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2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3 * * *

4 COMMISSIONER OF INSURANCE
5 FOR THE STATE OF NEVADA AS
6 RECEIVER OF LEWIS AND CLARK
7 LTC RISK RETENTION GROUP,
8 INC.,

9 Appellant,

10 vs.

11 ROBERT CHUR, STEVE FOGG,
12 MARK GARBER, CAROL HARTER,
13 ROBERT HURLBUT, BARBARA
14 LUMPKIN, JEFF MARSHALL, ERIC
15 STICKELS, UNI-TER
16 UNDERWRITING MANAGEMENT
17 CORP., UNI-TER CLAIMS SERVICES
18 CORP., and U.S. RE CORPORATION,;
19 DOES 1-50, inclusive; and ROES 51-
20 100, inclusive;

21 Respondents.

Supreme Court No. 84253
District Court Case No. A711535
Mar 10 2022 11:00 p.m.
Electronically Filed
Elizabeth A. Brown
Clerk of Supreme Court
DOCKETING STATEMENT

22 **GENERAL INFORMATION**

23 All appellants not in proper person must complete the docketing statement.
24 NRAP 14(a). The purpose of the docketing statement is to assist the Supreme
25 Court in screening jurisdiction, classifying cases for en banc, panel, or expedited
26 treatment, compiling statistical information and identifying parties and their
27 counsel.

28 **WARNING**

This statement must be completed fully, accurately and on time. NRAP
14(c). The Supreme Court may impose sanctions on counsel or appellant if it
appears that the information provided is incomplete or inaccurate *Id.* Failure to fill
out the statement completely or to file it in a timely manner constitutes grounds for
the imposition of sanctions, including a fine and/or dismissal of the appeal.

1 A complete list of the documents that must be attached appears as Question
2 27 on this docketing statement. Failure to attach all required documents will result
3 in the delay of your appeal and may result in the imposition of sanctions.

4 This court has noted that when attorneys do not take seriously their
5 obligations under NRAP 14 to complete the docketing statement properly and
6 conscientiously, they waste the valuable judicial resources of this court, making the
7 imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107, Nev.
8 340, 810 P.2d 1217 (1991). Please use tab dividers to separate any attached
9 documents.

10 **1. Judicial District:**

11 Eighth Judicial District

12 Department: XXVII

13 Country: Clark County

14 Judge: Honorable Nancy L. Allf

15 Case No. A-14-711535-C

16 **2. Attorney filing this docketing statement:**

17 Attorney: Brenoch R. Wirthlin, Esq.

18 Firm: Hutchison & Steffen, PLLC

19 Address: 10080 W. Alta Drive, Ste. 200

20 Las Vegas, Nevada 89145

21 702-385-2500

22 Client(s): Commissioner of Insurance for the State of Nevada as Receiver
23 of Lewis & Clark LTC Risk Retention Group, Inc.

24 If this is a joint statement by multiple applicants, add the names and addresses of other counsel
25 and the names of their clients on an additional sheet accompanied by a certification that they
26 concur in the filing of this statement

27 **3. Attorney(s) representing respondent(s):**

28 Attorney: Angela Nakamura Ochoa, Esq.
Joseph P. Garin, Esq.

Lipson Neilson, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, NV 89144

Client(s): Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert
Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels
(collectively "Director Defendants")

4. **Nature of disposition below (check all that apply):**

Judgment after bench trial
Judgment after jury verdict
Summary Judgment
Default Judgment

☒ **Dismissal**

Lack of Jurisdiction

☒ **Failure to State a
Claim**

Failure to Prosecute

Other (specify)

Grant/Denial of NRCP 60(b) relief

Grant/Denial of Injunction

Grant/Denial of Declaratory Relief

Review of Agency Determination

Divorce Decree

Original Modification

☒ **Other disposition (specify):**

- **Denial of Motion to Amend
Complaint**
- **Denial of Motion for Partial
Reconsideration of Denial of
Motion to Amend Complaint**

5. **Does this appeal raise issues concerning any of the following:**

Child custody(visitation rights only)

Venue

Termination of parental rights

This case does not involve child custody or visitation, venue, or termination
of parental rights.

6. **Pending and prior proceedings in this court.** List the case name and
docket number of all appeals or original proceedings presently or previously
pending before this court which are related to this appeal:

Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut,
Barbara Lumpkin, Jeff Marshall and Eric Stickels v. The Eight Judicial
District Court of the State of Nevada, in and for the County of Clark and the

1 Honorable Nancy L. Allf, District Court Judge, Case No. 78301.

2 Commissioner of Insurance for the State of Nevada as Receiver of Lewis &
3 Clark LTC Risk Retention Group, Inc. v. The Eight Judicial District Court of
4 the State of Nevada, in and for the County of Clark and the Honorable
5 Nancy L. Allf, District Court Judge, Case No. 81857.

6 Commissioner of Insurance for the State of Nevada as Receiver of Lewis &
7 Clark LTC Risk Retention Group, Inc. v. The Eight Judicial District Court of
8 the State of Nevada, in and for the County of Clark and the Honorable
9 Nancy L. Allf, District Court Judge, Case No. 84253.

- 10 7. **Pending and prior proceedings in other courts.** List the case name,
11 number and court of all pending and prior proceedings in other courts which
12 are related to this appeal (e.g., bankruptcy, consolidated or bifurcated
13 proceedings) and their dates of disposition:

14 Commissioner of Insurance for the State of Nevada as Receiver of Lewis &
15 Clark LTC Risk Retention Group, Inc. v. Robert Chur, Steve Fogg, Mark
16 Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, Eric
17 Stickels, Uni-Ter Underwriting Management Corp., Uni-Ter Claims
18 Services Corp., and U.S. Re Corporation, Case No. A-12-672047-B. This
19 matter is still open.

- 20 8. **Nature of the action.** Briefly describe the nature of the action and the result
21 below:

22 The Commissioner of Insurance relied upon existing Nevada law when
23 drafting her complaint, filed on December 24, 2014, against the former directors of
24 an insolvent Nevada risk retention group. Subsequently, the basis of pleading
25 director liability in Nevada changed with the Court's opinion in Chur v. Eighth
26 Judicial Dist. Court, 136 Nev. 68, 458 P.3d 336 (2020), which substantively altered
27 the law regarding director liability in Nevada. Within the time period allowed by
28 the District Court for amending her pleadings, the Commissioner of Insurance

1 moved to amend her complaint against the Director Defendants in order to comply
2 with the change to Nevada law following Court's opinion in *Chur*. The District
3 Court, however, denied Appellant's motion to amend, despite also having relied
4 upon *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 640, 137 P.3d 1171, 1184 (2006),
5 in prior rulings.
6

7
8 The Commissioner of Insurance seeks relief from the District Court's
9 erroneous rulings related to denying her right to amend her complaint to comply with
10 new Nevada law. Specifically, this appeal seeks relief from the District Court's
11 order dated August 10, 2020, denying leave to file an amended complaint, the
12 District Court's order dated August 1, 2020, granting the Director Defendants'
13 motion for judgment on the pleadings, and the District Court's order dated
14 September 9, 2020, denying partial reconsideration of the motion for leave to amend
15 to file a fourth amended complaint.
16

17
18 9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach
19 separate sheets as necessary:
20

21 This District Court's denial of Appellant's motion to amend her complaint in
22 order to comply with new Nevada law raises important precedential, constitutional
23 and public policy issues regarding: (1) the right of parties to amend pleadings in
24 order to comply with changes in the underlying law which occur after a complaint
25 has been filed but before the deadline for amending pleadings as provided in the trial
26 court's scheduling order; (2) application of this Court's recent amendments to NRCPP
27 41(e) regarding additional time provided under Nevada's 5-year rule in which a case
28

1 must be brought to trial; and (3) whether the District Court's factual mistake as to
2 the time remaining until the close of discovery which formed that basis for the denial
3 of a motion to amend a complaint in order to comply with new Nevada law was in
4 error.
5

6 **10. Pending proceedings in this court raising the same or similar issues.** If
7 you are aware of any proceeding presently pending before this court which
8 raises the same or similar issues raised in this appeal, list the case name and
9 docket number and identify the same or similar issues raised:

10 The Commissioner of Insurance is not aware of any similar cases pending at
11 this time.
12

13 **11. Constitutional issues.** If this appeal challenges the constitutionality of a
14 statute, and the state, any state agency, or any officer or employee thereof is
15 not a party to this appeal, have you notified the clerk of this court and the
16 attorney general in accordance with NRAP 44 and NRS 30.130?
17

18 This appeal does not challenge the constitutionality of a statute.
19

20 **12. Other issues.** Does this appeal involve any of the following:
21

22 Reversal of well-settled Nevada precedent (on an attachment, identify the
23 case(s))

24 An issue arising under the United States and/or Nevada Constitutions

25 A substantial issue of first-impression

26 An issue of public policy

27 An issue where en banc consideration is necessary to maintain uniformity of
28 this court's decisions

A ballot question

If so, explain

1 This appeal involves the constitutional due process rights of a litigant to be
2 provided the opportunity to amend a complaint in order to comply with changes in
3 the underlying law which occur after a complaint has been filed but before the
4 deadline for amending pleadings as provided in the trial court's scheduling order
5 has passed.

6
7 **13. Assignment to the Court of appeals or retention in the Supreme Court.**

8 Briefly set forth whether the matter is presumptively retained by the
9 Supreme Court or assigned to the Court of appeals under NRAP 17, and cite
10 the subparagraph(s) of the Rule under which the matter falls. If appellant
11 believes that the Supreme Court should retain the case despite its
12 presumptive assignment to the Court of Appeals, identify the specific
13 issue(s) or circumstances(s) that warrant retaining the case, and include an
14 explanation of their importance or significance:
15

16 This case is presumptively retained by the Supreme Court under both NRAP
17 17(a)(9) and NRAP 17(a)11. This appeal originates in business court which is a
18 presumptive category of retention by the Supreme Court. In addition, this appeal
19 raises as a principal issue a question of first impression involving the United States
20 Constitution or Nevada Constitution or common law which is a presumptive
21 category of retention by the Nevada Supreme Court.
22

23 **14. Trial.** If this action proceeded to trial, how many days did the trial last?
24 Was it a bench or jury trial?
25

26 Following the District Court's erroneous dismissal of the Director
27 Defendants, the underlying action proceeded to trial against the remaining
28 defendants. A jury trial against Uni-Ter Underwriting Management Corp., Uni-Ter

1 Claims Services Corp., and U.S. Re Corporation (“Corporate Defendants”) began
2 on September 20, 2021, and concluded on October 14, 2021, with a unanimous
3 jury verdict in favor of the Commissioner of Insurance and a judgment against the
4 Corporate Defendants in the amount of \$15,222,853.00.

5
6 **15. Judicial disqualification.** Do you intend to file a motion to disqualify or
7 have a justice recuse him/herself from participation in this appeal. If so,
8 which Justice?

9
10 The Commissioner of Insurance does not anticipate at this time filing a
11 motion to disqualify or have a justice recuse him/herself from participation in this
12 appeal.

13
14 **TIMELINESS OF NOTICE OF APPEAL**

15 **16. Date of entry of written judgment or order appealed from:**

16
17 August 10, 2020. Notice of Entry of Findings of Fact, Conclusions of Law
18 and Order Denying Plaintiff’s Motion for Leave to File Fourth Amended
19 Complaint.

20 August 14, 2020. Notice of Entry of Order Granting Defendants Robert
21 Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin,
22 Jeff Marshall, and Eric Stickels’ Motion for Judgment on the Pleadings Pursuant to
23 NRCPC 12(C).

24 September 10, 2020. Notice of Entry of Findings of Fact, Conclusions of
25 Law and Order Denying the Motion for Partial Reconsideration of Motion for
26 Leave to Amend Regarding Director Defendants.

27 January 13, 2022. Notice of Entry of Judgment on Jury Verdict.
28

1
2 If no written judgment or order was filed in the district court, explain the
3 basis for seeking appellate review:

4 **17. Date written notice of entry of judgment or order served:**

5
6 (a) Was service by delivery _____ or by mail/electronic/fax X.

7
8 Notice of entry of all orders and judgment on appeal were served by
9 electronic service through the District Court's e-service system on the same day
10 the notice of entry of orders were filed.
11

12 **18. If the time for filing the notice of appeal was tolled by a post-judgment**
13 **motion (NRCP 50(b), 52 (b), or 59.**

14
15 (a) Specify the type of motion, and the date and method of service of the
16 motion, and date of filing.

17 NRCP 50(b) Date of filing _____

18 NRCP 52(b) Date of filing _____

19 NRCP 59 Date of filing February 10, 2022

20
21 February 10, 2022. Defendant U.S. Re Corporation's Motion to Alter or
22 Amend Judgment Pursuant to Rule 59(e), for Relief from Judgment Pursuant to
23 Rule 60(b), and for Stay of Execution Pursuant to 62(b)(3) and (4).

24 February 10, 2022. Plaintiff's Motion to Alter of Amend Judgment Pursuant
25 to Rule 59.

26 **Note: Motions made pursuant to NRCP 60 or motions for rehearing or**
27 **reconsideration may toll the time for filing a notice of appeal. See AA**
28 **Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).**

1 (b) Date of entry of written order resolving tolling motion:
2 Both Rule 59 motions are still pending before the District Court.
3 (c) Date of written notice of entry of order resolving motion served:
4 Both Rule 59 motions are still pending before the District Court.
5 Was service by delivery _____ or by mail _____(specify).
6 Service was provided by the District Court's e-service system on the same
7 day the Rule 59 motions were filed.
8

9 19. **Date notice of appeal was filed:** February 14, 2022
10 If more than one party has appealed from the judgment or order, list date
11 each notice of appeal was filed and identify by name the party filing the
12 notice of appeal:

13 20. **Specify statute or rule governing the time limit for filing the notice of**
14 **appeal, e.g., NRAP 4(a) or other:**

15 The rule governing the time limit for filing the notice of appeal is NRAP
16 4(a).

17 **SUBSTANTIVE APPEALABILITY**

18
19 21. **Specify the statute or other authority granting this court jurisdiction to**
20 **review the judgment or order appealed from:**
21 Explain how each authority provides a basis for appeal from the judgment or
22 order:

23 NRAP 4(a). Final judgment was entered in this case after trial.

24 22. **List all parties involved in the action in the district court:**

25 All parties involved below are currently involved in the appeal.

26 (a) Parties:

27 Plaintiff/Appellant: Commissioner of Insurance for
28 the State of Nevada as Receiver of
Lewis & Clark LTC Risk Retention

Group, Inc.

Defendants/Respondents:

Director Defendants: Robert Chur
Steve Fogg
Mark Garber
Carol Harter
Robert Hurlbut
Barbara Lumpkin
Jeff Marshall
Eric Stickels

Corporate Defendants: Uni-Ter Underwriting Management Corp.
Uni-Ter Claims Services Corp.
U.S. Re Corporation

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal *e.g.*, formally dismissed, not served, or other:

23. **Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the date of formal disposition of each claim.**

Commissioner of Insurance:

Against the Director Defendants: (1) Gross Negligence; and (2) Deepening of the Insolvency.

Against the Corporate Defendants: (1) Breach of Fiduciary Duty; and (2) Negligent Misrepresentation.

Director Defendants: No separate claims, counterclaims, cross-claims or third-party claims.

Corporate Defendants: No separate claims, counterclaims, cross-claims or third-party claims.

24. **Did the judgment or order appealed from adjudicate ALL the claims**

1 **alleged below and the rights and liabilities of ALL the parties to the**
2 **action or consolidated actions below:**

3 Yes _____ No X
4

5 **25. If you answered “No” to question 24, complete the following:**

6 (a) Specify the claims remaining pending below:

7 The claims against the Corporate Defendants remained and were adjudicated
8 at trial.

9 (b) Specify the parties remaining below:

10 The claims against the Corporate Defendants remained and were adjudicated
11 at trial.

12 (c) Did the district court certify the judgment or order appealed from as a
13 final judgment pursuant to NRCP 54(b):

14 Yes _____ No X

15 (d) Did the district court make an express determination, pursuant to NRCP
16 54(b), that there is no just reason for delay and an express direction for the
17 entry of judgment:

18 Yes _____ No X

19 **26. If you answered “No” to any part of question 25, explain the basis for**
20 **seeking appellate review (e.g., order is independently appealable under**
21 **NRAP 3A(b)):**

22 **27. Attach file-stamped copies of the following documents:**

- 23 ● The latest-filed complaint, counterclaims, cross-claims, and third-
- 24 party claims
- 25 ● Any tolling motion(s) and order(s) resolving tolling motion(s)
- 26 ● Orders of NRCP 41(a) dismissals formally resolving each claim,
- 27 counterclaims, cross-claims and/or third-party claims asserted in the
- 28 action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

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VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Name of Appellants: Commissioner of Insurance for the State of Nevada as Receiver of Lewis & Clark LTC Risk Retention Group, Inc.

Name of counsel of record: Brenoch Wirthlin, Esq.
Hutchison & Steffen, PLLC
10080 W. Alta Drive, Ste. 200
Las Vegas, Nevada 89145
702-385-2500

Date: 3/10/2022 /s/Brenoch Wirthlin
Signature of counsel of record

Clark County, Nevada
State and county where signed

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this 10th day of March, 2022, I caused the above and foregoing document entitled: **DOCKETING STATEMENT** to be served via NOTICE OF ELECTRONIC FILING through the Electronic Case Filing System of the Nevada Supreme Court with the submission to the Clerk of the Court, who will serve the parties electronically.

/s/ Jon Linder
An employee of Hutchison & Steffen, PLLC


CLERK OF THE COURT

1 ACOM
JAMES L. WADHAMS, ESQ.
2 Nevada Bar No. 1115
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Attorneys for Plaintiff Commissioner of Insurance
7 *For the State of Nevada*

8
9 DISTRICT COURT OF NEVADA
10 CLARK COUNTY, NEVADA

11 COMMISSIONER OF INSURANCE FOR
THE STATE OF NEVADA AS RECEIVER
12 OF LEWIS AND CLARK LTC RISK
RETENTION GROUP, INC.,
13

14 Plaintiff,

15 vs.
16

17 ROBERT CHUR, STEVE FOGG, MARK
18 GARBER, CAROL HARTER, ROBERT
HURLBUT, BARBARA LUMPKIN, JEFF
19 MARSHALL, ERIC STICKELS, UNI-TER
UNDERWRITING MANAGEMENT CORP.,
20 UNI-TER CLAIMS SERVICES CORP., and
U.S. RE CORPORATION,; DOES 1-50,
21 inclusive; and ROES 51-100, inclusive;

22 Defendants.
23

Case No.: A-14-711535-C

Dept No.: XXVII

THIRD AMENDED COMPLAINT

[Request for Exemption to be Filed]
[Damages in Excess of \$50,000]

24 Plaintiff, the Court-appointed receiver ("Plaintiff") of Lewis & Clark LTC Risk Retention
25 Group, Inc. ("L&C" or the "Company"), files the Third Amended Complaint clarifying the
26 Exhibits referenced in the Complaint and hereby complains and alleges as follows:

27 ///

28 ///

EXHIBIT

WITNESS: Greer

DATE: 11-8-18

HOLLY LARSEN, CCR NO. 680

1 PARTIES, JURISDICTION AND VENUE

2 1. L&C was a Nevada domiciled risk retention group formed in 2004. Between 2004
3 and February 28, 2013, L&C provided general and professional liability coverage to long term
4 care facilities and home health providers.

5 2. The Nevada Division of Insurance ("DOI") filed a Receivership Action related to
6 L&C in November, 2012, commencing case number A-12-672047-B in the Eighth Judicial
7 District Court of Nevada, in and for the County of Clark ("Receivership Action"). In the
8 Receivership Action, the court entered an Order of Liquidation ("Liquidation Order") on
9 February 28, 2013. A copy of the Liquidation Order is attached hereto as Exhibit 1. In the
10 Liquidation Order, Plaintiff was appointed as the Receiver ("Receiver") of L&C. *Id.* The express
11 powers granted to Receiver in the Order include the power to "[p]rosecute any action which may
12 exist on behalf of the policyholders, members or shareholders of L&C against any officer of L&C
13 or any other person[.]" See Liquidation Order, Exhibit 1, at ¶6(g).

14 3. On information and belief, defendant Robert Chur ("Chur") was a director of L&C
15 at all relevant times including as of the time the Receivership Action was filed.

16 4. On information and belief, Chur resides in Williamsville, New York.

17 5. On information and belief, Chur was also President of ElderWood Senior Care at
18 relevant times.

19 6. On information and belief, defendant Steve Fogg ("Fogg") was a director of L&C
20 at all relevant times including as of the time the Receivership Action was filed.

21 7. On information and belief, Fogg resides in Oregon.

22 8. On information and belief, Fogg was also Chief Financial Officer of Marquis
23 Companies at relevant times.

24 9. On information and belief, defendant Mark Garber ("Garber") was a director of
25 L&C at all relevant times including as of the time the Receivership Action was filed.

26 10. On information and belief, Garber resides in Oregon.

27 11. Garber was also Chief Financial Officer of Pinnacle Healthcare, Inc. ("Pinnacle")
28 at relevant times.

1 12. On information and belief, defendant Carol Harter ("Harter") was a director of
2 L&C at all relevant times including as of the time the Receivership Action was filed.

3 13. On information and belief, Harter resides in Las Vegas, Nevada.

4 14. On information and belief, Harter was also a professor at University of Nevada,
5 Las Vegas at relevant times.

6 15. On information and belief, defendant Robert Hurlbut ("Hurlbut") was a director of
7 L&C at all relevant times including as of the time the Receivership Action was filed.

8 16. On information and belief, Hurlbut resides in New York.

9 17. On information and belief, defendant Barbara Lumpkin ("Lumpkin") was a
10 director of L&C at all relevant times including as of the time the Receivership Action was filed.

11 18. On information and belief, Lumpkin resides in Florida.

12 19. On information and belief, Lumpkin was also the Associate Executive Director of
13 the Florida Nurses Association at relevant times.

14 20. On information and belief, defendant Jeff Marshall ("Marshall") was the President
15 and CEO of L&C at all relevant times including as of the time the Receivership Action was filed.

16 21. On information and belief, Marshall resides in Washington.

17 22. On information and belief, Marshall was also President and CEO of Eagle
18 Healthcare, Inc. ("Eagle Healthcare") at relevant times.

19 23. On information and belief, defendant Eric Stickels ("Stickels") was the Secretary
20 and Treasurer of L&C at all relevant times including as of the time the Receivership Action was
21 filed.

22 24. On information and belief, Stickels resides in New York.

23 25. On information and belief, Stickels was also Chief Financial Officer of Oneida
24 Savings Bank ("Oneida") at relevant times.

25 26. On information and belief, U.S. RE Corporation ("U.S. RE") is a New York
26 corporation and is an international financial services firm with interests in reinsurance brokerage,
27 investment banking, and program business, as well as holdings in the insurance industry.

28 27. On information and belief, defendant Uni-Ter Underwriting Management

1 Corporation ("Uni-Ter UMC" or "Uni-Ter") is a Georgia corporation and is a wholly owned
2 subsidiary of U.S. RE Corporation.

3 28. On information and belief, Uni-Ter Claims Services Corp. ("Uni-Ter CS") is a
4 Georgia corporation and is a wholly owned subsidiary of Uni-Ter UMC.

5 29. On information and belief, Defendants DOE INDIVIDUALS 1 through 50 and
6 ROE COMPANIES 51 through 100 are individuals or business entities currently unknown to
7 Plaintiff who claim some right, title, interest or lien in the subject matter of this action. When the
8 names of said DOE INDIVIDUALS and ROE COMPANIES have been ascertained, Plaintiff will
9 request leave to substitute their true names and capacities and join them in this action.

10 GENERAL ALLEGATIONS

11 A. Introduction

12 30. L&C was a Nevada corporation formed in or around 2003. L&C was organized as
13 a risk retention group to write Professional and General Liability coverage for long-term care
14 facilities in the Pacific Northwest.

15 31. L&C expanded its area of operation over the years and, at the time of Receivership
16 Action in 2012, wrote coverage for long term care facilities in 46 states, although New York,
17 California, Oregon, and Washington accounted for a majority of the premiums.

18 32. The individual defendants include the directors and officers of L&C at the relevant
19 times who, among other things, were grossly negligent in performing their duties as directors and
20 officers of L&C which resulted the Receivership Action being filed.

21 33. Defendants Uni-Ter UMC and Uni-Ter CS were retained as a manager of L&C.
22 Defendant U.S. RE was retained to provide reinsurance to L&C.

23 34. On information and belief, the Defendants who were directors and officers of L&C
24 ("Board") were aware at the time it retained Uni-Ter and its affiliates that they had only recently
25 been formed and had limited operating history. Further, the Board understood that the Board
26 members had not previously organized an insurance company. Thus, on information and belief,
27 the Board placed undue reliance on Uni-Ter as its manager without properly informing itself of
28 the information provided by Uni-Ter and its affiliates. Further, on information and belief, the

Board continued to rely on information and recommendations from Uni-Ter despite clear indications that the information was incomplete and inaccurate and the recommendations were ill advised, but the Board failed to exercise even slight diligence or care in verifying or correcting the misinformation provided by Uni-Ter, U.S. RE and others, and to take proper corrective action.

B. Acquisitions and Growth of L&C

35. During calendar year 2005, L&C acquired Henry Hudson LTC Risk Retention Group, Inc. ("Henry Hudson") which wrote exclusively in New York. L&C assumed all outstanding liabilities of Henry Hudson.

36. L&C acquired Sophia Palmer Nurses Risk Retention Group ("Sophia Palmer") in 2009. Sophia Palmer wrote general and professional liability policies to nurses mostly in Florida. L&C assumed all outstanding liabilities of Sophia Palmer.

37. By the time it was placed in receivership, L&C had issued approximately 25,254 shares of common stock. Its directors and officers held approximately 11,720 shares. The largest shareholders were Pinnacle with approximately 3663 shares and Eagle Healthcare with approximately 4041 shares.

38. L&C was managed by Uni-Ter UMC at all times. Uni-Ter UMC also did other work including private offering work on behalf of L&C such as sending out the offering memoranda and offering documents on behalf of the company.

C. Agreements with the Uni-Ter Entities and Brokers

39. The Uni-Ter entities hold themselves out as a leading provider of liability insurance to the healthcare industry.

40. Uni-Ter UMC has created at least five Risk Retention Groups which include L&C, Ponce de Leon LTC RRG, Inc., and J.M. Woodworth RRG, Inc.

41. As a Managing General Underwriter, Uni-Ter's services to L&C included administration, underwriting, risk management, claims, and regulatory compliance.

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1 (1) **Management Agreements**

2 42. Immediately upon formation of L&C by Uni-Ter UMC, L&C entered into
3 management agreements with Uni-Ter UMC. In 2011, Uni-Ter entered into a new management
4 agreement with Uni-Ter UMC and Uni-Ter CS.

5 a. 2004 Management Agreement

6 43. L&C and Uni-Ter UMC entered into a Management Agreement dated January 1,
7 2004 ("2004 Management Agreement") for a period of seven years. A copy of the 2004
8 Management Agreement is attached hereto as **Exhibit 2**.

9 44. In the agreement, L&C appointed Uni-Ter UMC as its exclusive underwriting,
10 administrative, accounting, risk management, and claims manager for the lines of business and
11 territories set forth in Exhibit A to that agreement.

12 45. The 2004 Management Agreement states that Uni-Ter UMC would "serve L&C in
13 a fiduciary capacity for all legal duties." *Id.*

14 46. Uni-Ter UMC's duties under the 2004 Management Agreement expressly included
15 the following: (i) Soliciting of risks and class of risks that meet L&C's underwriting and pricing
16 standards, appointing qualified brokers and agents to sell the insurance, (ii) binding of risks, (iii)
17 issuance, renewal, and cancellation of policies, (iv) collection of premiums, (v) handling of
18 claims, (vi) keeping accurate records and having audits done, (vii) maintaining electronic files,
19 (viii) providing the usual and customary services to insureds, (ix) ensuring compliance with state
20 and federal regulations, (x) determining and setting appropriate premium rates, (xi) compiling and
21 providing the needed statistical reports to L&C, (xii) holding all of L&C's assets in investment
22 custodian accounts as a fiduciary, (xiii) determining and obtaining appropriate reinsurance
23 authorized by L&C, (xiv) safeguarding and maintaining L&C property, and (xv) accounting to
24 L&C for certain financial and insurance information on a monthly basis (including operating
25 statement, balance sheet, policies written for the month, claims incurred for the month, AR
26 summary, and summary of all claims, reserves, and losses). *Id.*, at Article III.

27 47. Uni-Ter's duties also specifically included "[t]o arrange for or perform risk
28 management services for the benefit of the insureds of L&C. Such risk management shall have

the primary goal of reducing the frequency of medical incidents that give rise to policy claims. Specific risk management duties are set forth in Exhibit C.” *Id.* Art. III(R).

48. Uni-Ter’s duties also included filing quarterly and annual financial statements with the Nevada DOI and other states requiring the same. *Id.* Art. III(H)(2).

49. The 2004 Management Agreement also included Exhibit B entitled Claims Management Authority which stated that Uni-Ter UMC “shall handle all aspects of claim processing . . . for all claims and allocated loss adjustment expenses subject to this Agreement.” The Exhibit then lists specific claims handling duties of Uni-Ter including monthly reporting of new claims, open reserves, paid claims, and ending reserve balance for both indemnity and expense activity. *Id.* at Exhibit B.

50. Regarding compensation, Uni-Ter was paid in three components.

- (i) A management fee of 22% of gross written premiums net of cancellations and non renewals up to \$5 million, 20% between \$5 million and \$15 million, and 17.5% above \$15 million. Management fees were to be paid monthly.
- (ii) Claims handling fees of \$250 per file setup for each claim or investigation, \$95 per hour for claim adjuster/nurse professional time, and actual travel expenses.
- (iii) A profit sharing bonus on a sliding scale as a percent of earned premiums based on loss ratio for each calendar year. The profit sharing bonus was to be paid no later than March 1 of the year following the fifth year after the year at issue.

See id.

51. The 2004 Management Agreement included amendments that modified these payment terms. *Id.*

52. The Second Amendment to the 2004 Management Agreement states that for all services under the 2004 Management Agreement other than claims handling, the management fee will be 12% of annual gross written premiums net of cancellations and non-renewals plus the

(1 amount of agency commissions (at rates approved by L&C) payable to retail and wholesale
2 agents appointed by Uni-Ter. *Id.*

3 53. Various amendments raised the hourly rate for claim adjuster/professional time.
4 *Id.*

5 54. The Fifth Amendment to the 2004 Management Agreement modified the profit
6 sharing bonus provision to be paid on March 1 of the year following the fourth year after the year
7 at issue. *Id.*

8 55. On information and belief, in or around 2009 L&C, at Uni-Ter's direction,
9 accepted multiple multi-site LTC operators ("Multi-site Operators") as policyholders. As noted
10 above, one of these operators was Sophia Palmer.

11 56. On information and belief, at the time L&C accepted Sophia Palmer, Lumpkin – a
12 director of L&C – also chaired the board of Sophia Palmer.

13 57. On information and belief, the DOI reprimanded the Board for failing to submit a
14 Conflict of Interest Statement as the officers and directors of L&C were required to do pursuant
15 to NAC 694C.

16 58. On information and belief, the Board accepted Uni-Ter's direction to obtain the
17 Multi-site Operators, including Sophia Palmer, without adequate information. In fact, the Board
18 failed to even exercise a slight degree of diligence in determining whether the acceptance of the
19 Multi-site Operators, including Sophia Palmer, was an appropriate decision.

20 59. On information and belief, had the Board exercised even scant care in informing
21 itself based upon the information available to it regarding the Multi-site Operators, it would have
22 discovered that in fact the recommendation by Uni-Ter was ill advised.

23 60. On information and belief, L&C's acceptance of the Multi-site Operators
24 constituted a significant divergence from the established business model of L&C as the Multi-site
25 Operators were large, multi-facility operators and had historical loss records outside L&C's
26 typical underwriting range. Further, on information and belief, one of the contracts at issue
27 contained an unprecedented provision that limited the claims exposure of L&C on an aggregate
28 level rather than on a claim-specific level.

61. Following L&C's acquisition in 2009 of the Sophia Palmer nurse/nurse practitioner book of business in Florida, the Seventh Amendment stated that the existing profit sharing terms were applicable to L&C's long term care facility/home health care book of business, but that regarding L&C's nurse/nurse practitioner book of business produced by agents, the profit sharing bonus (called "commissions") were to be paid at a rate of 37.5% of the annual gross written premiums net of cancellations and non-renewals. For nurse/nurse practitioner business produced by Uni-Ter UMC, the commission rate was to be 30.0%.

62. The Eighth Amendment to the 2004 Management Agreement stated that management fees were to be paid to Uni-Ter UMC on a continuing basis as premiums are collected or adjusted (as opposed to monthly previously). *Id.*

63. On information and belief, Uni-Ter received at least \$1,500,000 in management fees in 2010.

b. 2011 Management Agreement

64. At the expiration of the 2004 Management Agreement, L&C and Uni-Ter UMC (and Uni-Ter's subsidiary Uni-Ter CS) entered into a similar Management Agreement on January 1, 2011 ("2011 Management Agreement") for a period of five years. A copy of the 2011 Management Agreement is attached hereto as Exhibit 3.

65. The 2011 Management Agreement was in place when the Order of Liquidation was entered.

66. The 2011 Management Agreement states that Uni-Ter UMC and Uni-Ter CS as Manager would "serve L&C in a fiduciary capacity for all legal duties." *Id.* It sets forth similar duties for Uni-Ter as under the 2004 agreement. The management fee and claims handling fees portion of the compensation are the same as the amended compensation under the 2004 agreement.

67. The 2011 Management Agreements included the following revisions to the 2004 Management Agreement:

- (i) The accounting reporting to L&C is to be done on a quarterly basis instead of monthly. Art. III(H).

(

1 (ii) Exhibit A was revised regarding the territory to include all of the U.S.
2 except for Hawaii and Alaska and excluding long term care and home
3 healthcare in Florida.

4 (iii) The limitations of Uni-Ter's authority in Article III(Y) are revised to delete
5 the limitations set forth in items 2, 6, and 9 of the 2004 agreement. Uni-
6 Ter's new allowed duties (i.e., no longer a limitation) included that it had
7 full authority to settle claims on L&C's behalf or commit L&C to pay
8 claims.

9 (iv) The profit sharing bonus provision was revised to apply from 2007 forward
10 with 2006 being the last year under the 2004 Management Agreement. For
11 2007 onward, the profit sharing bonus was to be 20% of L&C's Profit as
12 defined to be pre-tax net income as adjusted for the applicable year's loss
13 ratio, ALAE ratio, and reinsurance payables and receivables through
14 December 31 of the fourth year following the applicable year.

15 Id.

16 68. The First Amendment to the 2011 Management Agreement revised the
17 management fee for calendar year 2011 to be at a rate of 10% instead of 12% and stated that
18 continuation of the 2% differential for subsequent periods is subject to mutual agreement of the
19 parties. A handwritten notation on the amendment states that "This was revised on February 7th,
20 2011." Id.

21 69. The Second Amendment is dated November 15, 2011 in conjunction with
22 additional capital contributions at that time. It states that for so long as any amounts are unpaid
23 on the surplus debentures of L&C issued in 2011 and 2012, the profit sharing bonus payable to
24 Uni-Ter UMC shall accrue but not be paid. Id.

25 70. The Third Amendment done on December 31, 2011 states that no profit sharing
26 bonus would accrue or be paid regarding the 2008 calendar year. Id.

27 71. Despite the changes to Uni-Ter's management responsibilities, and despite the dire
28 financial circumstances of L&C during 2011, on information and belief Uni-Ter received not less

than \$1,000,000.00 in management fees in 2011.

72. Milliman, Inc. ("Milliman"), an actuarial firm, provided Rate and Loss Reserve analysis to Uni-Ter ("Milliman Reports"). Milliman was engaged by Uni-Ter, and not L&C, in the work that it did. Milliman did premium rate and professional liability and general liability rate analysis for Uni-Ter. Milliman also did loss reserve analysis for Uni-Ter.

(2) U.S. RE Agreement

73. In a Broker of Record Letter Agreement between L&C and U.S. RE, L&C appointed U.S. RE as its exclusive reinsurance intermediary/broker for a period of seven years and granted U.S. RE full and complete authority to negotiate the placement of reinsurance on all classes of insurance with unspecified limits of coverage as requested by any underwriter of L&C, *i.e.*, Uni-Ter ("U.S. RE Agreement"). A copy of the U.S. RE Agreement is attached hereto as Exhibit 4.

74. The U.S. RE Agreement states that U.S. RE will handle all funds collected for L&C in a fiduciary capacity. *Id.*

75. In each of the eleven (11) ceded reinsurance agreements between L&C and its reinsurers, U.S. RE is listed as the reinsurance intermediary in each agreement via an intermediary clause in the reinsurance agreements.

76. U.S. RE was not merely hired as some uninvolved third party broker of reinsurance, although acting as a third party broker of reinsurance was included with U.S. RE's duties.

77. On information and belief, Uni-Ter Underwriting Management Corporation ("Uni-Ter Underwriting") and Uni-Ter Claims Services Corporation ("Uni-Ter Claims") were retained as the managers of L&C.

78. On information and belief, both Uni-Ter Underwriting and Uni-Ter Claims are direct or indirect subsidiaries of U.S. RE.

79. U.S. RE was itself engaged as L&C's "exclusive reinsurance intermediary/broker" and as L&C's agent, including being granted "full and complete authority to negotiate the placement of reinsurance or retrocessions on all classes of insurance with unspecified limits of

1 coverage as specifically requested by any underwriter of [L&C]." *Id.*

2 80. The U.S. RE Agreement further recognizes U.S. RE's agency with L&C by stating
3 that U.S. RE "will exercise its best efforts in the discharge of its duties on behalf of the
4 Company." *Id.* (emphasis added).

5 81. The Supreme Court of Nevada has held that "[a]n agency relationship is formed
6 when one who hires another retains a contractual right to control the other's manner of
7 performance." *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 108 Nev. 811, 815, 839 P.2d
8 599, 602 (1992) (citation omitted).

9 82. U.S. RE acted as the agent of L&C, as the U.S. RE Agreement expressly states not
10 only that U.S. RE will act "on behalf of" L&C, but also that L&C has the right to control U.S.
11 RE's manner of performance as U.S. RE promises to "comply with written standards established
12 by [L&C] for the cession or retrocession of all insured risks." *Id.*

13 83. Further, Nevada law makes clear that "[a]n agent, such as respondent in these
14 circumstances, owes to the principal the highest duty of fidelity, loyalty and honesty in the
15 performance of the duties by the agent on behalf of the principal." *LeMon v. Landers*, 81 Nev.
16 329, 332, 402 P.2d 648, 649 (1965) (holding that the agent breached her fiduciary obligations)
17 (emphasis added); *see also Chem. Bank v. Sec. Pac. Nat. Bank*, 20 F.3d 375, 377 (9th Cir. 1994)
18 ("The very meaning of being an agent is assuming fiduciary duties to one's principal.") (*citing*
19 *Restatement (Second) of Agency* § 1(1)).

20 84. Additionally, as noted above, U.S. RE was engaged not only as L&C's exclusive
21 broker, but also as its consultant. Many courts have recognized that insurance brokers are agents
22 of, and therefore owe fiduciary duties to, their insureds. *See Capitol Indem. Corp. v. Stewart*
23 *Smith Intermediaries, Inc.*, 229 Ill. App. 3d 119, 124-25, 593 N.E.2d 872, 876 (1992) ("An
24 agency relationship is a fiduciary one; insurance brokers employed for a single transaction or
25 series of transactions are agents...").

26 85. The Nevada Supreme Court has recognized that insurance brokers may assume
27 additional duties -- including through representations by the broker upon which the insured relies
28 -- thereby creating a special relationship between the broker and the insured. *Flaherty v. Kelly*,

2013 WL 7155078, at *2 (Nev. Dec. 18, 2013).

86. U.S. RE assumed such duties including “substantial and essential efforts expended by U.S. RE and its affiliates in the organization and licensing of [L&C]” and serving as a consultant to U.S. RE. *See* U.S. RE Agreement.

87. Further, as recognized in the U.S. RE Agreement, U.S. RE’s agency relationship with Plaintiff extended to additional actions and bases with U.S. RE, including but not limited to the “substantial and essential efforts expended by U.S. RE and its affiliates in the organization and licensing of [L&C]” and to state that U.S. RE will “serve as the exclusive intermediary in connection with the placement of all of [L&C’s] reinsurance.” *Id.*

88. The U.S. RE Agreement further recognizes U.S. RE’s agency with L&C by stating that U.S. RE “will exercise its best efforts in the discharge of its duties on behalf of the Company.” *Id.* (emphasis added). The U.S. RE Agreement also states that “[a]ll funds collected for [L&C]’s account will be handled by U.S. RE in a fiduciary capacity in a bank which is a qualified United States financial institution.” *Id.*

89. Thus, U.S. RE was the agent of Plaintiff in multiple aspects, including but not limited to, those set forth above.

90. Further, U.S. RE did more than merely act as some disinterested third party reinsurance broker. In fact, U.S. RE was directly involved in the activities of L&C in its capacity as agent of L&C.

91. Moreover, U.S. RE was actively involved in management related activities, including presenting financial and other pertinent information to L&C’s Board.

92. U.S. RE intentionally failed to obtain reinsurance through syndicates as required under the U.S. RE Agreement. No facts were found that reinsurance failed to pay as required. To the contrary, the reinsurance policies seemed not to be invoked because deductible amounts were not reached, especially in the early years of 2004 to 2008.

93. Nevertheless, U.S. RE intentionally represented to L&C that it would act in L&C’s best interests, creating additional duties toward L&C other than merely finding and securing reinsurance, including but not limited to, fiduciary duties, as set forth herein.

1 94. In violation of such duties, U.S. RE intentionally did not find appropriate
2 reinsurance because the deductible rates were consistently too high. This is shown by the fact
3 that reinsurance did not come into play at all in the early years. Indeed, the Board approved
4 commutation of the 2007 treaty only 10 days into 2008.

5 (3) Reinsurance Contracts

6 95. U.S. RE, acting as L&C's intermediary broker, procured the following general
7 reinsurance treaties. Certain terms of such treaties are noted below the treaty name.

8 (i) April 1, 2004 to December 31, 2004 Treaty (Commutated).

9 (ii) January 1, 2005-December 31, 2006 Treaty.

- 10 - Applicable to \$750,000 excess of \$250,000 per claim
- 11 - Aggregate limit is lesser of \$3,500,000 or 225% of ceded premium.
- 12 - Ceded premium is 25% of gross net written premium income (GNWPI)

13 (iii) January 1, 2007-December 31, 2007 Treaty (Commutated in early 2008)

- 14 - Applicable to \$750,000 excess of \$250,000 per claim
- 15 - Deductible is 22% of GNWPI.
- 16 - Aggregate limit is 300% of ceded premium.
- 17 - Ceded premium is 20% of GNWPI.

18 (iv) July 1, 2005-December 31, 2006 Treaty.

- 19 - Applicable to \$1,000,000 excess of \$1,000,000 per claim
- 20 - Aggregate limit is \$3,000,000 or 300% of ceded premium.
- 21 - Ceded premium is 100% of gross premiums for policies with limits greater than \$1,000,000 per claim.

22 (v) January 1, 2008-March 31, 2009 Treaty.

- 23 - Applicable to \$650,000 excess of \$350,000 per claim
- 24 - Deductible is greater of 13% of GNWPI or \$1,274,000.
- 25 - Aggregate limit is 300% of ceded premium.
- 26 - Ceded premium is 17.08% of GNWPI for all policies subject to a minimum of \$1,575,000.

27 (vi) April 1, 2009-March 31, 2010 Treaty.

- 28 - Applicable to \$650,000 excess of \$350,000 per claim
- Deductible is greater of 11% of GNWPI or \$1,100,000.
- Aggregate limit is 300% of ceded premium.
- Ceded premium is 17.93% of GNWPI for all policies subject to a minimum of \$1,613,700.

(vii) April 1, 2010-May 31, 2011 Treaty.

- Applicable to \$650,000 excess of \$350,000 per claim
- Deductible is greater of 11% of GNWPI or \$1,220,000.
- Aggregate limit is 300% of ceded premium.
- Ceded premium is 17.00% of GNWPI for all policies subject to a minimum of \$1,890,000.

(viii) December 1, 2009-May 31, 2011 Treaty.

- L&C cedes 75% of losses in reinsured layer and retains 25%
- Applicable to \$1,000,000 excess of \$1,000,000 per claim
- Aggregate limit is greater of \$3,000,000 or 300% of ceded premium.
- Ceded premium is 100% of net excess premiums (gross premiums less 20%) for policies with limits greater than \$1,000,000 per claim

(ix) June 1, 2011-May 31, 2012 Treaty.

- Applicable to \$650,000 excess of \$350,000 per claim
- Deductible is greater of 18.5% of GNWPI or \$1,300,000.
- Aggregate limit is 300% of ceded premium.
- Ceded premium is 17.00% of GNWPI for all policies subject to a minimum of \$1,190,000.

(x) June 1, 2011-May 31, 2012 Treaty:

- L&C cedes 75% of losses in reinsured layer and retains 25%
- Applicable to \$1,000,000 excess of \$1,000,000 per claim
- Aggregate limit is \$1,500,000
- Ceded premium is 100% of net excess premiums (gross premiums less 20%) for policies with limits greater than \$1,000,000 per claim

(xi) June 1, 2012-May 31, 2013 Treaty.

- Applicable to \$650,000 excess of \$350,00 per claim
- Aggregate limit is 300% of ceded premium.

C. Financial Disaster in 2010 and 2011 at Uni-Ter's and U.S. RE's Direction and the Board's Gross Negligence Despite the Board's Knowledge that Reliance on the Information and Representations from Uni-Ter and U.S. RE was Unwarranted and Dangerous.

96. On or around September 8, 2010, the DOI sent a letter to Marshall, President of L&C and a member of the Board ("September 2010 Letter") advising the Board of the dangerous financial position of L&C. A copy of the "September 2010 Letter is attached hereto as **Exhibit 5**.

97. In the September 2010 Letter, captioned "Lewis & Clark Deteriorating Financial Condition", the DOI states in part the following:

Dear President Marshall:

1 The [DOI]'s review of the June 30, 2010 financial statement of [L&C]
2 revealed a deteriorating financial condition which the company's management
must address. The following are items that must be considered:

- 3 • Increase in reserves has increased liabilities \$3.1 million above
4 the 12/31/10 pro-forma accounts and has resulted in a liquidity
ratio ... of 116.0%.
- 5 • Due to underwriting and operating losses, \$1.1 million and
6 \$792.7 thousand, respectively, policyholder surplus has
declined by 11.6% from December 31, 2009.
- 7 • Underwriting losses are the result of increasing loss and loss
8 administration expense coupled with high other
underwriting/administrative expenses (which exceed 12/31/10
9 pro-forma amounts by \$744 thousand), all of which result in a
combined ratio of 131.1%.
- 10 • Risk Based Capital (RBC) ratio of 210.5% is hardly
adequate....

11 *Id.*

12 98. The September 2010 Letter ended with an admonition from the DOI that
13 "[b]ecause of the company's capital decline revealed by the June 30, 2010 financial statement,
14 management should commence preparing a corrective action plan and an implementation
15 schedule addressing a means to enhance earnings and surplus, reduce expenses, and improve
16 liquidity." *Id.*

17 99. On information and belief, despite the DOI's recommendations regarding L&C's
18 deteriorating financial condition and need for an effective corrective action plan, the Board failed
19 to exercise even slight diligence in correcting the substantial problems L&C was facing, and the
20 alarming financial problems of L&C outlined by the DOI in its September 2010 Letter were not
21 corrected, and in fact were dramatically worsened, by the Board's actions.

22 100. On information and belief, in the first three (3) quarters of 2011, L&C experienced
23 a net loss of not less than \$3,100,000.

24 101. On information and belief, the principal reason for these losses was that the Multi-
25 Site Operators had passed on significant losses to L&C in the two policy years from 2009-2011,
26 as well as increases in claims for other insureds.

27 102. On information and belief, on or about September 1, 2011, Sanford Elsass and
28 Donna Dalton sent a memorandum to the Board purporting to outline the events causing financial

difficulties. Included in that memorandum was a representation that Uni-Ter would hire a consultant to perform a "complete analysis" of the claims process of Uni-Ter Claims Services Corporation.

103. On information and belief, the consultant hired by Uni-Ter was Praxis Claims Consulting ("Praxis").

104. On information and belief, at this time the Board knew that reliance on information presented to it by, or at the direction of, Uni-Ter and U.S. RE could not be relied on, in part because the decision to accept the Multi-Site Operators was financially devastating to L&C.

105. On information and belief, despite this knowledge of the Board regarding the wholly inadequate and inaccurate information provided by Uni-Ter, the Board's gross negligence is manifest in the fact that, the Board failed to exercise even a slight degree of care in verifying whether Praxis was provided accurate information in preparing its reviewing the claims process.

106. On information and belief, in fact Uni-Ter did not provide Praxis with accurate information and, in fact, limited the scope of Praxis's initial engagement to a review of claims-related processes and of a small sample size of only nine (9) specific claims reserves. Praxis's review, which was grossly inadequate due to Uni-Ter's failure to provide adequate and accurate information to Praxis, resulted in a report dated September 15, 2011 ("September 2011 Praxis Report"). A copy of the September 2011 Praxis Report is attached hereto as Exhibit 6.

107. On information and belief, because Uni-Ter failed to provide accurate and complete information to Praxis, the September 2011 Praxis Report was substantially inaccurate and incomplete.

108. On information and belief, the Board later learned that, in fact, Uni-Ter had not provided Praxis with accurate information and that Uni-Ter had limited the scope of Praxis's engagement to a review of claims-related processes and of a small sample size of only nine (9) specific claims reserves. This is information which the Board, through exercise of even slight diligence or scant care, could have known before the 2011 Praxis Report was issued.

109. Further, on information and belief, on or around September 23, 2011, the DOI sent

1 another letter to Marshall regarding the now disastrous financial condition of L&C ("September
2 2011 Letter"). A copy of the September 2011 Letter is attached hereto as Exhibit 7.

3 110. In the September 2011 Letter, the DOI noted several massive financial problems
4 with L&C which the Board had, on information and belief, taken improper or no action to correct,
5 including the following:

- 6 * Of particular concern is the Combined ratio which has increased
7 since prior year-end from 99.4% to 153.9% - a 54.8% increase post-
8 merger.
- 9 * A major concern is Risk Based Capital ("RBC") - 208.8%. This
10 RBC calculation results from year-end 2010 financial statement.
11 The RBC is now well below that level considering the reserve
12 (Liability) increases and net loss reducing policyholder surplus by
13 40.3% for only one-half (Six Months) of a year of operating
14 activity.
- 15 * Net underwriting loss has deteriorated to \$3.1 million
- 16 * Net loss = \$1.8 million

17 *Id.*

18 111. The September 2011 Letter further noted the following regarding the second
19 quarter of 2011:

20 Since prior year-end, policyholder surplus has declined by 40.3%. Company is
21 experiencing adverse claims Development and is becoming extremely leveraged.
22 Total Liabilities have increased by 26.5% ... Net Loss is \$1.8 million, a result
23 of \$3.1 million net underwriting loss for six months and \$1.7 million
24 underwriting loss for just the second quarter. Unassigned Funds have
25 deteriorated further to a negative (\$1.4 million). Since prior year-to-date, net
26 premiums earned have improved nominally by 5.8% while net losses incurred has
27 increased by 117.6% causing a net loss ratio of 114.4% and resulting in a
28 153.9% combined ratio. Company is highly leveraged. Cash and invested assets
only represent 59.2% of total assets resulting in a 148.7% liquidity ratio
coupled with gross premiums written representing 571.6% of policyholder surplus
and net premiums written representing 499.9% of policyholder surplus ...

Id. (emphasis added).

112. The September 2011 Letter noted that the DOI had sent "a prior letter advis[ing]
the Board of Directors of deteriorating financial condition and admonish[ing] the Board and
management to consider a correction plan." The letter required that "[t]he Board and

(1 management must now prepare a short-term (3 month) action plan and based on this action plan
2 how they forecast their 12/31/2011 statement to appear." *Id.*

3 113. On information and belief, the Board failed to exercise even scant care in
4 addressing the September 2011 Letter, and failed to correct the staggering financial problems
5 L&C was facing.

6 114. Subsequently, in late November 2011, on information and belief, Uni-Ter
7 conducted what purported to be a full-scale internal review of all claims reserves, and later
8 engaged Uni-Ter to conduct a full review as well.

9 115. On information and belief, the outcome of the internal review by Uni-Ter, as well
10 as the negative review by Praxis, showed that Uni-Ter had incorrectly understated the sampled
11 claims in the September 2011 Praxis Report by a net of not less than \$1,200,000.

12 116. On information and belief, Uni-Ter and/or U.S. RE informed the Board on a
13 conference call that, in fact, an increase of \$5,000,000.00 to L&C's claims reserves was
14 necessary. This significantly increased the net loss of Lewis & Clark on a full 2011 year basis
15 and further decreased L&C's capital to an unacceptable level for operational, regulatory, and
16 rating purposes.

17 117. On information and belief the Board, through its gross negligence, ignored or
18 improperly responded to the multiple red flags – including communications from the DOI –
19 regarding L&C's financial position, Uni-Ter's management and the representations of Uni-Ter
20 and U.S. RE's, and failed to exercise even a slight degree of diligence or care in fulfilling its
21 obligations, which proximately caused and contributed to the damages suffered by Plaintiff.

22 **D. L&C Board Meeting Minutes**

23 118. On information and belief, the Board met generally once per quarter starting in late
24 2004 and continuing to September 2012 related to L&C. Minutes of said meetings were kept by
25 L&C ("Minutes").

26 119. On information and belief, because Uni-Ter UMC was managing all of the
27 business aspects of L&C's business, Mr. Sanford Elsass ("Elsass"), President of Uni-Ter UMC
28

1 and an officer of U.S. RE at all relevant times, attended all of the L&C Board meetings in person
2 except for the last two. On information and belief, Elsass and other Uni-Ter employees gave
3 most of the reports about the company to the Board members.

4 120. On information and belief, many of the approvals and actions of the Board were
5 done at the recommendation of Mr. Elsass.

6 121. On information and belief, the Board had knowledge concerning Mr. Elsass and
7 his recommendations that caused reliance on the reports and recommendations of Mr. Elsass and
8 Uni-Ter UMC to be unwarranted.

9 122. Despite this knowledge, the Board failed to exercise even a slight degree of
10 diligence or care with respect to accepting the information and recommendations provided by Mr.
11 Elsass and Uni-Ter UMC and failed to verify whether this information was accurate and whether
12 the recommendations should be adopted.

13 123. On information and belief, the Minutes also do not mention the monthly reports
14 that Uni-Ter UMC was supposed to provide to L&C in the 2004 Management Agreement or the
15 quarterly reports that Uni-Ter UMC was supposed to provide to L&C in the 2011 Management
16 Agreement. The Minutes do reference annual and quarterly financial results and there are
17 discussions of the claims and underwriting activities for each quarter, but no mention of the
18 reports required by the 2004 and 2011 Management Agreements.

19 124. Item 13 in the March 9, 2005 Minutes states that the Board requested that Uni-Ter
20 provide financial information to the Board monthly. On information and belief, Uni-Ter already
21 had the obligation to provide the information listed in the 2004 Management Agreement to the
22 Board monthly.

23 125. Item 10 from the August 12, 2005 Minutes, attached hereto as Exhibit 8, which
24 state that the Board is unhappy with the work of Uni-Ter. The Minutes state that the Board was
25 concerned regarding the lack of completion by Uni-Ter regarding marketing plans presented at
26 the March 2005 meeting, including non-receipt of periodic marketing reports, lack of contract
27 with state associations and potential new agents, and generally, a lack of production of new
28 business during 2005.

1 126. On information and belief, despite these clear indications that Uni-Ter was failing
2 to provide complete and accurate information, the Board remained indifferent to its legal duty to
3 act on an informed basis by ensuring the information and recommendations provided by Uni-Ter
4 and Mr. Elsass were complete and accurate.

5 127. One of the resolutions in L&C's first set of Minutes of December 22, 2003,
6 approves the engagement between L&C and U.S. RE to engage U.S. RE as the exclusive
7 reinsurance broker and consultant for L&C. The resolution states that confirmation was received
8 from Elsass as an officer of U.S. RE that U.S. RE would use its best efforts to obtain competitive
9 rates and terms.

10 128. On information and belief, Uni-Ter undertook the fiduciary duty of determining
11 and establishing the appropriate loss reserves for the company. Item 3 in the September 14, 2005
12 Minutes, attached hereto as **Exhibit 9**, states that Elsass reported on establishing the appropriate
13 loss reserves for the company.

14 129. On information and belief, the Board's Audit Committee ("Audit Committee")
15 was established at the February 10, 2006 meeting of the Board. On information and belief, the
16 relevant Minutes contain no discussion of why this was not done previously or why it was needed
17 at that juncture.

18 130. On information and belief, the Audit Committee generally reviewed and approved
19 L&C's financial audits. On information and belief, there are no entries stating that the Audit
20 Committee performed any auditing functions other than review of financial audits.

21 131. The May 30, 2006 Minutes, attached hereto as **Exhibit 10**, state that L&C's D&O
22 insurance was renewed, but that L&C's E&O insurance was not renewed.

23 132. On information and belief, L&C subsequently obtained E&O insurance.

24 133. Item 3 of the October 20, 2006 Minutes, attached hereto as **Exhibit 11**, states that
25 the Board directed Donna Dalton of Uni-Ter and L&C's counsel to comment to the Nevada DOI
26 regarding issues including loss reserves and Risk Retention Act requirements.

27

28

1 134. Item 9 of the March 23, 2007 Minutes, attached hereto as **Exhibit 12**, references
2 the Nevada DOI triennial examination report for 2003 to 2005, but does not state any findings
3 related to the report or what corrective actions, if any, the Board would take.

4 135. The October 12, 2007 Minutes, attached hereto as **Exhibit 13**, reference an
5 incurred but not reported ("IBNR") reduction of \$934,000 but do not explain it or why the
6 reduction occurred. The October 12, 2007 Minutes also state that L&C was beginning to offer
7 occurrence policies subject to required regulatory filings, but do not discuss the required
8 regulatory filings.

9 136. The January 10, 2008 Minutes, attached hereto as **Exhibit 14**, state that there will
10 be commutation of the 2007 reinsurance with Imagine RE, and note the change that Uni-Ter will
11 begin a retail policy sales agency to improve on the disappointing efforts by the "current agency
12 network." The entry notes that Uni-Ter will be paid commissions on L&C's retail policy
13 business at 10% of gross written premiums rather than 15% of gross written premiums. The
14 Minutes do not say which contract Uni-Ter would provide such services under. The 2004
15 Management Agreement required solicitation services by Uni-Ter. This same item mentions that
16 Uni-Ter requested an advancement of half of L&C's 2008 annual budget for Uni-Ter for "this
17 effort" with such advancement repayable from commissions earned by Uni-Ter.

18 137. Item 13 in the April 24, 2008 Minutes, attached hereto as **Exhibit 15**, references
19 insolvency gap coverage of \$1 million. Then, item 11 of the December 2, 2009 Minutes, attached
20 hereto as **Exhibit 16**, notes a renewal of insolvency gap coverage in the amount of \$2 million.

21 138. Item 4 in the December 10, 2008 Minutes, attached hereto as **Exhibit 17**, notes
22 that, based on a request from the Nevada DOI, the Board ratified clarification amendments to the
23 Oneida surplus notes.

24 139. Item 6 of the December 2, 2009 Minutes, attached hereto as **Exhibit 17**, notes a
25 report on the current triennial examination by the Nevada DOI but does not state any more
26 regarding said examination.

27 140. Item 5 of the May 21, 2010 Minutes, attached hereto as **Exhibit 18**, references the
28 Board's review of results of the Nevada DOI triennial examination and approval of responses to

(1 the DOI. The Minutes do not explain or discuss the responses or any corrective actions that the
2 Board may take. Those Minutes also approved the 2009 annual audited statements and report
3 prepared by Johnson Lambert & Co. as well as the 2009 Milliman Report and calculation of
4 "Profit Sharing bonuses."

5 141. The November 2010 Minutes, attached hereto as Exhibit 19, contain discussion of
6 renewal of L&C's Management Agreement with Uni-Ter subject to noted revisions including a
7 requirement of clarification of significant claims notice to the Board with settlement authority
8 remaining with Uni-Ter.

9 142. The May 4-5, 2011 Minutes, attached hereto as Exhibit 20, approved the 2010
10 annual audited statements and report prepared by L&C's auditors, Johnson Lambert & Co.

11 143. The September 21, 2011 Minutes, attached hereto as Exhibit 21, contain in Item 7
12 a statement that the Board reviewed and approved a new underwriting philosophy. The Minutes
13 do not say what the new underwriting philosophy was. However, a document dated 8/31/11 and
14 entitled "Long Term Care Underwriting Philosophy & Strategic Direction" was part of the
15 directors' package for that meeting. The document lists specific requirements related to
16 consideration of long term care facilities for coverage.

17 144. On October 5, 2011 the Board held a special meeting and approved capital
18 contributions by shareholders Oneida, Eagle Healthcare, Pinnacle, Marquis, Elderwood, Rohm,
19 and Uni-Ter in exchange for surplus notes. The action of the Board in lieu of a special meeting,
20 attached hereto as Exhibit 22 ("Action"), also noted that depending on the fourth quarter, the
21 same parties other than Oneida would commit to an additional amount of \$550,000 in the fourth
22 quarter of 2011 and first quarter of 2012 as the stated proportions (with Uni-Ter having 20/55 or
23 4/11 responsibility). The Minutes also noted approval of the new underwriting philosophy.

24 145. On information and belief, the minutes of the October 5, 2011 action by the Board
25 demonstrate that the Board was well aware it was not receiving accurate and complete
26 information from Uni-Ter as the Board requested "more frequent financial reporting to the Board
27 as discussed at the last meeting, preferably monthly." (Emphasis added). On information and
28

1 belief the Board failed to exercise even slight diligence or scant care and failed to ensure that Uni-
2 Ter did, in fact, provide more complete and accurate reporting of L&C's financial status.

3 146. Even with the bad financial news in early October, 2011, the Board was indifferent
4 to its legal obligations and did not meet again until December 20, 2011, over two and a half
5 months later. At that meeting, as reflected in the Minutes attached hereto as Exhibit 23, Uni-Ter
6 reported that claims reserves may have increased by \$5 million from the November 2011 figures,
7 i.e., in one month.

8 147. On information or belief, in or around the latter part of 2011, William Fishlinger
9 ("Fishlinger") was retained to provide claims review for L&C. Item 3 in the December 28, 2011
10 Minutes, attached hereto as Exhibit 24, states that the Board was advised regarding the schedule
11 for Fishlinger's claims review commencing in the first full week of January 2012. Item 4 of those
12 Minutes states that Uni-Ter's pro forma December 31, 2011 financials indicate that L&C is
13 neither impaired nor insolvent and pending receipt of the Fishlinger review, Uni-Ter should
14 process the current renewals. The Minutes also note that the Board's claims committee should
15 have a conference call with Fishlinger about his work and conclusions before the work is done to
16 finalize his written report.

17 148. On information and belief the Board failed to exercise the slightest degree of
18 diligence and care regarding this information and took no action whatsoever to verify whether the
19 information provided by Uni-Ter suggesting that L&C was "neither impaired nor insolvent" was
20 accurate, despite numerous indications that information provided by Uni-Ter was inaccurate and
21 incomplete.

22 149. At the January 16, 2012 meeting, the Minutes for which are attached hereto as
23 Exhibit 25, the Board was told that capital and surplus was \$1,979,730 as of December 31, 2011.
24 Thus, L&C's surplus dropped over \$2.5 million in one year.

25 150. On information and belief, the Minutes do not reflect any discussion of how that
26 relates to the approximate \$5 million additional loss reserves noted at the December 20, 2011
27 meeting.

28

1 151. On information and belief, L&C's Nevada counsel was instructed to contact
2 Nevada DOI regarding the "current inquiry." The Minutes do not say what the current inquiry
3 was.

4 152. The January 26, 2012 Minutes state in Item 2 that L&C's Nevada counsel reported
5 on her conversations with the Nevada DOI. *See Exhibit 26.* The Minutes do not include the
6 substance of those discussions. Item 3 states that the Board deferred approval of commutation of
7 reinsurance for years 2005, 2006, 2008, and 2009 pending receipt from Uni-Ter of a report
8 regarding outstanding claims for such periods. Item 5 states that the Board met in executive
9 session to discuss issues involving potential additional capital.

10 153. Further, the minutes for the January 26, 2012 meeting stated that "Mr. Elsass
11 presented a report on current claims activity in California and New York and discussions with the
12 Corporation's actuaries and auditors." *Id.* On information and belief the Board failed to exercise
13 the slightest degree of diligence and care regarding this information took no action to verify that
14 Mr. Elsass's report was accurate, despite clear indications that information provided by Mr.
15 Elsass was incomplete and inaccurate.

16 154. At the February 2, 2012 meeting, the Minutes for which are attached hereto as
17 Exhibit 27, the Board approved \$480,000 additional capital contributions in exchange for
18 subordinated surplus notes on the same terms used in the fall of 2011. On information and belief,
19 Elsass reported to the Board "regarding recent favorable claims activity." The Minutes do not say
20 what the alleged favorable claims activity was. On information and belief, the Board failed to
21 exercise the slightest degree of diligence and care regarding this information and did not verify
22 whether the report by Elsass regarding alleged "favorable claims activity" was accurate or
23 complete.

24 155. Notwithstanding the dire financial issues, the Board remained indifferent to its
25 legal obligations and did not meet again until April 30, 2012, almost three (3) months later. At
26 the April 30, 2012 meeting, the Minutes for which are attached hereto as Exhibit 28, Item 1
27 provides that L&C's submissions to the Nevada DOI were approved, but do not explain what the
28 submissions were.

1 156. There is no mention in the April 30, 2012 Minutes of the Milliman Report from
2 April 12, 2012 stating that, as of the end of 2011, the company's loss reserves were \$1.4 million
3 under what they need to be when using the mid-range number.

4 157. Item 5 of the May 14, 2012 Minutes, attached hereto as **Exhibit 29**, state that a
5 Nevada DOI examination was scheduled, but do not explain this matter further.

6 158. On information and belief, the Board did not meet for another two and a half (2
7 ½) months regarding the financial conditions of L&C. The Board met telephonically on June 6,
8 2012, the Minutes for which are attached hereto as **Exhibit 30**, but the only business noted was
9 the approval of reinsurance. There is no entry regarding a discussion of the financial status of
10 L&C.

11 159. In fact, despite the clear indications that Uni-Ter and U.S. RE were providing
12 inaccurate and/or incomplete information to L&C, the minutes of the June 6, 2012 Board meeting
13 state that the Board approved the renewal of L&C's reinsurance "[f]ollowing a presentation by
14 USRE [sic]". *Id.* There is no indication whatsoever regarding any measures taken by the Board
15 to verify the information provided by Uni-Ter and/or U.S. RE.

16 160. At the July 25, 2012 meeting, the Minutes for which are attached hereto as **Exhibit**
17 **31**, Uni-Ter and U.S. RE presented a report of second quarter financial results in which a
18 significant increase in loss reserves was reported. The Board then discussed possible courses of
19 action. The Board requested that Uni-Ter contact Fishlinger to conduct an independent roll
20 forward of its last claims reserve review preferably by August 7, 2012. The Board also resolved
21 that the preliminary second quarter results not be filed until the Fishlinger review is done and that
22 the results should be approved by the Board before filing. Finally, the Minutes noted that no new
23 business should be written by L&C and no capital raised until further notice, but that renewals
24 may be processed until notice otherwise.

25 161. The August 15, 2012 was the last meeting Elsass and Uni-Ter or U.S. RE attended.
26 At that meeting, the Board discussed the filing with the Nevada DOI of financial information with
27 notice of further deterioration of L&C's finances.

1 162. At the August 22, 2012 meeting, Minutes for which are attached hereto as Exhibit
2 32, L&C's counsel reported on recent discussions with Uni-Ter and U.S. RE. Uni-Ter personnel
3 were not present at the meeting.

4 163. On information and belief the Board held a telephonic meeting on September 24,
5 2012, the Minutes for which are attached hereto as Exhibit 33. The Board's grossly negligent
6 failure to inform itself of the basic financial condition of the Company was made clear as the
7 Board tacitly acknowledged it was not aware whether the Company was financially solvent at that
8 time, resolving that "a request be made to the Nevada Division [sic] of Insurance that the
9 Corporation be placed in rehabilitation, in view of the fact that the Corporation is or may be
10 insolvent." *Id.* (emphasis added).

11 E. Information Available to the Officers and Directors

12 164. On information and belief, substantial financial information regarding L&C was
13 available to the Board of which the Board failed entirely to exercise even a slight degree of care
14 to properly inform itself and understand.

15 165. On information and belief, among this available information was the Annual
16 Statement of L&C for the year ending December 31, 2006, attached hereto as Exhibit 34, which
17 was submitted to the Nevada DOI contains L&C's financial statement for 2006. The Notes to
18 Financial Statements (pages 14-14.3) include the reinsurance in place (note 23) as well as the
19 change of incurred losses and LAE (note 25). The Quarterly Statement for L&C for the first
20 quarter of 2007, attached hereto as Exhibit 35, has similar notes.

21 166. Sophia Palmer 2007 board Minutes were very similar to L&C board Minutes. On
22 information and belief, Uni-Ter was the underwriter for Sophia Palmer as well.

23 167. L&C's Internal Unaudited Financial Statements as of December 31, 2007, attached
24 hereto as Exhibit 36, states that unpaid losses and loss expenses were \$578,000 in 2004,
25 \$1,142,000 in 2005, \$2,636,000 in 2006, and \$3,013,000 in 2007. This is a growth of over 500%
26 in only four (4) years.

27 168. On information and belief, Uni-Ter's management fees grew from nothing in
28 2004, to \$120,000 in 2005, to \$126,000 in 2006, to \$760,000 in 2007. Between 2005 and 2007,

1 this is a growth of 633% in three years.

2 169. On information and belief, the information provided to the directors of L&C for
3 the April 2008 and May 2010 Board meetings included the following financial information for
4 L&C across the years of 2004 to 2009:

Policy Year	Written Premium	Earned Premium	Paid Losses	Reserves	Totals Incurred	Loss Ratio
2004	\$1,344,358	\$1,344,358	\$223,232	\$---	\$208,232	15.49%
2005	\$3,124,474	\$3,124,474	\$745,466	\$80,720	\$782,438	24.23%
2006	\$5,821,739	\$5,821,739	\$1,311,965	\$477,775	\$1,751,740	30.64%
2007	\$5,958,904	\$4,184,641	\$1,555,249	\$1,621,520	\$3,111,769	52.38%
2008	\$8,340,000	\$5,203,834	\$1,211,943	\$3,941,000	\$1,687,006	34.77%
2009	\$10,705,229	\$7,792,504	\$1,545,000	\$6,255,488	\$3,947,463	50.66% with Sophia Palmer being 80.96%

12 170. On information and belief, the Board wholly failed to exercise even slight
13 diligence in informing itself of the reasons behind the dangerous financial status of the company
14 or in taking timely, corrective action.

15 171. Further, L&C's Summary Balance Sheet as of December 31, 2008, attached hereto
16 as **Exhibit 37**, states that while unpaid losses and loss expenses grew from \$3,013,000 to
17 \$3,941,000 between 2007 and 2008, Uni-Ter's management fees went from \$760,312 in 2007 to
18 \$1,372,915 in 2008.

19 172. L&C's Internal Unaudited Financial Statements as of December 31, 2009, attached
20 hereto as **Exhibit 38**, state that unpaid losses and loss expenses jumped to \$6,255,488 in 2009
21 from \$3,941,000 in 2008. Uni-Ter's management fees jumped to \$1,717,482 for 2009 from
22 \$1,372,915 in 2008.

23 173. The 2009 Milliman Report, which supports the corresponding Statement of
24 Actuarial Opinion attached hereto as **Exhibit 39**, states that the existing risk factors, "coupled
25 with the variability that is inherent in any estimate of unpaid loss and loss adjustment expense
26 obligations, could result in material adverse deviation from the carried net reserve amounts." The
27 Milliman Report concludes that L&C's actual net outstanding losses and loss adjustment expense
28

(1 ("LAE") exceed L&C's reserves for unpaid losses (\$5,021,810) and unpaid LAE (\$1,233,678) by
2 an amount of more than 5% of L&C's statutory surplus shown on the annual statement, which
3 was \$4,031,349. The Milliman Report also states that this materiality standard was selected
4 based on the fact that his opinion was prepared for regulatory review. Further, the corresponding
5 Statement of Actuarial Opinion provides that it is reliant on "data and related information
6 prepared by [L&C]" and that "[t]here are a variety of risk factors that expose [L&C's] reserves to
7 significant variability." Id.

8 174. On information and belief, the information provided to the directors of L&C for
9 the May 2010 Board meeting state that Sophia Palmer merged with L&C as of December 3, 2009,
10 and that the written premiums were \$8,340,000 for 2008 and \$10,705,000 for 2009.

11 175. On information and belief, in or around October 2010, Elsass, Larry Shatoff at
12 U.S. RE, Donna Dalton, John Klaus at Uni-Ter, Curtis Sitterson at Stearns Weaver, and Jim
13 Murphy at the accounting firm Johnson Lambert & Co., through email correspondence, made the
14 decision to record the twenty-five percent (25%) refund payment, in the amount of \$569,600,
15 from the commutation of the January 1, 2008 to April 1, 2009 reinsurance treaty.

16 176. On information and belief, Mr. Shatoff stated in said email correspondence that the
17 April 1, 2004 to December 31, 2004 treaty was commuted, the January 1, 2007 to December 31,
18 2007 treaty was commuted, and the January 1, 2005 to December 31, 2006 treaty was "swing
19 rated" and had been adjusted to the minimum premium. Regarding the January 1, 2008 to April
20 1, 2009 reinsurance treaty, Mr. Shatoff said that it covers all claims reported on occurrence
21 policies up to April 1, 2012. Mr. Shatoff further stated that L&C was subject to a 13% aggregate
22 deductible for an amount of \$1,690,673, and that L&C had paid reinsurance premiums of
23 \$2,278,400, which at a 25% refund rate would result in a refund of \$569,600 if no claims were
24 paid by the reinsurers. Further, Mr. Shatoff's communications state that there had been no losses
25 reported under that treaty. Mr. Shatoff noted that L&C could commute at any time before
26 January 1, 2013 to obtain the "profit commission" - how he referred to the 25% refund.

27 177. On information and belief, Mr. Shatoff encouraged L&C to commute that treaty to
28 ensure that seventy-five percent (75%) of premiums paid could be confirmed as received by the

1 reinsurers with confirmation that no claims or losses would be paid by them.

2 178. On information and belief Elsass directed that the refund for the commutation of
3 the January 1, 2008 to April 1, 2009 reinsurance treaty be recorded at that time in the third quarter
4 of 2010.

5 179. On information and belief, Mr. Shatoff noted that it would be too soon to record
6 any "profit commission" on the April 1, 2009 to April 1, 2010 treaty because the premium for
7 those policies would not be fully earned until April 1, 2011.

8 180. The Milliman Report stated that L&C reserves were \$600,000 - \$628,000 above
9 the Medium Estimate, but about \$650,000 below the High Estimate. That report also noted that
10 L&C started to write occurrence policies in the fourth quarter of 2008.

11 181. On information and belief, more than half of the policies written by Sophia Palmer
12 were occurrence policies.

13 182. The Milliman Report stated that the loss development for occurrence policies is
14 relatively immature at the current evaluation and that caused uncertainty in the loss estimates.

15 183. Further, the 2010 Milliman Report opined that the existing risk factors "coupled
16 with the variability that is inherent in any estimate of unpaid loss and loss adjustment expense
17 obligations, could result in material adverse deviation from the carried net reserve amounts." He
18 concluded that based on the calculation shown in Exhibit B that shows that L&C's actual net
19 outstanding losses and LAE exceed L&C's reserves for unpaid losses (\$7,353,289) and unpaid
20 LAE (\$1,798,188) by an amount of more than five percent (5%) of L&C's statutory surplus
21 shown on the annual statement, which was \$4,579,710. The 2010 Milliman Report states that this
22 materiality standard was selected based on the fact that his opinion was prepared for regulatory
23 review.

24 184. On information and belief, the financial information provided to the Board for the
25 September 2011 Board Meeting included a report from Brian Stiefel, President of Praxis, which
26 was the September 2011 Praxis Report. The Praxis Report provides that Uni-Ter has adopted a
27 new reserve philosophy, is revising its litigation management guidelines to reflect a more
28 aggressive approach to the litigation process, and that standardizing the claims documentation,

1 evaluation, and reporting process is recommended. The Praxis Report does not evaluate the level
2 of L&C's loss reserves. See Exhibit 6 hereto.

3 185. On information and belief, the information provided to the directors for the
4 September 2011 Board meeting also contains a power point presentation from Milliman which
5 shows that L&C steadily decreased its reinsurance deductible across the years 2008 to 2011,
6 demonstrating that L&C's reinsurance deductible was set too high, especially in years 2009 and
7 2010.

8 186. On information and belief, in or around December 19, 2011, Milliman provided a
9 preliminary draft of certain schedules to its actuarial reports ("2011 Milliman Schedules"). The
10 Schedules provide that as of November 30, 2011, L&C's Incurred Loss & ALAE for years 2004
11 through November 2011 was \$17,858,866. That same exhibit states that Paid Loss & ALAE for
12 those same dates was a total of \$11,208,076. The exhibit states that L&C's Paid Loss & ALAE
13 was \$2,230,000.00 for 2009 and \$2,440,000.00 for 2010 but only \$198,711.00 for 2011 through
14 November.

15 187. L&C's Annual Statement for the year ending December 31, 2011 ("2011 Annual
16 Statement"), attached as Exhibit 40, stated a drastic increase in incurred losses and LAE and a
17 significant drop in shareholder's surplus. Pursuant to that statement, reserves for losses and LAE
18 increased from a total of \$9,181,477 at the end of 2010 to \$14,026,020 at the end of 2011, almost
19 a \$5 million increase. Note 24 to L&C's 2011 Financial Statements (which is presented below)
20 stated that unpaid losses and LAE increased from \$9,153,000 at the beginning of 2011 to
21 \$14,843,000 at the end of 2011, a \$5,700,000 increase. Meanwhile, the company's policyholder's
22 surplus amount decreased from \$4,579,710 at the end of 2010 to \$3,625,317 at the
23 end of 2011.

24 188. Note 24 to L&C's 2011 Financial Statements stated as follows:

25	Balance-January 1, 2011	\$9,153,000
26	Incurred related to:	
27	Current year	7,418,000
28	2010	3,039,000
	2009	2,284,000

1	2008	747,000
2	2007	162,000
3	2006	375,000
4	2005	(359,000)
5	2004	(1,000)
6	Total Incurred:	13,665,000
7	Paid related to:	
8	Current year	1,878,000
9	2010	3,571,000
10	2009	1,545,000
11	2008	222,000
12	2007	630,000
13	2006	131,000
14	2005	(1,000)
15	2004	(1,000)
16	Total Paid:	7,975,000
17	Balance-December 31, 2011	\$ 14,843,000
18	(emphasis added)	

19 *Id.*

20 189. On information and belief, notwithstanding this information, the Board represented
21 in Note 14 at page 14.2 that "[T]he Company's management is not aware of any ongoing
22 litigation which would, individually or collectively, result in judgments for amounts, after
23 considering the established loss reserves, that would be material to the Company's financial
24 condition or results of operations." *Id.*

25 190. On February 2, 2012, Milliman provided a preliminary draft of certain schedules
26 to its actuarial reports ("2012 Milliman Schedules"). Exhibit 1 Page 2 states that, as of December
27 30, 2011, L&C's Discounted Net Loss & LAE Reserve (after Ceded Loss and LAE Reserve) was
28 Low Estimate of \$13,019,000, Central Estimate of \$14,973,000, and High Estimate of
\$18,635,000. Exhibit 3 of that document shows that Incurred Loss and ALAE had grown
substantially from 2005 (\$373,816) to 2010 (\$9,068,552) while showing estimated reserves only
growing to \$4,048,241. It also shows that for 2011, Ultimate Loss & ALAE was \$7,620,000 and
Incurred Loss & ALAE was \$5,744,385, but estimate reserves was only \$5,938,479, which is
over \$1.6 million less than the Ultimate Loss & ALAE.

191. The 2011 Milliman Report, attached hereto as Exhibit 41, in the section entitled

1 "Risk of Material Adverse Deviation", provides that "[t]he Company's carried reserves are within
2 a reasonable range, however other points within the reasonable range would cause surplus to be
3 below zero. Therefore I believe that there are significant risks and uncertainties that could result
4 in material adverse deviation in the loss and loss adjustment expense reserves, possibly by
5 amounts exceeding surplus." The report again provides that the current risk factors, "coupled
6 with the variability that is inherent in any estimate of unpaid loss and loss adjustment expense
7 obligations, could result in material adverse deviation from the carried net reserve amounts." The
8 report concluded that based on the calculation shown in Exhibit B that shows that L&C's actual
9 net outstanding losses and LAE exceed L&C's reserves for unpaid losses (\$11,766,924) and
10 unpaid LAE (\$2,259,096) by an amount of more than five percent (5%) of L&C's statutory
11 surplus shown on the annual statement, which was \$3,625,316. The report states that this
12 materiality standard was selected based on the fact that his opinion was prepared for regulatory
13 review.

14 192. Further, in the Notes to Financial Statements for Years Ended December 31, 2011
15 and 2010 ("2011 Notes"), the management of L&C stated Uni-Ter "believes that its aggregate
16 provision for losses and loss adjustment expenses is reasonable and adequate to meet the ultimate
17 net cost of covered losses...". On information and belief, the Board failed to exercise even the
18 slightest degree of care with respect to this information it was receiving concerning Uni-Ter's
19 opinions and failed to take any action to verify that this information was complete or accurate.

20 193. The 2011 Notes also provide that "[a]t December 31, 2011 and 2010, management
21 determined that no premium deficiency reserve was required." On information and belief, the
22 Board failed to exercise even the slightest degree of care with respect to this information it was
23 receiving concerning Uni-Ter's opinions and failed to take any action to verify that this
24 information was complete or accurate.

25 194. Further, the 2011 Notes state that was a party to various lawsuits "in the normal
26 course of business" but that "[t]he Company's management does not believe that any ongoing
27 litigation would, individually or collectively, result in judgments for amounts, after considering
28 the established loss reserves and reinsurance, that would be material to the Company's financial

condition or results of operations.” On information and belief, the Board failed to exercise even the slightest degree of care with respect to this information it was receiving concerning Uni-Ter’s opinions and failed to take any action to verify that this information was complete or accurate.

195. L&C’s “NAIC Property and Casualty Financial Ratio Results for 2011”, attached hereto as Exhibit 42, painted a very bleak picture of the L&C. It has a date stamp of 2/23/2012. It states that Direct Premiums Written in 2011 totaled \$10,224,774. It states that Net Premiums Written for 2011 were \$8,997,524 which was a 25% drop from Net Premiums Written in 2010 of \$11,946,738. It states that Losses and LAE incurred for 2011 totaled \$12,759,779 when Losses and LAE incurred for 2010 totaled \$8,183,816, about \$4.6 million less. It states that surplus for 2011 was \$3,625,316 when the surplus for 2010 was \$4,579,709, almost a million drop. Finally, it states that L&C’s estimated current reserve deficiency was -\$752,997.5.

196. A spreadsheet entitled “Inforce (sic) Policies as of 2.23.2012” lists such policies. It states at the bottom that the total premium amount for such in force policies was \$6,825,864.

197. A spreadsheet document dated February 2012 and entitled “L&C Loss Ratio Report” shows a substantial reduction of loss payments for 2011. The document states that the information is through 02/29/2012, but says that earned premium for 2011 dropped to \$5,209,362 from \$12,798,406 in 2010 and \$11,776,406 in 2009. It also shows that earned premium was only \$240,573 through February which, extrapolated through December, would be only \$1,443,438. Meanwhile, total incurred losses for 2011 were only \$1,573,965 even though total incurred losses were almost \$9.5 million in 2010 and almost \$8 million in 2009.

198. On information and belief, the loss ratios shown for 2006 through 2010 were 78.92%, 65.33%, 67.83%, and 73.59%, respectively. The loss ratio chart in the April 2008 Board meeting directors’ package states that the 2006 loss ratio was only 25.25% and the 2007 loss ratio was stated to be only 22.41%. The loss ratio for 2011 was only 30.21%. Paid losses in all of 2011 were only \$264,000 even though those were almost \$5 million in 2010, \$5.4 million in 2009, and over \$3.5 million in 2008.

199. L&C’s Summary Balance Sheet as of February 29, 2012, attached hereto as Exhibit 43, states that unpaid losses and loss expenses were \$14,026,019 at the end of 2011 and

grew to \$14,607,812 as of the end of February 2012. Uni-Ter's management fees for 2011 were only \$87,617.

200. L&C's Comparative Summary Balance Sheet dated through March 2012, attached as Exhibit 44, shows the growth of L&C's losses and Uni-Ter's fees. Unpaid losses and LAE was \$3,624,000 as of March 2008, \$4,325,000 as of March 2009, \$7,313,000 as of March 2010, \$9,953,000 as of March 2011, and \$12,381,985 as of March 2012. Uni-Ter's management fees were \$728,000 as of March 2008, \$1,329,000 as of March 2009, \$1,607,000 as of March 2010, \$830,000 as of March 2011, and \$104,000 as of March 2012.

201. The 2012 Milliman Report states that L&C reserves of \$16,333,000 were \$1,367,000 below the Central Estimate of what L&C's loss reserves should be. The report states that L&C's reserves were over \$7 million below the High Estimate of what L&C's reserves should be. There is no mention of the report in the Board Minutes. The report states as follows:

The ultimate loss and ALAE estimates have increased significantly since the prior report as of December 31, 2010. *Through report/accident/tail effective year 2010, the selected ultimate loss and ALAE estimates have increased by \$9.2 million. Claims-made nursing home paid and incurred losses have been higher than expected during the past year due to significantly inadequate case reserves at December 31, 2010 and exceptionally high loss ratios that were generated by three insureds that were non-renewed during 2011. . . .* (emphasis added)

Finally, the report states in Table 3 on page 12 that the continuing Ultimate Loss & ALAE as of the report at end of 2010 was \$13,863,000 but the Ultimate Loss & ALAE as of the report at the end of 2011 was \$19,229,000 for a \$5.5 million increase.

202. In the D&O policy application submitted by Uni-Ter on behalf of L&C on or about May 23, 2012, attached as Exhibit 45, Uni-Ter stated in the supplement that "[t]o improve the financial stability of [L&C], UUMC has reviewed the entire book of business and intends to only renew accounts that have maintained a favorable historical loss ratio. This may result in a 35-40% reduction in its premium volume." The underwriting philosophy change completed in late 2011, while stating limitations for loss ratios in soft and hard market facilities, does not state that the policy would apply to renewals and also does not discuss the loss of such a large premium amount. This reduction would apply to the \$6,825,864 total premiums of inforce policies as of February 2012. With no new policies, that would result in total premiums for 2012

in the range of \$4,095,518 to \$4,436,800.

203. The following chart shows relevant information from L&C's Audited Financial Statements for the periods indicated:

	2009	2010	2011	March 2012	June 2012
Losses and LAE	\$6,255,488 (this was \$3,941,000 for 2008)	\$9,161,477	\$14,026,020	\$12,381,985	\$11,594,038
Premiums earned	\$10,864,100 with \$4,149,333 being new for that year.	\$12,514,066	\$11,498,294	\$1,957,716 (compared to \$2,776,612 for March 2011)	\$3,753,489 (compared to \$6,720,334 for June 2011)
Ceded reinsurance premiums payable	\$1,969,682	\$2,050,400	\$750,084	\$26,523	\$624,029
Amount recoverable from reinsurance		\$2,819,800	\$3,039,002	\$3,039,002 with \$1.553M from AR and \$1.087 from other amounts receivable	\$1,530,415
Management fees payable	\$1,717,482	\$1,084,400	\$87,617	\$104,690	\$63,164
Total liabilities	\$13,887,255	\$15,625,439	\$21,840,572	\$19,777,205	\$16,397,861
Cash and invested assets		\$13,942,322	\$13,514,557	\$13,064,932	\$9,525,379
Shareholders' equity, i.e., surplus	\$4,031,351	\$4,579,710	\$3,625,317	\$3,713,503 (versus \$3,760,925 for March 2011)	\$1,675,694 (versus \$2,732,826 for June 2011)

204. On information and belief, as of July 31, 2012, L&C's Gross Losses and LAE was \$14,786,000. As of the end of September 2012, losses and LAE totaled \$13,609,401 and surplus was negative \$1,490,085. Cash and invested assets had dropped to \$6.6 million.

F. Gross Negligence by the Board

205. On information and belief, beginning in the 3rd quarter of 2011, adverse development on claims incurred during 2009 began to appear in the financial operations of L&C. As a result, Uni-Ter (captive manager) began to get more involved in claims and reserves. In a

1 unilateral decision, Uni-Ter brought in Praxis Claims Consulting to assist with improving the
2 reserve setting process. On information and belief, the engagement involved reviewing various
3 open claims files. The owner of Praxis, Brian Stiefel took a lead role in setting reserves for L&C
4 with Uni-Ter. As a result of this engagement, a strengthening of reserves was recommended and
5 booked in the amount of approximately \$2.2 million.

6 206. On information and belief, due to the strengthening entry, and the resulting
7 downturn in the financial condition of L&C, additional capital of \$2,220,000 was raised in the
8 form of surplus notes.

9 207. On information and belief, in the October 5, 2011 Action by Unanimous Consent
10 of the Board of Directors ("Action") surplus note contributions were agreed to be paid by
11 November 15, 2011:

12	o Oneida Bank	\$750,000
13	o Eagle Healthcare	\$220,000
14	o Pinnacle Healthcare	\$220,000
15	o Marquis Companies	\$220,000
16	o Elderwood Senior Care	\$220,000
17	o Rohm Services	\$220,000
18	o Uni-ter	\$300,000

19 208. On information and belief, the Action indicated that an additional \$550,000 in
20 capital could be raised in additional surplus notes, "depending upon the requirements of the
21 business in the fourth quarter, 2011, as approved by the Board". The following commitments
22 were funded in the form of Surplus Notes on February 7, 2012:

23	o Eagle Healthcare	\$70,000
24	o Pinnacle Healthcare	\$70,000
25	o Marquis Companies	\$70,000
26	o Elderwood Senior Care	\$70,000
27	o Rohm Services	\$70,000
28	o Uni-ter	\$200,000

29 209. On information and belief, with the exception of Oneida Bank, where L&C's
30 investments are held in custody, and Uni-Ter, the captive manager, all other Surplus Note holders
31 were facilities insured by L&C and whose management is a representative on the Board of

1 Directors of L&C.

2 210. On information and belief, Stickels is the President of Oneida Bank.

3 211. On information and belief, prior to the second commitment coming due in the first
4 quarter of 2012, the Board determined that they wanted a second review to confirm the
5 conclusion of the reserve strengthening in late 2011. Fishlinger was hired to conduct an
6 independent analysis of the same claims reviewed by Praxis.

7 212. On information and belief, using the low end of the ranges of reserves established
8 by Praxis, Fishlinger concluded a low end of strengthening could be approximately a million
9 dollars less than determined by Praxis. Although the Board had requested that Fishlinger conduct
10 its review independently, ultimately it used the work of Praxis in coming to a similar conclusion
11 on the reserve strengthening needed. Based on these two reviews, the additional capitalization of
12 \$480,000 was determined to be adequate by the Board.

13 213. On information and belief, at the end of the second quarter of 2012, the Board
14 assumed that the reserving methodology established under Praxis had continued to be deployed.
15 The Board determined that a follow up review was necessary. Praxis completed their review in
16 July of 2012, involving review of the same estimated 150 claims reviewed at year end 2011.
17 Praxis recommended stepping up of reserves in the cases previously reviewed and indicated that
18 trouble getting case reserve information from attorneys had been one cause of the continued
19 adverse development of these claims. Praxis concluded an additional \$2 million in strengthening
20 was required at July 2012.

21 214. On information and belief, Fishlinger was also brought in for a second review,
22 which ultimately concluded some differences on the low and high end of the ranges for these
23 cases, but ultimately recommended similar cumulative reserve strengthening. An additional party
24 also reviewed the case reserves, the London Based reinsurance broker ("London Broker") for
25 U.S. RE, the reinsurance broker for L&C. The Board and Uni-Ter thought that they would have a
26 vested interest in picking accurate reserves because of the reinsurance that the London broker had
27 placed for L&C with various reinsurers. On information and belief, the London Broker
28 determined that it would be comfortable in the low end of the ranges for many of the cases.

1 Dalton, and others was, at best, unreliable and incomplete, the Board failed to exercise even slight
2 diligence in informing itself of the truth of the financial status of L&C.

3 222. Further, as of the end of 2011, there was more than ample information that, in
4 combination, clearly showed that L&C's financial condition was in dangerous peril.

5 223. This information available in late 2011 included rapid and drastic increase in loss
6 reserves, reports of inadequate reserves requiring repeated capital infusions in late 2011 and early
7 2012, high loss ratios, drastically decreasing realized premiums, absence of any adjustment of
8 premium rates, implementation of a new underwriting philosophy that would result in a 35-40%
9 drop in premiums, and a drastically decreasing company surplus.

10 224. These reports included the following summarized facts:

- 11 • In September 2005, Elsass reported on appropriate loss reserves.
- 12 • L&C had substantial growth of premiums and reserves between 2004 and 2009.
13 By 2009, written premium was \$10.7 million and reserves were \$6.2 million. Uni-
14 Ter's management fees also increased rapidly to \$1.4 million in 2008 and \$1.7
15 million in 2009.
- 16 • Losses and LAE grew to \$9.1 million in 2010 and \$14 million in 2011.
- 17 • Loss ratios were generally in the 30% range and below until 2009 when the
18 addition of the Sophia Palmer work caused a loss ratio over 50% (because of
19 Sophia Palmer claims having a loss ratio over 80%).
- 20 • A new underwriting philosophy was discussed at the September 2011 meeting.
21 Although it does not appear that the Board questioned how this would affect
22 premiums earned, Uni-Ter expected this new philosophy would only renew
23 accounts that had a favorable historical loss ratio and that that could result in a 35-
24 40% reduction in premium volume.
- 25 • In the 3rd quarter 2011, adverse development on claims incurred in 2009 showed
26 up on L&C's financial results. Uni-Ter brought in Praxis to improve the reserve
27 setting process. Uni-Ter brought in Praxis to analyze and recommend reserves.
28 Praxis recommended reserve strengthening of \$2.2 million.
- Capital contributions totaling \$2.22 million were approved by the Board at the
October 5, 2011 meeting. That same meeting said that an additional \$550,000 in
capital could be raised in the 4th quarter 2011 and 1st quarter 2012.
- Financial information shows L&C was not paying losses in 2011. 12/19/11 draft
report from Milliman shows \$2.23 million paid losses and ALAE in 2009, \$2.44
million in 2010, but only \$199,000 in 2011.
- On 12/20/2011, Uni-Ter reported claims reserves increased \$5 million from the
November 2011 figures.
- Uni-Ter's pro forma 12/31/11 financials show that L&C was neither impaired nor
insolvent, but the 2011 Annual Statement shows losses and ALAE increased from
\$9.1 million at the beginning of 2011 to \$14.8 million at the end of the year.

- At January 16, 2012 meeting, surplus is only \$1,979,730, down from \$4,579,000 at end of 2010.
- At February 2, 2012 meeting, Board approved \$480,000 additional capital contributions even though Elsass reported recent favorable claims activity. Prior to this, the Board had determined that they wanted a second opinion from Fishlinger to confirm the need for reserve strengthening made by Praxis.
- A 2/23/12 report showed that L&C's net written premiums for 2011 dropped 25% (from \$12 to \$9 million). It confirmed that losses and LAE for 2011 were \$12.7 million when only \$8.1 million for 2010. It also said that L&C's current reserves were deficient by just over \$750,000.
- A 2/23/12 report on in force policies states that total premiums for those policies would be \$6.8 million for 2012.
- A 2/29/12 loss ratio report shows that earned premium for 2011 dropped to \$5,209,362 from \$12,798,406 in 2010 and \$11,776,406 in 2009 and states that earned premium for 2012 through February 2012 was only \$240,000 which, annualized, would be only about \$1.4 million. It also shows that loss ratios for 2006 through 2010 were all above 65% and as high as 79%.
- April 12, 2012 Milliman report says that L&C's loss reserves are \$1.4 million under the central estimate. That same reports says that ultimate loss and ALAE have increased by \$9.2 million from the end of 2010. Table 3 of that report (page 12) states that Ultimate Loss & ALAE increased \$5.5 million from \$13.8 million at the end of 2010 to \$19.2 million the end of 2011.

225. Under Nevada law, the business judgment rule does not protect the gross negligence of uninformed directors and officers. *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 640, 137 P.3d 1171, 1184 (2006).

226. The Board and officers did not adequately review all of the information to which they had access, and was grossly negligent in failing to do so. Further, the Board failed to exercise a slight degree of care regarding the incomplete and inaccurate information provided to it by Uni-Ter and/or U.S. RE, and remained uninformed despite their knowledge that they could not rely on the representations and recommendations of Uni-Ter and U.S. RE, as set forth above.

227. As set forth above, the Board was made well aware of the extremely dangerous and deteriorating financial position of L&C at least as early as September 2010 by the DOI in its September 2010 Letter.

228. Further, the Board was again made aware of the dire financial position it had allowed L&C to reach due to its failure to exercise a slight degree of care in informing itself of

1 the position of L&C and take effective corrective action, as set forth in the DOI's September 2011
2 Letter.

3 229. To the extent the Board did review any information, the Board was grossly
4 negligent in taking ineffective actions or in not taking immediate effective corrective action by at
5 least late 2011 (e.g., raising premium rates).

6 230. The Board was in a position to see this information and knew that it had an
7 obligation to do so. Further, it knew that the information provided by Uni-Ter, U.S. RE and
8 others was incomplete and inaccurate. Indeed, the Board had the contractual right to receive the
9 information (including on a monthly basis between 2004 and 2010). It also knew at least on
10 several occasions that it was not receiving sufficient information from Uni-Ter, but failed to
11 exercise even slight diligence in properly informing itself. On several occasions between 2005
12 and 2011, the Board asked Uni-Ter to provide more and better financial and other information:

- 13 * March 2005 Minutes request for financial information monthly.
- 14 * April 2005 Minutes note nonreceipt of periodic marketing reports.
- 15 * At the October 2011 special meeting approving \$2.2 million of additional capital
16 the Board requested more frequent financial reports by Uni-Ter, preferably
monthly.

17 231. The facts show an absence of the slightest degree of diligence of the Board and
18 company officers to ascertain and assess the available information so that decisions could be
19 made and based on such information, as set forth above.

20 232. The Board failed to exercise even the slightest degree of care or diligence to
21 become properly informed and was wholly indifferent to its legal obligations in relying on
22 information and recommendations of Uni-Ter, U.S. RE and others, as set forth herein, despite the
23 Board's knowledge and reason to know that the information and recommendations provided were
24 grossly inaccurate and incomplete.

25 233. As a proximate result, Plaintiff has been damaged in an amount in excess of
26 \$10,000, the exact amount to be proven at trial in this matter.

27 234. Plaintiff has retained the undersigned law firm to represent the Receiver in this
28 matter, and is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to

1 recover herein.

2 WHEREFORE, Plaintiff prays for relief as set forth herein.

3 **SECOND CLAIM FOR RELIEF**

4 **(Deepening of the Insolvency of L&C Caused by the Former Directors and Officers)**

5 235. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through
6 234, as though fully set forth herein.

7 236. The Board's inaction severely prolonged the insurance actions of L&C that led to
8 its initial insolvency and that then also increased its insolvency.

9 237. Had the Board taken action by late 2011, the substantial losses experienced by
10 L&C starting in late 2011 would not have occurred or, alternatively, would have been greatly
11 limited.

12 238. Because L&C had a surplus as of the end of 2011, according to its financial
13 statements, then all of the insolvency of L&C was arguably attributable to the directors' and
14 officers' failure to promptly identify and address the financial problems.

15 239. As a proximate result, Plaintiff has been damaged in an amount in excess of
16 \$10,000, the exact amount to be proven at trial in this matter.

17 240. Plaintiff has retained the undersigned law firm to represent the Receiver in this
18 matter, and is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to
19 recover herein.

20 WHEREFORE, Plaintiff prays for relief as set forth herein.

21 **THIRD CLAIM FOR RELIEF**

22 **(Negligent Misrepresentation by Uni-Ter UMC)**

23 241. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through
24 240, as though fully set forth herein.

25 242. Uni-Ter UMC, through its employees, negligently misrepresented the specific
26 financial conditions of L&C including the level of losses and LAE.

27 243. Uni-Ter had created L&C and grown it rapidly for its own financial benefit, as
28 well as that of U.S. RE, who benefitted from the placement of reinsurance and from management

1 fees earned by its subsidiary. Uni-Ter had intimate familiarity with the financial information of
2 L&C.

3 244. However, instead of presenting all relevant financial information to the Board,
4 Uni-Ter appears to have selectively provided information such that the Board was not informed
5 of the actual financial condition of L&C. Even after a number of reports showed substantial
6 growth of L&C's losses in late 2011, Mr. Elsass even represented to the Board in early 2012 that
7 claims losses were not as bad as previously reported in late December.

8 245. Uni-Ter and Milliman told the Board that the large losses that started appearing in
9 the 3rd quarter of 2010 were primarily because of three insureds who had been non-renewed in
10 2011, thus giving the impression that this would resolve the large losses issue. These
11 representations are representative of how the Board was kept in the dark regarding the actual
12 financial condition of L&C.

13 246. L&C justifiably relied on the information presented to it by Uni-Ter, as set forth
14 herein.

15 247. As a proximate result, Plaintiff has suffered damages in excess of \$10,000, the
16 exact amount to be proven at trial herein.

17 248. Plaintiff has retained the undersigned law firm to represent her in this matter, and
18 is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to recover herein.

19 WHEREFORE, Plaintiff prays for relief as set forth herein.

20 **FOURTH CLAIM FOR RELIEF**

21 **(Breach of Fiduciary Duty by Uni-Ter UMC and Uni-Ter CS)**

22 249. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through
23 248, as though fully set forth herein.

24 250. Uni-Ter owed a fiduciary duty to L&C as set forth above.

25 251. Uni-Ter breached its fiduciary duty to L&C by recommending to the Board that
26 the 2007 treaty be commuted too soon and by failing to gain Board approval to commute the 2008
27 and 2009 treaty such that that treaty was commuted without authorization to do so from the
28 Board.

1 252. Approval of commutation of the 2007 treaty was done at the January 10, 2008
2 board meeting.

3 253. Commutation benefitted U.S. RE, the parent of Uni-Ter, because the syndicate
4 insurers get to keep 75% of the premiums paid without any requirement to pay any claims. U.S.
5 RE also appears to have done an unapproved commutation for the 2008-2009 treaty at the
6 direction of Uni-Ter.

7 254. October 2010 emails between U.S. RE and Uni-Ter discuss booking the
8 commutation amount, but the February 2, 2012 Minutes state that the Board deferred approval of
9 commutation of certain treaties including the 2008 and 2009 treaties. *See Exhibit 26.*

10 255. As a proximate result, Plaintiff has been damaged in an amount in excess of
11 \$10,000, the exact amount to be proven at trial herein.

12 256. Plaintiff has retained the undersigned law firm to represent her in this matter, and
13 is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to recover herein.

14 WHEREFORE, Plaintiff prays for relief as set forth herein.

15 **FIFTH CLAIM FOR RELIEF**

16 **(Breach of Fiduciary Duty Against U.S. RE)**

17 257. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through
18 256, as though fully set forth herein.

19 258. L&C engaged U.S. RE as its agent and exclusive broker to find and secure
20 appropriate reinsurance. The U.S. RE Agreement appointed U.S. RE as L&C's exclusive
21 reinsurance intermediary/broker and granted U.S. RE full and complete authority to negotiate the
22 placement of reinsurance on all classes of insurance with unspecified limits of coverage as
23 requested by the underwriter of L&C (i.e., Uni-Ter).

24 259. U.S. RE was itself engaged as L&C's "exclusive reinsurance intermediary/broker"
25 and as L&C's agent, including being granted "full and complete authority to negotiate the
26 placement of reinsurance or retrocessions on all classes of insurance with unspecified limits of
27 coverage as specifically requested by any underwriter of [L&C]." *See Exhibit 4*, the U.S. RE
28 Agreement.

1 260. The U.S. RE Agreement further recognizes U.S. RE's agency with L&C by stating
2 that U.S. RE "will exercise its best efforts in the discharge of its duties on behalf of the
3 Company." *Id.* (emphasis added).

4 261. The Supreme Court of Nevada has held that "[a]n agency relationship is formed
5 when one who hires another retains a contractual right to control the other's manner of
6 performance." *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 108 Nev. 811, 815, 839 P.2d
7 599, 602 (1992) (citation omitted).

8 262. U.S. RE acted as the agent of L&C, as the U.S. RE Agreement expressly states not
9 only that U.S. RE will act "on behalf of" L&C, but also that L&C has the right to control U.S.
10 RE's manner of performance as U.S. RE promises to "comply with written standards established
11 by [L&C] for the cession or retrocession of all insured risks." See Exhibit 4.

12 263. Further, Nevada law makes clear that "[a]n agent, such as respondent in these
13 circumstances, owes to the principal the highest duty of fidelity, loyalty and honesty in the
14 performance of the duties by the agent on behalf of the principal." *LeMon v. Landers*, 81 Nev.
15 329, 332, 402 P.2d 648, 649 (1965) (holding that the agent breached her fiduciary obligations)
16 (emphasis added); see also *Chem. Bank v. Sec. Pac. Nat. Bank*, 20 F.3d 375, 377 (9th Cir. 1994)
17 ("The very meaning of being an agent is assuming fiduciary duties to one's principal.") (citing
18 *Restatement (Second) of Agency* § 1(1)).

19 264. Thus, as the agent of L&C, U.S. RE owed L&C fiduciary duties under Nevada
20 law, as set forth herein

21 265. U.S. RE breached this fiduciary duty through intentional acts including, but not
22 limited to, by not obtaining reinsurance through syndicates as listed in the fact section above. No
23 facts were found that reinsurance failed to pay as required. To the contrary, the reinsurance
24 policies seemed not to be invoked because deductible amounts were not reached, especially in the
25 early years of 2004 to 2008.

26 266. Nevertheless, U.S. RE intentionally represented to L&C that it would act in L&C's
27 best interests, creating additional duties toward L&C other than merely finding and securing
28 reinsurance, including but not limited to, fiduciary duties, as set forth herein.

267. In violation of such duties, U.S. RE intentionally failed to find appropriate reinsurance because the deductible rates were consistently too high. This is shown by the fact that reinsurance did not come into play at all in the early years. Indeed, the Board approved commutation of the 2007 treaty only 10 days into 2008.

268. As a proximate result, Plaintiff has been damaged in an amount in excess of \$10,000, the exact amount to be proven at trial in this matter.

269. Plaintiff has retained the undersigned law firm to represent her in this matter, and is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to recover herein.

WHEREFORE, Plaintiff prays for relief and judgment as follows:

A. For actual damages sustained by Plaintiff in an amount in excess of \$10,000 in an amount to be more specifically established at trial in accordance with proof;

B. For reasonable attorney's fees pursuant to statute or as special damages, or as provided in the agreement between the parties;

C. For pre-judgment and post-judgment interest; and

D. For such other and further relief at law or in equity as the Court may deem just and proper.

DATED this 5th day of August, 2016.

FENNEMORE CRAIG, P.C.

By: /s/ Brenock Wirthlin

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

COMMISSIONER OF INSURANCE FOR THE
STATE OF NEVADA AS RECEIVER OF
LEWIS AND CLARK LTC RISK RETENTION
GROUP, INC.,

Plaintiffs,

v.

ROBERT CHUR, STEVE FOGG, MARK
GARBER, CAROL HARTER, ROBERT
HURLBUT, BARBARA LUMPKIN, JEFF
MARSHALL, ERIC STICKELS, UNI-TER
UNDERWRITING MANAGEMENT CORP.
UNI-TER CLAIMS SERVICES CORP., and
U.S. RE CORPORATION, DOES 1-50,
inclusive; and ROES 51-100, inclusive,

Defendants.

Case No. A-14-711535-C

Dept. No.: XXVII

**ORDER DENYING PLAINTIFF'S
MOTION FOR LEAVE TO FILE
FOURTH AMENDED COMPLAINT**

1 This matter came before the Court for hearing on July 23, 2020 on Plaintiff's Motion for
2 Leave to File Fourth Amended Complaint ("Motion"). Brenoch R. Wirthlin, Esq. appeared on
3 behalf of Plaintiff Commissioner of Insurance for the State of Nevada ("Plaintiff"); George F.
4 Ogilvie III, Esq., Jon N. Wilson, Esq. and Erin Kolmansberger, Esq. appeared on behalf of
5 Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S.
6 RE Corporation; and Angela T. Nakamura Ochoa, Esq. appeared on behalf of Defendants Robert
7 Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall
8 and Eric Stickels.

9 Having considered the record and the briefs submitted in support of and in opposition to
10 the Motion, and having entertained the arguments of counsel, the Court finds that the Motion is
11 untimely; that Plaintiff unduly delayed the assertion of the new allegations and claims for relief
12 set forth in the proposed Fourth Amended Complaint; that granting Plaintiff leave to file the Fourth
13 Amended Complaint would unduly prejudice defendants; that the new defendant sought to be
14 added was known to Plaintiff at the time of the filing of the original Complaint; and that the
15 proposed new claims for relief do not relate back to the filing of the original Complaint and are,
16 therefore, time-barred. Based on these findings and good cause appearing therefor,

17 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Leave to File Fourth Amended
18 Complaint is **DENIED**.

19 DATED this ____ day of July, 2020.

Dated this 10th day of August, 2020

Nancy L Allf

NANCY L. ALLF
District Court Judge
B19 B66 6A18 37FC
Nancy Allf
District Court Judge

1 Approved as to Form and Content:

2 HUTCHISON & STEFFEN

3
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14
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27 Miami, Florida 33131

28 *Attorneys for Defendants Uni-Ter Underwriting*
Management Corp., Uni-Ter Claims Services Corp.,
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1 **CSERV**

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

5
6 Commissioner of Insurance for
7 the State of Nevada as Receiver
8 of Lewis and Clark, Plaintiff(s)

CASE NO: A-14-711535-C

DEPT. NO. Department 27

9 vs.

10 Robert Chur, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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14 Court. The foregoing Order was served via the court's electronic eFile system to all
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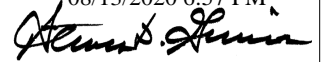
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Robert Hurlbut, Barbara Lumpkin,
Jeff Marshall, and Eric Stickels

DISTRICT COURT
CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR
THE STATE OF NEVADA AS RECEIVER
OF LEWIS AND CLARK LTC RISK
RETENTION GROUP, INC.,

Plaintiff,

vs.

ROBERT CHUR, STEVE FOGG, MARK
GARBER, CAROL HARTER, ROBERT
HURLBUT, BARBARA LUMPKIN, JEFF
MARSHALL, ERIC STICKELS, UNI-TER
UNDERWRITING MANAGEMENT
CORP., UNI-TER CLAIMS SERVICES
CORP., and U.S. RE CORPORATION,
DOES 1-50, inclusive; and ROES 51-100,
inclusive,

Defendants.

CASE NO.: A-14-711535-C

DEPT. NO.: 27

**ORDER GRANTING DEFENDANTS
ROBERT CHUR, STEVE FOGG, MARK
GARBER, CAROL HARTER, ROBERT
HURLBUT, BARBARA LUMPKIN, JEFF
MARSHALL, AND ERIC STICKELS'
MOTION FOR JUDGMENT ON THE
PLEADINGS PURSUANT TO NRCP
12(C)**

AND

JUDGMENT THEREON

Pursuant to the Nevada Supreme Court's Order Granting the Petition for Writ of
Mandamus and Notice in Lieu of Remittitur,

THE COURT HEREBY ORDERS that its November 2, 2018 Order Denying
Director Defendants' Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) is
hereby VACATED.

THE COURT FURTHER ORDERS that Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels' Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) is GRANTED.

With Plaintiff's Motion for Leave to file an Amended Complaint having been denied by this Court on August 10, 2020, Judgment is hereby entered in favor of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall.

DATED this 1 day of August, 2020.

Dated this 13th day of August, 2020

Nancy L Allf

JUDGE NANCY ALLF

1FA 835 11BE 21AF
Nancy Allf
District Court Judge

NB

Submitted by:
LIPSON NEILSON P.C.

/s/ Angela Nakamura Ochoa

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Marshall & Eric Stickels*

1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Commissioner of Insurance for
7 the State of Nevada as Receiver
of Lewis and Clark, Plaintiff(s)

CASE NO: A-14-711535-C

DEPT. NO. Department 27

8 vs.

9 Robert Chur, Defendant(s)
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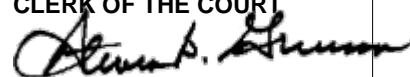
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Jeff Marshall, and Eric Stickels*

DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR
THE STATE OF NEVADA AS RECEIVER
OF LEWIS AND CLARK LTC RISK
RETENTION GROUP, INC.,

Plaintiff,

vs.

ROBERT CHUR, STEVE FOGG, MARK
GARBER, CAROL HARTER, ROBERT
HURLBUT, BARBARA LUMPKIN, JEFF
MARSHALL, ERIC STICKELS, UNI-TER
UNDERWRITING MANAGEMENT
CORP., UNI-TER CLAIMS SERVICES
CORP., and U.S. RE CORPORATION;
DOES 1-50, inclusive; and ROES 51-100,
inclusive,

Defendants.

CASE NO.: A-14-711535-C

DEPT. NO.: 27

NOTICE OF ENTRY OF ORDER

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NOTICE OF ENTRY OF ORDER

Please take notice that the Order Granting Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels' Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) and Judgment Theron was filed with this court on the 13th day of August, 2020, a copy of which is attached hereto, as **Exhibit A**.

Dated this 14th day of August, 2020.

LIPSON NEILSON P.C.

/s/ Angela Ochoa

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Plaintiffs Robert Chur, Steve Fogg,
Mark Garber, Carol Harter,
Robert Hurlbut, Barbara Lumpkin,
Jeff Marshall, and Eric Stickels*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 14th day of August, 2020, I electronically transmitted the foregoing **NOTICE OF ENTRY OF ORDER** to the Clerk's Office using the Odyssey E-File & Serve System for filing and transmittal to the following Odyssey E-File & Serve registrants:

E-Service Master List For Case

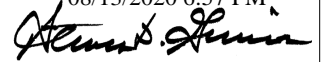
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/s/ Sydney Ochoa

An employee of LIPSON NEILSON P.C.

EXHIBIT “A”

EXHIBIT “A”


CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR
THE STATE OF NEVADA AS RECEIVER
OF LEWIS AND CLARK LTC RISK
RETENTION GROUP, INC.,

Plaintiff,

vs.

ROBERT CHUR, STEVE FOGG, MARK
GARBER, CAROL HARTER, ROBERT
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MARSHALL, ERIC STICKELS, UNI-TER
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DOES 1-50, inclusive; and ROES 51-100,
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Defendants.

CASE NO.: A-14-711535-C

DEPT. NO.: 27

**ORDER GRANTING DEFENDANTS
ROBERT CHUR, STEVE FOGG, MARK
GARBER, CAROL HARTER, ROBERT
HURLBUT, BARBARA LUMPKIN, JEFF
MARSHALL, AND ERIC STICKELS'
MOTION FOR JUDGMENT ON THE
PLEADINGS PURSUANT TO NRCP
12(C)**

AND

JUDGMENT THEREON

Pursuant to the Nevada Supreme Court's Order Granting the Petition for Writ of
Mandamus and Notice in Lieu of Remittitur,

THE COURT HEREBY ORDERS that its November 2, 2018 Order Denying
Director Defendants' Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) is
hereby VACATED.

THE COURT FURTHER ORDERS that Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels' Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) is GRANTED.

With Plaintiff's Motion for Leave to file an Amended Complaint having been denied by this Court on August 10, 2020, Judgment is hereby entered in favor of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall.

DATED this 1 day of August, 2020.

Dated this 13th day of August, 2020

Nancy L Allf

JUDGE NANCY ALLF

1FA 835 11BE 21AF
Nancy Allf
District Court Judge

NB

Submitted by:
LIPSON NEILSON P.C.

/s/ Angela Nakamura Ochoa

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4 **CLARK COUNTY, NEVADA**

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6 Commissioner of Insurance for
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CASE NO: A-14-711535-C

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9 vs.

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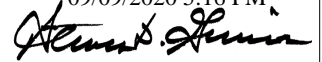
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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR
THE STATE OF NEVADA AS RECEIVER
OF LEWIS AND CLARK LTC RISK
RETENTION GROUP, INC.,

Plaintiff,

vs.

ROBERT CHUR, STEVE FOGG, MARK
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UNDERWRITING MANAGEMENT
CORP., UNI-TER CLAIMS SERVICES
CORP., and U.S. RE CORPORATION,
DOES 1-50, inclusive; and ROES 51-100,
inclusive,

Defendants.

CASE NO.: A-14-711535-C

DEPT. NO.: 27

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER DENYING THE
MOTION FOR PARTIAL
RECONSIDERATION OF MOTION FOR
LEAVE TO AMEND REGARDING
DIRECTOR DEFENDANTS**

This matter came before the Court for hearing on August 26, 2020 on Plaintiff's Motion for Partial Reconsideration of Motion for Leave to Amend Regarding Director Defendants ("Motion"). Angela T. Nakamura Ochoa, Esq. appeared on behalf of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut,

Barbara Lumpkin, Jeff Marshall and Eric Stickels; Mark A. Hutchison, Esq. and Brenoch R. Wirthlin, Esq. appeared on behalf of Plaintiff Commissioner of Insurance for the State of Nevada ("Plaintiff" or "Commissioner"); and George F. Ogilvie III, Esq., appeared on behalf of Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation; and

Having considered the record and the briefs submitted in support of and in opposition to the Motion, and having entertained the arguments of counsel, and being fully informed in the premises, the Court makes the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. Lewis and Clark LTC Risk Retention Group, Inc. ("L&C") was formed in 2003. Between 2004 and February 28, 2013, L&C provided general and professional liability coverage to long term care facilities and home health providers. See Third Amended Complaint ("TAC") at ¶1.

2. The Nevada Division of Insurance ("DOI") filed a Receivership Action related to L&C in November, 2012, commencing case number A-12-672047-B ("Receivership Action"). Plaintiff Commissioner of Insurance for the State of Nevada was appointed as the receiver.

3. On February 28, 2013, an order of liquidation ("Liquidation Order") was entered in the Receivership Action, appointing the Commissioner as the receiver of L&C. See Liquidation Order.

4. On December 23, 2014, the Commissioner instituted this lawsuit against, among other defendants, eight of the former directors of L&C Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels ("Director Defendants"). In the initial complaint, the Commissioner alleged

1 claims of gross negligence and deepening of the insolvency against the Director
2 Defendants.

3 5. On December 11, 2015, Director Defendants filed their Motion to Dismiss,
4 challenging the sufficiency of the allegations of gross negligence and asserting that a
5 claim for deepening insolvency required allegations of fraud such that the claims must
6 be pled with specificity.

7 6. On June 13, 2016, the Commissioner filed its Second Amended
8 Complaint, and, subsequently, on August 5, 2016, the Commissioner filed its Third
9 Amended Complaint.

10 7. On April 18, 2016, Director Defendants filed a Motion to Dismiss the First
11 Amended Complaint, asserting that claims against officers and directors needed to be
12 supported by claims of intentional misconduct, fraud or knowing violation of the law.
13 Said Motion was subsequently denied.

14 8. During the period of September 5, 2017 through April 13, 2018, Director
15 Defendants propounded written discovery upon Plaintiff.

16 9. Due to the multiple requests to extend discovery in this action and the
17 then approaching 5-year rule expiration, this Court expressly conditioned its May 16,
18 2018 Order continuing discovery deadlines that it would be the "last stipulation to
19 continue."

20 10. On August 14, 2018, the Director Defendants filed a Motion For Judgment
21 On The Pleadings Pursuant To NRCP 12(C) ("Motion For Judgment On The
22 Pleadings"). On November 2, 2018, this Court denied the Director Defendants' Motion
23 for Judgment on the Pleadings.

24 11. On December 12, 2018, the Commissioner filed Plaintiff's Motion for
25 Extension of Discovery Deadlines and to Continue Trial on Order Shortening Time
26 (Fourth Request), which this Court granted in part and denied in part, extending
27 discovery for sixty (60) days and ordering a firm trial setting.
28

12. In and around July, 2018, Director Defendant Barbara Lumpkin passed away.

13. On November 8, 2018, the deposition of the NRCP 30(b)(6) witness for the Commissioner of Insurance for the State of Nevada took place, in which he frequently responded that the complaint spoke for itself and that he would be relying upon experts in response to the Defendants questioning. Mr. Greer also testified regarding the unavailability of certain Division of Insurance former employees. At no time, did he state that the Director Defendants violated the law.

14. On March 8, 2019, the Director Defendants filed a Motion to Stay Proceedings Pending Petition for Writ of Mandamus on an Order Shortening Time. The Commissioner filed a Limited Joinder to Directors' Motion to Stay Proceedings Pending Petition for Writ of Mandamus.

15. On March 12, 2019, the Director Defendants filed their Notice of Filing of Petition for Writ of Mandamus with the Nevada Supreme Court. In their Petition for Writ of Mandamus, the Director Defendants challenged this Court's denial of the Director Defendants' Motion for Judgment on the Pleadings.

16. On March 14, 2019, this Court granted the Motion to Stay Proceedings Pending Petition for Writ of Mandamus, and imposed an immediate stay (the "Stay") of all proceedings in this matter.

17. On February 27, 2020, the Nevada Supreme Court issued its Opinion ("NSC Opinion") granting the Director Defendants' Petition for Writ of Mandamus, and instructed this Court to vacate its order denying the Director Defendants' Motion for Judgment on the Pleadings, and to enter a new order granting the Director Defendants' Motion for Judgment on the Pleadings. The NSC Opinion left to this Court's discretion whether to grant the Commissioner leave to file a fourth amended complaint.

18. On May 14, 2020, because the writ petition proceedings before the Nevada Supreme Court were not concluded, the parties entered into a stipulation

1 continuing the hearing on the Plaintiff's Motion for Clarification and extending the Stay
2 until June 18, 2020.

3 19. On May 22, 2020, the Nevada Supreme Court issued its Order Denying
4 Rehearing, thereby affirming the Opinion, and directing this Court to enter an order
5 granting the Director Defendants' Motion for Judgment on the Pleadings, but leaving to
6 this Court's discretion whether to grant the Commissioner leave to file a fourth amended
7 complaint.

8 20. At the time of the June 18, 2020 hearing, the Commissioner requested
9 that the Stay be extended to July 1, 2020; the Defendants objected to the Plaintiff's
10 request, and requested that the Stay be lifted immediately. This Court granted Plaintiff's
11 Motion for Clarification, and ordered that the Stay be lifted as of July 1, 2020.

12 21. On June 24, 2020, the Commissioner filed Plaintiff's Motion for
13 Preferential Trial Setting And For Issuance of A New Discovery Scheduling Order or, In
14 the Alternative, Motion to Stay All Discovery During the Pendency of Motion For Leave
15 to File Fourth Amended Complaint; On Order Shortening Time ("Plaintiff's Motion for
16 Preferential Trial Setting").

17 22. At the time of the July 1, 2020 hearing on Plaintiff's Motion for Preferential
18 Trial Setting, the Commissioner advised the court that it would file a Motion for Leave to
19 Amend on July 2, 2020. The Defendants requested that the Court direct the Receiver to
20 serve its initial expert disclosures on July 2. Over the Defendants' objection, this Court
21 extended the deadline for the Commissioner to serve its initial expert disclosures to the
22 conclusion of the hearing of Plaintiff's anticipated Motion for Leave to File Fourth
23 Amended Complaint¹.

24 23. On July 2, 2020, Plaintiff filed its Motion for Leave to File Fourth Amended
25 Complaint.

26
27
28 ¹ The hearing was scheduled for July 23, 2020.

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2 138, 139 (1973) (emphasis added) (citing *Foman v. Davis*, 371 U.S. 178 (1962)). While
3 leave to amend should be freely given when justice so requires, “[t]his does not,
4 however, mean that a trial judge may not, in a proper case, deny a motion to amend.”
5 *Stephens v. S. Nevada Music Co., Inc.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973).
6 Indeed, “[i]f that were the intent, leave of court would not be required.” *Id.*
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8 5. Where a plaintiff has previously amended her complaint, the discretion to
9 deny further amendment is “particularly broad.” *Cafasso v. Gen. Dynamics C4 Sys.*, 637
10 F.3d 1047, 1058 (9th Cir. 2011).

11 6. In evaluating whether a party timely moved for leave to amend, a court is
12 not confined to solely reviewing whether a motion was filed during the time allotted by a
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15 7. There has been a clarification by the Supreme Court of the *Shoen* case
16 [See *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 640, 137 P.3d 1171, 1184 (2006)],
17 that despite the existence of hardship to the Plaintiff, the Court finds that it would not be
18 fair to the Director Defendants to have to defend a fourth amended complaint two
19 months before the discovery deadline and with a five-year rule looming. Justice does
20 not require granting leave to amend for Plaintiff to file the proposed Fourth Amended
21 Complaint as to the Director Defendants because Plaintiff unduly delayed bringing said
22 complaint and it would be unduly prejudicial for the Director Defendants to defend such
23 theories of liability at this point. Plaintiff did not provide any new evidence to warrant
24 reconsideration. Further, this Court did not err in denying Plaintiff’s Motion for Leave to
25 Amend.

26 If any of these conclusions of law should more properly be identified as a finding
27 of fact, then it shall be deemed a finding of fact.
28

ORDER

IT IS HEREBY ORDERED that Plaintiff's Motion for Reconsideration of Motion for Leave to Amend Regarding Director Defendants is DENIED.

DATED this 9 day of September, 2020.

Dated this 9th day of September, 2020

Nancy L. Allf

NANCY L. ALLF

District Court Judge

39B 7F7 F34A 1E07

Nancy Allf

District Court Judge

NB

Submitted by:
LIPSON NEILSON P.C.

/s/ Angela Nakamura Ochoa

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Angela Ochoa, Esq. (NV Bar No. 10164)

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Marshall & Eric Stickels*

Approved as to Form and Content:

HUTCHISON & STEFFEN

By: Would not Agree to Form or Content

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*Attorneys for Plaintiff Commissioner
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Commissioner of Insurance for
7 the State of Nevada as Receiver
8 of Lewis and Clark, Plaintiff(s)

CASE NO: A-14-711535-C

DEPT. NO. Department 27

9 vs.

10 Robert Chur, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
15 court's electronic eFile system to all recipients registered for e-Service on the above entitled
16 case as listed below:

17 Service Date: 9/9/2020

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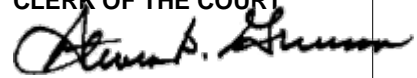
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*Attorneys for Defendants/Third-Party
Plaintiffs Robert Chur, Steve Fogg,
Mark Garber, Carol Harter,
Robert Hurlbut, Barbara Lumpkin,
Jeff Marshall, and Eric Stickels*

DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR
THE STATE OF NEVADA AS RECEIVER
OF LEWIS AND CLARK LTC RISK
RETENTION GROUP, INC.,

Plaintiff,

vs.

ROBERT CHUR, STEVE FOGG, MARK
GARBER, CAROL HARTER, ROBERT
HURLBUT, BARBARA LUMPKIN, JEFF
MARSHALL, ERIC STICKELS, UNI-TER
UNDERWRITING MANAGEMENT
CORP., UNI-TER CLAIMS SERVICES
CORP., and U.S. RE CORPORATION;
DOES 1-50, inclusive; and ROES 51-100,
inclusive,

Defendants.

CASE NO.: A-14-711535-C

DEPT. NO.: 27

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW AND
ORDER DENYING THE MOTION FOR
PARTIAL RECONSIDERATION OF
MOTION FOR LEAVE TO AMEND
REGARDING DIRECTOR DEFENDANTS**

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1 Please take notice that the Findings of Fact, Conclusions of Law and Order
2 Denying the Motion for Partial Reconsideration of Motion for Leave to Amend Regarding
3 Director Defendants was filed with this court on the 9th day of September, 2020, a copy
4 of which is attached hereto, as **Exhibit A**.

5 Dated this 10th day of September, 2020.

6 LIPSON NEILSON P.C.

7 /s/ Angela Ochoa

8 By: _____
9 Joseph P. Garin, Esq. (6653)
10 Angela T. Nakamura Ochoa, Esq. (10164)
11 Jonathan K. Wong, Esq. (13621)
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13 Las Vegas, NV 89144
14 jgarin@lipsonneilson.com
15 aochoa@lipsonneilson.com
16 jwong@lipsonneilson.com

17 *Attorneys for Defendants/Third-Party*
18 *Plaintiffs Robert Chur, Steve Fogg,*
19 *Mark Garber, Carol Harter,*
20 *Robert Hurlbut, Barbara Lumpkin,*
21 *Jeff Marshall, and Eric Stickels*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 10th day of September, 2020, I electronically transmitted the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING THE MOTION FOR PARTIAL RECONSIDERATION OF MOTION FOR LEAVE TO AMEND REGARDING DIRECTOR DEFENDANTS** to the Clerk's Office using the Odyssey E-File & Serve System for filing and transmittal to the following Odyssey E-File & Serve registrants:

**E-Service Master List
For Case**

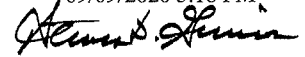
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Nevada Division of Insurance	
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Terri Verbrugghen	verbrug@doi.nv.gov

/s/ Juan Cerezo

An employee of LIPSON NEILSON P.C.

EXHIBIT “A”

EXHIBIT “A”


CLERK OF THE COURT

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Nevada Bar No. 10164
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Attorneys for Defendants
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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR
THE STATE OF NEVADA AS RECEIVER
OF LEWIS AND CLARK LTC RISK
RETENTION GROUP, INC.,

Plaintiff,

vs.

ROBERT CHUR, STEVE FOGG, MARK
GARBER, CAROL HARTER, ROBERT
HURLBUT, BARBARA LUMPKIN, JEFF
MARSHALL, ERIC STICKELS, UNI-TER
UNDERWRITING MANAGEMENT
CORP., UNI-TER CLAIMS SERVICES
CORP., and U.S. RE CORPORATION,
DOES 1-50, inclusive; and ROES 51-100,
inclusive,

Defendants.

CASE NO.: A-14-711535-C

DEPT. NO.: 27

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER DENYING THE
MOTION FOR PARTIAL
RECONSIDERATION OF MOTION FOR
LEAVE TO AMEND REGARDING
DIRECTOR DEFENDANTS**

This matter came before the Court for hearing on August 26, 2020 on Plaintiff's Motion for Partial Reconsideration of Motion for Leave to Amend Regarding Director Defendants ("Motion"). Angela T. Nakamura Ochoa, Esq. appeared on behalf of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut,

1 Barbara Lumpkin, Jeff Marshall and Eric Stickels; Mark A. Hutchison, Esq. and Brenoch
2 R. Wirthlin, Esq. appeared on behalf of Plaintiff Commissioner of Insurance for the State
3 of Nevada ("Plaintiff" or "Commissioner"); and George F. Ogilvie III, Esq., appeared on
4 behalf of Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services
5 Corp., and U.S. RE Corporation; and
6

7 Having considered the record and the briefs submitted in support of and in
8 opposition to the Motion, and having entertained the arguments of counsel, and being
9 fully informed in the premises, the Court makes the following findings of fact,
10 conclusions of law and order:

11 **FINDINGS OF FACT**

12 1. Lewis and Clark LTC Risk Retention Group, Inc. ("L&C") was formed in
13 2003. Between 2004 and February 28, 2013, L&C provided general and professional
14 liability coverage to long term care facilities and home health providers. See Third
15 Amended Complaint ("TAC") at ¶1.

16 2. The Nevada Division of Insurance ("DOI") filed a Receivership Action
17 related to L&C in November, 2012, commencing case number A-12-672047-B
18 ("Receivership Action"). Plaintiff Commissioner of Insurance for the State of Nevada
19 was appointed as the receiver.

20 3. On February 28, 2013, an order of liquidation ("Liquidation Order") was
21 entered in the Receivership Action, appointing the Commissioner as the receiver of
22 L&C. See Liquidation Order.

23 4. On December 23, 2014, the Commissioner instituted this lawsuit against,
24 among other defendants, eight of the former directors of L&C Robert Chur, Steve Fogg,
25 Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric
26 Stickels ("Director Defendants"). In the initial complaint, the Commissioner alleged
27
28

1 claims of gross negligence and deepening of the insolvency against the Director
2 Defendants.

3 5. On December 11, 2015, Director Defendants filed their Motion to Dismiss,
4 challenging the sufficiency of the allegations of gross negligence and asserting that a
5 claim for deepening insolvency required allegations of fraud such that the claims must
6 be pled with specificity.

7 6. On June 13, 2016, the Commissioner filed its Second Amended
8 Complaint, and, subsequently, on August 5, 2016, the Commissioner filed its Third
9 Amended Complaint.

10 7. On April 18, 2016, Director Defendants filed a Motion to Dismiss the First
11 Amended Complaint, asserting that claims against officers and directors needed to be
12 supported by claims of intentional misconduct, fraud or knowing violation of the law.
13 Said Motion was subsequently denied.

14 8. During the period of September 5, 2017 through April 13, 2018, Director
15 Defendants propounded written discovery upon Plaintiff.

16 9. Due to the multiple requests to extend discovery in this action and the
17 then approaching 5-year rule expiration, this Court expressly conditioned its May 16,
18 2018 Order continuing discovery deadlines that it would be the "last stipulation to
19 continue."

20 10. On August 14, 2018, the Director Defendants filed a Motion For Judgment
21 On The Pleadings Pursuant To NRCP 12(C) ("Motion For Judgment On The
22 Pleadings"). On November 2, 2018, this Court denied the Director Defendants' Motion
23 for Judgment on the Pleadings.

24 11. On December 12, 2018, the Commissioner filed Plaintiff's Motion for
25 Extension of Discovery Deadlines and to Continue Trial on Order Shortening Time
26 (Fourth Request), which this Court granted in part and denied in part, extending
27 discovery for sixty (60) days and ordering a firm trial setting.
28

1 12. In and around July, 2018, Director Defendant Barbara Lumpkin passed
2 away.

3 13. On November 8, 2018, the deposition of the NRCP 30(b)(6) witness for
4 the Commissioner of Insurance for the State of Nevada took place, in which he
5 frequently responded that the complaint spoke for itself and that he would be relying
6 upon experts in response to the Defendants questioning. Mr. Greer also testified
7 regarding the unavailability of certain Division of Insurance former employees. At no
8 time, did he state that the Director Defendants violated the law.

9 14. On March 8, 2019, the Director Defendants filed a Motion to Stay
10 Proceedings Pending Petition for Writ of Mandamus on an Order Shortening Time. The
11 Commissioner filed a Limited Joinder to Directors' Motion to Stay Proceedings Pending
12 Petition for Writ of Mandamus.

13 15. On March 12, 2019, the Director Defendants filed their Notice of Filing of
14 Petition for Writ of Mandamus with the Nevada Supreme Court. In their Petition for Writ
15 of Mandamus, the Director Defendants challenged this Court's denial of the Director
16 Defendants' Motion for Judgment on the Pleadings.

17 16. On March 14, 2019, this Court granted the Motion to Stay Proceedings
18 Pending Petition for Writ of Mandamus, and imposed an immediate stay (the "Stay") of
19 all proceedings in this matter.

20 17. On February 27, 2020, the Nevada Supreme Court issued its Opinion
21 ("NSC Opinion") granting the Director Defendants' Petition for Writ of Mandamus, and
22 instructed this Court to vacate its order denying the Director Defendants' Motion for
23 Judgment on the Pleadings, and to enter a new order granting the Director Defendants'
24 Motion for Judgment on the Pleadings. The NSC Opinion left to this Court's discretion
25 whether to grant the Commissioner leave to file a fourth amended complaint.

26 18. On May 14, 2020, because the writ petition proceedings before the
27 Nevada Supreme Court were not concluded, the parties entered into a stipulation
28

1 continuing the hearing on the Plaintiff's Motion for Clarification and extending the Stay
2 until June 18, 2020.

3 19. On May 22, 2020, the Nevada Supreme Court issued its Order Denying
4 Rehearing, thereby affirming the Opinion, and directing this Court to enter an order
5 granting the Director Defendants' Motion for Judgment on the Pleadings, but leaving to
6 this Court's discretion whether to grant the Commissioner leave to file a fourth amended
7 complaint.

8 20. At the time of the June 18, 2020 hearing, the Commissioner requested
9 that the Stay be extended to July 1, 2020; the Defendants objected to the Plaintiff's
10 request, and requested that the Stay be lifted immediately. This Court granted Plaintiff's
11 Motion for Clarification, and ordered that the Stay be lifted as of July 1, 2020.

12 21. On June 24, 2020, the Commissioner filed Plaintiff's Motion for
13 Preferential Trial Setting And For Issuance of A New Discovery Scheduling Order or, In
14 the Alternative, Motion to Stay All Discovery During the Pendency of Motion For Leave
15 to File Fourth Amended Complaint; On Order Shortening Time ("Plaintiff's Motion for
16 Preferential Trial Setting").

17 22. At the time of the July 1, 2020 hearing on Plaintiff's Motion for Preferential
18 Trial Setting, the Commissioner advised the court that it would file a Motion for Leave to
19 Amend on July 2, 2020. The Defendants requested that the Court direct the Receiver to
20 serve its initial expert disclosures on July 2. Over the Defendants' objection, this Court
21 extended the deadline for the Commissioner to serve its initial expert disclosures to the
22 conclusion of the hearing of Plaintiff's anticipated Motion for Leave to File Fourth
23 Amended Complaint¹.

24 23. On July 2, 2020, Plaintiff filed its Motion for Leave to File Fourth Amended
25 Complaint.

26
27
28 ¹ The hearing was scheduled for July 23, 2020.

25. The court subsequently ruled that discovery would close on December 17, 2020.

26. As it relates to the Director Defendants, the Commissioner contends that her proposed Fourth Amended Complaint alleges that the Director Defendants knowingly violated the law. The court makes no findings as to the futility of the proposed Fourth Amended Complaint.

27. With the passage of time, the Director Defendants will be unduly prejudiced in establishing their defenses to Plaintiff's new theory that the Director Defendants knowingly violated the law.

If any of these findings of fact should more properly be identified as a conclusion of law, then it shall be deemed a conclusion of law.

CONCLUSIONS OF LAW

1. “A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous.” *Masonry & Title Contractors Ass’n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

2. "Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." *Moore v. Las Vegas* (1976) 92 Nev. 402,405.

3. Whether to allow amendment to a pleading resides within the sound discretion of the trial court. *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000).

4. In “the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant – [leave to amend] should

1 be freely given." *Stephens v. Southern Nev. Music Co.*, 89 Nev. 104, 105-106, 507 P.2d
2 138, 139 (1973) (emphasis added) (citing *Foman v. Davis*, 371 U.S. 178 (1962)). While
3 leave to amend should be freely given when justice so requires, "[t]his does not,
4 however, mean that a trial judge may not, in a proper case, deny a motion to amend."
5 *Stephens v. S. Nevada Music Co., Inc.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973).
6 Indeed, "[i]f that were the intent, leave of court would not be required." *Id.*
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8 5. Where a plaintiff has previously amended her complaint, the discretion to
9 deny further amendment is "particularly broad." *Cafasso v. Gen. Dynamics C4 Sys.*, 637
10 F.3d 1047, 1058 (9th Cir. 2011).

11 6. In evaluating whether a party timely moved for leave to amend, a court is
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13 scheduling order. *AmerisourceBergen Corp. v. Dialysist West, Inc.*, 465 F.3D 946, 951-
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15 7. There has been a clarification by the Supreme Court of the *Shoen* case
16 [See *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 640, 137 P.3d 1171, 1184 (2006)],
17 that despite the existence of hardship to the Plaintiff, the Court finds that it would not be
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19 months before the discovery deadline and with a five-year rule looming. Justice does
20 not require granting leave to amend for Plaintiff to file the proposed Fourth Amended
21 Complaint as to the Director Defendants because Plaintiff unduly delayed bringing said
22 complaint and it would be unduly prejudicial for the Director Defendants to defend such
23 theories of liability at this point. Plaintiff did not provide any new evidence to warrant
24 reconsideration. Further, this Court did not err in denying Plaintiff's Motion for Leave to
25 Amend.

26 If any of these conclusions of law should more properly be identified as a finding
27 of fact, then it shall be deemed a finding of fact.
28

ORDER

IT IS HEREBY ORDERED that Plaintiff's Motion for Reconsideration of Motion for Leave to Amend Regarding Director Defendants is DENIED.

DATED this 9 day of September, 2020.

Dated this 9th day of September, 2020

Nancy L. Allf

NANCY L. ALLF

District Court Judge

39B 7F7 F34A 1E07

Nancy Allf

District Court Judge

NB

Submitted by:
LIPSON NEILSON P.C.

/s/ Angela Nakamura Ochoa

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Marshall & Eric Stickels*

Approved as to Form and Content:

HUTCHISON & STEFFEN

By: Would not Agree to Form or Content

Brenoch Wirthlin, Esq.

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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
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6 Commissioner of Insurance for
7 the State of Nevada as Receiver
8 of Lewis and Clark, Plaintiff(s)

CASE NO: A-14-711535-C

DEPT. NO. Department 27

9 vs.

10 Robert Chur, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
15 court's electronic eFile system to all recipients registered for e-Service on the above entitled
16 case as listed below:

17 Service Date: 9/9/2020

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR
THE STATE OF NEVADA AS RECEIVER OF
LEWIS AND CLARK LTC RISK
RETENTION GROUP, INC.,

Plaintiff,

vs.

ROBERT CHUR, STEVE FOGG, MARK
GARBER, CAROL HARTER, ROBERT
HURLBUT, BARBARA LUMPKIN, JEFF
MARSHALL, ERIC STICKELS, UNI-TER
UNDERWRITING MANAGEMENT CORP.,
UNI-TER CLAIMS SERVICES CORP., and
U.S. RE CORPORATION,; DOES 1-50,
inclusive; and ROES 51-100, inclusive;

Defendants.

Case No.: A-14-711535-C

Dept. No.: XXVII

JUDGMENT ON JURY VERDICT

Trial: 9/20/2021 – 10/14/2021

This matter having been tried before a jury ("Jury") beginning September 20, 2021 through October 14, 2021; Plaintiff Commissioner of Insurance for the State of Nevada as Receiver for Lewis & Clark LTC Risk Retention Group, Inc. ("Plaintiff") having been represented by Brenoch Wirthlin, Esq., Chris Orme, Esq., and Tanya Fraser, Esq. of the law firm of Hutchison & Steffen, PLLC; Defendants U.S. Re Corporation ("U.S. Re"), Uni-Ter Underwriting Management Corp. ("Uni-Ter UMC") and Uni-Ter Claims Services Corp. ("Uni-Ter CS" and collectively with U.S.

1 Re and Uni-Ter UMC referred to as the “Corporate Defendants”) having been represented by Jon
2 M. Wilson, Esq. of the Law Offices of Jon M. Wilson, George F. Ogilvie III of the law firm of
3 McDonald Carano LLP, and Kimberly Freedman and Erin Kolmansberger of the law firm of
4 Nelson Mullins; the Jury having rendered its verdict which was presented in open Court on October
5 14, 2021 (“Verdict”); the Jury having made the following findings as set forth in the Verdict:

- 6 1. The Jury having found by clear and convincing evidence that Uni-Ter UMC made a
7 negligent misrepresentation(s) to Lewis & Clark LTC Risk Retention Group, Inc. (“Lewis
8 & Clark”) regarding Lewis & Clark’s financial condition, on which Lewis & Clark
9 justifiably relied;
- 10 2. The Jury having found by clear and convincing evidence that Un-Ter UMC’s negligent
11 misrepresentation(s) was a legal cause of damages to Lewis & Clark;
- 12 3. The Jury having found by a preponderance of the evidence that a fiduciary relationship
13 existed between Uni-Ter UMC and Lewis & Clark where Uni-Ter UMC was under a duty
14 to act for or give advice for the benefit of Lewis & Clark upon matters within the scope of
15 their relationship;
- 16 4. The Jury having found by a preponderance of the evidence that Uni-Ter UMC breached its
17 fiduciary duty to Lewis & Clark;
- 18 5. The Jury having found by a preponderance of the evidence that Uni-Ter UMC’s breach of
19 its fiduciary duty to Lewis & Clark was a legal cause of damages to Lewis & Clark;
- 20 6. The Jury having found by a preponderance of the evidence that a fiduciary relationship
21 existed between Uni-Ter CS and Lewis & Clark where Uni-Ter CS was under a duty to act
22 for or to give advice for the benefit of Lewis & Clark upon matters within the scope of their
23 relationship;
- 24 7. The Jury having found by a preponderance of the evidence that Uni-Ter CS breached its
25 fiduciary duty to Lewis & Clark;
- 26 8. The Jury having found by a preponderance of the evidence that Uni-Ter CS’s breach of its
27 fiduciary duty to Lewis & Clark was a legal cause of damages to Lewis & Clark;
- 28 9. The Jury having found by a preponderance of the evidence that a fiduciary relationship

1 existed between U.S. Re and Lewis & Clark where U.S. Re was under a duty to act for or
2 to give advice for the benefit of Lewis & Clark upon matters within the scope of their
3 relationship;

4 10. The Jury having found by a preponderance of the evidence that U.S. Re breached its
5 fiduciary duty to Lewis & Clark;

6 11. The Jury having found by a preponderance of the evidence that U.S. Re's breach of its
7 fiduciary duty to Lewis & Clark was a legal cause of damages to Lewis & Clark;

8 12. The Jury having found that the amount of damages incurred by Lewis & Clark totaled the
9 principal amount of \$15,222,853.00;

10 13. The Jury having determined that the liability for Plaintiff's claims of negligent
11 misrepresentation and breach of fiduciary duty should be allocated with respect to each of
12 the Corporate Defendants as follows:

13 a. Fifty-five percent (55%) to U.S. Re Corporation;

14 b. Twenty-five percent (25%) to Uni-Ter Underwriting Management Corporation;

15 c. Twenty percent (20%) to Uni-Ter Claims Services Corporation.

16 NOW THEREFORE, based upon the findings by the Jury as set forth in its Verdict, and
17 good cause appearing,

18 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that based upon the Jury's
19 Verdict, judgment against defendant U.S. Re Corporation is hereby entered in the principal amount
20 of \$8,372,569.15.

21 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, U.S. Re
22 Corporation having been served with the summons and complaint in this matter on March 12,
23 2015, pre-judgment interest is hereby awarded against U.S. Re Corporation pursuant to NRS §
24 17.130(2) in the additional amount of \$2,109,887.43¹, for a total principal judgment against U.S.
25 Re Corporation in the amount of \$10,482,456.58, which amount does not include post-judgment
26

27 ¹ Calculated at the rate of 5.25% over 1,752 days (March 12, 2015, when U.S. Re Corporation was
28 served with the summons and complaint, through December 23, 2021, less 726 days during periods
of stay) pursuant to NRS § 17.130.

1 interest, attorney fees or costs, which amounts may be awarded by post trial motion.

2 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that based upon
3 the Jury's Verdict, judgment against defendant Uni-Ter Underwriting Management Corporation is
4 hereby entered in the principal amount of \$3,805,713.25.

5 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, Uni-Ter
6 Underwriting Management Corporation having been served with the summons and complaint in
7 this matter on March 11, 2015, pre-judgment interest is hereby awarded against Uni-Ter
8 Underwriting Management Corporation pursuant to NRS § 17.130(2) in the additional amount of
9 \$959,587.14², for a total principal judgment against Uni-Ter Underwriting Management
10 Corporation in the amount of \$4,765,300.39, which amount does not include post-judgment
11 interest, attorney fees or costs, which amounts may be awarded by post trial motion.

12 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that based upon
13 the Jury's Verdict, judgment against defendant Uni-Ter Claims Services Corporation is hereby
14 entered in the principal amount of \$3,044,570.60.

15 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, Uni-Ter
16 Claims Services Corporation having been served with the summons and complaint in this matter
17 on March 11, 2015, pre-judgment interest is hereby awarded against Uni-Ter Claims Services
18 Corporation pursuant to NRS § 17.130(2) in the additional amount of \$767,669.71³, for a total
19 principal judgment against Uni-Ter Underwriting Claims Services Corporation in the amount of
20 \$3,812,240.31, which amount does not include post-judgment interest, attorney fees or costs,
21 which amounts may be awarded by post trial motion.⁴

22 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED, pursuant to NRS
23 _____

24 ² Calculated at the rate of 5.25% over 1,753 days (March 11, 2015, when Uni-Ter Underwriting
25 Management Corporation was served with the summons and complaint, through December 23,
2021, less 726 days during periods of stay) pursuant to NRS § 17.130.

26 ³ Calculated at the rate of 5.25% over 1,753 days (March 11, 2015, when Uni-Ter Claims Services
27 Corporation was served with the summons and complaint, through December 23, 2021, less 726
days during periods of stay) pursuant to NRS § 17.130.

28 ⁴ Pursuant to NRS § 18.120, the following blank is left in this judgment for costs to be included
within the judgment once the same shall be taxed or ascertained: _____.

1 § 18.120, and other applicable law, that all said judgment amounts hereby entered against the
2 Corporate Defendants, and each of them, shall bear post-judgment interest at the Nevada statutory

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interest rate per annum from the date of award until fully satisfied, for all of which let execution and garnishment issue forthwith.⁵

DATED: December 27, 2021.

Dated this 30th day of December, 2021


HON. NANCY L. ALLF TW
DISTRICT COURT JUDGE
449 33C 9DF7 6302
Nancy Allf
District Court Judge

HUTCHISON & STEFFEN, PLLC

By: /s/ Brenoch Wirthlin
MARK A. HUTCHISON, ESQ. (4639)
BRENOCH R. WIRTHLIN, ESQ. (10282)
CHRISTIAN ORME, ESQ. (10175)
TANYA M. FRASER, ESQ. (13872)
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Attorneys for Plaintiff

Approved as to Form:

By: /s/ George Ogilvie
George F. Ogilvie III, Esq.
Nevada Bar No. 3552
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gogilvie@mcdonaldcarano.com

Jon M. Wilson, Esq. (Appearing *Pro Hac Vice*)
200 Biscayne Blvd Way, Suite 5107
Miami, FL 33131
Telephone: (310) 626-2216
jonwilson@jonmwilsonattorney.com

⁵ Plaintiff expressly reserves the right to seek costs against the Corporate Defendants, and each of them, pursuant to NRS § 18.110 or other applicable law, and attorney fees against the Corporate Defendants, and each of them, pursuant to NRCP 68 and NRS § 17.117 or other applicable law.

RE: Lewis & Clark



George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>

To: Brenoch R. Wirthlin; Christian M. Orme; Tanya M. Fraser

Cc: Jon; Jon Wilson; Kimberly Freedman; erin Kolmansberger; Amanda Yen; Jon Linder; No Scrub



Wed 12/22/2021 6:18 PM

 Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.

Brenoch,

I have reviewed the revised judgment and checked your math. It is in compliance with our requested edits and the math is accurate. Therefore, you may affix my electronic signature.

I see what you are saying about NRS 18.120; however, that will lead to two different documents entitled "Judgment" in the record. I think it is cleaner to exclude the footnote and the blank in the Judgment, and then submit an Amended Judgment once the costs and attorney's fees issues are adjudicated, but I am not adamant about it.

George F. Ogilvie III | Partner

McDONALD CARANO

P: 702.873.4100 | E: gogilvie@mcdonaldcarano.com

From: Brenoch R. Wirthlin <bwirthlin@hutchlegal.com>

Sent: Wednesday, December 22, 2021 4:36 PM

To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Christian M. Orme <COrme@hutchlegal.com>; Tanya M. Fraser <tfraser@hutchlegal.com>

Cc: Jon <jonwilson@jonmwilsonattorney.com>; Jon Wilson <jonwilson2013@gmail.com>; Kimberly Freedman <Kimberly.Freedman@nelsonmullins.com>; erin Kolmansberger <erin.kolmansberger@nelsonmullins.com>; Amanda Yen <ayen@mcdonaldcarano.com>; Jon Linder <jlinder@hutchlegal.com>; No Scrub <NoScrub@mcdonaldcarano.com>

Subject: RE: Lewis & Clark

George and Jon, I accepted all the changes you made and revised the amounts based on the calculation of pre-judgment interest through tomorrow, December 23. In addition, my reading of 18.120 says we're supposed to leave a blank for costs so I added a footnote with a blank for costs. A redline and clean copy pdf are attached.

If we can attach your electronic signature and submit to the Court, please let me know. Alternatively, we can submit a joint email to the Court's clerk and see if the judge has a preference one way or the other.

1 **CSERV**

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

5
6 Commissioner of Insurance for
7 the State of Nevada as Receiver
8 of Lewis and Clark, Plaintiff(s)

9 vs.

10 Robert Chur, Defendant(s)

CASE NO: A-14-711535-C

DEPT. NO. Department 27

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Judgment on Jury Verdict was served via the court's electronic eFile
system to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 12/30/2021

16 Adrina Harris .	aharris@fclaw.com
17 Angela T. Nakamura Ochoa .	aochoa@lipsonneilson.com
18 Ashley Scott-Johnson .	ascott-johnson@lipsonneilson.com
19 Brenoch Wirthlin .	bwirthli@fclaw.com
20 CaraMia Gerard .	cgerard@mcdonaldcarano.com
21 George F. Ogilvie III .	gogilvie@mcdonaldcarano.com
22 Jessica Ayala .	jayala@fclaw.com
23 Joanna Grigoriev .	jgrigoriev@ag.nv.gov
24 Jon M. Wilson .	jwilson@broadandcassel.com
25 Kathy Barrett .	kbarrett@mcdonaldcarano.com

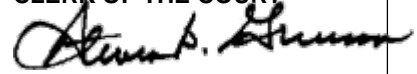
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20	Brenoch Wirthlin	bwirthlin@klnevada.com
21	Jon Linder	jlinder@klnevada.com
22	S. Dianne Pomonis	dpomonis@klnevada.com
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jlinder@hutchlegal.com



1 **NEO**

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4 CHRISTIAN ORME, ESQ. (10175)

5 **HUTCHISON & STEFFEN**

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13 *Attorneys for Plaintiff*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 COMMISSIONER OF INSURANCE FOR
17 THE STATE OF NEVADA AS RECEIVER
18 OF LEWIS AND CLARK LTC RISK
19 RETENTION GROUP, INC.,

20 Plaintiff,

21 vs.

22 ROBERT CHUR, STEVE FOGG, MARK
23 GARBER, CAROL HARTER, ROBERT
24 HURLBUT, BARBARA LUMPKIN, JEFF
25 MARSHALL, ERIC STICKELS, UNI-TER
26 UNDERWRITING MANAGEMENT CORP.,
27 UNI-TER CLAIMS SERVICES CORP., and
28 U.S. RE CORPORATION,; DOES 1-50,
inclusive; and ROES 51-100, inclusive;

Defendants.

Case No.: A-14-711535-C

Dept. No.: XXVII

NOTICE OF ENTRY OF ORDER

Please take notice that a Judgment on Jury Verdict was entered on the 30th day of
December, 2021,

///

///

///

1 a copy of which is attached hereto.

2 DATED this 13th day of January, 2022.

3 HUTCHISON & STEFFEN

4

5 By /s/Brenoch Wirthlin
6 MARK A. HUTCHISON, ESQ. (4639)
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11 *Attorneys for Plaintiff*
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 13th day of January, 2022, I caused the document entitled **NOTICE OF ENTRY OF ORDER** to be served on the following by Electronic Service to:

ALL PARTIES ON THE E-SERVICE LIST

/s/Danielle Kelley
An Employee of Hutchison & Steffen, PLLC

JGJV

MARK A. HUTCHISON, ESQ. (4639)
BRENOCH R. WIRTHLIN, ESQ. (10282)
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR
THE STATE OF NEVADA AS RECEIVER OF
LEWIS AND CLARK LTC RISK
RETENTION GROUP, INC.,

Plaintiff,

vs.

ROBERT CHUR, STEVE FOGG, MARK
GARBER, CAROL HARTER, ROBERT
HURLBUT, BARBARA LUMPKIN, JEFF
MARSHALL, ERIC STICKELS, UNI-TER
UNDERWRITING MANAGEMENT CORP.,
UNI-TER CLAIMS SERVICES CORP., and
U.S. RE CORPORATION,; DOES 1-50,
inclusive; and ROES 51-100, inclusive;

Defendants.

Case No.: A-14-711535-C

Dept. No.: XXVII

JUDGMENT ON JURY VERDICT

Trial: 9/20/2021 – 10/14/2021

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1 Re and Uni-Ter UMC referred to as the “Corporate Defendants”) having been represented by Jon
2 M. Wilson, Esq. of the Law Offices of Jon M. Wilson, George F. Ogilvie III of the law firm of
3 McDonald Carano LLP, and Kimberly Freedman and Erin Kolmansberger of the law firm of
4 Nelson Mullins; the Jury having rendered its verdict which was presented in open Court on October
5 14, 2021 (“Verdict”); the Jury having made the following findings as set forth in the Verdict:

- 6 1. The Jury having found by clear and convincing evidence that Uni-Ter UMC made a
7 negligent misrepresentation(s) to Lewis & Clark LTC Risk Retention Group, Inc. (“Lewis
8 & Clark”) regarding Lewis & Clark’s financial condition, on which Lewis & Clark
9 justifiably relied;
- 10 2. The Jury having found by clear and convincing evidence that Un-Ter UMC’s negligent
11 misrepresentation(s) was a legal cause of damages to Lewis & Clark;
- 12 3. The Jury having found by a preponderance of the evidence that a fiduciary relationship
13 existed between Uni-Ter UMC and Lewis & Clark where Uni-Ter UMC was under a duty
14 to act for or give advice for the benefit of Lewis & Clark upon matters within the scope of
15 their relationship;
- 16 4. The Jury having found by a preponderance of the evidence that Uni-Ter UMC breached its
17 fiduciary duty to Lewis & Clark;
- 18 5. The Jury having found by a preponderance of the evidence that Uni-Ter UMC’s breach of
19 its fiduciary duty to Lewis & Clark was a legal cause of damages to Lewis & Clark;
- 20 6. The Jury having found by a preponderance of the evidence that a fiduciary relationship
21 existed between Uni-Ter CS and Lewis & Clark where Uni-Ter CS was under a duty to act
22 for or to give advice for the benefit of Lewis & Clark upon matters within the scope of their
23 relationship;
- 24 7. The Jury having found by a preponderance of the evidence that Uni-Ter CS breached its
25 fiduciary duty to Lewis & Clark;
- 26 8. The Jury having found by a preponderance of the evidence that Uni-Ter CS’s breach of its
27 fiduciary duty to Lewis & Clark was a legal cause of damages to Lewis & Clark;
- 28 9. The Jury having found by a preponderance of the evidence that a fiduciary relationship

1 existed between U.S. Re and Lewis & Clark where U.S. Re was under a duty to act for or
2 to give advice for the benefit of Lewis & Clark upon matters within the scope of their
3 relationship;

4 10. The Jury having found by a preponderance of the evidence that U.S. Re breached its
5 fiduciary duty to Lewis & Clark;

6 11. The Jury having found by a preponderance of the evidence that U.S. Re's breach of its
7 fiduciary duty to Lewis & Clark was a legal cause of damages to Lewis & Clark;

8 12. The Jury having found that the amount of damages incurred by Lewis & Clark totaled the
9 principal amount of \$15,222,853.00;

10 13. The Jury having determined that the liability for Plaintiff's claims of negligent
11 misrepresentation and breach of fiduciary duty should be allocated with respect to each of
12 the Corporate Defendants as follows:

13 a. Fifty-five percent (55%) to U.S. Re Corporation;

14 b. Twenty-five percent (25%) to Uni-Ter Underwriting Management Corporation;

15 c. Twenty percent (20%) to Uni-Ter Claims Services Corporation.

16 NOW THEREFORE, based upon the findings by the Jury as set forth in its Verdict, and
17 good cause appearing,

18 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that based upon the Jury's
19 Verdict, judgment against defendant U.S. Re Corporation is hereby entered in the principal amount
20 of \$8,372,569.15.

21 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, U.S. Re
22 Corporation having been served with the summons and complaint in this matter on March 12,
23 2015, pre-judgment interest is hereby awarded against U.S. Re Corporation pursuant to NRS §
24 17.130(2) in the additional amount of \$2,109,887.43¹, for a total principal judgment against U.S.
25 Re Corporation in the amount of \$10,482,456.58, which amount does not include post-judgment
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27 ¹ Calculated at the rate of 5.25% over 1,752 days (March 12, 2015, when U.S. Re Corporation was
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1 interest, attorney fees or costs, which amounts may be awarded by post trial motion.

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3 the Jury's Verdict, judgment against defendant Uni-Ter Underwriting Management Corporation is
4 hereby entered in the principal amount of \$3,805,713.25.

5 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, Uni-Ter
6 Underwriting Management Corporation having been served with the summons and complaint in
7 this matter on March 11, 2015, pre-judgment interest is hereby awarded against Uni-Ter
8 Underwriting Management Corporation pursuant to NRS § 17.130(2) in the additional amount of
9 \$959,587.14², for a total principal judgment against Uni-Ter Underwriting Management
10 Corporation in the amount of \$4,765,300.39, which amount does not include post-judgment
11 interest, attorney fees or costs, which amounts may be awarded by post trial motion.

12 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that based upon
13 the Jury's Verdict, judgment against defendant Uni-Ter Claims Services Corporation is hereby
14 entered in the principal amount of \$3,044,570.60.

15 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, Uni-Ter
16 Claims Services Corporation having been served with the summons and complaint in this matter
17 on March 11, 2015, pre-judgment interest is hereby awarded against Uni-Ter Claims Services
18 Corporation pursuant to NRS § 17.130(2) in the additional amount of \$767,669.71³, for a total
19 principal judgment against Uni-Ter Underwriting Claims Services Corporation in the amount of
20 \$3,812,240.31, which amount does not include post-judgment interest, attorney fees or costs,
21 which amounts may be awarded by post trial motion.⁴

22 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED, pursuant to NRS
23 _____

24 ² Calculated at the rate of 5.25% over 1,753 days (March 11, 2015, when Uni-Ter Underwriting
25 Management Corporation was served with the summons and complaint, through December 23,
2021, less 726 days during periods of stay) pursuant to NRS § 17.130.

26 ³ Calculated at the rate of 5.25% over 1,753 days (March 11, 2015, when Uni-Ter Claims Services
27 Corporation was served with the summons and complaint, through December 23, 2021, less 726
days during periods of stay) pursuant to NRS § 17.130.

28 ⁴ Pursuant to NRS § 18.120, the following blank is left in this judgment for costs to be included
within the judgment once the same shall be taxed or ascertained: _____.

1 § 18.120, and other applicable law, that all said judgment amounts hereby entered against the
2 Corporate Defendants, and each of them, shall bear post-judgment interest at the Nevada statutory

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interest rate per annum from the date of award until fully satisfied, for all of which let execution and garnishment issue forthwith.⁵

DATED: December 27, 2021.

Dated this 30th day of December, 2021


HON. NANCY L. ALLF TW
DISTRICT COURT JUDGE
449 33C 9DF7 6302
Nancy Allf
District Court Judge

HUTCHISON & STEFFEN, PLLC

By: /s/ Brenoch Wirthlin
MARK A. HUTCHISON, ESQ. (4639)
BRENOCH R. WIRTHLIN, ESQ. (10282)
CHRISTIAN ORME, ESQ. (10175)
TANYA M. FRASER, ESQ. (13872)
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Attorneys for Plaintiff

Approved as to Form:

By: /s/ George Ogilvie
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Nevada Bar No. 3552
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200 Biscayne Blvd Way, Suite 5107
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jonwilson@jonmwilsonattorney.com

⁵ Plaintiff expressly reserves the right to seek costs against the Corporate Defendants, and each of them, pursuant to NRS § 18.110 or other applicable law, and attorney fees against the Corporate Defendants, and each of them, pursuant to NRCP 68 and NRS § 17.117 or other applicable law.

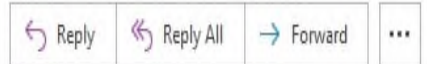
RE: Lewis & Clark



George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>

To: Brenoch R. Wirthlin; Christian M. Orme; Tanya M. Fraser

Cc: Jon; Jon Wilson; Kimberly Freedman; erin Kolmansberger; Amanda Yen; Jon Linder; No Scrub



Wed 12/22/2021 6:18 PM

 Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.

Brenoch,

I have reviewed the revised judgment and checked your math. It is in compliance with our requested edits and the math is accurate. Therefore, you may affix my electronic signature.

I see what you are saying about NRS 18.120; however, that will lead to two different documents entitled "Judgment" in the record. I think it is cleaner to exclude the footnote and the blank in the Judgment, and then submit an Amended Judgment once the costs and attorney's fees issues are adjudicated, but I am not adamant about it.

George F. Ogilvie III | Partner

McDONALD CARANO

P: 702.873.4100 | E: gogilvie@mcdonaldcarano.com

From: Brenoch R. Wirthlin <bwirthlin@hutchlegal.com>

Sent: Wednesday, December 22, 2021 4:36 PM

To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Christian M. Orme <COrme@hutchlegal.com>; Tanya M. Fraser <tfraser@hutchlegal.com>

Cc: Jon <jonwilson@jonmwilsonattorney.com>; Jon Wilson <jonwilson2013@gmail.com>; Kimberly Freedman <Kimberly.Freedman@nelsonmullins.com>; erin Kolmansberger <erin.kolmansberger@nelsonmullins.com>; Amanda Yen <ayen@mcdonaldcarano.com>; Jon Linder <jlinder@hutchlegal.com>; No Scrub <NoScrub@mcdonaldcarano.com>

Subject: RE: Lewis & Clark

George and Jon, I accepted all the changes you made and revised the amounts based on the calculation of pre-judgment interest through tomorrow, December 23. In addition, my reading of 18.120 says we're supposed to leave a blank for costs so I added a footnote with a blank for costs. A redline and clean copy pdf are attached.

If we can attach your electronic signature and submit to the Court, please let me know. Alternatively, we can submit a joint email to the Court's clerk and see if the judge has a preference one way or the other.

1 **CSERV**

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

5
6 Commissioner of Insurance for
7 the State of Nevada as Receiver
8 of Lewis and Clark, Plaintiff(s)

9 vs.

10 Robert Chur, Defendant(s)

CASE NO: A-14-711535-C

DEPT. NO. Department 27

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Judgment on Jury Verdict was served via the court's electronic eFile
system to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 12/30/2021

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25 Kathy Barrett .	kbarrett@mcdonaldcarano.com

26
27
28

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Jon Linder

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