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Elizabeth A. Brown  
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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](mailto: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 Docket No. 85668

**CASE APPEAL STATEMENT**

**1. Name of appellant filing this case appeal statement:** Commissioner of Insurance  
for the State of Nevada as Receiver for Lewis and 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 the 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.  
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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 of Nevada was appointed receiver of an insolvent Nevada  
5 insurer named Lewis and Clark LTC Risk Retention Group, Inc. (“L&C”), and filed suit against  
6 L&C’s directors, managers, and reinsurance broker, relying upon existing Nevada law when  
7 drafting her complaint, which was filed on December 24, 2014. Subsequently, the basis of  
8 pleading director liability in Nevada changed with the Court’s opinion in *Chur v. Eighth Judicial*  
9 *Dist. Court*, 136 Nev. 68, 458 P.3d 336 (2020), which substantively altered the law regarding  
10 director liability in Nevada. Within the time period allowed by the District Court for amending  
11 her pleadings, the Commissioner of Insurance moved to amend her complaint against the Director  
12 Defendants in order to comply with the change to Nevada law following Court’s opinion in *Chur*.  
13 The District Court, however, denied Appellant’s motion to amend, despite also having relied upon  
14 *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 640, 137 P.3d 1171, 1184 (2006), in its prior rulings.  
15 As a result of the District Court’s refusal to allow Plaintiff to amend her pleadings within the time  
16 period allowed by the District Court, the Director Defendants were dismissed from the action. The  
17 Commissioner of Insurance proceeded in the action against the remaining defendants, Uni-Ter  
18 Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. Re Corporation  
19 (“Corporate Defendants”), and on October 14, 2021 following a three-week trial, was awarded a  
20 unanimous jury verdict in the amount of \$15,222,853.00.

21           The Commissioner of Insurance seeks relief from the District Court’s erroneous rulings  
22 related and/or leading to the dismissal of the Director Defendants from the District Court action,  
23 and appeals the following judgments and orders granted by the District Court: (1) Order Denying  
24 Plaintiff’s Motion for Leave to File Fourth Amended Complaint dated and entered August 10,  
25 2020, which denied Plaintiff leave to file a fourth amended complaint; (2) Findings of Fact,  
26  
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1 Conclusions of Law and Order Denying Plaintiff's Motion for Leave to File Fourth Amended  
2 Complaint dated and entered August 10, 2020, which denied Plaintiff leave to file a fourth  
3 amended complaint; (3) Order to Strike from Record dated August 13, 2020, which struck from  
4 the record a second version of the order inadvertently filed by the Court; (4) Order Granting  
5 Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara  
6 Lumpkin, Jeff Marshall, and Eric Stickels' Motion for Judgment on the Pleadings Pursuant to  
7 NRCP 12(c) and Judgment Thereon dated August 13, 2020 and entered August 14, 2020, granting  
8 judgment to the Director Defendants on the pleadings; (5) Findings of Fact, Conclusions of Law  
9 and Order Denying the Motion for Reconsideration of Motion for Leave to Amend Regarding  
10 Director Defendants dated September 9, 2020 and entered September 10, 2020, denying Plaintiff's  
11 motion for reconsideration of the District Court order denying Plaintiff leave to file a fourth  
12 amended complaint; (6) Order Denying Plaintiff's Motion to Retax and Settle Costs of Director  
13 Defendants dated July 16, 2021 and entered July 29, 2021, denying Plaintiff's motion to retax and  
14 settle costs with respect to the Director Defendants; (7) Order Granting in Part and Denying in Part  
15 Plaintiff's Motion for Declaratory Relief dated and entered August 17, 2021, which denied in part  
16 Plaintiff's motion for declaratory relief to the extent that there was no request for declaratory relief  
17 in the third amended complaint; (8) Discovery Commissioner's Report and Recommendations  
18 dated, filed and served on August 23, 2021, recommending denial of Plaintiff's motion to compel  
19 additional discovery; (9) Order Regarding Discovery Commissioner's Report and  
20 Recommendations dated September 17, 2021 and filed on September 18, 2021, adopting the  
21 recommendation of the discovery commissioner and denying Plaintiff's motion to compel  
22 additional discovery; (10) Order Granting In Part And Denying In Part Plaintiff's Motion In Limine  
23 No. 2 dated September 20, 2021, which denied in part testimony regarding unperformed solvency  
24 analysis; (11) Order Granting In Part And Denying In Part Plaintiff's Motion For Partial Summary  
25 Judgment As To U.S. Re Corporation dated September 20, 2021, which denied the motion to the

1 extent that it is a question for the trier of fact to determine the effect of U.S. Re Corporation's  
2 failure to obtain a Nevada license to broker reinsurance; (12) Order Denying Plaintiff's Motion In  
3 Limine Number 5 To Limit The Scope Of Expert Witness Testimony Regarding Speculation  
4 Concerning The Economy dated September 24, 2021, which allowed speculative testimony by  
5 expert witnesses regarding the economy at trial; (13) Order Denying Plaintiff's Motion In Limine  
6 Number 4: To Preclude Any Reference To Reinsurance Estimates dated September 24, 2021,  
7 which allowed testimony at trial regarding reinsurance estimates; (14) Order Denying Plaintiff's  
8 Motion In Limine Number 1 To Preclude Sam Hewitt From Providing Expert Testimony  
9 Regarding Insolvency Analysis dated September 24, 2021, which allowed expert witness  
10 testimony by Sam Hewitt regarding insolvency analysis at trial; (15) Order Denying Plaintiff's  
11 Motion In Limine Number 6 To Strike Proffered Expert Witness Alan Gray dated September 24,  
12 2021, which allowed expert witness testimony by Alan Gray at trial; (16) Order Denying Plaintiff  
13 s Motion For Partial Summary Judgment Regarding Uni-Ter Defendants Breach Of Their  
14 Fiduciary Duties dated September 27, 2021, which denied summary judgment to Plaintiff  
15 regarding breach of fiduciary duties by Uni-Ter Underwriting Management Corp. and Uni-Ter  
16 Claims Services Corp.; (17) Order Granting Motion to Exclude Interest dated December 15, 2021,  
17 which denied interest to accrue to Plaintiff during periods of stay; (18) Order of Dismissal Without  
18 Prejudice in favor of Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut,  
19 Barbara Lumpkin, Jeff Marshall, and Eric Stickels dated February 25, 2016 and docketed March  
20 3, 2016, granting the Director Defendants' motion for dismissal; (19) Order of Dismissal dated  
21 May 4, 2016, and docketed May 12, 2016, granting the Director Defendants' motion for dismissal;  
22 (20) Judgment in favor of Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut,  
23 Barbara Lumpkin, Jeff Marshall, and Eric Stickels dated August 13, 2020 and docketed August  
24 14, 2020, granting the Director Defendants judgment on the pleadings; (21) Order Denying  
25 Plaintiff's Motion to Lift Stay or Alternatively Grant Plaintiff Other Relief dated and entered  
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1 August 12, 2019, denying Plaintiff's motion to lift stay or grant other relief; (22) Order Denying  
2 Motion to Substitute dated February 21, 2019 and entered February 26, 2019, denying Plaintiff's  
3 motion to substitute the proper party in place of deceased Defendant Barbara Lumpkin; (23) Order  
4 Granting in Part Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut,  
5 Barbara Lumpkin, Jeff Marshall, and Eric Stickels Motion to Strike dated November 6, 2018,  
6 granting in part the Director Defendants' motion to strike Plaintiff's countermotion for summary  
7 judgment; and (24) Order Granting in Part Defendants Robert Chur, Steve Fogg, Mark Garber,  
8 Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels Motion to Dismiss  
9 dated February 25, 2016 and entered February 26, 2016, granting in part the Director Defendants'  
10 motion to dismiss.  
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12 **11. Indicate whether the case has previously been the subject of an appeal to or**  
13 **original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court**  
14 **docket number of the prior proceeding:**  
15

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

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

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

25 Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara  
26 Lumpkin, Jeff Marshall and Eric Stickels vs. Commissioner of Insurance for the State of  
27 Nevada as Receiver of Lewis and Clark LTC Risk Retention Group, Inc.,  
28 Case No. 84311



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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that on this 25th day of November, 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