

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

v.

ROBERT CHUR; STEVE FOGG; MARK
GARBER; CAROL HARTER; ROBERT
HURLBUT; BARBARA LUMPKIN; JEFF
MARSHALL; and ERIC STICKELS

Respondents.

Supreme Court Case No. 85668
District Court Case No. A711535

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**RESPONSE TO THE
DOCKETING STATEMENT**

RESPONSE TO THE DOCKETING STATEMENT

Pursuant to Nevada Rule of Appellate Procedure 14(a)(1), Respondents file this Response to Appellant's Docketing Statement. Respondents do not intend to waive their right to assert jurisdictional defects or to seek a motion to dismiss.

Appellant has appealed a series of interlocutory orders from the District Court and did not appeal the final judgment, which vests jurisdiction upon this Court. *See* Docket, Paragraph 16. Paragraph 24 of Appellant's Docketing Statement is incorrect.

Appellant did not include Defendants Uniter/US Re as parties to this appeal, even though eleven of the interlocutory orders Appellant challenges were entered while Uniter/US Re were the lone remaining defendants in the case. *See* Case Appeal and Docketing Statement, Paragraphs 16 and 3.

Respondent believes the recusal of Patricia Lee is appropriate. In November 2022, this Court announced that Ms. Lee was chosen to be a justice of the Supreme Court. Ms. Lee is a partner of Hutchison & Steffen, PLLC, who represents the Appellant, and Ms. Lee appeared in this case before the District Court.

Respondents' cross-appeal (Supreme Court Case No. 85728) concerns the Notice of Entry of Order Denying Directors' Motion for Attorneys' Fees filed and served on July 26, 2021 and the Notice of Entry of Order Denying Plaintiff's Motion to Retax and Settle Costs of Director Defendants filed and electronically served on July 29, 2021. The cross-appeal was perfected when Respondents filed their Notice of Appeal on November 21, 2022, less than 14 days after Appellant's Notice of Appeal dated November 9, 2022. NRAP 4(a)(2).

Defendants Uniter/US Re are not parties to the cross-appeal because the Respondents' Motion sought an award of fees against Appellant. Uniter/US Re did not file briefs or argue at the hearing on these matters.

The Issue on Cross-Appeal is: Whether the District Court erred in denying Defendants' Motions for Attorneys' Fees and Costs, and the related order, denying Plaintiff's Motion to Retax Costs when it held that NRS 696B.565 precludes Defendants from recovering their reasonable fees and costs despite an unbeaten offer of judgment.

Insofar as a constitutional challenge is made to NRS 696B.565, the State is a party to this cross-appeal as Appellant asserted that it was an officer or employee of the State pursuant to NRS 696B.565.

Dated this 20th day of December, 2022.

LIPSON NEILSON P.C.

By: /s/ Angela Ochoa
ANGELA N. OCHOA, ESQ. (Bar No. 10164)
9900 Covington Cross Dr., Suite 120
Las Vegas, NV 89144

Counsel of record for Respondents

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of LIPSON NEILSON P.C. and on the 20th day of December, 2022, a true and correct copy of the foregoing **RESPONSE TO THE DOCKETING STATEMENT** IN CASE NO. 85668 was filed and served electronically with the Clerk of the Nevada Supreme Court in accordance with the master service list as follows:

Brenoch R. Wirthlin, Esq.
Hutchison & Steffen, PLLC
10080 W. Alta Drive, Ste. 200
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Attorneys for Appellant
Commissioner of Insurance for the State of Nevada as
Receiver of Lewis & Clark LTC Risk Retention Group, Inc.

And by United States First Class Mail, in a properly addressed envelope with adequate postage affixed thereon, addressed as follows:

Lansford W. Levitt
32072 Sea Island Drive
Dana Point, CA 92629

Settlement Judge

/s/ Juan Cerezo
An employee of Lipson Neilson P.C.