

IN THE SUPREME COURT OF NEVADA

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,

Electronically Filed
Mar 16 2022 01:18 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Petitioners,

vs.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK, THE HONORABLE TIMOTHY C.
WILLIAMS, DISTRICT COURT JUDGE,

Respondent

- and -

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

Real Party in Interest.

District Court Case No. A-17-760558-B, Department XVI

PETITIONERS' REPLY APPENDIX - VOLUME 1 OF 2

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SOLUTIONS, LLC

March 16, 2022

PETITIONERS' REPLY APPENDIX
VOLUME 1 OF 2

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PETITIONERS' REPLY APPENDIX

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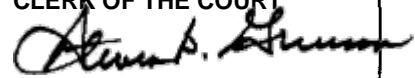
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TAB 1

TAB 1



OSCJC

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,

vs

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;
LINDA MATTOON, an Individual; TOM
ZUMTOBEL, an Individual; BOBBETTE
BOND, an Individual; KATHLEEN SILVER, an
Individual; DOES I through X inclusive; and
ROE CORPORATIONS I-X, inclusive

Defendants.

CASE NO. A-17-760558-B
DEPT. NO. XXV

BUSINESS COURT SCHEDULING ORDER SETTING
CIVIL JURY TRIAL AND PRE-TRIAL CONFERENCE/CALENDAR CALL

This BUSINESS COURT SCHEDULING ORDER SETTING TRIAL ("Scheduling Order") is entered following the Rule 16 conference conducted on January 23, 2018. Pursuant to NRCP 16.1(f) this case has been deemed complex and all discovery disputes will be resolved by this Court. Based upon the information presented at the conference and the

KATHLEEN E. DELANEY
DISTRICT JUDGE
DEPARTMENT XXV

1 agreement of the parties, EDCR Rule 2.55 is superseded by this Scheduling Order. This Order
2 may be amended or modified by the Court upon good cause shown.

3 **IT IS HEREBY ORDERED** that the parties will comply with the following deadlines:

4	Motions to amend pleadings or add parties	10/22/18
5	Designation of experts pursuant to NRCP 16.1(a)(2)	10/22/18
6	Designation of rebuttal experts pursuant to NRCP 16.1(a)(2)	11/21/18
7	Discovery Cut Off	01/25/19
8	Motions in Limine or other Dispositive Motions	02/22/19

9
10 **IT IS HEREBY ORDERED** that a mandatory settlement conference has been set for **Friday,**
11 **June 8, 2018 at 10:00 a.m.** with District Court Judge Nancy Allf.

12 **IT IS HEREBY ORDERED THAT:**

13 A. The above entitled case is set to be tried to a jury on a **five week stack** to begin
14 **May 20, 2019 at 10:30 a.m.**

15 B. A calendar call will be held on **May 14, 2019 at 10:30 a.m.** Parties must bring to
16 Calendar Call the following:

- 17
18 (1) Typed exhibit lists;
19 (2) List of depositions;
20 (3) Courtesy copies of any legal briefs on trial issues.

21 The Final Pretrial Conference may be set at the time of the Calendar Call.

22 C. The Pre-Trial Memorandum must be filed no later than **May 6, 2019** with a
23 courtesy copy delivered to Department XXV. All parties, (Attorneys and parties in proper
24 person) **MUST** comply with **All REQUIREMENTS** of EDCR 2.67, 2.68 and 2.69. Counsel
25 should include in the Memorandum an identification of orders on all motions in limine or
26 motions for partial summary judgment previously made, a summary of any anticipated legal
27 issues remaining, a brief summary of the opinions to be offered by any witness to be called to
28 offer opinion testimony as well as any objections to the opinion testimony.

1 D. All motions in limine must be in writing and filed no later than **February 22,**
2 **2019. Orders shortening time will not be signed except in extreme emergencies.**

3 E. All original depositions anticipated to be used in any manner during the trial must
4 be delivered to the clerk prior to the final Pre-Trial Conference. If deposition testimony is
5 anticipated to be used in lieu of live testimony, a designation (by page/line citation) of the
6 portions of the testimony to be offered must be filed and served by facsimile or hand, two (2)
7 judicial days prior to the final Pre-Trial Conference. Any objections or counter-designations
8 (by page/line citation) of testimony must be filed and served by facsimile or hand, one (1)
9 judicial day prior to the final Pre-Trial Conference commencement. Counsel shall advise the
10 clerk prior to publication.
11

12 F. In accordance with EDCR 2.67, counsel shall meet, review, and discuss exhibits.
13 All exhibits must comply with EDCR 2.27. Two (2) sets must be three hole punched placed in
14 three ring binders along with the exhibit list. The sets must be delivered to the clerk prior to
15 the final Pre-Trial Conference. Any demonstrative exhibits including exemplars anticipated to
16 be used must be disclosed prior to the calendar call. Pursuant to EDCR 2.68, at the final Pre-
17 Trial Conference, counsel shall be prepared to stipulate or make specific objections to
18 individual proposed exhibits. Unless otherwise agreed to by the parties, demonstrative exhibits
19 are marked for identification but not admitted into evidence.
20

21 G. In accordance with EDCR 2.67, counsel shall meet, review, and discuss items to
22 be included in the Jury Notebook. Pursuant to EDCR 2.68, at the final Pre-Trial Conference,
23 counsel shall be prepared to stipulate or make specific objections to items to be included in the
24 Jury Notebook.
25

26 H. In accordance with EDCR 2.67, counsel shall meet and discuss preinstructions to
27 the jury, jury instructions, special interrogatories, if requested, and verdict forms. Each side
28 shall provide the Court, at the final Pre-Trial Conference, an agreed set of jury instructions and

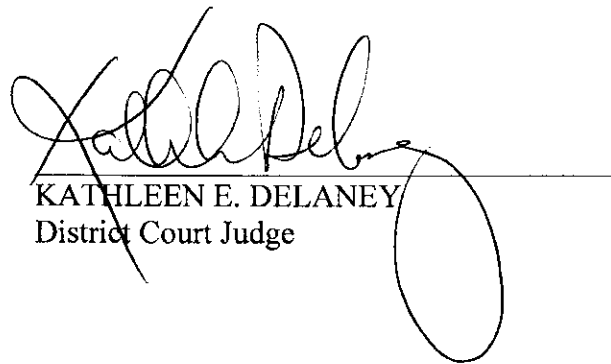
1 proposed form of verdict along with any additional proposed jury instructions with an
2 electronic copy in Word format.

3 I. In accordance with EDCR 7.70, counsel shall file and serve by facsimile or hand,
4 two (2) judicial days prior to the final Pre-Trial Conference voir dire proposed to be conducted
5 pursuant to conducted pursuant to EDCR 2.68.

6 **Failure of the designated trial attorney or any party appearing in proper person to**
7 **appear for any court appearances or to comply with this Order shall result in any of the**
8 **following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4)**
9 **vacation of trial date; and/or any other appropriate remedy or sanction.**

10
11 Counsel is required to advise the Court immediately when the case settles or is otherwise
12 resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate
13 whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial.
14 A copy should be given to Chambers.


15 DATED: January 24, 2018.

16
17 
18 KATHLEEN E. DELANEY
19 District Court Judge
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KATHLEEN E. DELANEY
DISTRICT JUDGE
DEPARTMENT XXV

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of the foregoing **BUSINESS**
COURT SCHEDULING ORDER SETTING CIVIL JURY TRIAL AND PRE-TRIAL
CONFERENCE/CALENDAR CALL was electronically served upon all registered parties
for the above-referenced matter.


Cindy Springberg
Judicial Executive Assistant

KATHLEEN E. DELANEY
DISTRICT JUDGE
DEPARTMENT XXV

TAB 2

TAB 2

A-17-760558-B Nevada Commissioner of Insurance, Plaintiff(s)
vs.
Milliman Inc, Defendant(s)

August 21, 2018 09:00 AM All Pending Motions

HEARD BY: Williams, Timothy C. COURTROOM: RJC Courtroom 03H

COURT CLERK: Kidd, Lauren

RECORDER:

REPORTER: Isom, Peggy

PARTIES PRESENT:

Donald L. Prunty	Attorney for Plaintiff
Evan L. James	Attorney for Defendant
Mark E. Ferrario, ESQ	Attorney for Plaintiff
Mathew Pruitt, ESQ	Attorney for Defendant
Russell B Brown	Attorney for Defendant

JOURNAL ENTRIES

PLAINTIFF'S MOTION TO AMEND COMPLAINT...STATUS CHECK: 16.1 CASE CONFERENCE

There being no opposition, COURT ORDERED, Plaintiff's Motion to Amend Complaint GRANTED. Mr. Ferraro noted counsel needed to extend the discovery deadline and requested the Court modify the current order to continue dates. Upon Court's inquiry, Mr. Ferraro requested the trial date be moved to the Fall of 2019 and corresponding discovery dates be set back from that date. Mr. Ferraro advised he had some disclosures, was pursuing depositions of Larson and the Amended Complaint needs to be served to begin Order based discovery. Upon Court's inquiry, counsel advised they had a 16.1 conference for the current Order. COURT ORDERED, Trial dates VACATED and RESET; Status Check SET in 60 days. Mr. Ferraro advised Mr. Prunty notified him of an issue regarding the depositions having a 7 hour time limit. Counsel advised some of the depositions required more time. Court advised they would discuss the matter at the Status Check. Colloquy regarding staggering of expert witnesses. Expert witness reports to be further discussed at the Status Check.

10/23/18 9:00 AM STATUS CHECK: DISCOVERY/EXPERT WITNESSES

8/21/19 10:30 AM PRETRIAL/CALENDAR CALL

10/14/19 9:30 AM JURY TRIAL

TAB 3

TAB 3

Steven D. Grierson

ARJT

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,

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

Plaintiff,

vs.

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; Marth 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; LINDA MATTOON,
an Individual; BOBBETTE BOND, an
Individual; KATHLEEN SILVER, an
Individual; DOES I through X Inclusive; and
ROE CORPORATIONS I-X, inclusive,
Defendants.



**AMENDED ORDER SETTING CIVIL JURY TRIAL,
PRE-TRIAL, CALENDAR CALL, AND DEADLINES FOR MOTIONS;
AMENDED DISCOVERY SCHEDULING ORDER**

Pursuant to the Status Check held on August 21, 2018, the Discovery Deadlines and Trial
dates are hereby amended as follows:

IT IS HEREBY ORDERED that the parties will comply with the following deadlines:

...

1 Motions to amend pleadings or add parties April 29, 2019
2
3 Designation of experts pursuant to NRCP 16.1(a)(2) April 29, 2019
4 Designation of rebuttal experts pursuant to NRCP 16.1(a)(2) May 29, 2019
5 Discovery Cut Off July 26, 2019
6 Motions in Limine or other Dispositive Motions August 26, 2019

7 **IT IS HEREBY ORDERED THAT:**

8 A. A Status Check re discovery issues/depositions is scheduled to be held on
9 **Tuesday, October 23, 2018 at 9:00 am.**

10 B. The above entitled case is set to be tried to a jury on a **five week stack** to begin
11 **October 14, 2019 at 9:30 a.m.**

12 C. Pre-Trial Conference/Calendar Call will be held on **October 3, 2019 at 10:30**
13 **a.m.** Parties must bring to Calendar Call the following:

- 14
15 (1) Typed exhibit lists;
16 (2) List of depositions;
17 (3) Courtesy copies of any legal briefs on trial issues.

18 The Final Pretrial Conference may be set at the time of the Calendar Call.

19 D. The Pre-Trial Memorandum must be filed no later than **September 26, 2019**, with
20 a courtesy copy delivered to Department XVI. All parties, (Attorneys and parties in proper
21 person) **MUST** comply with **All REQUIREMENTS** of EDCR 2.67, 2.68 and 2.69. Counsel
22 should include in the Memorandum an identification of orders on all motions in limine or
23 motions for partial summary judgment previously made, a summary of any anticipated legal
24 issues remaining, a brief summary of the opinions to be offered by any witness to be called to
25 offer opinion testimony as well as any objections to the opinion testimony.

1 E. All motions in limine must be in writing and filed no later than **August 26, 2019.**
2
3 **Orders shortening time will not be signed except in extreme emergencies.**

4 F. All original depositions anticipated to be used in any manner during the trial must
5 be delivered to the clerk prior to the final Pre-Trial Conference. If deposition testimony is
6 anticipated to be used in lieu of live testimony, a designation (by page/line citation) of the
7 portions of the testimony to be offered must be filed and served by facsimile or hand, two (2)
8 judicial days prior to the final Pre-Trial Conference. Any objections or counter-designations
9 (by page/line citation) of testimony must be filed and served by facsimile or hand, one (1) judicial
10 day prior to the final Pre-Trial Conference commencement. Counsel shall advise the clerk prior
11 to publication.
12

13 G. In accordance with EDCR 2.67, counsel shall meet, review, and discuss exhibits.
14 All exhibits must comply with EDCR 2.27. Two (2) sets must be three-hole punched and placed
15 in three ring binders along with the exhibit list. The sets must be delivered to the clerk two days
16 prior to the firm trial setting (given at Pre-Trial/Calendar Call). Any demonstrative exhibits
17 including exemplars anticipated to be used must be disclosed prior to the calendar call. Pursuant
18 to EDCR 2.68, at the final Pre-Trial Conference, counsel shall be prepared to stipulate or make
19 specific objections to individual proposed exhibits. Unless otherwise agreed to by the parties,
20 demonstrative exhibits are marked for identification but not admitted into evidence.
21

22 H. In accordance with EDCR 2.67, counsel shall meet, review, and discuss items to
23 be included in the Jury Notebook. Pursuant to EDCR 2.68, at the final Pre-Trial Conference,
24 counsel shall be prepared to stipulate or make specific objections to items to be included in the
25 Jury Notebook.
26
27
28

1
2 I. In accordance with EDCR 2.67, counsel shall meet and discuss pre-instructions to
3 the jury, jury instructions, special interrogatories, if requested, and verdict forms. Each side shall
4 provide the Court, at the final Pre-Trial Conference, an agreed set of jury instructions and
5 proposed form of verdict along with any additional proposed jury instructions with an electronic
6 copy in Word format.

7 J. In accordance with EDCR 7.70, counsel shall file and serve by facsimile or hand,
8 two (2) judicial days prior to the final Pre-Trial Conference voir dire proposed to be conducted
9 pursuant to conducted pursuant to EDCR 2.68.

10
11 **Failure of the designated trial attorney or any party appearing in proper person to**
12 **appear for any court appearances or to comply with this Order shall result in any of the**
13 **following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4)**
14 **vacation of trial date; and/or any other appropriate remedy or sanction.**

15 *Counsel is asked to notify the Court Reporter at least two (2) weeks in advance if they*
16 *are going to require daily copies of the transcripts of this trial or real time court reporting.*
17 *Failure to do so may result in a delay in the production of the transcripts or the availability of*
18 *real time court reporting.*

19
20 Counsel must advise the Court immediately when the case settles or is otherwise resolved
21 prior to trial. A Stipulation which terminates a case by dismissal shall also indicate whether a
22 Scheduling Order has been filed and if a trial date has been set, and the date of that trial. A copy
23 should be given to Chambers.

24 DATED this 27th day of August, 2018

25
26 
27 TIMOTHY C. WILLIAMS
28 DISTRICT JUDGE


CERTIFICATE

I hereby certify that on or about the date filed, this document was e-served or a copy of this document was placed in the attorney's folder in the Clerk's Office or mailed to:

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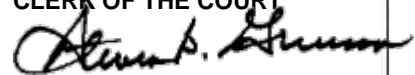
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LYNN BERKHEIMER
Judicial Executive Assistant
Dept. No. XVI

TAB 4

TAB 4



MTED

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Nevada Bar No. 6840
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Counsel for Plaintiff

**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;
LINDA MATTOON, an Individual; TOM
ZUMTOBEL, an Individual; BOBBETTE
BOND, an Individual; KATHLEEN SILVER, an
Individual; UNITED HERE HEALTH, 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.

Case No.: A-17-760558-C
Dept. No.: XVI

**MOTION TO EXTEND DISCOVERY
DEADLINES ON ORDER SHORTENING
TIME**

(FIRST REQUEST)

DEPARTMENT XVI
NOTICE OF HEARING
DATE 4-25-19 TIME 9:00 AM
APPROVED BY CJTW

04-05-19P04:52 RCVD

GREENBERG TRAURIG, LLP
10845 Griffith Peak Dr., Suite 600
Las Vegas, Nevada 89135
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

Plaintiff, Commissioner of Insurance BARBARA D. RICHARDSON ("Commissioner"), in her capacity as Receiver of Nevada Health CO-OP ("NHC" or "CO-OP"), by and through her undersigned counsel, hereby moves this Court for an extension of the deadlines to move for leave to amend pleadings or to add parties, and for the disclosure of expert witnesses in the above-captioned matter ("Motion"). This is the first request for a discovery extension. This Motion is made pursuant to EDCR 2.35 and is based upon the following memorandum of points and authorities, the pleadings and papers on file herein, the Declaration of Donald Prunty, Esq., and any oral argument this Court should choose to entertain at the time of hearing.

DATED this 5th day of April, 2019.

GREENBERG TRAURIG, LLP

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

ORDER SHORTENING TIME

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

IT IS ORDERED that the foregoing **MOTION TO EXTEND DISCOVERY DEADLINES ON ORDER SHORTENING TIME (FIRST REQUEST)** shall be heard on the **25TH** day of

April, 2019 at **9:00** a.m./p.m.

DATED this **8TH** day of April, 2019.


District Court Judge

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

AFFIDAVIT OF DONALD PRUNTY, ESQ.
IN SUPPORT OF MOTION ON ORDER SHORTENING TIME

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Donald Prunty, Esq., being first duly sworn, deposes and says:

1. I am an attorney with the law firm of Greenberg Traurig, LLP, counsel for Plaintiff. As such, I am knowledgeable of the facts contained herein and am competent to testify thereto.

2. I make this affidavit in support of Plaintiff's Motion to Extend Discovery Deadlines on Order Shortening Time ("Motion").

3. The purpose of this Motion is to extend the discovery deadlines by thirty (30) days for motions to amend pleadings or add parties, and the designation of experts and rebuttal experts. Plaintiff requests that all other existing deadlines remain as currently scheduled.

4. Plaintiff has attempted in good faith to resolve this issue without the need for court intervention.

5. The issue of extending the discovery deadlines was first raised at a status check hearing on discovery held on March 19, 2019. Due to opposition between the parties regarding extending certain deadlines but not extending other deadlines, including the trial date, the Court advised the parties that the issue would need to be heard on a motion.

6. Subsequently, Plaintiff's counsel followed up with additional meet and confer discussions on March 28, 2019 and April 4, 2019 with counsel for each of the Defendants in the case. Counsel for the Defendants either approved the extension, only approved of the extension if other deadlines were also extended, or had other issues with the original scheduling order, resulting in an impasse.

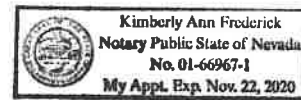
7. Because the expiration of the designation of expert witnesses is scheduled for April 29, 2019, this matter must be heard on an Order Shortening Time to enable preparation of the prepare the expert reports and to conduct the depositions of the expert witnesses without affecting the scheduled dates for the close of discovery or the trial.

8. This Motion on Order Shortening Time is made in good faith and not for purposes of delay. Pursuant to NRS 53.045, I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.



Donald Prunty, Esq.

SUBSCRIBED and SWORN to before me
this 5th day of April, 2019.


Notary Public

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

Discovery in the above-captioned matter has been ongoing for several months. In spite of extensive document production and numerous depositions by the Plaintiff, more discovery remains outstanding, including, but not limited to document production from certain Defendants and third parties, and additional depositions. This outstanding discovery jeopardizes the deadline for expert witness disclosures. Mindful of this fact and of the complexity of the case and the scope of the materials to be submitted to the experts for review, counsel for Plaintiff requested a thirty (30) day extension to the April 29, 2019 deadline for expert designations and amendments and to the May 29, 2019 deadline for designation of rebuttal experts. However, counsel for Defendants were unwilling to agree to such an extension without additional conditions, including an extension of remaining deadlines. These included an extension to the trial date, which is currently set to occur on a five week stack, beginning on October 14, 2019.

Given the inherent difficulty in scheduling the trial around the schedules of the numerous parties involved in this case, any extension of the existing trial date would result in a delay of many months for the trial. Such a delay would result in substantial expenditure of both time and resources for all parties and this Court, and more importantly, it is entirely unnecessary. Plaintiff merely

requests an extension of time to accommodate the remaining discovery so that her expert's opinions will be fully formed. Specifically, Plaintiff respectfully requests that this Court order an extension of the deadlines for designations of experts, motions to amend pleadings or add parties, and rebuttal experts for a period of thirty (30) days from the existing dates.

II. LEGAL ARGUMENT

Plaintiff requests that this Court extend certain discovery deadlines to allow the parties adequate opportunity to complete additional discovery prior to the disclosure of expert witnesses and to permit the expert witnesses adequate time to review the discovery and to prepare their reports. EDCR 2.35(a) requires an application to extend a date in the scheduling order to be supported by a showing of "good cause for the extension...within 20 days before the discovery cut-off or any extension thereof." Additionally, EDCR 2.35(b) requires each motion to extend discovery to include:

- (1) A statement specifying the discovery completed;
- (2) A specific description of the discovery that remains to be completed;
- (3) The reasons why the discovery remaining was not completed within the time limits set by the discovery order;
- (4) A proposed schedule for completing all remaining discovery;
- (5) The current trial date; and
- (6) Immediately below the title of such motion or stipulation a statement indicating whether it is the first, second, third, etc., requested extension. . .

EDCR 2.35.

A. "Good Cause" Exists to Extend the Deadline Because of the Scope of This Litigation and Outstanding Discovery.

In making a "good cause" determination to modify a scheduling order, a court considers the moving party's reasons for seeking modification, the diligence of the party seeking the modification, and the existence or degree of prejudice to the party opposing the modification. *See Howard v. Skolnik*, 2010 WL 5102251 (D.Nev. 2010), quoting *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d

1 604, 609 (9th Cir.1992). Here, each of these factors weighs greatly in favor of modification of the
2 discovery schedule.

3 As shown herein, Plaintiff has diligently sought to complete discovery in this matter, and she
4 has sought this extension outside of the 20-day limitations under EDCR 2.35. In spite of Plaintiff's
5 diligence, discovery efforts have been delayed due to disputes between the parties regarding the ESI
6 protocol and ongoing scheduling conflicts for depositions requested by Plaintiff. Moreover, several
7 third parties, including, but not limited to Milliman, Inc., have yet to produce requested
8 documentation.¹

9 Given the numerous parties and the size of this litigation, a short extension of the expert
10 witness deadline is warranted. At the outset of this matter, Plaintiff was in possession of electronic
11 and paper documents which together constituted at least one terabyte of data, much of which is
12 relevant to this action. Included in this inventory is a large volume of ESI consisting of accounting
13 and actuarial records, enrollment databases, claims and adjustment detail, documents and software
14 reports from third-party vendors, tens of thousands of e-mails, and other additional documents.
15 Defendants in this case and other third parties were also in possession of significant volumes of
16 relevant documents. The process of discovery has revealed additional matters that need to be
17 explored, which support Plaintiff's claims. The depositions of numerous named defendants and
18 additional third parties are essential for exploring these newly discovered issues.

19 There can be little or no prejudice to Defendants as a result of this modification. In fact, the
20 extension as proposed below would represent a more fair and workable schedule to perform adequate
21 discovery for each party. Indeed, Defendants are not completely opposed to such an extension – rather
22 some defendants desire to unnecessarily extend all remaining deadlines, including the trial date, while
23 another objects to the original scheduling order. Conversely, a denial of the modification would
24 substantially prejudice Plaintiff's ability to litigate its claims. While Plaintiff has established facts on
25 which to base her expert's opinions, a short extension will permit her experts sufficient time to review
26

27
28 ¹ Although Milliman is a named party, it initially prevailed on its Motion to Compel Arbitration. *See* Order Granting
Milliman's Motion to Compel Arbitration, dated March 12, 2018. Plaintiffs have contested Milliman's right to arbitration,
first via a Motion for Reconsideration, and the issue is now before the Nevada Supreme Court on a writ.

the documents and testimony supporting such facts and to clearly elucidate these facts in their reports. The complexity of the matter requires that experts be granted a longer period to review the extensive documentation that supports Plaintiff's claims. Moreover, given the newly discovered issues above, Plaintiff needs additional time to flush out such issues in discovery prior to the preparation of the experts' reports. As such, Plaintiff requires a modification of the scheduling order to avoid substantial prejudice.

B. 2.34(b) Requirements.

In addition to a showing of "good cause" for the extension, EDCR 2.34(b) requires (a) a statement specifying the discovery completed, (b) a specific description of the discovery remaining to be completed, (c) the reasons why the deadline was not satisfied, (d) a proposed schedule for completing all remaining discovery, and (e) the current trial date. These requirements are detailed below:

1. Discovery Completed.

The following discovery has been completed in this matter:

Plaintiff's Disclosures:

1. Initial disclosures, served February 9, 2018.
2. First supplemental disclosures, served September 24, 2018.
3. Second supplemental disclosures, served November 13, 2018.
4. Third supplemental disclosures, served December 7, 2018.
5. Fourth supplemental disclosures, served December 17, 2018.
6. Fifth supplemental disclosures, served January 3, 2019.
7. Sixth supplemental disclosures, served January 24, 2019.
8. Seventh supplemental disclosures, served February 14, 2019.
9. Eighth supplemental disclosures, served March 14, 2019.

Defendants' Disclosures:

Defendants Kathleen Silver, Bobbette Bond, Tom Zumtobel, Pam Egan, Basil Dibsie, and Linda Mattoon

1. Initial Disclosures, served February 8, 2018.

2. First Supplemental Disclosures, served September 20, 2018.
3. Second Supplemental Disclosures, served September 26, 2018.
4. Third Supplemental Disclosures, served December 10, 2018.
5. Fourth Supplemental Disclosures, served January 31, 2019.
6. Fifth Supplemental Disclosures, served March 4, 2019.

Defendants InsureMonkey, Inc. and Alex Rivlin

1. Initial Disclosures, served August 27, 2018.

Defendants, Larson & Company, P.C., Martha Hayes and Dennis T. Larson

1. Initial Disclosures, served March 23, 2018.
2. First Supplemental Disclosures, September 21, 2018.
3. Second Supplemental Disclosures, served January 28, 2019.
4. Third Supplemental Disclosures, served March 14, 2019.

Plaintiff has propounded the following written discovery:

1. First Set of Requests for Production to Larson & Company, served on April 9, 2018.

Larson & Company served its responses on May 23, 2018.

2. First Set of Requests for Production to Millennium Consulting Services, LLC, served on April 9, 2018. No response by Millennium Consulting Services, LLC has been served.

3. First Set of Requests for Production to Nevada Health Solutions, LLC, served on June 4, 2018. Nevada Health Solutions, LLC served its responses on July 6, 2018.

4. First Set of Requests for Production to InsureMonkey, Inc., served on June 27, 2018. InsureMonkey served its responses to Requests for Production No. 55 and No. 93 on August 8, 2018. It served its remaining responses on August 23, 2018.

5. First Set of Requests for Admission to Tom Zumtobel served October 23, 2018. Tom Zumtobel served his responses on December 10, 2018.

6. First Set of Requests for Admission to Pamela Egan, served October 23, 2018. Pamela Egan served her responses on December 10, 2018.

1 7. First Set of Requests for Admission to Linda Mattoon, served October 23, 2018. Linda
2 Mattoon served her responses on December 10, 2018.

3 8. First Set of Requests for Admission to Kathleen Silver, served October 23, 2018.
4 Kathleen Silver served her responses on December 10, 2018.

5 9. First Set of Requests for Admission to Bobette Bond, served October 23, 2018.
6 Bobette Bond served her responses on December 10, 2018.

7 10. First Set of Requests for Admission to Basil Dibsie, served October 23, 2018. Basil
8 Dibsie served his responses on December 10, 2018.

9 11. First Set of Interrogatories to Tom Zumtobel, served October 23, 2018. Tom Zumtobel
10 served his responses on December 6, 2018.

11 12. First Set of Interrogatories to Pamela Egan, served October 23, 2018. Pamela Egan
12 served her responses on November 30, 2018.

13 13. First Set of Interrogatories to Linda Mattoon, served October 23, 2018. Linda Mattoon
14 served her responses on November 30, 2018.

15 14. First Set of Interrogatories to Kathleen Silver, served October 23, 2018. Kathleen
16 Silver served her responses on December 11, 2018.

17 15. First Set of Interrogatories to Bobette Bond, served October 23, 2018. Bobette Bond
18 served her responses on December 11, 2018.

19 16. First Set of Interrogatories to Basil Dibsie, served October 23, 2018. Basil Dibsie
20 served his responses on November 30, 2018.

21 17. First Set of Request for Production of Documents to Tom Zumtobel, served October
22 23, 2018. Tom Zumtobel served his responses on December 10, 2018.

23 18. First Set of Request for Production of Documents to Pamela Egan, served October 23,
24 2018. Pam Egan served her responses on December 10, 2018.

25 19. First Set of Request for Production of Documents to an, Linda Mattoon, served
26 October 23, 2018. Linda Mattoon served her response on December 10, 2018.

20. First Set of Request for Production of Documents to Kathleen Silver, served October 23, 2018. Kathleen Silver served her responses on December 10, 2018.

21. First Set of Request for Production of Documents to Bobette Bond, served October 23, 2018. Bobette Bond served her responses on December 10, 2018.

22. First Set of Request for Production of Documents to Basil Dibsie, served October 23, 2018. Basil Dibsie served his responses on December 10, 2018.

23. First Set of Requests for Admission to Larson & Company, served October 25, 2018. Larson & Company served its responses on December 10, 2018.

24. First Set of Interrogatories to Larson & Company, served October 25, 2018. Larson & Company served its responses on December 20, 2018.

25. First Set of Interrogatories to InsureMonkey, Inc., served October 29, 2018. InsureMonkey served its responses on December 3, 2018.

26. First Set of Requests for Production to Unite Here Health, served November 2, 2018. Unite Here Health served its responses on December 5, 2018.

27. First Set of Interrogatories to Unite Here Health, served January 30, 2019. Unite Here Health served its responses on March 4, 2019.

Defendants have propounded the following written discovery:

1. InsureMonkey, Inc.'s First Set of Requests for Admission. Plaintiff provided her response on September 21, 2018.

2. InsureMonkey, Inc.'s First Set of Interrogatories. Plaintiff provided her response on September 21, 2018.

3. Insuremonkey, Inc.'s First Set of Requests for Production. Plaintiff provided her response on September 24, 2018.

4. Kathleen Silver, Bobbette Bond, Tom Zumtobel, Pam Egan, Basil Dibsie and Linda Mattoon's First Set of Requests for Production of Documents. Plaintiff provided her response on December 17, 2018.

1 5. Bobbette Bond, Pamela Egan, Linda Mattoon, and Kathleen Silver's First Set of
2 Interrogatories. Plaintiff provided her response on December 13, 2018.

3 6. Tom Zumtobel and Basil Dibsie's First Set of Interrogatories. Plaintiff provided her
4 response on December 14, 2018.

5 7. Kathleen Silver, Bobbette Bond, Tom Zumtobel, Pam Egan, Basil Dibsie and Linda
6 Mattoon's Second Set of Requests for Production of Documents. Plaintiff provided her response on
7 January 3, 2019, and a First Supplemental Response on January 24, 2019.

8 8. Unite Here Health's First Set of Request for Production of Documents to Plaintiff,
9 served on February 22, 2019. Plaintiff's responses to Unite Here Health's Request for Production of
10 Documents are in process.

11 9. Unite Here Health's First Set of Interrogatories to Plaintiff, served March 5, 2019.
12 Plaintiff's responses to Unite Here Health's First Set of Interrogatories are in process.

13 **Depositions of the following witnesses have taken place:**

- 14 1. Dennis T. Larson, taken by Plaintiff on November 6, 2018.
15 2. Martha Hayes, taken by Plaintiff on November 7-8, 2018.
16 3. Alex Rivlin, taken by Plaintiff on December 13, 2018.
17 4. Kathleen Silver, taken by Plaintiff on December 18, 2018.
18 5. Karsten Hatch, taken by Plaintiff on March 14-15, 2019.
19 6. Amanda Weitzel, taken by Plaintiff on March 18, 2019.
20 7. Alex Basil Dibsie, taken by Plaintiff on March 27-28, 2019.

21 **Records requested by Plaintiff pursuant to Subpoena Duces Tecum:**

22 1. Plaintiff served a Subpoena Duces Tecum on the Resident Agent for the Custodian of
23 Records for Eldorado, a division of Mphasis Corporation, Inc. ("Eldorado"), in Arizona, on March
24 19, 2019. Eldorado served its responsive documents on April 1, 2019.

25 2. Plaintiff served a Subpoena Duces on the Resident Agent for the Custodian of Records
26 for Milliman, Inc. ("Milliman"), in Washington, on March 11, 2019. Milliman has not yet produced
27 documents.
28

1 3. Plaintiff served a Deposition Subpoena/Subpoena Duces Tecum on the Resident
2 Agent for the Custodian of Records for MedSource Management Group, LLC on February 7, 2019.
3 The deposition has been postponed and will be rescheduled.

4 4. Plaintiff served a Deposition Subpoena/Subpoena Duces Tecum on Kenneth Volker,
5 M.D., for the Custodian of Records for WellHealth Medical Associates (Volker), PLLC d/b/a
6 WellHealth Quality Care on February 4, 2019. The deposition has been postponed and will be
7 rescheduled.

8 2. **Discovery Remaining.**

9 Although discovery has been progressing in this case, certain discovery is still outstanding.
10 This includes, but is not limited to, the depositions of certain named defendants, including Tom
11 Zumtobel, Pamela Egan, Linda Mattoon, and Bobette Bond, as well as various witnesses for Unite
12 Here Health and InsureMonkey. Based on the depositions of these individuals, as well as further
13 document review, certain additional depositions may be warranted, including all Rule 30(b)(6)
14 witnesses. Plaintiffs are currently preparing responses to outstanding discovery requests, and it is
15 unknown what additional written discovery Defendants intend to propound. It is anticipated that
16 Defendants will want to depose Plaintiff or her representative. All parties need to retain initial and
17 rebuttal experts, service all corresponding reports, and the experts will need to be deposed.

18 3. **Reason the deadlines cannot be satisfied.**

19 Given the size of this case and its inherent complexities, the number of parties, and newly
20 discovered issues, the initial expert deadline needs to be extended to allow experts to render their
21 opinions after receiving the remaining discovery. Further discovery could reveal crucial information
22 that could provide support to Plaintiff's claims. In particular, outstanding depositions of key witnesses
23 and defendants are essential for Plaintiff's claims and damages. Given the number of parties involved,
24 it has been difficult to schedule depositions, and the remaining depositions cannot be reasonably
25 completed prior to the preparation of the expert reports. Moreover, a substantial quantity of
26 documents would need to be reviewed by the experts in preparation of their reports, particularly as
27 detailed information is essential to anticipated calculations by the expert witnesses. A 30-day
28

extension will allow the remaining depositions to be completed and grant Plaintiff's experts the requisite time to review documents in the preparation of their reports.

4. Proposed scheduled for completing all remaining discovery.

Plaintiff proposes an extension of certain discovery deadlines by thirty (30) days, but that all other remaining deadlines remain as currently scheduled. Plaintiff proposes the following schedule:

	Proposed	Current
1. Motions to Amend Pleadings or Add Parties:	May 29, 2019	April 29, 2019
2. Initial Designation of Experts:	May 29, 2019	April 29, 2019
3. Designation of Rebuttal Experts:	June 29, 2019	May 29, 2019
4. Discovery Cut Off:	No change	July 26, 2019
5. Motions in Limine/Dispositive Motions:	No change	August 26, 2019
6. Date of Trial:	No change	October 14, 2019

5. Trial Date.

Trial is currently set on a five-week stack to begin on October 14, 2019. The requested extensions will not affect the current trial date.

IV. CONCLUSION

In light of the foregoing, Plaintiff respectfully requests that this Court GRANT Plaintiff's Motion to Discovery Deadlines.

Dated this 5th day of April, 2019.

GREENBERG TRAURIG, LLP

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

Counsel for Plaintiff

CERTIFICATE OF SERVICE

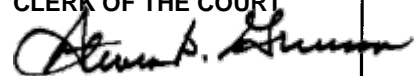
I hereby certify that on this 10th day of April 2019, a true and correct copy of the foregoing **MOTION TO EXTEND DISCOVERY DEADLINES ON ORDER SHORTENING TIME (FIRST REQUEST)** was filed with the Clerk of the Court using the Odyssey eFileNV Electronic Service system and served on all parties with an 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 U.S. Mail.


An employee of GREENBERG TRAURIG, LLP

TAB 5

TAB 5



ARJT

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,

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

Plaintiff,

vs.

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; Marth 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; LINDA MATTOON,
an Individual; BOBBETTE BOND, an
Individual; KATHLEEN SILVER, an
Individual; DOES I through X Inclusive; and
ROE CORPORATIONS I-X, inclusive,
Defendants.

HEARING DATE(S)
ENTERED IN
ODYSSEY



**2nd AMENDED ORDER SETTING CIVIL JURY TRIAL,
PRE-TRIAL, CALENDAR CALL, AND DEADLINES FOR MOTIONS;
AMENDED DISCOVERY SCHEDULING ORDER**

Pursuant to the Motion to Extend Discovery Deadlines held on April 25, 2019, the
Discovery Deadlines and Trial dates are hereby amended as follows:

IT IS HEREBY ORDERED that the parties will comply with the following deadlines:

...

1 Motions to amend pleadings or add parties July 30, 2019
2
3 Designation of experts pursuant to NRCP 16.1(a)(2) July 30, 2019
4 Designation of rebuttal experts pursuant to NRCP 16.1(a)(2) August 29, 2019
5 Discovery Cut Off October 28, 2019
6 Motions in Limine or other Dispositive Motions November 27, 2019

7 **IT IS HEREBY ORDERED THAT:**

8 A. The above entitled case is set to be tried to a jury on a **five week stack** to begin
9 **January 27, 2020 at 9:30 a.m.**

10 B. Pre-Trial Conference/Calendar Call will be held on **January 9, 2020 at 10:30**
11 **a.m.**

12 C. The Pre-Trial Memorandum must be filed no later than **January 8, 2020**, with a
13 courtesy copy delivered to Department XVI. All parties, (Attorneys and parties in proper
14 person) **MUST** comply with **All REQUIREMENTS** of EDCR 2.67, 2.68 and 2.69. Counsel
15 should include in the Memorandum an identification of orders on all motions in limine or
16 motions for partial summary judgment previously made, a summary of any anticipated legal
17 issues remaining, a brief summary of the opinions to be offered by any witness to be called to
18 offer opinion testimony as well as any objections to the opinion testimony.

19 D. All motions in limine must be in writing and filed no later than **November 27,**
20 **2019. Orders shortening time will not be signed except in extreme emergencies.**

21 E. All original depositions anticipated to be used in any manner during the trial must
22 be delivered to the clerk prior to the firm trial date given at Calendar Call. If deposition
23 testimony is anticipated to be used in lieu of live testimony, a designation (by page/line citation)
24 of the portions of the testimony to be offered must be filed and served by facsimile or hand, two
25
26
27
28

1 (2) judicial days prior to the firm trial date given at Calendar Call. Any objections or
2 counter-designations (by page/line citation) of testimony must be filed and served by facsimile or
3 hand, one (1) judicial day prior to the firm trial date given at Calendar Call. Counsel shall advise
4 the clerk prior to publication.
5

6 F. In accordance with EDCR 2.67, counsel shall meet, review, and discuss exhibits.
7 All exhibits must comply with EDCR 2.27. Two (2) sets must be three-hole punched and placed
8 in three ring binders along with the exhibit list. The sets must be delivered to the clerk two days
9 prior to the firm trial setting (given at Pre-Trial/Calendar Call). Any demonstrative exhibits
10 including exemplars anticipated to be used must be disclosed prior to the calendar call. Pursuant
11 to EDCR 2.68, counsel shall be prepared to stipulate or make specific objections to individual
12 proposed exhibits. Unless otherwise agreed to by the parties, demonstrative exhibits are marked
13 for identification but not admitted into evidence.
14

15 G. In accordance with EDCR 2.67, counsel shall meet, review, and discuss items to
16 be included in the Jury Notebook. Pursuant to EDCR 2.68, counsel shall be prepared to stipulate
17 or make specific objections to items to be included in the Jury Notebook.
18

19 H. In accordance with EDCR 2.67, counsel shall meet and discuss pre-instructions to
20 the jury, jury instructions, special interrogatories, if requested, and verdict forms. Each side shall
21 provide the Court, prior to the firm trial date given at Calendar Call., an agreed set of jury
22 instructions and proposed form of verdict along with any additional proposed jury instructions
23 with an electronic copy in Word format.
24

25 **Failure of the designated trial attorney or any party appearing in proper person to**
26 **appear for any court appearances or to comply with this Order shall result in any of the**
27
28

1 following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4)
2 vacation of trial date; and/or any other appropriate remedy or sanction.
3

4 *Counsel is asked to notify the Court Reporter at least two (2) weeks in advance if they*
5 *are going to require daily copies of the transcripts of this trial or real time court reporting.*
6 *Failure to do so may result in a delay in the production of the transcripts or the availability of*
7 *real time court reporting.*
8


9 Counsel must advise the Court immediately when the case settles or is otherwise resolved
10 prior to trial. A Stipulation which terminates a case by dismissal shall also indicate whether a
11 Scheduling Order has been filed and if a trial date has been set, and the date of that trial. A copy
12 should be given to Chambers.

13 DATED this 7th day of May, 2019.

14 
15 TIMOTHY C. WILLIAMS
16 DISTRICT JUDGE

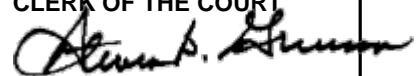
17 **CERTIFICATE**

18 I hereby certify that on or about the date filed, this document was e-served to all
19 registered parties with Odyssey File & Serve.
20

21 
22 LYNN BERKHEIMER
23 Judicial Executive Assistant
24 Dept. No. XVI
25
26
27
28

TAB 6

TAB 6



ARJT

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,

vs.

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; Marth 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; LINDA MATTOON,
an Individual; BOBBETTE BOND, an
Individual; KATHLEEN SILVER, an
Individual; DOES I through X Inclusive; and
ROE CORPORATIONS I-X, inclusive,
Defendants.

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

HEARING DATE(S)
ENTERED IN
ODYSSEY



**3rd AMENDED ORDER SETTING CIVIL JURY TRIAL,
PRE-TRIAL, CALENDAR CALL, AND DEADLINES FOR MOTIONS;
AMENDED DISCOVERY SCHEDULING ORDER**

Pursuant to the Status Check re Supplemental Expert Disclosures/Trial Setting held on
November 6, 2019, the Discovery Deadlines and Trial dates are hereby amended as follows:

IT IS HEREBY ORDERED that the parties will comply with the following deadlines:

...

1 Motions to amend pleadings or add parties April 8, 2020
2 Designation of experts pursuant to NRCP 16.1(a)(2) April 8, 2020
3 Designation of rebuttal experts pursuant to NRCP 16.1(a)(2) May 8, 2020
4 Discovery Cut Off July 7, 2020
5 Motions in Limine or other Dispositive Motions August 6, 2020
6

7 **IT IS HEREBY ORDERED THAT:**

8 A. The above entitled case is set to be tried to a jury on a **five week stack** to begin
9 **October 5, 2020 at 9:30 a.m.**

10 B. Pre-Trial Conference/Calendar Call will be held on **September 17, 2020, 2020 at**
11 **10:30 a.m.**

12 C. A Status Check re Scheduling Order/Agreement by the Parties is set for
13 November 20, 2019 at 9:00 a.m.

14 D. The Pre-Trial Memorandum must be filed no later than **October 2, 2020**, with a
15 courtesy copy delivered to Department XVI. All parties, (Attorneys and parties in proper
16 person) **MUST** comply with **All REQUIREMENTS** of EDCR 2.67, 2.68 and 2.69. Counsel
17 should include in the Memorandum an identification of orders on all motions in limine or
18 motions for partial summary judgment previously made, a summary of any anticipated legal
19 issues remaining, a brief summary of the opinions to be offered by any witness to be called to
20 offer opinion testimony as well as any objections to the opinion testimony.

21 E. All motions in limine must be in writing and filed no later than **August 6, 2020.**
22 **Orders shortening time will not be signed except in extreme emergencies.**

23 F. All original depositions anticipated to be used in any manner during the trial must
24 be delivered to the clerk prior to the firm trial date given at Calendar Call. If deposition
25
26
27
28

1 testimony is anticipated to be used in lieu of live testimony, a designation (by page/line citation)
2 of the portions of the testimony to be offered must be filed and served by facsimile or hand, two
3 (2) judicial days prior to the firm trial date given at Calendar Call. Any objections or
4 counter-designations (by page/line citation) of testimony must be filed and served by facsimile or
5 hand, one (1) judicial day prior to the firm trial date given at Calendar Call. Counsel shall advise
6 the clerk prior to publication.
7

8 G. In accordance with EDCR 2.67, counsel shall meet, review, and discuss exhibits.
9 All exhibits must comply with EDCR 2.27. Two (2) sets must be three-hole punched and placed
10 in three ring binders along with the exhibit list. The sets must be delivered to the clerk two days
11 prior to the firm trial setting (given at Pre-Trial/Calendar Call). Any demonstrative exhibits
12 including exemplars anticipated to be used must be disclosed prior to the calendar call. Pursuant
13 to EDCR 2.68, counsel shall be prepared to stipulate or make specific objections to individual
14 proposed exhibits. Unless otherwise agreed to by the parties, demonstrative exhibits are marked
15 for identification but not admitted into evidence.
16

17 H. In accordance with EDCR 2.67, counsel shall meet, review, and discuss items to
18 be included in the Jury Notebook. Pursuant to EDCR 2.68, counsel shall be prepared to stipulate
19 or make specific objections to items to be included in the Jury Notebook.
20

21 I. In accordance with EDCR 2.67, counsel shall meet and discuss pre-instructions to
22 the jury, jury instructions, special interrogatories, if requested, and verdict forms. Each side shall
23 provide the Court, prior to the firm trial date given at Calendar Call., an agreed set of jury
24 instructions and proposed form of verdict along with any additional proposed jury instructions
25 with an electronic copy in Word format.
26
27
28

1 Failure of the designated trial attorney or any party appearing in proper person to
2 appear for any court appearances or to comply with this Order shall result in any of the
3 following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4)
4 vacation of trial date; and/or any other appropriate remedy or sanction.
5

6 *Counsel is asked to notify the Court Reporter at least two (2) weeks in advance if they*
7 *are going to require daily copies of the transcripts of this trial or real time court reporting.*
8 *Failure to do so may result in a delay in the production of the transcripts or the availability of*
9 *real time court reporting.*
10


11 Counsel must advise the Court immediately when the case settles or is otherwise resolved
12 prior to trial. A Stipulation which terminates a case by dismissal shall also indicate whether a
13 Scheduling Order has been filed and if a trial date has been set, and the date of that trial. A copy
14 should be given to Chambers.

15 DATED this 18 day of November, 2019.

16 
17 TIMOTHY C. WILLIAMS
18 DISTRICT JUDGE

19 **CERTIFICATE**

20 I hereby certify that on or about the date filed, this document was e-served to all
21 registered parties with Odyssey File & Serve.
22

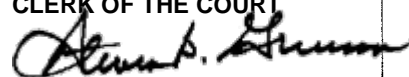
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24 LYNN BERKHEIMER
25 Judicial Executive Assistant
26 Dept. No. XVI
27
28

TAB 7

TAB 7

ORIGINAL

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1/23/2020 5:02 PM
Steven D. Grierson
CLERK OF THE COURT



ORD (CIV)

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Attorneys for Defendants

UNITE HERE HEALTH AND

NEVADA HEALTH SOLUTIONS, LLC

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

Case No. A-17-760558-C

Dept. No. XVI

**SECOND AMENDED DISCOVERY
SCHEDULING ORDER**

EGAN, an Individual; BASIL C. DIBSIE, an Individual; LINDA MATTOON, an Individual; TOM ZUMTOBEL, an Individual; BOBBETTE BOND, an Individual; KATHLEEN SILVER, an Individual; DOES I through X inclusive; and ROE CORPORATIONS I-X, inclusive,

Defendants.

On November 20, 2019 at 9 a.m., all parties listed below came before this Court for a status check regarding the November 19, 2019 3rd Amended Order Setting Civil Jury Trial, Pre-Trial, Calendar Call, and Deadlines for Motions; Amended Discovery Scheduling Order (the “November 19, 2019 Order”).

APPEARANCES

- For Unite Here Health and Nevada Health Solutions, LLC: John Bailey, Esq. and Joseph Liebman, Esq. of Bailey ♦ Kennedy, LLP.
- For Plaintiff: Mark Ferrario, Esq. and Don Prunty, Esq. of Greenberg Traurig.
- For Kathleen Silver, Bobbette Bond, Tom Zumtobel, Pam Egan, Basis Dibsie, and Linda Mattoon: Angela Ochoa of Lipson Nielson P.C.
- For InsureMonkey, Inc. and Alev Rivlin: Matt Pruitt of Alverson, Taylor, & Sanders.
- For Larson & Company, PC, Dennis Larson, and Martha Hayes: Russell Brown of Meyers McConnell Reisz Sideman.

ORDER

The Court, having heard oral argument, having reviewed the papers, exhibits, and pleadings on file, and having considered the same, and for the reasons stated upon the record, hereby amends the November 19, 2019 Order as follows:

- | | |
|---|------------------|
| ➤ Plaintiff’s designation of initial experts | February 7, 2020 |
| ➤ Defendants’ designation of initial/rebuttal experts | March 9, 2020 |
| ➤ Motions to amend pleadings or add parties | April 8, 2020 |
| ➤ Plaintiffs’ designation of rebuttal experts | May 8, 2020 |
| ➤ Discovery Cut Off | July 22, 2020 |
| ➤ Motions <i>in Limine</i> or other Dispositive Motions | August 24, 2020 |

The remainder of the November 19, 2019 Order remains in place and is unaffected by this Amended Discovery Scheduling Order. Further, the November 26, 2019 Amended Discovery Scheduling Order is fully replaced by this Second Amended Discovery Scheduling Order.


DATED this ____ day of _____, 2020.


DISTRICT COURT JUDGE

Submitted by:

BAILEY ♦ KENNEDY

By

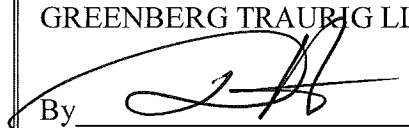

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Attorneys for Defendants
Unite Here Health and
Nevada Health Solutions, LLC

APPROVED AS TO FORM AND CONTENT:

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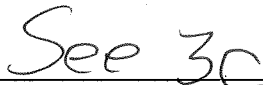
By


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Attorneys for Plaintiff

ALVERSON TAYLOR & SANDERS

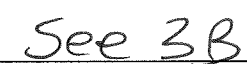
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InsureMonkey, Inc. and Alex Rivlin

LIPSON NEILSON, P.C.

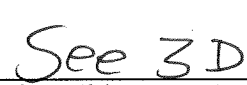
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*Attorneys for Defendants Kathleen Silver,
Bobbette Bond, Tom Zumtobel, Pam Egan,
Basil Dibsie and Linda Mattoon*

MEYERS McCONNELL REISZ SIDERMAN

By


Lori E. Sideman, Esq., NV Bar No. 7515
Russell B. Brown, Esq., NV Bar No. 11355
1745 Village Center Circle
Las Vegas, NV 89134

Attorneys for Defendants
Martha Hayes and Dennis T. Larson

The remainder of the November 19, 2019 Order remains in place and is unaffected by this Amended Discovery Scheduling Order. Further, the November 26, 2019 Amended Discovery Scheduling Order is fully replaced by this Second Amended Discovery Scheduling Order.

DATED this ____ day of _____, 2020.

~~DISTRICT COURT JUDGE~~

Submitted by:

BAILEY ♦ KENNEDY

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Martha Hayes and Dennis T. Larson

The remainder of the November 19, 2019 Order remains in place and is unaffected by this Amended Discovery Scheduling Order. Further, the November 26, 2019 Amended Discovery Scheduling Order is fully replaced by this Second Amended Discovery Scheduling Order.

DATED this ____ day of _____, 2020.

DISTRICT COURT JUDGE

Submitted by:

BAILEY ♦ KENNEDY

By

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Attorneys for Defendants
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Attorneys for Defendants
Martha Hayes and Dennis T. Larson

The remainder of the November 19, 2019 Order remains in place and is unaffected by this Amended Discovery Scheduling Order. Further, the November 26, 2019 Amended Discovery Scheduling Order is fully replaced by this Second Amended Discovery Scheduling Order.

DATED this 14TH day of January, 2020.


DISTRICT COURT JUDGE

Submitted by:

BAILEY ♦ KENNEDY

By 

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Attorneys for Defendants
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Nevada Health Solutions, LLC

APPROVED AS TO FORM AND CONTENT:

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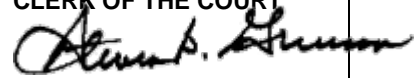
By Lori E. Sid

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TAB 8

TAB 8



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Attorneys for Defendants

UNITE HERE HEALTH AND

NEVADA HEALTH SOLUTIONS, LLC

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

Case No. A-17-760558-B

Dept. No. XVI

**NOTICE OF ENTRY OF STIPULATION
AND ORDER TO EXTEND DISCOVERY
DEADLINES [THIRD REQUEST]**

EGAN, an Individual; BASIL C. DIBSIE, an Individual; 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.

PLEASE TAKE NOTICE that a Stipulation and Order to Extend Discovery Deadlines [Third Request] was entered in the above-entitled action on March 4, 2020, a true and correct copy of which is attached hereto.

DATED this 5th day of March, 2020.

BAILEY ♦ KENNEDY

By: /s/ Joseph A. Liebman

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JOSEPH A. LIEBMAN
Nevada Bar No. 10125

SEYFARTH SHAW LLP
SUZANNA C. BONHAM
Texas Bar No. 24012307
EMMA C. MATA
Texas Bar No. 24029470

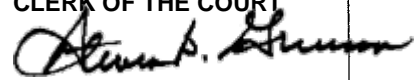
*Attorneys for Defendants Unite Here Health
and Nevada Health Solutions, LLC*

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 5th day of March, 2020, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District 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:

<p>Mark E. Ferrario, Esq. Eric W. Swanis, Esq. Donald L. Prunty, Esq. GREENBERG TRAURIG LLP 10845 Griffith Peak Drive, Suite 600 Las Vegas, NV 89135 ferrariom@gtlaw.com swanise@gtlaw.com pruntyd@gtlaw.com</p> <p><i>Attorneys for Plaintiff</i></p>	<p>Joseph P. Garin, Esq. Angela T. Nakamura Ochoa, Esq. LIPSON NEILSON, P.C. 9900 Covington Cross Dr., Suite 120 Las Vegas, NV 89144 jgarin@lipsonneilson.com aocchoa@lipsonneilson.com</p> <p><i>Attorneys for Defendants Kathleen Silver, Bobbette Bond, Tom Zumtobel, Pam Egan, Basil Dibsie and Linda Mattoon</i></p>
<p>Kurt R. Bonds Matthew Pruitt ALVERSON TAYLOR & SANDERS 6605 Grand Montecito Parkway, Suite 200 Las Vegas, NV 89149 kbonds@alversontaylor.com</p> <p><i>Attorneys for Defendants InsureMonkey, Inc. and Alex Rivlin</i></p>	<p>Lori E. Siderman, Esq. Russell B. Brown, Esq. MEYERS McCONNELL REISZ SIDERMAN 1745 Village Center Circle Las Vegas, NV 89134 siderman@mmrs-law.com brown@mmrs-law.com</p> <p><i>Attorneys for Defendants Martha Hayes and Dennis T. Larson</i></p>

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



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12 *Attorneys for Defendants*
13 *UNITE HERE HEALTH AND*
NEVADA HEALTH SOLUTIONS, LLC
14

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

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

Case No. A-17-760558-C
Dept. No. XVI

20 v.
21 MILLIMAN, INC., a Washington Corporation;
JONATHAN L. SHREVE, an Individual;
22 MARY VAN DER HEIJDE, an Individual;
MILLENNIUM CONSULTING SERVICES,
23 LLC, a North Carolina Corporation; LARSON &
COMPANY P.C., a Utah Professional
Corporation; DENNIS T. LARSON, an
24 Individual; MARTHA HAYES, an Individual;
INSUREMONKEY, INC., a Nevada
25 Corporation; ALEX RIVLIN, an Individual;
NEVADA HEALTH SOLUTIONS, LLC, a
26 Nevada Limited Liability Company; PAMELA
EGAN, an Individual; BASIL C. DIBSIE, an
27 Individual; LINDA MATTOON, an Individual;
TOM ZUMTOBEL, an Individual; BOBBETTE
28 BOND, an Individual; KATHLEEN SILVER, an

Individual; DOES I through X inclusive; and
ROE CORPORATIONS I-X, inclusive,
Defendants.

**STIPULATION AND ORDER TO EXTEND DISCOVERY DEADLINES [THIRD
REQUEST]**

Plaintiff, Barbara D. Richardson, Commissioner of Insurance in the State of Nevada, in her
official capacity as Permanent Receiver of Nevada Health CO-OP ("Plaintiff"), and Defendants, by
and through their respective counsel of record, hereby stipulate to extend certain discovery deadlines
in the current scheduling order, subject to the Court's approval, as follows:

- Plaintiff's designation of initial experts: February 7, 2020
- Defendants' designation of initial experts: April 9, 2020
- Defendants' designation of rebuttal experts: May 11, 2020
- Amend Pleading and Add Parties: June 9, 2020
- Plaintiff's designation of rebuttal experts: July 10, 2020
- Discovery Cut Off (non-experts): August 1, 2020
- Discovery Cut Off (experts): August 13, 2020
- Motions *in Limine* and Dispositive Motions: August 27, 2020

WHEREAS, on February 7, 2020, Defendants Unite Here Health and Nevada Health
Solutions submitted their Motion to Extend Deadline for Defendants' Expert Disclosures
("Defendants' Motion") seeking an additional 30 days (to April 9, 2020) to serve their initial and
rebuttal expert disclosures to the Court for an Order Shortening Time.

WHEREAS, Defendants' Motion was then filed and served on all parties on February 10,
2020.

WHEREAS, on February 7, 2020, after Defendants' Motion had been submitted to the Court
for an Order Shortening Time, Plaintiff served its Disclosures of Expert Witnesses Mark A. Fish and
Hank Osowski Pursuant to N.R.C.P. 16.1., which included two new expert reports with additional
opinions, including a new damages model, from Plaintiff's experts.

WHEREAS, in light of Plaintiff's experts' new opinions and damages model, Defendants
requested an additional 90 days (to June 9, 2020) from Plaintiff to serve their initial and rebuttal
experts.

1 WHEREAS, after conferring with Plaintiff's counsel, the parties compromised and agreed to
2 extend the expert disclosure deadlines and other deadlines.

3 WHEREAS, Plaintiff and Defendants confirm that their testifying experts have availability
4 for depositions during the time period of late July and the first two weeks of August to assure that
5 the parties will be able to complete expert depositions.

6 **A. Discovery Completed**

7 Plaintiff has served multiple sets of Interrogatories and Requests for Production on
8 Defendants and each Defendant has served multiple sets of Interrogatories and Request for
9 Production on Plaintiff.

10 The parties have jointly produced about 2 million pages of documents in this case and
11 continue to produce documents and respond to written discovery.

12 Seven oral depositions have taken place to date, which includes 5 of the 18 named parties.

13 The deposition of Plaintiff's witness Michael Katigbak is scheduled for March 13, 2020.

14 The depositions of Plaintiff's witnesses Daina Sangkhabos, Lisa Simons, Christina Sandoval,
15 Randy Plum, and Dr. Nicole Flora are in the process of being scheduled for end of March or early
16 April, subject to each witnesses' availability.

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1 **B. Discovery to be Completed**

2 The following discovery remains:

- 3 • Depositions of the pertinent witnesses related to Plaintiff, Defendants and third
4 parties.
• Expert discovery and depositions.

5 **C. Reasons That Discovery Has Not Yet Been Completed**

6 As described above, there are an extraordinary amount of documents at issue in this case, as
7 it is a particularly complex matter. The complexity of this case, the large amount of documents and
8 information that remains to be exchanged, and the number of defendants and witnesses in this case
9 complicated by the fact that most are located in different cities and states slowed down the discovery
10 process considerably.

11 **D. Proposed Amended Deadlines**

- | | |
|--|------------------|
| 12 • Plaintiff's designation of initial experts: | February 7, 2020 |
| 13 • Defendants' designation of initial experts: | April 9, 2020 |
| 14 • Defendants' designation of rebuttal experts: | May 11, 2020 |
| 15 • Amend Pleading and Add Parties: | June 9, 2020 |
| 16 • Plaintiff's designation of rebuttal experts: | July 10, 2020 |
| 17 • Discovery Cut Off (non-experts): | August 1, 2020 |
| 18 • Discovery Cut Off (experts): | August 13, 2020 |
| 19 • Motions <i>in Limine</i> and Dispositive Motions: | August 27, 2020 |

20 **E. Current Trial Date**

21 This 6-8 week trial is set to be tried on a 5 week stack beginning October 5, 2020. Under the
22 proposed extension, the trial date will not need to be continued to a later date.

23 IT IS SO AGREED AND STIPULATED, THROUGH COUNSEL OF RECORD.

24 **GREENBERG TRAURIG LLP**

25 By: 

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27 *Attorneys for Plaintiff*

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*Attorneys for Defendants
InsureMonkey, Inc. and Alex Rivlin*

1 IT IS SO ORDERED this 4th day of March, 2020.

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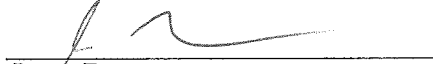


THE HONORABLE TIMOTHY WILLIAMS
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted,

BAILEY ♦ KENNEDY

By:



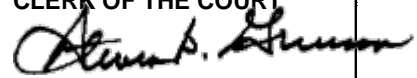
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*Attorneys for Defendants Unite Here Health and
Nevada Health Solutions, LLC*

TAB 9

TAB 9



ARJT

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,

vs.

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; Marth 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; LINDA MATTOON,
an Individual; BOBBETTE BOND, an
Individual; KATHLEEN SILVER, an
Individual; DOES I through X Inclusive; and
ROE CORPORATIONS I-X, inclusive,
Defendants.

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

HEARING DATE(S)
ENTERED IN
ODYSSEY

**4TH AMENDED ORDER SETTING CIVIL JURY TRIAL,
PRE-TRIAL, CALENDAR CALL, AND DEADLINES FOR MOTIONS;
AMENDED DISCOVERY SCHEDULING ORDER**

Pursuant to the Status Check re Trial Rescheduling held on April 30, 2020, the Discovery

Deadlines and Trial dates are hereby amended as follows:

IT IS HEREBY ORDERED that the parties will comply with the following deadlines:

...

1 Defendants' designation of initial and rebuttal experts August 17, 2020
2 Motions to amend pleadings or add parties August 31, 2020
3 Plaintiff's designation of rebuttal experts October 16, 2020
4 Discovery Cut Off February 19, 2021
5 Dispositive Motions March 5, 2021
6 Motions in Limine March 19, 2021
7

8 **IT IS HEREBY ORDERED THAT:**

9 A. The above entitled case is set to be tried to a jury on a **five week stack** to begin
10 **May 3, 2021 at 9:30 a.m.**

11 B. Pre-Trial Conference/Calendar Call will be held on **April 22, 2021 at 10:30 a.m.**

12 C. A Status Check re Status of Discovery/Case Schedule is set for **August 6, 2020** at
13 **9:00 a.m.**

14 D. The Pre-Trial Memorandum must be filed no later than **April 29, 2021**, with a
15 courtesy copy delivered to Department XVI. All parties, (Attorneys and parties in proper
16 person) **MUST** comply with **All REQUIREMENTS** of EDCR 2.67, 2.68 and 2.69. Counsel
17 should include in the Memorandum an identification of orders on all motions in limine or
18 motions for partial summary judgment previously made, a summary of any anticipated legal
19 issues remaining, a brief summary of the opinions to be offered by any witness to be called to
20 offer opinion testimony as well as any objections to the opinion testimony.

21 E. All motions in limine must be in writing and filed no later than **March 19, 2021**.
22 **Orders shortening time will not be signed except in extreme emergencies.**

23 F. All original depositions anticipated to be used in any manner during the trial must
24 be delivered to the clerk prior to the firm trial date given at Calendar Call. If deposition
25
26
27

1 testimony is anticipated to be used in lieu of live testimony, a designation (by page/line citation)
2 of the portions of the testimony to be offered must be filed and served by facsimile or hand, two
3 (2) judicial days prior to the firm trial date given at Calendar Call. Any objections or
4 counter-designations (by page/line citation) of testimony must be filed and served by facsimile or
5 hand, one (1) judicial day prior to the firm trial date given at Calendar Call. Counsel shall advise
6 the clerk prior to publication.
7

8 G. In accordance with EDCR 2.67, counsel shall meet, review, and discuss exhibits.
9 All exhibits must comply with EDCR 2.27. Two (2) sets must be three-hole punched and placed
10 in three ring binders along with the exhibit list. The sets must be delivered to the clerk two days
11 prior to the firm trial setting (given at Pre-Trial/Calendar Call). Any demonstrative exhibits
12 including exemplars anticipated to be used must be disclosed prior to the calendar call. Pursuant
13 to EDCR 2.68, counsel shall be prepared to stipulate or make specific objections to individual
14 proposed exhibits. Unless otherwise agreed to by the parties, demonstrative exhibits are marked
15 for identification but not admitted into evidence.
16

17 H. In accordance with EDCR 2.67, counsel shall meet, review, and discuss items to
18 be included in the Jury Notebook. Pursuant to EDCR 2.68, counsel shall be prepared to stipulate
19 or make specific objections to items to be included in the Jury Notebook.
20

21 I. In accordance with EDCR 2.67, counsel shall meet and discuss pre-instructions to
22 the jury, jury instructions, special interrogatories, if requested, and verdict forms. Each side shall
23 provide the Court, prior to the firm trial date given at Calendar Call., an agreed set of jury
24 instructions and proposed form of verdict along with any additional proposed jury instructions
25 with an electronic copy in Word format.
26
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1 Failure of the designated trial attorney or any party appearing in proper person to
2 appear for any court appearances or to comply with this Order shall result in any of the
3 following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4)
4 vacation of trial date; and/or any other appropriate remedy or sanction.
5

6 *Counsel is asked to notify the Court Reporter at least two (2) weeks in advance if they*
7 *are going to require daily copies of the transcripts of this trial or real time court reporting.*
8 *Failure to do so may result in a delay in the production of the transcripts or the availability of*
9 *real time court reporting.*
10

11 Counsel must advise the Court immediately when the case settles or is otherwise resolved
12 prior to trial. A Stipulation which terminates a case by dismissal shall also indicate whether a
13 Scheduling Order has been filed and if a trial date has been set, and the date of that trial. A copy
14 should be given to Chambers.

15 DATED this 12th day of May, 2020.

16 
17 TIMOTHY C. WILLIAMS
18 DISTRICT JUDGE

19 **CERTIFICATE**

20 I hereby certify that on or about the date filed, this document was e-served to all
21 registered parties with Odyssey File & Serve.
22

23 /s/ Lynn Berkheimer
24 _____
25 LYNN BERKHEIMER
26 Judicial Executive Assistant
27 Dept. No. XVI
28

TAB 10

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September 2, 2021

Via E-Service

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Daniel F. Polsenberg, Esq.
Abraham G. Smith, Esq.
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

Re: **State of Nevada, ex rel. Commissioner of Insurance v. Milliman, Inc.**
Case No. A-17-760558-B

Dear Dan and Abe:

As you know, the close of discovery is currently scheduled for December 31, 2021. To that end, your co-counsel, Greenberg Traurig ("Greenberg"), has begun to inquire about scheduling various depositions. My clients—Unite Here Health and Nevada Health Solutions (jointly "UHH")—intend to do the same, and are hereby providing all parties with a list of deponents.¹

With respect to the deponents that UHH intends to notice and/or subpoena, a considerable portion of those depositions will involve extensive questioning regarding Xerox State Healthcare, LLC ("Xerox") and its role as the primary architect and operator of Nevada Health Link—the online marketplace where the vast majority of the Nevada Health CO-OP's (the "CO-OP") insurance policies were sold. As you are no doubt aware, at the time your co-counsel (Greenberg) was retained by the CO-OP and formally approved by the Receivership Court, it was concurrently representing Xerox in three *related* matters, all of which involved Xerox's development and operation of Nevada Health Link.²

¹ Attached as Exhibit A is our preliminary list of deponents, whose depositions we plan to take in October, November, and December 2021. I have copied all counsel of record so that they can advise me of any conflicts in their respective schedules.

² Those cases are as follows:

- *Basich v. Xerox State Healthcare, LLC, et al.*, Case No. A-14-698567-C, a class action complaint filed on behalf of all Nevada consumers who purchased an insurance policy on the Silver State Health Insurance Exchange and did not receive the benefits of such a policy;
- *Casale v. State of Nevada ex. rel. Silver State Health Insurance Exchange, et al.*, Case No. A-14-706171-C, a class action complaint filed on behalf of all Nevada brokers who were owed a commission for the sale of an insurance policy on the Silver State Health Insurance Exchange; and

Daniel F. Polsenberg, Esq.
Abraham G. Smith, Esq.
September 2, 2021
Page 2

Greenberg recently claimed—although it was not disclosed to the Receivership Court at the time of its retention—that the CO-OP retained Santoro Whitmire as “conflicts counsel” to address any matters in which Greenberg had a conflict of interest. In fact, after UHH filed their Motion to Disqualify in the Receivership Action in October 2020, Greenberg explicitly made the following representation to the Receivership Court:

In any event, even if UHH and NHS were allowed to implead Xerox, *the Receiver’s use of conflicts counsel to handle the portions of the litigation involving Xerox would avoid any potential conflict.*³

Accordingly, Greenberg has recognized and represented to the Court that to the extent any Xerox-related issues arise in above-referenced litigation, “conflicts counsel”—and not Greenberg—will handle it.⁴

On February 18, 2021, following Santoro Whitmire’s decision to withdraw from its supposed role as “conflicts counsel,” Greenberg filed a Motion with the Receivership Court, stating that your firm needed to be retained as “conflicts counsel” to address any “matters that concern Xerox.” Thus, again, Greenberg and the CO-OP represented to the Receivership Court that “conflicts counsel”—and not Greenberg—would need to handle any Xerox-related issues.

Most of these upcoming depositions will be replete with Xerox-related issues. UHH expects that Lewis & Roca—as “conflicts counsel”—will unilaterally handle all depositions that would potentially encompass any issues relating to Xerox. Additionally, UHH expects that Greenberg will not participate in any deposition that concerns or relates to Xerox, including, but not limited to, the preparation for any such deposition. Considering Greenberg’s ongoing loyalties to Xerox, as well as the valid presumption that Greenberg obtained confidential and privileged

➤ *In the Matter of Xerox State Healthcare, LLC*, Cause No. 17.0299, a regulatory action before the State of Nevada, Department of Business and Insurance, Division of Insurance, involving Xerox’s deficient performance.

³ Greenberg Traurig LLP’s Opp’n to Unite Here Health and Nevada Health Solutions, LLC’s Mot. to Disqualify Greenberg Traurig and Disgorge Attorneys’ Fees, Case No. A-15-725244-C, p. 16, n. 16.

⁴ Of course, UHH does not agree that Greenberg’s use of “conflicts counsel” cures or remedies the conflict of interest arising from its representation of Xerox. Considering Xerox’s prominent role in this lawsuit and the inability to sever Xerox-related issues from non-Xerox-related issues, it is UHH’s position that the use of “conflicts counsel” is not a valid or plausible remedy. Nonetheless, that is the subject of a pending appeal before the Nevada Supreme Court. In the interim, Greenberg and the CO-OP have chosen to try to move forward with the use of “conflicts counsel,” and thus, must comply with the necessary protocol for any such remedy, no matter how invalid or implausible.

Daniel F. Polsenberg, Esq.
Abraham G. Smith, Esq.
September 2, 2021
Page 3

information from Xerox *to which no other parties are privy*, any participation in these depositions by Greenberg would have the effect of tainting those proceedings. It is for these reasons that numerous courts have precluded conflicted counsel from attending or participating in depositions where its client is a relevant witness, in some instances disqualifying conflicted counsel altogether. *See, e.g., Koza v. Dist. Ct.*, 99 Nev. 535, 538, 665 P.2d 244, 246 (1983); *United States v. Dunlap*, 2010 U.S. Dist. LEXIS 82474, at *14-18 (D. Nev. July 6, 2010); *Sykes v. Matter*, 316 F.Supp.2d 630, 633-36 (M.D. Tenn. 2004); *Emmis Operating Co. v. CBS Radio, Inc.*, 480 F.Supp.2d 1111, 1119-20 (S.D. Ind. 2007); *FMC Techs., Inc. v. Edwards*, 420 F. Supp. 2d 1153, 1160-61 (W.D. Wash. 2006).⁵

Further, many courts have recognized that in order to effectuate the underlying purpose of using “conflicts counsel” (*i.e.*, to cure an actual or potential conflict), it is necessary to screen or wall off the conflicted attorney(s) from the portion of the litigation from which the conflict arises. *See, e.g., TQ Delta LLC v. Pace PLC*, 2017 U.S. Dist. LEXIS 1860 (D. Del. Jan. 5, 2017); *Wal-Mart Stores, Inc. v. Vidalakis*, 2007 U.S. Dist. LEXIS 99356 (W.D. Ark. Dec. 17, 2007); *High Point Sarl v. Sprint Nextel Corp.*, 2011 U.S. Dist. LEXIS 4244 (D. Kan. Jan. 18, 2011).

Again, UHH does not agree that “conflicts counsel” will remedy the numerous issues stemming from Greenberg’s representation of Xerox, and the only remedy is disqualification (*i.e.*, the subject of the pending appeal). However, to the extent discovery concerning Xerox will be conducted while the appeal remains pending (which it must be under the current discovery schedule), Greenberg must be completely screened from any Xerox-related discovery.

⁵ In addition to the issues arising from Xerox’s role as a relevant witness, the fact that Greenberg—on behalf of the CO-OP—continues to pursue claims against UHH that could ultimately result in the assertion of a separate contribution action against Xerox—as the Court recently discussed—also implicates the plain language of Nev. R.P.C. 1.9(a).

Daniel F. Polsenberg, Esq.
Abraham G. Smith, Esq.
September 2, 2021
Page 4

Based on Greenberg's and the CO-OP's prior representations to the Receivership Court with respect to the role of the CO-OP's "conflicts counsel," UHH will presume that the CO-OP agrees with this protocol. After all, it was Greenberg and the CO-OP which decided to retain your firm as "conflicts counsel" to purportedly address these issues. However, if your client disagrees for some reason, please inform me by no later than the close of business on Tuesday, September 7, 2021. Thank you.

Sincerely



John R. Bailey

JRB\rlc

cc: All counsel of record (via E-Service)

Daniel F. Polsenberg, Esq.
Abraham G. Smith, Esq.
September 2, 2021
Page 5

EXHIBIT A

- Barbara Richardson
- Mark Bennett – Cantilo Bennett
- Arati Bhattacharya – Cantilo Bennett
- Kristen Johnson – Cantilo Bennett
- Mark A. Fish
- Hank Osowski
- Xerox State Healthcare – Rule 30(b)(6) Representative
- Red River – Rule 30(b)(6) Representative
- Russell Cook
- Amy Parks
- Scott Kipper
- Todd Rich
- Alexia Emmerman
- Jon Hager
- Brian Sandoval
- Daina Sangkhabos
- Beverly Presley
- Lisa Simons

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Abraham G. Smith, Esq.
September 2, 2021
Page 6

- MaryAnn Tanada
- Gwen Harris
- Lynn Jones

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Partner
Admitted in Nevada
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September 14, 2021

Via E-mail: JBailey@BaileyKennedy.com

John R. Bailey
BAILEY KENNEY
8984 Spanish Ridge Avenue
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(702) 562-8820

***RE: September 2, 2021 Correspondence in State of Nevada, ex rel. Comm'r
of Ins. v. Milliman, Inc. et al., Case No. A-17-760558-C***

Dear John:

Thank you for giving us the extension to today to respond to your letter.

As you know, the district court has already decided, over your client's objections, that Greenberg Traurig can continue to represent the receiver. Of course, the receiver will follow all applicable rules of professional conduct in deciding which attorneys will handle particular issues, including depositions. The bare fact that the receiver has hired our firm—expressly “in an abundance of caution” rather than as an admission of an ethical duty—does not give adverse parties the prerogative to dictate who may represent the receiver at depositions. The receiver will decide these questions on an individual basis rather than through a blanket “protocol” as you are proposing. It makes especially little sense for the receiver to so hamstring herself at the outset when your letter suggests that not all of the depositions will even touch on Xerox; only some unspecified subset will.

We also disagree with the letter's mischaracterizations about conflicts and obligations of counsel, but as the district court has rejected the arguments based on those characterizations, it is unnecessary to address those here.

As to our availability for specific depositions, we expect you to follow the procedure the parties previously agreed to: the deposing party proposes four dates so that the others can respond with their availability.

Sincerely,

/s/ Abraham Smith

ABRAHAM G. SMITH

TAB 12

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September 15, 2021

Via Email and E-Service:
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3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

**Re: State of Nevada, ex rel. Commissioner of Insurance v. Milliman, Inc.
Case No. A-17-760558-B**

Dear Abe:

Thank you for your responsive letter dated September 14, 2021.

Unfortunately, it does not remedy any of the concerns or the legal authority outlined in my letter to you dated September 2, 2021. Specifically, your firm—as approved “conflicts counsel”—refuses to provide any assurances that it will preclude Greenberg Traurig—who represented Xerox State Healthcare, LLC (“Xerox”) in numerous related matters at the time it was retained in this matter—from participating in portions of this litigation involving Xerox and its role with Nevada HealthLink, the very subject of those related matters. Your letter ignores the binding and persuasive authority addressing conflicts of interest arising from counsel’s representation of relevant witnesses (an issue that was **not** the subject of the prior Motion to Disqualify before the Receivership Court – Judge Cory).

Despite your firm’s supposed role as “conflicts counsel,” it appears predisposed to disregard any concerns relating to Greenberg’s representation of Xerox. Your firm is quick to cite to the Receivership Court’s Order Denying the Motion to Disqualify, while ignoring the undisputed fact that the Nevada Supreme Court has ordered additional briefing (despite Greenberg’s arguments to the contrary) and will be substantively reviewing that particular order.¹ The purpose of my September 2, 2021 letter was an attempt at compromise to maintain the status quo and ensure that Greenberg’s representation of Xerox would not taint this litigation and the discovery process before the Nevada Supreme Court issues a substantive decision on the pending appeal/writ petition. Assuming that your firm—as “conflicts counsel”—was willing to unilaterally handle any Xerox-related matters while the appeal/writ petition is pending, UHH was willing to

¹ As you know, the Nevada Supreme Court has also ordered additional briefing on Judge Williams’ decision to deny UHH’s motion to implead Xerox as a third-party defendant.

Abraham G. Smith, Esq.
September 15, 2021
Page 2

go forward with discovery while the appeal/writ petition was pending. Unfortunately, it does not appear that your firm is willing to do so.²

Accordingly, you have left us with no alternative but to seek a stay of discovery pending the Nevada Supreme Court's decision on the appeal/writ petition. Please let me know by close of business on Thursday, September 16, 2021, if the Plaintiff/Receiver is willing to stipulate to such a stay.³ Thank you.

Sincerely



John R. Bailey

JRB\rlc

cc: All counsel of record

² For example, the upcoming deposition of Patti McCoy (scheduled for September 22, 2021) will involve Xerox-related issues. Yet Greenberg unilaterally noticed that deposition and we have received no indication that your firm will be present to address any Xerox-related issues or that any preparation for Ms. McCoy's deposition is to be conducted by your firm (not Greenberg).

³ Any stay would need to exclude the deposition of Gary Odenweller, whose testimony will need to be taken as a preservation deposition due to his poor and declining health.

TAB 13

TAB 13

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3 STATE OF NEVADA, EX REL.)
 COMMISSIONER OF INSURANCE,)
 4 BARBARA D. RICHARDSON, IN)
 HER OFFICIAL CAPACITY AS)
 5 RECEIVER FOR NEVADA HEALTH)
 CO-OP,)
 6)
 Plaintiffs,) Case No.: A-17-760558-C
 7) Dept. No.: XVI
 vs.)
 8)
 MILLIMAN, INC., a)
 9 Washington Corporation,)
 JONATHAN L. SHREVE, an)
 10 Individual; MARY VAN DER)
 HEIJDE, an Individual;)
 11 MILLENNIUM CONSULTING)
 SERVICES, LLC, a North)
 12 Carolina Corporation; LARSON)
 & COMPANY P.C., a Utah)
 13 Professional Corporation;)
 DENNIS T. LARSON, an)
 14 Individual; MARTHA HAYES, an)
 Individual; INSUREMONKEY,)
 15 INC., a Nevada Corporation;)
 ALEX RIVLIN, an Individual;)
 16 NEVADA HEALTH SOLUTIONS,)
 LLC, a Nevada Limited)
 17 Liability Company; PAMELA)
 EGAN, an Individual; BASIL)
 18 C. DIBSIE, an individual,)
 19
 20
 21 VIDEOTAPED DEPOSITION OF PATTI MCCOY
 22 WEDNESDAY, SEPTEMBER 22, 2021
 23
 24 Reported by: Monice K. Campbell, NV CCR No. 312
 25 Job No.: 6158

Defendants.

VIDEOTAPED DEPOSITION OF PATTI MCCOY, held on
Wednesday, September 22, 2021, at 10:09 a.m., before
Monice K. Campbell, Certified Court Reporter, in and
for the State of Nevada.

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17 Also Present:

18 SHONN SLIVKOFF, THE VIDEOGRAPHER
19
20
21
22
23
24
25

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* * * * *

WEDNESDAY, SEPTEMBER 22, 2021

10:09 a.m.

* * * * *

THE VIDEOGRAPHER: Good morning. Today is September 22nd, 2021, and the time is approximately 10:09 a.m. The deponent is Patti McCoy. This is case number A-17-760558-C, filed in District Court, Clark County, Nevada, entitled "Nevada Commissioner of Insurance v. Milliman Incorporated, et al."

My name is Shonn Slivkoff of Envision Legal Solutions. I am the videographer. The location of this deposition is the offices of Envision Legal Solutions, located at 1050 Indigo Drive, Suite 140, Las Vegas, Nevada, 89145.

Will all counsel present please identify themselves and the court reporter will administer the oath.

MR. PRUNTY: My name is Don Prunty. I am with Greenberg Traurig, and I represent the Nevada Health Co-Op.

MR. MEIER: My name is Glen Meier. I'm also with Greenberg Traurig, also representing Nevada Health Co-Op.

1 MR. LAJOIE: My name is Andrew Lajoie,
2 representing InsureMonkey and Alex Rivlin.

3 MS. OCHOA: I'm Angela Nakamura Ochoa. I
4 represent Pam Egan, Linda Mattoon, Basil Dibsie,
5 Tom Zumtobel, Bobbette Bond, and Kathleen Silver.

6 MR. BROWN: Good morning. Russell Brown.
7 I represent Defendants Larson & Company, Martha
8 Hayes and Dennis Larson.

9 MS. MATA: Emma Matta. I represent
10 Unite Here Health and Nevada Health Solutions.

11 THE WITNESS: Patti McCoy.

12 Whereupon,

13 PATTI MCCOY,
14 having been sworn to testify to the truth, the whole
15 truth, and nothing but the truth, was examined and
16 testified under oath as follows:

17
18 EXAMINATION

19 BY MR. PRUNTY:

20 Q. Ms. McCoy, are you represented by
21 counsel here today?

22 A. No.

23 Q. And you are appearing pursuant to a
24 subpoena, correct?

25 A. That's correct.

1 A. Nevada Health Link?

2 Q. Yes. The Nevada Health Link.

3 A. Nevada Health Link was the State
4 Exchange. Nevada decided to do their own exchange
5 and build it. And it was an abysmal failure.

6 Q. Okay. And why do you call it an
7 abysmal failure?

8 A. It didn't work.

9 Q. What was it supposed to do that it did
10 not do as it related to the Co-Op?

11 A. It was supposed to allow consumers to
12 enroll either on their own or through -- with a
13 broker. They could have an agent representing them
14 and also a place for small business owners to
15 enroll. And the -- it would be able to calculate
16 any APTC, that advanced premium tax credit, that
17 the individual or the business owner was entitled
18 to, to decrease the premiums that they paid monthly
19 to become members of whichever insurance company
20 that they chose to be part of.

21 Q. Okay. And the fact that the Nevada
22 Health Link, as you called it, was an abysmal
23 failure, how did that affect the Co-Op, or NHC?

24 A. It was very difficult for us to enroll
25 our customers. It would -- it would take

1 approximately four hours to enroll one individual
2 when it first opened up.

3 MS. MATA: So I'm going to walk you
4 through some documents now.

5 (Exhibit Number 182 was marked.)

6 BY MS. MATA:

7 Q. All right. I'm going to hand you what
8 I've just marked as Exhibit 182. And there is a
9 Bates number at the bottom of that page. It
10 says PLAINTIFF00962410.

11 Do you see that?

12 A. Yes.

13 Q. And this is an email that's dated
14 October 11th of 2013. And it's sent to you
15 and Mike, I think it's Priseler, from Tom
16 Zumtobel.

17 Do you see that?

18 A. Yes.

19 Q. And it says -- and remind me again who
20 you said Mike Priseler was.

21 A. He worked as the head of my broker team.

22 Q. Okay. All right. And it says
23 "Patti/Mike, we are preparing a weekly report
24 with all carriers regarding challenges of the
25 Nevada Health Link. In addition to the broker

1 number, if you're aware of any issues or
2 concerns that the brokers have in regards to the
3 Exchange functionality or operation, I would
4 like -- I would like to include it in this
5 report."

6 Do you -- or what challenges with the
7 Nevada Health Link was Tom Zumtobel referring to?

8 A. He's referring to some of the challenges
9 that I just spoke of, which was the functionality
10 of the Nevada Health Link website. It would take
11 an inordinate amount of time to enroll an
12 individual.

13 Q. Okay.

14 A. So it just would spin for hours. And
15 that was one of the issues. The other issue was
16 being -- for the brokers to be able to get their
17 NPI numbers listed into the Health Link so that
18 they could be paid commission by us, or whatever
19 company they had chosen to go with.

20 Q. So in terms of the information that
21 was -- or, the function of the Nevada Health
22 Link, you said they -- it was supposed to allow,
23 for example, for people to enroll through the
24 link, and then once they did that, is that
25 information that would have been sent from the

1 Nevada Health Link to the Co-Op?

2 A. Not directly.

3 Q. How would that work, if you know?

4 A. I'm not that expert in how to map out
5 those electronic transfers. The ETFs are out of my
6 purview to tell you.

7 Q. Okay. Tom, in this email, refers to
8 weekly reports regarding those challenges.

9 Do you recall whether there were actual
10 weekly reports regarding challenges with the Nevada
11 Health Link that were prepared by somebody at the
12 Co-Op?

13 A. Yeah. My team would compile a list of
14 the complaints from the brokers and provide that to
15 Tom so it could be forwarded.

16 Q. And do you know where those reports
17 were kept?

18 A. No.

19 Q. Do you know how they were kept,
20 whether it was electronic or in paper format?

21 A. No.

22 Q. When they were prepared, do you know
23 how they were prepared?

24 A. No.

25 Q. Once you -- once those reports were

1 given to Tom Zumtobel, you don't know what
2 happened to them?

3 A. I don't know.

4 Q. What was Xerox's relation to the
5 Nevada Health Link?

6 MR. PRUNTY: Objection. Standard.
7 Leading question.

8 THE WITNESS: Do I answer that?

9 BY MS. MATA:

10 Q. You can answer.

11 A. Xerox built the Nevada Health Link.

12 MS. MATA: I'm handing you Exhibit 183.

13 (Exhibit Number 183 was marked.)

14 BY MS. MATA:

15 Q. So I've handed you what I've marked as
16 Exhibit 183, and that one, at the bottom of the
17 page, is Bates numbered PLAINTIFF00114243; is
18 that correct?

19 A. That's what I have.

20 Q. And this is a chain of emails. And
21 what I really want to ask you about is the very
22 top email on the very first page.

23 It's an email dated April 4th of 2014,
24 and it's from you to Mike Priseler.

25 Do you see that?

1 A. Yes.

2 Q. And it says "Thanks, Everyone" -- it
3 copies other people as well. It says "So I
4 talked to Xerox today, stating we have issues
5 with the files they provide. They acknowledged
6 a problem (or six)."

7 What were you referring to there?

8 A. That there were multiple problems.

9 Q. Well, let me ask a better question.

10 You said, "I talked to Xerox today,
11 stating we have issues with the files they
12 provide."

13 What do you mean by "the files that they
14 provide"?

15 A. I don't recall.

16 Q. Okay. And when you're referring to
17 Xerox, are you referring to the relationship you
18 just described between Xerox and Nevada Health
19 Link?

20 A. Yes.

21 Q. And to the best that you can or to the
22 best of your knowledge, what exactly is your
23 understanding of what the relationship between
24 Xerox and the Nevada Health Link is or was?

25 MR. PRUNTY: Objection. Form of the

1 question.

2 THE WITNESS: Xerox -- Xerox built the
3 Nevada Health Link.

4 BY MS. MATA:

5 Q. Were the problems that you were
6 describing earlier with the functionality of the
7 Nevada Health Link attributed by you and others
8 at the Co-Op to Xerox?

9 A. Xerox is the company that built their
10 platform, so yes, we felt Xerox was to blame or
11 was -- what they had built wasn't working.

12 Q. Okay. And when you say in the second
13 sentence -- or, I guess it's the third sentence
14 in the email, "They acknowledged a problem (or
15 six)," you weren't meaning there was only six
16 problems, you were just saying there were
17 several problems?

18 A. Yes.

19 MS. MATA: I'm handing you Exhibit 184.

20 (Exhibit Number 184 was marked.)

21 MR. PRUNTY: Did you say 183?

22 MS. MATA: No. 184.

23 BY MS. MATA:

24 Q. All right. Exhibit 184 that I've just
25 handed you is Bates-numbered PLAINTIFF00885779,

1 and it goes through PLAINTIFF00885782.

2 Do you see that?

3 A. Yes.

4 Q. Exhibit 184 is an email with an
5 attachment. It's dated April 9th of 2014, and
6 it's from Tracey Woods to several people.

7 Do you know who Tracey Woods is?

8 A. No.

9 Q. One of the -- or, some of the people
10 that were copied on this email -- and you can
11 look through them -- included at least one
12 person at the Nevada Health Co-Op, which was Tom
13 Zumtobel.

14 Do you see that?

15 A. Yes.

16 Q. And then the subject of the email is
17 "NAHP Operations Issues Letter Board 4/9/2014
18 Final."

19 Do you see that?

20 A. Yes.

21 Q. Do you know what NAHP is?

22 A. Nevada Association of Health Plans.

23 Q. And do you know what the Nevada
24 Association of Health Plans is?

25 A. I have a pretty good idea. It's a

1 group -- it's a group of people -- representatives
2 from the different health plans that would meet to
3 discuss common problems.

4 Q. And do you know whether Mr. Zumtobel
5 or anybody else at the Co-Op was one of or maybe
6 several of the representatives on behalf of the
7 Co-Op for the Nevada Association of Health
8 Plans?

9 A. I believe Tom was, Tom Zumtobel.

10 Q. Okay. All right. So attached to this
11 email -- well, let's look at the email first.

12 The email says "Please" -- well, let me
13 say this: It's directed to Barbara Smith Campbell,
14 and her email is Barbara@consensusnv.com.

15 Do you see that?

16 A. Yes.

17 Q. Do you know who Barbara Smith Campbell
18 is?

19 A. No.

20 Q. And then it's also addressed to
21 Shawnaderousse@exchange.nv.gov.

22 Do you know who Miss DeRousse is?

23 A. No.

24 Q. Okay. Then the e-mail says, "Please
25 find attached the NAHP comments for submission

1 for the SSHIX board meeting on 4/10/14."

2 Did I read that correctly?

3 A. Yes.

4 Q. Okay. Do you know what "SSHIX" stands
5 for?

6 A. Silver State Health Exchange, I'm
7 guessing.

8 Q. Okay. And then it says, "Please enter
9 during the public comment period of the agenda.
10 As always, please let me know if you have any
11 questions." Then there's an attachment to that
12 email.

13 Have you ever seen this attachment
14 before?

15 A. Not that I recall.

16 Q. The attachment is addressed to the
17 board of directors of the Silver State Health
18 Insurance Exchange, correct?

19 A. Yes.

20 Q. And if you go to the body of the
21 letter, it says "Dear Directors, over the past
22 few months, Xerox has provided weekly updates as
23 to the steps that have been taken to correct the
24 problems with the Exchange functionality, and
25 Xerox appears to paint a picture of things

1 slowly improving. However, the picture painted
2 by Xerox is not shared by the Exchange medical
3 carriers. The Exchange medical carriers have
4 not seen the improvements as Xerox implies are
5 occurring and, in fact, additional problems
6 continue to be discovered."

7 As of April 9th of 2014, based on your
8 experience at the Co-Op, do you agree with that
9 statement?

10 A. It seems plausible.

11 THE COURT REPORTER: It's what?

12 THE WITNESS: Plausible.

13 BY MS. MATA:

14 Q. And that's because you agree that, as
15 of April 9, 2014, the Co-Op was still having
16 issues with the Nevada Health Link and Xerox,
17 correct?

18 A. Correct.

19 Q. Okay. The next paragraph says, "In a
20 number of Exchange board meetings, it appears
21 that Xerox implies that the Exchange enrollment
22 and payment is being completed via an electronic
23 process known as an 'EDI process.' An EDI
24 process would allow the insurer to
25 electronically receive an enrollment file, a

1 payment file, and an ACH payment (from Xerox).

2 If the EDI process had been in place, many of
3 the enrollment issues that the Exchange is
4 experiencing would not have occurred.

5 Unfortunately, the EDI process that Xerox was
6 contracted to create does not work, and most of
7 the medical Exchange carriers are manually
8 enrolling individuals and verifying payments."

9 As of April 9th, 2014, based on your
10 experience at the Co-Op, do you agree with that
11 statement?

12 MR. PRUNTY: Objection. Foundation.

13 THE WITNESS: I don't have specific
14 knowledge on how all that works.

15 BY MS. MATA:

16 Q. Okay. At some point during your
17 tenure at the Co-Op -- or let me ask you this:
18 At some point in 2014, based on your experience
19 at the Co-Op, was there a time when the EDI
20 process that Xerox was contracted to create
21 didn't work and the Co-Op had to enter certain
22 information manually?

23 A. Yes.

24 MR. PRUNTY: Objection. Foundation.

25 / / /

1 BY MS. MATA:

2 Q. What is an 834 enrollment file?

3 A. I'm not entirely sure.

4 Q. If you go to the next page, which is
5 page 2 of the letter, and at the bottom, the
6 Bates numbers end in 5781.

7 Do you see that page?

8 A. Yes.

9 Q. The second -- or the first full
10 paragraph in that page talks about "The process
11 is very laborious and significantly lengthens
12 the time it takes to actually enroll a person in
13 an Exchange plan."

14 Is that what you were telling me about
15 earlier, where you said it took about four hours to
16 enroll somebody into a plan?

17 A. Yes.

18 Q. So at least -- and feel free to read
19 any part of the letter that you need to -- but
20 at least in terms of what you experienced, you
21 would agree with that statement about being
22 laborious and significantly lengthening the time
23 it actually took to enroll the person?

24 A. Yes.

25 Q. All right. So if we go to the next

1 page, which is the last page of the letter,
2 Bates number ending in 5782.

3 The second to last paragraph -- I guess
4 it's the third to last paragraph. Starts with
5 "Independent of the issues above, the Exchange
6 shopping experience is still not reliable."

7 Based on your experience at the Co-Op as
8 of April of 2014, do you agree that at that point,
9 the Exchange shopping experience was still not
10 reliable?

11 MR. PRUNTY: Objection. Foundation.

12 THE WITNESS: I agree.

13 BY MS. MATA:

14 Q. It says "The system randomly crashes
15 during enrollment."

16 As of April of 2014, was that your
17 experience based on the work that you did at the
18 Co-Op?

19 MR. PRUNTY: Same objection.

20 THE WITNESS: Yes.

21 BY MS. MATA:

22 Q. And then the second to last paragraph
23 says "We applaud the board in retaining Deloitte
24 to evaluate the functionality of the exchange
25 and hope that, once Deloitte completes its

1 review, that significant improvements are made."

2 Do you have any knowledge about the board
3 of the Silver State Health Insurance Exchange
4 retaining Deloitte for -- to evaluate functionality
5 of the Exchange?

6 A. I don't have knowledge of that.

7 Q. I think you said earlier in the day
8 that you attended some board meetings; is that
9 correct? -- for the Co-Op?

10 A. Yes.

11 Q. During any of those board meetings
12 that you attended, did you ever hear any
13 conversations about the problems with Xerox and
14 the Exchange as we've been talking about here or
15 as is described in this letter that we just
16 looked at?

17 A. I don't recall.

18 Q. In 2014 -- I'm going to say around May
19 of 2014, do you recall that there were
20 discussions about the Co-Op terminating its
21 relationship with the Nevada Health Link and
22 Xerox?

23 A. Can you restate that or rephrase that
24 question?

25 Q. Yeah.

1 So do you recall any -- at any time, I
2 guess, when you were at the Co-Op, do you recall
3 any conversations or talk about actually Nevada
4 dropping the Healthcare Exchange or Xerox?

5 A. I didn't hear any conversation about
6 that.

7 Q. Okay. Do you recall getting emails or
8 being included in emails where you received news
9 articles about Nevada dropping the Healthcare
10 Exchange and Xerox?

11 A. I don't recall.

12 (Exhibit Number 185 was marked.)

13 BY MS. MATA:

14 Q. I've handed you Exhibit 185.

15 Have you ever -- well, Exhibit 185
16 actually does not have a Bates number, but it's an
17 article from the Las Vegas Sun.

18 And it says, "Will Nevada drop its
19 Healthcare Exchange, Xerox, on Tuesday?" and it's
20 dated May 19th 2014.

21 Do you recall ever seeing this news
22 article?

23 MR. PRUNTY: Let me object to this
24 because it contains no Bates number, and there is
25 no evidence it was previously produced.

1 But go ahead.

2 THE WITNESS: I don't know if I
3 specifically saw this article.

4 BY MS. MATA:

5 Q. Does this jog your memory at all as to
6 discussions that people at the Co-Op were having
7 regarding Nevada possibly dropping the
8 Healthcare Exchange or Xerox?

9 A. Give me a moment to read it, please.

10 Q. Sure.

11 A. (Reviewing document.)

12 Can you restate your question, please?

13 Q. Does this article jog your memory with
14 regard to any discussions regarding Nevada
15 potentially dropping the Healthcare Exchange or
16 Xerox?

17 A. Yes.

18 Q. And was that related, as far as you
19 knew, to the issues that you described since
20 we've been talking that the Co-Op was having
21 with Xerox and Nevada Health Link?

22 MR. PRUNTY: Objection. I don't
23 understand the question. It's ambiguous.

24 THE WITNESS: Can you restate the
25 question?

1 BY MS. MATA:

2 Q. Sure.

3 Let me ask -- let me ask you this: Do
4 you remember -- with regard to the information that
5 the Co-Op was receiving from Xerox, do you remember
6 there being issues with accuracy of information
7 related to members?

8 A. Yes.

9 Q. And you were involved with issues
10 where members were not being accurately
11 reflected as members based on that information
12 that was being received from Xerox, correct?

13 A. Yes.

14 Q. And, in fact, you were talking a
15 little while ago about fielding calls at
16 2:00 a.m. for these type of issues, correct?

17 A. Yes.

18 Q. And then my question -- I'll go back,
19 because I know you asked me to reask it -- is,
20 the reasoning behind the Nevada dropping the
21 Healthcare Exchange or Xerox, as far as you
22 knew, was related to those type of issues, the
23 incorrect information that was being received
24 from the -- by the Co-Op from Xerox?

25 MR. PRUNTY: Objection. Foundation.

1 Form of the question.

2 THE WITNESS: I don't -- excuse me.

3 BY MS. MATA:

4 Q. You can answer.

5 A. I don't know why specifically that they
6 decided to drop Xerox, but I know at the end of the
7 year, that we changed to the healthcare.gov.

8 Q. If you could just give me a second,
9 I'm going through my notes to keep this moving.

10 (Brief pause.)

11 BY MS. MATA:

12 Q. All right. Earlier, you were asked a
13 question regarding Michael Katigbak. And I
14 think you said -- well, remind what you said.

15 Did you or did you not work with
16 Mr. Katigbak while you were employed by NHC?

17 A. I did work with Mike.

18 Q. And what -- in what role did you work
19 with Mr. Katigbak?

20 A. He was one of the employees. I was one
21 of the employees.

22 Q. Did you work directly with him on
23 anything?

24 A. No.

25 Q. There's -- I apologize. I'm just

1 Q. Did you work with First Health
2 directly?

3 A. I did.

4 Q. Okay. And did you have any
5 involvement in the -- I guess the agreement with
6 First Health or in retaining First Health?

7 A. I believe I was asked to read the
8 agreement and give any comments, but I didn't
9 specifically write the agreement or sign the
10 agreement or anything.

11 Q. Did you review any documents to
12 prepare for today's deposition?

13 A. No.

14 Q. Did you talk to anybody about your
15 deposition today or what would be involved with
16 regard to your deposition?

17 A. No.

18 MS. MATA: That's it. I will pass the
19 witness. We'll reserve the right to ask additional
20 questions.

21 Thank you.

22 THE WITNESS: Thank you.

23 THE VIDEOGRAPHER: Counsel, do we have
24 more questions at this time?

25 MR. BROWN: Yes, he's just looking. Is

1 that "no"?

2 THE VIDEOGRAPHER: That's a "no."

3 MR. BROWN: We're done then.

4 Anyone on the phone or Zoom or whatever?

5 MR. PRUNTY: They can't ask questions.

6 THE VIDEOGRAPHER: Having heard the
7 approval of both attorneys to go off the record at
8 this time, this concludes the video deposition of
9 Patti McCoy. We are now going off the record. The
10 time is approximately 4:01 p.m.

11 (Whereupon, the deposition was concluded
12 at 4:01 p.m. this date.)

13 * * * * *

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
3) SS:
4 COUNTY OF CLARK)

5 I, Monice K. Campbell, a duly
6 commissioned and licensed court reporter, Clark
7 County, State of Nevada, do hereby certify: That I
8 reported the taking of the deposition of the
9 witness, PATTI MCCOY, commencing on Wednesday,
10 September 22, 2021, at 10:09 a.m. a.m.;

11 That prior to being examined, the witness
12 was, by me, duly sworn to testify to the truth.
13 That I thereafter transcribed my said shorthand
14 notes into typewriting and that the typewritten
15 transcript of said deposition is a complete, true,
16 and accurate transcription of said shorthand notes.

17 I further certify that I am in no way
18 related to to any of the parties, nor am I in any way
19 interested in the outcome thereof.

20 IN WITNESS THEREOF, I have hereunto set my
21 hand in my office in the County of Clark, State of
22 Nevada, this 24th day of September, 2021.

23 

24 _____
25 Monice K. Campbell, CCR No. 312

TAB 14

TAB 14

1 **SUBP**

JOHN R. BAILEY

2 Nevada Bar No. 0137

SARAH E. HARMON

3 Nevada Bar No. 8106

JOSEPH A. LIEBMAN

4 Nevada Bar No. 10125

REBECCA L. CROOKER

5 Nevada Bar No. 15202

BAILEY ♦ KENNEDY

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12 Texas Bar No. 24029470

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Houston, Texas 77002

14 Telephone: 713.225.2300

SBonham@seyfarth.com

15 EMata@seyfarth.com

16 *Attorneys for Defendants*

Unite Here Health and Nevada Health

17 *Solutions, LLC*

18 DISTRICT COURT

19 CLARK COUNTY, NEVADA

20 STATE OF NEVADA, EX REL.

COMMISSIONER OF INSURANCE,

21 BARBARA D. RICHARDSON, IN HER

OFFICIAL CAPACITY AS RECEIVER FOR

22 NEVADA HEALTH CO-OP,

23 Plaintiff,

24 v.

MILLIMAN, INC., a Washington Corporation;

25 JONATHAN L. SHREVE, an Individual;

MARY VAN DER HEIJDE, an Individual;

26 MILLENNIUM CONSULTING SERVICES,

LLC, a North Carolina Corporation; LARSON

27 & COMPANY P.C., a Utah Professional

Corporation; DENNIS T. LARSON, an

28 Individual; MARTHA HAYES, an Individual;

Case No. A-17-760558-B

Dept. No. XVI

**DEFENDANTS UNITE HERE HEALTH
AND NEVADA HEALTH SOLUTIONS,**

**LLC'S 30(b)(6) DEPOSITION
SUBPOENA TO CONDUENT STATE
HEALTHCARE, LLC f/k/a XEROX
STATE HEALTHCARE, LLC**

(For Personal Appearance at Deposition)

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; 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.

THE STATE OF NEVADA TO:

CONDUENT STATE HEALTHCARE, LLC f/k/a
XEROX STATE HEALTHCARE, LLC
c/o its Registered Agent
Corporation Service Company
112 North Curry Street
Carson City, Nevada 89703

YOU ARE ORDERED TO APPEAR AS A WITNESS and give testimony at the following date, time, and place pursuant to NRS 50.165 and NRCP 30 and 45, UNLESS you make an agreement with the attorney or party submitting this subpoena:

Date: November 18, 2021
Time: 9:00 a.m.
Place: Bailey ♦ Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, NV 89148

If you are a public or private corporation, partnership, association, or governmental agency, you are ordered to designate one or more officers, directors, managing agents, or other persons who consent to testify on your behalf. The persons you designate will be examined, and are ordered to testify, on the matters set forth below that are known or reasonably available to the organization. NRCP 30(b)(6).

WITNESS FEES: You are entitled to witness fees and mileage traveled, as provided by NRS 50.225. This Subpoena must be accompanied by the fees for one day's attendance and mileage, unless issued on behalf of the State or a State agency. NRCP 45(b).

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MATTERS ON WHICH TESTIMONY WILL BE TAKEN

DEFINITIONS

1. “UHH” means Defendant UNITE HERE HEALTH, including all of its past or present principals, members, employees, agents, representatives, attorneys, or other persons or entities acting or purporting to act for, on behalf of, or with, all or any of them.

2. “NHC” or “Co-Op” means Nevada Health Co-Op, including all of its past or present principals, members, employees, agents, representatives, attorneys, or other persons or entities acting or purporting to act for, on behalf of, or with, all or any of them, including its predecessor - Hospitality Health.

3. “NHS” means Nevada Health Solutions, LLC, including all of its past or present principals, members, employees, agents, representatives, attorneys, or other persons or entities acting or purporting to act for, on behalf of, or with, all or any of them.

4. “Nevada DOI” or “NDOI” means Nevada Division of Insurance, including all of its past or present principals, members, employees, agents, representatives, attorneys, or other persons or entities acting or purporting to act for, on behalf of, or with, all or any of them.

5. “Defendants” means any and/or all of the defendants in this lawsuit, which includes Milliman, Inc., Johnathan L. Shreve, Mary Van Der Heijde, Millenium Consulting Services, LLC, Larson & Company, Dennis T. Larson, Martha Hayes, InsureMonkey, Inc., Alex Rivlin, NHC, Pamela Egan, Basis C. Dibsie, Linda Mattoon, Tom Zumtobel, Kathleen Silver, and UHH.

TOPICS OF INQUIRY

UHH and NHS will conduct examination on each of the following matters:

1. Any and all contracts and/or agreements which relate to your role with Nevada Health Link and/or the Silver State Health Insurance Exchange.

2. Your qualifications to develop, administer, and/or operate Nevada Health Link.

3. The delineation of duties and obligations between you and Silver State Health Insurance Exchange with respect to Nevada Health Link.

4. Your development of Nevada Health Link.

5. Your administration of Nevada Health Link.
6. Your operation of Nevada Health Link.
7. The purpose and/or intent of Nevada Health Link.
8. The functionality and/or performance of Nevada Health Link, including the role of EDI 834 and 820 files/transmissions.
9. Any issues and/or problems with Nevada Health Link.
10. Your attempts to remedy and/or fix any issues and/or problems with Nevada Health Link.
11. The compatibility of Nevada Health Link with healthcare payer and/or claims processing systems/platforms, including those utilized by the insurance carriers who were selling health insurance policies on Nevada Health Link (*e.g.*, Mphasis Javelina).
12. *In the Matter of Xerox State Healthcare, LLC*, Cause No. 17.0299.
13. *Basich v. Xerox State Healthcare, LLC, et al.*, Case No. A-14-698567-C.
14. *Casale v. State of Nevada Ex. Rel. Silver State Health Insurance Exchange, et al.*, Case No. A-14-706171-C.
15. The May of 2014 termination of your contract with the State of Nevada and/or Silver State Health Insurance Exchange.
16. The report prepared by Deloitte Consulting LLP regarding Nevada Health Link.
17. The letter attached hereto as Exhibit B.
18. Discussions with NHC regarding Nevada Health Link and any detrimental effects it was causing to NHC.
19. Discussions with the Silver State Health Insurance Exchange regarding issues and/or problems with Nevada Health Link.
20. Discussions with the State of Nevada and/or NDOI regarding issues and/or problems with Nevada Health Link.
21. Discussions with Red River Consulting regarding issues and/or problems with Nevada Health Link.

///

1 22. Discussions with other insurance carriers who were selling health insurance policies
2 on Nevada Health Link regarding Nevada Health Link and any detrimental effects it was causing to
3 them.

4 23. The divestiture of Xerox State Health, LLC, resulting in the formation of Conduent
5 State Healthcare, LLC.

6 24. Discussions with Cantilo & Bennett regarding NHC, UHH, NHS, and/or the above-
7 referenced litigation.

8 25. Discussions with Greenberg Traurig regarding NHC, UHH, NHS, and/or the above-
9 referenced litigation.

10 26. Discussions with Barbara Richardson regarding NHC, UHH, NHS, and/or the above-
11 referenced litigation.

12 27. Discussions with Lewis & Roca regarding NHC, UHH, NHS, and/or the above-
13 referenced litigation.

14 28. Discussions with Santoro Whitmire regarding NHC, UHH, NHS, and/or the above-
15 referenced litigation.

AFFIDAVIT/DECLARATION OF SERVICE

STATE OF NEVADA)
) ss.
COUNTY OF _____)

I, _____, being duly sworn, or under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a party to or interested in the proceedings in which this Affidavit/Declaration is made; that I received a copy of the **DEFENDANTS' 30(b)(6) DEPOSITION SUBPOENA TO CONDUENT STATE HEALTHCARE, LLC f/k/a XEROX STATE HEALTHCARE, LLC** on the _____ day of _____, 2021; and that I served the same on _____, by delivering and leaving a copy with the witness at (state address) _____.

Executed on: _____
(Date) (Signature of Person Making Service)

SUBSCRIBED AND SWORN to before me this

_____ day of _____, 20____.

NOTARY PUBLIC in and for the
County of _____, State of _____.

OR ONE OF THE FOLLOWING: Per NRS 53.045

(a) If executed in the State of Nevada: "I declare under penalty of perjury that the foregoing is true and correct."

Executed on: _____
(Date) (Signature of Person Making Service)

(b) If executed outside of the State of Nevada: "I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

Executed on: _____
(Date) (Signature of Person Making Service)

EXHIBIT “A” - NEVADA RULE OF CIVIL PROCEDURE 45

(c) Protection of Persons Subject to Subpoena

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court that issued the subpoena must enforce this duty and may impose an appropriate sanction — which may include lost earnings and reasonable attorney fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. (i) A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial. (ii) If documents, electronically stored information, or tangible things are produced to the party that issued the subpoena without an appearance at the place of production, that party must, unless otherwise stipulated by the parties or ordered by the court, promptly copy or electronically reproduce the documents or information, photograph any tangible items not subject to copying, and serve these items on every other party. The party that issued the subpoena may also serve a statement of the reasonable cost of copying, reproducing, or photographing, which a party receiving the copies, reproductions, or photographs must promptly pay. If a party disputes the cost, then the court, on motion, must determine the reasonable cost of copying the documents or information, or photographing the tangible items.

(B) Objections. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, or a person claiming a proprietary interest in the subpoenaed documents, information, tangible things, or premises to be inspected, may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The person making the objection must serve it before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made: (i) the party serving the subpoena is not entitled to inspect, copy, test, or sample the materials or tangible things or to inspect the premises except by order of the court that issued the subpoena; (ii) on notice to the parties, the objecting person, and the person commanded to produce or permit inspection, the party serving the subpoena may move the court that issued the subpoena for an order compelling production or inspection; and (iii) if the court enters an order compelling production or inspection, the order must protect the person commanded to produce or permit inspection from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court that issued a subpoena must quash or modify the subpoena if it: (i) fails to allow reasonable time for compliance; (ii) requires a person to travel to a place more than 100 miles from the place where that person resides, is employed, or regularly transacts business in person, unless the person is commanded to attend trial within Nevada; (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or (iv) subjects a person to an undue burden.

(B) When Permitted. On timely motion, the court that issued a subpoena may quash or modify the subpoena if it requires disclosing: (i) a trade secret or other confidential research, development, or commercial information; or (ii) an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order an appearance or production under specified conditions if the party serving the subpoena: (i) shows a substantial

1 need for the testimony or material that cannot be otherwise met without undue hardship; and (ii)
2 ensures that the subpoenaed person will be reasonably compensated.

3 **(d) Duties in Responding to a Subpoena.**

4 **(1) Producing Documents or Electronically Stored Information.** These procedures apply to
5 producing documents or electronically stored information:

6 **(A) Documents.** A person responding to a subpoena to produce documents must produce
7 them as they are kept in the ordinary course of business or must organize and label them to
8 correspond to the categories in the demand.

9 **(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena
10 does not specify a form for producing electronically stored information, the person responding
11 must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable
12 form or forms.

13 **(C) Electronically Stored Information Produced in Only One Form.** The person
14 responding need not produce the same electronically stored information in more than one form.

15 **(D) Inaccessible Electronically Stored Information.** The person responding need not
16 provide discovery of electronically stored information from sources that the person identifies as
17 not reasonably accessible because of undue burden or cost. On motion to compel discovery or
18 for a protective order, the person responding must show that the information is not reasonably
19 accessible because of undue burden or cost. If that showing is made, the court may nonetheless
20 order discovery from such sources if the requesting party shows good cause, considering the
21 limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

22 **(2) Claiming Privilege or Protection.**

23 **(A) Information Withheld.** A person withholding subpoenaed information under a claim
24 that it is privileged or subject to protection as trial-preparation material must: (i) expressly make
25 the claim; and (ii) describe the nature of the withheld documents, communications, or tangible
26 things in a manner that, without revealing information itself privileged or protected, will enable the
27 parties to assess the claim.

28 **(B) Information Produced.** If information produced in response to a subpoena is subject to a
claim of privilege or of protection as trial-preparation material, the person making the claim may
notify any party that received the information of the claim and the basis for it. After being notified,
a party must promptly return, sequester, or destroy the specified information and any copies it has;
must not use or disclose the information until the claim is resolved; must take reasonable steps to
retrieve the information if the party disclosed it before being notified; and may promptly present the
information under seal to the court for a determination of the claim. The person who produced the
information must preserve the information until the claim is resolved.

(e) Contempt; Costs.

Failure by any person without adequate excuse to obey a subpoena served upon that person may be
deemed a contempt of the court that issued the subpoena. In connection with a motion for a
protective order brought under Rule 26(c), a motion to compel brought under Rule 45(c)(2)(B), or a
motion to quash or modify the subpoena brought under Rule 45(c)(3), the court may consider the
provisions of Rule 37(a)(5) in awarding the prevailing person reasonable expenses incurred in
making or opposing the motion.

EXHIBIT B

A letter to all Nevadans



Xerox is committed to making Nevada Health Link better.

As the contracted vendor for Nevada's health insurance exchange, we recognize and truly regret any challenges you may have encountered when dealing with the system.

Given the importance of getting this right, we're dedicating significant and widespread resources from throughout our company to address the issues most important to you—the customers.

Long wait times for the call center, website errors and other processing delays are unacceptable. As a result, we have brought in hundreds of additional staff over the last few weeks to help solve these issues.

Like you, we want a Nevada Health Link that is easy to access and simple to use. Though every issue won't be solved overnight, we have made steady progress, and we are confident that you will see these improvements continue over the coming days and weeks.

Nevada Health Link has to be a service of which both Xerox and all Nevadans can be proud. We are sincerely dedicated to reaching that goal.

A handwritten signature in black ink, reading "Ursula M. Burns".

Ursula M. Burns
Chairman and CEO, Xerox Corporation

For more information about our work with Nevada Health Link, go to:
xerox.com/NevadaHealthLink

TAB 15

TAB 15

SUBP

JOHN R. BAILEY

Nevada Bar No. 0137

SARAH E. HARMON

Nevada Bar No. 8106

JOSEPH A. LIEBMAN

Nevada Bar No. 10125

REBECCA L. CROOKER

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RCrooker@BaileyKennedy.com

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Telephone: 713.225.2300

SBonham@seyfarth.com

EMata@seyfarth.com

Attorneys for Defendants

Unite Here Health and Nevada Health

Solutions, LLC

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;

Case No. A-17-760558-B

Dept. No. XVI

SUBPOENA DUCES TECUM FOR
BUSINESS RECORDS OF CONDUENT
STATE HEALTHCARE, LLC f/k/a
XEROX STATE HEALTHCARE, LLC

(No Appearance Required)

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; 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.

THE STATE OF NEVADA SENDS GREETINGS TO:

The Custodian of Records or Other Qualified Person at:

CONDUENT STATE HEALTHCARE, LLC f/k/a
XEROX STATE HEALTHCARE, LLC
c/o its Registered Agent
Corporation Service Company
112 North Curry Street
Carson City, Nevada 89703

YOU ARE ORDERED, pursuant to NRCP 45, to produce and permit inspections and copying of books, documents, or tangible things set forth below that are in your possession, custody or control, by delivering a true, legible, and durable copy of the business records described below to the requesting attorney or party appearing in proper person, by United States mail or similar delivery service to the attention of Joseph A. Liebman, Esq., no later than 5:00 p.m. on Monday, November 1, 2021, at the following address:

Bailey ♦ Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, NV 89148

All documents shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories listed. NRCP 45(d)(1)(A).

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ITEMS TO BE PRODUCED

See Schedule “1” attached hereto and incorporated herein.

SCHEDULE 1

CONDUENT STATE HEALTHCARE, LLC f/k/a XEROX STATE HEALTHCARE, LLC **DISCOVERY REQUESTS**

INSTRUCTIONS AND DEFINITIONS

1. Whenever the word "document" is used in these Requests, this will be liberally construed to include, without limitation, all originals, copies and duplicates of all tangible forms of electronic, graphic, photographic and phone recordings, including but not limited to information in databases, correspondence, records, reports, memoranda, invoices, contracts, statements, telegrams, cancelled checks, microfilms, photographs, tapes, discs and all other kinds of written or documentary personal property.

2. As used herein the term "communication" means and includes any written, oral, telephonic or other inquiry, representation, discussion, conversation, agreement, understanding, meeting, memorandum, letter, note, telegram, advertisement or interview.

3. The term "and" includes "or," and the term "or" includes "and."

4. The term "including" means "including but not limited to."

5. The use of the singular of any word refers, in addition, to the plural of such word, and the use of the plural of any word refers, in addition, to the singular of such word.

6. As used herein, the terms "you," "your," and "yourself" refer to the answering party, and shall include each of your accountants, agents, representatives, affiliates, employees, attorneys and each person acting or purporting to act on behalf of answering party.

7. "UHH" means Defendant UNITE HERE HEALTH, including all of its past or present principals, members, employees, agents, representatives, attorneys, or other persons or entities acting or purporting to act for, on behalf of, or with, all or any of them.

8. "NHC" or "Co-Op" means Nevada Health Co-Op, including all of its past or present principals, members, employees, agents, representatives, attorneys, or other persons or entities acting or purporting to act for, on behalf of, or with, all or any of them, including its predecessor - Hospitality Health.

9. “NHS” means Nevada Health Solutions, LLC, including all of its past or present principals, members, employees, agents, representatives, attorneys, or other persons or entities acting or purporting to act for, on behalf of, or with, all or any of them.

10. “Nevada DOI” or “NDOI” means Nevada Division of Insurance, including all of its past or present principals, members, employees, agents, representatives, attorneys, or other persons or entities acting or purporting to act for, on behalf of, or with, all or any of them.

11. “Defendants” means any and/or all of the defendants in this lawsuit, which includes Milliman, Inc., Johnathan L. Shreve, Mary Van Der Heijde, Millenium Consulting Services, LLC, Larson & Company, Dennis T. Larson, Martha Hayes, InsureMonkey, Inc., Alex Rivlin, NHC, Pamela Egan, Basis C. Dibsie, Linda Mattoon, Tom Zumtobel, Kathleen Silver, and UHH.

12. If an objection is made as to the production of any requested information, or if any Request is otherwise not answered in full:

- a. State the specific grounds for not answering in full;
- b. State the answer to the Request to the extent to which it is not objected;
- c. Fully identify the information, documents and/or other item for which its objection is asserted; and
- d. If a privilege is alleged, the privilege asserted (e.g., work product, attorney/client).

REQUESTS FOR DOCUMENTS

1. Produce any and all contracts and/or agreements which relate to your role with Nevada Health Link and/or the Silver State Health Insurance Exchange.

2. Produce any and all documents and non-privileged communications relating to your role, duties, and/or obligations as it pertains to Nevada Health Link and/or the Silver State Health Insurance Exchange.

3. Produce any and all documents and non-privileged communications which relate to your licensure or lack thereof with the NDOI.

4. Produce any and all documents and non-privileged communications which relate to any investigation and any related proceedings (e.g., *In the Matter of Xerox State Healthcare, LLC*, Cause No. 17.0299) initiated by the NDOI relating to your role with Nevada Health Link and/or the Silver State Health Insurance Exchange.

5. Produce any and all documents and non-privileged communications relating to the report prepared by Deloitte Consulting LLP regarding Nevada Health Link.

6. Produce any and all documents and non-privileged communications relating to the termination of your contract with the State of Nevada and/or Silver State Health Insurance Exchange.

7. Produce any and all documents and non-privileged communications relating to the letter attached hereto as Exhibit A.

8. Produce any and all communications between you and UHH relating to Nevada Health Link and/or the Silver State Health Insurance Exchange.

9. Produce any and all communications between you and NHS relating to Nevada Health Link and/or the Silver State Health Insurance Exchange.

10. Produce any and all communications between you and NHC relating to Nevada Health Link and/or the Silver State Health Insurance Exchange.

11. Produce any and all communications between you and InsureMonkey relating to Nevada Health Link and/or the Silver State Health Insurance Exchange.

12. Produce any and all communications between you and Red River Consulting relating to Nevada Health Link and/or the Silver State Health Insurance Exchange.

13. Produce any and all communications between you and the Silver State Health Insurance Exchange relating to Nevada Health Link and/or the Silver State Health Insurance Exchange.

14. Produce any and all communications between you and the State of Nevada and/or NDOI relating to Nevada Health Link and/or the Silver State Health Insurance Exchange.

15. Produce any and all communications between you and any insurance carrier which was selling health insurance policies on Nevada Health Link relating to Nevada Health Link and/or the Silver State Health Insurance Exchange.

16. Produce any and all non-privileged internal communications regarding Nevada Health Link and/or the Silver State Health Insurance Exchange.

17. Produce any and all communications with Cantilo & Bennett regarding NHC, UHH, NHS, and/or the above-referenced litigation.

18. Produce any and all communications with Greenberg Traurig regarding NHC, UHH, NHS, and/or the above-referenced litigation.

19. Produce any and all communications with Barbara Richardson or anyone from the NDOI regarding NHC, UHH, NHS, and/or the above-referenced litigation.

20. Produce any and all communications with Lewis & Roca regarding NHC, UHH, NHS, and/or the above-referenced litigation.

21. Produce any and all communications with Santoro Whitmire regarding NHC, UHH, NHS, and/or the above-referenced litigation.

EXHIBIT A

A letter to all Nevadans



Xerox is committed to making Nevada Health Link better.

As the contracted vendor for Nevada's health insurance exchange, we recognize and truly regret any challenges you may have encountered when dealing with the system.

Given the importance of getting this right, we're dedicating significant and widespread resources from throughout our company to address the issues most important to you—the customers.

Long wait times for the call center, website errors and other processing delays are unacceptable. As a result, we have brought in hundreds of additional staff over the last few weeks to help solve these issues.

Like you, we want a Nevada Health Link that is easy to access and simple to use. Though every issue won't be solved overnight, we have made steady progress, and we are confident that you will see these improvements continue over the coming days and weeks.

Nevada Health Link has to be a service of which both Xerox and all Nevadans can be proud. We are sincerely dedicated to reaching that goal.

A handwritten signature in black ink, reading "Ursula M. Burns".

Ursula M. Burns
Chairman and CEO, Xerox Corporation

For more information about our work with Nevada Health Link, go to:
xerox.com/NevadaHealthLink

AFFIDAVIT/DECLARATION OF SERVICE

STATE OF NEVADA)
) ss.
COUNTY OF _____)

I, _____, being duly sworn, or under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a party to or interested in the proceedings in which this Affidavit/Declaration is made; that I received a copy of the **SUBPOENA DUCES TECUM FOR BUSINESS RECORDS OF CONDUENT STATE HEALTHCARE, LLC f/k/a XEROX STATE HEALTHCARE, LLC** on the _____ day of _____, 2021; and that I served the same on _____, by delivering and leaving a copy with the witness at (state address) _____.

Executed on: _____
(Date) (Signature of Person Making Service)

SUBSCRIBED AND SWORN to before me this

_____ day of _____, 20____.

NOTARY PUBLIC in and for the
County of _____, State of _____.

OR ONE OF THE FOLLOWING: Per NRS 53.045

(a) If executed in the State of Nevada: "I declare under penalty of perjury that the foregoing is true and correct."

Executed on: _____
(Date) (Signature of Person Making Service)

(b) If executed outside of the State of Nevada: "I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

Executed on: _____
(Date) (Signature of Person Making Service)

EXHIBIT “A” - NEVADA RULE OF CIVIL PROCEDURE 45

(c) Protection of Persons Subject to Subpoena

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court that issued the subpoena must enforce this duty and may impose an appropriate sanction — which may include lost earnings and reasonable attorney fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. (i) A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial. (ii) If documents, electronically stored information, or tangible things are produced to the party that issued the subpoena without an appearance at the place of production, that party must, unless otherwise stipulated by the parties or ordered by the court, promptly copy or electronically reproduce the documents or information, photograph any tangible items not subject to copying, and serve these items on every other party. The party that issued the subpoena may also serve a statement of the reasonable cost of copying, reproducing, or photographing, which a party receiving the copies, reproductions, or photographs must promptly pay. If a party disputes the cost, then the court, on motion, must determine the reasonable cost of copying the documents or information, or photographing the tangible items.

(B) Objections. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, or a person claiming a proprietary interest in the subpoenaed documents, information, tangible things, or premises to be inspected, may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The person making the objection must serve it before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made: (i) the party serving the subpoena is not entitled to inspect, copy, test, or sample the materials or tangible things or to inspect the premises except by order of the court that issued the subpoena; (ii) on notice to the parties, the objecting person, and the person commanded to produce or permit inspection, the party serving the subpoena may move the court that issued the subpoena for an order compelling production or inspection; and (iii) if the court enters an order compelling production or inspection, the order must protect the person commanded to produce or permit inspection from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court that issued a subpoena must quash or modify the subpoena if it: (i) fails to allow reasonable time for compliance; (ii) requires a person to travel to a place more than 100 miles from the place where that person resides, is employed, or regularly transacts business in person, unless the person is commanded to attend trial within Nevada; (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or (iv) subjects a person to an undue burden.

(B) When Permitted. On timely motion, the court that issued a subpoena may quash or modify the subpoena if it requires disclosing: (i) a trade secret or other confidential research, development, or commercial information; or (ii) an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order an appearance or production under specified conditions if the party serving the subpoena: (i) shows a substantial

1 need for the testimony or material that cannot be otherwise met without undue hardship; and (ii)
2 ensures that the subpoenaed person will be reasonably compensated.

3 **(d) Duties in Responding to a Subpoena.**

4 **(1) Producing Documents or Electronically Stored Information.** These procedures apply to
5 producing documents or electronically stored information:

6 **(A) Documents.** A person responding to a subpoena to produce documents must produce
7 them as they are kept in the ordinary course of business or must organize and label them to
8 correspond to the categories in the demand.

9 **(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena
10 does not specify a form for producing electronically stored information, the person responding
11 must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable
12 form or forms.

13 **(C) Electronically Stored Information Produced in Only One Form.** The person
14 responding need not produce the same electronically stored information in more than one form.

15 **(D) Inaccessible Electronically Stored Information.** The person responding need not
16 provide discovery of electronically stored information from sources that the person identifies as
17 not reasonably accessible because of undue burden or cost. On motion to compel discovery or
18 for a protective order, the person responding must show that the information is not reasonably
19 accessible because of undue burden or cost. If that showing is made, the court may nonetheless
20 order discovery from such sources if the requesting party shows good cause, considering the
21 limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

22 **(2) Claiming Privilege or Protection.**

23 **(A) Information Withheld.** A person withholding subpoenaed information under a claim
24 that it is privileged or subject to protection as trial-preparation material must: (i) expressly make
25 the claim; and (ii) describe the nature of the withheld documents, communications, or tangible
26 things in a manner that, without revealing information itself privileged or protected, will enable the
27 parties to assess the claim.

28 **(B) Information Produced.** If information produced in response to a subpoena is subject to a
claim of privilege or of protection as trial-preparation material, the person making the claim may
notify any party that received the information of the claim and the basis for it. After being notified,
a party must promptly return, sequester, or destroy the specified information and any copies it has;
must not use or disclose the information until the claim is resolved; must take reasonable steps to
retrieve the information if the party disclosed it before being notified; and may promptly present the
information under seal to the court for a determination of the claim. The person who produced the
information must preserve the information until the claim is resolved.

(e) Contempt; Costs.

Failure by any person without adequate excuse to obey a subpoena served upon that person may be
deemed a contempt of the court that issued the subpoena. In connection with a motion for a
protective order brought under Rule 26(c), a motion to compel brought under Rule 45(c)(2)(B), or a
motion to quash or modify the subpoena brought under Rule 45(c)(3), the court may consider the
provisions of Rule 37(a)(5) in awarding the prevailing person reasonable expenses incurred in
making or opposing the motion.

EXHIBIT "B"

CERTIFICATE OF CUSTODIAN OF RECORDS

_____ hereby declares:

1. My position with Conduent State Healthcare, LLC f/k/a Xerox State Healthcare, LLC ("Xerox") is _____, and in this capacity, I am the custodian of records for Xerox.

2. On the _____ day of _____, 2021, Xerox was served with (or accepted service of) a subpoena in connection with records pertaining to *State of Nevada, Ex Rel. Commissioner of Insurance, Barbara D. Richardson, in her Official Capacity as Receiver for Nevada Health Co-Op v. Milliman, Inc., a Washington Corporation, et al.; Case No. A-17-760558-C* pending in the Eighth Judicial District Court in Clark County, Nevada (the "Subpoena"). The Subpoena called for any and all documents described in the above-referenced Subpoena.

3. I have examined the original of those records and have made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

4. That the original of those records was made at or near the time of the act, event, condition, opinion, or diagnosis recited therein by or from information transmitted by a person with knowledge, in the course of the regularly conducted activity of Xerox.

(a) If executed in the State of Nevada: "I declare under penalty of perjury that the foregoing is true and correct."

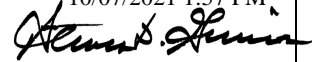
Executed on: _____
(Date) (Custodian of Records of Xerox)

(b) If executed outside of the State of Nevada: "I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

Executed on: _____
(Date) (Custodian of Records of Xerox)

TAB 16

TAB 16


CLERK OF THE COURT

BAILEY ♦ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

MSTY (CIV)

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Attorneys for Defendants
Unite Here Health and Nevada Health
Solutions, LLC

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

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

**UNITE HERE HEALTH AND NEVADA
HEALTH SOLUTIONS' MOTION FOR
STAY PENDING RESOLUTION OF
NEVADA SUPREME COURT APPEAL
AND WRIT PETITION, ON
APPLICATION FOR ORDER
SHORTENING TIME**

Hearing Requested

EGAN, an Individual; BASIL C. DIBSIE, an Individual; 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.

Defendants Unite Here Health and Nevada Health Solutions, LLC (jointly, “UHH”) respectfully request that this Court stay the remaining discovery¹ and trial of this action pending the resolution of: (1) UHH’s Appeal in *Unite Here Health v. State of Nevada ex rel. Commissioner of Insurance*, Case No. 82467, filed in the Nevada Supreme Court on February 8, 2021, **and** UHH’s Petition for Extraordinary Writ Relief in *Unite Here Health v. Eighth Judicial District Court ex rel. County of Clark*, Case No. 83552, filed in the Nevada Supreme Court on February 26, 2021 (jointly, the “Appeal”)²; and (2) UHH’s Petition for Extraordinary Writ Relief in *Unite Here Health v. Eighth Judicial District Court ex rel. County of Clark*, Case No. 83135, filed in the Nevada Supreme Court on July 1, 2021 (the “Writ Petition”).

The Appeal concerns whether Barbara Richardson, Statutory Receiver (the “Receiver”) for the Nevada Health CO-OP (the “CO-OP”) and her counsel, Greenberg Traurig, LLP’s (“Greenberg”) failure to disclose and concealment of Greenberg’s concurrent representation of: (1) a creditor of the Receivership Estate, Valley Health System (“Valley”), in the receivership proceedings;³ and (2) a significant target defendant of the Receivership Estate, Xerox State Healthcare, LLC (“Xerox”), in related litigation and an administrative action, as well as the continuing conflicts of interest arising therefrom, should have resulted in Greenberg’s disqualification and disgorgement of attorneys’ fees earned in representing the Receiver.⁴

¹ UHH requests that the Court carve out a single exception to allow the parties to preserve the testimony of Gary Odenweller.

² The Supreme Court consolidated Case No. 82467 and Case No. 83552 on April 12, 2021.

³ The receivership proceeding is *State of Nevada ex rel. Commissioner of Insurance v. Nevada Health CO-OP*, Case No. A-15-725244-C, pending in Department XXI (the “Receivership Action”).

⁴ UHH’s Motion to Disqualify Greenberg Traurig, LLP and to Disgorge Attorneys’ Fees (the “Motion to Disqualify”) was filed in the Receivership Action.

1 The Writ Petition illustrates the harm caused by Greenberg’s ongoing conflicted
2 representation of the Receiver (it resulted in the denial of UHH’s timely NRCP 14 Motion) and
3 seeks relief from this Court’s decision to deny UHH’s Motions (1) for Leave to File Third-Party
4 Complaint; and (2) to Consolidate.⁵

5 If this stay is not granted, UHH will suffer irreparable harm and the objects of the Appeal and
6 Writ Petition will be defeated. Greenberg’s continued participation in this action taints the
7 proceeding and erodes the public confidence in the fairness and impartiality of the proceeding.
8 Moreover, if the case proceeds before the Writ Petition is resolved, UHH will be forced to go to trial
9 without Xerox as a third-party defendant, meaning it could be found liable for damage to the CO-OP
10 caused by Xerox’s actions, and could be forced into insolvency before being able to initiate any
11 contribution action and subsequent collection against Xerox. Similarly, if a stay is not granted
12 pending the resolution of the Appeal, Greenberg will continue prosecuting the CO-OP’s claims
13 against UHH with conflicting duties—those owed to its current client (a supposedly independent and
14 neutral Receiver and receivership estate) and those owed to Xerox, a potential target of the
15 receivership estate whose conduct remains at the forefront of this lawsuit.

16 This Motion for Stay is also made in an effort to conserve judicial resources and prevent all
17 parties from incurring unnecessary costs and fees while the Appeal and Writ Petition are pending
18 before the Nevada Supreme Court. Given that the Receiver owes fiduciary duties to all of the
19 creditors of the Receivership Estate (including UHH), and the Receivership Estate has limited assets
20 to pay creditor claims, it is in the Receiver’s and the creditors’ best interests to stay this proceeding
21 until the Appeal and the Writ Petition are resolved in order to avoid unnecessary duplication of legal
22 services and unnecessary costs and fees should Greenberg ultimately be disqualified and/or Xerox
23 ultimately be added as a party to this lawsuit.

24 ///

25 ///

26 _____
27 ⁵ The Receiver recently moved to voluntarily dismiss claims against the Silver State Health Exchange in *State of*
28 *Nevada ex rel. Nevada Health Co-Op v. Silver State Health Insurance Exchange*, Case No. A-20-81616-C. Therefore,
this Motion will discuss the Writ Petition in the context of the Motion for Leave to File Third-Party Complaint (the
“Motion to Implead Xerox”) only.

1 This Motion is based upon the pleadings and papers on file here, the following memorandum
2 of points and authorities, and any oral argument permitted by the Court.

3 DATED this 6th day of October, 2021.

4 BAILEY ♦ KENNEDY

5 By: /s/ Dennis L. Kennedy
6 JOHN R. BAILEY
7 DENNIS L. KENNEDY
8 SARAH E. HARMON
9 JOSEPH A. LIEBMAN
10 REBECCA L. CROOKER

11 AND

12 SEYFARTH SHAW LLP
13 SUZANNA C. BONHAM
14 EMMA C. MATA

15 *Attorneys for Defendants Unite Here Health
16 and Nevada Health Solutions, LLC*

17 **APPLICATION FOR AN ORDER SHORTENING TIME**

18 Pursuant to EDCR 2.26, UHH hereby applies for an Order Shortening Time for the hearing
19 on its Motion for Stay Pending Resolution of Nevada Supreme Court Appeal and Writ Petition based
20 on the following declaration of John R. Bailey, Esq.

21 DATED this 6th day of October, 2021.

22 BAILEY ♦ KENNEDY

23 By: /s/ Dennis L. Kennedy
24 JOHN R. BAILEY
25 DENNIS L. KENNEDY
26 SARAH E. HARMON
27 JOSEPH A. LIEBMAN
28 REBECCA L. CROOKER

AND

SEYFARTH SHAW LLP
SUZANNA C. BONHAM
EMMA C. MATA

*Attorneys for Defendants Unite Here Health
and Nevada Health Solutions, LLC*

**DECLARATION OF JOHN R. BAILEY IN SUPPORT OF APPLICATION
FOR AN ORDER SHORTENING TIME**

I, John R. Bailey, declare as follows:

1. I am the managing partner of the law firm of Bailey❖Kennedy, counsel of record for UHH in the above-captioned matter, pending before this Court, as well as the Receivership Action, the Appeal, and the Writ Petition.

2. I make this declaration in support of UHH's Motion for Stay Pending Resolution of Nevada Supreme Court Appeal and Writ Petition, on Application for Order Shortening Time (the "Motion").

3. I am competent to testify to the facts stated herein, which are based on personal knowledge unless otherwise indicated, and if called upon to testify, I could and would testify competently to the following.

4. On January 15, 2021, the Receivership Court entered an Order Denying Motion to Disqualify Greenberg Traurig, LLP and to Disgorge Attorneys' Fees. Notice of Entry of this Order was filed the same day.

5. On February 11, 2021, UHH filed its Notice of Appeal in the Nevada Supreme Court. UHH's Opening Brief is attached hereto as Exhibit 1.

6. On February 26, 2021, in the alternative, UHH filed a Petition for Extraordinary Writ Relief in the Nevada Supreme Court, raising the same issues as set forth in the Appeal. The Petition is attached hereto as Exhibit 2.

7. On April 12, 2021, the Supreme Court consolidated the Appeal and the Writ Petition. The Supreme Court also ordered additional briefing, stating that "an answer may assist this court in resolving the matter."

8. On May 26, 2021, this Court entered an Order Denying Motions (1) for Leave to File Third-Party Complaint and (2) to Consolidate. Notice of Entry of this Order was filed on June 11, 2021.

9. UHH filed a second Petition for Extraordinary Writ Relief in the Nevada Supreme Court on July 1, 2021. This Petition is attached hereto as Exhibit 3. On August 4, 2021, the

1 Supreme Court ordered additional briefing.

2 10. As set forth in this Motion, *infra*, UHH asserts that it will suffer irreparable harm if
3 this case proceeds prior to the resolution of the Appeal and the Writ Petition. Specifically:

4 First, in the Appeal, UHH contends that Greenberg’s concurrent representation of Valley, the
5 Receiver, and Xerox resulted in an unwaivable conflict of interest, and its failure to disclose
6 (and conceal) this conflict to the court in the Receivership Action necessitated both
7 Greenberg’s disqualification as counsel for the Receiver and its disgorgement of fees
8 received from the Receivership Estate. UHH asserts that Greenberg’s continued participation
9 in this action as counsel for the Receiver taints this proceeding and damages UHH’s ability to
10 defend itself at trial; and

11 Second, UHH contends that this Court erred in denying UHH’s Motion for Leave to File
12 Third-Party Complaint — *a decision this Court based solely on Greenberg’s conflict of*
13 *interest with Xerox*. If the stay is not granted pending the resolution of the Writ Petition,
14 UHH will suffer irreparable harm, as it is at risk of being held liable for damages in excess of
15 \$142 million and it may be forced into insolvency before receiving any contribution from
16 Xerox for such damages.

17 11. Before filing this Motion, UHH attempted to proceed with discovery while
18 minimizing the impact of Greenberg’s conflict on the parties. Before the parties began depositions, I
19 sent correspondence to the Receiver’s “conflicts counsel,” Lewis & Roca, to confirm that Greenberg
20 would not participate in any deposition proceedings wherein the subject of Xerox was likely to be
21 raised. A copy of my correspondence to Daniel F. Polsenberg and Abraham G. Smith, dated
22 September 2, 2021, is attached hereto as Exhibit 4.

23 12. On September 14, 2021, Lewis & Roca responded and refused to provide any
24 assurance that Greenberg would recuse itself when the subject of Xerox was raised at depositions. A
25 copy of Mr. Smith’s correspondence is attached hereto as Exhibit 5.

26 13. The following day, I again wrote to Lewis & Roca, requesting—in the absence of
27 Lewis & Roca’s assurances that it would unilaterally handle any Xerox-related matters—that the
28 Receiver agree to stay discovery pending the Nevada Supreme Court’s decision on the Appeal and

1 the Writ Petition. I also advised the Receiver that at the upcoming deposition of Patty McCoy, a
2 former CO-OP employee, UHH intended to question Ms. McCoy about Xerox. A copy of my
3 correspondence to Mr. Smith, dated September 15, 2021, is attached hereto as Exhibit 6. The
4 Receiver's counsel failed to respond.

5 14. On September 22, 2021, the Receiver commenced the deposition of Ms. McCoy. It is
6 my understanding that Donald Prunty of Greenberg conducted the deposition, and that Lewis &
7 Roca—the Receiver's "conflicts counsel"—was not present at the deposition. A copy of excerpts
8 from the transcript of this deposition are attached hereto as Exhibit 7. Based on information and
9 belief, during the deposition, counsel for UHH asked Ms. McCoy questions pertaining to Xerox and
10 the effect of Xerox's actions on the CO-OP. Mr. Prunty did not leave the room, nor did he refrain
11 from lodging objections. Mr. Prunty did not, however, follow up with any questions about Xerox.
12 (*See id.* at 163:4-177:7, 186:23-187:5.)

13 15. Discovery is currently scheduled to close on December 31, 2021, and the trial of this
14 matter is currently assigned to a 5-week stack commencing on May 16, 2022.

15 16. This Motion cannot be heard in the normal course because the objects of the Appeal
16 and the Writ Petition will be defeated if discovery closes or trial proceeds prior to the resolution of
17 the appellate proceedings. Greenberg's continued participation in this action taints the proceeding
18 and erodes the public's confidence in the impartiality and fairness of the action. Moreover, if the
19 trial proceeds before the Supreme Court's resolution of the Writ Petition, UHH will suffer
20 irreparable harm by having to proceed to trial without impleading Xerox as a third-party defendant.

21 I declare under penalty of perjury, under the laws of the State of Nevada, that the foregoing is
22 true and correct.

23 EXECUTED on this 6th day of October, 2021.

24
25 
26 JOHN R. BAILEY
27
28

MH
Entered

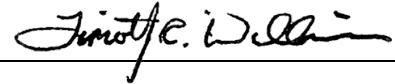
BAILEY ♦ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

ORDER SHORTENING TIME

THE COURT, having considered the foregoing Application for Order Shortening Time,
and the Declaration of John R. Bailey, Esq. in support thereof, and good cause appearing,

HEREBY ORDERS that the time for hearing **UNITE HERE HEALTH AND NEVADA
HEALTH SOLUTIONS' MOTION FOR STAY PENDING RESOLUTION OF NEVADA
SUPREME COURT APPEAL AND WRIT PETITION** be shortened, and the same shall now be
heard on the 20th day of October, 2021, at 9:05 am.m., in Department XVI, or as soon
thereafter as counsel can be heard.

Dated this 7th day of October, 2021



MH

868 432 5488 0BF5
Timothy C. Williams
District Court Judge

Submitted by:

BAILEY ♦ KENNEDY

By: /s/ Dennis L. Kennedy
JOHN R. BAILEY
DENNIS L. KENNEDY
SARAH E. HARMON
JOSEPH A. LIEBMAN
REBECCA L. CROOKER

SEYFARTH SHAW LLP
SUZANNA C. BONHAM
EMMA C. MATA

*Attorneys for Defendants
Unite Here Health and Nevada
Health Solutions, LLC*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Greenberg’s conflicts of interest with Valley and Xerox have tainted this proceeding. In short, “[b]ecause a conflict of interest could affect the fairness and impartiality of the proceeding, or the perception of fairness and impartiality, ... a plausible claim of conflict ***must be resolved before*** allegedly conflicted counsel or the court ***takes further action in the case.***” *Grimes v. Dist. of Columbia*, 794 F.3d 83, 90 (D.C. Cir. 2015) (emphasis added). Although the Receivership Court denied UHH’s Motion to Disqualify Greenberg, its decision was an abuse of discretion which UHH is confident will be overturned by the Nevada Supreme Court. In fact, the Nevada Supreme Court has already weighed in, stating that “an answer [from Greenberg and the Receiver] may assist this court in resolving the matter.” Awaiting that decision, UHH has been trying to diligently proceed with discovery, whilst attempting to prevent Greenberg’s conflict from further perverting the instant proceedings and irreparably harming UHH, the other Defendants in this action, and the CO-OP’s other creditors. However, it has become clear to UHH that while Greenberg remains counsel for the Receiver, the “fair and impartial” processing of this action will always be compromised.

For example, Greenberg refuses to recuse itself from matters where it has an ethical obligation to do so. Despite the Receiver’s retention of “conflicts counsel” to deal with matters that Greenberg should not, Greenberg refuses to take a step back and allow Lewis & Roca to act as counsel for the Receiver in depositions wherein the topic of Xerox is likely to be raised. Not only does this prejudice UHH—but it affects the Receiver’s ability to fully litigate her claims, and thus presents a risk to the Receivership Estate and its many creditors (including UHH).

Moreover, it was Greenberg’s conflicts of interest that led this Court to deny UHH’s Motion to Implead Xerox. Now, UHH faces the risk of being found liable for damages in excess of \$142 million—damages which UHH would have to pay before even commencing a contribution claim against Xerox. Thus, UHH could be forced into insolvency before recouping its damages through a separate contribution action against Xerox.

In these circumstances, a stay of this action is proper, legally supported, and simply a function of common sense. A stay will prevent the objects of the Appeal and Writ Petition from

1 being defeated; e.g., by preventing Greenberg’s conflict from irreparably tainting this matter,
2 protecting the creditors and Receivership Estate from further erosion of the limited Estate assets, and
3 protecting UHH from irreparable harm by being unable to present a full defense at trial due to the
4 inability to implead Xerox. Any harm from the delay of this action will be negligible, as briefing on
5 the Appeal is complete and the outcome of the Writ Petition⁶ will almost certainly be dependent on
6 the outcome of the Appeal. Moreover, the Receiver will not be prejudiced by a stay; to the contrary,
7 a stay will preserve Estate assets. Finally, UHH has a strong likelihood of success on the merits of
8 the Appeal and the Writ Petition, as the Receivership Court exhibited a manifest abuse of discretion
9 in failing to consider overwhelming authority from other jurisdictions mandating the disqualification
10 of counsel for a fiduciary, like a receiver, with conflicts of interests similar to Greenberg’s.
11 Similarly, UHH contends that it was an abuse of discretion to deny the Motion to Implead Xerox
12 based solely on Greenberg’s self-inflicted, undisclosed, and actively concealed conflicts of interest.

13 Therefore, UHH requests that this Court enter an Order staying all further discovery⁷ and the
14 trial pending the resolution of the Appeal and the Writ Petition.

15 II. STATEMENT OF FACTS

16 A. The Disastrous Nevada Health Exchange.

17 In March 2010, Congress passed the Patient Protection and Affordable Care Act (“ACA”)
18 with the goal of expanding access to affordable health insurance. (Ex. 1, at 2:12-13.) In 2012, the
19 CO-OP was created as a non-profit insurance company under § 1322 of the ACA, which was
20 intended to incentivize the creation of qualified non-profit health insurers, specifically in the
21 individual and small group markets. (Am. Compl. at ¶¶ 2, 68.) The CO-OP retained UHH to act as
22 third-party administrator for some of its medical claims and retained Nevada Health Solutions to
23 perform evaluations of the appropriateness and medical necessity of health care services, procedures,
24 and facilities. (*Id.* at ¶¶ 26, 302.)

25 ///

26
27 ⁶ While the Receiver has not yet answered the Writ Petition, the delay in briefing is due to the Receiver’s request
for a 60-day continuance due to its counsel’s heavy workload.

28 ⁷ See footnote 1, *supra*.

The ACA also provided for the creation of American Health Benefit Exchanges, where consumers could review and purchase insurance policies from ACA insurers, including, but not limited to, the CO-OP. 42 U.S.C. § 18031(b). Nevada elected to create its own health exchange, and in 2012, awarded Xerox a \$72 million contract to administer and operate it (the “Xerox Exchange”). NRS 695I.200; *see also* Ex. 8;⁸ Ex. 9,⁹ at 2 ¶ 6.

Specifically, Xerox was hired to design an online marketplace where consumers could evaluate and compare insurers, select an insurer, complete the enrollment process, and have their information and premium payments transmitted to the insurers. (Ex. 10,¹⁰ at 2, 6-8, 12-14.) The process was supposed to be seamless. However, the Xerox Exchange’s launch on October 1, 2013, was an utter failure. (Ex. 11.¹¹) The Xerox Exchange website frequently crashed, and consumers encountered great difficulties even completing the enrollment process. (*Id.*; Ex. 12.¹²) Insurers soon found that Xerox was not sending them accurate and timely premium payments and complete data on consumer enrollments. (Ex. 13;¹³ Ex. 14;¹⁴ Ex. 15.¹⁵) The issues were so pervasive that they resulted in two class action settlements; namely:

- *Basich v. State of Nevada ex rel. Silver State Health Insurance Exchange*, No. A-14-698567-C, Eighth Judicial District Court, Clark County, Nevada — a class action filed on behalf of all Nevada consumers who purchased insurance policies on the Xerox Exchange and did not receive the benefits of such policies;¹⁶ and

⁸ Kyle Roerink, *Nevada, Xerox in Private Talks to Settle \$75 Million Health Care Contract Out of Court*, LAS VEGAS SUN (October 1, 2014), attached as Exhibit 8.

⁹ Xerox Contract, attached as Exhibit 9.

¹⁰ Silver State Exchange Requirements Matrix, attached as Exhibit 10.

¹¹ Deloitte Consulting LLP Report, attached as Exhibit 11.

¹² Jennifer Robison, *Silver State Health Insurance Exchange Still Plagued by Problems*, LAS VEGAS REVIEW J. (November 5, 2013), attached as Exhibit 12.

¹³ February 24, 2014 correspondence from Tom Zumbobel to Governor Brian Sandoval and Xerox State Healthcare, LLC, attached as Exhibit 13.

¹⁴ February 19, 2014 NHC Board Minutes, attached as Exhibit 14.

¹⁵ May 23, 2014 NHC Board Minutes, attached as Exhibit 15.

¹⁶ Joint Motion for Final Approval of Class Settlement, Certification of Settlement Class, Approval of Attorney’s Fees and Costs, and Entry of Final Order, Case No. A-14-69857-C, attached as Exhibit 16, at 1, 3:1-4, 4:7; Consent Order, In the Matter of Xerox State Healthcare, LLC, No. 17-0299, State of Nevada, Department of Business and Insurance, Division of Insurance, attached as Exhibit 17, at 2:18-23.

1 • *Casale v. State of Nevada ex rel. Silver State Health Insurance Exchange*, No. A-14-706171-
2 C, Eighth Judicial District Court, Clark County, Nevada — a class action filed on behalf of all
3 Nevada brokers owed unpaid commissions for the sale of insurance policies on the Xerox
Exchange.¹⁷

4 The State of Nevada also retained Deloitte Consulting LLP (“Deloitte”) to evaluate the
5 Xerox Exchange, and Deloitte identified more than 1,500 defects—over 500 of which were
6 classified as a “higher severity.” (Ex. 11, at 3, 10.) Xerox’s performance was so poor and disruptive
7 that Nevada ultimately terminated Xerox and opted to proceed using a federally facilitated exchange.
8 (Ex. 8; Ex. 18, at 4.) Nevada’s Division of Insurance also conducted a regulatory action¹⁸ involving
9 Xerox’s failures in developing, administering, and managing the Xerox Exchange, which resulted in
10 a Consent Order being entered on October 20, 2017. (Ex. 17.)

11 **B. Xerox’s Failures Send the CO-OP Into Insolvency.**

12 Xerox’s failures also had direct ramifications for the CO-OP. In fact, the issues that the CO-
13 OP experienced were so severe and pervasive that the CO-OP’s CEO met three times per week with
14 the Governor’s office, other insurance carriers, and Xerox, to discuss “the challenges the CO-OP
15 [wa]s experiencing with data submission from Xerox.” (Ex. 14, at 1-2.) In February 2014, the CO-
16 OP wrote the Governor and Xerox noting that despite the fact that the CO-OP had “attracted 37% of
17 the [Xerox] Exchange market share,” Xerox’s “broken enrollment system” was “undeniably the
18 greatest threat to [the CO-OP’s] operations.” (Ex. 13, at 1.) By May 2014, the CO-OP determined
19 that “Xerox ha[d] drained the CO-OP’s resources[,] as no less than 50% of the CO-OP’s resources
20 ha[d] been committed to Xerox and Xerox[-]related issues since October 2013.” (Ex. 18,¹⁹ at 5.)

21 On September 25, 2015, the Nevada Department of Insurance (“NDOI”) commenced a
22 delinquency proceeding against the CO-OP by filing a Petition for Appointment of its Commissioner
23 as Receiver and Other Permanent Relief; Request for Temporary Injunction Pursuant to NRS

24
25
26 ¹⁷ Ex. 16, at 2, 3:1-4, 3:7; Ex. 17, at 2:18-25.

27 ¹⁸ In the Matter of Xerox State Healthcare, LLC, No. 17-0299, State of Nevada, Department of Business and
Insurance, Division of Insurance.

28 ¹⁹ Minutes of the Regular Meeting of the Formation Board of Directors of Nevada Health CO-OP, Batesnumbered
LARSON014384-14390 (May 23, 2014), attached as Exhibit 18.

1 696B.270(1). (Ex. 19,²⁰ at 2:22-3:2.) The Receivership Court appointed the Commissioner as the
2 temporary Receiver for the CO-OP on October 1, 2015, and on October 14, 2015, the Receivership
3 Court appointed the Commissioner as the CO-OP's permanent Receiver. (Ex. 20,²¹ Ex. 21.) Cantilo
4 & Bennett, LLP was appointed as the Special Deputy Receiver ("SDR"). (Ex. 21,²² at 2:9-10.)

5 On July 21, 2016, the Receiver moved for a final order (the "Motion for Final Order")
6 declaring the CO-OP to be insolvent and placing it into liquidation. (Ex. 22.²³) The Receivership
7 Court granted the Motion for Final Order on September 21, 2016. (Ex. 23,²⁴ at 2:2-5.)

8 **C. Greenberg Becomes Involved With the Receivership Action.**

9 Before the Receivership Court granted the Motion for Final Order, on August 8, 2016,
10 Greenberg, on behalf of CO-OP creditor, Valley, filed a response to the Receiver's Motion for Final
11 Order, seeking to hold the declaration of insolvency and order for liquidation in abeyance until the
12 Receiver could demonstrate that (i) it had identified all potential sources for recovery of the assets of
13 the CO-OP; and (ii) all efforts had been undertaken to obtain those assets for the CO-OP's creditors.
14 (Ex. 24,²⁵ at 3:5-10.) Greenberg represented that Valley was raising these concerns about efforts for
15 asset recovery for the Receivership Estate because Valley had "a substantial claim exceeding \$5
16 million in this case." (*Id.* at 8:18.)

17 **Four months later**—on December 19, 2016, the Receiver filed a motion in the Receivership
18 Court seeking approval of the Court to retain Greenberg as her counsel. (Ex. 25,²⁶ at 5:24-25, 6:1-

19 _____
20 ²⁰ Petition for Appointment of Commissioner as Receiver and Other Permanent Relief; Request for Temporary
Injunction Pursuant to NRS 696B.270(1) (September 25, 2015), attached as Exhibit 19.

21 ²¹ Order Appointing the Acting Insurance Commissioner, Amy L. Parks, as Temporary Receiver Pending Further
22 Orders of the Court and Granting Temporary Injunctive Relief Pursuant to NRS 696B.270 (October 1, 2015), attached as
Exhibit 20.

23 ²² Permanent Injunction and Order Appointing Commissioner as Permanent Receiver of Nevada Health CO-OP
(October 14, 2015), attached as Exhibit 21.

24 ²³ Motion for Final Order Finding and Declaring Nevada Health CO-OP to Be Insolvent, Placing Nevada Health
CO-OP Into Liquidation, and Granting Related Relief (July 21, 2016), attached as Exhibit 22.

25 ²⁴ Final Order Finding and Declaring Nevada Health CO-OP to Be Insolvent and Placing Nevada Health CO-OP
26 Into Liquidation (September 21, 2016), attached as Exhibit 23.

27 ²⁵ Response to Motion for Final Order Finding and Declaring Nevada Health CO-OP to Be Insolvent, Placing
Nevada Health CO-OP Into Liquidation, and Granting Related Relief (August 8, 2016), attached as Exhibit 24.

28 ²⁶ Motion to Approve Professional Fee Rates on an Order Shortening Time (December 19, 2016), attached as
Exhibit 25.

2.) In the motion, the Nevada Deputy Attorney General, the Receiver’s original counsel, asserted that Greenberg’s representation was needed because “the Receiver does not have access to the legal resources necessary to evaluate the prosecution and defense of litigation.” (*Id.* at 3:11-12.) The Deputy Attorney General also claimed that the “Receiver needs immediate assistance of legal counsel and consulting firms with specialized expertise for the evaluation and resolution of [the creditors’] claims, which may also include the pursuit of related counterclaims.” (*Id.* at 3:12-16.)

While seeking the Receivership Court’s approval of Greenberg’s engagement, *neither Greenberg, the Receiver, nor the SDR made any disclosures regarding potential or actual conflicts of interests.* (*See generally* Ex. 25.)

Unsurprisingly, the Receivership Court expressed no concerns about Greenberg’s representation, other than whether Greenberg’s substantial hourly rates could deplete the CO-OP’s assets and lead to reduced payments for the CO-OP’s creditors, and approved Greenberg’s engagement. (Ex. 26,²⁷ at 4:25-27.)

Eight months later—on August 25, 2017—Greenberg, on behalf of the Receiver, filed this lawsuit. (*See generally* Compl.)

D. UHH Learns of Greenberg’s Multiple Unwaivable Conflicts of Interest.

As the parties engaged in discovery in this action, UHH not only learned about Xerox’s role in the disastrous launch of the Xerox Exchange in Nevada, and the damage that Xerox’s actions caused to the CO-OP, but also about Greenberg’s concurrent representation of the Receiver, Valley, and Xerox. As a result, UHH requested that the Receiver provide some basis for Greenberg’s engagement, in light of what appeared to be multiple unwaivable conflicts of interests. (Ex. 27.²⁸) However, the Receiver refused to produce any engagement letters or conflict waivers to support Greenberg’s assertion that no conflicts of interest existed. (Ex. 28.²⁹) Nor would the Receiver

²⁷ Notice of Entry of Order (January 23, 2017), attached as Exhibit 26.

²⁸ June 16, 2020 correspondence from John R. Bailey to Mark E. Ferrario and Donald Prunty, attached as Exhibit 27.

²⁹ June 26, 2020 email correspondence from Donald Prunty to John R. Bailey, attached as Exhibit 28.

1 provide any logical basis for her decision not to pursue claims against Xerox.³⁰ (Ex. 29,³¹ at 3:23-
2 4:17; Ex. 30,³² at 5:14-17, 6:17-28, 7:1-8:14.)

3 UHH further learned that despite Greenberg’s concurrent representation of the Receiver and
4 both a creditor and a potential target of the Receivership Estate, Greenberg *never disclosed its*
5 *conflicts* to the Receivership Court. In fact, Greenberg actively concealed them. In the Receiver’s
6 Eighth Status Report, filed on October 6, 2017, Greenberg, on behalf of the Receiver, stated that
7 “Counsel for Xerox” in the Basich class action “wrote to the [SDR] on June 15, 2017” concerning
8 “short-pay funds’ that it claims ‘represents payment[s] that the CO-OP’s] consumers submitted to
9 Xerox for the 2014 coverage year that were less than that consumer’s [sic] full premium payment[s]
10 which were] required to initiate transfer of the payment[s] to [the CO-OP].’” (Ex. 31,³³ at 16:2-8.)
11 The unnamed “Counsel for Xerox” also stated that Nevada’s Silver State Health Insurance Exchange
12 had instructed Xerox to remit the funds to carriers, like the CO-OP, so that the carriers could refund
13 the consumers. (*Id.* at 16:8-14.) The unnamed “Counsel for Xerox” likewise informed the SDR that
14 the CO-OP must also refund “other members for overpaid premiums that [the CO-OP] received from
15 Xerox during the 2014 coverage year.” (*Id.* at 16:15-18.)

16 Greenberg reported to the Receivership Court that the SDR, in response to the letter from the
17 unnamed “Counsel for Xerox,” had “asked for further clarification and documentation from Xerox”
18 and was “evaluating the information.” (*Id.* at 16:13-14, 17-18.)

19 In Greenberg’s fourteen subsequent reports filed over the next three and a half years,
20 Greenberg failed to mention this correspondence from the still unnamed “Counsel for Xerox” or the
21 funds to be returned to the CO-OP’s members. In fact, it was not until UHH received responses to
22 its discovery requests that it was able to confirm that the unnamed “Counsel for Xerox” who had

23 ³⁰ The Receiver’s only explanation was that Xerox “had no direct contractual relationship with [the CO-OP],” an
24 explanation which is confounding based on Xerox’s payment of over \$5 million dollars to settle two class action suits
25 brought by individuals who likewise had no direct contractual relationship with Xerox. Ex. 16. at 10:23-25, 14:22-
15:18; Ex. 29, at 4:20-5:1. Simply put, that is precisely what tort claims are designed to address.

26 ³¹ Plaintiff’s Response to Unite Here Health’s Third Set of Interrogatories, served August 7, 2020, attached as
Exhibit 29.

27 ³² Plaintiff’s Response to Unite Here Health’s Sixth Set of Requests for Production, served August 7, 2020,
attached as Exhibit 30.

28 ³³ Eighth Status Report (October 6, 2017), attached as Exhibit 31.

1 been corresponding with the SDR about these premiums was actually Greenberg—who was (and is)
2 concurrently counsel for the Receiver. (Ex. 32.³⁴)

3 **E. UHH Moves to Disqualify Greenberg.**

4 On October 8, 2020, UHH filed a Motion to Disqualify Greenberg in the Receivership
5 Action. (Ex. 33.³⁵) UHH contended that Xerox should have been a primary target of Greenberg’s
6 investigation of entities that were potentially liable to the CO-OP, but that the Receiver was barred
7 from bringing claims against Xerox due to Greenberg’s conflict of interest. (*Id.* at 2:1-7.) UHH also
8 contended that Greenberg’s representation of Valley, a significant creditor of the CO-OP
9 Receivership Estate, “rais[ed] the specter of preferential treatment in favor of Valley and to the
10 detriment of all of the remaining creditors who are not fortunate enough to also be represented by
11 Greenberg.” (*Id.* at 2:10-13.) Due to Greenberg, the Receiver, and the SDR’s failure to disclose
12 these significant and known conflicts to the Receivership Court at the time of Greenberg’s
13 appointment or anytime thereafter, UHH sought disqualification of Greenberg as counsel for the
14 Receiver, as well as disgorgement of all of the attorney’s fees and costs paid to Greenberg from the
15 assets of the Receivership Estate (which were approximately \$5 million at the time of the filing of
16 the Motion to Disqualify). (*Id.* at 2:15-19.)

17 In opposing the Motion to Disqualify, Greenberg, the Receiver, and the SDR asserted, for the
18 first time, and in direct contradiction to the representations made to the Receivership Court at the
19 time of Greenberg’s appointment, as well as in direct contradiction with the reality that Greenberg
20 had appeared and litigated on behalf of the Receiver *in five separate actions*, that: “[Greenberg] was
21 retained by the Receiver for the limited purpose of pursuing specific claims on the Receiver’s
22 behalf” and had “fully advised the Receiver that [Greenberg] had a potential conflict with pursuing
23 any claim against [Xerox]. [Therefore, t]he Receiver consequently did not retain [Greenberg] to
24 evaluate or pursue any such claims.” (Ex. 34³⁶ at 2:14-18.) *Instead*, the Receiver retained conflicts
25

26 ³⁴ June 14, 2017 correspondence from Whitney L. Welch-Kirmse to Patrick Cantilo, attached as Exhibit 32.

27 ³⁵ Unite Here Health and Nevada Health Solutions, LLC’s Motion to: (1) Disqualify Greenberg Traurig, LLP as
Counsel for the Statutory Receiver of Nevada Health CO-OP; and (2) Disgorge Attorney’s Fees Paid by Nevada Health
CO-OP to Greenberg Traurig, LLP (October 8, 2020), attached as Exhibit 33.

28 ³⁶ Greenberg’s Traurig LLP’s Opposition to Unite Here Health and Nevada Health Solutions, LLC’s Motion to

1 counsel, Santoro Whitmire, Ltd., “to handle any matters that were outside the scope of [Greenberg’s]
2 retention due to potential conflicts. Since its engagement, [Greenberg] had no involvement
3 whatsoever in the Receiver’s evaluation of its potential claims against Xerox,” nor did Greenberg’s
4 representation include “allocating assets among creditors like Valley.” (*Id.* at 2:19-25; Ex. 25.)

5 However, neither Greenberg nor the Receiver have produced a single shred of evidence,
6 other than self-serving affidavits, to support this assertion. They have produced no engagement
7 letters, conflict of interest waivers, billing invoices, or other correspondence—not even for in camera
8 review.

9 Moreover, the Receiver’s quarterly status reports to the Receivership Court—all of which
10 were prepared and filed by Greenberg since the time of its retention in January 2017—reveal that
11 “conflicts counsel” (Santoro Whitmire) billed less than \$2,000.00 to the Receivership estate since
12 2017, despite the abundance of issues relating to Xerox that have arisen in this action. (Ex. 35,³⁷ at
13 43; Ex. 36,³⁸ at 52.) Further, the Attorney General’s Office—the Receiver’s original counsel—
14 stated that it knew nothing about the conflicts and only discovered Greenberg’s prior representation
15 of Xerox after reviewing UHH’s Motion to Disqualify. (Ex. 37, at 2:9-25 & n.1, 5:9-14.)

16 Despite Greenberg’s duplicitous actions, and a wealth of authority mandating disqualification
17 where counsel for fiduciaries, like receivers, fail to disclose actual or potential conflicts of interest,
18 the Receivership Court denied the Motion to Disqualify because of a lack of *Nevada* authority
19 requiring disclosure of such known conflicts. (Ex. 38.) The Receivership Court, despite the
20 Receiver’s role as a fiduciary and officer of the Court—stated: “[UHH] have not been able to point
21 to any binding authority that mandates the Receiver and her counsel, [Greenberg], disclose all
22 possible conflicts to the Court. Because there is no explicit rule requiring disclosure, the Court
23 cannot disqualify [Greenberg] on that basis.” (*Id.* at 6:17-20.)

24 The Receivership Court also created a new requirement that conflicts must be “substantial
25 enough” to warrant disqualification, and found that the Xerox conflict was not “clear and substantial

26 _____
Disqualify Greenberg Traurig and Disgorge Attorneys’ Fees (November 16, 2020), attached as Exhibit 34.

27 ³⁷ Sixth Status Report (April 5, 2017), attached as Exhibit 35.

28 ³⁸ Seventh Status Report (July 6, 2017), attached as Exhibit 36.

1 enough possible conflict[s] to justify disqualifying [Greenberg] as counsel in this Receivership
2 matter.” (*Id.* at 6:21-22.)

3 Finally, the Receivership Court based its decision on a lack of “related matters where the
4 CO-OP [wa]s adverse to Xerox,” and stated that UHH was “free to attempt to bring in Xerox as a
5 third-party defendant and seek whatever relief they believe they are entitled to with the Judges
6 overseeing those matters.” (*Id.* at 6:22-7:1.)

7 On February 7, 2021, UHH filed a Notice of Appeal in the Nevada Supreme Court, and,
8 alternatively, on February 26, 2021, UHH filed a Petition for Extraordinary Writ Relief regarding the
9 same issues. (*See generally* Ex. 1; Ex. 2.)

10 **F. The Receiver Retains New “Conflicts Counsel.”**

11 Shortly after the Receivership Court’s decision, the Receiver sought and received the
12 Receivership Court’s approval to replace Santoro Whitmire with the law firm of Lewis & Roca as
13 “outside conflicts counsel”. (Ex. 39³⁹ at 4:15-19; Ex. 40⁴⁰ at 6.) The Receiver ambiguously
14 explained that “[p]reviously approved conflicts counsel for the CO-OP has declined further
15 representation as additional parties added to related cases has [sic] caused such counsel to reconsider
16 its ability or willingness to represent the CO-OP.” (Ex. 39 at 4:12-14.) The Receiver did not
17 elaborate as to what caused Santoro Whitmire to “reconsider” its willingness to serve as conflicts
18 counsel, as no additional parties had been added to any of the Receiver’s related actions at the time
19 of its withdrawal.

20 **G. UHH Seeks to Implead Xerox as a Third-Party Defendant.**

21 On October 15, 2020, UHH sought to implead Xerox as a third-party defendant through its
22 Motion to Implead Xerox. The Receiver’s new “conflicts counsel” opposed the Motion to Implead
23 Xerox claiming it would be “futile” for UHH to assert a contribution claim against Xerox.
24 (Combined Resp. to Mots. (I) for Leave to File Third-Party Compl. and (II) to Consolidate (Mar. 29,
25 2021).) The Receiver also proffered the baffling argument that contribution was not permitted

26 ³⁹ Motion to Approve Professional Fee Rates on Order Shortening Time (February 18, 2021), attached as Exhibit
27 39.

28 ⁴⁰ Notice of Entry [Order Granting Motion to Approve Professional Fee Rates] (March 22, 2021), attached as
Exhibit 40.

1 because her claims against UHH were contractual—despite many of her claims being
2 straightforward torts (*e.g.*, malpractice and gross negligence). (*Id.*)

3 On May 3, 2021, this Court issued a minute order denying the Motion to Implead Xerox,
4 agreeing that it was timely under this Court’s scheduling order, yet specifically noting that its
5 decision stemmed from “potential conflicts resulting in the disqualification of Plaintiff’s counsel...”
6 (Minute Order (May 3, 2021).) Notice of Entry of the Order Denying the Motion to Implead Xerox
7 was filed on June 11, 2021. (Notice of Entry of Order Denying Mots. (I) for Leave to File Third-
8 Party Compl. and (II) to Consolidate (June 11, 2021).)

9 On July 1, 2021, UHH filed a Petition for Extraordinary Writ Relief in the Nevada Supreme
10 Court, requesting that the Court vacate the Order Denying the Motion to Implead Xerox. (Ex. 3.)
11 On August 4, 2021, the Court ordered additional briefing on the Writ Petition.

12 **H. Greenberg Refuses to Prevent Its Conflict From Further Tainting the**
13 **Proceedings.**

14 On September 2, 2021, Counsel for UHH (“Mr. Bailey”) sent correspondence to Lewis &
15 Roca, seeking to confirm that Greenberg would refrain from participation in all matters related to
16 Xerox in upcoming depositions. (Ex. 4.) Specifically, Mr. Bailey noted that “a considerable portion
17 of those depositions will involve questioning regarding Xerox State Healthcare, LLC (“Xerox”) and
18 its role as the primary architect and operator of Nevada Health Link...” (*Id.*) Based on Greenberg’s
19 representations that “the Receiver’s use of conflicts counsel to handle the portions of the litigation
20 involving Xerox would avoid any potential conflict,” UHH conveyed its expectation that “Lewis &
21 Roca—as ‘conflicts counsel’—w[ould] unilaterally handle all depositions that would potentially
22 encompass any issues relating to Xerox.” (*Id.*) UHH stated that it also expected that “Greenberg
23 w[ould] not participate in any deposition that concern[ed] or relate[d] to Xerox, including, but not
24 limited to, the preparation for any such deposition. Considering Greenberg’s ongoing loyalties to
25 Xerox, as well as the undisputable presumption that Greenberg obtained confidential and privileged
26 information from Xerox to which no other parties are privy, any participation in these depositions by
27 Greenberg would have the effect of tainting those proceedings. (*Id.*)

28 In response, Lewis & Roca refused to confirm that Greenberg would be screened from all

1 Xerox-related preparation or questioning at the upcoming depositions. (Ex. 5.) Instead, Lewis &
2 Roca stated that “[t]he bare fact that the receiver has hired our firm—expressly “in an abundance of
3 caution” rather than as an admission of an ethical duty—does not give adverse parties the
4 prerogative to dictate who may represent the receiver at depositions.” (*Id.*) Lewis & Roca would
5 not confirm Greenberg’s exclusion from Xerox-related matters, but stated that “the [R]eceiver will
6 decide these questions on an individual basis rather than through a blanket “protocol” as you are
7 proposing.” (*Id.*)

8 Because Lewis & Roca would not provide any assurances that Greenberg would not be
9 permitted to taint the deposition proceedings relating to Xerox, UHH asked that the Receiver agree
10 to stay discovery pending the Nevada Supreme Court’s decision on the appeal of the Order Denying
11 Motion to Disqualify. (Ex. 6.) The Receiver failed to respond.

12 **I. The Deposition of Patty McCoy.**

13 On September 22, 2021, the Receiver deposed former CO-OP employee Patty McCoy. (Ex.
14 7.) Notwithstanding UHH’s correspondence, Greenberg—not Lewis & Roca—appeared on behalf
15 of the Receiver.⁴¹ (*Id.* at 7:20-25.)

16 During UHH’s cross-examination of Ms. McCoy, including UHH’s questions about Xerox,
17 Greenberg participated as counsel, and lodged objections to UHH’s questions. (*Id.* at 163:4-177:7.)
18 Greenberg did not ask Ms. McCoy any follow-up questions pertaining to Xerox. (*Id.* at 186:23-
19 187:5.)

20 **III. ARGUMENT**

21 **A. Standard of Decision.**

22 In deciding whether to issue a stay, the district court should generally consider the following
23 factors: “(1) whether the object of the appeal or writ petition will be defeated if the stay...is denied;
24 (2) whether [the] appellant/petitioner will suffer irreparable or serious injury if the stay...is denied;
25 (3) whether [the] respondent/real party in interest will suffer irreparable or serious injury if the
26 stay...is granted; and (4) whether the appellant/petitioner is likely to prevail on the merits in the
27

28 ⁴¹ *Id.*

1 appeal or writ petition.” NRAP 8(c); *State v. Robles-Nieves*, 129 Nev. 537, 539–40, 306 P.3d 399,
2 401 (2013); *Fritz Hansen A/S v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 116 Nev. 650, 657, 6
3 P.3d 982, 986 (2000). No factor weighs heavier than the others; however, “if one or two factors are
4 especially strong, they may counterbalance other weak factors.” *Mikohn Gaming Corp. v. McCrea*,
5 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (citation omitted); *see also Landis v. N. Am. Co.*, 299 U.S.
6 248, 254 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court
7 to control the disposition of the causes on its docket with economy of time and effort for itself, for
8 counsel, and for litigants.”).

9 Here, all four factors establish that this action should be stayed pending resolution of both the
10 Appeal and the Writ Petition.

11 **B. The Object of the Appeal Will Be Defeated if the Stay Is Denied.**

12 The primary issue in the Appeal is whether fiduciaries, such as receivers, special deputy
13 receivers, and their proposed counsel must disclose conflicts of interest to the Receivership Court at
14 the time of their proposed appointment. If so, the question then becomes whether the Receivership
15 Court erred and abused its discretion in finding that Greenberg’s failure to disclose (and active
16 concealment of) its concurrent representation of (1) the Receiver and Valley, a creditor of the
17 Receiver Estate; and (2) the Receiver and Xerox—a significant target of the Receivership Estate—
18 warranted its disqualification as counsel for the Receiver.

19 “[A] receiver must act for the benefit of all persons interested in the property.” *Fullerton v.*
20 *Second Jud. Dist. Ct. ex rel. Cnty. of Washoe*, 111 Nev. 391, 400, 892 P.2d 935, 941 (1995). Thus,
21 “a [r]eceiver owes [a] fiduciary duty to all the parties in interest, including the creditors . . . , and is
22 under the duty to act impartially toward, and protect the rights of, all parties.” *Hilti, Inc. v. HML*
23 *Dev. Corp.*, No. 97271, 2007 Mass. Super. LEXIS 66 at *55-56 (Mass. Super. Ct. Feb. 5, 2007)
24 (internal quotation omitted). Special deputy receivers and *the receiver’s counsel* are also fiduciaries
25 and must therefore be neutral and impartial. *McPherson v. U.S. Physicians Mut. Risk Retention*
26 *Group*, 99 S.W.3d 462, 468 (Mo. Ct. App. 2003) (holding that both the SDR and receiver’s counsel
27 are a “fiduciary of all parties interested in the receivership”); *KeyBank Nat’l Ass’n v. Michael*, 737
28 N.E.2d 834, 852 (Ind. Ct. App. 2000); *In re Coastal Equities, Inc.*, 39 B.R. 304, 309 (Bankr. S.D.

1 Cal. 1984); *Pulitzer Publishing Co. v. Transit Cas. Co.*, 43 S.W.3d 293, 303 (Mo. 2001).

2 The Receiver, SDR, and Greenberg are therefore required to remain neutral and impartial to
3 all creditors of the Receivership estate. However, Greenberg's representation of Valley in front of
4 the Receivership Court irreparably destroys the appearance of neutrality and calls into question the
5 legitimacy of the receivership process. (Ex. 1, at 56:8-13.) Because Greenberg did not disclose, but
6 rather actively concealed its representation of both Valley and Xerox from the Receivership Court,
7 creditors, such as UHH, were unable to lodge objections.

8 Moreover, the Receiver is obligated to pursue all legal avenues which could maximize the
9 receivership estate for the benefit of the creditors. *See Phelan v. Middle States Oil Corp.*, 154 F.2d
10 978, 990 (2d Cir. 1946) (holding that a receiver (and by extension her counsel) have an "affirmative
11 duty to endeavor to realize the largest possible amount for assets of the estate") (internal citation
12 omitted); *see also Hilti, Inc. v. HML Dev. Corp.*, No. 97271, 2007 Mass. Super. LEXIS 66 at *52
13 (Mass. Super. Ct. Feb. 5, 2007).

14 However, Greenberg's representation **of Xerox** in substantially related matters precluded it
15 from analyzing or pursuing claims **against Xerox**, and the Receiver consequently brought claims
16 against other parties (like UHH) who are not culpable. (*See* Ex. 1, at 53:12-54:5.) Greenberg's
17 conflicts of interest have destroyed the Receiver's ability to neutrally appraise which entities to bring
18 claims against, and has marred the Receiver's ability to fully maximize the receivership estate for the
19 benefit of creditors. *See In re S. Kitchens, Inc.*, 216 B.R. 819 (Bankr. D. Minn. 1998) ("**Regardless**
20 **of whom a trustee has identified as an opponent**, if a past or present client of proposed counsel was
21 involved in any way with the events that gave rise to the dispute or could otherwise be the subject of
22 a claim based on those events, the client has an interest adverse to the estate and disqualification
23 results.") (emphasis added); *see also In re Bohack Corp.*, 607 F.2d 258, 264 (2d Cir. 1979).

24 Finally, Greenberg's continued participation in this case is destroying the impartiality and
25 fairness of this proceeding. Greenberg refuses to recuse itself from proceedings (such as
26 depositions) where Xerox is a topic of interest. (*See* Exs. 4-7.) Greenberg's refusal to honor its
27 ethical obligations (and the Receiver's representations to the Court about its "conflicts counsel")
28 further raises the question of whether Greenberg is acting in the interest of the Receiver and creditors

1 of the Receivership Estate, *or* whether Greenberg is acting in the interests of its former client, Xerox.

2 Greenberg's involvement in these proceedings has already begun to destroy the Receiver's
3 appearance of neutrality and has tainted both the Receivership Action and this litigation. Thus, this
4 Court should not permit discovery to continue and this case to proceed to trial before the Supreme
5 Court has rendered a decision on the Appeal, at the risk of allowing Greenberg's conflicts to further
6 infect these proceedings beyond any reasonable cure.

7 **C. The Object of the Writ Petition Will Also Be Defeated if the Stay Is Denied.**

8 UHH's Writ Petition demonstrates that the repercussions of Greenberg's conflict are being
9 felt outside of the Receivership Action and are causing serious prejudice to parties who are not
10 solely creditors of the Receivership Estate.

11 Specifically, Greenberg's fiduciary duties to its former client, Xerox, prevent it from
12 pursuing Xerox as a target of the Receivership Estate. Not only does this impact the creditors of the
13 Receivership Estate, because the Receiver is failing to pursue every possible avenue of recovery, it
14 also directly impacts UHH in the instant action, because the Receiver (and Greenberg) are seeking
15 damages from *UHH* for harm to the CO-OP caused by *Xerox's* failures in designing and operating
16 the Xerox Exchange in Nevada.

17 Greenberg is well aware of Xerox's culpability—having represented Xerox in two class
18 action suits arising from Xerox's failures in conjunction with the Xerox Exchange, as well as in a
19 regulatory investigation conducted by the Nevada Division of Insurance. However, Greenberg
20 cannot bring claims against its former client; therefore, the blame for Xerox's failings has been
21 shifted to UHH.

22 Despite the *Receiver's* failure to name the correct party as a defendant, UHH sought to
23 implead Xerox as a third-party defendant in order to establish that it was Xerox—not UHH—whose
24 actions were a significant contributor to the CO-OP's demise. Impleading Xerox would have
25 maximized judicial efficiency by preventing the necessity of a second, separate action after the
26 conclusion of this matter. Moreover, by impleading Xerox, all parties with potential liability to the
27 CO-OP would have been present in the same forum, allowing for a proper (and timely)
28 apportionment of liability. *Shafarman v. Ryder Truck Rental Inc.*, 100 F.R.D. 454, 458–59

(S.D.N.Y. 1984) (“Impleader is a procedural device that promotes judicial efficiency because it allows for the adjudication of several claims in one action, thereby eliminating circuitous, duplicative actions.”); *Nalder v. Eighth Jud. Dist. Ct ex rel. Cnty. of Clark.*, 136 Nev. Adv. Rep. 24, 462 P.3d 677, 685 (2020) (“Allowing a case that has reached final judgment to be consolidated with a newer case undermines that goal by permitting relitigation of resolved issues and requiring parties to spend unnecessary additional court costs.”).

However, this Court denied said motion, *solely on the basis of Greenberg’s conflict of interest*. Despite the fact that Greenberg’s conflicts were “self-inflicted,” and that Greenberg alone is responsible for the repercussions of those conflicts, it is UHH—not Greenberg, and not the Receiver—who is being prejudiced by Greenberg’s conflicts, Greenberg’s non-disclosure of those conflicts, and Greenberg’s active concealment of those conflicts.

Although UHH attempted to file the Writ Petition as expeditiously as possible, the Receiver recently sought an extension to file her Answer. Now, briefing on the Writ Petition will not conclude until November 2021. Not only will discovery be nearly complete by the time the briefing on the Writ Petition has concluded—but the trial may also be concluded, thereby rendering the Writ Petition moot before the Supreme Court issues a decision.

Moreover, if the Supreme Court grants the Writ Petition, Xerox will be added to this matter as a third-party defendant. Xerox will undoubtedly want to participate in discovery. While the parties may easily provide Xerox with the evidence produced thus far, and permit Xerox time to produce expert reports, the cost and effort associated with re-scheduling and re-deposing the dozens of witnesses involved in this case will severely impact all parties—in addition to the deponents themselves.

Thus, this Court should require the conservation of both party and judicial resources by staying further discovery and trial pending a decision on the Writ Petition.

D. The Harm Posed by Greenberg’s Continued Representation of the Receiver Warrants a Stay.

It is widely accepted that motions to disqualify should be granted “where necessary to preserve the integrity of the adversary process.” *Lowe v. Experian*, 328 F. Supp. 2d 1122, 1125 (D.

Kan. 2004); *see also* *Plant Genetic Sys. N.V. v. Ciba Seeds*, 933 F. Supp. 514, 517 (M.D.N.C. 1996) (“The guiding principle in considering a motion to disqualify counsel is safeguarding the integrity of the court proceedings; the purpose of granting such motions is to eliminate the threat that the litigation will be tainted.”). Therefore, most courts agree that a stay of proceedings is warranted when a motion to disqualify is pending in order to preserve the fairness of the underlying proceedings. *See, e.g., Bowers v. Ophthalmology Group*, 733 F.3d 647, 654 (6th Cir. 2013) (holding that when a motion to disqualify has been filed, “a court should not reach the other questions or motions presented to it through the disqualified counsel”); *see also Grimes v. Dist. of Columbia*, 794 F.3d 83, 90 (D.C. Cir. 2015); *Allergia, Inc. v. Bouboulis*, No. 14-CV-1566 JLS (RBB), 2015 U.S. Dist. LEXIS 189230, at *13 (S.D. Cal. May 5, 2015) (holding that the motion to disqualify “must be decided before proceeding with other issues in the case”).

Courts routinely preclude conflicted counsel from attending or participating in proceedings where their client (or former client) is a relevant witness—and in some instances, disqualify conflicted counsel from participation altogether. *See, e.g., Koza v. Dist. Ct.*, 99 Nev. 535, 538, 665 P.2d 244, 246 (1983); *United States v. Dunlap*, No. 2:08-cr-00283-RCJ-RJJ, 2010 U.S. Dist. LEXIS 82474, at *14–*18 (D. Nev. July 6, 2010); *Sykes v. Matter*, 316 F. Supp. 2d 630, 633–36 (M.D. Tenn. 2004); *Emmis Operating Co. v. CBS Radio, Inc.*, 480 F. Supp. 2d 1111, 1119–20 (S.D. Ind. 2007); *FMC Techs., Inc. v. Edwards*, 420 S. Supp. 2d 1153, 1160–61 (W.D. Wash. 2016).

Indeed, the likelihood that a conflict will taint the proceedings is so great, that *the mere continuation of the proceedings* constitutes irreparable harm to *all* parties involved in the matter. *See Grimes v. Dist. of Columbia*, 794 F.3d 83, 90 (D.C. Cir. 2015) (“Resolving asserted conflicts before deciding substantive motions assures that no conflict taints the proceeding, impairs the public’s confidence, or infects any substantive motion prepared by or under the auspices of conflicted counsel.”) As one court noted:

It is essential that a tribunal determine whether an attorney or law firm is disqualified from a case immediately upon being alerted to a potential conflict of interest. ***Until that determination is made, no further proceedings may take place.*** Conflicts of interest, left unchecked, could taint an entire case and call into question the integrity of the attorney client relationship.... ***Failing to stay the proceedings was error that***

seriously affected the fairness, integrity, or public reputation of the proceedings.

Living Cross Ambulance Serv., Inc. v. N.M. Pub. Regulation Comm’n, 338 P.3d 1258, 1264 (N.M. 2014) (emphasis added). Greenberg acknowledged this verity in consenting to a stay while the Receivership Court decided the Motion to Disqualify. The same principles apply before the Nevada Supreme Court—particularly since the Supreme Court has decided to entertain the Appeal.

While the hypothetical harm caused by Greenberg’s conflict (especially where, as here, the Receiver is acting in her statutory role and on behalf of Nevada insureds) *warrants* a stay, the actual harm caused by Greenberg’s conflict *mandates* a stay. As discussed *supra*, Greenberg has not simply refrained from suing its former client Xerox—Greenberg has also fought UHH’s attempts to obtain information regarding Xerox for use in its defense, and refused to recuse itself from proceedings where its presence is improper and unethical. While this impacts UHH and its defense, it also prejudices the Receiver and her ultimate ability to recover assets for Receivership Estate.

For example, Greenberg cannot ask questions pertaining to Xerox in its cross-examination or redirect. While this does not immediately impact UHH, it impacts the Receiver’s ability to fully litigate her claims, and thus impacts every creditor and policyholder of the Receivership Estate—one of which is UHH. Greenberg’s refusal to allow “conflicts counsel” to handle matters pertaining to Xerox in discovery also raises the question of whether Greenberg intends to argue Xerox-related matters at trial.

Moreover, as discussed *infra*, UHH is likely to prevail on its eventual appeal. Accordingly, the closer that this case gets to trial, the more the Receiver will have to “unwind” upon Greenberg’s ultimate disqualification. Therefore, the harm to the Receivership Estate and to UHH mandates a stay of discovery and trial pending the outcome of the Appeal.

E. UHH Will Suffer Irreparable Harm if This Matter Is Not Stayed While the Writ Petition Is Pending.

To be clear, UHH has already been harmed by Greenberg’s conflicts of interest. Greenberg has repeatedly frustrated UHH’s attempts to obtain information pertaining to Xerox (and Greenberg’s conflicts) through the discovery process, thereby harming UHH’s attempts to develop

1 its defense.

2 However, while the Receivership Court refused to acknowledge that Greenberg's conflict of
3 interest precluded the Receiver from bringing claims against Xerox, it recognized that UHH could
4 seek to implead Xerox in the underlying action. However, when UHH sought to do so, this Court
5 denied the Motion **based solely on Greenberg's conflict of interest**. In other words, the Receiver
6 cannot sue Xerox due to Greenberg's conflict of interest, and now UHH cannot sue Xerox based on
7 Greenberg's conflict of interest.

8 UHH should not have to suffer the consequences of Greenberg's self-inflicted conflicts of
9 interest. UHH is not responsible for the Receiver's and the SDR's decision to retain Greenberg in
10 the face of known conflicts, nor is UHH responsible for Greenberg's active concealment of those
11 conflicts from the Receivership Court. Further, Greenberg was well aware of Xerox's role in
12 Nevada's disastrous attempt to launch the Xerox Exchange, and it should have foreseen that any
13 parties that Greenberg chose to blame for the failure of the CO-OP would ultimately seek to redirect
14 blame to the true wrongdoer: Xerox.

15 Moreover, should this Court deny the stay pending the Supreme Court's decisions,
16 Greenberg's conflicts of interest may not only damage UHH, but potentially destroy it. **First**,
17 because this Court denied UHH's Motion to Implead Xerox, the factfinder will be precluded from
18 *apportioning* blame to Xerox at trial for harm caused to the CO-OP. NRS 41.141(2)(b)(2);
19 *Warmbrodt v. Blanchard*, 100 Nev. 703, 709, 692 P.2d 1282, 1286 (1984). Instead, UHH may only
20 argue that Xerox is **entirely** at fault for the harm that the CO-OP attributes to UHH, which
21 significantly increases UHH's burden of proof. *Banks ex rel. Banks v. Sunrise Hospital*, 120 Nev.
22 822, 844-45, 102 P.3d 52, 67 (2004).

23 **Second**, "[t]he right of contribution exists only in favor of a tortfeasor who has paid more
24 than his or her equitable share of the common liability. . ." NRS 17.225(2). Therefore, UHH will be
25 required to pay any monetary judgments before it may pursue separate contribution claims against
26 Xerox. The Receiver is seeking more than **\$142 million** in damages. Should UHH be required to
27 pay any portion of this amount, it could be driven into insolvency before receiving (or even
28 pursuing) any contribution from Xerox. *See* 3 Moore's Federal Practice -Civil § 14.03 (2020)

1 (“Even when the defendant is successful in the second suit, it will be required to pay for separate
2 litigation, and may suffer adverse consequences because of the delay between judgments in the two
3 suits.”).

4 The extraordinary prejudice that Greenberg’s conflicts are causing UHH warranted UHH
5 filing its Appeal and Writ Petition in the Supreme Court. The Appeal is now fully briefed.
6 However, while UHH filed its Writ Petition as expeditiously as possible, in the hopes of obtaining a
7 speedy resolution, the Receiver requested an extension of time to file her Answer, which is now due
8 in November 2021. Based on this timeframe, it is likely that the Supreme Court will not have issued
9 a decision on the Writ Petition before the parties’ current May 2022 trial date. Therefore, a stay is
10 necessary to preserve the status quo until the Supreme Court issues its decision.

11 **F. The Receiver Will Suffer No Harm From a Stay.**

12 While UHH will suffer irreparable harm if this Court does not grant a stay—the Receiver
13 will suffer *little to no harm* if this action is stayed pending resolution of the Appeal and Writ
14 Petition. First, the stay would not be for an indefinite period of time. The parties have already
15 completed briefing in the Appeal, and simply await the Supreme Court’s issuance of a decision.
16 Moreover, the decision on the Appeal is likely to have a direct impact on the Court’s ultimate
17 decision on the Writ Petition.

18 Second, the parties have already completed a substantial amount of discovery. The parties
19 have exchanged documents and written discovery, and their experts have produced reports.⁴² The
20 sole remaining piece is the deposition of witnesses and experts. If Greenberg is ultimately
21 disqualified, the Receiver will not be forced to make a determination on whether Greenberg’s
22 presence tainted the depositions. With regard to the Writ Petition, if UHH is allowed to implead
23 Xerox, the parties will have minimized the amount of discovery that must be replicated once Xerox
24 is a party to the proceedings.

25 Finally, if the Court determines that Greenberg must be disqualified—Greenberg may or may
26

27 ⁴² Despite the progress the parties have made in discovery, the Receiver has thus far grossly failed to comply with
28 her discovery obligations by actively concealing relevant and material evidence. These failures are the subject of UHH’s
pending Rule 37(c) Motion for Sanctions and will likewise require UHH to supplement its expert reports.

1 not have to disgorge its fees earned in representing the Receiver. If Greenberg is not forced to
2 disgorge its fees, then a stay benefits the receivership estate and all of its creditors, because it stops
3 the bleeding of limited resources. Therefore, the stay will not prejudice the Receiver financially.

4 **G. UHH Is Likely to Prevail on the Merits of the Appeal.**

5 “[T]he standard of review for an order resolving a motion to disqualify ‘is for abuse of
6 discretion, with the underlying factual findings reviewed for clear error and the interpretation of the
7 relevant rules of attorney conduct reviewed de novo[.]’” *State ex rel. Cannizzaro v. First Judicial*
8 *Dist. Ct.*, 136 Nev. Adv. Rep. 34, 466 P.3d 529, 531 (2020) (citation omitted).

9 The Receivership Court based its decision on the lack of “binding authority that mandates the
10 Receiver and her counsel, Greenberg, disclose all possible conflicts to the Court.” (Ex. 38 at 6:17-
11 20.) While the Receivership Court may have been correct that there is not an explicit Nevada rule or
12 statute which addresses the disclosure of conflicts of interest in a receivership proceeding, the
13 Receivership Court abused its discretion in ignoring the clear, undisputed, and overwhelming weight
14 of authority requiring receivers and their counsel to fully disclose all conflicts of interest (actual or
15 potential) to the appointing court at the time of the appointment.

16 Moreover, while the Receivership Court adopted a new standard to determine that it could
17 not find “a clear and substantial enough possible conflict” in Greenberg’s representation of Xerox to
18 justify disqualification, the Receivership Court failed entirely to address Greenberg’s representation
19 of both the Receiver and a creditor of the Receivership Estate (Valley) in the exact same matter.

20 ***Every receivership and bankruptcy court*** that has encountered this type of conflict of
21 interest has determined that the attorney in question suffers from a disabling conflict of interest. *See*
22 *CFTC v. Ustace*, Nos. 05-2973, 06-1944, 2007 U.S. Dist. LEXIS 33137 (E.D. Pa. May 3, 2007); *In*
23 *re Bohack Corp.*, 607 F.2d 258, 264 (2d. Cir. 1979); *In re Envirodyne Indus.*, 150 B.R. 1008, 1019
24 (Bankr. N.D. Ill. 1993); *Real Estate Capital Corp. v Thunder Corp.*, 31 Ohio Misc. 169, 188 (Ohio
25 Ct. Comm. 1972); *In re Git-N-Go, Inc.*, 321 B.R. 54, 59 n.4 (Bankr. N.D. Okla. 2004); *In re Leslie*
26 *Fay Cos.*, 175 B.R. 525, 534 (Bankr. S.D.N.Y. 1994).

27 The Receivership Court ignored the resounding weight of authority from other jurisdictions
28 in denying UHH’s Motion to Disqualify. Therefore, the Supreme Court is likely to find that the

1 Receivership Court abused its discretion and reverse the Receivership Court’s denial of the Motion
2 to Disqualify.

3 **H. UHH Is Likely to Prevail on the Merits of the Writ Petition.**

4 As discussed *supra*, this Court’s decision to deny UHH’s Motion to Implead Xerox was
5 based on Greenberg’s conflicts of interest. However, the Supreme Court is likely to find that it was
6 a manifest abuse of discretion to allow any “prejudice” caused by Greenberg’s self-inflicted conflicts
7 of interest to outweigh UHH’s rights to implead Xerox. *See El Camino Res., Ltd. v. Huntington*
8 *Nat’l Bank*, 623 F. Supp. 2d 863, 886 (W.D. Mich. 2007) (holding that a thrust upon conflict “must
9 truly be unforeseeable, and that the conflict must truly be no fault of the lawyer.”) (internal quotation
10 omitted). Moreover, as discussed in Section III.E, *supra*, UHH respectfully suggests that this Court
11 underestimated the severe prejudice to UHH should UHH have to pursue contribution claims against
12 Xerox in a separate action.

13 For these reasons, the Supreme Court is likely to find that this Court abused its discretion and
14 will grant UHH’s Writ Petition.

15 **IV. CONCLUSION**

16 For the foregoing reasons, UHH respectfully requests that this Court stay all remaining
17 discovery and the trial in this action pending the outcome of the Appeal and the Writ Petition, and
18 requests that this Court grant this Motion in its entirety.

19 DATED this 6th day of October, 2021.

20 BAILEY❖KENNEDY

21 By: /s/ Dennis L. Kennedy

22 JOHN R. BAILEY

23 DENNIS L. KENNEDY

24 SARAH E. HARMON

25 JOSEPH A. LIEBMAN

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27 [Additional Attorneys Listed in Caption]

28 *Attorneys for Defendants*
Unite Here Health and Nevada Health
Solutions, LLC

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 Nevada Commissioner of
Insurance, Plaintiff(s)

7 vs.

8 Milliman Inc, Defendant(s)
9

CASE NO: A-17-760558-B

DEPT. NO. Department 16

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order Shortening Time was served via the court's electronic eFile
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TAB 17

TAB 17

Heather S. Smith
CLERK OF THE COURT

AMOR

DISTRICT COURT
CLARK COUNTY, NEVADA

NEVADA COMMISSIONER OF
INSURANCE, PLAINTIFF(S)
VS.
MILLIMAN, INC., DEFENDANT(S)

CASE NO: A-17-760558-B

DEPARTMENT 16

**AMENDED ORDER RESCHEDULING DATES FOR TRIAL,
AND PRE-TRIAL/CALENDAR CALL**

IT IS HEREBY ORDERED THAT:

Trial in the above-entitled matter is rescheduled from May 16, 2022 to
May 23, 2022 at 9:30 a.m.

Pre-Trial/Calendar Call with the designated attorney and/or parties in proper
person is rescheduled from April 28, 2022 to **May 12, 2022 at 10:30 a.m.**

The Pre-Trial Memorandum is due May 19, 2022.

Dated this 18th day of October, 2021

Timothy C. Williams

LB

6D8 908 023A EE15
Timothy C. Williams
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Nevada Commissioner of
7 Insurance, Plaintiff(s)

8 vs.

9 Milliman Inc, Defendant(s)

CASE NO: A-17-760558-B

DEPT. NO. Department 16

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11 **AUTOMATED CERTIFICATE OF SERVICE**

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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 10/19/2021

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