



Electronically Filed
Mar 18 2022 01:44 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Brenoch R. Wirthlin, Esq. (10282)
Hutchison & Steffen
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Telephone: (702) 385.2500
Facsimile: (702) 385.2086
E-Mail: bwirthlin@hutchlegal.com
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

Nevada Supreme Court Case No. 84253

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement: Commissioner of Insurance
for the State of Nevada as Receiver for Lewis & Clark LTC Risk Retention Group, Inc.
("Appellant" or "Commissioner of Insurance").

2. Identify the judge issuing the decision, judgment, or order appealed from:
Honorable Nancy L. Allf, Department XXVII, of Eighth Judicial District Court.

1 **3. Identify each appellant and the name and address of counsel for each**
2 **appellant:** Counsel for Commissioner of Insurance is Brenoch Wirthlin, Esq., Hutchison &
3 Steffen, 10080 W. Alta Dr., Suite 200, Las Vegas, Nevada 89145.

4 **4. Identify each respondent and the name and address of appellate counsel, if**
5 **known, for each respondent (if the name of a respondent's appellate counsel is unknown,**
6 **indicate as much and provide the name and address of that respondent's trial counsel): **

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

10 Counsel: Angela Nakamura Ochoa, Esq.
11 Joseph P. Garin, Esq.
12 Lipson Neilson, P.C.
13 9900 Covington Cross Drive, Suite 120
 Las Vegas, NV 89144

14 **5. Indicate whether any attorney identified above in response to question 3 or 4**
15 **is not licensed to practice law in Nevada and, if so, whether the district court granted that**
16 **attorney permission to appear under SCR 42 (attach a copy of any district court order**
17 **granting such permission):** All counsel for Appellant and Respondents are licensed in the State
18 of Nevada.

19 **6. Indicate whether appellant was represented by appointed or retained counsel**
20 **in the district court:** Retained.

21 **7. Indicate whether appellant is represented by appointed or retained counsel on**
22 **appeal:** Retained.

23 **8. Indicate whether appellant was granted leave to proceed in forma pauperis,**
24 **and the date of entry of the district court order granting such leave:** Leave to file in *forma*
25 *pauperis* was not requested.

26 **9. Indicate the date the proceedings commenced in the district court (e.g., date**
27 **complaint, indictment, information, or petition was filed):** December 23, 2014.
28

1 **10. Provide a brief description of the nature of the action and result in the district**
2 **court, including the type of judgment or order being appealed and the relief granted by the**
3 **district court:**

4 The Commissioner of Insurance relied upon existing Nevada law when drafting her
5 complaint, filed on December 24, 2014, against the former directors of an insolvent Nevada risk
6 retention group. Subsequently, the basis of pleading director liability in Nevada changed with the
7 Court's opinion in *Chur v. Eighth Judicial Dist. Court*, 136 Nev. 68, 458 P.3d 336 (2020), which
8 substantively altered the law regarding director liability in Nevada. Within the time period allowed
9 by the District Court for amending her pleadings, the Commissioner of Insurance moved to amend
10 her complaint against the Director Defendants in order to comply with the change to Nevada law
11 following Court's opinion in *Chur*. The District Court, however, denied Appellant's motion to
12 amend, despite also having relied upon *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 640, 137 P.3d
13 1171, 1184 (2006), in prior rulings.

14 The Commissioner of Insurance seeks relief from the District Court's erroneous rulings
15 related to denying her right to amend her complaint to comply with new Nevada law. Specifically,
16 this appeal seeks relief from the District Court's order dated August 10, 2020, denying leave to
17 file an amended complaint, the District Court's order dated August 1, 2020, granting the Director
18 Defendants' motion for judgment on the pleadings, and the District Court's order dated September
19 9, 2020, denying partial reconsideration of the motion for leave to amend to file a fourth amended
20 complaint.

21 **Indicate whether the case has previously been the subject of an appeal to or original**
22 **writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket**
23 **number of the prior proceeding:**

1 Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara
2 Lumpkin, Jeff Marshall and Eric Stickels vs. The Eighth Judicial District Court of
3 the State of Nevada, in and for the County of Clark and the Honorable Nancy L.
Allf, District Judge, Case No. 78301

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

7 Commissioner of Insurance for the State of Nevada as Receiver of Lewis and
8 Clark LTC Risk Retention Group, Inc. v. Robert Chur, Steve Fogg, Mark Garber,
9 Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels,
Case No. 84253

10 **11. Indicate whether this appeal involves child custody or visitation:** This case
11 does not involve child custody or visitation.

12 **12. If this is a civil case, indicate whether this appeal involves the possibility of**
13 **settlement:** Lewis & Clark is willing to discuss settlement.

14
15 DATED this 10th day of March, 2022.

16 HUTCHISON & STEFFEN, PLLC

17
18 /s/Brenoch Wirthlin
19 Brenoch R. Wirthlin, Esq. (10282)
20 Nevada Bar No. 14285
21 10080 West Alta Drive, Suite 200
22 Las Vegas, Nevada 89145
23 *Attorneys for Plaintiff*
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 10th day of March, 2022, I caused the document entitled **CASE APPEAL STATEMENT** to be served on the following by Electronic Service to:

ALL PARTIES ON THE E-SERVICE LIST

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