

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Electronically Filed

RESPONDENTS' MOTION TO DISMISS APPELLANT'S APPEAL

CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL AND ERIC STICKELS' MOTION TO DISMISS APPELLANT'S APPEAL

By: Geth A. Brown, Clerk of Supreme Court

May 10, 2023 10:33 AM

Supreme Court

Case No. 85668

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RESPONDENTS' MOTION TO DISMISS APPELLANT'S APPEAL

Respondents Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels, hereby respectfully submit their Motion to Dismiss Appellant Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, LTC Risk Retention Group, Inc.'s Appeal for lack of jurisdiction pursuant to NRAP 14(f).

I. INTRODUCTION

The Nevada Supreme Court has jurisdiction to entertain an appeal "... only where an appeal is authorized by statute or court rule." *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 444, 874 P.2d 729, 732 (1994). If no statute or court rule authorizes an appeal, no right to appeal exists. *Taylor Constr. Co. v. Hilton Hotels*

Corp., 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984); *Kokkos v. Tsalikis*, 91 Nev. 24, 25, 530 P.2d 756, 756–57 (1975). Appellant did not to appeal the final judgment entered in the underlying case, therefore Appellant has no right to appeal a series of interlocutory orders that preceded the final judgment. Because the time to appeal the final judgment has expired, the Court must dismiss this appeal.

II. CASE BACKGROUND

Lewis and Clark, LTC Risk Retention Group, Inc. (“L&C”) is a defunct risk retention group that provided insurance to skilled nursing facilities and nurses until 2012, when L&C’s directors turned the company over to the Commissioner of Insurance. In 2014, the Plaintiff/Appellant Commissioner of Insurance for the State of Nevada as Receiver of L&C filed suit against the former L&C directors, Respondent/Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels (collectively “Directors”) and L&C’s management companies Defendant Uni-ter Underwriting Management Corp., and Uni-ter Claims Services Corp. and reinsurance broker Defendant U.S. Re Corporation (collectively “Uniter/US Re”), accusing all the defendants of generally causing L&C’s demise.

On February 27, 2020, this Court issued its Writ of Mandamus, granting the Directors’ Writ Petition regarding the interpretation of NRS 78.138. This Court agreed with the Directors that Appellant’s third amended complaint failed to state a

claim for which relief could be granted, leaving it to the District Court's discretion as to whether Appellant would be allowed to file a fourth amended complaint. *Chur v. Eighth Jud. Dist. Ct.*, 458 P.3d 336 (2020).

In August 2020, the District Court entered its Order denying Appellant's Motion for Leave to Amend to file a fourth amended complaint. The District Court also denied the Directors' motion for attorney's fees pursuant to an unaccepted Offer of Judgment, finding the Appellant enjoyed immunity.

In October 2021, with the directors no longer in the case, Appellant proceeded to trial against Uniter/US Re. Appellant obtained a full jury verdict against Uniter/US Re for approximately \$15 million in alleged damages. The verdict was reduced to a final judgment in December 2021. Notice of Entry of Order on the Judgment on Jury Verdict, attached hereto as Exhibit A. Thereafter, the parties filed post-judgment motions that tolled the time to appeal.

On October 18, 2022, the District Court issued its Order Granting Plaintiff's Motion to Alter or Amend Judgment Pursuant to NRCP 59, which was the last motion to toll the deadline to appeal the final judgment. Appellant served the Notice of Entry of Order on October 19, 2022, commencing the 30-day deadline to appeal the final judgment. Notice of Entry of Order Granting the Motion to Alter or Amend, attached hereto as Exhibit B. That deadline expired on November 18, 2022.

III. PROCEDURAL BACKGROUND OF APPEAL

On November 9, 2022, Appellant filed its Notice of Appeal with the District Court. Notice of Appeal, attached hereto as Exhibit C. The Notice did not identify the final judgment, which provides this court jurisdiction. Instead, the Notice specifically identified 17 interlocutory orders as the subject of the appeal.

On November 18, 2022, Appellant filed its Amended Notice of Appeal in the District Court. Amended Notice of Appeal, attached hereto as Exhibit D. Once again, the Notice did not identify the final judgment. Nor did the Notice identify the Order granting the last tolling motion on the final judgment in October 2022. Instead, the Notice clearly identified 24 interlocutory orders as the subject of the appeal (an increase of 7 from the original Notice).

On May 10, 2023, this Court filed its Order to Show Cause as to why certain of the appealed interlocutory orders should not be dismissed. While the Order to Show Cause asks Appellant to show whether it was aggrieved by certain interlocutory orders, the Respondents submit that the entire appeal should be dismissed. Because Appellant did not appeal the final judgment, the Court has no jurisdiction to review any of the interlocutory orders Appellant has challenged.

IV. ARGUMENT

A. This Court has Limited Jurisdiction to Review Interlocutory Orders

This Court's appellate jurisdiction is limited, as it can only consider appeals

authorized by statute or court rule. *Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345301 P.3d 850, 851 (2013)

NRAP 3A(b) sets forth the orders and judgments where there is a direct right to appeal in a civil case. They are as follows:

- (1) A final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered.
- (2) An order granting or denying a motion for a new trial.
- (3) An order granting or refusing to grant an injunction or dissolving or refusing to dissolve an injunction.
- (4) An order appointing or refusing to appoint a receiver or vacating or refusing to vacate an order appointing a receiver.
- (5) An order dissolving or refusing to dissolve an attachment.

Nevada does not allow for direct appeals on interlocutory orders. *Lee v. GNLV Corp.*, 116 Nev. 424 (2000). Rather, it follows The Final Judgment or Single Appeal Rule. *Id.* The Final Judgment Rule requires that a party raise all claims of error in a single appeal following final judgment on the merits. *Orr v. Plumb*, 884 F.3d 923 (9th Cir. 2018). The purpose of the Final Judgment rule is to prevent piecemeal disposition on appeal. *Cobbledick v. U.S.*, 309 U.S. 323 (U.S. 1940).

B. Appellant did not Appeal the Final Judgment

Except for an automatic appeal under NRS 177.055, an appeal is only perfected when an appellant timely files its notice of appeal. NRAP 3. The Notice of Appeal must specify the party or parties taking the appeal; the judgment, order or part thereof being appealed, and the court to which the appeal is taken. NRAP 3(c)(1).

On November 9, 2022, Appellant filed a Notice of Appeal, identifying 17 different interlocutory orders, but not the final judgment or the Order Granting Plaintiff's Motion to Alter or Amend Judgment Pursuant to NRCP 59. On November 18, 2022, Appellant filed its Amended Notice of Appeal, identifying 24 different interlocutory orders, but again, not the final judgment or the Order Granting Plaintiff's Motion to Alter or Amend Judgment Pursuant to NRCP 59.

Moreover, the time to file a notice of appeal identifying the final judgment has passed. The notice of appeal must be filed within 30 days after the written notice of entry of the judgment or order appealed from is served. NRAP 4. The time to appeal is tolled while there is a pending motion under Rule 50(b), Rule 52(b) or Rule 59 to alter or amend the judgment. NRAP 4(a)(4).

In this case, a final judgment was entered in December 2021. The time to appeal was tolled when the parties filed their respective motions for leave to amend the verdict. On October 19, 2022, Appellant served the Notice of Entry of Order Granting Plaintiff's Motion to Alter or Amend Judgment Pursuant to NRCP 59, which was the last tolling motion to be resolved. The deadline to appeal the final judgment was therefore November 18, 2022.

C. Therefore, this Court Has No Jurisdiction to Review the Interlocutory Orders

This Court regularly holds that when appellate review is sought on interlocutory orders entered before a final judgment, dismissal is appropriate when

the final judgment is not appealed. For example, in *Abts v. Arnold-Abts*, this Court dismissed the appeal of an interlocutory order for want of jurisdiction, even though a final judgment was entered, finding that the interlocutory order was only subject to appellate review “in the context of appellant’s appeal from the final judgment.” 466 P.3d 1289, 2020 Nev. Unpub. LEXIS 703, Case No. 81296, 81297 (Unpub. July 16, 2020).

Likewise, in *Brandt v. Smith*, 501 P.3d 992, 2022 WL 178118, Case No. 83667 (Unpub. January 19, 2022), this Court dismissed the appellant’s appeal in its entirety when he filed a notice of appeal on only interlocutory orders. A final judgment was docketed in the case. However, appellant admitted that he was not appealing the judgment.

In this case, Appellant appeals 24 different interlocutory orders but not the resulting final judgment. The time to appeal the final judgment has now passed. Therefore, this Court lacks jurisdiction to review the interlocutory orders.

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CONCLUSION

Based upon the foregoing, Respondents Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels respectfully request that this Court dismiss Appellant's appeal in its entirety.

Dated this 26th day of May, 2023.

LIPSON NEILSON P.C.

By: /s/ Angela Ochoa
JOSEPH P. GARIN, ESQ.
Nevada Bar No. 6653
ANGELA N. OCHOA, ESQ.
Nevada Bar No. 10164
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*Attorneys for Defendants/Respondents
Robert Chur, Steve Fogg, Mark Garber, Carol
Harter, Robert Hurlbut, Barbara Lumpkin, Jeff
Marshall and Eric Stickels*

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of LIPSON NEILSON P.C. and on the 26th day of May, 2023, a true and correct copy of the foregoing **RESPONDENTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL AND ERIC STICKELS' MOTION TO DISMISS APPELLANT'S APPEAL** was filed and served electronically with the Clerk of the Nevada Supreme Court in accordance with the master service list as follows:

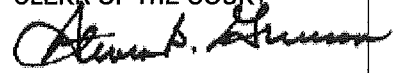
Brenoch R. Wirthlin, Esq.
Hutchison & Steffen, PLLC
10080 W. Alta Drive, Ste. 200
Las Vegas, NV 89145

Attorneys for Appellant
Commissioner of Insurance for the State of Nevada as
Receiver of Lewis & Clark LTC Risk Retention Group, Inc.

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

EXHIBIT “A”

EXHIBIT “A”



1 **NEO**

MARK A. HUTCHISON, ESQ. (4639)

2 **BRENOCH R. WIRTHLIN, ESQ. (10282)**

3 **CHRISTIAN ORME, ESQ. (10175)**

HUTCHISON & STEFFEN

4 10080 West Alta Drive, Suite 200

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5 Telephone: (702) 385.2500

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E-Mail: corne@hutchlegal.com

8 *Attorneys for Plaintiff*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

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.

Case No.: A-14-711535-C

Dept. No.: XXVII

NOTICE OF ENTRY OF ORDER

23
24 Please take notice that a Judgment on Jury Verdict was entered on the 30th day of
25 December, 2021,

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27 ///

28 ///

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)
9 10080 West Alta Drive, Suite 200
10 Las Vegas, Nevada 89145
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

1 **JGJV**

2 MARK A. HUTCHISON, ESQ. (4639)
3 BRENOCH R. WIRTHLIN, ESQ. (10282)
4 CHRISTIAN ORME, ESQ. (10175)
5 TANYA M. FRASER, ESQ. (13872)
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10 Facsimile: (702) 385.2086
11 E-Mail: mhutchison@hutchlegal.com
12 E-Mail: bwirthlin@hutchlegal.com
13 *Attorneys for Plaintiff*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

14 Plaintiff,

15 vs.

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

21 Defendants.
22

Case No.: A-14-711535-C

Dept. No.: XXVII

JUDGMENT ON JURY VERDICT

Trial: 9/20/2021 – 10/14/2021

23 This matter having been tried before a jury ("Jury") beginning September 20, 2021 through
24 October 14, 2021; Plaintiff Commissioner of Insurance for the State of Nevada as Receiver for
25 Lewis & Clark LTC Risk Retention Group, Inc. ("Plaintiff") having been represented by Brenoch
26 Wirthlin, Esq., Chris Orme, Esq., and Tanya Fraser, Esq. of the law firm of Hutchison & Steffen,
27 PLLC; Defendants U.S. Re Corporation ("U.S. Re"), Uni-Ter Underwriting Management Corp.
28 ("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
Las Vegas, NV 89102
Telephone: (702) 873-4100
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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
jonmwilson@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.

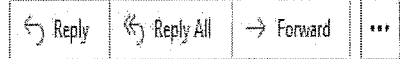
RE: Lewis & Clark



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 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

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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**

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
15 system to all recipients registered for e-Service on the above entitled case as listed below:

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

26
27
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1	Marilyn Millam .	mmillam@ag.nv.gov
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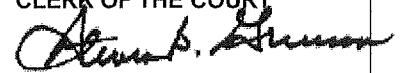
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EXHIBIT “B”

EXHIBIT “B”



1 **NEO**

2 MARK A. HUTCHISON, ESQ. (4639)

3 BRENOCH R. WIRTHLIN, ESQ. (10282)

4 TANYA M FRASER, ESQ. (13872)

5 **HUTCHISON & STEFFEN**

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11 E-Mail: bwirthlin@hutchlegal.com

12 E-Mail: tfraser@hutchlegal.com

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 an Order Granting Plaintiff's Motion to Alter or Amend Judgment Pursuant to NRCP 59 was entered on the 18th day of October, 2022,

///

///

///

1 a copy of which is attached hereto.

2 DATED this 19th day of October, 2022.

3 HUTCHISON & STEFFEN

4

5 By /s/Brenoch Wirthlin
6 MARK A. HUTCHISON, ESQ. (4639)
7 BRENOCH R. WIRTHLIN, ESQ. (10282)
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11 *Attorneys for Plaintiff*

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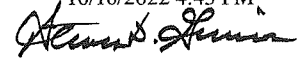
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 19th day of October, 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


CLERK OF THE COURT

OGM

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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

**ORDER GRANTING PLAINTIFF'S
MOTION TO ALTER OR AMEND
JUDGMENT PURSUANT TO NRCP 59**

This matter came before the Court for hearing ("Hearing") on September 7, 2022 on Plaintiff's Motion to Alter or Amend Judgment Pursuant to NRCP 59 ("Motion"). Brenoch R. Wirthlin, Esq. appeared on behalf of Plaintiff Commissioner of Insurance for the State of Nevada ("Plaintiff"); George F. Ogilvie III, Esq. appeared on behalf of Defendant U.S. Re Corporation ("US Re").¹ No opposition to the Motion was filed. Mr. Ogilvie opposed the Motion at the

¹ Mr. Ogilvie and his firm, McDonald Carano, LLP, have withdrawn from representing Uni-Ter Underwriting
Page 1 of 3

1 Hearing on behalf of U.S. Re. The Court having read and considered the Motion, as well as
2 having heard and considered the arguments of counsel at the Hearing on the Motion, and good
3 cause appearing, the Court hereby finds that Plaintiff is entitled to the relief requested in the
4 Motion and good cause appearing therefor,

5 IT IS HEREBY ORDERED that Plaintiff's Motion to Alter or Amend Judgment Pursuant
6 to NRCP 59 is hereby GRANTED in its entirety.

7 IT IS HEREBY FURTHER ORDERED that the Court finds that joint tortfeasors are jointly
8 and severally liable for breaches of fiduciary duty. *See e.g., F.D.I.C. v. Anders*, No. CIV. S-87-
9 430EJG/PAN, 1991 WL 442874, at *6 (E.D. Cal. July 2, 1991); *Constr. Laborers Tr. Funds for*
10 *S. California Admin. Co. v. Victory Engineers, Inc.*, No. CV 10-2134 CBM (EX), 2010 WL
11 11598019, at *5 (C.D. Cal. Oct. 14, 2010); *Doe v. Harbor Schools, Inc.*, 446 Mass. 245, 254, 843
12 N.E.2d 1058 (2006); *Donnelly v. Larkin*, 327 Mass. 287, 296, 98 N.E.2d 280 (1951) ("it is a
13 familiar rule of law, that in cases in tort, where two or more are liable to an action, they are
14 liable jointly and severally....").

15
16 IT IS HEREBY FURTHER ORDERED that the judgment in this matter ("Judgment") shall
17 be and is hereby amended to reflect joint and several liability among all Corporate Defendants
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25 _____
26 Management Corp., Uni-Ter Claims Services Corp. ("Uni-Ter Defendants" and collectively with US Re referred to
27 as the "Corporate Defendants"). The Uni-Ter Defendants did not file an opposition to the Motion or appear at the
28 Hearing. Defendant US Re also filed Motion to Alter or Amend Judgment Pursuant to Rule 59(e), for Relief from
Judgment and Pursuant to Rule 60(b), and for Stay of Execution Pursuant to 62(b)(3) and (4) ("US Re's Motion to
Amend"). At the Hearing US Re withdrew its Motion to Amend. Thus this order also resolves US Re's Motion to
Amend and the Court hereby acknowledges US Re's Motion to Amend is withdrawn.

for all damages and amounts awarded in the Judgment.

Dated this 18th day of October, 2022

Nancy L Alif

MA

CB9 7BD 0EDD 77EF
Nancy Alif
District Court Judge

Respectfully submitted by:

Approved as to form and content:

Dated this 18th day of October, 2022.

Dated this ____ day of October, 2022.

HUTCHISON & STEFFEN

MCDONALD CARANO LLP

/s/Brenoch Wirthlin

Did not sign

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Marina Del Rey, CA 90292
Attorneys for U.S. Re

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
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 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
14 recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 10/18/2022

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18	Brenoch Wirthlin	bwirthlin@klnevada.com
19	Jon Linder	jlinder@klnevada.com
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EXHIBIT “C”

EXHIBIT “C”



1 NOAS
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12 Attorneys for Plaintiff

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

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

Case No.: A-14-711535-C

Dept. No.: XXVII

13 Plaintiff,

NOTICE OF APPEAL

14 vs.

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

21 Defendants.

22 Notice is hereby given that Plaintiff, Commissioner of Insurance for the State of Nevada as
23 Receiver of Lewis and Clark LTC Risk Retention Group, Inc. ("Plaintiff"), by and through her
24 counsel of record, the law firm of Hutchison & Steffen, PLLC, hereby appeals to the Supreme Court
25 of Nevada from the following: (1) Order Denying Plaintiff's Motion for Leave to File Fourth
26 Amended Complaint dated and entered August 10, 2020; (2) Findings of Fact, Conclusions of Law
27 and Order Denying Plaintiff's Motion for Leave to File Fourth Amended Complaint dated and
28 entered August 10, 2020; (3) Order to Strike from Record dated August 13, 2020; (4) Order Granting

1 Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin,
2 Jeff Marshall, and Eric Stickels' Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) and
3 Judgment Thereon dated August 13, 2020 and entered August 14, 2020; (5) Findings of Fact,
4 Conclusions of Law and Order Denying the Motion for Reconsideration of Motion for Leave to
5 Amend Regarding Director Defendants dated September 9, 2020 and entered September 10, 2020;
6 (6) Order Denying Plaintiff's Motion to Retax and Settle Costs of Director Defendants dated July
7 16, 2021 and entered July 29, 2021; (7) Order Granting in Part and Denying in Part Plaintiff's Motion
8 for Declaratory Relief dated and entered August 17, 2021; (8) Discovery Commissioner's Report
9 and Recommendations dated August 23, 2021; (9) Order Regarding Discovery Commissioner's
10 Report and Recommendations dated September 17, 2021 and filed on September 18, 2021; (10)
11 Order Granting In Part And Denying In Part Plaintiff s Motion In Limine No. 2 dated September 20,
12 2021; (11) Order Granting In Part And Denying In Part Plaintiff s Motion For Partial Summary
13 Judgment As To U.S. Re Corporation dated September 20, 2021; (12) Order Denying Plaintiff s
14 Motion In Limine Number 5 To Limit The Scope Of Expert Witness Testimony Regarding
15 Speculation Concerning The Economy dated September 24, 2021; (13) Order Denying Plaintiff's
16 Motion In Limine Number 4: To Preclude Any Reference To Reinsurance Estimates dated
17 September 24, 2021; (14) Order Denying Plaintiff s Motion In Limine Number 1 To Preclude Sam
18 Hewitt From Providing Expert Testimony Regarding Insolvency Analysis dated September 24,
19 2021; (15) Order Denying Plaintiff's Motion In Limine Number 6 To Strike Proffered Expert
20 Witness Alan Gray dated September 24, 2021; (16) Order Denying Plaintiff s Motion For Partial
21 Summary Judgment Regarding Uni-Ter Defendants Breach Of Their Fiduciary Duties dated

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1 September 27, 2021; and (17) Order Granting Motion to Exclude Interest dated December 15, 2021;
2 and all related orders and judgments entered herein.

3 Dated this 9th day of November, 2022.

4 By: /s/ Brenoch Wirthlin
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6 BRENOCH WIRTHLIN, ESQ. (10282)
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13 *Attorneys for Plaintiff*
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 9th day of November, 2022, I caused the document entitled **NOTICE OF APPEAL** 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

EXHIBIT “D”

EXHIBIT “D”



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11 E-Mail: bwirthlin@hutchlegal.com
12 Attorneys for Plaintiff

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

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

Case No.: A-14-711535-C

Dept. No.: XXVII

13 Plaintiff,

AMENDED NOTICE OF APPEAL

14 vs.

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

21 Defendants.

22 Notice is hereby given that Plaintiff, Commissioner of Insurance for the State of Nevada as
23 Receiver of Lewis and Clark LTC Risk Retention Group, Inc. ("Plaintiff"), by and through her
24 counsel of record, the law firm of Hutchison & Steffen, PLLC, hereby submits her amended notice
25 of appeal, for the appeal to the Supreme Court of Nevada the following: (1) Order Denying Plaintiff's
26 Motion for Leave to File Fourth Amended Complaint dated and entered August 10, 2020; (2)
27 Findings of Fact, Conclusions of Law and Order Denying Plaintiff's Motion for Leave to File Fourth
28 Amended Complaint dated and entered August 10, 2020; (3) Order to Strike from Record dated

1 August 13, 2020; (4) Order Granting Defendants Robert Chur, Steve Fogg, Mark Garber, Carol
2 Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels' Motion for Judgment on
3 the Pleadings Pursuant to NRCP 12(c) and Judgment Thereon dated August 13, 2020 and entered
4 August 14, 2020; (5) Findings of Fact, Conclusions of Law and Order Denying the Motion for
5 Reconsideration of Motion for Leave to Amend Regarding Director Defendants dated September 9,
6 2020 and entered September 10, 2020; (6) Order Denying Plaintiff's Motion to Retax and Settle
7 Costs of Director Defendants dated July 16, 2021 and entered July 29, 2021; (7) Order Granting in
8 Part and Denying in Part Plaintiff's Motion for Declaratory Relief dated and entered August 17,
9 2021; (8) Discovery Commissioner's Report and Recommendations dated August 23, 2021; (9)
10 Order Regarding Discovery Commissioner's Report and Recommendations dated September 17,
11 2021 and filed on September 18, 2021; (10) Order Granting In Part And Denying In Part Plaintiff's
12 Motion In Limine No. 2 dated September 20, 2021; (11) Order Granting In Part And Denying In
13 Part Plaintiff's Motion For Partial Summary Judgment As To U.S. Re Corporation dated September
14 20, 2021; (12) Order Denying Plaintiff's Motion In Limine Number 5 To Limit The Scope Of Expert
15 Witness Testimony Regarding Speculation Concerning The Economy dated September 24, 2021;
16 (13) Order Denying Plaintiff's Motion In Limine Number 4: To Preclude Any Reference To
17 Reinsurance Estimates dated September 24, 2021; (14) Order Denying Plaintiff's Motion In Limine
18 Number 1 To Preclude Sam Hewitt From Providing Expert Testimony Regarding Insolvency
19 Analysis dated September 24, 2021; (15) Order Denying Plaintiff's Motion In Limine Number 6 To
20 Strike Proffered Expert Witness Alan Gray dated September 24, 2021; (16) Order Denying Plaintiff
21's Motion For Partial Summary Judgment Regarding Uni-Ter Defendants Breach Of Their Fiduciary
22 Duties dated September 27, 2021; and (17) Order Granting Motion to Exclude Interest dated
23 December 15, 2021; (18) Order of Dismissal Without Prejudice in favor of Robert Chur, Steve Fogg,
24 Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels dated
25 February 25, 2016 and docketed March 3, 2016; (19) Order of Dismissal dated May 4, 2016, and
26 docketed May 12, 2016; (20) Judgment in favor of Robert Chur, Steve Fogg, Mark Garber, Carol
27 Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels dated August 13, 2020
28 and docketed August 14, 2020; (21) Order Denying Plaintiff's Motion to Lift Stay or Alternatively

1 Grant Plaintiff Other Relief dated and entered August 12, 2019; (22) Order Denying Motion to
2 Substitute dated February 21, 2019 and entered February 26, 2019; (23) Order Granting in Part
3 Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Limpkin,
4 Jeff Marshall, and Eric Stickels Motion to Strike dated November 6, 2018; (24) Order Granting in
5 Part Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara
6 Limpkin, Jeff Marshall, and Eric Stickels Motion to Dismiss dated February 25, 2016 and entered
7 February 26, 2016; and all related orders and judgments entered herein.

8 Dated this 18th day of November, 2022.

9 By: /s/ Brenoch Wirthlin
10 MARK A. HUTCHISON, ESQ. (4639)
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 18th day of November, 2022, I caused the document entitled **AMENDED NOTICE OF APPEAL** 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