency of the receivership, the
13 Receiver is working to resolve certain outstanding matters relating to the collection of amounts
14 due under the various federal receivables programs, of which the CO-OP was a participant, and
15 which are administered primarily by CMS. The recovery of these assets will allow the SDR to
16 make further claim payments to estate creditors. It is also necessary to resolve the receivership’s
17 dispute of the government’s asserted right to be paid ahead of all other creditors in the estate
18 (including providers and members). CMS has maintained the position that any monies deemed
19 owed to NHC (and thus the receivership estate) are to be offset against the amounts CMS asserts
20 it is owed under the start-up loan awarded to NHC. To date, CMS has offset approximately
21 \$12.9 million against the start-up loan that, the Receiver maintains, should have instead been

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1 paid to NHC. When the full amount of 2014 - 2015 Risk Corridors payments (*i.e.*, not just the
2 prorated amount⁶) are included in the total, NHC is owed over \$55 million.⁷

3 In light of the United States Supreme Court’s recent decision in *Maine Community Health*
4 *Options v. United States*, No. 18-1023 (described further below), the Receiver is trying to resolve
5 some or all of the claims with CMS.⁸ The asset recovery litigation against CMS has since
6 continued on the questions of debt, rights to offset, and claim and issue preclusion matters. CMS
7 has filed a motion to dismiss the Receiver’s claims, while the Receiver has filed a motion for
8 summary judgment on NHC’s claims—and both motions remain pending before the United
9 States Court of Federal Claims.

10 **Internal Administrative Matters Related to Wind Down**

11 The Receiver may, in her discretion and as necessary to advance the receivership, contract
12 to use the services of certain former employees for specific, limited-term projects. The Receiver
13 completed the wind down and closure of NHC’s administrative office in 2019, and has since
14 transferred estate records, property, and operations to the SDR’s offices.

15 ///

16 ///

17 ⁶ Due to a shortfall in risk corridor collections, CMS asserted it could only pay a prorated
18 percentage of issuers’ 2014 Risk Corridors payments and that it would use all collections in subsequent
19 years towards the 2014 payments (*i.e.*, they are unable to make payments for the subsequent years at all).
20 DEP’T OF HEALTH & HUMAN SERVICES & CENTERS FOR MEDICARE & MEDICAID
21 SERVICES (“CMS”), CCIIO MEMORANDUM, RISK CORRIDORS PAYMENT AND CHARGE
22 AMOUNTS FOR THE 2015 BENEFIT YEAR (November 18, 2016) (available at
23 <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2015-RC-Issuer-level-Report-11-18-16-FINAL-v2.pdf>); CMS, CCIIO MEMORANDUM, RISK CORRIDORS PAYMENT
24 AND CHARGE AMOUNTS FOR THE 2016 BENEFIT YEAR (November 15, 2017) (available at
25 <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/Risk-Corridors-Amounts-2016.pdf>).

26 ⁷ NHC sold a significant portion of its interest in the Risk Corridors receivables, as detailed in
27 the Receiver’s Seventeenth Status Report to this Court. However, NHC will still participate in actions
28 to recover CMS receivables.

⁸ See, Amy Howe, OPINION ANALYSIS: DECISIVE WIN FOR HEALTH INSURERS SEEKING
COMPENSATION FOR ACA LOSSES, SCOTUS BLOG (2020), <https://www.scotusblog.com/2020/04/opinion-analysis-decisive-win-for-health-insurers-seeking-compensation-for-aca-losses/> (last visited June 26,
2020).

Continuation of Action Against Various Professionals and Other Firms Who Performed Services for and on Behalf of NHC

On August 25, 2017, Counsel for the Receiver filed in Clark County District Court a Complaint (Case No. A-17-760558-C in Department No. 18) against various persons, third-party vendors, and professional service firms which are alleged to have contributed to NHC's losses by, among other things, failing to adhere to applicable standards of professional care and requirements imposed by law, misrepresentation concerning quality and standard of care for services performed, and breaches of contract, duty, and implied covenants of good faith and fair dealing. The complaint names, among others, NHC's former actuaries, accountants, auditors, and providers of certain business operations and utilization review services, as well as those individuals who specifically performed, or who were in the role of supervising the performance of, those services. The Complaint also names several NHC former directors and executive management.

Via Plaintiff's Motion to Amend Complaint, filed on July 17, 2018, the Receiver sought an order granting leave to amend the August 25, 2017, complaint against certain of NHC's various directors, officers, and third-party contractors, citing the discovery of additional facts in support of assertions made in the first complaint, as well as the need to add a new defendant to the existing proceedings. This Motion to Amend Complaint was filed in Judicial Department Sixteen, in line with the terms of contemporaneous Notice of Department Reassignment assigning the proceedings to Judge Timothy C. Williams. The Motion to Amend Complaint was approved via an order entered on September 18, 2018. Subsequently, the Court ordered that the case against Milliman must be arbitrated. On December 19, 2019, the Nevada Supreme Court denied the Receiver's Writ of Mandamus seeking extraordinary relief against the order compelling arbitration, noting the availability of subsequent appellate relief, as well as disagreeing that clear legal error had occurred in the underlying proceedings. On October 16, 2020, Plaintiff filed a Motion for Leave to File Second Amended Complaint, which contains additional factual allegations, theories of injury, and other context concerning NHC's resulting

///

1 insolvency. Hearing on this Motion was scheduled for November 18, 2020, but was vacated
2 later, as explained below.

3 On October 8, 2020, Unite Here Health and Nevada Health Solutions, each Defendants
4 in the instant asset recovery litigation, filed their Motion with the Receivership Court to:
5 (1) Disqualify Greenberg Traurig, LLP as Counsel for the Statutory Receiver of Nevada Health
6 CO-OP, and (2) Disgorge Attorneys' Fees Paid by Nevada Health CO-OP to Greenberg Traurig,
7 LLP. Defendants' allegations are that Plaintiff's counsel cannot sufficiently represent NHC's
8 interests due to having provided prior legal services to a specific creditor of the estate, as well
9 as other entities which Defendants assert should have been named in the asset recovery litigation
10 (to which they themselves are parties) and were not so named because of the pre-existing
11 professional relationship. Greenberg Traurig, LLP, filed its Opposition to the Motion to
12 Disqualify on November 16, 2020, asserting that Defendants' did not have legal standing to
13 challenge Plaintiff's choice of representation, that counsel's representation of the prior parties
14 does not create a conflict because the circumstances of the legal services rendered to Plaintiff
15 are unrelated, that disqualification would work to the extreme prejudice of the Plaintiff, and that
16 Defendants' had waived this form of procedural objection by delaying, making it until more than
17 three years into the litigation. Plaintiff filed her Joinder to Greenberg Traurig's Opposition on
18 November 16, 2020, and Defendants Unite Here Health and Nevada Health Solutions filed their
19 Reply in Support of the Motion on December 8, 2020. Following a series of stipulated
20 continuances, Judge Cory heard the arguments and evidence for and against the Motion to
21 Disqualify on December 15, 2020. The Court issued a Minute Order on December 16, 2020,
22 denying the Motion to Disqualify.

23 Pursuing the same theories as underlined in their Motion to Disqualify, Unite Here Health
24 and Nevada Health Solutions filed on October 15, 2020, their Motion for Leave to File Third-
25 Party Complaint, seeking permission from the Court to file a complaint alleging that the Silver
26 State Health Insurance Exchange and Xerox State Healthcare, LLC, are responsible for a
27 significant number of NHC's injuries, such that concerns for judicial economy and the
28 consolidation of related proceedings should merit the cross-complaint and addition of these

1 parties to the instant asset recovery litigation. This Motion was joined by Defendant former
2 directors and officers on October 16, 2020, and by InsureMonkey on October 22, 2020. These
3 actions were quickly followed by the filing on October 19, 2020, of a Motion to Consolidate
4 seeking to consolidate A-20-816161-C, the recently-filed asset recovery suit against the Silver
5 State Health Insurance Exchange, with the instant asset recovery proceedings. As with the
6 Motion seeking the filing of the Third-Party Complaint, the Motion to Consolidate asserts that
7 the alleged similarities between the factual circumstances of the cases merit this outcome.

8 On October 20, 2020, Defendants Unite Here Health and Nevada Health Solutions filed
9 their Motion to Strike Jury Demand, alongside a request for redaction and submission of exhibits
10 under seal. On October 21, 2020, Defendant former directors and officers filed their Motion for
11 Partial Summary Judgment on the pleadings pursuant to NRCP (12)(c), primarily on the basis
12 that many of the causes of action asserted in the First Amended Complaint (*i.e.*, negligent
13 misrepresentation, constructive fraud, negligent performance of an undertaking) are acts that
14 directors and officers of non-profit organizations (such as NHC) cannot be liable for under
15 Nevada law and statutes regulating the governance of non-profit organizations.

16 In light of the pending Motion to Disqualify before the Receivership Court, Plaintiff's
17 counsel filed, on November 2, 2020, the Motion for Entry of Stay on Order Shortening Time,
18 informing the court that the resolution of the questions concerning Greenberg Traurig's
19 representation of Plaintiff directly bears upon the course of the related asset recovery litigation,
20 and understandably requires the placement of that litigation into abeyance for the duration of
21 those proceedings. By an Order Staying the Litigation dated November 10, 2020, the court in
22 A-17-760558-B stayed all schedules or actions involving the motions for the filing of a Third-
23 Party Complaint, consolidation, partial summary judgment, the filing of a Second Amended
24 Complaint, and the request to strike the Jury Demand.

25 As well, this Order Staying the Litigation explicitly vacates all open discovery deadlines,
26 including those for expert reports, and requires the parties to the litigation to meet and confer
27 about new deadlines for the remaining matters, which shall be entered into a new scheduling
28 order upon the lifting of the stay. Through a December 14, 2020, Stipulation and Order agreed

1 to by the parties, the Status Check hearing on the litigation stay originally scheduled for
2 December 16, 2020, has been continued to January 6, 2021. The Status Check has now been
3 continued until January 14, 2021.

4 As of the date of filing of this Status Report, no later scheduling orders have been issued
5 extending these deadlines, although certain deadlines may be amended by stipulation of the
6 parties in the near future if deemed necessary and approved by the Court.

7 The Receiver has settled its claims against Millennium, and the settlement agreement was
8 approved by the Court. Millennium has made all of the settlement progress payments required
9 under the settlement agreement.

10 On April 13, 2020, the Defendant directors and officers filed their Motion to Compel
11 Production of Lynn Fulstone documents, seeking to compel certain documents held by the
12 Receiver but not produced in discovery in response to a Defendant's request on the basis that
13 such documents are privileged and protected from disclosure as attorney-client communications
14 and as files falling under the work product doctrine.

15 An Opposition by the Receiver was filed on April 27, 2020, setting forth responses to
16 these allegations and describing relevant legal authorities. The Opposition maintains that no
17 such partial disclosure of files was made, that none of the documents that the Motion to Compel
18 seeks to produce were relied upon by NHC in the making of the Complaint against the
19 Defendants, and that numerous legal doctrines would protect the documents being sought from
20 disclosure in any case. A Reply by the Defendant directors and officers in support of the Motion
21 to Compel was filed under seal on June 16, 2020, and joined by Unite Here Health and Nevada
22 Health Solutions the same day. Although set initially for hearing on June 17, 2020, per a June 15,
23 2020, Stipulation and Order, the hearing on the Motion to Compel was re-set for June 24, 2020.
24 Via a Minute Order dated August 10, 2020, the Court denied the Motion to Compel and the
25 associated joinders. A formal, written Order Denying the Motion to Compel dated October 2,
26 2020, was recorded on the Court's docket as of November 2, 2020.

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1 Discovery continues in the litigation before the recent stay of litigation, with Plaintiff
2 having delivered to Defendant former directors and officers the First Supplemental Response to
3 the Sixth Set of Requests for Production on October 16, 2020, alongside the Twenty-Ninth
4 Supplemental Rule 16.1 Production. Subject to the Court’s recently ordered stay, additional or
5 supplemental discovery requests made by Defendants are being responded to as received, with
6 the Special Deputy Receiver coordination with counsel as necessary in the identification and
7 production of responsive documents. As mentioned above, the relevant discovery deadlines have
8 been vacated in light of the pending Motion to Disqualify and will be reset upon agreement of
9 parties.

10 **Pending Action Against the United States in the Court of Federal Claims**

11 On November 8, 2018, the Receiver filed a Complaint in the United States Court of Federal
12 Claims (“CFC Complaint”) against the United States for monetary amounts owed to NHC under
13 the Consumer Operated and Oriented Plan program organized pursuant to the ACA. The
14 Receiver determined that such litigation was necessary in order to advance the interests of the
15 receivership estate’s various creditors, and to protect and conserve assets that rightfully belong
16 to the estate.

17 In Counts I through IV, the CFC Complaint prays for relief in the form of an award of
18 damages and monetary relief equal to the difference between the amount NHC actually received
19 in payments under Sections 1342, 1341, 1343, and 1401 of the ACA – the statutes which describe
20 and enact the Risk Corridors, transitional reinsurance, risk adjustment, and cost sharing reduction
21 programs respectively – and the amount NHC should have received under those laws.

22 The CFC Complaint’s Count V (breach of contract by offset) and Count VI (illegal
23 exaction) plead alternate theories for recovery of money damages resulting from the United
24 States, through its agents at HHS and CMS, offsetting payments that CMS owed to NHC against
25 funds NHC allegedly owed to the government pursuant to the terms of the CO-OP start-up loan.
26 On March 7, 2019, the United States filed a motion to dismiss the CFC Complaint’s (“Motion
27 to Dismiss”) argument that none of Counts I through VI state claims upon which relief can be
28 granted. NHC’s deadline for responding to the Motion to Dismiss was July 9, 2019. However,

1 on June 24, 2019, the United States Supreme Court granted certiorari in three Risk Corridors
2 appeals, *i.e.*, the Supreme Court Appeal Cases.

3 Subsequent to a Motion for Enlargement of Time to Respond to Government's Motion to
4 Dismiss, filed on June 28, 2019, the Receiver filed her Opposition to Motion to Dismiss, and
5 Cross-Motion for Final Partial Summary Judgment on July 31, 2019, which sought from the
6 Court of Federal Claims, *inter alia*, an adjudication in favor of the Receiver regarding that
7 Counts II through IV of the CFC Complaint, the counts not taken up by the United States
8 Supreme Court for review. The Cross-Motion for Partial Summary Judgment predicated its
9 arguments on the basis that the United States had already admitted prior liability and damages
10 concerning the amounts sought by the CFC Complaint under counts II-IV (*i.e.*, the Federal
11 Transitional Reinsurance program, the Risk Adjustment program, and the Cost-Sharing
12 Reduction programs provided for explicitly by ACA statutes), save for their affirmative defense
13 of offset, and that the affirmative defense of offset must fail as a matter of law as the
14 circumstances provided for in applicable federal law and regulation permitting an offset of
15 amounts owed under the ACA receivables programs were not satisfied in this case.

16 On August 7, 2019, the United States filed with the Court of Federal Claims its Motion
17 to Stay, or in the Alternative, for an Enlargement of Time, asserting that the interrelated issues
18 of fact and law at the center of the Court of Federal Claims litigation, alongside countervailing
19 concerns of judicial economy, justified a general suspension of proceedings during the pendency
20 of the United States Supreme Court's review of the legal and constitutional questions in the
21 Supreme Court Appeal Cases, notwithstanding the theoretical separability of the various federal
22 receivables programs under which NHC presented its claims. The Court of Federal Claims
23 granted the United States' Motion to Stay on August 12, 2019, until such legal and constitutional
24 questions were resolved.

25 The United States Supreme Court, through its April 27, 2020, decision, found in favor of
26 the CO-OPs, and held that the Risk Corridors statutes did indeed create a government obligation
27 to pay insurers the full amount set out in Section 1342's formula. Despite the decision of
28 Congress to disallow by specific legislative rider the making of Risk Corridors payments from

1 funding sources which would have otherwise been available under the annual appropriations
2 omnibus, the plain text of the legislative rider at issue in the litigation did not indicate an intention
3 to impliedly, retroactively repeal Risk Corridors obligations, and that therefore the CO-OPs
4 properly relied upon the Tucker Act to bring suits for damages against the United States in the
5 Court of Federal Claims.

6 Subsequent to this decision, the Court of Federal Claims issued its May 4, 2020, Order
7 scheduling a status conference to take place on May 19, 2020, concerning the remaining matters
8 at issue in the litigation. This telephone conference did occur on May 19, 2020, and the issues
9 discussed on that call were later summarized in the Court of Federal Claims' May 21, 2020,
10 Order staying proceedings for a further forty-five days and requiring the filing of a joint status
11 report on or before July 6, 2020, addressing the topics discussed during the telephone conference.
12 This deadline was later moved to July 10, 2020, upon approval by the Court of Plaintiff's July 6,
13 2020, Unopposed Motion for Extension of Time for Filing Joint Status Report. The Joint Status
14 Report was filed on July 10, 2020, and proposed August 3, 2020, as the deadline for NHC's
15 Updated Opposition to the United States' Motion to Dismiss and Cross Motion for Summary
16 Judgment, with the United States' reply in support of the Motion being due on September 18,
17 2020, and NHC's own reply due on November 13, 2020.

18 On August 3, 2020, Plaintiff filed her Unopposed Motion to Set Briefing Schedule, which
19 was approved and ordered the same day. Per this Motion, August 24, 2020, was proposed as the
20 deadline for NHC's Updated Opposition to the Motion to Dismiss and Cross Motion for
21 Summary Judgment, with the government's reply due October 9, 2020, and NHC's reply due
22 October 26, 2020. A subsequent Unopposed Motion for Extension of Time, filed on August 19,
23 2020, and approved on August 20, 2020, established September 9, 2020, as the deadline for
24 NHC's Updated Opposition, with the United States' reply due October 26, 2020, and NHC's
25 own reply due November 13, 2020.

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1 On September 9, 2020, Plaintiff filed her Response and Reply to the United States’
2 Motion to Dismiss and Cross-Motion for Summary Judgment.

3 The United States filed its Reply in Support of its Motion to Dismiss and Opposition to
4 Cross-Motion for Summary Judgment on October 26, 2020, reiterating its prior arguments that
5 offsets are proper in amounts alleged to be owed between the two creditors at issue here. These
6 proceedings, in the same manner as with the state court asset recovery proceedings, were sought
7 to be stayed by the filing by Plaintiff of a November 5, 2020, Motion to Stay Proceedings. On
8 December 16, 2020, the Receivership Court entered its Minute Order denying the Motion to
9 Disqualify, noting the failure of Defendants to cite either to clear and substantial evidence of
10 possible conflicts or to binding legal authority mandating the disclosure of all potential or
11 supposed conflicts which may implicate counsel. The Motion to Disqualify having been denied,
12 the Motion to Stay Proceedings filed in the United States Court of Federal Claims has now been
13 rendered moot. The motion to dismiss of the United States and the Receiver’s motion for
14 summary judgment remain pending before the United States Court of Federal Claims.

15 **Pending Action Against the Silver State Health Insurance Exchange**

16 Through the filing of a Complaint dated June 5, 2020, in Case Number A-20-816161-C,
17 in Department Number Eight of the Eighth Judicial District Court, the Receiver has brought an
18 action against the Exchange for, *inter alia*, damages of approximately one-half million dollars
19 in premiums received from on-exchange insureds on behalf of NHC, but never remitted to the
20 CO-OP. The Complaint alleges that the retention of these funds by the Exchange, without
21 explanation or justification, constitutes a violation of the existing agreement between the parties,
22 unjust enrichment of the Exchange at the expense of receivership claimants, and an appropriate
23 basis for the imposition of a constructive trust over the assets at issue. The Exchange filed its
24 Answer on August 24, 2020, denying the relevant allegations and asserting conventional
25 affirmative defenses such as the doctrine of assumption of risk, sovereign immunity,
26 contributory negligence, offset, and unclean hands. Following the October 8, 2020, Joint Case
27 Conference Report, and the November 19, 2020, Mandatory Rule 16 Conference, the
28

proceedings are now continuing along the schedules set out in the relevant November 24, 2020, Scheduling Order and Order Setting Civil Bench Trial.

Defendant then filed, as of September 29, 2020, a Motion to Intervene with NHC's Receivership Court, seeking authorization to file a POC for amounts allegedly owed to the Exchange by NHC, but which was never filed timely by the Exchange despite having the opportunity do so (and is therefore barred by law from collecting from estate assets). The Motion to Intervene claimed that the Exchange had previously filed a POC, but lost its records concerning the same, and that nonetheless the Exchange be entitled to register its claims against NHC at a low statutory priority level because the Receiver had actual knowledge of the Exchange's claims notwithstanding the failure to file. Plaintiff's Opposition to the Motion to Intervene was filed on October 13, 2020, and asserted several bases to deny the Exchange's relief, including the absence of evidence supporting the prior attempts to file a POC, the Exchange's failure to show its ability to intervene in Receivership proceedings as a matter of right, and the explicit requirements of Nevada receivership law and court orders disallowing late-filed claims from sharing in the assets of the estate. Following the Exchange's October 28, 2020, Reply to the Opposition, the Receivership Court decided, on November 4, 2020, to deny the Exchange's attempt to intervene and held that the attempted late-claim filing was untimely and unwarranted by law.

Civil Action Against WellHealth Medical Associates, Medsource, and Certain Persons

Through the filing of a Complaint dated July 16, 2020, in case Number A-20-818118-C, in Department Number Nineteen of the Eighth Judicial District Court, the Receiver has brought an action against WellHealth Medical Associates, PLLC, Medsource Management Group, LLC, and certain individual persons in positions of responsibility within those organizations, for the recovery of amounts owed in connection with certain illegal, unethical, negligent, and intentionally fraudulent transactions which took place with NHC in health plan years 2014 and 2015. The primary allegations involve WellHealth's entry into an illegal and unapproved services contract with NHC, which, as per the Receiver's allegations, constitute a material shifting of insurance risk from a licensed carrier (NHC) to an unlicensed insurer (Wellhealth)—

1 and Wellhealth was also expressly disapproved by the Nevada Division of Insurance as a
2 Delivery Service Intermediary. Defendants in this action received millions of dollars from NHC
3 in exchange for their services, which are alleged in the Complaint to not have been performed at
4 the standard required, or with necessary licenses and legal authority. The Receiver has not yet
5 received an Answer from defendants in this matter but will proceed to discovery and further
6 litigation when appropriate.

7 **Current Receivership Assets**

8 The Receiver's evaluation of the assets and liabilities of the CO-OP is ongoing, and
9 adjusted periodically to accommodate new authorized payments, receipts, and transfers. Below
10 is an overview of some key asset matters thus far identified by the Receiver (other than those
11 already mentioned herein):

12 1. The unrestricted cash assets of the CO-OP have fluctuated with post-
13 receivership expenses and claim payments, as well as with the Receiver's receipt of member
14 premiums. The currently available, unrestricted cash assets of the CO-OP as of November 30,
15 2020, were approximately \$4,690,708.00. The majority of NHC's currently available and liquid
16 assets are held in bank deposits.

17 2. The financial information of NHC in this Twenty-First Status Report
18 provides estimates. NHC's financials may materially vary depending upon the estate's receipt
19 of the promised federal receivables payments under the various ACA programs described in this
20 report, and future litigation recoverables.

21 3. The Receiver is including, as **Exhibit 3** attached hereto, a cash flow report
22 for NHC for the period covering the inception of the receivership through November 30, 2020.
23 This report reflects a summary of disbursements and collections made by NHC during this
24 period.

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CONCLUSION

The Receiver has submitted this report in compliance with the Receivership Court's instructions for a status report on NHC. The Receiver requests that the Court approve this Twenty-First Status Report and the actions taken by the Receiver.

DATED this 8th day of January 2021.

Respectfully submitted:

Barbara D. Richardson, Commissioner of Insurance of the State of Nevada, in her Official Capacity as Statutory Receiver of Delinquent Domestic Insurer

By: /s/ Cantilo & Bennett, L.L.P.

Special Deputy Receiver

By Its Authorized Representative Patrick H. Cantilo

Respectfully submitted by:
GREENBERG TRAURIG, LLP

/s/ Donald L. Prunty

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the **8th day of January 2021**, and pursuant to NEFCR 9, NRCP 5(b), and EDCR 7.26, I served this **TWENTY-FIRST STATUS REPORT** on all parties receiving service in this action through electronic transmission via this Court's electronic filing system to:

**E-Service Master List
For Case**

**State of Nevada, ex rel. Commissioner of Insurance, Plaintiff(s) vs. Nevada Health
CO-OP, Defendant(s)**

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

EXHIBIT 1

Summaries

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September 24, 2020

BILL SUMMARY

70750 Nevada Health Co-Op ("NHC")

July 1 - July 31, 2020

<u>Matter No. and Description</u>	<u>Invoice Numbers</u>	<u>Fees</u>	<u>Costs</u>	<u>Total</u>
July 2020	24729, 24731- 24737, 24759	\$ 49,856.25	\$ 811.50	\$ 50,667.75
Totals (1)		\$ 49,856.25	\$ 811.50	\$ 50,667.75

Cantilo & Bennett, L.L.P.

**NEVADA HEALTH CO-OP
TIMEKEEPER SUMMARY REPORT
7/1/20 - 7/31/20**

		Billable Hours	Billable Rate	June Billing
1	Timekeeper - Patrick H. Cantilo	0.00	\$490.00	\$0.00
2	Timekeeper - Mark F. Bennett	72.10	\$400.00	\$28,840.00
3	Timekeeper - Kristen W. Johnson	16.60	\$300.00	\$4,980.00
4	Timekeeper - Josh O. Lively	68.00	\$200.00	\$13,600.00
5	Timekeeper - Douglas J. Coonfield	0.00	\$200.00	\$0.00
6	Timekeeper - Jose M. Rangel	0.00	\$350.00	\$0.00
7	Timekeeper - Arati Bhattacharya	0.00	\$300.00	\$0.00
8	Timekeeper - Law Clerk	0.00	\$85.00	\$0.00
9	Timekeeper - Isaiah Samaniego	0.45	\$125.00	\$56.25
10	TimeKeeper - Pierre Riou	7.60	\$300.00	\$2,280.00
11	TimeKeeper - Jeffrey L. Collins	0.80	\$125.00	\$100.00
	GRAND TOTAL	165.55		\$49,856.25

Client ID 70750
Work Date 07/01/20:07/31/2020

TimeKeeper		Hours	Fees	NC Hours	NC Fees
MFB MARK F. BENNETT					
70750003	Claims	0.75	300.00	0.00	0.00
70750008	Company Administration	5.05	2,020.00	0.00	0.00
70750100	Asset Recovery	26.30	10,520.00	0.00	0.00
70750102	NHC vs. CMS Litigation	40.00	16,000.00	0.00	0.00
	Sub Total (MFB)	72.10	28,840.00	0.00	0.00*
JLC JEFFREY L. COLLINS		0.80	100.00	0.00	0.00
	Sub Total (JLC)	0.80	100.00	0.00	0.00*
KWJ KRISTEN W. JOHNSON					
70750003	Claims	2.50	750.00	0.00	0.00
70750008	Company Administration	5.80	1,740.00	0.00	0.00
70750100	Asset Recovery	8.30	2,490.00	0.00	0.00
	Sub Total (KWJ)	16.60	4,980.00	0.00	0.00*
JOL JOSHUA O. LIVELY		35.25	7,050.00	0.00	0.00
70750102	NHC vs. CMS Litigation	32.75	6,550.00	0.00	0.00
	Sub Total (JOL)	68.00	13,600.00	0.00	0.00*
PJR PIERRE J. RIOU		7.60	2,280.00	0.00	0.00
	Sub Total (PJR)	7.60	2,280.00	0.00	0.00*
IXS ISAAH SAMANIEGO					
70750008	Company Administration	0.45	56.25	0.00	0.00
	Sub Total (IXS)	0.45	56.25	0.00	0.00*
Grand Total		165.55	49,856.25	0.00	0.00

September 24, 2020
8:22 am

Cantilo & Bennett, L.L.P.
Bill Register

Page 1

Client and Matter	Date	Inv No	Fees	Costs	Credits	Total
70750 Nevada Health CO-OP 70750003 Claims	07/31/20	24838	1,050.00	0.00	0.00	1,050.00
70750008 Company Administration	07/31/20	24835	3,816.25	0.00	0.00	3,816.25
70750100 Asset Recovery	07/31/20	24839	20,060.00	0.00	0.00	20,060.00
70750102 NHC vs. CMS Litigation	07/31/20	24840	24,930.00	0.00	0.00	24,930.00
Totals (4)			49,856.25	0.00	0.00	49,856.25

Client and Matter	Date	Inv No	Fees	Costs	Credits	Total
70750 Nevada Health CO-OP 70750001 Takeover Administration	07/31/20	24842	0.00	600.68	0.00	600.68
70750003 Claims	07/31/20	24843	0.00	1.40	0.00	1.40
70750100 Asset Recovery	07/31/20	24844	0.00	18.62	0.00	18.62
70750102 NHC vs. CMS Litigation	07/31/20	24845	0.00	190.80	0.00	190.80
Totals (4)			0.00	811.50	0.00	811.50

September 24, 2020
10:19 am

Cantilo & Bennett, L.L.P.
Timekeeper Costs by Work Code

Page 1
[cs1c]

Work Date 07/01/2020:07/31/2020
Client ID 70750

Staff ID	Cost Code	Units	Amount	Write Down	Total
	LX1A LEXIS	0.00	176.10	0.00	176.10
	MT1A MISCELLANEOUS	0.00	14.70	0.00	14.70
	PO1E POSTAGE	0.00	3.80	0.00	3.80
	TS1E TELEPHONE CHARGES	0.00	598.28	0.00	598.28
	WL1A WESTLAW	0.00	18.62	0.00	18.62
	Sub Total ()	0.00	811.50	0.00	811.50
Grand Total		0.00	811.50	0.00	811.50

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October 20, 2020

BILL SUMMARY

70750 Nevada Health Co-Op ("NHC")

August 1 - August 31, 2020

<u>Matter No. and Description</u>	<u>Invoice Numbers</u>	<u>Fees</u>	<u>Costs</u>	<u>Total</u>
August 2020	24846- 24881	\$ 57,092.50	\$ 795.41	\$ 57,887.91
Totals (1)		\$ 57,092.50	\$ 795.41	\$ 57,887.91

Cantilo & Bennett, L.L.P.

**NEVADA HEALTH CO-OP
TIMEKEEPER SUMMARY REPORT
8/1/20 - 8/31/20**

		Billable Hours	Billable Rate	August Billing
1	Timekeeper - Patrick H. Cantilo	0.00	\$490.00	\$0.00
2	Timekeeper - Mark F. Bennett	74.10	\$400.00	\$29,640.00
3	Timekeeper - Kristen W. Johnson	15.30	\$300.00	\$4,590.00
4	Timekeeper - Josh O. Lively	113.00	\$200.00	\$22,600.00
5	Timekeeper - Douglas J. Coonfield	0.00	\$200.00	\$0.00
6	Timekeeper - Jose M. Rangel	0.00	\$350.00	\$0.00
7	Timekeeper - Arati Bhattacharya	0.00	\$300.00	\$0.00
8	Timekeeper - Law Clerk	0.00	\$85.00	\$0.00
9	Timekeeper - Isaiah Samaniego	0.90	\$125.00	\$112.50
10	TimeKeeper - Pierre Riou	0.00	\$300.00	\$0.00
11	TimeKeeper - Jeffrey L. Collins	1.20	\$125.00	\$150.00
	GRAND TOTAL	204.50		\$57,092.50

Client ID 70750
Work Date 08/1/20:08/31/2020

TimeKeeper		Hours	Fees	NC Hours	NC Fees
MFB MARK F. BENNETT					
70750003	Claims	0.75	300.00	0.00	0.00
70750008	Company Administration	2.55	1,020.00	0.00	0.00
70750100	Asset Recovery	16.05	6,420.00	0.00	0.00
70750102	NHC vs. CMS Litigation	54.75	21,900.00	0.00	0.00
Sub Total (MFB)		74.10	29,640.00	0.00	0.00*
JLC JEFFREY L. COLLINS					
70750008	Company Administration	0.20	25.00	0.00	0.00
70750102	NHC vs. CMS Litigation	1.00	125.00	0.00	0.00
Sub Total (JLC)		1.20	150.00	0.00	0.00*
KWJ KRISTEN W. JOHNSON					
70750003	Claims	0.70	210.00	0.00	0.00
70750008	Company Administration	5.90	1,770.00	0.00	0.00
70750100	Asset Recovery	8.70	2,610.00	0.00	0.00
Sub Total (KWJ)		15.30	4,590.00	0.00	0.00*
JOL JOSHUA O. LIVELY					
70750102	NHC vs. CMS Litigation	106.00	21,200.00	0.00	0.00
Sub Total (JOL)		7.00	1,400.00	0.00	0.00
		113.00	22,600.00	0.00	0.00*
IXS ISAIAH SAMANIEGO					
70750008	Company Administration	0.90	112.50	0.00	0.00
Sub Total (IXS)		0.90	112.50	0.00	0.00*
Grand Total		204.50	57,092.50	0.00	0.00

Client and Matter	Date	Inv No	Fees	Costs	Credits	Total
70750 Nevada Health CO-OP 70750003 Claims	08/31/20	24880	510.00	0.00	0.00	510.00
70750008 Company Administration	08/31/20	24877	2,927.50	0.00	0.00	2,927.50
70750100 Asset Recovery	08/31/20	24878	30,230.00	0.00	0.00	30,230.00
70750102 NHC vs. CMS Litigation	08/31/20	24881	23,425.00	0.00	0.00	23,425.00
Totals (4)			57,092.50	0.00	0.00	57,092.50

October 22, 2020
1:36 pm

Cantilo & Bennett, L.L.P.
Timekeeper Costs by Work Code

Page 1
[cs1c]

Work Date 08/01/2020:08/31/2020
Client ID 70750

Staff ID	Cost Code	Units	Amount	Write Down	Total
	PO1E POSTAGE	0.00	11.65	0.00	11.65
	TS1E TELEPHONE CHARGES	0.00	685.11	0.00	685.11
	WL1A WESTLAW	0.00	98.65	0.00	98.65
	Sub Total ()	0.00	795.41	0.00	795.41
	Grand Total	0.00	795.41	0.00	795.41

October 08, 2020
10:16 am

Cantilo & Bennett, L.L.P.
Bill Register

Page 1

Client and Matter	Date	Inv No	Fees	Costs	Credits	Total
70750 Nevada Health CO-OP 70750001 Takeover Administration	08/31/20	24846	0.00	688.31	0.00	688.31
70750003 Claims	08/31/20	24876	0.00	8.45	0.00	8.45
70750102 NHC vs. CMS Litigation	08/31/20	24879	0.00	98.65	0.00	98.65
Totals (3)			0.00	795.41	0.00	795.41

11401 Century Oaks Terrace
Suite 310
Austin, Texas 78758



PALOMAR FINANCIAL, LC

Telephone (512) 404-6555
Facsimile (512) 404-6530
Toll Free (877) 309-7105
www.palomarfin.com

September 22, 2020

BILL SUMMARY

70750 Nevada Health Co-Op ("NHC")

July 1, 2020 – July 31, 2020

Matter No. and Description	Fees	Costs	Total
July 2020 Non-IT Services	\$2,700.00	\$0.00	\$2,700.00
July 2020 IT Services Flat Fee	5,000.00	0.00	5,000.00
Totals	\$7,700.00	\$0.00	\$7,700.00

Palomar Financial, LC

NEVADA HEALTH CO-OP
PRIVILEGED AND CONFIDENTIAL
SUMMARY REPORT
PERIOD JULY 2020

		Billable Hours	Billable Rate	July 2020 Billing
1	TIME KEEPER - Nicole Wilkins	1.70	\$250.00	\$425.00
2	TIME KEEPER - Robert Stebel	0.00	\$160.00	\$0.00
3	TIME KEEPER - Kelly Reed	0.00	\$150.00	\$0.00
4	TIME KEEPER - Neda Khalaf	10.00	\$160.00	\$1,600.00
5	TIME KEEPER - Brent Andrews	0.00	\$150.00	\$0.00
6	TIME KEEPER - Mary Noel	4.50	\$150.00	\$675.00
	GRAND TOTAL	16.20		\$2,700.00

Palomar Financial, LC
07/01/2020-07/31/2020
Client: Nevada Health Co-Op ("NHC")

Staff ID	Name	Description	Hours	Amount
NMW	Nicole Wilkins	Accounting Reports/Receivership Team Support	0.80	\$ 200.00
		Accounts Payable and Receivable	0.40	\$ 100.00
		Bank Account Administration/Reconciliation	0.50	\$ 125.00
		Sub Total (NMW)	1.70	\$ 425.00
RNS	Robert Stebel	Payroll & Employee Benefits	0.00	\$ -
		Sub Total (RNS)	0.00	\$ -
KJR	Kelly Reed	Accounts Payable and Receivable	0.00	\$ -
		Sub Total (KJR)	0.00	\$ -
NK	Neda Khalaf	Accounting Reports/Receivership Team Support	10.00	\$ 1,600.00
		Sub Total (NK)	10.00	\$ 1,600.00
BA	Brent Andrews	IT Support & Administration	0.00	\$ -
		Sub Total (BA)	0.00	\$ -
MFN	Mary Noel	Investment Accounting/Support	0.75	\$ 112.50
		Accounts Payable and Receivable	3.75	\$ 562.50
		Sub Total (MFN)	4.50	\$ 675.00
Grand Total			16.20	\$ 2,700.00

11401 Century Oaks Terrace
Suite 310
Austin, Texas 78758



PALOMAR FINANCIAL, LC

Telephone (512) 404-6555
Facsimile (512) 404-6530
Toll Free (877) 309-7105
www.palomarfin.com

October 23, 2020

BILL SUMMARY

70750 Nevada Health Co-Op ("NHC")

August 1, 2020 – August 31, 2020

Matter No. and Description	Fees	Costs	Total
August 2020 Non-IT Services	\$8,130.00	\$0.00	\$8,130.00
August 2020 IT Services Flat Fee	5,000.00	0.00	5,000.00
Totals	\$13,130.00	\$0.00	\$13,130.00

Palomar Financial, LC

NEVADA HEALTH CO-OP
PRIVILEGED AND CONFIDENTIAL
SUMMARY REPORT
PERIOD AUGUST 2020

		Billable Hours	Billable Rate	August 2020 Billing
1	TIME KEEPER - Nicole Wilkins	4.05	\$250.00	\$1,012.50
2	TIME KEEPER - Robert Stebel	0.00	\$160.00	\$0.00
3	TIME KEEPER - Kelly Reed	0.00	\$150.00	\$0.00
4	TIME KEEPER - Neda Khalaf	33.00	\$160.00	\$5,280.00
5	TIME KEEPER - Brent Andrews	0.00	\$150.00	\$0.00
6	TIME KEEPER - Mary Noel	12.25	\$150.00	\$1,837.50
	GRAND TOTAL	49.30		\$8,130.00

Palomar Financial, LC
08/01/2020-08/31/2020
Client: Nevada Health Co-Op ("NHC")

Staff ID	Name	Description	Hours	Amount
NMW	Nicole Wilkins	Accounting Reports/Receivership Team Support	0.70	\$ 175.00
		Accounts Payable and Receivable	2.90	\$ 725.00
		Bank Account Administration/Reconciliation	0.25	\$ 62.50
		Reports/Replies to Policyholders, Creditors, Other Parties	0.20	\$ 50.00
		Sub Total (NMW)	4.05	\$ 1,012.50
RNS	Robert Stebel	Payroll & Employee Benefits	0.00	\$ -
		Sub Total (RNS)	0.00	\$ -
KJR	Kelly Reed	Accounts Payable and Receivable	0.00	\$ -
		Sub Total (KJR)	0.00	\$ -
NK	Neda Khalaf	Accounting Reports/Receivership Team Support	33.00	\$ 5,280.00
		Sub Total (NK)	33.00	\$ 5,280.00
BA	Brent Andrews	IT Support & Administration	0.00	\$ -
		Sub Total (BA)	0.00	\$ -
MFN	Mary Noel	Investment Accounting/Support	0.25	\$ 37.50
		Accounts Payable and Receivable	12.00	\$ 1,800.00
		Sub Total (MFN)	12.25	\$ 1,837.50
Grand Total			49.30	\$ 8,130.00

11401 Century Oaks Terrace
Suite 310
Austin, Texas 78758



PALOMAR FINANCIAL, LC

Telephone (512) 404-6555
Facsimile (512) 404-6530
Toll Free (877) 309-7105
www.palomarfin.com

December 8, 2020

BILL SUMMARY

70750 Nevada Health Co-Op ("NHC")

September 1, 2020 – September 30, 2020

Matter No. and Description	Fees	Costs	Total
September 2020 Non-IT Services	\$21,752.00	\$0.00	\$21,752.00
September 2020 IT Services Flat Fee	5,000.00	0.00	5,000.00
Totals	\$26,752.00	\$0.00	\$26,752.00

Palomar Financial, LC

NEVADA HEALTH CO-OP
PRIVILEGED AND CONFIDENTIAL
SUMMARY REPORT
PERIOD SEPTEMBER 2020

		Billable Hours	Billable Rate	September 2020 Billing
1	TIME KEEPER - Nicole Wilkins	38.65	\$250.00	\$9,662.50
2	TIME KEEPER - Robert Stebel	0.70	\$160.00	\$112.00
3	TIME KEEPER - Kelly Reed	30.15	\$150.00	\$4,522.50
4	TIME KEEPER - Neda Khalaf	14.25	\$160.00	\$2,280.00
5	TIME KEEPER - Brent Andrews	0.00	\$150.00	\$0.00
6	TIME KEEPER - Mary Noel	34.50	\$150.00	\$5,175.00
	GRAND TOTAL	118.25		\$21,752.00

Palomar Financial, LC
09/01/2020-09/30/2020
Client: Nevada Health Co-Op ("NHC")

Staff ID	Name	Description	Hours	Amount
NMW	Nicole Wilkins	Accounting Reports/Receivership Team Support	25.30	\$ 6,325.00
		General Ledger Accounting	2.35	\$ 587.50
		Accounts Payable and Receivable	5.00	\$ 1,250.00
		Bank Account Administration/Reconciliation	1.95	\$ 487.50
		Claims Matters	4.05	\$ 1,012.50
		Sub Total (NMW)	38.65	\$ 9,662.50
RNS	Robert Stebel	Claims Matters	0.70	\$ 112.00
		Sub Total (RNS)	0.70	\$ 112.00
KJR	Kelly Reed	Accounting Reports/Receivership Team Support	23.50	\$ 3,525.00
		Bank Account Administration/Reconciliations	6.65	\$ 997.50
		Sub Total (KJR)	30.15	\$ 4,522.50
NK	Neda Khalaf	Accounting Reports/Receivership Team Support	14.25	\$ 2,280.00
		Sub Total (NK)	14.25	\$ 2,280.00
BA	Brent Andrews	IT Support & Administration	0.00	\$ -
		Sub Total (BA)	0.00	\$ -
MFN	Mary Noel	Accounting Reports/Receivership Team Support	17.75	\$ 2,662.50
MFN	Mary Noel	Investment Accounting/Support	0.25	\$ 37.50
		Accounts Payable and Receivable	16.50	\$ 2,475.00
		Sub Total (MFN)	34.50	\$ 5,175.00
Grand Total			118.25	\$ 21,752.00

Invoice No.: 5477610
File No. : 170678.010100
Bill Date : September 15, 2020

Nevada Health Co-Op
Cantilo & Bennett, L.L.P.
c/o Mark F. Bennett, Esq.
11401 Century Oaks Terrace, Suite 300
Austin, TX 78758

INVOICE

Re: Asset Recovery matter in State Court

Legal Services through August 31, 2020:

Total Fees: \$ 57,543.00

Expenses:

Filing Fees	3.50
Professional & Legal	232.72
Transcript Charges	353.32

Total Expenses: \$ 589.54

Total Current Invoice: \$ 58,132.54

MEF:TKK
Tax ID: 13-3613083



Invoice No.: 5482178
File No. : 170678.010300
Bill Date : September 22, 2020

Nevada Health Co-Op
Cantilo & Bennett, L.L.P.
c/o Mark F. Bennett, Esq.
11401 Century Oaks Terrace, Suite 300
Austin, TX 78758

INVOICE

Re: Federal Court of Claims

Legal Services through August 31, 2020:

Total Fees: \$ 173,477.50

Total Current Invoice: \$ 173,477.50

MEF:TKK
Tax ID: 13-3613083



Invoice No.: 5477557
File No. : 170678.010800
Bill Date : September 15, 2020

Nevada Health Co-Op
Cantilo & Bennett, L.L.P.
c/o Mark F. Bennett, Esq.
11401 Century Oaks Terrace, Suite 300
Austin, TX 78758

INVOICE

Re: NHC v. WellHealth, etc.

Legal Services through August 31, 2020:

Total Fees: \$ 1,565.00

Total Current Invoice: \$ 1,565.00

MEF:TKK
Tax ID: 13-3613083



Invoice No.: 5477591
File No. : 170678.010700
Bill Date : September 15, 2020

Nevada Health Co-Op
Cantilo & Bennett, L.L.P.
c/o Mark F. Bennett, Esq.
11401 Century Oaks Terrace, Suite 300
Austin, TX 78758

INVOICE

Re: Silver State Health Insurance Exchange

Legal Services through August 31, 2020:

Total Fees: \$ 2,145.00

Total Current Invoice: \$ 2,145.00

MEF:TKK
Tax ID: 13-3613083



Invoice No.: 5508036
File No. : 170678.010100
Bill Date : October 26, 2020

Nevada Health Co-Op
Cantilo & Bennett, L.L.P.
c/o Mark F. Bennett, Esq.
11401 Century Oaks Terrace, Suite 300
Austin, TX 78758

INVOICE

Re: Asset Recovery matter in State Court

Legal Services through September 30, 2020:

Total Fees: \$ 73,578.50

Total Current Invoice: \$ 73,578.50

MEF:TKK
Tax ID: 13-3613083



Invoice No.: 5512631
File No. : 170678.010300
Bill Date : November 2, 2020

Nevada Health Co-Op
Cantilo & Bennett, L.L.P.
c/o Mark F. Bennett, Esq.
11401 Century Oaks Terrace, Suite 300
Austin, TX 78758

INVOICE

Re: Federal Court of Claims

THIS INVOICE REPLACES INVOICE #5508037

Total Fees: \$ 106,989.00

Total Current Invoice: \$ 106,989.00

MEF:TKK
Tax ID: 13-3613083

Invoice No.: 5508041
File No. : 170678.010700
Bill Date : October 26, 2020

Nevada Health Co-Op
Cantilo & Bennett, L.L.P.
c/o Mark F. Bennett, Esq.
11401 Century Oaks Terrace, Suite 300
Austin, TX 78758

INVOICE

Re: Silver State Health Insurance Exchange

Legal Services through September 30, 2020:

Total Fees: \$ 16,748.00

Expenses:

Filing Fees

10.50

Total Expenses: \$ 10.50

Total Current Invoice: \$ 16,758.50

MEF:TKK

Tax ID: 13-3613083



Invoice No.: 5508038
File No. : 170678.010500
Bill Date : October 26, 2020

Nevada Health Co-Op
Cantilo & Bennett, L.L.P.
c/o Mark F. Bennett, Esq.
11401 Century Oaks Terrace, Suite 300
Austin, TX 78758

INVOICE

Re: Special Legal Receivership Matters

Legal Services through September 30, 2020:

Total Fees: \$ 47.50

Total Current Invoice: \$ 47.50

MEF:TKK
Tax ID: 13-3613083

Invoice No.: 5533664
File No. : 170678.010100
Bill Date : November 18, 2020

Nevada Health Co-Op
Cantilo & Bennett, L.L.P.
c/o Mark F. Bennett, Esq.
11401 Century Oaks Terrace, Suite 300
Austin, TX 78758

INVOICE

Re: Asset Recovery matter in State Court

Legal Services through October 31, 2020:

Total Fees: \$ 174,813.50

Expenses:

Filing Fees

17.50

Total Expenses: \$ 17.50

Total Current Invoice: \$ 174,831.00

MEF:TKK

Tax ID: 13-3613083



Invoice No.: 5533649
File No. : 170678.010300
Bill Date : November 18, 2020

Nevada Health Co-Op
Cantilo & Bennett, L.L.P.
c/o Mark F. Bennett, Esq.
11401 Century Oaks Terrace, Suite 300
Austin, TX 78758

INVOICE

Re: Federal Court of Claims

Legal Services through October 31, 2020:

Total Fees: \$ 7,440.50

Total Current Invoice: \$ 7,440.50

MEF:TKK
Tax ID: 13-3613083



Invoice No.: 5533642
File No. : 170678.010800
Bill Date : November 18, 2020

Nevada Health Co-Op
Cantilo & Bennett, L.L.P.
c/o Mark F. Bennett, Esq.
11401 Century Oaks Terrace, Suite 300
Austin, TX 78758

INVOICE

Re: NHC v. WellHealth, etc.

Legal Services through October 31, 2020:

Total Fees: \$ 2,077.50

Total Current Invoice: \$ 2,077.50

MEF:TKK
Tax ID: 13-3613083

Invoice No.: 5533630
File No. : 170678.010700
Bill Date : November 18, 2020

Nevada Health Co-Op
Cantilo & Bennett, L.L.P.
c/o Mark F. Bennett, Esq.
11401 Century Oaks Terrace, Suite 300
Austin, TX 78758

INVOICE

Re: Silver State Health Insurance Exchange

Legal Services through October 31, 2020:

Total Fees: \$ 3,191.50

Expenses:

Filing Fees

3.50

Total Expenses: \$ 3.50

Total Current Invoice: \$ 3,195.00

MEF:TKK
Tax ID: 13-3613083

Invoice No.: 5552233
File No. : 170678.010100
Bill Date : December 7, 2020

Nevada Health Co-Op
Cantilo & Bennett, L.L.P.
c/o Mark F. Bennett, Esq.
11401 Century Oaks Terrace, Suite 300
Austin, TX 78758

INVOICE

Re: Asset Recovery matter in State Court

Legal Services through November 30, 2020:

Total Fees: \$ 75,961.50

Expenses:

Filing Fees 17.50

Subpoenas 35.00

Total Expenses: \$ 52.50

Total Current Invoice: \$ 76,014.00

MEF:TKK

Tax ID: 13-3613083



Invoice No.: 5552277
File No. : 170678.010300
Bill Date : December 7, 2020

Nevada Health Co-Op
Cantilo & Bennett, L.L.P.
c/o Mark F. Bennett, Esq.
11401 Century Oaks Terrace, Suite 300
Austin, TX 78758

INVOICE

Re: Federal Court of Claims

Legal Services through November 30, 2020:

Total Fees: \$ 39,392.00

Total Current Invoice: \$ 39,392.00

MEF:TKK
Tax ID: 13-3613083



Invoice No.: 5552238
File No. : 170678.010800
Bill Date : December 7, 2020

Nevada Health Co-Op
Cantilo & Bennett, L.L.P.
c/o Mark F. Bennett, Esq.
11401 Century Oaks Terrace, Suite 300
Austin, TX 78758

INVOICE

Re: NHC v. WellHealth, etc.

Legal Services through November 30, 2020:

Total Fees: \$ 1,755.00

Total Current Invoice: \$ 1,755.00

MEF:TKK
Tax ID: 13-3613083



Invoice No.: 5552237
File No. : 170678.010700
Bill Date : December 7, 2020

Nevada Health Co-Op
Cantilo & Bennett, L.L.P.
c/o Mark F. Bennett, Esq.
11401 Century Oaks Terrace, Suite 300
Austin, TX 78758

INVOICE

Re: Silver State Health Insurance Exchange

Legal Services through November 30, 2020:

Total Fees: \$ 5,157.50

Total Current Invoice: \$ 5,157.50

MEF:TKK
Tax ID: 13-3613083



Invoice No.: 5552236
File No. : 170678.010500
Bill Date : December 7, 2020

Nevada Health Co-Op
Cantilo & Bennett, L.L.P.
c/o Mark F. Bennett, Esq.
11401 Century Oaks Terrace, Suite 300
Austin, TX 78758

INVOICE

Re: Special Legal Receivership Matters

Legal Services through November 30, 2020:

Total Fees: \$ 47.50

Total Current Invoice: \$ 47.50

MEF:TKK
Tax ID: 13-3613083



Invoice Remittance

Mark Bennett
Cantilo & Bennett, LLP
11401 Century Oaks Terrace, Suite 300
Austin, TX 78758
mfbennett@cb-firm.com

October 8, 2020
FTI Invoice No. 7560708
FTI Job No. 400181.0551
Terms NET 30
Federal I.D. No. 52-1261113
Currency: USD

Re: Nevada Health CO-OP Receivership - Surplus notes

Current Invoice Period: Charges Posted through September 30, 2020

Amount Due This Period

Professional Services.....	\$9,896.60
Expenses	<u>\$0.00</u>
Amount Due this Period.....	\$9,896.60



Invoice Remittance

Mark Bennett
Cantilo & Bennett, LLP
11401 Century Oaks Terrace, Suite 300
Austin, TX 78758
mfbennett@cb-firm.com

November 10, 2020
FTI Invoice No. 7563844
FTI Job No. 425623.0005
Terms NET 30
Federal I.D. No. 52-1261113
Currency: USD

Re: Nevada Health CO-OP in Receivership

Current Invoice Period: Charges Posted through October 31, 2020

Amount Due This Period

Professional Services.....	\$18,045.00
Expenses.....	<u>\$0.00</u>
Total Amount Due	<u><u>\$18,045.00</u></u>



DEVITO CONSULTING, INC.
JOSEPH J. DEVITO CONSULTING

November 12, 2020

Mr. Mark F. Bennett
Cantilo & Bennett, LLP
11401 Century Oaks Terrace
Suite 300
Austin, TX 78758

Re: Work Related to Nevada Health CO-OP ("NHC")

Dear Mr. Bennett:

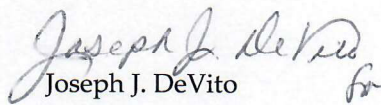
The following is a summary of consulting fees incurred from October 1, 2020 through October 31, 2020 in connection with the above-referenced matter.

Total Due - **Consulting Fees**

\$22,487.50

Details of time are provided in the enclosed schedules. Your prompt payment is appreciated.

Very truly yours,


Joseph J. DeVito
President

Enclosures



DEVITO CONSULTING, INC.
JOSEPH J. DEVITO CONSULTING

December 7, 2020

Mr. Mark F. Bennett
Cantilo & Bennett, LLP
11401 Century Oaks Terrace
Suite 300
Austin, TX 78758

Re: Work Related to Nevada Health CO-OP ("NHC")

Dear Mr. Bennett:


The following is a summary of consulting fees incurred from November 1, 2020 through November 30, 2020 in connection with the above-referenced matter.

Total Due - Consulting Fees

\$7,962.50

Details of time are provided in the enclosed schedules. Your prompt payment is appreciated.

Very truly yours,


Joseph J. DeVito
President

Enclosures

EXHIBIT 2

Class C-L Claims

NRS 696B.330(6) Claims Report of Allowed Amounts for Class C-L Claims

Proof of Claim No.	Priority per NRS 696B.420(1)	Claimant Name	Total Allowed Amount
NHC1012	G	Christopher Carothers	\$0.00
NHC1022	G	Phi Long	\$14,400.00
NHC1023	G	Safeguard Insurance, LLC	\$8,633.12
NHC1026	G	Eldorado Computing	\$2,707.50
NHC1027	G	Eldorado Computing	\$2,000.00
NHC1028	G	Eldorado Computing	\$0.00
NHC1029	G	Eldorado Computing	\$2,000.00
NHC1030	G	Eldorado Computing	\$7,820.00
NHC1031	G	Eldorado Computing	\$15,930.00
NHC1032	G	Eldorado Computing	\$8,977.50
NHC1033	G	Eldorado Computing	\$0.00
NHC1034	G	Eldorado Computing	\$0.00
NHC1035	G	Eldorado Computing	\$0.00
NHC1038	G	Insurance Group of Nevada	\$10,882.83
NHC1042	G	Judith A Tompa	\$424.10
NHC1060	D	Internal Revenue Service	\$493.65
NHC1062	G	Frank Sposato	\$11,758.18
NHC1065	G	David Mannina	\$2,716.51
NHC 1068	G	Nevada Benefits	\$52,707.85
NHC 1072	G	Michele Schulz	\$6,251.58
NHC 1078	G	Tarkus Mossberg	\$479.59
NHC 1079	G	Conrad Stork	\$2,000.00
NHC 1080	G	Mayfair Management Group	\$9,863.00
NHC 1083	G	Janet Holland-Williams	\$640.09
NHC 1085	G	Carl Cook	\$11,021.79
NHC 1087	G	Elevate Insurance	\$12,473.35
NHC 1092	G	Sun City Financial LLC	\$21,244.45
NHC 1097	G	Afsar Amin-Akbari	\$331.07
NHC 1098	G	Nancy Bellantine	\$1,732.93
NHC 1099	G	Indegene Healthcare LLC Dr. Rajesh Nair	\$59,517.36
NHC 1102	G	Brownstein Hyatt Farber Schreck LLP	\$39,029.96
NHC 1105	G	Nancy Joanne Buford	\$6,151.72
NHC 1107	G	Health Services Coalition	\$141,280.00
NHC 1110	G	Xerox Corporation	\$7,047.03
NHC 1111	G	Charles Dean Richard	\$11,437.73
NHC 1117	DENIED	Stewart, Archibald & Barney LLP	\$0.00
NHC 1125	G	RLM LLC	\$5,245.00
NHC 1126	G	RLM Agency	\$116,702.31
NHC 1132	G	Walter Ross	\$4,605.59
NHC 1133	G	3800 Meadows	\$854,608.00
NHC 1134	G	3900 Meadows	\$479,465.75
NHC 1135	G	Soledad Madrigal	\$7,000.00
N/A	LATE	Tillman Clifton, III	\$0.00
N/A	LATE	Silver State Health Ins. Exch.	\$0.00
			\$1,939,579.53

EXHIBIT 3

Cash Flow Analysis

NEVADA HEALTH CO-OP

Cash Flow Analysis

Oct 2015 - Nov 2020

Sources & Uses

Beginning Cash as of October 1, 2015

\$ 5,352,417

SOURCES:

Premium Revenue	17,756,567
CSR Recoveries	2,347,121
Rx Rebates	-
Claims Overpayment Recoveries	720,133
PartnerRe 2014 Premium Refund	374,513
Traditional Reins Recoveries	787,352
FTR Reins Recoveries	735,747
Risk Corridor 2014	1,163,872
Federal Receivables Bridge Loan	-
Restricted Cash became Unrestricted	768,517
Sale of Risk Corridor Receivable Interest	10,000,000
Other	846,708
TOTAL SOURCES:	35,500,530

USES:

Medical Claims Q4 2015 and Post 2015 Adj	(176,660)
Rx Claims Q4 2015	(7,599,195)
Risk Adjustment 2015	-
Medical PMPMs Q4	(43,967)
FTR Reinsurance Premium	(898,687)
Traditional Reins Premium Q4 2015	(547,319)
Premium Tax	(294,665)
Other Admin	(12,785,492)
9010 ACA Fee / 720 PCORI Fee	(161,242)
Provider Claims Payments	(802,891)
Professional Services	(12,852,121)

TOTAL USES:

(36,162,240)

Net cash increase for period

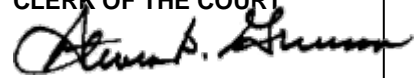
(661,709)

Ending Cash as of November 30, 2020

\$ 4,690,708

TAB 46

TAB 46



1 **NEOJ**

2 MARK E. FERRARIO, ESQ.

3 Nevada Bar No. 001625

4 DONALD L. PRUNTY, ESQ.

5 Nevada Bar No. 008230

6 TAMI D. COWDEN, ESQ.

7 Nevada Bar No. 008994

8 GREENBERG TRAUIG, LLP

9 10845 Griffith Peak Drive, Suite 600

10 Las Vegas, Nevada 89135

11 Telephone: (702) 792-3773

12 Facsimile: (702) 792-9002

13 Email: ferrariom@gtlaw.com

14 pruntyd@gtlaw.com

15 cowdent@gtlaw.com

16 *Counsel for Plaintiff*

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28
EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, EX REL.
COMMISSIONER OF INSURANCE,
BARBARA D. RICHARDSON, IN HER
OFFICIAL CAPACITY AS RECEIVER
FOR NEVADA HEALTH CO-OP,

Plaintiff,

v.

NEVADA HEALTH CO-OP,

Defendant.

CASE NO. A-15-725244-C
DEPARTMENT I

NOTICE OF ENTRY

[ORDER DENYING MOTION TO DISQUALIFY GREENBERG TRAUIG, LLP AND
TO DISGORGE ATTORNEYS' FEES]

///

///

NOTICE OF ENTRY

[ORDER DENYING MOTION TO DISQUALIFY GREENBERG TRAURIG, LLP AND
TO DISGORGE ATTORNEYS' FEES]

YOU AND EACH OF YOU, will please take notice that the **ORDER DENYING
MOTION TO DISQUALIFY GREENBERG TRAURIG, LLP AND DISGORGE
ATTORNEYS' FEES** was entered on the 15TH day of January 2021. A copy of said Order
is attached hereto as **Exhibit A**.

DATED this 15th day of January 2021.

GREENBERG TRAURIG, LLP

/s/ Donald L. Prunty

MARK E. FERRARIO, ESQ.

Nevada Bar No. 001625

DONALD L. PRUNTY, ESQ.

Nevada Bar No. 008230

TAMI D. COWDEN, ESQ.

Nevada Bar No. 008994

GREENBERG TRAURIG, LLP

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

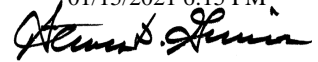
I HEREBY CERTIFY that, on the **15th day of January 2021**, and pursuant to NEFCR 9, NRCR 5(b), and EDCR 7.26, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING MOTION TO DISQUALIFY GREENBERG TRAURIG, LLP AND DISGORGE ATTORNEYS' FEES** was filed with the Clerk of the Court using the Odyssey eFileNV Electronic Service system and served on all parties with an email-address on record, 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.

/s/ Evelyn Escobar-Gaddi
An employee of GREENBERG TRAURIG, LLP

EXHIBIT A

Order Denying Motion to Disqualify Greenberg
Traurig, LLP and to Disgorge Attorneys' Fees


CLERK OF THE COURT

ODM

MARK E. FERRARIO, ESQ.

Nevada Bar No. 001625

ERIC W. SWANIS, ESQ.

Nevada Bar No. 006840

DONALD L. PRUNTY, ESQ.

Nevada Bar No. 008230

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pruntyd@gtlaw.com

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, EX REL.
COMMISSIONER OF INSURANCE, IN HER
OFFICIAL CAPACITY AS STATUTORY
RECEIVER FOR DELINQUENT DOMESTIC
INSURER,

Plaintiff,

v.

NEVADA HEALTH CO-OP,

Defendant.

CASE NO. A-15-725244-C
DEPARTMENT XXI

**ORDER DENYING MOTION TO
DISQUALIFY GREENBERG
TRAURIG, LLP AND TO DISGORGE
ATTORNEYS' FEES**

HEARING DATE: DECEMBER 15, 2020
HEARING TIME: 9:00 A.M.

Unite Here Health and Nevada Health Solutions, LLC's ("UHH") Motion to:
(1) Disqualify Greenberg Traurig, LLP as Counsel for the Statutory Receiver of the Nevada
Health CO-OP; and (2) Disgorge Attorneys' Fees Paid by Nevada Health CO-OP to
///

Greenberg Traurig, LLP (the “Motion to Disqualify”) came before the Court on December 15, 2020.

APPEARANCES

The Parties appeared as follows:

- For UHH (the “Movants”): Dennis L. Kennedy, John R. Bailey, and Joseph A. Liebman of Bailey❖Kennedy, LLP.
- For Barbara D. Richardson as the Statutory Receiver (the “Receiver”) for Nevada Health CO-OP (the “CO-OP”): Mark E. Ferrario and Donald L. Prunty of Greenberg Traurig, LLP. Mark Bennett of Cantilo & Bennett (the Special Deputy Receiver) was also present.
- For Greenberg Traurig, LLP (“GT”): David Jimenez-Ekman of Jenner & Block, admitted *pro hac vice*. GT’s Assistant General Counsel Jim Tolpin was also present.

ORDER

The Court, having heard oral argument, having reviewed the papers, exhibits, and pleadings on file, and having fully considered the same, DENIES the Motion to Disqualify. 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

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1 believe they are entitled to with the Judges overseeing those matters. This Court is not in the
2 best position to determine whether there are conflicts in other suits.

3 **IT IS SO ORDERED.**

4 Dated this 15th day of January, 2021

5 

6
7 C3A 821 DC49 841C
8 Tara Clark Newberry
9 District Court Judge

10 Respectfully submitted by:
11 GREENBERG TRAURIG, LLP

12 /s/ Donald L. Prunty

13 MARK E. FERRARIO, ESQ.
14 ERIC W. SWANIS, ESQ.
15 DONALD L. PRUNTY, ESQ.
16 10845 Griffith Peak Drive
17 Suite 600
18 Las Vegas, Nevada 89135
19 *Counsel for Plaintiff*

20 **APPROVED as to form and content:**

21 BAILEY ♦ KENNEDY

22 /s/ John Bailey

23 JOHN BAILEY, ESQ.
24 JOSEPH A. LIEBMAN, ESQ.
25 8984 Spanish Ridge Avenue
26 Las Vegas, Nevada 89148-1302
27 *Counsel for Defendants, Unite Here Health*
28 *and Nevada Health Solutions, LLC*

From: [John Bailey](#)
To: [Prunty, Donald L. \(Shld-LV-LT\)](#)
Cc: [Cowden, Tami D. \(OfCnsl-LV-LT\)](#); [Escobar-Gaddi, Evy \(Secy-LV-LT\)](#)
Subject: RE: Proposed Order Denying Motion to Disqualify
Date: Monday, January 11, 2021 11:23:32 AM
Attachments: [image001.png](#)
[20210111 ODM Order Denying Motion to Disqualify.pdf](#)

EXTERNAL TO GT

Don:

You are authorized to affix my signature to draft Order attached.

I don't believe the signature block for the Judge is consistent with the applicable Administrative Order (see AO 20-24). Please check.

Thanks. JRB

John R. Bailey
BAILEY KENNEDY, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
Phone: (702) 562-8820
Fax: (702) 562-8821
Direct Dial: (702) 851-0051
JBailey@BaileyKennedy.com

This e-mail message is a confidential communication from Bailey Kennedy, LLP and is intended only for the named recipient(s) above and may contain information that is a trade secret, proprietary, privileged or attorney work product. If you have received this message in error, or are not the named or intended recipient(s), please immediately notify the sender at 702-562-8820 and delete this e-mail message and any attachments from your workstation or network mail system.

From: PruntyD@gtlaw.com [mailto:PruntyD@gtlaw.com]
Sent: Monday, January 11, 2021 11:05 AM
To: John Bailey <JBailey@baileykennedy.com>
Cc: cwudent@gtlaw.com; escobargaddie@gtlaw.com
Subject: FW: Proposed Order Denying Motion to Disqualify

John

Although we completely disagree with your objections, we have redrafted the proposed order denying the motion to disqualify GT and disgorge attorneys' fees, using the original language of the minute order. If this new proposed order meets with your approval, please confirm that we may electronically sign your name to the proposed order where indicated.

Best,

Donald Prunty

Shareholder

Greenberg Traurig, LLP

10845 Griffith Peak Drive | Suite 600 | Las Vegas, NV 89135

T +1 702.938.6890

PruntyD@gtlaw.com | www.gtlaw.com | [View GT Biography](#)



If you are not an intended recipient of confidential and privileged information in this email, please delete it, notify us immediately at postmaster@gtlaw.com, and do not use or disseminate the information.

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 State of Nevada, ex rel
7 Commissioner of Insurance,
8 Plaintiff(s)

CASE NO: A-15-725244-C

DEPT. NO. Department 21

9 vs.

10 Nevada Health CO-OP,
11 Defendant(s)

12 **AUTOMATED CERTIFICATE OF SERVICE**

13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Denying Motion 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: 1/15/2021

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20 7132 Andrea Rosehill . rosehilla@gtlaw.com

21 Arati Bhattacharya . abhattacharya@cb-firm.com

22 Barry Sullivan . bsullivan@sacfirm.com

23 Bryce C. Loveland . bcloveland@bhfs.com

24 Ebony Davis . edavis@bhfs.com

25 Eric W. Swanis . SwanisE@gtlaw.com

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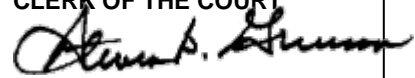
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18	John Bailey	jbailey@baileykennedy.com
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20	Michele Caro	mcaro@ag.nv.gov
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22	Stephanie Bedker	bedkers@gtlaw.com
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Joseph Liebman	jliebman@baileykennedy.com
Doreen Loffredo	dloffredo@foxrothschild.com
Shannon Fagin	sfagin@bckltd.com

TAB 47

TAB 47



OPPM

MARK E. FERRARIO, ESQ.

Nevada Bar No. 001625

DONALD L. PRUNTY, ESQ.

Nevada Bar No. 008230

GLENN F. MEIER, ESQ.

Nevada Bar No. 006059

GREENBERG TRAURIG, LLP

10845 Griffith Peak Drive, Suite 600

Las Vegas, Nevada 89135

Telephone: (702) 792-3773

Facsimile: (702) 792-9002

Email: ferrariom@gtlaw.com

pruntyd@gtlaw.com

meierg@gtlaw.com

Counsel for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, EX REL.
COMMISSIONER OF INSURANCE,
BARBARA D. RICHARDSON, IN HER
OFFICIAL CAPACITY AS RECEIVER FOR
NEVADA HEALTH CO-OP,

Plaintiff,

v.

MILLIMAN, INC., a Washington
Corporation; JONATHAN L. SHREVE, an
Individual; MARY VAN DER HEIJDE, an
Individual; MILLENNIUM CONSULTING
SERVICES, LLC, a North Carolina
Corporation; LARSON & COMPANY P.C., a
Utah Professional Corporation; DENNIS T.
LARSON, an Individual; MARTHA HAYES,
an Individual; INSUREMONKEY, INC., a
Nevada Corporation; ALEX RIVLIN, an
Individual; NEVADA HEALTH
SOLUTIONS, LLC, a Nevada Limited
Liability Company; PAMELA EGAN, an
Individual; BASIL C. DIBSIE, an Individual;

CASE NO. A-17-760558-B
DEPARTMENT XVI

**OPPOSITION TO DEFENDANTS
UNITE HERE HEALTH AND
NEVADA HEALTH SOLUTIONS,
LLC'S MOTION TO STRIKE JURY
DEMAND**

DATE OF HEARING: MARCH 10, 2021
TIME OF HEARING: 9:30 A.M.

LINDA MATTOON, an Individual; TOM ZUMTOBEL, an Individual; BOBBETTE BOND, an Individual; KATHLEEN SILVER, an Individual; UNITE HERE HEALTH, is a multi-employer health and welfare trust as defined in ERISA Section 3(37); DOES I through X inclusive; and ROE CORPORATIONS I-X, inclusive,

Defendants.

Plaintiff STATE OF NEVADA, EX REL. COMMISSIONER OF INSURANCE, BARBARA D. RICHARDSON, IN HER OFFICIAL CAPACITY AS RECEIVER FOR NEVADA HEALTH CO-OP ("Plaintiff") by and through her counsel of record, the law firm of Greenberg Traurig, LLP, hereby submits the following Opposition to Defendants Unite Here Health and Nevada Health Solutions, LLC's Motion to Strike Jury Demand ("Motion").

This Opposition is based on the papers and pleading on file herein, the attached memorandum of points and authorities, and any exhibits attached hereto, and any oral argument his Court may choose to entertain at the time of hearing.

DATED this 12th day of February 2021.

GREENBERG TRAURIG, LLP

/s/ Donald L. Prunty

MARK E. FERRARIO, ESQ.

Nevada Bar No. 001625

DONALD L. PRUNTY, ESQ.

Nevada Bar No. 008230

GLENN F. MEIER, ESQ.

Nevada Bar No. 006059

10845 Griffith Peak Drive, Suite 600

Las Vegas, Nevada 89169

Counsel for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

More than three years after the jury demand was made, Defendants Nevada Health Solutions, LLC (“NHS”)¹ and Unite Here Health (“UHH”) (collectively, “Defendants”) suddenly filed the instant Motion seeking to enforce three jury trial waivers contained in three separate agreements (the “Jury Trial Waivers”) to which the Plaintiff was not a signatory. Despite their undue delay in bringing this Motion, Defendants seek to deprive the Plaintiff, and all those whose interests she represents, of the constitutional right to a jury trial based on jury waivers found in contracts created long before Plaintiff was assigned as receiver in this case. Specifically, Defendants cite to: (1) a Consulting Agreement between Hospitality Health and UHH dated January 30, 2013 (the “Consulting Agreement”); (2) an Administrative Services Agreement between NHC and UHH, dated June 27, 2013 (the “Administrative Services Agreement”); and (3) a Management Services Agreement between NHC and NHS.² However, Plaintiff, in her capacity as Receiver of the Nevada Health Co-Op (“NHC”) was not a party to any of these agreements.

Moreover, Defendants have waived their right to seek enforcement of jury trial waivers, as they participated in status check hearings wherein jury trial settings were discussed, failed to object to multiple orders setting the matter for a jury trial, and even cited potential juror confusion as a basis for seeking a stay of the proceedings. Additionally, as the Receiver was not a signatory to the agreements, and cannot be considered to have simply stepped into the shoes of NHC, there is no basis on which the jury trial waivers may be enforced against the Receiver. As shown below, Courts have repeatedly found that receivers appointed pursuant to insurance regulations, for the purpose of rehabilitating or liquidating an insolvent insurer, do not simply “step into the shoes” of that insurer, but instead, are acting in

¹ NHS was named in the original action and therefore has been aware of the jury demand at issue herein for more than three years.

² See Defendants Unite Here Health and Nevada Health Solutions, LLC’s Motion to Strike Jury Demand (the “Motion”) on file herein at p. 3:17-6:1.

1 the interest of the public. Thus, the underlying basis of Defendants' Motion—that the receiver
2 stepped into the shoes of the insurer—lacks merit. Finally, even if this Court were to consider
3 the jury waivers at issue, there are substantial questions regarding the validity of the
4 agreements and discovery is ongoing.

5 **II. Facts Relevant to This Motion**

6 NHC filed its Complaint, which included claims against NHS, on August 25, 2017
7 and filed its demand for jury trial on September 7, 2017. NHS filed its answer on
8 November 11, 2017 which did not include an objection to a jury trial. UHH, represented by
9 the same counsel as NHS, filed its answer to the Amended Complaint on October 22, 2018
10 which likewise did not object to a jury trial.

11 On April 17, 2019, NHS and UHH filed their Opposition to Plaintiff's Motion to
12 Extend Discovery Deadlines on OST and Countermotion to Extend All Remaining Deadlines
13 and Trial in which neither party noted any objection to the new trial setting also being for a
14 jury trial stack.

15 On May 5, 2019, this Court entered its Second Amended Order Setting Civil Jury Trial,
16 Pre-Trial, Calendar Call, and Deadlines for Motions; Amended Discovery Scheduling Order.
17 That Order set the matter for the five-week jury trial stack beginning January 27, 2020.
18 Again, Defendants did not object to the jury trial setting during the hearing held on April 25,
19 2019, or following the issuance of the Order.

20 On September 10, 2019, UHH filed its Supplemental Brief on Motion to Stay. Therein,
21 UHH made arguments in support of a stay that reference questions that would be presented
22 to the jury. *See* Supplemental Brief, 31:1-11; 32:16-19; 36:18-23; 40:7-7; 42:16-25.
23 Defendants again referenced the need for clarity of questions to be presented to the jury in
24 their Reply in Support of Their Supplemental Brief on Motion to Stay, filed on September 30,
25 2019. *See* Reply, 4:13-18.

26 On November 11, 2019, this Court entered its Third Amended Order Setting Civil Jury
27 Trial, Pre-Trial, Calendar Call, and Deadlines for Motions; Amended Discovery Scheduling
28 Order. That Order set the matter for the five week jury trial stack beginning October 5, 2020.

Defendants did not object to the jury trial setting during the November 6, 2019 status check hearing or following issuance of the Order.

On May 13, 2020, this Court entered its Fourth Order setting the matter for the five week jury trial stack beginning May , 2021. Defendants did not object to the jury trial setting during the April 30, 2020 status check hearing or following issuance of the Order.

For more than 36 months, Plaintiff's Demand for Jury Trial was unchallenged. It was not until October 10, 2020, that Defendants raised any objection to the long-planned jury trial. On October 15, 2020, Defendants filed a Motion for Leave to File a Third Party Complaint, seeking contribution against two entities. Moreover, Defendants contended that the addition of the "third party defendants would not cause delay of the trial or complicate the trial." Oct. 15, 2020 Motion, 11:22-25. Additionally, Defendants argued that joining the parties would avoid the possibility of inconsistent verdicts and the waste of multiple suits the third party – thus, implicitly indicating a single trial. *Id.* at 12:1-14, 22-25. Yet there is nothing to indicate that either of the proposed third party defendants would not be entitled to a jury trial.

II. Legal Argument

The Motion to Strike the Jury Demand should be denied. The courts of Nevada have long recognized this Court's authority to grant relief from a waiver of jury trial under Rule 39 and found setting a matter for a jury trial to be the "**better policy**". *See, e.g., Walton v. Eighth Judicial Dist. Ct.*, 94 Nev. 690, 695 (1978) (citing, *De Remer v. Anderson*, 41 Nev. 287, 169 P. 737 (1918)) (emphasis added). Indeed, the Nevada Constitution provides: "[t]he right of trial by Jury shall be secured to all and remain inviolate **forever**." Nevada Const. Art. 1, § 3; *see also*, NRCPP 38(a). (emphasis added).

Plaintiff has been preparing its case for a jury trial and would be prejudiced, if after over three years it had to change its strategy. Defendants' Motion is too late, and they have forfeited and waived any right to make the arguments set forth therein, by not timely advancing the same at some earlier stage of these proceedings. Moreover, even if the

///

Defendants' Motion was timely, the Receiver cannot be bound by the jury trial waiver here.

A. The Motion to Strike Should Be Denied as Untimely.

The Motion to Strike should be denied, as it is untimely, and Defendants are estopped from seeking to enforce the jury waivers contained in the contracts. Neither of the Defendants' Answers to the Amended Complaint, filed *after* the Jury Demand was of record, raised the anti-jury clauses as an affirmative defense. Additionally, no attempt was made to invoke those clauses until 37 months after the Demand was filed. Throughout that time, the parties have proceeded on the assumption that trial would be to a jury, and have prepared accordingly.

Like any contractual provision, a provision that waives a right to a jury trial may itself be waived. *See, 3300 Partners, LLC v. Eighth Judicial Dist. Court of Nev.*, No. 74897 (Nev. Jan. 30, 2018) (declining mandamus where district court deemed jury trial waiver to have been waived by two year delay in filing motion to strike). Here, the delay was even longer than in *3300 Partners, LLC*,

Moreover, the Defendants here did more than simply delay seeking to enforce the jury trial waivers. They have also acted inconsistently with an expectation of a bench trial. For example, they relied on potential jury confusion in seeking a stay. *See* Supplemental Brief filed September 10, 2019, 31:1-11; 32:16-19; 36:18-23; 40:7-7.; 42:16-25. More recently, UHH sought leave to file a third-party complaint against entities its claims would be liable to it for contribution, indicating their inclusion as third parties would avoid the expense and risk of inconsistency of multiple trials, even though there is no basis to force bench trials as to those entities.

Nevada courts have long noted that the right to arbitrate claims may be waived, even though this form of jury trial waiver are statutorily protected. *See, e.g. County v. Blanchard*, 98 Nev. 488, 653 P.2d 1217 (1982) (arbitration clause may be waived by a litigant's participation in litigation prior to invoking the clause). In such cases, among the facts the Court must consider is whether the entity seeking to enforce the contractual clause has

engaged in conduct inconsistent with such enforcement. *Nevada Gold Casinos v. American Heritage*, 121 Nev. 84, 91 (Nev. 2005).

Prejudice may be shown where enforcement of a previously ignored provision would require duplication of efforts. *Nevada Gold Casinos v. American Heritage*, *supra*. Nor it is appropriate for parties to “test” the waters before enforcing a contract trial right. Here, the parties have engaged in significant discovery with the view that a jury trial would be had, and accordingly, the attorneys have pursued such discovery with an eye to preparing presentations for a jury of laymen, rather than for a bench trial. Given the timing of their Motion, Defendants have determined that the evidence revealed by discovery would not sway a jury to their position. However, they should not be permitted to change horses midstream, as they seek through the instant Motion.

B. The Contractual Jury Trial Waivers are not Binding Upon Plaintiff

Defendants argue that the Jury Trial Waivers are valid and enforceable based solely on the fact that Plaintiff was appointed as the receiver for a now defunct health care co-op.³ Specifically, Defendants argue “[t]he Receiver is standing in the shoes of NHC, and cannot avoid NHC’s waiver of a jury trial.”⁴ However, Defendants’ arguments miss the mark as Plaintiff cannot, and should not, be bound by the jury waivers at issue in the Motion.

Defendants, as the party seeking to enforce the waiver of the right to a jury trial, bear the burden of demonstrating the Jury Trial Waivers are valid. *See, Phx. Leasing v. Sure Broad.*, 843 F. Supp. 1379, 1384 (D. Nev. 1994). In determining the enforceability of jury trial waivers, the Ninth Circuit has previously held “[u]nlike arbitration clauses, courts generally construe jury waivers narrowly.” *Paracor Finance, Inc. v. General Electric Capital Corp.*, 96 F.3d 1151, 1167 n. 21 (9th Cir. 1996) (emphasis added). To be valid and enforceable, a jury waiver must be entered into knowingly, voluntarily and intentionally. *Lowe Enters. Residential Ptnrs., Ltd. P’ship v. Eighth Judicial Dist. Court*, 118 Nev. 92, 100-

³ See Mot. at p. 10:12-11:11.

⁴ Mot. at p. 11:10-11.

01, 40 P.3d 405, 410-11 (2002) (emphasis added). The factors to consider in determining whether a contractual waiver of the right to jury trial was entered into knowingly and voluntarily include: (1) the parties' negotiations concerning the waiver provision, if any (2) the conspicuousness of the provision, (3) the relative bargaining power of the parties and (4) whether the waiving party's counsel had an opportunity to review the agreement. *Id.*

Here, the Plaintiff is not, and never was, a signatory to any of the contracts containing the jury waivers. Accordingly, she cannot be held to the jury waiver contained therein. Significantly, rather than relying on caselaw construing jury trial waivers, Defendants cite caselaw regarding the transferability of arbitration provisions—which clauses benefit from a policy favoring arbitration, while, as noted above, jury trial waivers are construed narrowly. *See, Bennett v. Liberty Nat'l Fire Ins. Co.*, 968 F.2d 969, 971 (9th Cir. 1992) (“questions of arbitrability must be addressed with a *healthy regard for the federal policy favoring arbitration.*”); *Paracor Finance, Inc., supra*. Thus, except to the extent that waivers of the contractual language is concerned, case law interpreting the enforceability of an arbitration provision bears no meaning on the determination of the enforceability of a jury trial waiver.

Unsurprisingly, Defendants fail to cite to a single case discussing the application of a jury waiver to a receiver of a defunct insurance company. Instead, Defendants rely solely on cases from throughout the country discussing the application of an arbitration provision which, again, is an entirely different consideration for this court.⁵ But given the glaring difference in the enforceability of jury waivers and arbitration clauses, Defendants have not met their burden of demonstrating the Jury Trial Waivers are valid and enforceable against Plaintiff. *See, Phx. Leasing*, 843 F. Supp. at 1384.

1. The Receiver Does Not Simply “Step Into the Shoes” of NHC

In moving to strike the jury demand in this case, Defendants seek to enforce the Jury Waiver Provisions in three contracts to which Plaintiff was not a signatory. It goes without

⁵ Specifically, Defendant cites to *Bennet v. Liberty Nat'l Fire Ins. Co.*, 968 F.2d 969, 972 (9th Cir. 1992); *Ommen v. Ringlee*, 941 N.W.2d 310, 312 (Iowa 2020); and *Milliman, Inc. v. Roof*, 353 F. Supp. 3D 588 (E.D. Ky. 2018), each of which concerned the application of an arbitration provision.

1 saying that a contract generally cannot bind a non-party. *See, County of Clark v. Bonanza*
2 *No. 1*, 96 Nev. 643, 648–49, 615 P.2d 939, 943 (1980). This matter is no exception. In an
3 attempt to side step this tenet of contract law and bind Plaintiff to the Jury Trial Waivers,
4 Defendants argue the “Receiver steps into the shoes of the insolvent insurer, and is
5 accordingly bound to the terms of the insurer’s pre-insolvency contracts.”⁶ However,
6 Defendants’ over-generalized argument does not stick in this case.

7 Contrary to Defendant’s assertions, a liquidator or receiver of a defunct insurance
8 company does not simply “stand in the shoes” of an insolvent insurer, because he or she also
9 represents the insureds, policyholders, and creditors of that entity. Courts have long
10 recognized that a receiver appointed pursuant to insurance regulations to marshal the assets
11 of an insolvent insurer does not act “merely to prosecute claims of an entity under
12 receivership.” *Arthur Andersen v. Superior Court*, 67 Cal. App. 4th 1481, 1495 (Cal. Ct. App.
13 1998). Accordingly, the notion that such a Receiver merely steps into the shoes of the
14 insolvent receiver, and therefore, is bound to whatever obligations with respect to jury trials
15 that the insolvent insurer would have been bound by have long been rejected. Instead, the
16 Receiver is representing the claims of the policyholders, with the primary goal being to satisfy
17 the claims of policyholders and fulfill their insurance coverage needs. In short, a receiver in
18 such circumstances is engaged in public protection. *See, Donelo v. Shilling*, No. 2019-C-
19 00514, at *5 (La. Apr. 27, 2020) (“The Commissioner of Insurance as rehabilitator or
20 liquidator owes an overriding duty to the people of the State of Louisiana.”); *Taylor v. Ernst*
21 *& Young*, 130 Ohio St. 3d 411, 419 (Ohio 2011) (“The fact that any judgments in favor of the
22 liquidator accrue to the benefit of insureds, policyholders, and creditors means that the
23 liquidator’s unique role is one of public protection....”); *Corcoran v. Ardra Ins. Co.*, 77
24 N.Y.2d 225, 232 (N.Y. 1990) (Superintendent of Insurance “holds office as liquidator *solely*
25 *to protect the interests of policyholders, stockholders and the public* and has no authority to
26 pursue the commercial interests which motivated the original parties to conclude the
27

28 ⁶ Mot. at 10:15-18.

reinsurance agreements.”) (emphasis added); *see also, LeBlanc v. Bernard*, 554 So. 2d 1378, 1381 (La. Ct. App. 1990) (finding that Commissioner of Insurance as Liquidator exercises the police power of the state in marshalling the assets of insolvent insurer). *Corcoran v. Ardra Ins. Co.*, 77 N.Y.2d 225, 233, 567 N.E.2d 969, 973 (1990). This distinction is critical. Here, Defendants seek to deprive Plaintiff of its constitutional right to a jury trial on these matters simply because Plaintiff was appointed to conserve and preserve the affairs of the Co-Op under NRS 696B. This is not a garden variety receivership case and any assertion to the contrary is disingenuous. Moreover, this is not an instance where the Defendants are seeking to enforce an arbitration provision—a provision typically favored by courts for its efficiency. Rather, this is a matter in which the Plaintiff has been directed to rehabilitate or liquidate the Co-Op’s business affairs. In so doing, the Plaintiff represents the interests of each and every insured, policyholder, and creditor. Thus, to argue Plaintiff simply “steps into the shoes of NHC” is misleading. Moreover, to bind Plaintiff to a Jury Trial Waiver to which it never agreed would deprive each and every insured, policyholder and creditor of the right to have this matter decided by the jury—a right afforded by the Nevada Constitution.

This premise is even more troubling when considering the fact that the insureds, policyholders and creditors, whose interests the Plaintiff is tasked with protecting, have absolutely no connection to the Jury Trial Waivers or the contracts in which they are contained. *That is, the insureds, policyholders and creditors have never considered nor agreed to waive the right to a jury trial in this case.* To find otherwise would unjustly deprive those individuals’ and their interests in this case, of their constitutional right to a jury trial.

As the Receiver cannot be bound by the jury trial waivers, the Motion to Strike Jury Demand must be denied.

C. There are Substantial Questions Regarding the Validity of the Underlying Agreements and Discovery is Ongoing

Defendants’ Motion is premised on the fact that the Jury Trial Waivers are contained in certain agreements held by NHC—the defunct insurance entity for which Plaintiff was appointed the receiver. True as this may be, there remain substantial questions regarding the

1 validity of those specific underlying agreements to be borne out during discovery which is
2 ongoing. Indeed, questions remain regarding the validity of the contracts at issue in this case
3 including whether the agreements at issue were true arm's length deals. Existing evidence
4 shows that the contracts at issue in this case were the result of the complicit actions of high-
5 level employees of NHC who simultaneously held managerial positions at UHH.

6 Through documents already produced, it is evident that (a) critical upper level
7 employees of NHC were effectively "on loan" from UHH and coerced the formation of the
8 contracts at issue.⁷ Moreover, NHC's former CEO drafted a document, already been
9 produced in discovery, which provides:

10 **"I was pressured to sign the TPA & UR contracts:** Tom Zumtobel and
11 Bobbette Bond, both employees of UNITE HERE HEALTH, need two
12 lucrative Core Contracts, the contract for Utilization Review (the "UR
13 Contract") and the Contract for Third Party Administration services (the
14 "TPA Contract") signed by a third person. This is because both these
15 contracts are between the Nevada Health COOP and their employer UNITE
16 HERE HEALTH or companies related to UNITE HERE HEALTH. For that
17 reason, Tom Zumtobel and Bobbette Bond couldn't be on both side of the
18 transaction. Either of their signatures on those contracts, on behalf of the
19 COOP, would have demonstrated in writing their clear conflict of interest.
20 They needed someone to sign those contracts that didn't know the two
21 companies the COOP was contracting with were not legally capable of
22 performing the contracted services in Nevada."

23 *See Exhibit 1.*

24 In addition to written discovery not yet completed, Plaintiff has not yet completed the
25 depositions of the D&O Defendants, the contents of which will bear directly on the validity
26 of the contracts in question. Discovery is not currently set to close until December 31, 2021.
27 Given the substantial impact of the foregoing on the questions raised in the Motion,
28 consideration of the Jury Trial Waivers should not occur before the completion of discovery.
29 Thus, additional discovery is required to determine whether the Jury Trial Waivers were
30 entered into knowingly, voluntarily, and intentionally as required to enforce the same upon

⁷ See generally Amended Complaint on file herein.

1 Plaintiff. *See, Lowe Enters. Residential Ptnrs.*, 118 Nev. at 100-01. For that reason alone,
2 Defendants' Motion should—at a minimum—be denied without prejudice.

3 **IV. Conclusion**

4 For the foregoing reasons, Plaintiff respectfully requests that this Court deny
5 Defendants Unite Here Health and Nevada Health Solutions, LLC's Motion to Strike Jury
6 Demand.

7 DATED this 12th day of February 2021.

8 GREENBERG TRAURIG, LLP

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CERTIFICATE OF SERVICE

I hereby certify that on this **12th day of February 2021**, a true and correct copy of the foregoing **OPPOSITION TO DEFENDANTS UNITE HERE HEALTH AND NEVADA HEALTH SOLUTIONS, LLC'S MOTION TO STRIKE JURY DEMAND** was submitted for service using the Odyssey eFileNV Electronic Service system and served on all parties with an email address on record, 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.

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