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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 Case No : 84253
Electronically Filed
May 06 2022 06:45 p.m.
District Court Case No. A-14-711535-C
Elizabeth A. Brown
Clerk of Supreme Court

RESPONSE TO ORDER TO
SHOW CAUSE

22 **Hutchison & Steffen**

23 Mark A. Hutchison, Esq. (NV Bar No. 4639)

24 Brenoch Wirthlin, Esq. (NV Bar No. 10282)

25 Tanya M. Fraser, Esq. (NV Bar No. 13872)

26 10080 W. Alta Dr., Suite 200

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Attorneys for Appellant

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I. STATEMENT OF FACTS

On October 14, 2021, the matter was submitted to the Jury, which rendered its Verdict in favor of the Commissioner that same day. *See* Verdict Form (Oct. 14, 2021), attached hereto as Exhibit 1. Subsequently, a Judgment on Jury Verdict was entered on December 30, 2021. A copy of the judgment entered on the Jury Verdict

Page 2 of 6

1 (“Judgment”) is attached hereto as Exhibit 2. A Notice of Entry of Order of the
2 Judgment on Jury Verdict was filed on January 13, 2022. Exhibit 3.

3
4 On February 10, 2022, Defendant U.S. Re filed its Motion to Alter or Amend
5 Judgment Pursuant to Rule 59(e), for Relief from Judgment Pursuant to Rule 60(b),
6 and for Stay of Execution Pursuant to 62(b)(3) and (4) (“U.S. Re Rule 59 Motion”).
7 That same day the Commissioner filed her Motion to alter or Amend Judgment
8 Pursuant to NRCP 59 (“Plaintiff’s Rule 59 Motion” and collectively the “Rule 59
9 Motions”). The Rule 59 Motions pertained only to the Judgment, not the Dismissal
10 Order. The Rule 59 Motions remain pending with a hearing set for June 9, 2022. On
11 February 25, 2022, the Commissioner filed her Notice of Appeal, commencing the
12 instant appeal.
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15 16 **II. APPLICABLE LAW**

17 As this Court has noted, “[a]pplying the definition that judgment includes any
18 appealable order, a motion to alter or amend is permitted as to any appealable order,
19 not just final judgments. And, as a result, a motion to alter or amend any appealable
20 order will generally toll the time to appeal from that order.” *Lytle v. Rosemere Ests.*
21 *Prop. Owners*, 129 Nev. 923, 926, 314 P.3d 946, 948 (2013). Thus, there appears to
22 be some open questions regarding the terms “generally” and “from that order” as to
23 whether a Rule 59 motion filed regarding one order (*i.e.* the Judgment) would
24 necessarily toll the time for filing a notice of appeal as to a separate order, *i.e.*, the
25 Dismissal Order. As this Court has recognized, the penalty for miscalculating the
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1 appeal date is severe. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 584,
2 245 P.3d 1190, 1194 (2010) (“On the other hand, a party who waits to file the notice
3 of appeal until a post-judgment motion is decided risks being too late if the motion
4 turns out to be nontolling.”). Further, in certain circumstances, though likely
5 inapplicable here, motions under NRCP 59 have been found to not toll the time for
6 filing an appeal. *See Matter of Est. of Miller*, 111 Nev. 1, 5–6, 888 P.2d 433, 435–36
7 (1995) (“Appellants contend, on the other hand, that in accordance with NRAP
8 4(a)(2), they filed a timely motion to amend pursuant to NRCP 52(b) and NRCP 59.
9 Appellants assert that this motion operated to toll the time for filing the notice of
10 appeal provided in NRS 155.190. We disagree, and we conclude that appellants'
11 motion to amend did not toll the statutory time period established in NRS 155.190,
12 within which appellants were required to file their notice of appeal.”).

13 Out of an abundance of caution to ensure a preservation of her rights with
14 respect to the Dismissal Order (and related orders), Appellant filed her notice of appeal
15

16 ///

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1 prior to the resolution of the Rule 59 Motions.

2 Dated this 6th day of May, 2022.

3
4 By /s/ Brenoch Wirthlin, Esq.

5 Mark A. Hutchison, Esq.

6 Nevada Bar No. 4639

7 Brenoch Wirthlin, Esq.

8 Nevada Bar No. 10282

9 Tanya Fraser, Esq.

10 Nevada Bar No. 13872

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14 *Attorneys for Appellant*

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

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

OCT 14 2021

DISTRICT COURT
CLARK COUNTY, NEVADA

BY: Nicole McDevitt
NICOLE MCDEVITT, DEPUTY

1 VER

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

9 Plaintiff,

10 vs.

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

16 Defendants.
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Case No. A-14-711535-C

Dept. No.: XXVII

VERDICT FORM

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1 Breach of fiduciary duty against Uni-Ter UMC:

2 3. Do you find by a preponderance of the evidence that a fiduciary relationship
3 existed between Uni-Ter UMC and Lewis & Clark where Uni-Ter UMC was under a duty to act
4 for or to give advice for the benefit of Lewis & Clark upon matters within the scope of their
5 relationship?

6 ANSWER: YES X NO _____

7 **If your answer to question 3 directly above is "YES," go to question 4 directly**
8 **below. If your answer to question 3 directly above is "NO," skip to question 6.**

9
10 4. Do you find by a preponderance of the evidence that Uni-Ter UMC breached its
11 fiduciary duty to Lewis & Clark?

12 ANSWER: YES X NO _____

13 **If your answer to question 4 directly above is "YES," go to question 5 directly**
14 **below. If your answer to question 4 directly above is "NO," skip to question 6.**

15
16 5. Do you find by a preponderance of the evidence that Uni-Ter UMC's breach of
17 its fiduciary duty to Lewis & Clark was a legal cause of damages to Lewis & Clark?

18 ANSWER: YES X NO _____

19
20 **Please proceed to question 6.**

Breach of fiduciary duty against Uni-Ter CS:

6. Do you find by a preponderance of the evidence that a fiduciary relationship existed between Uni-Ter CS and Lewis & Clark where Uni-Ter CS was under a duty to act for or to give advice for the benefit of Lewis & Clark upon matters within the scope of their relationship?

ANSWER: YES X NO _____

If your answer to question 6 directly above is "YES," go to question 7 directly below. If your answer to question 6 directly above is "NO," skip to question 9.

7. Do you find by a preponderance of the evidence that Uni-Ter CS breached its fiduciary duty to Lewis & Clark?

ANSWER: YES X NO _____

If your answer to question 7 directly above is "YES," go to question 8 directly below. If your answer to question 7 directly above is "NO," skip to question 9.

8. Do you find by a preponderance of the evidence that Uni-Ter CS's breach of its fiduciary duty to Lewis & Clark was the legal cause of damages to Lewis & Clark?

ANSWER: YES X NO _____

Please proceed to question 9.

1 Breach of fiduciary duty against U.S. Re:

2 9. Do you find by a preponderance of the evidence that a fiduciary relationship
3 existed between U.S. Re and Lewis & Clark where U.S. Re was under a duty to act for or to give
4 advice for the benefit of Lewis & Clark upon matters within the scope of their relationship?

5 ANSWER: YES X NO _____

6 **If your answer to question 9 directly above is "YES," go to question 10 directly**
7 **below. If your answer to question 9 directly above is "NO," skip to question 12.**

8
9
10 10. Do you find by a preponderance of the evidence that U.S. Re breached its
11 fiduciary duty to Lewis & Clark?

12 ANSWER: YES X NO _____

13 **If your answer to question 10 directly above is "YES," go to question 11 directly**
14 **below. If your answer to question 10 directly above is "NO," skip to question 12.**

15
16 11. Do you find by a preponderance of the evidence that U.S. Re's breach of its
17 fiduciary duty to Lewis & Clark was a legal cause of damages to Lewis & Clark?

18 ANSWER: YES X NO _____

19
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21 **If your answer to question 2, 5, 8 or 11 was "YES", please proceed to question 12.**

22
23 **If your answers to questions 2, 5, 8 and 11 were "NO", please sign and date this**
24 **Special Verdict Form and notify the marshal.**

Damages

12. If your answer to question 2, 5, 8 or 11 was yes, what is the total amount of damages you find Lewis & Clark incurred?

\$ 15,222,853

Please proceed to question 13.

Allocation of Liability

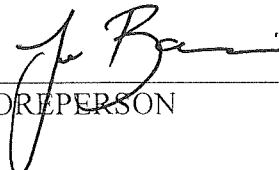
13. Using one hundred percent (100%) as the total combined percentage of liability with respect to Plaintiff's claims for negligent misrepresentation and breach of fiduciary duty, please allocate the percentage of that total liability to each respective Defendant, if any:

a. U.S. RE Corporation, Inc.:	<u>55</u>
b. Uni-Ter Underwriting Management Corporation:	<u>25</u>
c. Uni-Ter Claims Services Corporation	<u>20</u>

Total: 100%

Please sign and date this Special Verdict Form and notify the marshal.

DATED THIS 14 day of October, 2021.



FOREPERSON

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EXHIBIT PAGE ONLY

EXHIBIT 2

JGJV

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BRENOCH R. WIRTHLIN, ESQ. (10282)
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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.: 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
MCDONALD CARANO LLP
2300 West Sahara Avenue, Suite 1200
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Telephone: (702) 873-4100
Facsimile: (702) 873-9966
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.

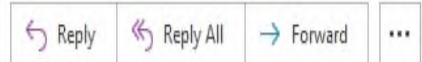
RE: Lewis & Clark



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**

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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)

10
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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Jon Linder

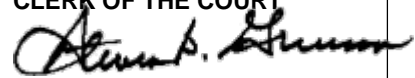
jlinder@hutchlegal.com

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EXHIBIT PAGE ONLY

EXHIBIT 3

HUTCHISON & STEFFEN

A PROFESSIONAL LLC



1 **NEO**

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3 BRENOCH R. WIRTHLIN, ESQ. (10282)

4 CHRISTIAN ORME, ESQ. (10175)

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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)
7 BRENOCH R. WIRTHLIN, ESQ. (10282)
8 CHRISTIAN ORME, ESQ. (10175)
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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)
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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
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Nevada Bar No. 3552
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2300 West Sahara Avenue, Suite 1200
Las Vegas, NV 89102
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Facsimile: (702) 873-9966
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
CLARK COUNTY, NEVADA

4
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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)
10

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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