

Case Nos. 82467 & 82552

In the Supreme Court of Nevada

UNITE HERE HEALTH; and NEVADA HEALTH SOLUTIONS, LLC,

Appellants,

vs.

STATE OF NEVADA 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,

Respondents.

UNITE HERE HEALTH, a multi-employer health and welfare trust, as defined in 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 D. CLARK NEWBERRY, District Court Judge,

Respondents,

and

STATE OF NEVADA COMMISSIONER OF INSURANCE, BARBARA D. RICHARDSON, in her official capacity as receiver for delinquent domestic insurer; NEVADA HEALTH CO-OP; and GREENBERG TRAURIG, LLP,

Real Parties in Interest.

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No. 82552

OPPOSITION TO MOTION FOR STAY

OPPOSITION TO MOTION FOR STAY

Waiting seems to be the name of the game for appellants/petitioners Unite Here Health and Nevada Health Solutions, LLC (together, “UHH”). Some eight months after filing an appeal (and later, a writ petition) seeking the disqualification of real party in interest’s lead trial counsel, and more than three months after filing a second writ petition challenging the district court’s discretionary decision not to implead new parties late in the litigation, UHH has finally decided it now needs a blanket stay of all proceedings—including as to parties in the district court that are not part of UHH’s appeal and writ petitions.

The district court rejected this belated effort to disrupt discovery and trial, noting the age of the case and expressing skepticism that a stay was necessary under the NRAP 8(c) factors, especially considering that UHH

will always have an opportunity to conduct . . . discovery . . . as Xerox is concerned in this matter and potentially make a *Banks versus Sunrise Hospital* type of argument^[1] or point fingers. Just as important too, they

¹ *Banks* noted that even though NRS 41.141 prevents apportionment of fault among nonparties, “[n]othing in NRS 41.141 prohibits a party defendant from attempting to establish that either no negligence occurred or that the entire responsibility for a plaintiff’s injuries rests with nonparties, including those who have separately settled their liabilities with the plaintiff.” 120 Nev. 822, 845, 102 P.3d 52, 67 (2004).

do have claims for contribution and indemnity, and I think I discussed that at a prior time in this case that they can pursue potentially post judgment and that's only under the circumstances where they didn't prevail.

(Ex. A to Mot. in Dkt. 82467, at 21:2-20.) While UHH continues its campaign against Greenberg Traurig in this Court, this Court should not penalize the parties and the district court by halting progress toward trial. This Court should deny a stay.

FACTS

Greenberg Traurig is the counsel of choice for real party in interest, the receiver for Nevada Health Co-op. More than three years ago, the receiver through Greenberg Traurig added to its complaint the UHH defendants, whom the Co-op had engaged for third-party administration services and medical utilization review. UHH has never had an attorney-client relationship with Greenberg Traurig. Nonetheless, more than two years after being sued, UHH sought to disqualify the firm. UHH's argued that Greenberg Traurig's prior representation of two entities—Valley Health Systems (who had submitted an administrative claim against the estate) and Xerox State Healthcare, LLC (with whom Nevada Health Co-op had no contractual relationship but whom

UHH blames for the Co-op’s failure)—presented an irreconcilable conflict. The receiver presented multiple alternative arguments in opposition. District Judge Cory, presiding over the receivership matter, was not persuaded that the receiver had a duty to disclose the prior representations and denied the motion. UHH appealed and filed a writ petition.

Meanwhile, UHH tried to force Greenberg Traurig’s withdrawal by other means by seeking to add Xerox as a third-party defendant, even though the receiver had, independently from Greenberg Traurig, determined that responsibility rested with the Co-op’s vendor, UHH—not Xerox—and had therefore elected not to sue Xerox. Like Judge Cory, District Judge Williams rejected this effort, too. Although in UHH’s motion to this Court, UHH emphasizes Judge Williams’s finding that the motion was “timely and not the result of dilatory conduct” (Mot. 6 in Dkt. 83135), UHH omits the critical context for this statement, which sharply qualifies it:

1. The Court is well aware of its broad but not unlimited discretion in addressing a motion to implead under NRCP 14. The impleader rule does not set forth a time when a motion for leave must be brought; however, *pursuant to the Court’s scheduling order*, defendants Unite Here Health and Nevada Health Solutions, LLC’s Motion is timely and not the result of dilatory

conduct.

2. Notwithstanding, an undue delay is only one factor upon which this Court should consider.

3. Thus, this Court's decision *considers the timing* of the filed motion for leave to file third-party complaint and motion to implead *after three-and-a-half years of litigation* and the potential prejudice to the parties.

4. Consequently, the Court is concerned about whether the impleader of a third party based on contribution claims would unduly complicate the pending action by injecting tangential issues such as potential conflicts resulting in the disqualification of plaintiff's counsel and impacting plaintiff's choice of counsel in the pending matter, potentially prejudicing the plaintiff.

(May 26, 2021 Order, at 2-3 (emphasis added).) Judge Williams analyzed the prejudice to the parties by complicating the matter with new defendants as the case was headed toward trial and also took into account "the fact that defendant may still pursue an independent contribution claim if they are unsuccessful in defense of this action." (*Id.*, at 3, ¶¶ 5-6.)

UHH filed a second writ petition challenging this order. Both the original disqualification issue (now fully briefed) and the denial of impleader (pending the receiver's answer) are before this Court.

ARGUMENT

Alone and in combination, the NRAP 8(c) factors weigh decidedly

against granting UHH’s late request to halt the entire litigation, including as to nonparties to these appellate proceedings. The district court was correct in its analysis, and this Court should likewise deny a stay.

A. Denying a Stay Would Not Moot the Legal Issues Presented in these Appellate Proceedings

The object of UHH’s appeal and writ petitions will not be defeated if the stay is denied. NRAP 8(c)(1). UHH argues otherwise, but only by distorting the meaning of an appeal’s “object” to mean not just the legal issues it presents, but also the supposed right to have those issues decided before the completion of discovery and a trial.

As this Court made clear in *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, the fact that a party might have to endure a trial under erroneous legal rulings does not, itself, establish that the “object of the appeal or writ petition will be defeated if the stay is denied.” 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). In that case, the petitioner faced a much more extreme harm—being haled before a court that purportedly lacked jurisdiction over it—and yet this Court did not halt the trial proceedings. This Court observed that the petitioner had preserved its jurisdictional objection, so even pending appellate review the petitioner could be forced to appear and litigate in the district court. *Id.*

Here, as to both of the issues on appeal, UHH's arguments are self-defeating. In the case of the appeal and petition on disqualification, UHH first argues that "Greenberg's continued role . . . is destroying the impartiality and fairness of the action," yet then concedes that a victory in this Court would indeed be effective by providing the remedy of a remand without Greenberg Traurig's participation. (Mot. 6 in Dkt. No. 82467 (suggesting that "much of the discovery—and the trial—will have to be redone").) Indeed, UHH has to resort to complaining about the inconvenience of a retrial because the ordinary harm from a denial of disqualification and that might justify a stay—disclosure or misuse of confidential client information—is pointedly lacking here, where UHH has never been a Greenberg client.

Similarly, no stay is necessary for the Court to review UHH's writ petition challenging the denial of impleader. Such a denial, like other pretrial rulings, merges with the judgment and is reviewable as part of the appeal from the judgment. So it is not necessary to halt the litigation—and forestall the entry of a judgment—to preserve UHH's right to review. More important, as the district court pointed out and UHH concedes, UHH retains its right to pursue separate litigation against Xerox without disrupting this trial against the parties the receiver has elected

to sue. *See Pack v. LaTourette*, 128 Nev. 264, 270, 277 P.3d 1246, 1250 (2012). Again, UHH points only to a delay, not to an actual defeat of its right to pursue Xerox.

**B. UHH’s Complaint about Delay
Is Not Irreparable harm**

Refusing to let UHH disrupt the entire litigation—even as to parties in the district-court litigation that are not part of UHH’s appellate adventures—would not cause UHH serious or irreparable harm. NRAP 8(c)(2). UHH remains free to conduct discovery concerning Xerox and to ultimately argue that Xerox is completely responsible for the damages suffered by Nevada Health Co-op.

“[L]itigation expenses, while potentially substantial, are neither irreparable nor serious.” *Hansen*, 116 Nev. at 658, 6 P.3d at 986-87; *see also, e.g., Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029–30 (1987); *Wisconsin Gas Co. v. F.E.R.C.*, 758 F.2d 669, 674 (D.C. Cir. 1985) (noting that “[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough” to show irreparable harm).

Attempting to gussy up litigation costs as something more, UHH speculates without evidence that a hypothetical judgment might drive it

into insolvency, stymying its contribution action against Xerox. Of course, this scenario ignores the avenues of relief from the collection of a judgment pending an appeal of this action or a future contribution action against Xerox. *See, e.g.*, NRCP 62(d). UHH tellingly has not attempted to show how it fits within the insolvency considerations of *Nelson v. Heer*, 121 Nev. 832, 122 P.3d 1252 (2005) to warrant a stay.

Moreover, even accepting UHH's insolvency as a plausible consequence, it is no more "irreparable" harm than other litigation expenses or exposure to a judgment pending appeal that do not, on their own, call for a stay. Regardless, such an outcome would be self-inflicted harm caused by UHH's inexplicable decision to refrain for years from attempting to implead the party that they now claim is the central villain and responsible for Nevada Health Co-op's demise.

Similarly, UHH's complaint that it is "precluded from apportioning blame at trial" is not irreparable harm but, even if UHH is correct on the legal issue, a legal error that can be corrected on appeal—if necessary through the ordering of a new trial.²

² Again, this assumes that UHH will be able to prove that the error caused substantial harm, at all. This is doubtful in light of UHH's right

At a minimum, the harm UHH foretells is no greater than the harm the receivership, managed under the state's auspices, would endure by having to endure yet another delay of this four-year-old case if the blanket stay UHH requests were granted. *See* NRAP 8(c)(3).

C. UHH Is Unlikely to Prevail

UHH is unlikely to succeed in its appellate efforts. NRAP 8(c)(4). It faces multiple hurdles in its disqualification bid, including (1) demonstrating standing,³ (2) proving an actual conflict despite the absence of adversity in this litigation to Greenberg's former clients and the receiver's employment of independent counsel on issues implicating Xerox, (3) establishing a legal obligation on the receiver to disclose the prior representations, and (4) overcoming UHH's own delay in raising the issue, thereby forfeiting any right to deny the receiver its counsel of choice at this late stage.⁴ This Court should not countenance UHH's

to apportion any alleged blame to Xerox by means of a contribution action.

³ "The general rule is that only a former or current client has standing to bring a motion to disqualify counsel on the basis of a conflict of interest." *Liapis v. Second Jud. Dist. Ct.*, 128 Nev. 414, 420 (2012).

⁴ *See Tr. Corp. of Montana v. Piper Aircraft Corp.*, 701 F.2d 85, 87-88 (9th Cir. 1983) (unreasonable delay in moving to disqualify an attorney constitutes de facto consent to an attorney's representation and waiver of the right to object).

continued attempts to misuse a motion to disqualify as an “instrument of harassment or delay.” *Brown v. Eighth Jud. Dist. Ct.*, 116 Nev. 1200, 1205 (2000) (discussing the impropriety of using disqualifications as a litigation tactic).

Likewise, the decision to grant or deny impleader is discretionary, and the district court was well within its discretion to balance the harm of adding new parties after three-and-a-half years of litigation against the availability of a contribution action that gives UHH the same relief without disrupting this already complex, aging case.

This Court should deny the stay.

Dated this 8th day of December, 2021.

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CERTIFICATE OF SERVICE

I certify that on December 8, 2021, I submitted the foregoing “Opposition to Motion for Stay” for filing *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, addressed as follows:

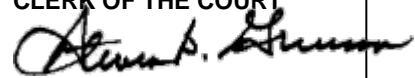
The Honorable Tara D. Clark Newberry
DISTRICT COURT JUDGE – DEPT. 16
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondent

/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT A

EXHIBIT A



OPPM

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DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA, ex rel. Commis-
sioner of Insurance, BARBARA D.
RICHARDSON, in her Official Capacity
as Receiver for NEVADA HEALTH CO-OP,

Plaintiff,

v.

MILLIMAN, INC., *et al.*,

Defendants.

Case No. A-17-760558-B
Dept. No. 16

**PLAINTIFF'S OPPOSITION TO
DEFENDANT UNITE HERE HEALTH'S
MOTION TO STAY PENDING
RESOLUTION OF NEVADA SUPREME
COURT APPEAL AND WRIT PETITION**

Plaintiff opposes Defendant Unite Here Health and Nevada Health Solutions' ("NHS") (collectively, "UHH") Motion to Stay, as a stay serves no purpose other than to delay resolution of this matter. The Motion for Stay is part of UHH's continued campaign to delay the resolution of this case in the hopes of ultimately avoiding accountability for their role in the failure of the Nevada Health CO-OP ("NHC"). Specifically, on October 8, 2020, UHH filed a Motion to Disqualify Plaintiff's counsel, Greenberg Traurig, LLP ("GT") in Eighth Judicial District Court Case Number A-15-725244, (the "Receivership Action").¹ While the Motion to Disqualify was rightly denied, UHH has continued to execute numerous legal maneuvers related to the issues they raised in that motion as delay tactics in this case. The Court should not reward UHH's dilatory tactics and should deny the Motion for Stay.

¹ The Receivership Action was initiated by the State of Nevada and sought an order declaring the insolvency of NHC and also sought to place NHC into Receivership.

1 POINTS AND AUTHORITIES

2 **I. STATEMENT OF FACTS**

3 UHH, who does not claim any present or past attorney client relationship
4 with GT, sought to disqualify GT based on two purported conflicts of interest.²
5 First, it noted that GT had represented Xerox State Healthcare, LLC (“Xerox”) in
6 two different class actions, as well as an administrative proceeding that stemmed
7 from Xerox’s role as a vendor to the Silver State Health Insurance Exchange,
8 Nevada’s effort to establish a state specific health insurance portal as part of the
9 Affordable Care Act. Second, it noted that GT had represented a creditor of the
10 Receivership Estate, Valley Health Systems (“Valley”) in the preparation and
11 submission of an administrative claim against the Estate. UHH claimed that
12 both of these prior relationships prevented GT from acting as counsel for the Re-
13 ceiver.

14 In response to the Motion to Disqualify, GT demonstrated multiple reasons
15 why the disqualification arguments were flawed. First, GT demonstrated that
16 Nevada law clearly holds that only past or present clients of a lawyer have stand-
17 ing to claim disqualification of that lawyer based on conflict of interests. Second,
18 GT demonstrated that in receivership actions it is not unusual for the same coun-
19 sel to represent both a creditor of the estate and also represent the receiver in
20 pursuing recovery from third parties. In such a situation the creditor’s interests
21 and the receiver’s interests are the same, to maximize the recovery of assets
22 which can be paid to creditors. Therefore, such a scenario does not present a
23 conflict of interest. Additionally, GT demonstrated that it was not retained to
24

25
26 _____
27 ² The arguments of the parties in relation to the motion to disqualify and the factual
28 support therefore are all documented in the briefings and exhibits submitted in the
Receivership Action relating to the Motion to Disqualify. Plaintiff asks this Court to
take judicial notice of these filings.

1 evaluate potential claims and advise the Receiver regarding what claims to pur-
2 sue, but rather to pursue specific claims as directed by the Receiver. This fact
3 totally undercut UHH's narrative regarding the issues concerning Xerox. The
4 story UHH wants to tell is that GT is somehow leading the Receiver away from
5 the pursuit of Xerox. What GT actually demonstrated was that it played no role
6 in the Receiver's determination not to pursue Xerox as a defendant.

7 In addition to all of the above arguments, GT noted for the Receivership
8 Court that even a party who has standing to seek an attorney's disqualification
9 and who has a valid basis to do so cannot sit on their rights. More than four years
10 ago, on August 25, 2017, the Receiver filed the complaint initiating this lawsuit
11 against NHS and several other parties. At the time this case was filed, GT's prior
12 representations of both Xerox and Valley were matters of public record. Further-
13 more, at the time this case was filed, NHS knew or should have known of Xerox's
14 involvement with the Silver State Exchange and the potential impact of that in-
15 volvement on the claims against NHC. At that time, NHS took no action either
16 to challenge the role of GT in this case or to implead Xerox.

17 More than three years ago, on September 24, 2018, the Receiver amended
18 the complaint to add Unite Here Health as a defendant. Similarly, at the time
19 Unite Here Health joined this litigation as a party it knew or should have known
20 of GT's prior involvement with Valley and Xerox. It also knew or should have
21 known of the bases for any third party claims against Xerox. At that time, neither
22 Unite Here Health nor NHS took any action either to challenge GT's representa-
23 tion of the Receiver or to attempt to bring Xerox in to this litigation.

24 In June 2020, three years after the filing of this lawsuit and almost two
25 years after Unite Here Health was joined in the suit, Unite Here Health and NHS
26 began their current campaign to further delay a reckoning on the merits, first by
27 serving discovery about the Receiver's decision-making process as to Xerox, and
28 then by filing the Motion to Disqualify on October 8, 2020. Finally, on October

1 15, 2020, UHH sought, *for the first time*, to add Xerox as a party to this case by
2 seeking leave of this court to file a third party complaint against Xerox.

3 In light of the years of delay for UHH to add Xerox to this case, and in light
4 of UHH's ability to pursue Xerox in a separate action, this Court correctly denied
5 the Motion to Implead. Likewise, the Receivership Court denied Motion to Dis-
6 qualify in light of all the issues identified above. UHH has sought relief from the
7 Nevada Supreme Court from the order denying the Motion to Disqualify.³ UHH
8 has also requested the Nevada Supreme Court issue an extraordinary writ re-
9 versing this Court's decision denying UHH leave to add Xerox as a party to this
10 case (the "Writ Petition"). UHH now asks this Court to halt all activity on this
11 case, which still requires extensive discovery in order to prepare for trial, pending
12 the Nevada Supreme Court's resolution of both the Appeal and the Writ Petition.

13 **II. A STAY IS UNNECESSARY AND WILL ONLY DELAY THE PROCEEDINGS**

14 **A. UHH Cannot Meet Any of the Factors Justifying a Stay**

15 In deciding whether to issue a stay, a court generally considers the follow-
16 ing factors:

- 17 (1) Whether the object of the appeal or writ petition will be defeated
if the stay is denied;
- 18 (2) Whether appellant/petitioner will suffer irreparable or serious
injury if the stay is denied;
- 19 (3) Whether respondent/real party in interest will suffer irreparable
or serious injury if the stay is granted; and
- 20 (4) Whether appellant/petitioner is likely to prevail on the merits in
the appeal or writ petition.

21 NRAP 8(c); *Hansen v. Eighth Judicial Dist. Court ex rel. County of Clark*, 116
22 Nev. 650, 657, 6 P.3d 982, 986 (2000). The Nevada Supreme Court has "not as-
23 cribed particular weights to any of the stay factors in the civil context." *State v.*
24

25 ³ UHH has submitted multiple filings to the Nevada Supreme Court regarding the Mo-
26 tion to Disqualify purporting to both appeal the order denying that motion and request-
27 ing extraordinary writ relief concerning the order denying that motion. Without con-
28 ceding the procedural propriety of any of those filings, for purposes of this opposition,
the Receiver will refer to all of UHH's efforts to seek review of the denial of its Motion
to Disqualify collectively as the "Appeal."

1 *Robles-Nieves*, 129 Nev. Adv. Op. 55, 306 P.3d 399, 403 (2013). UHH cannot es-
2 tablish any of these factors.

3
4 **B. Denying a Stay Will Not Defeat the Object**
5 **of the Appeal or Writ Petition**

6 UHH argues that the object of the Appeal and Writ Petition will be de-
7 feated if the stay is denied. Specifically, UHH claims the object of the Appeal
8 will be defeated because “Greenberg’s continued participation in this case is de-
9 stroying the impartiality and fairness of this proceeding,” including the alleged
10 failure to sue Xerox. (Motion for Stay, at 22). In UHH’s view, the object of the
11 Writ Petition will be defeated due to the waste of judicial and party resources.
12 (*Id.* at 24). Neither of these constitute a defeat of the object of the Appeal or
13 Writ Petition.

14 When considering “[w]hether the object of the appeal or writ petition will
15 be defeated if the stay is denied,” Nevada courts have looked to see if the resolu-
16 tion of the appeal or writ will have a substantive impact on the case proceed-
17 ings. For example, the Nevada Supreme Court found that the object of the writ
18 petition challenging an order denying motion to quash service of process for lack
19 of personal jurisdiction would not be defeated if the stay was denied. *Hansen*,
20 116 Nev. at 657, 6 P.3d at 986. The court observed that defendant “will not
21 waive its jurisdictional defense by answering after its motion to quash was de-
22 nied; as [defendant] timely challenged jurisdiction, Rule 12’s waiver provisions
do not apply.” *Id.*

23 Similarly, the Nevada Supreme Court found that the object of the appeal
24 would be destroyed in a case challenging denial of a motion to compel arbitra-
25 tion. *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 39
26 (2004). The court held that

27 [g]iven the interlocutory nature of an appeal seeking to compel arbi-
28 tration, and the purposes of arbitration, the first stay factor takes
on added significance. The object of an appeal seeking to compel ar-

1 bitration is to enforce the arbitration agreement and attain the bar-
2 gained-for benefits of arbitration. As a result, because the object of
3 an appeal seeking to compel arbitration will likely be defeated if a
4 stay is denied, a stay is generally warranted.

5 *Id.* Even so, the court noted further that a “stay is not automatic, however.
6 NRAP 8(c)’s other stay factors also apply in the stay analysis.” *Id.*

7 As the *Hansen* and *Mikohn Gaming Corp.* courts observed, for denial of a
8 stay to defeat the object of an appeal or writ petition, the right at issue has to be
9 substantially and negatively impacted by continuation of the proceedings. That
10 is not the case here, as UHH’s weak arguments make clear.

11 This case can proceed without defeating the object of the Appeal because
12 its outcome will not impact the course of this litigation through trial in any
13 meaningful way. Obviously, if the Nevada Supreme Court follows the law and
14 upholds the denial of the Motion to Disqualify, this case will proceed the same
15 regardless of whether the Court grants the Motion to Stay. Even if the Nevada
16 Supreme Court were to reverse the Receivership Court’s denial of the Motion to
17 Disqualify, such a ruling would not be dispositive of any substantive issue in
18 the case. Reversal would only impact the identity of the counsel representing
19 the Receiver. Most significantly, reversal of the Receivership Court’s ruling
20 would not impact the Receiver’s strategy vis a vis Xerox, as that strategy was
21 independently determined by the Receiver. In the unlikely event that the Ne-
22 vada Supreme Court were to reverse the Receivership Court’s ruling, the Re-
23 ceiver would pursue the same approach to the claims against the existing De-
24 fendants in this case and, indeed would adhere to her prior strategy of not pur-
25 suing claims against Xerox. The only thing accomplished by a stay in this sce-
26 nario is a delay in the proceedings – UHH’s true goal.

27 A stay is also not necessary to preserve the object of the Writ Petition. As
28 noted by the Court, UHH retains the option to pursue separate litigation
 against Xerox. Moreover, the inability of UHH to add Xerox as a party to this

1 litigation does not impair its ability to question witnesses in this case about
2 Xerox's involvement with the Nevada Exchange and ultimately to argue that
3 Xerox is responsible for damages suffered by NHC. This case can proceed with-
4 out defeating any legitimate object of the either the Appeal or the Writ Petition.

5
6 **C. UHH Will Not Suffer Irreparable
or Serious Injury if the Stay is Denied**

7 As the case presently stands, UHH remains free to conduct discovery con-
8 cerning Xerox and to ultimately argue that Xerox is partially or completely re-
9 sponsible for the damages suffered by NHC. Indeed, UHH's Motion for Stay
10 acknowledges that in a recent deposition in this case, the deponent was ques-
11 tioned regarding Xerox. In an effort to manufacture a claim of harm if this case
12 is not stayed, UHH spins a scenario where judgment is entered against them in
13 this case sufficient to drive them into insolvency which insolvency would pre-
14 vent them from then pursuing separate litigation against UHH. Of course, this
15 scenario from UHH completely ignores the fact that it would have multiple ave-
16 nues to seek relief from the collection of any judgment pending their pursuit of
17 Xerox. Moreover, even if the scenario posited by UHH came to pass, then any
18 harm realized by UHH would be self-inflicted harm caused by UHH's curious
19 decision to refrain for years from attempting to implead the party they now
20 claim is the central figure in NHC's failure.

21 UHH's arguments that Xerox's potential entry into the case as a third-
22 party defendant will create additional costs and expenses is also meritless. The
23 Nevada Supreme Court has held that "litigation expenses, while potentially
24 substantial, are neither irreparable nor serious." *Hansen*, 116 Nev. at 658, 6
25 P.3d at 986-87; *see, e.g., Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029,
26 1029-30 (1987) (noting that, with respect to injunctive relief, irreparable harm
27 is harm for which compensatory damages would be inadequate, such as the sale
28 of a home at trustee's sale, because real property is unique); *Berryman v. Int'l*

1 *Bhd. Elec. Workers*, 82 Nev. 277, 280, 416 P.2d 387, 389 (1966) (stating that
2 with respect to harm, there should be a “reasonable probability that real injury
3 will occur if the injunction does not issue”); *Wisconsin Gas Co. v. F.E.R.C.*, 758
4 F.2d 669, 674 (D.C. Cir. 1985) (noting that “[m]ere injuries, however substan-
5 tial, in terms of money, time and energy necessarily expended in the absence of
6 a stay are not enough” to show irreparable harm).

7 This Court has already determined that it was not necessary to allow
8 UHH to amend to plead a claim against Xerox for at least three reasons, implic-
9 itly having weighed the relative impact on the parties:

10 (1) This case has already proceeded so far without the involvement of
11 Xerox that to introduce a new party now would cause unnecessary delay to the
12 existing parties. UHH’s strategic reasons to add another party are insufficient
13 to slow down the timely resolutions of the existing claims.

14 (2) This is particularly true because UHH does not need to bring a
15 third-party complaint to effectuate a contribution or indemnity claim against
16 Xerox. UHH can fully defend the current action and, if it loses here, it can
17 bring a separate claim for contribution and indemnity. If UHH is as blameless
18 as it alleges, a second action will be unnecessary.

19 (3) The Court also contemplated that it would be needless to grant the
20 amendment where it would create a gratuitous conflict for existing counsel.

21 (5/26/21 Order Denying Motions.)

22 Unlike UHH, the Receivership Estate will suffer significant harm if this
23 case is stayed pending the resolution of the appellate proceedings. The resolu-
24 tion of this case has already been delayed multiple times. As time progresses,
25 witnesses’ recall of the evidence will fade. Accordingly, the Receiver’s ability to
26 effectively complete trial preparations in this case will be significantly impaired
27 if UHH’s request for a lengthy stay is granted. When balancing the relative
28

1 harms, denying UHH's Motion for Stay is the appropriate way to minimize the
2 harm to all parties.

3 **D. UHH Is Unlikely to Prevail on Appeal**

4 There is minimal likelihood that UHH will succeed in any of its appellate
5 efforts. All of UHH's arguments rest on its claim that the Receiver's counsel
6 should be disqualified due to a conflict of interest. UHH faces multiple serious
7 challenges in pursuing the Appeal. First, UHH lacks standing to even raise the
8 issue of disqualification based on conflicts of interest. "The general rule is that
9 only a former or current client has standing to bring a motion to disqualify
10 counsel on the basis of a conflict of interest." *Liapis v. Second Jud. Dist. Ct.*,
11 128 Nev. 414, 420 (2012). Second, as to both Xerox and Valley, GT has provided
12 extensive evidence and case authority demonstrating that there is no conflict
13 primarily because UHH fundamentally misunderstands the scope of GT's repre-
14 sentation. Finally, even if UHH had standing and there were an actual conflict
15 relating to GT's representation, UHH waited far too long to raise this issue and
16 have therefore waived any claim its might have had. A party's unreasonable de-
17 lay in moving to disqualify an attorney constitutes de facto consent to an attor-
18 ney's representation and waiver of the right to object. *See, Tr. Corp. of Mon-*
19 *tana v. Piper Aircraft Corp.*, 701 F.2d 85, 87-88 (9th Cir. 1983).

20 This Court should not countenance UHH's continued attempts to misuse
21 a motion to disqualify as an "instrument of harassment or delay." *Brown v.*
22 *Eighth Jud. Dist. Ct.*, 116 Nev. 1200, 1205 (2000) (discussing the impropriety of
23 using disqualifications as a litigation tactic).

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CONCLUSION

UHH's Motion to Stay should be denied.

Dated this 19th day of October, 2021.

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CERTIFICATE OF SERVICE

I certify that on October 19, 2021, I served the foregoing “Plaintiff’s
Opposition to Defendant Unite Here Health’s Motion to Stay Pending Resolution
of Nevada Supreme Court Appeal and Writ Petition” through the Court’s
electronic filing system, electronic service of the foregoing documents shall be
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