

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.

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

Appellants,

vs.

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

Respondents.

Electronically Filed  
Jul 07 2023 02:29 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

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

**RESPONDENTS ROBERT  
CHUR, STEVE FOGG,  
MARK GARBER, CAROL  
HARTER, ROBERT  
HURLBUT, BARBARA  
LUMPKIN, JEFF  
MARSHALL AND ERIC  
STICKELS' REPLY IN  
SUPPORT OF THE MOTION  
TO DISMISS APPEAL**

Supreme Court No. 85728

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; UNI-TER  
UNDERWRITING MANAGEMENT  
CORP.; UNI-TER CLAIMS SERVICES  
CORP.; AND U.S. RE CORPORATION

Respondents.

Supreme Court No. 85907

Appellant asks this Court to broadly read her Notice of Appeal, and look to her intent to find that she timely appealed the Final Judgment. However, this Court cannot read into something, that which does not exist. Additionally, through her (1) Notice of Appeal, (2) Case Appeal Statement, (3) Transcript Request, (4) Docketing Statement and (5) subsequent actions, Appellant has made clear that she does not appeal the Final Judgment. Insofar as Appellant now claims that she appealed the final judgment, this Court has authority to dismiss the case pursuant to NRAP 3, 14 and 9, for submitting an “incomplete” Case Appeal and Docketing Statement and failing to request all necessary transcripts.

## I. ARGUMENT

### A. This Court Cannot Look Beyond a Notice of Appeal for Intent.

Appellant cites to a number of cases but they merely reflect that even when liberally construing a notice of appeal, the courts must have some identifier of the final judgment to read into intent.

In *Theiss*, the court declined to dismiss an appeal when the appellant stated in her notice of appeal that she was “appealing from judgment rendered as of [the] date when [the] trial judge wrote his decision.” *Thiess v. Rapaport*, 57 Nev. 434, 66 P.2d 1000 (1937). Similarly, in *Collins v. Union Fed. Sav. & Loan Ass’n*, 97 Nev. 88, 89, 624 P.2d 496, 497 (1981), the Court declined to dismiss the case when the appellant stated that he appealed the “order granting respondent’s motion for summary judgment,” but failed to list the correct date.

In the more recent *Abdullah v. State*, this Court dismissed an appeal when the notice of appeal identified solely an order which the docket showed no order had been entered. This Court held that it would not “look beyond the text of the notice of appeal and the notice of entry designated in the notice of appeal to the text of the order referred in the notice of entry.” Because to do otherwise, “goes beyond our prior decisions and would undermine the general rule that an appealable judgment or order that is not designated in the notice cannot be considered on appeal.” 129 Nev. 86, 91, 294 P.3d 419, 425 (2013).

Here, Appellant did not identify the date of the Final Judgment or state in plain terms that she appealed the Final Judgment, for this Court to reasonably infer an intent. At most Appellant stated, “and all related orders and judgment entered herein,” which would require the Court to review the entire docket. If this Court were to accept similar filings, it would render NRAP 3 useless.

B. Other Courts Applying Catch-All Phrases are Inapplicable to the facts here.

Appellant cites to *Luz v. Lopes*, 55 Cal 2d 54, 358 P.2d 289, (Cal. 1960), as authority for this Court to accept a “catch-all” phrase as sufficient identification, but *Luz* is not persuasive or analogous. In California, the rule states that the appellant need only “state the substance that the appellant appeals.” 55 Cal 2d. at 59, 358 P.2d at 292. NRAP 3 requires the appellant to “designate the judgment . . .being appealed.” Additionally, in *Luz*, the appellant correctly identified the last document filed before the appeal and used a specific catch-all language stating, “all orders and rulings . . .which are adverse to them.” 55 Cal 2d. at 59, 358 P.2d at 292.

Similarly, in *Blink v. McNabb*, 287 N.W.2d 596, 598-99 (Iowa 1980), while the court analyzed a catch-all, the case is inapposite because the appellant actually appealed the final judgment, as he stated “McNabb. . .appealed and do hereby appeal from the Final Judgment of the court entered herein . . . on the 20 day of September, 1978; and have appealed and do hereby appeal from all portions of said Decree of Final Judgment. . .” Similar language is clearly missing here.

C. Should this Court Look Beyond the Notice, it is Clear that Appellant Did Not Appeal the Final Judgment because (1) the Notice of Appeal was amended, (2) the Case Appeal and Docketing Statements do not Include the Final Judgment and (3) there was no Request for Transcripts related to the Final Judgment.

Appellant argues that her inclusion of “all related orders and judgment entered herein,” reflects an intent to include the Final Judgment. However, on November 9, 2022, Appellant filed a Notice of Appeal identifying 17 orders to which she appealed. Nine days later, Appellant filed an amendment to add 7 additional interlocutory orders to the list. Had Appellant “intended” to identify the final judgment through “all related orders and judgment entered,” she would have no need to file an amendment.

NRAP 3(f) requires the Appellant to file a case appeal statement including the name of all respondents and their counsel and a brief description of the nature of the action and order appealed. Appellant’s Case Appeal Statement did not include the Final Judgment or identify Uniter/US Re (who took part in the trial) as a respondent. Case Appeal Statement, attached as **Exhibit E**.

NRAP 9 requires the appellant to request all necessary transcripts from the court reporter, such that “[a] party’s failure to comply with the provisions of this Rule may result in the imposition of sanctions, including dismissal of the appeal.” NRAP 9(a)(7). On April 5, 2023, Appellant filed a Request for Transcript of

Proceedings, but did not include any of the trial dates leading to the final judgment. Request for Trial Transcript, attached as **Exhibit F**.

NRAP 14 requires the appellant to file a docketing statement, including in relevant part: description of the attorney(s) representing respondents, the “nature of disposition below (check all that apply),” “Pending and prior proceedings in other courts,” and the nature of the action below. This Court “may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate...” NRAP 14(c). Appellant did not identify Uniter/US Re’s counsel, did not discuss the Final Judgment in the description of the action or state that she was appealing a final judgment. Appellant’s Appendix, 4-7. Additionally, Appellant has not supplemented the docketing statement to reflect that in a related case, she filed suit against Uniter/US Re’s insurance carriers to enforce payment on the Final Judgment. Exhibit D of the Motion to Vacate Order Denying Motions for Reconsideration, attached as **Exhibit G**. Insofar as Appellant claims that she appealed the final judgment, the Docketing Statement and the Transcript Request is deficient and this Court should sanction Appellant with dismissal.

## **II. CONCLUSION**

Appellant seeks liability against Directors for the same harm that a jury found Uniter/US Re to be liable for, but intentionally does not appeal that Final Judgment. Appellant attempts to keep the Final Judgment untouched in order to sue Uniter/US

Re's insurer. The implications of Appellant's attempts to have her "cake and eat it too" are endless. However, this Court need not look beyond the Notice of Appeal, and Amended Notice to see that Appellant did not in any way describe the Final Judgment for this Court to reasonably infer that an appeal was taken thereon. Wherefore, this Court must GRANT Respondents' Motion and dismiss Appellant's appeal, as this Court lacks jurisdiction.

Dated this 7<sup>th</sup> day of July, 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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[aocchoa@lipsonneilson.com](mailto:aocchoa@lipsonneilson.com)

*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 that on the 7<sup>th</sup> day of July, 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' REPLY IN SUPPORT OF THE MOTION TO DISMISS 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.

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

Jon M. Wilson, Esq.  
Law Offices of Jon Wilson  
4712 Admiralty Way, Unit 361  
Marina Del Rey, CA 90292

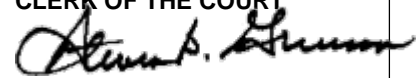
Kimberley Freedman, Esq.  
Erin Kolmansberger, Esq.  
2 South Biscayne Boulevard  
Miami, FL 33131

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



**EXHIBIT “E”**

**EXHIBIT “E”**



Electronically Filed  
Nov 28 2022 04:35 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

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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.  
28

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

4           The Commissioner of Insurance 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

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  
26  
27  
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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.  
11

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

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

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement: The Commissioner of Insurance is willing to discuss settlement.

DATED this 25th day of November, 2022.

HUTCHISON & STEFFEN, PLLC

/s/Brenoch Wirthlin  
Brenoch R. Wirthlin, Esq. (10282)  
Nevada Bar No. 14285  
10080 West Alta Drive, Suite 200  
Las Vegas, Nevada 89145  
*Attorneys for Plaintiff*



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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

**EXHIBIT “F”**

**EXHIBIT “F”**

1  
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 No. 85668  
District Court Case No. A711525  
Electronically Filed  
Apr 05 2023 07:26 PM  
Elizabeth A. Brown  
Clerk of Supreme Court  
**REQUEST FOR TRANSCRIPT OF  
PROCEEDINGS**

22 Appellant, by and through counsel, Hutchison & Steffen, PLLC, hereby files  
23 her Request for Transcript of Proceedings.

24 I hereby certify on the 5th day of April, 2023, I ordered the transcript(s) set  
25 forth in the Request for Transcript, attached hereto as **Exhibit 1**. I further certify that

26 ///

27 ///

1 Appellant yet to receive the invoice for the ordered transcripts but will pay it upon  
2 receipt and provide a supplement to this notice confirming payment.

3  
4 DATED this 5th day of April, 2023.

5 HUTCHISON & STEFFEN, PLLC

6  
7 /s/Brenoch Wirthlin

8 Brenoch R. Wirthlin, Esq. (10282)  
9 Nevada Bar No. 14285  
10 10080 West Alta Drive, Suite 200  
11 Las Vegas, Nevada 89145  
12 *Attorneys for Appellant*  
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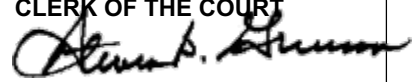
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/s/ Jon Linder  
An employee of Hutchison & Steffen, PLLC

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EXHIBIT PAGE ONLY

## EXHIBIT 1

HUTCHISON & STEFFEN  
A PROFESSIONAL LLC



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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

Nevada Supreme Court Case No. 85668

**PLAINTIFF'S REQUEST FOR  
TRANSCRIPT OF PROCEEDINGS**

**To: Brynn White, Department 27 Court Recorder;**

Plaintiff COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA  
AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC.  
REQUEST the preparation of a transcript of proceedings before the Eighth Judicial  
District Court, as follows:

**Judge Hearing the Proceedings:** Honorable Nancy L. Allf, District Court Dept. 27





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**CERTIFICATE OF SERVICE**

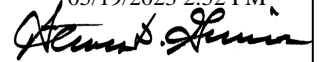
Pursuant to NRCP 5(b), I certify that on this 5th day of April, 2023, I caused the document entitled **PLAINTIFF'S REQUEST FOR TRANSCRIPT OF PROCEEDINGS** to be served on the following by Electronic Service to:

**ALL PARTIES ON THE E-SERVICE LIST**

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

**EXHIBIT “G”**

**EXHIBIT “G”**

  
CLERK OF THE COURT

**MRCN**

George F. Ogilvie III (NSBN 3552)  
Karyna M. Armstrong (NSBN 16044)  
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ENTERED kl

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*Attorneys for Defendant U.S. RE Corporation*

**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

**MOTION TO VACATE ORDER  
DENYING MOTIONS FOR  
RECONSIDERATION**

**(REQUESTED ON ORDER  
SHORTENING TIME)**

OST Hearing Date:  
OST Hearing Time:

Pursuant to NRCP 60, Defendant U.S. Re Corporation (“U.S. Re”), by and through its undersigned counsel, moves this Court to vacate its April 12, 2023 Order denying U.S. Re’s two motions for reconsideration (“Order”). Counsel for Plaintiff Commissioner of Insurance for the State

1 of Nevada As Receiver of Lewis And Clark LTC Risk Retention Group, Inc. (“Plaintiff  
2 Commissioner”) submitted the Order to chambers without providing the proposed Order to counsel for  
3 U.S. Re, and the legal bases set forth in the Order for denying U.S. Re’s two motions for reconsideration  
4 are clearly erroneous in that they are contrary to law.

5 Pursuant to EDCR 2.26, U.S. Re respectfully requests its Motion to Vacate Order Denying  
6 Motions for Reconsideration (“Motion”) be heard on shortened time.

7 This Motion is based on the attached Memorandum of Points and Authorities, the Declaration  
8 of George F. Ogilvie III, all the papers and pleadings on file herein, and the arguments of counsel at  
9 any hearing that this Court may entertain on the Motion.

10 DATED this 18th day of May 2023.

11 McDONALD CARANO LLP

12 By: /s/ George F. Ogilvie III

13 George F. Ogilvie III (NSBN 3552)  
14 Karyna M. Armstrong (NSBN 16044)  
15 2300 West Sahara Avenue, Suite 1200  
16 Las Vegas, NV 89102

17 Jon M. Wilson, Esq. (*Pro Hac Vice*)  
18 LAW OFFICES OF JON WILSON  
19 13924 Marquesas Way, Unit 1308  
20 Marina Del Rey, CA. 90292

21 *Attorneys for Defendant U.S. RE Corporation*  
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**ORDER SHORTENING TIME**

It appearing to the satisfaction of the Court and good cause appearing therefor,

IT IS HEREBY ORDERED that the hearing on the **MOTION TO VACATE ORDER DENYING MOTIONS FOR RECONSIDERATION** shall be shortened and heard before the above-entitled Court in Department XXVII on the 8th day of June, 2023 at 11:00 a.m./~~p.m.~~, or as soon thereafter as counsel may be heard.

IT IS HEREBY FURTHER ORDERED that any opposition shall be filed on or before the 30th day of May, 2023.

Dated this 19th day of May, 2023

*Nancy L Alf*

4A1 F6E 2C4F 4540

Nancy Alf

~~District Court Judge~~

**DECLARATION OF GEORGE F. OGILVIE III IN SUPPORT OF  
MOTION TO VACATE ORDER DENYING MOTIONS FOR RECONSIDERATION  
ON ORDER SHORTENING TIME**

I, George F. Ogilvie III, hereby declare under penalty of perjury as follows:

1. I am an attorney licensed to practice law in the State of Nevada and a partner in the law firm, McDonald Carano LLP. I am co-counsel for U.S. Re Corporation (“U.S. Re”) in the above-captioned action matter. I am over the age of 18 years and a resident of Clark County, Nevada. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief, and as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to these matters.

2. This declaration is made pursuant to EDCR 2.26 and in support of U.S. Re’s Motion to Vacate Order Denying Motions for Reconsideration on Order Shortening Time.

3. On July 13, 2022, Plaintiff Commissioner of Insurance for the State of Nevada as Receiver of the Lewis and Clark LTC Risk Retention Group, Inc. (“Plaintiff Commissioner”) and Defendants U.S. Re, Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp. (collectively, the “Corporate Defendants”) executed a Settlement Agreement whereby, the Corporate Defendants agreed to pay Plaintiff Commissioner the total amount of \$5,200,000.00.

1           4.       On August 24, 2022, Plaintiff Commissioner received the second of two checks totaling  
2 the \$5,200,000.00 paid on behalf of the Corporate Defendants for the total amount of the Settlement  
3 Funds, and the funds were deposited and cleared.

4           5.       U.S. Re filed motions for reconsideration relative to this Court's Order Denying U.S.  
5 Re's Motion to Dismiss and Enforce the Settlement Agreement and this Court's Order Granting  
6 Plaintiff Commissioner's Motion for Attorney Fees and Costs. U.S. Re's motions demonstrated that  
7 this Court was not divested of jurisdiction by reason of the Plaintiff Commissioner's Notice of Appeal  
8 because the issues before this Court were independent from and entirely collateral to the appeal.

9           6.       At the February 16, 2023 hearing on the two motions for reconsideration, this Court  
10 denied U.S. Re Corporation's Motion for Reconsideration of Order Granting Motion for Attorney Fees  
11 and Costs, but reserved ruling on U.S. Re Corporation's Motion for Reconsideration of Order Denying  
12 Motion to Dismiss and Enforce Settlement Agreement, and proposed that the parties file a Satisfaction  
13 of Judgment to reach closure in the case. U.S. Re agreed; counsel for Plaintiff Commissioner responded  
14 that he would have to confer with his client.

15           7.       On April 7, 2023, U.S. Re filed its Status Report In Advance Of April 11, 2023  
16 Chambers Calendar, submitting that this Court should proceed with ruling on U.S. Re Corporation's  
17 Motion for Reconsideration of Order Denying U.S. Re's Motion To Dismiss And Enforce Settlement  
18 Agreement.

19           8.       On April 10, 2023, Plaintiff Commissioner filed its Status Report in Advance of April  
20 11, 2023 Chambers Calendar, advising that Plaintiff Commissioner had filed a federal court lawsuit  
21 seeking to void the settlement agreement and asking this Court to deny U.S. Re Corporation's Motion  
22 for Reconsideration of Order Denying U.S. Re's Motion To Dismiss And Enforce Settlement  
23 Agreement.

24           9.       On April 11, 2023, without notifying U.S. Re's counsel or giving U.S. Re's counsel the  
25 opportunity to review and comment, Plaintiff Commissioner's counsel submitted to chambers a  
26 proposed order denying U.S. Re's two motions for reconsideration.

27           10.      Later, also on April 11, 2023, this Court issued an Order directing the parties to appear  
28 for a Status Check on June 8, 2023.

11. But on April 12, 2023, this Court issued the signed Order submitted by Plaintiff Commissioner that U.S. Re was not provided the opportunity to review.

12. I immediately sought a telephonic conference with this Court and had my office call to get this Court's availability.

13. At 1:46 p.m. on April 12, 2023, I emailed Plaintiff Commissioner's counsel asking for his availability for a telephonic conference later that afternoon. I received no response.

14. The next day, April 13, 2023, at 11:31 a.m., I emailed Plaintiff Commissioner's counsel, again asking for his availability for a telephonic conference. Again, I received no response.

15. On April 19, 2023, I had my office call this Court's chambers seeking this Court's availability and was advised that the Honorable Judge Nancy Allf would be available April 20, 2023.

16. My office then placed calls to the office of Plaintiff Commissioner's counsel at 11:07 a.m., 12:33 p.m., and 1:00 p.m. on April 20, 2023. We were advised that Plaintiff Commissioner's counsel was unavailable. Again, we received no response.

17. Plaintiff Commissioner's counsel failed to respond to my emails or return the telephone messages trying to schedule a telephonic hearing with this Court regarding the Order this Court entered on April 12, 2023

18. In response to Plaintiff Commissioner's counsel's failure to respond, U.S. Re immediately sought an Emergency Request for Status Conference on shortening time.

19. At the May 11, 2023 Status Conference, among other arguments, I explained to this Court that the federal court action was improper under the Settlement Agreement, that the April 12, 2023 Order was improperly submitted and that the legal bases set forth therein were contrary to law, and that the April 12, 2023 Order should be vacated.

20. In response, this Court stated it would not grant an oral motion to vacate and that U.S. Re could bring a motion for relief on shortening time to address the issues since the parties were only present for a Status Conference and not a hearing on a motion.

21. Thus, good cause exists to hear U.S. Re's Motion on shortened time. U.S. Re asks this Court to Vacate the April 12, 2023 Order denying the two motions for reconsideration.

22. U.S. Re brings this Request in good faith and not for the purpose of delay.

23. In accordance with EDCR 7.30, I certify that I have provided Plaintiff Commissioner's counsel with a copy of this Motion and the supporting documents.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed on this 18th day of May, 2023, at Las Vegas, Nevada.

  
George F. Ogilvie III

### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### **I. INTRODUCTION**

Plaintiff Commissioner and the Corporate Defendants fully executed the Settlement Agreement on July 13, 2022. *See* Settlement Agreement, attached as **Exhibit A**. Under the Settlement Agreement, the insurance carriers for Corporate Defendants agreed to pay Plaintiff Commissioner the total amount of \$5,200,000.00 ("Settlement Funds"). *See id.* at p. 1. As of August 24, 2022, the total Settlement Funds were received by Plaintiff Commissioner. Later, Plaintiff Commissioner deposited the checks, which cleared the bank. *See* Ogilvie Decl. at ¶ 4.

U.S. Re filed its Motion to Dismiss and Enforce Settlement Agreement on Order Shortening Time on October 21, 2022, arguing that the parties had settled, so this Court should not have taken any action on the post-trial motions and the case should be dismissed. Despite receiving the Settlement Funds, Plaintiff Commissioner refused to dismiss U.S. Re from this litigation. *See* Ex. A at ¶ B(4). This Court denied U.S. Re's Motion to Dismiss and Enforce Settlement Agreement, concluding it was divested of jurisdiction because of Plaintiff Commissioner filing the Notice of Appeal the night before the hearing. *See* November 9, 2022 Notice of Appeal. Soon after, this Court entered two Orders, first denying U.S. Re's Motion to Dismiss and Enforce Settlement Agreement and second an Order Granting Plaintiff Commissioner's Attorney Fees and Costs.

On December 14, 2022, U.S. Re filed a motion for reconsideration regarding the November 29, 2022 Order denying U.S. Re's Motion to Dismiss and Enforce Settlement Agreement ("Reconsideration Motion No. 1"). U.S. Re also moved for reconsideration regarding the December 2,



2022 Order Granting Attorney Fees and Costs (“Reconsideration Motion No. 2”). At the February 16, 2023 hearing on Reconsideration Motion No. 1 and Reconsideration Motion No. 2, this Court denied U.S. Re Corporation’s Motion for Reconsideration of Order Granting Motion for Attorney Fees and Costs, but reserved ruling on U.S. Re Corporation’s Motion for Reconsideration of Order Denying Motion to Dismiss and Enforce Settlement Agreement, and proposed that the parties file a Satisfaction of Judgment to reach the finality that U.S. Re seeks pursuant to the Settlement Agreement. U.S. Re agreed; Plaintiff Commissioner’s counsel advised that he would need to discuss it with his client. *See* Ogilvie Decl. at ¶ 6.

Despite multiple tries to reconcile and come to an agreement or agree to a satisfaction of judgment U.S. Re had no other choice and on April 7, 2023, U.S. Re filed its Status Report In Advance Of April 11, 2023 Chambers Calendar, submitting that this Court should proceed with ruling on U.S. Re Corporation’s Motion for Reconsideration of Order Denying U.S. Re’s Motion To Dismiss And Enforce Settlement Agreement. *See* U.S. Re Corporation’s Status Report In Advance Of April 11, 2023 Chambers Calendar. On April 10, 2023, Plaintiff Commissioner filed its status report ahead of the April 11, 2023 Status Check on chambers calendar, advising that Plaintiff Commissioner had filed a federal court lawsuit seeking to void the settlement agreement and asking this Court to deny U.S. Re Corporation’s Motion for Reconsideration of Order Denying U.S. Re’s Motion To Dismiss And Enforce Settlement Agreement. *See* Plaintiff’s Status Report in Advance of April 11, 2023 Chambers Calendar.

On April 11, 2023, without notifying U.S. Re’s counsel or giving U.S. Re’s counsel the opportunity to review and comment, Plaintiff Commissioner’s counsel submitted to chambers a proposed order denying U.S. Re’s two motions for reconsideration. *See* Ogilvie Decl. at ¶ 9. Later, on April 11, 2023, this Court issued an Order directing the parties to appear for a Status Check on June 8, 2023. *See id.* at ¶ 10; *see also* April 11, 2023 Order. But the next day, on April 12, 2023 this Court issued the signed Order submitted by Plaintiff Commissioner that U.S. Re was not provided the opportunity to review. *See id.* at ¶ 11.

U.S. Re’s counsel immediately sought a telephonic conference with this Court and contacted chambers to ask about this Court’s availability. *See id.* at ¶ 12. U.S. Re also sought availability for

1 Plaintiff Commissioner's counsel on five separate occasions. *See id.* at ¶¶ 13-16. Plaintiff  
2 Commissioner's counsel failed to respond to emails and telephone messages in an attempt to set up a  
3 telephonic hearing. *See id.* at ¶ 17. Because of Plaintiff Commissioner and Plaintiff Commissioner's  
4 counsel's failure to respond, U.S. Re filed an Emergency Request on Order Shortening Time on April  
5 28, 2023. *See* April 28, 2023 Emergency Request, on file with this Court. In its Emergency Request,  
6 U.S. Re argues that Plaintiff Commissioner's misconduct submitting an order without letting opposing  
7 counsel review and failing to respond to attempts for scheduling a telephonic conference put U.S. Re  
8 in a position of dire need that a status conference could hopefully resolve. *See id.*

9 Plaintiff Commissioner responded on May 8, 2023 ("Response"). *See* Plaintiff's Response to  
10 U.S. Re's Emergency Request for Status Conference, on file with this Court. In its response, Plaintiff  
11 Commissioner makes multiple arguments that are unresponsive to the issues U.S. Re brought forth in  
12 its Emergency Request. For example, Plaintiff Commissioner argues that in order to establish waiver  
13 of the late payment of settlement funds, due process requires there to be an evidentiary hearing. *See*  
14 Response at 5:16-26. Plaintiff Commissioner also argues that the Supreme Court prohibits district  
15 courts from issuing advisory opinions (*See* Response at 7:8-9), but then cites to the advisory opinion  
16 that this Court gave to show that dismissal was not a bargained-for term of the Settlement Agreement.  
17 *See id.* at 5:27-28; 6:1-2.

18 U.S. Re filed its Reply In Support of the Emergency Request ("Reply") on May 10, 2023, on  
19 file with this Court. In its Reply U.S. Re argues that it took all necessary steps to ensure good faith  
20 negotiation discussions took place with Plaintiff Commissioner, but Plaintiff Commissioner failed to  
21 reciprocate that effort. *See* Reply at 3:1-23; 4:1-17. U.S. Re also argues that the federal court action  
22 and appeal do not divest this Court. *Id.* at 5:11-28; 6:1-6.

23 At the May 11, 2023 Status Conference, among other arguments, I explained to this Court that  
24 the federal court action was improper under the Settlement Agreement, that the April 12, 2023 Order  
25 was improperly submitted and that the legal bases set forth therein were contrary to law, and that the  
26 April 12, 2023 Order should be vacated. Ogilvie Decl. at ¶ 19. Because of Plaintiff Commissioner's  
27 counsel's unresponsiveness after this Court issued the April 12, 2023 Order, and the good faith effort  
28 U.S. Re conducted to try to come to a resolution at the May 11, 2023 Status Conference, good cause

exists to hear U.S. Re’s Motion to Vacate the April 12, 2023 Order on shortened time.

## **II. ARGUMENT**

### **A. Legal Standard**

EDCR 2.24(b) provides that “[a] party seeking reconsideration of a ruling of the court, *other than any order that may be addressed by motion pursuant to NRCP50(b), 52(b), 59 or 60* must file a motion for such relief withing 14 days after service of written notice of the order . . .” EDCR 2.24 (emphasis added). Under NRCP 60(b) the court has the authority to relieve a party from an order for various reasons, including, but not limited to, misrepresentation or misconduct by an opposing party. *See* NRCP 60(b)(3). Further, this Court may relieve a party from its order for “any other reason that justifies relief.” NRCP 60(b)(6). This Court has “wide discretion in deciding whether to grant or deny a motion” to set aside an order. *Cook v. Cook*, 112 Nev. 179, 181, 912 P.2d 264, 265 (1996).

### **B. This Court Must Vacate The April 12, 2023 Order because of Plaintiff Commissioner’s Misconduct.**

NRCP 60(b)(3) provides an avenue for a party to seek relief because of misconduct by an opposing party. *See* NRCP 60(b)(3). Plaintiff Commissioner and Plaintiff Commissioner’s counsel’s misconduct is clear. Plaintiff Commissioner unilaterally submitted an order denying U.S. Re’s motions for reconsideration. Ogilvie Decl. at ¶ 9. Once this Court issued the April 12, 2023 Order, Plaintiff Commissioner’s counsel refused to respond to U.S. Re’s counsel’s email and telephone messages on five separate occasions. *See id.* at ¶¶ 13-16. In its Response, Plaintiff Commissioner made multiple arguments that were unresponsive to the issues U.S. Re brought forth in its Emergency Request. Lastly, Plaintiff Commissioner breached the Settlement Agreement by accepting the Settlement Funds, regardless of the late tender, and not releasing U.S. Re “from any and all charges, complaints, claims, promises agreement, controversies, liabilities, obligations, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses, . . .of any nature whatsoever, known or unknown . . .” Ex. A at ¶ B4. Plaintiff Commissioner also breached the Settlement Agreement by bringing a Nevada federal court action against the Insurance Carriers – who are neither parties to the Settlement Agreement nor this case – despite the Settlement Agreement stating multiple times that any legal proceeding arising under this Agreement shall be heard in Clark County, Nevada. *See id.* at ¶¶ N, T.

1 Thus, U.S. Re asks this Court to grant its Motion for relief under NRCP 60(b)(3) because of the  
2 above-mentioned misconduct by opposing counsel and Plaintiff Commissioner's misconduct.

3 **C. Good Cause Exists To Vacate The April 12, 2023 Order.**

4 Even if this Court does not believe the Order should be vacated because of Plaintiff  
5 Commissioner's misconduct, this Court still has the authority to vacate the Order for "any other reason  
6 that justifies relief." NRCP 60(b)(6).

7 U.S. Re has demonstrated that it took all necessary steps to resolve the issue of the April 12,  
8 2023 Order. U.S. Re tried to contact Plaintiff Commissioner's counsel five separate times to get  
9 availability for a telephonic conference with this Court and, when Plaintiff Commissioner's counsel  
10 refused to respond, U.S. Re immediately filed its Emergency Request. *See* Ogilvie Decl. at ¶¶ 12-18.  
11 At the May 11, 2023 Status Conference, U.S. Re's counsel expressed the errors contained in the April  
12 12, 2023 Order. *See id.* at ¶ 19. This Court stated that U.S. Re could bring a motion for relief on  
13 shortening time to address those issues since the parties were only present for a Status Conference and  
14 not a hearing on a motion. *See id.* at ¶ 20. Thus, U.S. Re's multiple attempts to resolve these issues  
15 outside of a motion to vacate justifies relief under NRCP 60(b)(6).

16 **D. Neither Plaintiff Commissioner's Appeal, nor the Federal Court Action Divests**  
17 **this Court of Jurisdiction.**

18 1. The Appeal in Case No. 85907 Before the Nevada Supreme Court Did Not  
19 Affect This Court's Jurisdiction.

20 Generally, a timely notice of appeal would divest a District Court of jurisdiction. *See Kantor v.*  
21 *Kantor*, 116 Nev. 886, 894, 8 P.3d 825, 830 (2000). That said, when an issue is "entirely collateral to  
22 and independent from that part of the case taken up by appeal, and in no way affect[s] the merits of the  
23 appeal" this Court maintains power and jurisdiction to grant relief. *See id.* (citation omitted); *see also*  
24 *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529 (2006) ("[T]he district court retains  
25 jurisdiction to enter orders on matters that are collateral to and independent from the appealed order,  
26 *i.e.*, matters that in no way affect the appeal's merit").

27 Plaintiff Commissioner did not name U.S. Re in the Case Appeal Statement filed on November  
28 25, 2022, nor in the Docketing Statement filed on December 13, 2022. *See Exhibit B; Exhibit C.* The

Case Appeal Statement and Docketing Statement reveal that Plaintiff Commissioner seeks relief from the Director Defendants, not U.S. Re. U.S. Re has not been named as a Respondent in the appeal and Plaintiff Commissioner has represented to this Court that the Corporate Defendants are not parties to the appeal. Thus, contrary to the language of the April 12, 2023 Order, this Court is not divested of jurisdiction.

2. The Federal Court Action Does Not Divest this Court of Jurisdiction.

Similar to Plaintiff Commissioner’s failure to name U.S. Re as an Appellee in Case No. 85907, there are several reasons why the federal action does not divest this Court of power and jurisdiction to grant U.S. Re relief. First, Plaintiff Commissioner’s federal court action (“Federal Action”), Case No. 2:23-cv-00537-JCM-BNW, names Ironshore Specialty Insurance Company and Catlin Insurance Company, Inc. (the “Insurance Carriers”) as the defendants. *See* Federal Action Complaint at ¶¶ 7-8, attached as **Exhibit D**. Further, in the Federal Action Complaint Plaintiff Commissioner asks this Court to issue a declaratory judgment finding that the Insurance Carriers “owe Plaintiff [Commissioner] the remaining unpaid amounts of the Judgment pursuant to the applicable insurance contracts.” *Id.* at ¶ 33. Even the relief Plaintiff Commissioner seeks does not include U.S. Re and, therefore, this Court is not divested of jurisdiction.

Second, Plaintiff Commissioner’s Federal Action is improper because the plain language of the contract bars either party from seeking relief in federal court. *See Ringle v. Bruton*, 120 Nev. 82, 93, 86 P.3d 1032, 1039 (2004) (“[W]hen a contract is clear, unambiguous, and complete, its terms must be given their plain meaning and the contract must be enforced as written.”). Plaintiff Commissioner argues throughout the Federal Action Complaint that the Insurance Carriers were obligated by the provisions in the Settlement Agreement to pay the Settlement Funds by August 19, 2022. *See generally* Ex. D. Plaintiff Commissioner thereby confirms that the parties must abide by and apply the provisions set forth in the Settlement Agreement. The Settlement Agreement explicitly states that any legal action concerning the Settlement Agreement must be brought in Clark County, Nevada. *See* Ex. A at ¶ N (“[t]he Parties further understand and agree that, in any legal proceeding arising under this Agreement, venue shall be in Clark County, Nevada”); *see also* Ex. A at ¶ T (“[i]n the event that the Parties have any disagreement or dispute arising from or relating to the performance or breach of this Agreement

and/or any additional documents which may be necessary to carry on the purposes of this Agreement, any such action shall be brought in the District Court of Clark County, Nevada and all Parties agree to submit to said Court’s jurisdiction.”) Thus, Plaintiff Commissioner improperly brought the Federal Action. Plaintiff Commissioner cannot argue that the parties must meet their obligations under the Settlement Agreement and then not abide by multiple provisions that state the proper venue for any issues arising from the Settlement Agreement be brought in Clark County, Nevada.

Finally, when the “same issues are to be tried and determined” simultaneously in state and federal actions, “[e]ach court is free to proceed in its own way and in its own time, without reference to the proceedings in the other court.” *Kline v. Burke Const. Co.*, 260 U.S. 226, 230-32 (1922); *see also Colorado River Water Conservation Dist. V. United States*, 424 U.S. 800, 817-819 (1976) (holding that federal courts have an obligation to exercise the jurisdiction given to them; further holding that only where “exceptional” circumstances exist may a district court depart from the general rule that “pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction”) (internal quotations and citations omitted)). As this Court well knows, if multiple cases are opened in multiple courthouses, despite the lack of judicial economy and efficiency in such a strategic choice, it is a race to judgment that counts.

This Court is not divested of jurisdiction and in fact, still maintains the jurisdiction to vacate the April 12, 2023 Order and make a finding on U.S. Re’s motions for reconsideration, without reference to the proceedings in the Federal Action.<sup>1</sup> *Id.*

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<sup>1</sup> The only possible way in which this Court could be divested of jurisdiction is if the court reached finality in the interim and therefore issue or claim preclusion would apply. *See Five Star Cap. Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008); *Weddell v. Sharp*, 131 Nev. 233, 350 P.3d 80 (2015).

1     **III.     CONCLUSION**

2             For the reasons described above, U.S. Re respectfully requests that this Court grant its motion  
3 to vacate the April 12, 2023 Order.

4             DATED this 18th day of May 2023.

5                             McDONALD CARANO LLP

6  
7             By: /s/ George F. Ogilvie III  
8                     George F. Ogilvie III (NSBN 3552)  
9                     Karyna M. Armstrong (NSBN 16044)  
                    2300 West Sahara Avenue, Suite 1200  
                    Las Vegas, NV 89102

10                     Jon M. Wilson, Esq. (*Pro Hac Vice*)  
11                     LAW OFFICES OF JON WILSON  
12                     13924 Marquesas Way, Unit 1308  
13                     Marina Del Rey, CA. 90292

14                             *Attorneys for Defendant U.S. RE Corporation*

# **EXHIBIT “A”**



## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Confidential Settlement Agreement and Mutual Release (the "Agreement") is entered into by and between the Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark LTC Risk Retention Group, Inc. ("Plaintiff" or "Commissioner")<sup>1</sup> on the one hand and U.S. Re Corporation ("U.S. Re"), Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp. (collectively, the "Uni-Ter Defendants" and, together with U.S. Re, the "Corporate Defendants") on the other (collectively, the "Parties"). In consideration of the mutual covenants and agreements of the Parties, and other good and valuable consideration, it is warranted and agreed as follows:

### **A. RECITALS**

1. On or about December 23, 2014, Plaintiff filed her complaint commencing Case no. A-14-711535-C (the "Lawsuit") against the Corporate Defendants and other defendants, including Robert Chur ("Chur"), Steve Fogg ("Fogg"), Mark Garber ("Garber"), Carol Harter ("Harter"), Robert Hurlbut ("Hurlbut"), Barbara Lumpkin ("Lumpkin"), Jeff Marshall ("Marshall"), and Eric Stickels ("Stickels" and, collectively, with Chur, Fogg, Garber, Harter, Hurlbut, Lumpkin, and Marshall referred to herein as the "Director Defendants").

2. On December 30, 2021, a Judgment on Jury Verdict was entered granting Judgment in favor of Plaintiff and against the Corporate Defendants ("Judgment").

3. Wherefore, the Parties intend to resolve the present dispute, including any and all issues relating to the allegations that were or could have been made in the Lawsuit.

### **B. TERMS OF AGREEMENT**

The Parties hereby stipulate and agree that the foregoing recitals are true and correct in all respects and are incorporated herein and made a part hereof by this reference. The Parties hereby further agree to the following terms and conditions and further agree to perform any and all acts and execute any and all documents necessary or appropriate to implement the following Agreement.

1. Within 30 days after receipt of a fully-executed copy of this Agreement, a W-9 from Plaintiff identifying the name and address of the payee, and service of notice of entry of an order approving this Agreement by the Eighth Judicial District Court in Clark County, Nevada, in Case no.: A-12-672047-B, STATE OF NEVADA, EX REL. COMMISSIONER OF INSURANCE, IN HIS OFFICIAL CAPACITY AS STATUTORY RECEIVER FOR DELINQUENT DOMESTIC INSURER vs. LEWIS & CLARK LTC RISK RETENTION GROUP, INC. (the "Receivership"), the insurance carriers for the Corporate Defendants will pay Plaintiff the sum of \$5,200,000 (US) by company check(s) (the "Settlement Funds") as consideration. However, all Parties acknowledge and agree that this Agreement is of no force and effect until said Settlement Funds are actually

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<sup>1</sup> Lewis and Clark LTC Risk Retention Group, Inc. shall be referred to herein as the "Company."

received by the Plaintiff, and that this Agreement shall be null and void in the event such Settlement Funds are not received by the Plaintiff within the 30-day time period referenced herein.

2. Catlin Specialty Insurance Company (“Catlin”) issued a \$5,000,000 primary layer of insurance (Policy Number IAP-97329-0514) to U.S. Re (“Catlin Policy”). Ironshore Insurance Company (“Ironshore”) issued a \$5,000,000 excess layer of insurance (Policy Number 000703604) to U.S. Re (“Ironshore Policy”). The Corporate Defendants hereby represent that the Catlin Policy and the Ironshore Policy are the only two policies issued by insurers that have agreed to provide coverage to the Corporate Defendants that have not been exhausted.

3. The Corporate Defendants represent that they have been out of business since 2018 and have no ongoing business interests.

4. Subject to the obligations set forth in this Agreement, Plaintiff hereby releases Tal Piccione, U.S. Re, U.S. Re Companies, Inc., the Uni-Ter Defendants, and the entities identified on Exhibit A hereto, and each of their respective agents, assigns, affiliates, entities (and agents, members, managers, directors, officers, employees, trusts, representatives, and attorneys of such related entities) employees, former employees, representatives, owners, insurers, attorneys, predecessors, and successors, and each of them (the “Defendant Released Parties”), from any and all charges, complaints, claims, promises, agreements, controversies, liabilities, obligations, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorney’s fees and costs actually incurred), of any nature whatsoever, known or unknown, whether based on tort, subrogation, contract, quasi-contract, or any other theory of recovery or responsibility, that the Plaintiff now has or could have had against the Defendant Released Parties. Further, all Parties acknowledge that nothing in this Agreement, including without limitation this release, in any way releases any applicable claims Plaintiff may have with respect to reinsurers that have issued reinsurance contracts or agreements for the benefit of Lewis & Clark LTC Risk Retention Group, Inc.

5. Subject to the obligations set forth in this Agreement, the Corporate Defendants hereby release Plaintiff, and its respective agents, assigns, affiliates, entities (and agents, members, managers, directors, officers, employees, trusts, representatives, and attorneys of such related entities) employees, former employees, representatives, owners, insurers, attorneys, predecessors, and successors, and each of them (the “Plaintiff Released Parties”), Tal Piccione and the officers and directors of the Corporate Defendants and U.S. Re Companies from any and all charges, complaints, claims, promises, agreements, controversies, liabilities, obligations, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorney’s fees and costs actually incurred), of any nature whatsoever, known or unknown, whether based on tort, subrogation, contract, quasi-contract, or any other theory of recovery or responsibility, the Corporate Defendants now has or could have had against the Plaintiff Released Parties.

6. On February 17, 2022, Plaintiff filed a notice of appeal commencing appeal Case no. 84253 in the Supreme Court of Nevada (“Appeal”) against the Director Defendants. The Appeal is not being prosecuted against the Corporate Defendants or Tal Piccione, and is asserted against the Director Defendants only.

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Confidential Settlement Agreement and Mutual Release (the "Agreement") is entered into by and between the Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark LTC Risk Retention Group, Inc. ("Plaintiff" or "Commissioner")<sup>1</sup> on the one hand and U.S. Re Corporation ("U.S. Re"), Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp. (collectively, the "Uni-Ter Defendants" and, together with U.S. Re, the "Corporate Defendants") on the other (collectively, the "Parties"). In consideration of the mutual covenants and agreements of the Parties, and other good and valuable consideration, it is warranted and agreed as follows:

### **A. RECITALS**

1. On or about December 23, 2014, Plaintiff filed her complaint commencing Case no. A-14-711535-C (the "Lawsuit") against the Corporate Defendants and other defendants, including Robert Chur ("Chur"), Steve Fogg ("Fogg"), Mark Garber ("Garber"), Carol Harter ("Harter"), Robert Hurlbut ("Hurlbut"), Barbara Lumpkin ("Lumpkin"), Jeff Marshall ("Marshall"), and Eric Stickels ("Stickels" and, collectively, with Chur, Fogg, Garber, Harter, Hurlbut, Lumpkin, and Marshall referred to herein as the "Director Defendants").

2. On December 30, 2021, a Judgment on Jury Verdict was entered granting Judgment in favor of Plaintiff and against the Corporate Defendants ("Judgment").

3. Wherefore, the Parties intend to resolve the present dispute, including any and all issues relating to the allegations that were or could have been made in the Lawsuit.

### **B. TERMS OF AGREEMENT**

The Parties hereby stipulate and agree that the foregoing recitals are true and correct in all respects and are incorporated herein and made a part hereof by this reference. The Parties hereby further agree to the following terms and conditions and further agree to perform any and all acts and execute any and all documents necessary or appropriate to implement the following Agreement.

1. Within 30 days after receipt of a fully-executed copy of this Agreement, a W-9 from Plaintiff identifying the name and address of the payee, and service of notice of entry of an order approving this Agreement by the Eighth Judicial District Court in Clark County, Nevada, in Case no.: A-12-672047-B, STATE OF NEVADA, EX REL. COMMISSIONER OF INSURANCE, IN HIS OFFICIAL CAPACITY AS STATUTORY RECEIVER FOR DELINQUENT DOMESTIC INSURER vs. LEWIS & CLARK LTC RISK RETENTION GROUP, INC. (the "Receivership"), the insurance carriers for the Corporate Defendants will pay Plaintiff the sum of \$5,200,000 (US) by company check(s) (the "Settlement Funds") as consideration. However, all Parties acknowledge and agree that this Agreement is of no force and effect until said Settlement Funds are actually

---

<sup>1</sup> Lewis and Clark LTC Risk Retention Group, Inc. shall be referred to herein as the "Company."

received by the Plaintiff, and that this Agreement shall be null and void in the event such Settlement Funds are not received by the Plaintiff within the 30-day time period referenced herein.

2. Catlin Specialty Insurance Company (“Catlin”) issued a \$5,000,000 primary layer of insurance (Policy Number IAP-97329-0514) to U.S. Re (“Catlin Policy”). Ironshore Insurance Company (“Ironshore”) issued a \$5,000,000 excess layer of insurance (Policy Number 000703604) to U.S. Re (“Ironshore Policy”). The Corporate Defendants hereby represent that the Catlin Policy and the Ironshore Policy are the only two policies issued by insurers that have agreed to provide coverage to the Corporate Defendants that have not been exhausted.

3. The Corporate Defendants represent that they have been out of business since 2018 and have no ongoing business interests.

4. Subject to the obligations set forth in this Agreement, Plaintiff hereby releases Tal Piccione, U.S. Re, U.S. Re Companies, Inc., the Uni-Ter Defendants, and the entities identified on Exhibit A hereto, and each of their respective agents, assigns, affiliates, entities (and agents, members, managers, directors, officers, employees, trusts, representatives, and attorneys of such related entities) employees, former employees, representatives, owners, insurers, attorneys, predecessors, and successors, and each of them (the “Defendant Released Parties”), from any and all charges, complaints, claims, promises, agreements, controversies, liabilities, obligations, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorney’s fees and costs actually incurred), of any nature whatsoever, known or unknown, whether based on tort, subrogation, contract, quasi-contract, or any other theory of recovery or responsibility, that the Plaintiff now has or could have had against the Defendant Released Parties. Further, all Parties acknowledge that nothing in this Agreement, including without limitation this release, in any way releases any applicable claims Plaintiff may have with respect to reinsurers that have issued reinsurance contracts or agreements for the benefit of Lewis & Clark LTC Risk Retention Group, Inc.

5. Subject to the obligations set forth in this Agreement, the Corporate Defendants hereby release Plaintiff, and its respective agents, assigns, affiliates, entities (and agents, members, managers, directors, officers, employees, trusts, representatives, and attorneys of such related entities) employees, former employees, representatives, owners, insurers, attorneys, predecessors, and successors, and each of them (the “Plaintiff Released Parties”), Tal Piccione and the officers and directors of the Corporate Defendants and U.S. Re Companies from any and all charges, complaints, claims, promises, agreements, controversies, liabilities, obligations, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorney’s fees and costs actually incurred), of any nature whatsoever, known or unknown, whether based on tort, subrogation, contract, quasi-contract, or any other theory of recovery or responsibility, the Corporate Defendants now has or could have had against the Plaintiff Released Parties.

6. On February 17, 2022, Plaintiff filed a notice of appeal commencing appeal Case no. 84253 in the Supreme Court of Nevada (“Appeal”) against the Director Defendants. The Appeal is not being prosecuted against the Corporate Defendants or Tal Piccione, and is asserted against the Director Defendants only.

7. Nothing in this Agreement is or shall be construed to constitute a release in any way against any and all claims Plaintiff has or may have against the Director Defendants, or any of them.

**C. UNKNOWN CLAIMS.**

The Parties understand and agree that there is a risk that subsequent to the execution of the Agreement, the Parties may discover claims which were unknown or unanticipated at the time the Agreement was executed, which if known by the Parties on the date the Agreement is executed may have materially affected their decision to execute the Agreement. The Parties understand and agree that by reason of the Agreement, they are assuming the risk of such unknown claims and agree that the releases contained herein apply to any and all such claims.

**D. ADEQUACY OF CONSIDERATION.**

The Parties agree and acknowledge that the covenants and promises made by them in this Agreement are sufficient, just and adequate consideration for their respective covenants and promises.

**E. COSTS AND ATTORNEY FEES**

If any legal action or other proceeding is brought by any of the Parties hereto relating to this Agreement or to recover damages or equitable relief for a breach or threatened breach thereof, the prevailing party shall recover its costs and reasonable attorneys' fees incurred in such an action or proceeding.

**F. ENTIRE AGREEMENT**

All prior or contemporaneous understandings or agreements between the Parties as they relate to the Agreement are merged into this Agreement, and it alone expresses the agreement of the Parties. This Agreement may be modified only in writing, signed by all the Parties hereto, and no term or provision may be waived except by such writing. There are no other agreements or representations, express or implied, either oral or in writing, between the Parties, concerning the subject matter of this Agreement, except as specifically set forth in this Agreement. There are no promises, agreements or expectations of the Parties unless otherwise stated in this Agreement.

**G. APPLICABLE LAW**

This Agreement was drafted through the joint efforts of the Parties and/or through counsel, and shall not be read for or against any Party to this Agreement on that account. This Agreement is intended to be enforced according to its written terms under the laws of the State of Nevada. Venue for any legal action concerning this Agreement shall lie exclusively in the state Courts of Nevada. All Parties consent to jurisdiction and venue in those Courts.

## **H. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and each counterpart executed by any of the undersigned together with all other counterparts so executed shall constitute a single instrument and agreement of the Parties. Facsimile and Portable Document Format ("PDF") copies hereof, as well as facsimile and PDF signatures hereon, shall have the same force and effect as originals.

## **I. MUTUAL WARRANTIES**

Each Party to this Agreement warrants and represents to the other that they have not assigned or transferred to any person or entity not a Party hereto any claim or other released matter, or any part or portion thereof, and that each Party has the authority to sign this Agreement, and each individual executing this Agreement on behalf of any entity or person specifically warrants that he or she has the authority to sign this Agreement.

## **J. NOTICE**

All notices or demands of any kind that any Party is required to or desires to give in connection with this Agreement shall be in writing and shall be delivered by facsimile and/or by depositing the notice or demand in the United States mail, postage prepaid, and addressed to the Parties as follows:

- 1) If to Plaintiff:  
Hutchison & Steffen  
Attn: Brenoch R. Wirthlin, Esq.  
Peccole Professional Park  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145  
Email: [bwirthlin@hutchlegal.com](mailto:bwirthlin@hutchlegal.com)
- 2) If to the Corporate Defendants:  
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  
Facsimile: (702) 873-9966  
[gogilvie@mcdonaldcarano.com](mailto:gogilvie@mcdonaldcarano.com)  
  
Jon M. Wilson, Esq. (Appearing *Pro Hac Vice*)  
LAW OFFICES OF JON WILSON  
13924 Marquesas Way, Unit 1308  
Marina Del Rey, CA. 90292  
Telephone: (310) 626-2216

**L. ADDITIONAL WARRANTIES**

The Parties represent and warrant as follows:

- a. They have full power and authority to execute this Agreement and this Agreement constitutes a legal, valid and binding obligation, enforceable in accordance with its terms and conditions;
- b. They have not sold, assigned or otherwise transferred any interest in the Lawsuit settled herein;
- c. They represent and agree that they have had full and fair opportunity to discuss all provisions, terms and conditions of this Agreement with their legal counsel, they have read and fully understand all of the provisions, terms and conditions of this Agreement, and that they are voluntarily entering into this Agreement;
- d. They represent and agree that they have had the opportunity to be represented throughout the negotiation and documentation of this Agreement by attorneys or financial advisors of their choice and have had the opportunity to be advised by such attorneys or financial advisors with respect to this Agreement and the effect of the releases given in this Agreement; and
- e. They warrant that no promise or inducement has been offered except as herein set forth; that this Agreement is executed without reliance upon any statement or representation by either party and/or their representatives, concerning the nature and extent of any damages, and/or legal liability therefore; that they are of legal age, legally competent to execute this Agreement, and accept full responsibility therefor.

**M. BINDING EFFECT, SUCCESSORS, AND ASSIGNS.**

This Agreement shall be binding upon and inure to the benefit of the successors, assigns, subsidiaries, parent corporations, partners, and affiliates, as well as all other persons or entities claiming through them.

**N. GOVERNING LAW AND CONSENT TO PERSONAL JURISDICTION.**

The laws of the state of Nevada shall govern this Agreement. The Parties further understand and agree that, in any legal proceeding arising under this Agreement, venue shall be in Clark County, Nevada.



**O. MODIFICATION.**

This Agreement may not be amended, altered, modified, or otherwise changed in any respect whatsoever, except by a subsequent writing executed by all Parties to the Agreement.

**P. TAX CONSEQUENCES.**

The Parties acknowledge that this Agreement may have tax or other consequences, and they are not relying on any other party for advice or communications as to any potential consequences. This Agreement is enforceable regardless of its tax consequences. The Parties make no representations regarding the Agreement's tax consequences.

**Q. ENFORCEABILITY.**

The Parties understand and agree that if any provision of this Agreement is determined to be wholly or partially illegal, invalid, contrary to public policy or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions shall not be affected thereby, and said illegal, unenforceable, or invalid part, term, or provision shall be first amended to give it/them the greatest effect allowed by law and to reflect the intent of the Parties. If this modification is not possible under applicable law, such term shall be deemed not to be a part of this Agreement and the remainder of this Agreement shall not be affected by such invalidity or unenforceability but shall remain in full force and effect.

**R. WAIVER.**

The provisions of this Agreement may not be waived by either party except by a subsequent writing executed by all Parties. The waiver by either party of any term, condition or provision of this Agreement shall not be construed as a waiver of any other or subsequent term, condition or provision.

**S. HEADINGS.**

The headings of each paragraph shall not be given any meaning, are not intended to be used to interpret this Agreement, are not to be used to explain, expand, contract or limit the language of this Agreement in any way, and are only included for the purpose of easy reference.

**T. DISPUTES.**

In the event that the Parties have any disagreement or dispute arising from or relating to the performance or breach of this Agreement and/or any additional documents which may be necessary to carry on the purposes of this Agreement, any such action shall be brought in the District Court of Clark County, Nevada and all Parties agree to submit to said Court's jurisdiction. In the event it is necessary for the aggrieved party or their authorized representative, successor, or assign to institute suit



in connection with this Agreement or its breach, the prevailing party in such suit or proceeding shall be entitled to reimbursement for its reasonable costs, expenses and attorneys' fees incurred, in addition to appropriate damages and equitable relief.

[SIGNATURE PAGES TO FOLLOW]

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IN WITNESS WHEREOF, THE UNDERSIGNED PARTIES HAVE CAREFULLY READ AND CONSIDERED THE FOREGOING SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS IN ITS ENTIRETY AND KNOW AND FULLY UNDERSTAND ITS CONTENTS AND THE SIGNIFICANCE OF ITS CONTENTS.

Dated: 7/13/2022

[Signature]  
COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA

STATE OF NEVADA

BY Barbara Richardson, its Commissioner

COUNTY OF CLARK

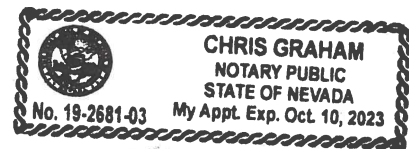
Carson City CA

§  
§  
§

ACKNOWLEDGED, AGREED, SUBSCRIBED, AND SWORN TO BEFORE ME in person by Barbara Richardson, as Commissioner, on behalf of COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA, a Nevada corporation, on this 13<sup>th</sup> day of July, 2022, to certify which witness my hand and seal of office.

[Signature]  
NOTARY PUBLIC in and for  
said County and State

My commission expires:  
10-10-23



IN WITNESS WHEREOF, THE UNDERSIGNED PARTIES HAVE CAREFULLY READ AND CONSIDERED THE FOREGOING SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS IN ITS ENTIRETY AND KNOW AND FULLY UNDERSTAND ITS CONTENTS AND THE SIGNIFICANCE OF ITS CONTENTS.

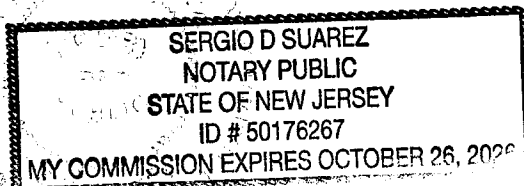
Dated: JUNE 29, 2022 TAL PICONE  
U.S. RE CORPORATION

New Jersey  
STATE OF NEVADA  
Berger  
COUNTY OF CLARK  
BY TAL PICONE CHAIRMAN  
§  
§  
§

ACKNOWLEDGED, AGREED, SUBSCRIBED, AND SWORN TO BEFORE ME in person by TAL PICONE, as Chairman, on behalf of U.S. RE CORPORATION, on this 29 day of June, 2022, to certify which witness my hand and seal of office.

[Signature]  
NOTARY PUBLIC in and for  
said County and State

My commission expires:  
10/26/2024



Dated:

6/29/2022

TAL PROCTOR  
UNI-TER UNDERWRITING MANAGEMENT CORP.

BY

TAL PROCTOR CHAIRMAN

STATE OF NEVADA

§  
§  
§

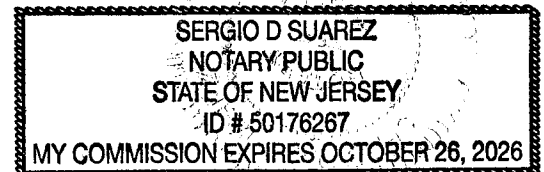
COUNTY OF CLARK

ACKNOWLEDGED, AGREED, SUBSCRIBED, AND SWORN TO BEFORE ME in person by TAL PROCTOR, as CHAIRMAN, on behalf of UNI-TER UNDERWRITING MANAGEMENT CORP., on this 29 day of JUNE, 2022, to certify which witness my hand and seal of office.

SERGIO D SUAREZ  
NOTARY PUBLIC in and for  
said County and State

My commission expires:

10/26/2026



Dated:

6/29/2022

TAL PROCTOR  
UNI-TER CLAIMS SERVICES CORP.

BY

TAL PROCTOR CHAIRMAN

STATE OF NEVADA

§  
§  
§

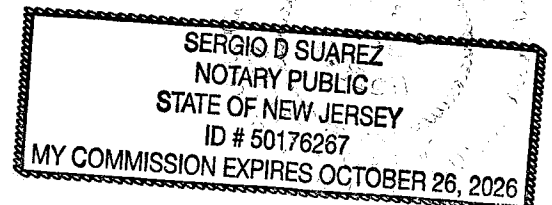
COUNTY OF CLARK

ACKNOWLEDGED, AGREED, SUBSCRIBED, AND SWORN TO BEFORE ME in person by TAL PROCTOR, as Chairman, on behalf of UNI-TER CLAIMS SERVICES CORP., on this 29 day of JUNE, 2022, to certify which witness my hand and seal of office.

SERGIO D SUAREZ  
NOTARY PUBLIC in and for  
said County and State

My commission expires:

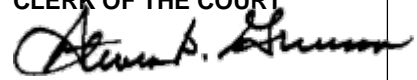
10/26/2026



## EXHIBIT A

U.S. RE Companies, Inc.
U.S. RE Corporation
U.S. RE Holdings, Ltd.
U.S. RE Corp. International, Ltd.
Uni-Ter International Management Company, Ltd.
U.S. RE Agencies, Inc.
Uni-Ter International Insurance Company
Fenelon Ventures, LLC (Inactive)
Fenelon Ventures II, LLC (Inactive)
Fenelon Ventures IV, LLC
U.S. RE Securities, LLC
U.S. RE Insurance Services Corporation (formerly Quadrant Und. Mgmt. Corp)
U.S. RE Consulting Agency Services, Inc (formerly Quadrant Ins. Managers Agency Inc.)
U.S. RE Risk Alternatives, LLC
Euro RE dba U.S. RE Europe
U.S. RE ApS (formerly Euro RE ApS)
U.S. RE Analytics, LLC
Blue Hill Claims Management, LLC
U.S. RE Do Brasil Corretora de Resseguros, LTDA
U.S. RE Risk Services Corp.

# **EXHIBIT “B”**



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.  
28



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

4           The Commissioner of Insurance 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

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.  
11

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., 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

# **EXHIBIT “C”**

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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, 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;

Respondents.

Supreme Court No. 85668  
District Court Case No. A-21-155  
Dec 13 2022 11:18 PM  
Elizabeth A. Brown  
Clerk of Supreme Court  
**DOCKETING STATEMENT**

Appellants, by and through their counsel, Hutchison & Steffen, PLLC, hereby submit the following Docketing Statement pursuant to Nevada Rule of Appellate Procedure (NRAP) 14.

24  
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28

All appellants not in proper person must complete the docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel].



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A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

**1. Judicial District:**

Department: XXVII

Judge: Honorable Nancy L. Alf

**2. Attorney filing this docketing statement:**

Firm: Hutchison & Steffen, PLLC

Las Vegas, Nevada 89145

Client(s): Commissioner of Insurance for the State of Nevada as Receiver  
of Lewis & Clark LTC Risk Retention Group, Inc.

Page 2 of 18

concur in the filing of this statement

3. **Attorney(s) representing respondent(s):**

Attorney: Angela Nakamura Ochoa, Esq.  
Joseph P. Garin, Esq.  
Lipson Neilson, P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, NV 89144

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

4. **Nature of disposition below (check all that apply):**

Judgment after bench trial  
Judgment after jury verdict  
Summary Judgment  
Default Judgment

**X Dismissal**

Lack of Jurisdiction

**X Failure to State a  
Claim**

Failure to Prosecute

Other (specify)

Grant/Denial of NRCP 60(b) relief  
Grant/Denial of Injunction  
Grant/Denial of Declaratory Relief  
Review of Agency Determination  
Divorce Decree

Original      Modification

**X Other disposition (specify):**

- **Denial of Motion to Amend Complaint**
- **Denial of Motion for Partial Reconsideration of Denial of Motion to Amend Complaint**
- **Order Denying Motion for Leave to File Fourth Amended Complaint**
- **Findings of Fact, Conclusions of Law and Order Denying Plaintiff's Motion for Leave to File Fourth Amended Complaint**
- **Order to Strike from Record**
- **Findings of Fact, Conclusions**

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**of Law and Order Denying the Motion for Reconsideration of Motion for Leave to Amend**

- **Order Denying Motion to Retax and Settle Costs**
- **Order Granting in Part and Denying in Part Motion for Declaratory Relief**
- **Discovery Commissioner’s Report and Recommendations**
- **Order Regarding Discovery Commissioner’s Report and Recommendations**
- **Order Granting In Part And Denying In Part Motion In Limine**
- **Order Granting Motion For Partial Summary Judgment**
- **Order Denying Motion In Limine(s)**
- **Order Denying Motion For Partial Summary Judgment**
- **Order Granting Motion to Exclude Interest**
- **Order of Dismissal**
- **Order Denying Motion to Lift Stay or Alternatively Grant Plaintiff Other Relief**
- **Order Denying Motion to Substitute**
- **Order Granting Motion to Strike**
- **Order Granting Motion to Dismiss**

5. **Does this appeal raise issues concerning any of the following:**  
Child custody (visitation rights only)  
Venue  
Termination of parental rights

1 This case does not involve child custody or visitation, venue, or termination  
2 of parental rights.

- 3 6. **Pending and prior proceedings in this court.** List the case name and  
4 docket number of all appeals or original proceedings presently or previously  
5 pending before this court which are related to this appeal:

6 Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut,  
7 Barbara Lumpkin, Jeff Marshall and Eric Stickels v. The Eight Judicial  
8 District Court of the State of Nevada, in and for the County of Clark and the  
Honorable Nancy L. Allf, District Court Judge, Case No. 78301.

9 Commissioner of Insurance for the State of Nevada as Receiver of Lewis &  
10 Clark LTC Risk Retention Group, Inc. v. The Eight Judicial District Court of  
11 the State of Nevada, in and for the County of Clark and the Honorable  
Nancy L. Allf, District Court Judge, Case No. 81857.

12 Commissioner of Insurance for the State of Nevada as Receiver of Lewis &  
13 Clark LTC Risk Retention Group, Inc. v. The Eight Judicial District Court of  
14 the State of Nevada, in and for the County of Clark and the Honorable  
15 Nancy L. Allf, District Court Judge, Case No. 84253.

- 16 7. **Pending and prior proceedings in other courts.** List the case name,  
17 number and court of all pending and prior proceedings in other courts which  
18 are related to this appeal (e.g., bankruptcy, consolidated or bifurcated  
19 proceedings) and their dates of disposition:

20 Commissioner of Insurance for the State of Nevada as Receiver of Lewis &  
21 Clark LTC Risk Retention Group, Inc. v. Robert Chur, Steve Fogg, Mark  
22 Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, Eric  
23 Stickels, Uni-Ter Underwriting Management Corp., Uni-Ter Claims  
Services Corp., and U.S. Re Corporation, Case No. A-12-672047-B. This  
matter is still open.

- 24 8. **Nature of the action.** Briefly describe the nature of the action and the result  
25 below:

26 The Commissioner of Insurance relied upon existing Nevada law when  
27 drafting her complaint, filed on December 24, 2014, against the former directors of  
28

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

12  
13 The Commissioner of Insurance seeks relief from the District Court's  
14 erroneous rulings related to denying her right to amend her complaint to comply with  
15 new Nevada law. Specifically, this appeal seeks relief from the District Court's  
16 order dated August 10, 2020, denying leave to file an amended complaint, the  
17 District Court's order dated August 1, 2020, granting the Director Defendants'  
18 motion for judgment on the pleadings, and the District Court's order dated  
19 September 9, 2020, denying partial reconsideration of the motion for leave to amend  
20 to file a fourth amended complaint.  
21

22  
23 9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach  
24 separate sheets as necessary:  
25

26  
27 This District Court's denial of Appellant's motion to amend her complaint in  
28 order to comply with new Nevada law raises important precedential, constitutional

1 and public policy issues regarding: (1) the right of parties to amend pleadings in  
2 order to comply with changes in the underlying law which occur after a complaint  
3 has been filed but before the deadline for amending pleadings as provided in the trial  
4 court's scheduling order; (2) application of this Court's recent amendments to NRC  
5 41(e) regarding additional time provided under Nevada's 5-year rule in which a case  
6 must be brought to trial; (3) whether the District Court's factual mistake as to the  
7 time remaining until the close of discovery which formed that basis for the denial of  
8 a motion to amend a complaint in order to comply with new Nevada law was in  
9 error; and (4) correction of legal errors made by district court in all orders and  
10 judgment from which appeal is taken.

11  
12  
13  
14  
15 **10. Pending proceedings in this court raising the same or similar issues.** If  
16 you are aware of any proceeding presently pending before this court which  
17 raises the same or similar issues raised in this appeal, list the case name and  
18 docket number and identify the same or similar issues raised:

19 The Commissioner of Insurance is not aware of any similar cases pending at  
20 this time.

21 **11. Constitutional issues.** If this appeal challenges the constitutionality of a  
22 statute, and the state, any state agency, or any officer or employee thereof is  
23 not a party to this appeal, have you notified the clerk of this court and the  
24 attorney general in accordance with NRAP 44 and NRS 30.130?

25  
26 This appeal does not challenge the constitutionality of a statute.

27  
28 **12. Other issues.** Does this appeal involve any of the following:

1  
2 Reversal of well-settled Nevada precedent (on an attachment, identify the  
3 case(s))  
4 An issue arising under the United States and/or Nevada Constitutions  
5 A substantial issue of first-impression  
6 An issue of public policy  
7 An issue where en banc consideration is necessary to maintain uniformity of  
8 this court's decisions  
9 A ballot question  
10 If so, explain  
11

12 This appeal involves the constitutional due process rights of a litigant to be  
13 provided the opportunity to amend a complaint in order to comply with changes in  
14 the underlying law which occur after a complaint has been filed but before the  
15 deadline for amending pleadings as provided in the trial court's scheduling order  
16 has passed. As a result, this appeal raises constitutional due process and public  
17 policy issues of first impression in Nevada.  
18

19 **13. Assignment to the Court of appeals or retention in the Supreme Court.**

20 Briefly set forth whether the matter is presumptively retained by the  
21 Supreme Court or assigned to the Court of appeals under NRAP 17, and cite  
22 the subparagraph(s) of the Rule under which the matter falls. If appellant  
23 believes that the Supreme Court should retain the case despite its  
24 presumptive assignment to the Court of Appeals, identify the specific  
25 issue(s) or circumstances(s) that warrant retaining the case, and include an  
26 explanation of their importance or significance:  
27

28 This case is presumptively retained by the Supreme Court under both NRAP  
17(a)(9) and NRAP 17(a)11. This appeal originates in business court which is a  
presumptive category of retention by the Supreme Court. In addition, this appeal  
raises as a principal issue a question of first impression involving the United States

1 Constitution or Nevada Constitution or common law which is a presumptive  
2 category of retention by the Nevada Supreme Court.

3  
4 14. **Trial.** If this action proceeded to trial, how many days did the trial last?  
5 Was it a bench or jury trial?

6 Following the District Court's erroneous dismissal of the Director  
7 Defendants, the underlying action proceeded to trial against the remaining  
8 defendants. A jury trial against Uni-Ter Underwriting Management Corp., Uni-Ter  
9 Claims Services Corp., and U.S. Re Corporation ("Corporate Defendants") began  
10 on September 20, 2021, and concluded on October 14, 2021, with a unanimous  
11 jury verdict in favor of the Commissioner of Insurance and a judgment against the  
12 Corporate Defendants in the amount of \$15,222,853.00.

13  
14 15. **Judicial disqualification.** Do you intend to file a motion to disqualify or  
15 have a justice recuse him/herself from participation in this appeal. If so,  
16 which Justice?

17 The Commissioner of Insurance does not anticipate at this time filing a  
18 motion to disqualify or have a justice recuse him/herself from participation in this  
19 appeal.

20  
21 **TIMELINESS OF NOTICE OF APPEAL**

22 16. **Date of entry of written judgment or order appealed from:**

23 Order Denying Plaintiff's Motion for Leave to File Fourth Amended  
24 Complaint dated August 10, 2020;

25 Findings of Fact, Conclusions of Law and Order Denying Plaintiff's Motion  
26 for Leave to File Fourth Amended Complaint dated August 10, 2020;

27 Order to Strike from Record dated August 13, 2020;

28 Order Granting Defendants Robert Chur, Steve Fogg, Mark Garber, Carol



1 Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels' Motion  
2 for Judgment on the Pleadings Pursuant to NRCp 12(c) and Judgment Thereon  
3 dated August 13, 2020 August 14, 2020;

4 Findings of Fact, Conclusions of Law and Order Denying the Motion for  
5 Reconsideration of Motion for Leave to Amend Regarding Director Defendants  
6 dated September 9, 2020;

7 Order Denying Plaintiff's Motion to Retax and Settle Costs of Director  
8 Defendants dated July 16, 2021;

9 Order Granting in Part and Denying in Part Plaintiff's Motion for  
10 Declaratory Relief dated August 17, 2021;

11 Discovery Commissioner's Report and Recommendations dated August 23,  
12 2021;

13 Order Regarding Discovery Commissioner's Report and Recommendations  
14 dated September 17, 2021;

15 Order Granting In Part And Denying In Part Plaintiff s Motion In Limine  
16 No. 2 dated September 20, 2021;

17 Order Granting In Part And Denying In Part Plaintiff s Motion For Partial  
18 Summary Judgment As To U.S. Re Corporation dated September 20, 2021;

19 Order Denying Plaintiff's Motion In Limine Number 5 To Limit The Scope  
20 Of Expert Witness Testimony Regarding Speculation Concerning The Economy  
21 dated September 24, 2021;

22 Order Denying Plaintiff's Motion In Limine Number 4: To Preclude Any  
23 Reference To Reinsurance Estimates dated September 24, 2021;

24 Order Denying Plaintiff s Motion In Limine Number 1 To Preclude Sam  
25 Hewitt From Providing Expert Testimony Regarding Insolvency Analysis dated  
26 September 24, 2021;

27 Order Denying Plaintiff's Motion In Limine Number 6 To Strike Proffered  
28 Expert Witness Alan Gray dated September 24, 2021;

1           Order Denying Plaintiff s Motion For Partial Summary Judgment Regarding  
2   Uni-Ter Defendants Breach Of Their Fiduciary Duties dated September 27, 2021;  
3           Order Granting Motion to Exclude Interest dated December 15, 2021;  
4           Order of Dismissal Without Prejudice in favor of Robert Chur, Steve Fogg,  
5   Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and  
6   Eric Stickels dated February 25, 2016;  
7           Order of Dismissal dated May 4, 2016;  
8           Judgment in favor of Robert Chur, Steve Fogg, Mark Garber, Carol Harter,  
9   Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels dated August  
10   13, 2020;  
11          Order Denying Plaintiff’s Motion to Lift Stay or Alternatively Grant  
12   Plaintiff Other Relief dated August 12, 2019;  
13          Order Denying Motion to Substitute dated February 21, 2019;  
14          Order Granting in Part Defendants Robert Chur, Steve Fogg, Mark Garber,  
15   Carol Harter, Robert Hurlbut, Barbara Limpkin, Jeff Marshall, and Eric Stickels  
16   Motion to Strike dated November 6, 2018;  
17          Order Granting in Part Defendants Robert Chur, Steve Fogg, Mark Garber,  
18   Carol Harter, Robert Hurlbut, Barbara Limpkin, Jeff Marshall, and Eric Stickels  
19   Motion to Dismiss dated February 25, 2016.  
20          If no written judgment or order was filed in the district court, explain the  
21          basis for seeking appellate review:  
22   17.   **Date written notice of entry of judgment or order served:**  
23          Order Denying Plaintiff’s Motion for Leave to File Fourth Amended  
24   Complaint notice of entry served August 10, 2020;  
25          Findings of Fact, Conclusions of Law and Order Denying Plaintiff’s Motion  
26   for Leave to File Fourth Amended Complaint notice of entry served August 10,  
27   2020;  
28          Order to Strike from Record notice of entry served August 14, 2020;

1 Order Granting Defendants Robert Chur, Steve Fogg, Mark Garber, Carol  
2 Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels' Motion  
3 for Judgment on the Pleadings Pursuant to NRCp 12(c) and Judgment Thereon  
4 notice of entry served August 14, 2020;

5 Findings of Fact, Conclusions of Law and Order Denying the Motion for  
6 Reconsideration of Motion for Leave to Amend Regarding Director Defendants  
7 notice of entry served September 10, 2020;

8 Order Denying Plaintiff's Motion to Retax and Settle Costs of Director  
9 Defendants notice of entry served July 29, 2021;

10 Order Granting in Part and Denying in Part Plaintiff's Motion for  
11 Declaratory Relief notice of entry served August 17, 2021;

12 Discovery Commissioner's Report and Recommendations served August 23,  
13 2021;

14 Order Regarding Discovery Commissioner's Report and Recommendations  
15 notice of entry served September 20, 2021;

16 Order Granting In Part And Denying In Part Plaintiff s Motion In Limine  
17 No. 2 notice of entry served September 21, 2021;

18 Order Granting In Part And Denying In Part Plaintiff s Motion For Partial  
19 Summary Judgment As To U.S. Re Corporation notice of entry served September  
20 21, 2021;

21 Order Denying Plaintiff s Motion In Limine Number 5 To Limit The Scope  
22 Of Expert Witness Testimony Regarding Speculation Concerning The Economy  
23 dated notice of entry served September 30, 2021;

24 Order Denying Plaintiff's Motion In Limine Number 4: To Preclude Any  
25 Reference To Reinsurance Estimates notice of entry served September 30, 2021;

26 Order Denying Plaintiff s Motion In Limine Number 1 To Preclude Sam  
27 Hewitt From Providing Expert Testimony Regarding Insolvency Analysis notice of  
28 entry served September 30, 2021;

1 Order Denying Plaintiff's Motion In Limine Number 6 To Strike Proffered  
2 Expert Witness Alan Gray notice of entry served September 30, 2021;

3 Order Denying Plaintiff s Motion For Partial Summary Judgment Regarding  
4 Uni-Ter Defendants Breach Of Their Fiduciary Duties notice of entry served  
5 September 30, 2021;

6 Order Granting Motion to Exclude Interest notice of entry served December  
7 16, 2021;

8 Order of Dismissal Without Prejudice in favor of Robert Chur, Steve Fogg,  
9 Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and  
10 Eric Stickels notice of entry served February 26, 2016;

11 Order of Dismissal as to U.S. RE notice of entry served May 10, 2016;

12 Judgment in favor of Robert Chur, Steve Fogg, Mark Garber, Carol Harter,  
13 Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels notice of entry  
14 served August 14, 2020;

15 Order Denying Plaintiff's Motion to Lift Stay or Alternatively Grant  
16 Plaintiff Other Relief notice of entry served August 12, 2019;

17 Order Denying Motion to Substitute dated notice of entry served February  
18 26, 2019;

19 Order Granting in Part Defendants Robert Chur, Steve Fogg, Mark Garber,  
20 Carol Harter, Robert Hurlbut, Barbara Limpkin, Jeff Marshall, and Eric Stickels  
21 Motion to Strike notice of entry served November 7, 2018;

22 Order Granting in Part Defendants Robert Chur, Steve Fogg, Mark Garber,  
23 Carol Harter, Robert Hurlbut, Barbara Limpkin, Jeff Marshall, and Eric Stickels  
24 Motion to Dismiss notice of entry served February 26, 2016.

25  
26 (a) Was service by delivery \_\_\_\_\_ or by mail/electronic/fax X.\

27 Notice of entry of all orders regarding this appeal were served by electronic  
28 service through the District Court's e-service system on the same day the notice of

entry of orders were filed.

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52 (b), or 59,**

(a) Specify the type of motion, and the date and method of service of the motion, and date of filing.

Plaintiff's Motion to Alter or Amend Judgment Pursuant to NRCP 59 filed on February 10, 2022 and served by electronic service on the same day.

Defendant US RE's Motion to Alter or Amend Judgment filed on February 10, 2022 and served by electronic service on the same day.

NRCP 50(b) Date of filing \_\_\_\_\_

NRCP 52(b) Date of filing \_\_\_\_\_

NRCP 59 Date of filing February 10, 2022

**Note: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion:

(c) Date of written notice of entry of order resolving motion served:

Was service by delivery \_\_\_\_\_ or by mail \_\_\_\_\_ (specify).

**19. Date notice of appeal was filed: November 18, 2022**

If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other: NRAP 4(a)**

## SUBSTANTIVE APPEALABILITY

21. **Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

Explain how each authority provides a basis for appeal from the judgment or order: The basis for appeals herein are pursuant to NRAP 3A(a) and (b), final judgment entered in an action, and all related final orders of the district court.

22. **List all parties involved in the action in the district court:**

(a) Parties:

Plaintiff/Respondent:

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

Defendants/Appellants:

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.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal *e.g.*, formally dismissed, not served, or other:

Following the District Court's dismissal of the Director Defendants, the underlying action proceeded to trial against the remaining defendants. A jury trial against Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. Re Corporation ("Corporate Defendants") began on September 20, 2021, and concluded on October 14, 2021, with a unanimous jury verdict in favor of the Commissioner of Insurance and a judgment against the Corporate Defendants in the amount of \$15,222,853.00. Final Judgment was entered, and the Corporate

1 Defendants did not appeal any appealable determinations made by the District  
2 Court.

3  
4 **23. Give a brief description (3 to 5 words) of each party's separate claims,**  
5 **counterclaims, cross-claims or third-party claims, and the date of**  
6 **formal disposition of each claim.**

7 Commissioner of Insurance:

8 Against the Director Defendants: (1) Gross Negligence; and (2)  
9 Deepening of the Insolvency.

10 Against the Corporate Defendants: (1) Breach of Fiduciary Duty; and  
11 (2) Negligent Misrepresentation.

12 Director Defendants: No separate claims, counterclaims, cross-claims or  
13 third-party claims.

14 Corporate Defendants: No separate claims, counterclaims, cross-claims or  
15 third-party claims.

16 **24. Did the judgment or order appealed from adjudicate ALL the claims**  
17 **alleged below and the rights and liabilities of ALL the parties to the**  
18 **action or consolidated actions below:**

19 Yes   X   No           

20 **25. If you answered "No" to question 24, complete the following:**

21 (a) Specify the claims remaining pending below:

22 (b) Specify the parties remaining below:

23  
24 (c) Did the district court certify the judgment or order appealed from as a  
25 final judgment pursuant to NRCP 54(b):

26 Yes            No           

27 (d) Did the district court make an express determination, pursuant to NRCP  
28 54(b), that there is no just reason for delay and an express direction for the

entry of judgment:

Yes \_\_\_\_\_ No \_\_\_\_\_

26. **If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

27. **Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

### VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Name of Appellants: Commissioner of Insurance for the State of Nevada as Receiver of Lewis & Clark LTC Risk Retention Group, Inc.

Name of counsel of record: Brenoch Wirthlin, Esq.  
Hutchison & Steffen, PLLC  
10080 W. Alta Drive, Ste. 200  
Las Vegas, Nevada 89145  
702-385-2500

Date: 12/13/2022

/s/Brenoch Wirthlin

Signature of counsel of record

Clark County, Nevada

State and county where signed



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

Page 18 of 18

# **EXHIBIT “D”**

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*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

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

Plaintiff,

vs.

IRONSHORE SPECIALTY INSURANCE  
COMPANY; CATLIN INSURANCE  
COMPANY, INC.;

Defendants.

Case No.:

**COMPLAINT**

Plaintiff, COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS  
RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., (“Plaintiff”  
or “Commissioner”), files this Complaint against Defendants, IRONSHORE SPECIALTY  
INSURANCE COMPANY (“Ironshore”), and CATLIN INSURANCE COMPANY, INC.  
 (“Catlin”, and collectively with Ironshore “Defendants” or “Insurance Providers”), alleging the  
following:

**INTRODUCTION**

1. This diversity action for declaratory judgment and injunctive relief arises out  
of the Commissioner’s claim to be owed the full amounts remaining under insurance

1 policies (“Policy Limits”) sold by Defendants Ironshore and Catlin to U.S. Re Corporation.

2 2. U.S. Re Corporation, along with their wholly-owned subsidiaries, Uni-Ter  
3 Underwriting Management Corp and Uni-Ter Claims Services Corp (collectively “Judgment  
4 Debtors”), ran a nationwide insurance scheme out of New York and Atlanta that involved  
5 setting up risk retention groups (“RRGs”), and then making themselves the managers and  
6 reinsurance brokers for the RRGs so they could control and systematically drain money  
7 from them until they collapsed.

8 3. Lewis and Clark LTC Risk Retention Group, Inc. (“L&C”) was a Nevada  
9 insurer that was just one of the RRGs set up and run into the ground by the Judgment  
10 Debtors. After L&C become insolvent, the Commissioner took over L&C in 2012 pursuant  
11 to Nevada law.

12 4. The Commissioner filed an action on behalf of L&C on December 23, 2014, in  
13 the Eighth Judicial District Court, Clark County, Nevada (Case No. A-14-7111535-C)  
14 naming the Judgment Debtors as Defendants. The case went to trial on September 20, 2021,  
15 and on October 14, 2021, the matter was submitted to the Jury, which rendered a unanimous  
16 Verdict in favor of the Commissioner. The district court subsequently entered Judgment  
17 against the Judgment Debtors totaling \$20,874,860.89 in damages (“Judgment”).

18 5. Despite their promise to pay the available policy limits for covered claims that  
19 the Judgment Debtors become legally obligated to pay, Defendants Ironshore and Catlin  
20 refuse to stand by the insurance policies that they issued and to honor their contractual  
21 undertakings.

## 22 **PARTIES**

### 23 **A. PLAINTIFF**

24 6. Plaintiff COMMISSIONER OF INSURANCE FOR THE STATE OF  
25 NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP,  
26 INC., is an appointed state executive position in the Nevada state government that oversees  
27 the Division of Insurance.

28 ///

•1                   **B. DEFENDANTS**

2                   7. Defendant IRONSHORE SPECIALTY INSURANCE COMPANY is an  
3 Arizona corporation with its principal place of business in Boston, Massachusetts.

4                   8. Defendant CATLIN INSURANCE COMPANY INC is a Texas corporation  
5 with its principal place of business in Stamford, Connecticut.

6                                   **JURISDICTION AND VENUE**

7                   9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, as the  
8 parties are completely diverse in citizenship and the amount in controversy exceeds \$75,000,  
9 exclusive of interests and costs.

10                  10. Venue is proper in this District under 28 U.S.C. § 1391 because the  
11 Commissioner's place of business is in this District and a substantial portion of the events  
12 and omissions giving rise to the claims and losses occurred within the District.

13                                   **GENERAL ALLEGATIONS**

14                  11. Judgment was entered against the Judgment Debtors in Dept. 27 of the Eighth  
15 Judicial District Court on December 30, 2021, in the amount of \$19,059,997.28. On  
16 December 2, 2022, the Court further awarded Plaintiff \$1,814,863.61 in attorneys' fees and  
17 costs, for a total judgment in favor of Plaintiff and against the Judgment Debtors jointly and  
18 severally in the amount of \$20,874,860.89.

19                  12. The Judgment Debtors had multiple insurance policies that together should have  
20 covered more than half the amount of the Judgment. Catlin issued a \$5,000,000 primary  
21 layer of insurance (Policy Number IAP-97329-0514) to U.S. Re ("Catlin Policy"), and  
22 Ironshore issued a \$5,000,000 excess layer of insurance (Policy Number 000703604) to U.S.  
23 Re ("Ironshore Policy").

24                  13. On information and belief, the Judgment Debtors falsely represented to the  
25 Commissioner that the Catlin Policy and the Ironshore Policy are the only two policies  
26 providing coverage that had not been exhausted.

27                  14. Based upon this representation, Plaintiff executed a Settlement Agreement and  
28 Mutual Release with the Judgment Debtors on or about July 13, 2022 ("Agreement").

1           15. The Agreement provided that Ironshore and Catlin will pay to Plaintiff the sum  
2 of \$5,200,000 (“Settlement Amount”) within 30 days after receipt of a fully-executed copy  
3 of the Agreement, a W-9 from Plaintiff identifying the name and address of the payee, and  
4 service of notice of entry of order approving the Agreement by the Eighth Judicial District  
5 Court (Case No. A-12-672047-B).

6           16. The Agreement also included a strict 30-day provision that was specifically  
7 negotiated by counsel for the parties that made the Agreement of no force and effect and to  
8 be null and void should the settlement funds (“Settlement Funds”) not be received within 30  
9 days.

10           17. The Agreement contains no provision regarding dismissal of US Re or any other  
11 defendant.

12           18. Paragraph B(1) of the Agreement states as follows:

13           **Within 30 days after receipt of a fully-executed copy of this Agreement, a W-**  
14 **9 from Plaintiff identifying the name and address of the payee, and service of**  
15 **notice of entry of an order approving this Agreement** by the Eighth Judicial  
16 District Court in Clark County, Nevada, in Case no.: A-12-672047-B, STATE OF  
17 NEVADA, EX REL. COMMISSIONER OF INSURANCE, IN HIS OFFICIAL  
18 CAPACITY AS STATUTORY RECEIVER FOR DELINQUENT DOMESTIC  
19 INSURER vs. LEWIS & CLARK LTC RISK RETENTION GROUP, INC. (the  
20 “Receivership”), the insurance carriers for the Corporate Defendants will pay  
21 Plaintiff the sum of \$5,200,000 (US) by company check(s) (the “Settlement  
22 Funds”) as consideration. **However, all Parties acknowledge and agree that**  
23 **this Agreement is of no force and effect until said Settlement Funds are**  
24 **actually received by the Plaintiff, and that this Agreement shall be null and**  
25 **void in the event such Settlement Funds are not received by the Plaintiff**  
26 **within the 30-day time period referenced herein.**

27           19. This strict 30-day provision was specifically negotiated between counsel for the  
28 parties.

          20. On July 20, 2022, undersigned counsel forwarded a copy of the signed  
Agreement, a W-9, and an notice of entry of order (“NOE”) as required by paragraph B(1) of  
the Agreement.

          21. Thus, the 30 day period to receive the Settlement Funds (as defined in the

1 Agreement) ended on August 19, 2022.

2 22. On July 22, 2022, counsel for US Re responded stating that he had received  
3 these items and had “forwarded them to the client and carriers.”

4 23. In addition, Plaintiff’s counsel mailed the items to counsel for US Re.

5 24. On August 19, 2022, Plaintiff’s representative received a check in the amount of  
6 approximately \$400,000 from one insurer, but did not receive the remaining amount of the  
7 Settlement Funds.

8 25. On August 24, 2022, five (5) days after the expiration of the strict 30-day time  
9 period for payment, Plaintiff received a check from Ironshore for approximately \$4.79M  
10 (“Ironshore Check”).

11 26. The Ironshore Check did not contain any notation that it was in full satisfaction  
12 of the debts owed to Plaintiff, or any other notation.

13 27. Accordingly, on information and belief, Plaintiff did not waive its right to  
14 collect the remaining amount of the Judgment from the Defendants.

15 28. On information and belief, Defendants have additional policies other than what  
16 has been paid to Plaintiff which are required to be paid to Plaintiff to satisfy the outstanding  
17 unpaid amounts of the Judgment.

18 **FIRST CAUSE OF ACTION**

19 **(By Plaintiffs against all Defendants)**

20  
21 29. Plaintiff incorporates by this reference each of the allegations set forth in each  
22 and every paragraph set forth in this Complaint as if fully set forth herein.

23 30. This Court has the power and authority to declare the rights, status and interests  
24 of the parties.

25 31. A justifiable controversy exists between Plaintiff and Defendants regarding their  
26 respective rights and obligations such that Plaintiff asserts a claim of a legally protected  
27 right.

28 32. This issue is ripe for judicial determination.

33. Plaintiff is therefore entitled to and requests that this Court issue a declaratory judgment finding, without limitation, that:

- i. Defendants owe Plaintiff the remaining unpaid amounts of the Judgment pursuant to the applicable insurance contracts.
- ii. Plaintiffs are entitled to the damages sought, including without limitation herein;
- iii. Such other and further relief as deemed appropriate.

34. Plaintiffs have been forced to retain the law firm of Hutchison & Steffen to prosecute this action and is entitled to an award of reasonable attorneys' fees and costs of suit incurred herein. Wherefore, Plaintiffs pray for relief including without limitation as set forth herein.

WHEREFORE, Plaintiffs pray for relief and judgment as follows:

- A. For damages, including without limitation general, compensatory and punitive damages, in an amount in excess of \$75,000, the exact amount to be proven at trial;
- B. For declaratory relief, including without limitation as set forth herein;
- C. For prejudgment interest from the date said sums first became due at the highest rate allowed under applicable law;
- D. For an award of costs and reasonable attorney fees pursuant to applicable law, with interest at the highest rate allowed by law; and
- E. For such other and further relief as the Court deems just and proper.

DATED this 10<sup>th</sup> day of April, 2023.

/s/Brenoch Wirthlin

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*Attorneys for Plaintiff*



1 **CSERV**

2  
3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5  
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 Order Shortening Time 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:

16 Service Date: 5/19/2023

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aharris@fclaw.com

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aochoa@lipsonneilson.com

19 Ashley Scott-Johnson .

ascott-johnson@lipsonneilson.com

20 Brenoch Wirthlin .

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