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UNITE HERE HEALTH; AND NEVADA
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12 IN THE SUPREME COURT OF THE STATE OF NEVADA

13 UNITE HERE HEALTH; AND
14 NEVADA HEALTH SOLUTIONS, LLC,

15 Appellants,

16 vs.

17 STATE OF NEVADA, EX REL.
18 COMMISSIONER OF INSURANCE,
19 BARBARA D. RICHARDSON, IN HER
20 OFFICIAL CAPACITY AS
STATUTORY RECEIVER FOR
DELINQUENT DOMESTIC

Supreme Court No. 82467
District Court No. A-15-725244-C

(Consolidated with Supreme Court
No. 82552)

**REPLY IN SUPPORT OF
MOTION TO STAY RELATED
DISTRICT COURT ACTION
PENDING RESOLUTION OF
APPEAL AND/OR PETITION
FOR EXTRAORDINARY
WRIT RELIEF**

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INSURER, NEVADA HEALTH CO-OP;
and GREENBERG TRAURIG, LLP,

Respondents.

UNITE HERE HEALTH; AND
NEVADA HEALTH SOLUTIONS, LLC,

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.

Supreme Court No. 82552
District Court No. A-15-725244-C

I. INTRODUCTION

A fair trial, untainted by Greenberg's¹ undisclosed and actively concealed conflicts of interest — not delay — is the object of UHH's Appeal.² Greenberg's continued participation in the Milliman Action warrants a stay while the Appeal is pending. Specifically, the continuation of the proceedings while this Appeal is pending, in and of itself, constitutes irreparable harm due to the great likelihood that Greenberg's conflicts of interest will taint the underlying proceedings and destroy the public's confidence in the fairness and impartiality of the Milliman Action, *see Grimes v. Dist. of Columbia*, 794 F.3d 83, 90 (D.C. Cir. 2015), especially considering the Receiver (Greenberg's client) should be conducting the Milliman Action as a fair and impartial officer of the Court.

Given the irreparable harm that will occur if the Milliman Action proceeds with discovery, pre-trial motions, and trial before the Appeal is fully resolved, UHH respectfully requests that this Court grant its Motion to Stay.

¹ In the interest of judicial economy and efficiency, UHH will continue to refer to the short names set forth and defined in its Motion to Stay filed on November 17, 2021.

² Upon discovery of Greenberg's conflicts, UHH promptly moved for disqualification, (Mot. to Stay, at Ex. B, at 14:16-16:6), and UHH immediately moved for a stay in the Milliman Action after the Receiver refused to confirm that its alleged conflicts counsel (and not Greenberg) would be participating in upcoming depositions in the Action. (*Id.* at 19:12-20:19.)

II. ARGUMENT

A. The Object of the Appeal Will Be Defeated if a Stay Is Denied.

The Receiver asserts that being forced to proceed with a trial “under erroneous legal rulings” is not sufficient to establish that the object of an appeal will be defeated if a motion to stay is denied. (Resp. at 5.) However, in this case, the parties will not just be proceeding with a trial under an erroneous ruling denying the Motion to Disqualify. Rather, they will be proceeding with discovery, pre-trial motions, and trial in an action tainted by Greenberg’s conflicts of interest such that all public trust and confidence in the impartiality and fairness of the action will be lost. *See Grimes*, 794 F.3d at 90.

The Receiver is also dismissive of UHH’s concern that any discovery and pre-trial motions that Greenberg participates in prior to the resolution of the Appeal, and possibly the trial of the Milliman Action itself, will have to be re-done if Greenberg is ultimately disqualified and the Motion to Stay is denied. (Resp. at 6.) This is ironic, considering that the Receiver represents the interests of all of the creditors of the CO-OP’s receivership estate, (Opening Br. at 59:4-8), and the CO-OP’s receivership estate currently lacks sufficient funds to satisfy the creditor’s claims. (*Id.* at 16:16-17:6 (demonstrating that as of February 2021, creditor claims exceeded \$35 million and the estate’s cash assets were less than \$4.5 million).) Therefore, it is nonsensical for the

Receiver to oppose a brief stay of the Milliman Action pending resolution of this Appeal. Being forced to redo discovery, pre-trial motions, and trial upon Greenberg’s disqualification will only serve to further deplete the assets of the Receivership Estate and delay resolution for the CO-OP’s creditors (which include UHH).

B. UHH Will Suffer Irreparable Harm if the Stay Is Denied.

The Receiver failed to refute any of UHH’s arguments regarding the irreparable harm it will suffer if the Milliman Action proceeds with Greenberg’s participation in discovery, pre-trial motions, and trial prior to the resolution of this Appeal. (Resp. at 7-9.) In fact, the Receiver’s entire argument regarding an alleged lack of irreparable harm is devoted to UHH’s writ petition concerning the denial of its motion for leave to implead Xerox in the Milliman Action – an issue which is the subject of a separate Motion to Stay in Case No. 83135. (*Id.*)

As set forth in the Motion to Stay, most courts will stay all proceedings when a motion to disqualify counsel is pending in order to avoid the irreparable harm of tainted proceedings. (Mot. to Stay at 2:4-17, 7:1-8:8.) Conflicted counsel should not be permitted to participate in discovery, pre-trial motions, or trial until the motion to disqualify has been resolved. *See, e.g., Bowers v. Ophthalmology Group*, 733 F.3d 647, 654 (6th Cir. 2013) (holding that when a

1 motion to disqualify has been filed, “a court should not reach the other
2 questions or motions presented to it through disqualified counsel”); *Grimes*,
3 794 F.3d at 90 (“Resolving asserted conflicts before deciding substantive
4 motions assures that no conflict taints the proceeding, impairs the public’s
5 confidence, or infects any substantive motion prepared by or under the auspices
6 of conflicted counsel.”). The Receiver — without any authority — asserts that
7 because Greenberg does not possess UHH’s confidential information, a stay is
8 inappropriate. Yet again, the Receiver ignores the plethora of authority cited in
9 the Appeal which outlines the significant harm of this particular type of
10 conflict. (Opening Br. at 38:16-40:3; 49:7-50:13, 51:3-53:2; 59:14-60:6.)

11 **C. The Receiver Will Not Be Prejudiced by a Stay.**

12 The Receiver does not dispute that it will suffer no prejudice if a stay is
13 granted. At best, it objects that UHH seeks to stay the entire Milliman Action,
14 “including as to parties in the district court that are not part of UHH’s appeal
15 and writ petitions.” (Resp. at 1.) This argument is unavailing. No other
16 defendant in the Milliman Action has opposed UHH’s Motion to Stay. More
17 importantly, as set forth in Section II(B), *supra*, most courts addressing the
18 issue have determined that *all parties* will suffer irreparable harm if an action
19 proceeds before a motion to disqualify is resolved, as the taint of counsel’s
20 conflicts of interest infect the *entire* proceeding. *Grimes*, 794 F.3d at 90.

1 **D. UHH Is Likely to Prevail on the Merits of the Appeal.**

2 The issues raised by the Receiver regarding the merits of UHH’s appeal
3 have each been addressed in great detail — and refuted — in UHH’s Opening
4 Brief, Petition for Extraordinary Writ Relief, and Consolidated Reply Brief.
5 (Opening Br. at 59:1-62:2, 49:4-58:17 (proving conflicts warranting
6 disqualification), 37:1-49:3 (establishing obligation to disclose); Pet. at 34:3-
7 35:15 (standing), 28:3-34:2 (proving conflicts warranting disqualification),
8 20:1-28:2 (establishing obligation to disclose); Consol. Reply at 27-28
9 (standing); 14-26 (proving conflicts warranting disqualification); 29-30 (no
10 delay or waiver of right to raise issue).)

11 **III. CONCLUSION**

12 For the foregoing reasons, UHH respectfully requests that this Court stay
13 the Milliman Action pending the resolution of the Appeal.

14 DATED this 15th day of December, 2021.

15 BAILEY❖KENNEDY

16 By: /s/ Dennis L. Kennedy
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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 15th day of December, 2021, service of the foregoing **REPLY IN SUPPORT OF MOTION TO STAY RELATED DISTRICT COURT ACTION PENDING RESOLUTION OF APPEAL AND/OR PETITION FOR EXTRAORDINARY WRIT RELIEF** was made by electronic service through Nevada Supreme Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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VIA E-MAIL

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