IN THE SUPREME COURT OF THE STATE OF NEVADA

*** * ***

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, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, Respondents.	Supreme Court No. 85668 Electronically Filed Jun 16 2023 03:31 PM Elizabeth A. Brown Clerk of Supreme Court **EXHIBIT 1 TO APPELLANT'S OPPOSITION TO MOTION TO DISMISS PAGES 1 - 90**
ROBERT CHUR; STEVE FOGG; MARK GARBER; CAROL HARTER; ROBERT HURLBUT; BARBARA LUMPKIN; JEFF MARSHALL; AND ERIC STICKELS, Appellants, vs. THE STATE OF NEVADA COMMISSIONER OF INSURANCE AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Respondents.	Supreme Court No. 85728

Docket 85668 Document 2023-19211

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; UNI-TER UNDERWRITING MANAGEMENT CORP.; UNI-TER CLAIMS SERVICES CORP.; AND U.S. RE CORPORATION, Respondents.	Supreme Court No. 85907

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EXHIBIT 1

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

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, 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. A721535 **DOCKETING STATEMENT**

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Dec 13 2022 11:18 PM
Elizabeth A. Brown
Clerk of Supreme Court

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

GENERAL INFORMATION

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.

Docket 85668 Document 2022-39132

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate *Id*. Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

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.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107, Nev. 340, 810 P.2d 1217 (1991). Please use tab dividers to separate any attached documents.

1. **Judicial District:**

Eighth Judicial District

Department: XXVII

Country: Clark County

Judge: Honorable Nancy L. Allf

Case No. A-14-711535-C

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

Attorney: Brenoch R. Wirthlin, Esq.
Firm: Hutchison & Steffen, PLLC
Address: 10080 W. Alta Drive, Ste. 200
Las Vegas, Nevada 89145
702-385-2500

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

If this is a joint statement by multiple applicants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they

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**

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

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

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

Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels v. The Eight Judicial 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.

Commissioner of Insurance for the State of Nevada as Receiver of Lewis & Clark LTC Risk Retention Group, Inc. v. The Eight Judicial 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. 81857.

Commissioner of Insurance for the State of Nevada as Receiver of Lewis & Clark LTC Risk Retention Group, Inc. v. The Eight Judicial 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. 84253.

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

Commissioner of Insurance for the State of Nevada as Receiver of Lewis & Clark LTC Risk Retention Group, Inc. v. 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, Case No. A-12-672047-B. This matter is still open.

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

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

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

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

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

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

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

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

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

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

This appeal does not challenge the constitutionality of a statute.

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

Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))

An issue arising under the United States and/or Nevada Constitutions

A substantial issue of first-impression

An issue of public policy

An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

A ballot question

If so, explain

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

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

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

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

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

Following the District Court's erroneous 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.

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

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

TIMELINESS OF NOTICE OF APPEAL

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

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

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

Order to Strike from Record dated August 13, 2020;

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

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

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

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

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

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

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

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

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

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

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

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

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

Order Denying Plaintiff s Motion For Partial Summary Judgment Regarding Uni-Ter Defendants Breach Of Their Fiduciary Duties dated September 27, 2021;

Order Granting Motion to Exclude Interest dated December 15, 2021;

Order of Dismissal Without Prejudice in favor of Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels dated February 25, 2016;

Order of Dismissal dated May 4, 2016;

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

Order Denying Plaintiff's Motion to Lift Stay or Alternatively Grant Plaintiff Other Relief dated August 12, 2019;

Order Denying Motion to Substitute dated February 21, 2019;

Order Granting in Part Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Limpkin, Jeff Marshall, and Eric Stickels Motion to Strike dated November 6, 2018;

Order Granting in Part Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Limpkin, Jeff Marshall, and Eric Stickels Motion to Dismiss dated February 25, 2016.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. **Date written notice of entry of judgment or order served:**

Order Denying Plaintiff's Motion for Leave to File Fourth Amended Complaint notice of entry served August 10, 2020;

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

Order to Strike from Record notice of entry served August 14, 2020;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Was service by delivery _____ or by mail/electronic/fax X.\

Notice of entry of all orders regarding this appeal were served by electronic 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

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

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

Commissioner of Insurance:
Against the Director Defendants: (1) Gross Negligence; and (2) Deepening of the Insolvency.
Against the Corporate Defendants: (1) Breach of Fiduciary Duty; and (2) Negligent Misrepresentation.

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

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

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

Yes X No _____

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

Yes _____ No _____

(d) Did the district court make an express determination, pursuant to NRCP 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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this 13th day of December, 2022, I caused the above and foregoing document entitled: **DOCKETING STATEMENT** to be served via NOTICE OF ELECTRONIC FILING through the Electronic Case Filing System of the Nevada Supreme Court with the submission to the Clerk of the Court, who will serve the parties electronically, and to be served by mailing via first class mail with sufficient postage prepaid to the following addresses listed below.

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

Lansford W. Levitt
2072 Sea Island Drive
Dana Point, CA 92629

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

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CLERK OF THE COURT

ACOM
JAMES L. WADHAMS, ESQ.
Nevada Bar No. 1115
BRENOCH WIRTHLIN, ESQ.
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Attorneys for Plaintiff Commissioner of Insurance
For the State of Nevada

DISTRICT COURT OF NEVADA

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, inclusc v sive; Defendants.	Case No.: A-14-711535-C Dept No.: XXVII **THIRD AMENDED COMPLAINT** **[Request for Exemption to be Filed]** **[Damages in Excess of $50,000]**

Plaintiff, the Court-appointed receiver ("Plaintiff") of Lewis & Clark LTC Risk Retention Group, Inc. ("L&C" or the "Company"), files the Third Amended Complaint clarifying the Exhibits referenced in the Complaint and hereby complains and alleges as follows:

///

///

PARTIES, JURISDICTION AND VENUE

1. L&C was a Nevada domiciled risk retention group formed in 2004. Between 2004 and February 28, 2013, L&C provided general and professional liability coverage to long term care facilities and home health providers.

2. The Nevada Division of Insurance ("DOI") filed a Receivership Action related to L&C in November, 2012, commencing case number A-12-672047-B in the Eighth Judicial District Court of Nevada, in and for the County of Clark ("Receivership Action"). In the Receivership Action, the court entered an Order of Liquidation ("Liquidation Order") on February 28, 2013. A copy of the Liquidation Order is attached hereto as **Exhibit 1**. In the Liquidation Order, Plaintiff was appointed as the Receiver ("Receiver") of L&C. *Id.* The express powers granted to Receiver in the Order include the power to "[p]rosecute any action which may exist on behalf of the policyholders, members or shareholders of L&C against any officer of L&C or any other person[.]" *See* Liquidation Order, Exhibit 1, at ¶6(g).

3. On information and belief, defendant Robert Chur ("Chur") was a director of L&C at all relevant times including as of the time the Receivership Action was filed.

4. On information and belief, Chur resides in Williamsville, New York.

5. On information and belief, Chur was also President of ElderWood Senior Care at relevant times.

6. On information and belief, defendant Steve Fogg ("Fogg") was a director of L&C at all relevant times including as of the time the Receivership Action was filed.

7. On information and belief, Fogg resides in Oregon.

8. On information and belief, Fogg was also Chief Financial Officer of Marquis Companies at relevant times.

9. On information and belief, defendant Mark Garber ("Garber") was a director of L&C at all relevant times including as of the time the Receivership Action was filed.

10. On information and belief, Garber resides in Oregon.

11. Garber was also Chief Financial Officer of Pinnacle Healthcare, Inc. ("Pinnacle") at relevant times.

12. On information and belief, defendant Carol Harter ("Harter") was a director of L&C at all relevant times including as of the time the Receivership Action was filed.

13. On information and belief, Harter resides in Las Vegas, Nevada.

14. On information and belief, Harter was also a professor at University of Nevada, Las Vegas at relevant times.

15. On information and belief, defendant Robert Hurlbut ("Hurlbut") was a director of L&C at all relevant times including as of the time the Receivership Action was filed.

16. On information and belief, Hurlbut resides in New York.

17. On information and belief, defendant Barbara Lumpkin ("Lumpkin") was a director of L&C at all relevant times including as of the time the Receivership Action was filed.

18. On information and belief, Lumpkin resides in Florida.

19. On information and belief, Lumpkin was also the Associate Executive Director of the Florida Nurses Association at relevant times.

20. On information and belief, defendant Jeff Marshall ("Marshall") was the President and CEO of L&C at all relevant times including as of the time the Receivership Action was filed.

21. On information and belief, Marshall resides in Washington.

22. On information and belief, Marshall was also President and CEO of Eagle Healthcare, Inc. ("Eagle Healthcare") at relevant times.

23. On information and belief, defendant Eric Stickels ("Stickels") was the Secretary and Treasurer of L&C at all relevant times including as of the time the Receivership Action was filed.

24. On information and belief, Stickels resides in New York.

25. On information and belief, Stickels was also Chief Financial Officer of Oneida Savings Bank ("Oneida") at relevant times.

26. On information and belief, U.S. RE Corporation ("U.S. RE") is a New York corporation and is an international financial services firm with interests in reinsurance brokerage, investment banking, and program business, as well as holdings in the insurance industry.

27. On information and belief, defendant Uni-Ter Underwriting Management

Corporation ("Uni-Ter UMC" or "Uni-Ter") is a Georgia corporation and is a wholly owned subsidiary of U.S. RE Corporation.

28. On information and belief, Uni-Ter Claims Services Corp. ("Uni-Ter CS") is a Georgia corporation and is a wholly owned subsidiary of Uni-Ter UMC.

29. On information and belief, Defendants DOE INDIVIDUALS 1 through 50 and ROE COMPANIES 51 through 100 are individuals or business entities currently unknown to Plaintiff who claim some right, title, interest or lien in the subject matter of this action. When the names of said DOE INDIVIDUALS and ROE COMPANIES have been ascertained, Plaintiff will request leave to substitute their true names and capacities and join them in this action.

GENERAL ALLEGATIONS

A. Introduction

30. L&C was a Nevada corporation formed in or around 2003. L&C was organized as a risk retention group to write Professional and General Liability coverage for long-term care facilities in the Pacific Northwest.

31. L&C expanded its area of operation over the years and, at the time of Receivership Action in 2012, wrote coverage for long term care facilities in 46 states, although New York, California, Oregon, and Washington accounted for a majority of the premiums.

32. The individual defendants include the directors and officers of L&C at the relevant times who, among other things, were grossly negligent in performing their duties as directors and officers of L&C which resulted the Receivership Action being filed.

33. Defendants Uni-Ter UMC and Uni-Ter CS were retained as a manager of L&C. Defendant U.S. RE was retained to provide reinsurance to L&C.

34. On information and belief, the Defendants who were directors and officers of L&C ("Board") were aware at the time it retained Uni-Ter and its affiliates that they had only recently been formed and had limited operating history. Further, the Board understood that the Board members had not previously organized an insurance company. Thus, on information and belief, the Board placed undue reliance on Uni-Ter as its manager without properly informing itself of the information provided by Uni-Ter and its affiliates. Further, on information and belief, the

Board continued to rely on information and recommendations from Uni-Ter despite clear indications that the information was incomplete and inaccurate and the recommendations were ill advised, but the Board failed to exercise even slight diligence or care in verifying or correcting the misinformation provided by Uni-Ter, U.S. RE and others, and to take proper corrective action.

B. Acquisitions and Growth of L&C

35. During calendar year 2005, L&C acquired Henry Hudson LTC Risk Retention Group, Inc. ("Henry Hudson") which wrote exclusively in New York. L&C assumed all outstanding liabilities of Henry Hudson.

36. L&C acquired Sophia Palmer Nurses Risk Retention Group ("Sophia Palmer") in 2009. Sophia Palmer wrote general and professional liability policies to nurses mostly in Florida. L&C assumed all outstanding liabilities of Sophia Palmer.

37. By the time it was placed in receivership, L&C had issued approximately 25,254 shares of common stock. Its directors and officers held approximately 11,720 shares. The largest shareholders were Pinnacle with approximately 3663 shares and Eagle Healthcare with approximately 4041 shares.

38. L&C was managed by Uni-Ter UMC at all times. Uni-Ter UMC also did other work including private offering work on behalf of L&C such as sending out the offering memoranda and offering documents on behalf of the company.

C. Agreements with the Uni-Ter Entities and Brokers

39. The Uni-Ter entities hold themselves out as a leading provider of liability insurance to the healthcare industry.

40. Uni-Ter UMC has created at least five Risk Retention Groups which include L&C, Ponce de Leon LTC RRG, Inc., and J.M. Woodworth RRG, Inc.

41. As a Managing General Underwriter, Uni-Ter's services to L&C included administration, underwriting, risk management, claims, and regulatory compliance.

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(1) Management Agreements

42. Immediately upon formation of L&C by Uni-Ter UMC, L&C entered into management agreements with Uni-Ter UMC. In 2011, Uni-Ter entered into a new management agreement with Uni-Ter UMC and Uni-Ter CS.

a. 2004 Management Agreement

43. L&C and Uni-Ter UMC entered into a Management Agreement dated January 1, 2004 ("2004 Management Agreement") for a period of seven years. A copy of the 2004 Management Agreement is attached hereto as **Exhibit 2**.

44. In the agreement, L&C appointed Uni-Ter UMC as its exclusive underwriting, administrative, accounting, risk management, and claims manager for the lines of business and territories set forth in Exhibit A to that agreement.

45. The 2004 Management Agreement states that Uni-Ter UMC would "serve L&C in a fiduciary capacity for all legal duties." Id.

46. Uni-Ter UMC's duties under the 2004 Management Agreement expressly included the following: (i) Soliciting of risks and class of risks that meet L&C's underwriting and pricing standards, appointing qualified brokers and agents to sell the insurance, (ii) binding of risks, (iii) issuance, renewal, and cancellation of policies, (iv) collection of premiums, (v) handling of claims, (vi) keeping accurate records and having audits done, (vii) maintaining electronic files, (viii) providing the usual and customary services to insureds, (ix) ensuring compliance with state and federal regulations, (x) determining and setting appropriate premium rates, (xi) compiling and providing the needed statistical reports to L&C, (xii) holding all of L&C's assets in investment custodian accounts as a fiduciary, (xiii) determining and obtaining appropriate reinsurance authorized by L&C, (xiv) safeguarding and maintaining L&C property, and (xv) accounting to L&C for certain financial and insurance information on a monthly basis (including operating statement, balance sheet, policies written for the month, claims incurred for the month, AR summary, and summary of all claims, reserves, and losses). Id, at Article III.

47. Uni-Ter's duties also specifically included "[t]o arrange for or perform risk management services for the benefit of the insureds of L&C. Such risk management shall have

the primary goal of reducing the frequency of medical incidents that give rise to policy claims. Specific risk management duties are set forth in Exhibit C." *Id.* Art. III(R).

48. Uni-Ter's duties also included filing quarterly and annual financial statements with the Nevada DOI and other states requiring the same. *Id.* Art. III(H)(2).

49. The 2004 Management Agreement also included Exhibit B entitled Claims Management Authority which stated that Uni-Ter UMC "shall handle all aspects of claim processing . . . for all claims and allocated loss adjustment expenses subject to this Agreement." The Exhibit then lists specific claims handling duties of Uni-Ter including monthly reporting of new claims, open reserves, paid claims, and ending reserve balance for both indemnity and expense activity. Id, at Exhibit B.

50. Regarding compensation, Uni-Ter was paid in three components.

(i) A management fee of 22% of gross written premiums net of cancellations and non renewals up to $5 million, 20% between $5 million and $15 million, and 17.5% above $15 million. Management fees were to be paid monthly.

(ii) Claims handling fees of $250 per file setup for each claim or investigation, $95 per hour for claim adjuster/nurse professional time, and actual travel expenses.

(iii) A profit sharing bonus on a sliding scale as a percent of earned premiums based on loss ratio for each calendar year. The profit sharing bonus was to be paid no later than March 1 of the year following the fifth year after the year at issue.

See id.

51. The 2004 Management Agreement included amendments that modified these payment terms. *Id.*

52. The Second Amendment to the 2004 Management Agreement states that for all services under the 2004 Management Agreement other than claims handling, the management fee will be 12% of annual gross written premiums net of cancellations and non-renewals plus the

amount of agency commissions (at rates approved by L&C) payable to retail and wholesale agents appointed by Uni-Ter. *Id.*

53. Various amendments raised the hourly rate for claim adjuster/professional time. *Id.*

54. The Fifth Amendment to the 2004 Management Agreement modified the profit sharing bonus provision to be paid on March 1 of the year following the fourth year after the year at issue. *Id.*

55. On information and belief, in or around 2009 L&C, at Uni-Ter's direction, accepted multiple multi-site LTC operators ("Multi-site Operators") as policyholders. As noted above, one of these operators was Sophia Palmer.

56. On information and belief, at the time L&C accepted Sophia Palmer, Lumpkin – a director of L&C – also chaired the board of Sophia Palmer.

57. On information and belief, the DOI reprimanded the Board for failing to submit a Conflict of Interest Statement as the officers and directors of L&C were required to do pursuant to NAC 694C.

58. On information and belief, the Board accepted Uni-Ter's direction to obtain the Multi-site Operators, including Sophia Palmer, without adequate information. In fact, the Board failed to even exercise a slight degree of diligence in determining whether the acceptance of the Multi-site Operators, including Sophia Palmer, was an appropriate decision.

59. On information and belief, had the Board exercised even scant care in informing itself based upon the information available to it regarding the Multi-site Operators, it would have discovered that in fact the recommendation by Uni-Ter was ill advised.

60. On information and belief, L&C's acceptance of the Multi-site Operators constituted a significant divergence from the established business model of L&C as the Multi-site Operators were large, multi-facility operators and had historical loss records outside L&C's typical underwriting range. Further, on information and belief, one of the contracts at issue contained an unprecedented provision that limited the claims exposure of L&C on an aggregate level rather than on a claim-specific level.

61. Following L&C's acquisition in 2009 of the Sophia Palmer nurse/nurse practitioner book of business in Florida, the Seventh Amendment stated that the existing profit sharing terms were applicable to L&C's long term care facility/home health care book of business, but that regarding L&C's nurse/nurse practitioner book of business produced by agents, the profit sharing bonus (called "commissions") were to be paid at a rate of 37.5% of the annual gross written premiums net of cancellations and non-renewals. For nurse/nurse practitioner business produced by Uni-Ter UMC, the commission rate was to be 30.0%.

62. The Eighth Amendment to the 2004 Management Agreement stated that management fees were to be paid to Uni-Ter UMC on a continuing basis as premiums are collected or adjusted (as opposed to monthly previously). *Id.*

63. On information and belief, Uni-Ter received at least $1,500,000 in management fees in 2010.

b. 2011 Management Agreement

64. At the expiration of the 2004 Management Agreement, L&C and Uni-Ter UMC (and Uni-Ter's subsidiary Uni-Ter CS) entered into a similar Management Agreement on January 1, 2011 ("2011 Management Agreement") for a period of five years. A copy of the 2011 Management Agreement is attached hereto as **Exhibit 3**.

65. The 2011 Management Agreement was in place when the Order of Liquidation was entered.

66. The 2011 Management Agreement states that Uni-Ter UMC and Uni-Ter CS as Manager would "serve L&C in a fiduciary capacity for all legal duties." Id. It sets forth similar duties for Uni-Ter as under the 2004 agreement. The management fee and claims handling fees portion of the compensation are the same as the amended compensation under the 2004 agreement.

67. The 2011 Management Agreements included the following revisions to the 2004 Management Agreement:

(i) The accounting reporting to L&C is to be done on a quarterly basis instead of monthly. Art. III(H).

(ii) Exhibit A was revised regarding the territory to include all of the U.S. except for Hawaii and Alaska and excluding long term care and home healthcare in Florida.

(iii) The limitations of Uni-Ter's authority in Article III(Y) are revised to delete the limitations set forth in items 2, 6, and 9 of the 2004 agreement. Uni-Ter's new allowed duties (i.e., no longer a limitation) included that it had full authority to settle claims on L&C's behalf or commit L&C to pay claims.

(iv) The profit sharing bonus provision was revised to apply from 2007 forward with 2006 being the last year under the 2004 Management Agreement. For 2007 onward, the profit sharing bonus was to be 20% of L&C's Profit as defined to be pre-tax net income as adjusted for the applicable year's loss ratio, ALAE ratio, and reinsurance payables and receivables through December 31 of the fourth year following the applicable year.

Id.

68. The First Amendment to the 2011 Management Agreement revised the management fee for calendar year 2011 to be at a rate of 10% instead of 12% and stated that continuation of the 2% differential for subsequent periods is subject to mutual agreement of the parties. A handwritten notation on the amendment states that "This was revised on February 7th, 2011." Id.

69. The Second Amendment is dated November 15, 2011 in conjunction with additional capital contributions at that time. It states that for so long as any amounts are unpaid on the surplus debentures of L&C issued in 2011 and 2012, the profit sharing bonus payable to Uni-Ter UMC shall accrue but not be paid. Id.

70. The Third Amendment done on December 31, 2011 states that no profit sharing bonus would accrue or be paid regarding the 2008 calendar year. Id.

71. Despite the changes to Uni-Ter's management responsibilities, and despite the dire financial circumstances of L&C during 2011, on information and belief Uni-Ter received not less

than $1,000,000.00 in management fees in 2011.

72. Milliman, Inc. ("Milliman"), an actuarial firm, provided Rate and Loss Reserve analysis to Uni-Ter ("Milliman Reports"). Milliman was engaged by Uni-Ter, and not L&C, in the work that it did. Milliman did premium rate and professional liability and general liability rate analysis for Uni-Ter. Milliman also did loss reserve analysis for Uni-Ter.

(2) U.S. RE Agreement

73. In a Broker of Record Letter Agreement between L&C and U.S. RE, L&C appointed U.S. RE as its exclusive reinsurance intermediary/broker for a period of seven years and granted U.S. RE full and complete authority to negotiate the placement of reinsurance on all classes of insurance with unspecified limits of coverage as requested by any underwriter of L&C, *i.e.*, Uni-Ter ("U.S. RE Agreement"). A copy of the U.S. RE Agreement is attached hereto as **Exhibit 4**.

74. The U.S. RE Agreement states that U.S. RE will handle all funds collected for L&C in a fiduciary capacity. Id.

75. In each of the eleven (11) ceded reinsurance agreements between L&C and its reinsurers, U.S. RE is listed as the reinsurance intermediary in each agreement via an intermediary clause in the reinsurance agreements.

76. U.S. RE was not merely hired as some uninvolved third party broker of reinsurance, although acting as a third party broker of reinsurance was included with U.S. RE's duties.

77. On information and belief, Uni-Ter Underwriting Management Corporation ("Uni-Ter Underwriting") and Uni-Ter Claims Services Corporation ("Uni-Ter Claims") were retained as the managers of L&C.

78. On information and belief, both Uni-Ter Underwriting and Uni-Ter Claims are direct or indirect subsidiaries of U.S. RE.

79. U.S. RE was itself engaged as L&C's "exclusive reinsurance intermediary/broker" and as L&C's agent, including being granted "full and complete authority to negotiate the placement of reinsurance or retrocessions on all classes of insurance with unspecified limits of

coverage as specifically requested by any underwriter of [L&C]." Id.

80. The U.S. RE Agreement further recognizes U.S. RE's agency with L&C by stating that U.S. RE "will exercise its best efforts in the discharge of its duties **on behalf of the Company**." *Id.* (emphasis added).

81. The Supreme Court of Nevada has held that "[a]n agency relationship is formed when one who hires another retains a contractual right to control the other's manner of performance." *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 108 Nev. 811, 815, 839 P.2d 599, 602 (1992) (citation omitted).

82. U.S. RE acted as the agent of L&C, as the U.S. RE Agreement expressly states not only that U.S. RE will act "on behalf of" L&C, but also that L&C has the right to control U.S. RE's manner of performance as U.S. RE promises to "comply with written standards established by [L&C] for the cession or retrocession of all insured risks." Id.

83. Further, Nevada law makes clear that "[a]n agent, such as respondent in these circumstances, owes to the principal the highest duty of fidelity, loyalty and honesty in the performance of the duties by the agent on behalf of the principal." *LeMon v. Landers*, 81 Nev. 329, 332, 402 P.2d 648, 649 (1965) (holding that the agent breached her fiduciary obligations) (emphasis added); *see also Chem. Bank v. Sec. Pac. Nat. Bank*, 20 F.3d 375, 377 (9th Cir. 1994) ("The very meaning of being an agent is assuming fiduciary duties to one's principal.") (*citing Restatement (Second) of Agency* § 1(1)).

84. Additionally, as noted above, U.S. RE was engaged not only as L&C's exclusive broker, but also as its consultant. Many courts have recognized that insurance brokers are agents of, and therefore owe fiduciary duties to, their insureds. *See Capitol Indem. Corp. v. Stewart Smith Intermediaries, Inc.*, 229 Ill. App. 3d 119, 124-25, 593 N.E.2d 872, 876 (1992) ("An agency relationship is a fiduciary one; insurance brokers employed for a single transaction or series of transactions are agents…").

85. The Nevada Supreme Court has recognized that insurance brokers may assume additional duties – including through representations by the broker upon which the insured relies – thereby creating a special relationship between the broker and the insured. *Flaherty v. Kelly*,

2013 WL 7155078, at *2 (Nev. Dec. 18, 2013).

86. U.S. RE assumed such duties including "substantial and essential efforts expended by U.S. RE and its affiliates in the organization and licensing of [L&C]" and serving as a consultant to U.S. RE. *See* U.S. RE Agreement.

87. Further, as recognized in the U.S. RE Agreement, U.S. RE's agency relationship with Plaintiff extended to additional actions and bases with U.S. RE, including but not limited to the "substantial and essential efforts expended by U.S. RE and its affiliates in the organization and licensing of [L&C]" and to state that U.S. RE will "serve as the exclusive intermediary in connection with the placement of all of [L&C's] reinsurance." Id.

88. The U.S. RE Agreement further recognizes U.S. RE's agency with L&C by stating that U.S. RE "will exercise its best efforts in the discharge of its duties on behalf of the Company." *Id.* (emphasis added). The U.S. RE Agreement also states that "[a]ll funds collected for [L&C]'s account will be handled by U.S. RE in a fiduciary capacity in a bank which is a qualified United States financial institution." *Id.*

89. Thus, U.S. RE was the agent of Plaintiff in multiple aspects, including but not limited to, those set forth above.

90. Further, U.S. RE did more than merely act as some disinterested third party reinsurance broker. In fact, U.S. RE was directly involved in the activities of L&C in its capacity as agent of L&C.

91. Moreover, U.S. RE was actively involved in management related activities, including presenting financial and other pertinent information to L&C's Board.

92. U.S. RE intentionally failed to obtain reinsurance through syndicates as required under the U.S. RE Agreement. No facts were found that reinsurance failed to pay as required. To the contrary, the reinsurance policies seemed not to be invoked because deductible amounts were not reached, especially in the early years of 2004 to 2008.

93. Nevertheless, U.S. RE intentionally represented to L&C that it would act in L&C's best interests, creating additional duties toward L&C other than merely finding and securing reinsurance, including but not limited to, fiduciary duties, as set forth herein.

94. In violation of such duties, U.S. RE intentionally did not find appropriate reinsurance because the deductible rates were consistently too high. This is shown by the fact that reinsurance did not come into play at all in the early years. Indeed, the Board approved commutation of the 2007 treaty only 10 days into 2008.

(3) Reinsurance Contracts

95. U.S. RE, acting as L&C's intermediary broker, procured the following general reinsurance treaties. Certain terms of such treaties are noted below the treaty name.

(i) April 1, 2004 to December 31, 2004 Treaty (Commuted).

(ii) January 1, 2005-December 31, 2006 Treaty.
- Applicable to $750,000 excess of $250,000 per claim
- Aggregate limit is lesser of $3,500,000 or 225% of ceded premium.
- Ceded premium is 25% of gross net written premium income (GNWPI)

(iii) January 1, 2007-December 31, 2007 Treaty (Commuted in early 2008)
- Applicable to $750,000 excess of $250,000 per claim
- Deductible is 22% of GNWPI.
- Aggregate limit is 300% of ceded premium.
- Ceded premium is 20% of GNWPI.

(iv) July 1, 2005-December 31, 2006 Treaty.
- Applicable to $1,000,000 excess of $1,000,000 per claim
- Aggregate limit is $3,000,000 or 300% of ceded premium.
- Ceded premium is 100% of gross premiums for policies with limits greater than $1,000,000 per claim.

(v) January 1, 2008-March 31, 2009 Treaty.
- Applicable to $650,000 excess of $350,000 per claim
- Deductible is greater of 13% of GNWPI or $1,274,000.
- Aggregate limit is 300% of ceded premium.
- Ceded premium is 17.08% of GNWPI for all policies subject to a minimum of $1,575,000.

(vi) April 1, 2009-March 31, 2010 Treaty.
- Applicable to $650,000 excess of $350,000 per claim
- Deductible is greater of 11% of GNWPI or $1,100,000.
- Aggregate limit is 300% of ceded premium.
- Ceded premium is 17.93% of GNWPI for all policies subject to a minimum of $1,613,700.

(vii) April 1, 2010-May 31, 2011 Treaty.

- Applicable to $650,000 excess of $350,000 per claim
- Deductible is greater of 11% of GNWPI or $1,220,000.
- Aggregate limit is 300% of ceded premium.
- Ceded premium is 17.00% of GNWPI for all policies subject to a minimum of $1,890,000.

(viii) December 1, 2009-May 31, 2011 Treaty.

- L&C cedes 75% of losses in reinsured layer and retains 25%
- Applicable to $1,000,000 excess of $1,000,000 per claim
- Aggregate limit is greater of $3,000,000 or 300% of ceded premium.
- Ceded premium is 100% of net excess premiums (gross premiums less 20%) for policies with limits greater than $1,000,000 per claim

(ix) June 1, 2011-May 31, 2012 Treaty.

- Applicable to $650,000 excess of $350,000 per claim
- Deductible is greater of 18.5% of GNWPI or $1,300,000.
- Aggregate limit is 300% of ceded premium.
- Ceded premium is 17.00% of GNWPI for all policies subject to a minimum of $1,190,000.

(x) June 1, 2011-May 31, 2012 Treaty.

- L&C cedes 75% of losses in reinsured layer and retains 25%
- Applicable to $1,000,000 excess of $1,000,000 per claim
- Aggregate limit is $1,500,000
- Ceded premium is 100% of net excess premiums (gross premiums less 20%) for policies with limits greater than $1,000,000 per claim

(xi) June 1, 2012-May 31, 2013 Treaty.

- Applicable to $650,000 excess of $350,00 per claim
Aggregate limit is 300% of ceded premium.

C. **Financial Disaster in 2010 and 2011 at Uni-Ter's and U.S. RE's Direction and the Board's Gross Negligence Despite the Board's Knowledge that Reliance on the Information and Representations from Uni-Ter and U.S. RE was Unwarranted and Dangerous.**

96. On or around September 8, 2010, the DOI sent a letter to Marshall, President of L&C and a member of the Board ("September 2010 Letter") advising the Board of the dangerous financial position of L&C. A copy of the "September 2010 Letter is attached hereto as **Exhibit 5.**

97. In the September 2010 Letter, captioned "Lewis & Clark Deteriorating Financial Condition", the DOI states in part the following:

Dear President Marshall:

> The [DOI]'s review of the June 30, 2010 financial statement of [L&C] revealed a deteriorating financial condition which the company's management must address. The following are items that must be considered:
>
> - Increase in reserves has increased liabilities $3.1 million above the 12/31/10 pro-forma accounts and has resulted in a liquidity ration … of 116.0%.
> - Due to underwriting and operating losses, $1.1 million and $792.7 thousand, respectively, policyholder surplus has declined by 11.6% from December 31, 2009.
> - Underwriting losses are the result of increasing loss and loss administration expense coupled with high other underwriting/administrative expenses (which exceed 12/31/10 pro-forma amounts by $744 thousand), all of which result in a combined ratio of 131.1%.
> - Risk Based Capital (RBC) ratio of 210.5% is hardly adequate….

Id.

98. The September 2010 Letter ended with an admonition from the DOI that "[b]ecause of the company's capital decline revealed by the June 30, 2010 financial statement, management should commence preparing a corrective action plan and an implementation schedule addressing a means to enhance earnings and surplus, reduce expenses, and improve liquidity." *Id.*

99. On information and belief, despite the DOI's recommendations regarding L&C's deteriorating financial condition and need for an effective corrective action plan, the Board failed to exercise even slight diligence in correcting the substantial problems L&C was facing, and the alarming financial problems of L&C outlined by the DOI in its September 2010 Letter were not corrected, and in fact were dramatically worsened, by the Board's actions.

100. On information and belief, in the first three (3) quarters of 2011, L&C experienced a net loss of not less than $3,100,000.

101. On information and belief, the principal reason for these losses was that the Multi-Site Operators had passed on significant losses to L&C in the two policy years from 2009-2011, as well as increases in claims for other insureds.

102. On information and belief, on or about September 1, 2011, Sanford Elsass and Donna Dalton sent a memorandum to the Board purporting to outline the events causing financial

difficulties. Included in that memorandum was a representation that Uni-Ter would hire a consultant to perform a "complete analysis" of the claims process of Uni-Ter Claims Services Corporation.

103. On information and belief, the consultant hired by Uni-Ter was Praxis Claims Consulting ("Praxis").

104. On information and belief, at this time the Board knew that reliance on information presented to it by, or at the direction of, Uni-Ter and U.S. RE could not be relied on, in part because the decision to accept the Multi-Site Operators was financially devastating to L&C.

105. On information and belief, despite this knowledge of the Board regarding the wholly inadequate and inaccurate information provided by Uni-Ter, the Board's gross negligence is manifest in the fact that, the Board failed to exercise even a slight degree of care in verifying whether Praxis was provided accurate information in preparing its reviewing the claims process.

106. On information and belief, in fact Uni-Ter did not provide Praxis with accurate information and, in fact, limited the scope of Praxis's initial engagement to a review of claims-related processes and of a small sample size of only nine (9) specific claims reserves. Praxis's review, which was grossly inadequate due to Uni-Ter's failure to provide adequate and accurate information to Praxis, resulted in a report dated September 15, 2011 ("September 2011 Praxis Report"). A copy of the September 2011 Praxis Report is attached hereto as **Exhibit 6.**

107. On information and belief, because Uni-Ter failed to provide accurate and complete information to Praxis, the September 2011 Praxis Report was substantially inaccurate and incomplete.

108. On information and belief, the Board later learned that, in fact, Uni-Ter had not provided Praxis with accurate information and that Uni-Ter had limited the scope of Praxis's engagement to a review of claims-related processes and of a small sample size of only nine (9) specific claims reserves. This is information which the Board, through exercise of even slight diligence or scant care, could have known before the 2011 Praxis Report was issued.

109. Further, on information and belief, on or around September 23, 2011, the DOI sent

another letter to Marshall regarding the now disastrous financial condition of L&C ("September 2011 Letter"). A copy of the September 2011 Letter is attached hereto as **Exhibit 7**.

110. In the September 2011 Letter, the DOI noted several massive financial problems with L&C which the Board had, on information and belief, taken improper or no action to correct, including the following:

> - Of particular concern is the Combined ratio which has increased since prior year-end from 99.4% to 153.9% - a 54.8% increase post-merger.
>
> - A major concern is Risk Based Capital ("RBC") – 208.8%. This RBC calculation results from year-end 2010 financial statement. The RBC is now well below that level considering the reserve (Liability) increases and net loss reducing policyholder surplus by 40.3% for only one-half (Six Months) of a year of operating activity.
>
> ...
>
> - Net underwriting loss has deteriorated to $3.1 million
>
> - Net loss = $1.8 million

Id.

111. The September 2011 Letter further noted the following regarding the second quarter of 2011:

> Since prior year-end, **policyholder surplus has declined by 40.3%**. Company is experiencing adverse claims Development and is becoming extremely leveraged. **Total Liabilities have increased by 26.5%** ... Net Loss is $1.8 million, **a result of $3.1 million net underwriting loss for six months and $1.7 million underwriting loss for just the second quarter**. Unassigned Funds have deteriorated further to a negative ($1.4 million). Since prior year-to-date, net premiums earned have improved nominally by 5.8% while net losses incurred has increased by 117.6% **causing a net loss ratio of 114.4% and resulting in a 153.9% combined ratio.** Company is highly leveraged. Cash and invested assets **only represent 59.2% of total assets** resulting in a **148.7% liquidity ratio** coupled with gross premiums written representing 571.6% of policyholder surplus and net premiums written representing 499.9% of policyholder surplus ...

Id. (emphasis added).

112. The September 2011 Letter noted that the DOI had sent "a prior letter advis[ing] the Board of Directors of deteriorating financial condition and admonish[ing] the Board and management to consider a correction plan." The letter required that "[t]he Board and

management must now prepare a short-term (3 month) action plan and based on this action plan how they forecast their 12/31/2011 statement to appear." *Id.*

113. On information and belief, the Board failed to exercise even scant care in addressing the September 2011 Letter, and failed to correct the staggering financial problems L&C was facing.

114. Subsequently, in late November 2011, on information and belief, Uni-Ter conducted what purported to be a full-scale internal review of all claims reserves, and later engaged Uni-Ter to conduct a full review as well.

115. On information and belief, the outcome of the internal review by Uni-Ter, as well as the negative review by Praxis, showed that Uni-Ter had incorrectly understated the sampled claims in the September 2011 Praxis Report by a net of not less than $1,200,000.

116. On information and belief, Uni-Ter and/or U.S. RE informed the Board on a conference call that, in fact, an increase of $5,000,000.00 to L&C's claims reserves was necessary. This significantly increased the net loss of Lewis & Clark on a full 2011 year basis and further decreased L&C's capital to an unacceptable level for operational, regulatory, and rating purposes.

117. On information and belief the Board, through its gross negligence, ignored or improperly responded to the multiple red flags – including communications from the DOI – regarding L&C's financial position, Uni-Ter's management and the representations of Uni-Ter and U.S. RE's, and failed to exercise even a slight degree of diligence or care in fulfilling its obligations, which proximately caused and contributed to the damages suffered by Plaintiff.

D. L&C Board Meeting Minutes

118. On information and belief, the Board met generally once per quarter starting in late 2004 and continuing to September 2012 related to L&C. Minutes of said meetings were kept by L&C ("Minutes").

119. On information and belief, because Uni-Ter UMC was managing all of the business aspects of L&C's business, Mr. Sanford Elsass ("Elsass"), President of Uni-Ter UMC

and an officer of U.S. RE at all relevant times, attended all of the L&C Board meetings in person except for the last two. On information and belief, Elsass and other Uni-Ter employees gave most of the reports about the company to the Board members.

120. On information and belief, many of the approvals and actions of the Board were done at the recommendation of Mr. Elsass.

121. On information and belief, the Board had knowledge concerning Mr. Elsass and his recommendations that caused reliance on the reports and recommendations of Mr. Elsass and Uni-Ter UMC to be unwarranted.

122. Despite this knowledge, the Board failed to exercise even a slight degree of diligence or care with respect to accepting the information and recommendations provided by Mr. Elsass and Uni-Ter UMC and failed to verify whether this information was accurate and whether the recommendations should be adopted.

123. On information and belief, the Minutes also do not mention the monthly reports that Uni-Ter UMC was supposed to provide to L&C in the 2004 Management Agreement or the quarterly reports that Uni-Ter UMC was supposed to provide to L&C in the 2011 Management Agreement. The Minutes do reference annual and quarterly financial results and there are discussions of the claims and underwriting activities for each quarter, but no mention of the reports required by the 2004 and 2011 Management Agreements.

124. Item 13 in the March 9, 2005 Minutes states that the Board requested that Uni-Ter provide financial information to the Board monthly. On information and belief, Uni-Ter already had the obligation to provide the information listed in the 2004 Management Agreement to the Board monthly.

125. Item 10 from the August 12, 2005 Minutes, attached hereto as **Exhibit 8**, which state that the Board is unhappy with the work of Uni-Ter. The Minutes state that the Board was concerned regarding the lack of completion by Uni-Ter regarding marketing plans presented at the March 2005 meeting, including non-receipt of periodic marketing reports, lack of contract with state associations and potential new agents, and generally, a lack of production of new business during 2005.

126. On information and belief, despite these clear indications that Uni-Ter was failing to provide complete and accurate information, the Board remained indifferent to its legal duty to act on an informed basis by ensuring the information and recommendations provided by Uni-Ter and Mr. Elsass were complete and accurate.

127. One of the resolutions in L&C's first set of Minutes of December 22, 2003, approves the engagement between L&C and U.S. RE to engage U.S. RE as the exclusive reinsurance broker and consultant for L&C. The resolution states that confirmation was received from Elsass as an officer of U.S. RE that U.S. RE would use its best efforts to obtain competitive rates and terms.

128. On information and belief, Uni-Ter undertook the fiduciary duty of determining and establishing the appropriate loss reserves for the company. Item 3 in the September 14, 2005 Minutes, attached hereto as **Exhibit 9**, states that Elsass reported on establishing the appropriate loss reserves for the company.

129. On information and belief, the Board's Audit Committee ("Audit Committee") was established at the February 10, 2006 meeting of the Board. On information and belief, the relevant Minutes contain no discussion of why this was not done previously or why it was needed at that juncture.

130. On information and belief, the Audit Committee generally reviewed and approved L&C's financial audits. On information and belief, there are no entries stating that the Audit Committee performed any auditing functions other than review of financial audits.

131. The May 30, 2006 Minutes, attached hereto as **Exhibit 10**, state that L&C's D&O insurance was renewed, but that L&C's E&O insurance was not renewed.

132. On information and belief, L&C subsequently obtained E&O insurance.

133. Item 3 of the October 20, 2006 Minutes, attached hereto as **Exhibit 11**, states that the Board directed Donna Dalton of Uni-Ter and L&C's counsel to comment to the Nevada DOI regarding issues including loss reserves and Risk Retention Act requirements.

134. Item 9 of the March 23, 2007 Minutes, attached hereto as **Exhibit 12**, references the Nevada DOI triennial examination report for 2003 to 2005, but does not state any findings related to the report or what corrective actions, if any, the Board would take.

135. The October 12, 2007 Minutes, attached hereto as **Exhibit 13**, reference an incurred but not reported ("IBNR") reduction of $934,000 but do not explain it or why the reduction occurred. The October 12, 2007 Minutes also state that L&C was beginning to offer occurrence policies subject to required regulatory filings, but do not discuss the required regulatory filings.

136. The January 10, 2008 Minutes, attached hereto as **Exhibit 14**, state that there will be commutation of the 2007 reinsurance with Imagine RE, and note the change that Uni-Ter will begin a retail policy sales agency to improve on the disappointing efforts by the "current agency network." The entry notes that Uni-Ter will be paid commissions on L&C's retail policy business at 10% of gross written premiums rather than 15% of gross written premiums. The Minutes do not say which contract Uni-Ter would provide such services under. The 2004 Management Agreement required solicitation services by Uni-Ter. This same item mentions that Uni-Ter requested an advancement of half of L&C's 2008 annual budget for Uni-Ter for "this effort" with such advancement repayable from commissions earned by Uni-Ter.

137. Item 13 in the April 24, 2008 Minutes, attached hereto as **Exhibit 15**, references insolvency gap coverage of $1 million. Then, item 11 of the December 2, 2009 Minutes, attached hereto as **Exhibit 16**, notes a renewal of insolvency gap coverage in the amount of $2 million.

138. Item 4 in the December 10, 2008 Minutes, attached hereto as **Exhibit 17**, notes that, based on a request from the Nevada DOI, the Board ratified clarification amendments to the Oneida surplus notes.

139. Item 6 of the December 2, 2009 Minutes, attached hereto as **Exhibit 17**, notes a report on the current triennial examination by the Nevada DOI but does not state any more regarding said examination.

140. Item 5 of the May 21, 2010 Minutes, attached hereto as **Exhibit 18**, references the Board's review of results of the Nevada DOI triennial examination and approval of responses to

the DOI. The Minutes do not explain or discuss the responses or any corrective actions that the Board may take. Those Minutes also approved the 2009 annual audited statements and report prepared by Johnson Lambert & Co. as well as the 2009 Milliman Report and calculation of "Profit Sharing bonuses."

141. The November 2010 Minutes, attached hereto as **Exhibit 19**, contain discussion of renewal of L&C's Management Agreement with Uni-Ter subject to noted revisions including a requirement of clarification of significant claims notice to the Board with settlement authority remaining with Uni-Ter.

142. The May 4-5, 2011 Minutes, attached hereto as **Exhibit 20**, approved the 2010 annual audited statements and report prepared by L&C's auditors, Johnson Lambert & Co.

143. The September 21, 2011 Minutes, attached hereto as **Exhibit 21**, contain in Item 7 a statement that the Board reviewed and approved a new underwriting philosophy. The Minutes do not say what the new underwriting philosophy was. However, a document dated 8/31/11 and entitled "Long Term Care Underwriting Philosophy & Strategic Direction" was part of the directors' package for that meeting. The document lists specific requirements related to consideration of long term care facilities for coverage.

144. On October 5, 2011 the Board held a special meeting and approved capital contributions by shareholders Oneida, Eagle Healthcare, Pinnacle, Marquis, Elderwood, Rohm, and Uni-Ter in exchange for surplus notes. The action of the Board in lieu of a special meeting, attached hereto as **Exhibit 22** ("Action"), also noted that depending on the fourth quarter, the same parties other than Oneida would commit to an additional amount of $550,000 in the fourth quarter of 2011 and first quarter of 2012 as the stated proportions (with Uni-Ter having 20/55 or 4/11 responsibility). The Minutes also noted approval of the new underwriting philosophy.

145. On information and belief, the minutes of the October 5, 2011 action by the Board demonstrate that the Board was well aware it was not receiving accurate and complete information from Uni-Ter as the Board requested "more frequent financial reporting to the Board **as discussed at the last meeting**, preferably monthly." (Emphasis added). On information and

belief the Board failed to exercise even slight diligence or scant care and failed to ensure that Uni-Ter did, in fact, provide more complete and accurate reporting of L&C's financial status.

146. Even with the bad financial news in early October, 2011, the Board was indifferent to its legal obligations and did not meet again until December 20, 2011, over two and a half months later. At that meeting, as reflected in the Minutes attached hereto as **Exhibit 23**, Uni-Ter reported that claims reserves may have increased by $5 million from the November 2011 figures, *i.e.*, in one month.

147. On information or belief, in or around the latter part of 2011, William Fishlinger ("Fishlinger") was retained to provide claims review for L&C. Item 3 in the December 28, 2011 Minutes, attached hereto as **Exhibit 24**, states that the Board was advised regarding the schedule for Fishlinger's claims review commencing in the first full week of January 2012. Item 4 of those Minutes states that Uni-Ter's pro forma December 31, 2011 financials indicate that L&C is neither impaired nor insolvent and pending receipt of the Fishlinger review, Uni-Ter should process the current renewals. The Minutes also note that the Board's claims committee should have a conference call with Fishlinger about his work and conclusions before the work is done to finalize his written report.

148. On information and belief the Board failed to exercise the slightest degree of diligence and care regarding this information and took no action whatsoever to verify whether the information provided by Uni-Ter suggesting that L&C was "neither impaired nor insolvent" was accurate, despite numerous indications that information provided by Uni-Ter was inaccurate and incomplete.

149. At the January 16, 2012 meeting, the Minutes for which are attached hereto as **Exhibit 25**, the Board was told that capital and surplus was $1,979,730 as of December 31, 2011. Thus, L&C's surplus dropped over $2.5 million in one year.

150. On information and belief, the Minutes do not reflect any discussion of how that relates to the approximate $5 million additional loss reserves noted at the December 20, 2011 meeting.

151. On information and belief, L&C's Nevada counsel was instructed to contact Nevada DOI regarding the "current inquiry." The Minutes do not say what the current inquiry was.

152. The January 26, 2012 Minutes state in Item 2 that L&C's Nevada counsel reported on her conversations with the Nevada DOI. *See* **Exhibit 26**. The Minutes do not include the substance of those discussions. Item 3 states that the Board deferred approval of commutation of reinsurance for years 2005, 2006, 2008, and 2009 pending receipt from Uni-Ter of a report regarding outstanding claims for such periods. Item 5 states that the Board met in executive session to discuss issues involving potential additional capital.

153. Further, the minutes for the January 26, 2012 meeting stated that "Mr. Elsass presented a report on current claims activity in California and New York and discussions with the Corporation's actuaries and auditors." *Id.* On information and belief the Board failed to exercise the slightest degree of diligence and care regarding this information took no action to verify that Mr. Elsass's report was accurate, despite clear indications that information provided by Mr. Elsass was incomplete and inaccurate.

154. At the February 2, 2012 meeting, the Minutes for which are attached hereto as **Exhibit 27**, the Board approved $480,000 additional capital contributions in exchange for subordinated surplus notes on the same terms used in the fall of 2011. On information and belief, Elsass reported to the Board "regarding recent favorable claims activity." The Minutes do not say what the alleged favorable claims activity was. On information and belief, the Board failed to exercise the slightest degree of diligence and care regarding this information and did not verify whether the report by Elsass regarding alleged "favorable claims activity" was accurate or complete.

155. Notwithstanding the dire financial issues, the Board remained indifferent to its legal obligations and did not meet again until April 30, 2012, almost three (3) months later. At the April 30, 2012 meeting, the Minutes for which are attached hereto as **Exhibit 28**, Item 1 provides that L&C's submissions to the Nevada DOI were approved, but do not explain what the submissions were.

156. There is no mention in the April 30, 2012 Minutes of the Milliman Report from April 12, 2012 stating that, as of the end of 2011, the company's loss reserves were $1.4 million under what they need to be when using the mid-range number.

157. Item 5 of the May 14, 2012 Minutes, attached hereto as **Exhibit 29**, state that a Nevada DOI examination was scheduled, but do not explain this matter further.

158. On information and belief, the Board did not meet for another two and a half (2 ½) months regarding the financial conditions of L&C. The Board met telephonically on June 6, 2012, the Minutes for which are attached hereto as **Exhibit 30**, but the only business noted was the approval of reinsurance. There is no entry regarding a discussion of the financial status of L&C.

159. In fact, despite the clear indications that Uni-Ter and U.S. RE were providing inaccurate and/or incomplete information to L&C, the minutes of the June 6, 2012 Board meeting state that the Board approved the renewal of L&C's reinsurance "[f]ollowing a presentation by USRE [sic]". *Id.* There is no indication whatsoever regarding any measures taken by the Board to verify the information provided by Uni-Ter and/or U.S. RE.

160. At the July 25, 2012 meeting, the Minutes for which are attached hereto as **Exhibit 31**, Uni-Ter and U.S. RE presented a report of second quarter financial results in which a significant increase in loss reserves was reported. The Board then discussed possible courses of action. The Board requested that Uni-Ter contact Fishlinger to conduct an independent roll forward of its last claims reserve review preferably by August 7, 2012. The Board also resolved that the preliminary second quarter results not be filed until the Fishlinger review is done and that the results should be approved by the Board before filing. Finally, the Minutes noted that no new business should be written by L&C and no capital raised until further notice, but that renewals may be processed until notice otherwise.

161. The August 15, 2012 was the last meeting Elsass and Uni-Ter or U.S. RE attended. At that meeting, the Board discussed the filing with the Nevada DOI of financial information with notice of further deterioration of L&C's finances.

162. At the August 22, 2012 meeting, Minutes for which are attached hereto as **Exhibit 32**, L&C's counsel reported on recent discussions with Uni-Ter and U.S. RE. Uni-Ter personnel were not present at the meeting.

163. On information and belief the Board held a telephonic meeting on September 24, 2012, the Minutes for which are attached hereto as **Exhibit 33**. The Board's grossly negligent failure to inform itself of the basic financial condition of the Company was made clear as the Board tacitly acknowledged it was not aware whether the Company was financially solvent at that time, resolving that "a request be made to the Nevada Division [sic] of Insurance that the Corporation be placed in rehabilitation, in view of the fact that the Corporation **is or may be** insolvent." *Id.* (emphasis added).

E. Information Available to the Officers and Directors

164. On information and belief, substantial financial information regarding L&C was available to the Board of which the Board failed entirely to exercise even a slight degree of care to properly inform itself and understand.

165. On information and belief, among this available information was the Annual Statement of L&C for the year ending December 31, 2006, attached hereto as **Exhibit 34**, which was submitted to the Nevada DOI contains L&C's financial statement for 2006. The Notes to Financial Statements (pages 14-14.3) include the reinsurance in place (note 23) as well as the change of incurred losses and LAE (note 25). The Quarterly Statement for L&C for the first quarter of 2007, attached hereto as **Exhibit 35**, has similar notes.

166. Sophia Palmer 2007 board Minutes were very similar to L&C board Minutes. On information and belief, Uni-Ter was the underwriter for Sophia Palmer as well.

167. L&C's Internal Unaudited Financial Statements as of December 31, 2007, attached hereto as **Exhibit 36**, states that unpaid losses and loss expenses were $578,000 in 2004, $1,142,000 in 2005, $2,636,000 in 2006, and $3,013,000 in 2007. This is a growth of over 500% in only four (4) years.

168. On information and belief, Uni-Ter's management fees grew from nothing in 2004, to $120,000 in 2005, to $126,000 in 2006, to $760,000 in 2007. Between 2005 and 2007,

this is a growth of 633% in three years.

169. On information and belief, the information provided to the directors of L&C for the April 2008 and May 2010 Board meetings included the following financial information for L&C across the years of 2004 to 2009:

Policy Year	Written Premium	Earned Premium	Paid Losses	Reserves	Totals Incurred	Loss Ratio
2004	$1,344,358	$1,344,358	$223,232	$---	$208,232	15.49%
2005	$3,124,474	$3,124,474	$745,466	$80,720	$782,438	24.23%
2006	$5,821,739	$5,821,739	$1,311,965	$477,775	$1,751,740	30.64%
2007	$5,958,904	$4,184,641	$1,555,249	$1,621,520	$3,111,769	52.38%
2008	$8,340,000	$5,203,834	$1,211,943	$3,941,000	$1,687,006	34.77%
2009	$10,705,229	$7,792,504	$1,545,000	$6,255,488	$3,947,463	50.66% with Sophia Palmer being 80.96%

170. On information and belief, the Board wholly failed to exercise even slight diligence in informing itself of the reasons behind the dangerous financial status of the company or in taking timely, corrective action.

171. Further, L&C's Summary Balance Sheet as of December 31, 2008, attached hereto as **Exhibit 37**, states that while unpaid losses and loss expenses grew from $3,013,000 to $3,941,000 between 2007 and 2008, Uni-Ter's management fees went from $760,312 in 2007 to $1,372,915 in 2008.

172. L&C's Internal Unaudited Financial Statements as of December 31, 2009, attached hereto as **Exhibit 38**, state that unpaid losses and loss expenses jumped to $6,255,488 in 2009 from $3,941,000 in 2008. Uni-Ter's management fees jumped to $1,717,482 for 2009 from $1,372,915 in 2008.

173. The 2009 Milliman Report, which supports the corresponding Statement of Actuarial Opinion attached hereto as **Exhibit 39**, states that the existing risk factors, "coupled with the variability that is inherent in any estimate of unpaid loss and loss adjustment expense obligations, could result in material adverse deviation from the carried net reserve amounts." The Milliman Report concludes that L&C's actual net outstanding losses and loss adjustment expense

("LAE") exceed L&C's reserves for unpaid losses ($5,021,810) and unpaid LAE ($1,233,678) by an amount of more than 5% of L&C's statutory surplus shown on the annual statement, which was $4,031,349. The Milliman Report also states that this materiality standard was selected based on the fact that his opinion was prepared for regulatory review. Further, the corresponding Statement of Actuarial Opinion provides that it is reliant on "data and related information prepared by [L&C]" and that "[t]here are a variety of risk factors that expose [L&C's] reserves to significant variability." Id.

174. On information and belief, the information provided to the directors of L&C for the May 2010 Board meeting state that Sophia Palmer merged with L&C as of December 3, 2009, and that the written premiums were $8,340,000 for 2008 and $10,705,000 for 2009.

175. On information and belief, in or around October 2010, Elsass, Larry Shatoff at U.S. RE, Donna Dalton, John Klaus at Uni-Ter, Curtis Sitterson at Stearns Weaver, and Jim Murphy at the accounting firm Johnson Lambert & Co., through email correspondence, made the decision to record the twenty-five percent (25%) refund payment, in the amount of $569,600, from the commutation of the January 1, 2008 to April 1, 2009 reinsurance treaty.

176. On information and belief, Mr. Shatoff stated in said email correspondence that the April 1, 2004 to December 31, 2004 treaty was commuted, the January 1, 2007 to December 31, 2007 treaty was commuted, and the January 1, 2005 to December 31, 2006 treaty was "swing rated" and had been adjusted to the minimum premium. Regarding the January 1, 2008 to April 1, 2009 reinsurance treaty, Mr. Shatoff said that it covers all claims reported on occurrence policies up to April 1, 2012. Mr. Shatoff further stated that L&C was subject to a 13% aggregate deductible for an amount of $1,690,673, and that L&C had paid reinsurance premiums of $2,278,400, which at a 25% refund rate would result in a refund of $569,600 if no claims were paid by the reinsurers. Further, Mr. Shatoff's communications state that there had been no losses reported under that treaty. Mr. Shatoff noted that L&C could commute at any time before January 1, 2013 to obtain the "profit commission" - how he referred to the 25% refund.

177. On information and belief, Mr. Shatoff encouraged L&C to commute that treaty to ensure that seventy-five percent (75%) of premiums paid could be confirmed as received by the

reinsurers with confirmation that no claims or losses would be paid by them.

178. On information and belief Elsass directed that the refund for the commutation of the January 1, 2008 to April 1, 2009 reinsurance treaty be recorded at that time in the third quarter of 2010.

179. On information and belief, Mr. Shatoff noted that it would be too soon to record any "profit commission" on the April 1, 2009 to April 1, 2010 treaty because the premium for those policies would not be fully earned until April 1, 2011.

180. The Milliman Report stated that L&C reserves were $600,000 - $628,000 above the Medium Estimate, but about $650,000 below the High Estimate. That report also noted that L&C started to write occurrence policies in the fourth quarter of 2008.

181. On information and belief, more than half of the policies written by Sophia Palmer were occurrence policies.

182. The Milliman Report stated that the loss development for occurrence policies is relatively immature at the current evaluation and that caused uncertainty in the loss estimates.

183. Further, the 2010 Milliman Report opined that the existing risk factors "coupled with the variability that is inherent in any estimate of unpaid loss and loss adjustment expense obligations, could result in material adverse deviation from the carried net reserve amounts." He concluded that based on the calculation shown in Exhibit B that shows that L&C's actual net outstanding losses and LAE exceed L&C's reserves for unpaid losses ($7,353,289) and unpaid LAE ($1,798,188) by an amount of more than five percent (5%) of L&C's statutory surplus shown on the annual statement, which was $4,579,710. The 2010 Milliman Report states that this materiality standard was selected based on the fact that his opinion was prepared for regulatory review.

184. On information and belief, the financial information provided to the Board for the September 2011 Board Meeting included a report from Brian Stiefel, President of Praxis, which was the September 2011 Praxis Report. The Praxis Report provides that Uni-Ter has adopted a new reserve philosophy, is revising its litigation management guidelines to reflect a more aggressive approach to the litigation process, and that standardizing the claims documentation,

evaluation, and reporting process is recommended. The Praxis Report does not evaluate the level of L&C's loss reserves. *See* **Exhibit 6** hereto.

185. On information and belief, the information provided to the directors for the September 2011 Board meeting also contains a power point presentation from Milliman which shows that L&C steadily decreased its reinsurance deductible across the years 2008 to 2011, demonstrating that L&C's reinsurance deductible was set too high, especially in years 2009 and 2010.

186. On information and belief, in or around December 19, 2011, Milliman provided a preliminary draft of certain schedules to its actuarial reports ("2011 Milliman Schedules"). The Schedules provide that as of November 30, 2011, L&C's Incurred Loss & ALAE for years 2004 through November 2011 was $17,858,866. That same exhibit states that Paid Loss & ALAE for those same dates was a total of $11,208,076. The exhibit states that L&C's Paid Loss & ALAE was $2,230,000.00 for 2009 and $2,440,000.00 for 2010 but only $198,711.00 for 2011 through November.

187. L&C's Annual Statement for the year ending December 31, 2011 ("2011 Annual Statement"), attached as **Exhibit 40**, stated a drastic increase in incurred losses and LAE and a significant drop in shareholder's surplus. Pursuant to that statement, reserves for losses and LAE increased from a total of $9,181,477 at the end of 2010 to $14,026,020 at the end of 2011, almost a $5 million increase. Note 24 to L&C's 2011 Financial Statements (which is presented below) stated that unpaid losses and LAE increased from $9,153,000 at the beginning of 2011 to $14,843,000 at the end of 2011, a $5,700,000 increase. Meanwhile, the company's policyholder's surplus amount decreased from $4,579,710 at the end of 2010 to $3,625,317 at the end of 2011.

188. Note 24 to L&C's 2011 Financial Statements stated as follows:

Balance-January 1, 2011	**$9,153,000**
Incurred related to:	
Current year	**7,418,000**
2010	3,039,000
2009	2,284,000

2008	747,000
2007	162,000
2006	375,000
2005	(359,000)
2004	(1,000)
Total Incurred:	13,665,000
Paid related to:	
Current year	**1,878,000**
2010	3,571,000
2009	1,545,000
2008	222,000
2007	630,000
2006	131,000
2005	(1,000)
2004	(1,000)
Total Paid:	7,975,000
Balance-December 31, 2011	**$ 14,843,000**
(emphasis added)	

Id.

189. On information and belief, notwithstanding this information, the Board represented in Note 14 at page 14.2 that "[T]he Company's management is not aware of any ongoing litigation which would, individually or collectively, result in judgments for amounts, after considering the established loss reserves, that would be material to the Company's financial condition or results of operations." *Id.*

190. On February 2, 2012, Milliman provided a preliminary draft of certain schedules to its actuarial reports ("2012 Milliman Schedules"). Exhibit 1 Page 2 states that, as of December 30, 2011, L&C's Discounted Net Loss & LAE Reserve (after Ceded Loss and LAE Reserve) was Low Estimate of $13,019,000, Central Estimate of $14,973,000, and High Estimate of $18,635,000. Exhibit 3 of that document shows that Incurred Loss and ALAE had grown substantially from 2005 ($373,816) to 2010 ($9,068,552) while showing estimated reserves only growing to $4,048,241. It also shows that for 2011, Ultimate Loss & ALAE was $7,620,000 and Incurred Loss & ALAE was $5,744,385, but estimate reserves was only $5,938,479, which is over $1.6 million less than the Ultimate Loss & ALAE.

191. The 2011 Milliman Report, attached hereto as **Exhibit 41**, in the section entitled

"Risk of Material Adverse Deviation", provides that "[t]he Company's carried reserves are within a reasonable range, however other points within the reasonable range would cause surplus to be below zero. Therefore I believe that there are significant risks and uncertainties that could result in material adverse deviation in the loss and loss adjustment expense reserves, possibly by amounts exceeding surplus." The report again provides that the current risk factors, "coupled with the variability that is inherent in any estimate of unpaid loss and loss adjustment expense obligations, could result in material adverse deviation from the carried net reserve amounts." The report concluded that based on the calculation shown in Exhibit B that shows that L&C's actual net outstanding losses and LAE exceed L&C's reserves for unpaid losses ($11,766,924) and unpaid LAE ($2,259,096) by an amount of more than five percent (5%) of L&C's statutory surplus shown on the annual statement, which was $3,625,316. The report states that this materiality standard was selected based on the fact that his opinion was prepared for regulatory review.

192. Further, in the Notes to Financial Statements for Years Ended December 31, 2011 and 2010 ("2011 Notes"), the management of L&C stated Uni-Ter "believes that its aggregate provision for losses and loss adjustment expenses is reasonable and adequate to meet the ultimate net cost of covered losses…". On information and belief, the Board failed to exercise even the slightest degree of care with respect to this information it was receiving concerning Uni-Ter's opinions and failed to take any action to verify that this information was complete or accurate.

193. The 2011 Notes also provide that "[a]t December 31, 2011 and 2010, management determined that no premium deficiency reserve was required." On information and belief, the Board failed to exercise even the slightest degree of care with respect to this information it was receiving concerning Uni-Ter's opinions and failed to take any action to verify that this information was complete or accurate.

194. Further, the 2011 Notes state that was a party to various lawsuits "in the normal course of business" but that "[t]he Company's management does not believe that any ongoing litigation would, individually or collectively, result in judgments for amounts, after considering the established loss reserves and reinsurance, that would be material to the Company's financial

condition or results of operations." On information and belief, the Board failed to exercise even the slightest degree of care with respect to this information it was receiving concerning Uni-Ter's opinions and failed to take any action to verify that this information was complete or accurate.

195. L&C's "NAIC Property and Casualty Financial Ratio Results for 2011", attached hereto as **Exhibit 42**, painted a very bleak picture of the L&C. It has a date stamp of 2/23/2012. It states that Direct Premiums Written in 2011 totaled $10,224,774. It states that Net Premiums Written for 2011 were $8,997,524 which was a 25% drop from Net Premiums Written in 2010 of $11,946,738. It states that Losses and LAE incurred for 2011 totaled $12,759,779 when Losses and LAE incurred for 2010 totaled $8,183,816, about $4.6 million less. It states that surplus for 2011 was $3,625,316 when the surplus for 2010 was $4,579,709, almost a million drop. Finally, it states that L&C's estimated current reserve deficiency was -$752,997.5.

196. A spreadsheet entitled "Inforce (sic) Policies as of 2.23.2012" lists such policies. It states at the bottom that the total premium amount for such in force policies was $6,825,864.

197. A spreadsheet document dated February 2012 and entitled "L&C Loss Ratio Report" shows a substantial reduction of loss payments for 2011. The document states that the information is through 02/29/2012, but says that earned premium for 2011 dropped to $5,209,362 from $12,798,406 in 2010 and $11,776,406 in 2009. It also shows that earned premium was only $240,573 through February which, extrapolated through December, would be only $1,443,438. Meanwhile, total incurred losses for 2011 were only $1,573,965 even though total incurred losses were almost $9.5 million in 2010 and almost $8 million in 2009.

198. On information and belief, the loss ratios shown for 2006 through 2010 were 78.92%, 65.33%, 67.83%, and 73.59%, respectively. The loss ratio chart in the April 2008 Board meeting directors' package states that the 2006 loss ratio was only 25.25% and the 2007 loss ratio was stated to be only 22.41%. The loss ratio for 2011 was only 30.21%. Paid losses in all of 2011 were only $264,000 even though those were almost $5 million in 2010, $5.4 million in 2009, and over $3.5 million in 2008.

199. L&C's Summary Balance Sheet as of February 29, 2012, attached hereto as **Exhibit 43**, states that unpaid losses and loss expenses were $14,026,019 at the end of 2011 and

grew to $14,607,812 as of the end of February 2012. Uni-Ter's management fees for 2011 were only $87,617.

200. L&C's Comparative Summary Balance Sheet dated through March 2012, attached as **Exhibit 44**, shows the growth of L&C's losses and Uni-Ter's fees. Unpaid losses and LAE was $3,624,000 as of March 2008, $4,325,000 as of March 2009, $7,313,000 as of March 2010, $9,953,000 as of March 2011, and $12, 381,985 as of March 2012. Uni-Ter's management fees were $728,000 as of March 2008, $1,329,000 as of March 2009, $1,607,000 as of March 2010, $830,000 as of March 2011, and $104,000 as of March 2012.

201. The 2012 Milliman Report states that L&C reserves of $16,333,000 were $1,367,000 below the Central Estimate of what L&C's loss reserves should be. The report states that L&C's reserves were over $7 million below the High Estimate of what L&C's reserves should be. There is no mention of the report in the Board Minutes. The report states as follows:

> The ultimate loss and ALAE estimates have increased significantly since the prior report as of December 31, 2010. ***Through report/accident/tail effective year 2010, the selected ultimate loss and ALAE estimates have increased by $9.2 million. Claims-made nursing home paid and incurred losses have been higher than expected during the past year due to significantly inadequate case reserves at December 31, 2010 and exceptionally high loss ratios that were generated by three insureds that were non-renewed during 2011.*** . . . (emphasis added)

Finally, the report states in Table 3 on page 12 that the continuing Ultimate Loss & ALAE as of the report at end of 2010 was $13,863,000 but the Ultimate Loss & ALAE as of the report at the end of 2011 was $19,229,000 for a $5.5 million increase.

202. In the D&O policy application submitted by Uni-Ter on behalf of L&C on or about May 23, 2012, attached as **Exhibit 45**, Uni-Ter stated in the supplement that "[t]o improve the financial stability of [L&C], UUMC has reviewed the entire book of business and intends to only renew accounts that have maintained a favorable historical loss ratio. This may result in a 35-40% reduction in its premium volume." The underwriting philosophy change completed in late 2011, while stating limitations for loss ratios in soft and hard market facilities, does not state that the policy would apply to renewals and also does not discuss the loss of such a large premium amount. This reduction would apply to the $6,825,864 total premiums of inforce policies as of February 2012. With no new policies, that would result in total premiums for 2012

in the range of $4,095,518 to $4,436,800.

203. The following chart shows relevant information from L&C's Audited Financial Statements for the periods indicated:

	2009	2010	2011	March 2012	June 2012
Losses and LAE	$6,255,488 (this was $3,941,000 for 2008)	$9,161,477	**$14,026,020**	$12,381,985	$11,594,038
Premiums earned	$10,864,100 with $4,149,333 being new for that year.	$12,514,066	**$11,498,294**	**$1,957,716 (compared to $2,776,612 for March 2011)**	$3,753,489 (compared to $6,720,334 for June 2011)
Ceded reinsurance premiums payable	$1,969,682	$2,050,400	$750,084	$26,523	$624,029
Amount recoverable from reinsurance		$2,819,800	$3,039,002	$3,039,002 with $1.553M from AR and $1.087 from other amounts receivable	$1,530,415
Management fees payable	$1,717,482	$1,084,400	$87,617	$104,690	$63,164
Total liabilities	$13,887,255	$15,625,439	$21,840,572	$19,777,205	$16,397.861
Cash and invested assets		$13,942,322	$13,514,557	$13,064,932	$9,525,379
Shareholders' equity, i.e., surplus	$4,031,351	**$4,579,710**	**$3,625,317**	$3,713,503 (versus $3,760,925 for March 2011)	$1,675,694 (versus $2,732,826 for June 2011)

204. On information and belief, as of July 31, 2012, L&C's Gross Losses and LAE was $14,786,000. As of the end of September 2012, losses and LAE totaled $13,609,401 and surplus was negative $1,490,085. Cash and invested assets had dropped to $6.6 million.

F. Gross Negligence by the Board

205. On information and belief, beginning in the 3rd quarter of 2011, adverse development on claims incurred during 2009 began to appear in the financial operations of L&C. As a result, Uni-Ter (captive manager) began to get more involved in claims and reserves. In a

unilateral decision, Uni-Ter brought in Praxis Claims Consulting to assist with improving the reserve setting process. On information and belief, the engagement involved reviewing various open claims files. The owner of Praxis, Brian Stiefel took a lead role in setting reserves for L&C with Uni-Ter. As a result of this engagement, a strengthening of reserves was recommended and booked in the amount of approximately $2.2 million.

206. On information and belief, due to the strengthening entry, and the resulting downturn in the financial condition of L&C, additional capital of $2,220,000 was raised in the form of surplus notes.

207. On information and belief, in the October 5, 2011 Action by Unanimous Consent of the Board of Directors ("Action") surplus note contributions were agreed to be paid by November 15, 2011:

o Oneida Bank	$750,000
o Eagle Healthcare	$220,000
o Pinnacle Healthcare	$220,000
o Marquis Companies	$220,000
o Elderwood Senior Care	$220,000
o Rohm Services	$220,000
o Uni-ter	$300,000

208. On information and belief, the Action indicated that an additional $550,000 in capital could be raised in additional surplus notes, "depending upon the requirements of the business in the fourth quarter, 2011, as approved by the Board". The following commitments were funded in the form of Surplus Notes on February 7, 2012:

o Eagle Healthcare	$70,000
o Pinnacle Healthcare	$70,000
o Marquis Companies	$70,000
o Elderwood Senior Care	$70,000
o Rohm Services	$70,000
o Uni-ter	$200,000

209. On information and belief, with the exception of Oneida Bank, where L&C's investments are held in custody, and Uni-Ter, the captive manager, all other Surplus Note holders were facilities insured by L&C and whose management is a representative on the Board of

Directors of L&C.

210. On information and belief, Stickels is the President of Oneida Bank.

211. On information and belief, prior to the second commitment coming due in the first quarter of 2012, the Board determined that they wanted a second review to confirm the conclusion of the reserve strengthening in late 2011. Fishlinger was hired to conduct an independent analysis of the same claims reviewed by Praxis.

212. On information and belief, using the low end of the ranges of reserves established by Praxis, Fishlinger concluded a low end of strengthening could be approximately a million dollars less than determined by Praxis. Although the Board had requested that Fishlinger conduct its review independently, ultimately it used the work of Praxis in coming to a similar conclusion on the reserve strengthening needed. Based on these two reviews, the additional capitalization of $480,000 was determined to be adequate by the Board.

213. On information and belief, at the end of the second quarter of 2012, the Board assumed that the reserving methodology established under Praxis had continued to be deployed. The Board determined that a follow up review was necessary. Praxis completed their review in July of 2012, involving review of the same estimated 150 claims reviewed at year end 2011. Praxis recommended stepping up of reserves in the cases previously reviewed and indicated that trouble getting case reserve information from attorneys had been one cause of the continued adverse development of these claims. Praxis concluded an additional $2 million in strengthening was required at July 2012.

214. On information and belief, Fishlinger was also brought in for a second review, which ultimately concluded some differences on the low and high end of the ranges for these cases, but ultimately recommended similar cumulative reserve strengthening. An additional party also reviewed the case reserves, the London Based reinsurance broker ("London Broker") for U.S. RE, the reinsurance broker for L&C. The Board and Uni-Ter thought that they would have a vested interest in picking accurate reserves because of the reinsurance that the London broker had placed for L&C with various reinsurers. On information and belief, the London Broker determined that it would be comfortable in the low end of the ranges for many of the cases.

215. On information and belief Milliman, L&C's opining actuary, booked its estimate of reserves at 6/30 and 12/31 of each year, based on its own analysis. During its June 30, 2012 analysis, Milliman determined that L&C would most likely need to increase premium rates by 12-20% on its current book of business to remain a viable entity. On information and belief this does not include capital needed to raise the current level to minimum requirements. Milliman also estimated that $6,000,000 - $6,500,000 million in capital would need to be raised in order to result in $3.6 million of unimpaired capital.

CLAIMS

216. The allegations set forth above are incorporated into the claims set forth herein as is fully set forth for each claim.

FIRST CLAIM FOR RELIEF

(Gross Negligence of the Former Officers and Directors of L&C)

217. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 216, as though fully set forth herein.

218. Under Nevada law, directors and officers must act on an informed basis and are grossly negligent if they fail to do so.

219. Under Nevada law, "[g]ross negligence is equivalent to the failure to exercise even a slight degree of care. It is materially more want of care than constitutes simple inadvertence. It is an act or omission respecting legal duty of an aggravated character as distinguished from a mere failure to exercise ordinary care. It is very great negligence, or the absence of slight diligence, or the want of even scant care." *Hart v. Kline*, 61 Nev. 96, 116 P.2d 672, 674 (1941). Further, gross negligence "amounts to indifference to present legal duty, and to utter forgetfulness of legal obligations so far as other persons may be affected." *Id.*

220. Here the Board was grossly negligent in numerous ways, including but not limited to its utter failure to properly inform itself of status of L&C and its complete failure to properly take timely corrective action.

221. As set forth above, on numerous occasions, even after clear and unmistakable indications that the information provided to the Board by Uni-Ter, U.S. RE, Mr. Elsass, Ms.

Dalton, and others was, at best, unreliable and incomplete, the Board failed to exercise even slight diligence in informing itself of the truth of the financial status of L&C.

222. Further, as of the end of 2011, there was more than ample information that, in combination, clearly showed that L&C's financial condition was in dangerous peril.

223. This information available in late 2011 included rapid and drastic increase in loss reserves, reports of inadequate reserves requiring repeated capital infusions in late 2011 and early 2012, high loss ratios, drastically decreasing realized premiums, absence of any adjustment of premium rates, implementation of a new underwriting philosophy that would result in a 35-40% drop in premiums, and a drastically decreasing company surplus.

224. These reports included the following summarized facts:

- In September 2005, Elsass reported on appropriate loss reserves.
- L&C had substantial growth of premiums and reserves between 2004 and 2009. By 2009, written premium was $10.7 million and reserves were $6.2 million. Uni-Ter's management fees also increased rapidly to $1.4 million in 2008 and $1.7 million in 2009.
- Losses and LAE grew to $9.1 million in 2010 and $14 million in 2011.
- Loss ratios were generally in the 30% range and below until 2009 when the addition of the Sophia Palmer work caused a loss ratio over 50% (because of Sophia Palmer claims having a loss ratio over 80%).
- A new underwriting philosophy was discussed at the September 2011 meeting. Although it does not appear that the Board questioned how this would affect premiums earned, Uni-Ter expected this new philosophy would only renew accounts that had a favorable historical loss ratio and that that could result in a 35-40% reduction in premium volume.
- In the 3rd quarter 2011, adverse development on claims incurred in 2009 showed up on L&C's financial results. Uni-Ter brought in Praxis to improve the reserve setting process. Uni-Ter brought in Praxis to analyze and recommend reserves. Praxis recommended reserve strengthening of $2.2 million.
- Capital contributions totaling $2.22 million were approved by the Board at the October 5, 2011 meeting. That same meeting said that an additional $550,000 in capital could be raised in the 4th quarter 2011 and 1st quarter 2012.
- Financial information shows L&C was not paying losses in 2011. 12/19/11 draft report from Milliman shows $2.23 million paid losses and ALAE in 2009, $2.44 million in 2010, but only $199,000 in 2011.
- On 12/20/2011, Uni-Ter reported claims reserves increased $5 million from the November 2011 figures.
- Uni-Ter's pro forma 12/31/11 financials show that L&C was neither impaired nor insolvent, but the 2011 Annual Statement shows losses and ALAE increased from $9.1 million at the beginning of 2011 to $14.8 million at the end of the year.

- At January 16, 2012 meeting, surplus is only $1,979,730, down from $4,579,000 at end of 2010.
- At February 2, 2012 meeting, Board approved $480,000 additional capital contributions even though Elsass reported recent favorable claims activity. Prior to this, the Board had determined that they wanted a second opinion from Fishlinger to confirm the need for reserve strengthening made by Praxis.
- A 2/23/12 report showed that L&C's net written premiums for 2011 dropped 25% (from $12 to $9 million). It confirmed that losses and LAE for 2011 were $12.7 million when only $8.1 million for 2010. It also said that L&C's current reserves were deficient by just over $750,000.
- A 2/23/12 report on in force policies states that total premiums for those policies would be $6.8 million for 2012.
- A 2/29/12 loss ratio report shows that earned premium for 2011 dropped to $5,209,362 from $12,798,406 in 2010 and $11,776,406 in 2009 and states that earned premium for 2012 through February 2012 was only $240,000 which, annualized, would be only about $1.4 million. It also shows that loss ratios for 2006 through 2010 were all above 65% and as high as 79%.
- April 12, 2012 Milliman report says that L&C's loss reserves are $1.4 million under the central estimate. That same reports says that ultimate loss and ALAE have increased by $9.2 million from the end of 2010. Table 3 of that report (page 12) states that Ultimate Loss & ALAE increased $5.5 million from $13.8 million at the end of 2010 to $19.2 million the end of 2011.

225. Under Nevada law, the business judgment rule does not protect the gross negligence of uninformed directors and officers. *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 640, 137 P.3d 1171, 1184 (2006).

226. The Board and officers did not adequately review all of the information to which they had access, and was grossly negligent in failing to do so. Further, the Board failed to exercise a slight degree of care regarding the incomplete and inaccurate information provided to it by Uni-Ter and/or U.S. RE, and remained uninformed despite their knowledge that they could not rely on the representations and recommendations of Uni-Ter and U.S. RE, as set forth above.

227. As set forth above, the Board was made well aware of the extremely dangerous and deteriorating financial position of L&C at least as early as September 2010 by the DOI in its September 2010 Letter.

228. Further, the Board was again made aware of the dire financial position it had allowed L&C to reach due to its failure to exercise a slight degree of care in informing itself of

the position of L&C and take effective corrective action, as set forth in the DOI's September 2011 Letter.

229. To the extent the Board did review any information, the Board was grossly negligent in taking ineffective actions or in not taking immediate effective corrective action by at least late 2011 (e.g., raising premium rates).

230. The Board was in a position to see this information and knew that it had an obligation to do so. Further, it knew that the information provided by Uni-Ter, U.S. RE and others was incomplete and inaccurate. Indeed, the Board had the contractual right to receive the information (including on a monthly basis between 2004 and 2010). It also knew at least on several occasions that it was not receiving sufficient information from Uni-Ter, but failed to exercise even slight diligence in properly informing itself. On several occasions between 2005 and 2011, the Board asked Uni-Ter to provide more and better financial and other information:

- March 2005 Minutes request for financial information monthly.
- April 2005 Minutes note nonreceipt of periodic marketing reports.
- At the October 2011 special meeting approving $2.2 million of additional capital the Board requested more frequent financial reports by Uni-Ter, preferably monthly.

231. The facts show an absence of the slightest degree of diligence of the Board and company officers to ascertain and assess the available information so that decisions could be made and based on such information, as set forth above.

232. The Board failed to exercise even the slightest degree of care or diligence to become properly informed and was wholly indifferent to its legal obligations in relying on information and recommendations of Uni-Ter, U.S. RE and others, as set forth herein, despite the Board's knowledge and reason to know that the information and recommendations provided were grossly inaccurate and incomplete.

233. As a proximate result, Plaintiff has been damaged in an amount in excess of $10,000, the exact amount to be proven at trial in this matter.

234. Plaintiff has retained the undersigned law firm to represent the Receiver in this matter, and is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to

recover herein.

WHEREFORE, Plaintiff prays for relief as set forth herein.

SECOND CLAIM FOR RELIEF

(Deepening of the Insolvency of L&C Caused by the Former Directors and Officers)

235. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 234, as though fully set forth herein.

236. The Board's inaction severely prolonged the insurance actions of L&C that led to its initial insolvency and that then also increased its insolvency.

237. Had the Board taken action by late 2011, the substantial losses experienced by L&C starting in late 2011 would not have occurred or, alternatively, would have been greatly limited.

238. Because L&C had a surplus as of the end of 2011, according to its financial statements, then all of the insolvency of L&C was arguably attributable to the directors' and officers' failure to promptly identify and address the financial problems.

239. As a proximate result, Plaintiff has been damaged in an amount in excess of $10,000, the exact amount to be proven at trial in this matter.

240. Plaintiff has retained the undersigned law firm to represent the Receiver in this matter, and is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to recover herein.

WHEREFORE, Plaintiff prays for relief as set forth herein.

THIRD CLAIM FOR RELIEF

(Negligent Misrepresentation by Uni-Ter UMC)

241. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 240, as though fully set forth herein.

242. Uni-Ter UMC, through its employees, negligently misrepresented the specific financial conditions of L&C including the level of losses and LAE.

243. Uni-Ter had created L&C and grown it rapidly for its own financial benefit, as well as that of U.S. RE, who benefitted from the placement of reinsurance and from management

fees earned by its subsidiary. Uni-Ter had intimate familiarity with the financial information of L&C.

244. However, instead of presenting all relevant financial information to the Board, Uni-Ter appears to have selectively provided information such that the Board was not informed of the actual financial condition of L&C. Even after a number of reports showed substantial growth of L&C's losses in late 2011, Mr. Elsass even represented to the Board in early 2012 that claims losses were not as bad as previously reported in late December.

245. Uni-Ter and Milliman told the Board that the large losses that started appearing in the 3rd quarter of 2010 were primarily because of three insureds who had been non-renewed in 2011, thus giving the impression that this would resolve the large losses issue. These representations are representative of how the Board was kept in the dark regarding the actual financial condition of L&C.

246. L&C justifiably relied on the information presented to it by Uni-Ter, as set forth herein.

247. As a proximate result, Plaintiff has suffered damages in excess of $10,000, the exact amount to be proven at trial herein.

248. Plaintiff has retained the undersigned law firm to represent her in this matter, and is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to recover herein.

WHEREFORE, Plaintiff prays for relief as set forth herein.

FOURTH CLAIM FOR RELIEF

(Breach of Fiduciary Duty by Uni-Ter UMC and Uni-Ter CS)

249. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 248, as though fully set forth herein.

250. Uni-Ter owed a fiduciary duty to L&C as set forth above.

251. Uni-Ter breached its fiduciary duty to L&C by recommending to the Board that the 2007 treaty be commuted too soon and by failing to gain Board approval to commute the 2008 and 2009 treaty such that that treaty was commuted without authorization to do so from the Board.

252. Approval of commutation of the 2007 treaty was done at the January 10, 2008 board meeting.

253. Commutation benefitted U.S. RE, the parent of Uni-Ter, because the syndicate insurers get to keep 75% of the premiums paid without any requirement to pay any claims. U.S. RE also appears to have done an unapproved commutation for the 2008-2009 treaty at the direction of Uni-Ter.

254. October 2010 emails between U.S. RE and Uni-Ter discuss booking the commutation amount, but the February 2, 2012 Minutes state that the Board deferred approval of commutation of certain treaties including the 2008 and 2009 treaties. *See* **Exhibit 26.**

255. As a proximate result, Plaintiff has been damaged in an amount in excess of $10,000, the exact amount to be proven at trial herein.

256. Plaintiff has retained the undersigned law firm to represent her in this matter, and is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to recover herein.

WHEREFORE, Plaintiff prays for relief as set forth herein.

FIFTH CLAIM FOR RELIEF

(Breach of Fiduciary Duty Against U.S. RE)

257. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 256, as though fully set forth herein.

258. L&C engaged U.S. RE as its agent and exclusive broker to find and secure appropriate reinsurance. The U.S. RE Agreement appointed U.S. RE as L&C's exclusive reinsurance intermediary/broker and granted U.S. RE full and complete authority to negotiate the placement of reinsurance on all classes of insurance with unspecified limits of coverage as requested by the underwriter of L&C (i.e., Uni-Ter).

259. U.S. RE was itself engaged as L&C's "exclusive reinsurance intermediary/broker" and as L&C's agent, including being granted "full and complete authority to negotiate the placement of reinsurance or retrocessions on all classes of insurance with unspecified limits of coverage as specifically requested by any underwriter of [L&C]." *See* **Exhibit 4**, the U.S. RE Agreement.

260. The U.S. RE Agreement further recognizes U.S. RE's agency with L&C by stating that U.S. RE "will exercise its best efforts in the discharge of its duties **on behalf of the Company**." *Id.* (emphasis added).

261. The Supreme Court of Nevada has held that "[a]n agency relationship is formed when one who hires another retains a contractual right to control the other's manner of performance." *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 108 Nev. 811, 815, 839 P.2d 599, 602 (1992) (citation omitted).

262. U.S. RE acted as the agent of L&C, as the U.S. RE Agreement expressly states not only that U.S. RE will act "on behalf of" L&C, but also that L&C has the right to control U.S. RE's manner of performance as U.S. RE promises to "comply with written standards established by [L&C] for the cession or retrocession of all insured risks." *See* **Exhibit 4**.

263. Further, Nevada law makes clear that "[a]n agent, such as respondent in these circumstances, owes to the principal the highest duty of fidelity, loyalty and honesty in the performance of the duties by the agent on behalf of the principal." *LeMon v. Landers*, 81 Nev. 329, 332, 402 P.2d 648, 649 (1965) (holding that the agent breached her fiduciary obligations) (emphasis added); *see also Chem. Bank v. Sec. Pac. Nat. Bank*, 20 F.3d 375, 377 (9th Cir. 1994) ("The very meaning of being an agent is assuming fiduciary duties to one's principal.") (*citing Restatement (Second) of Agency* § 1(1)).

264. Thus, as the agent of L&C, U.S. RE owed L&C fiduciary duties under Nevada law, as set forth herein

265. U.S. RE breached this fiduciary duty through intentional acts including, but not limited to, by not obtaining reinsurance through syndicates as listed in the fact section above. No facts were found that reinsurance failed to pay as required. To the contrary, the reinsurance policies seemed not to be invoked because deductible amounts were not reached, especially in the early years of 2004 to 2008.

266. Nevertheless, U.S. RE intentionally represented to L&C that it would act in L&C's best interests, creating additional duties toward L&C other than merely finding and securing reinsurance, including but not limited to, fiduciary duties, as set forth herein.

267. In violation of such duties, U.S. RE intentionally failed to find appropriate reinsurance because the deductible rates were consistently too high. This is shown by the fact that reinsurance did not come into play at all in the early years. Indeed, the Board approved commutation of the 2007 treaty only 10 days into 2008.

268. As a proximate result, Plaintiff has been damaged in an amount in excess of $10,000, the exact amount to be proven at trial in this matter.

269. Plaintiff has retained the undersigned law firm to represent her in this matter, and is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to recover herein.

WHEREFORE, Plaintiff prays for relief and judgment as follows:

A. For actual damages sustained by Plaintiff in an amount in excess of $10,000 in an amount to be more specifically established at trial in accordance with proof;

B. For reasonable attorney's fees pursuant to statute or as special damages, or as provided in the agreement between the parties;

C. For pre-judgment and post-judgment interest; and

D. For such other and further relief at law or in equity as the Court may deem just and proper.

DATED this 5th day of August, 2016.

FENNEMORE CRAIG, P.C.

By: */s/ Brenoch Wirthlin*

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EXHIBIT PAGE ONLY

EXHIBIT 2

HUTCHISON & STEFFEN
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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION,; DOES 1-50, inclusive; and ROES 51-100, inclusive; Defendants.	Case No.: A-14-711535-C Dept. No.: XXVII **PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO NRCP 59** **Hearing Requested**

Plaintiff, Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark LTC Risk Retention Group, Inc. ("Plaintiff" or the "Receiver"), by and through her counsel of record, the law firm of Hutchison & Steffen, PLLC, hereby submits her Motion to Alter or Amend Judgment Pursuant to NRCP 59.

This Motion is made and based on the following Memorandum of Points and Authorities, any argument the Court chooses to entertain at a hearing on this matter, and all papers and pleadings

///

Case Number: A-14-711535-C

on file herein.

DATED this 10th day of February, 2022.

By:___ /s/ *Brenoch Wirthlin*

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MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT FACTS

The trial regarding Plaintiff's claims against Defendant U.S. Re Corporation ("U.S. Re"), Uni-Ter Underwriting Management Corporation ("Uni-Ter UMC"), and Uni-Ter Claims Services Corporation ("Uni-Ter CS", and collectively with U.S. Re and Uni-Ter UMC referred to herein as the "Corporate Defendants") commenced on September 20, 2021 in this Court. On October 14, 2021, the matter was submitted to the Jury, which rendered its Verdict in favor of Plaintiff that same day. *See* Verdict Form (Oct. 14, 2021). Specifically, the Jury found that Plaintiff established damages in the amount of $15,222,853.00 and allocated liability for those damages to each respective Defendant as follows: 55 percent to US Re; 25 percent to Uni-Ter UMC; and 20 percent to Uni-Ter CS. Based upon simple math calculations, the foregoing translates to $8,372,569.15 allocated to US Re, $3,805.713.25 allocated to Uni-Ter UMC, and $3,044,570.60 allocated to Uni-Ter CS. A copy of the judgment entered on the Jury Verdict ("Judgment") is attached hereto as Exhibit 1, reflecting the allocation of damages as set forth above.

II. APPLICABLE STANDARD

The Court may grant a motion to amend a judgment under Rule 59(e), Nevada Rule of Civil Procedure, to correct manifest errors of law or to prevent manifest injustice. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010); *see also Panorama Towers Condo. Unit Owners' Ass'n v. Hallier*, 137 Nev. Adv. Op. 67, 498 P.3d 222, 224 (2021) ("An NRCP 59(e) motion to alter or amend a judgment may be appropriate to correct 'manifest errors of law or

fact,' address 'newly discovered or previously unavailable evidence,' 'prevent manifest injustice,' or address a 'change in controlling law.'"). Additionally, Rule 60(b)(6) allows the Court, "[o]n motion and just terms," to relieve a party, such as U.S. Re, from a final judgment for "any . . . reason that justifies relief."

III. ARGUMENT

A. Joint tortfeasors are jointly and severally liable for breaches of fiduciary duty.

Courts across the country, including California, have recognized the common law holding that joint tortfeasors are jointly and severally liable for breaches of fiduciary duty. *F.D.I.C. v. Anders*, No. CIV. S-87-430EJG/PAN, 1991 WL 442874, at *6 (E.D. Cal. July 2, 1991) ("Where a principal is injured by the acts of two agents, neither may avoid liability to the principal on the ground that the other was responsible. *Oxford Shipping Co. v. New Hampshire Trading Corp.*, 697 F.2d 1, 6–7 (1st Cir.1982).); *Constr. Laborers Tr. Funds for S. California Admin. Co. v. Victory Engineers, Inc.*, No. CV 10-2134 CBM (EX), 2010 WL 11598019, at *5 (C.D. Cal. Oct. 14, 2010) (finding joint and several liability on claims of breach of fiduciary duty); *Norte & Co. v. Huffines*, 304 F. Supp. 1096, 1109 (S.D.N.Y.), *supplemented*, 288 F. Supp. 855 (S.D.N.Y. 1968), *aff'd in part, remanded in part*, 416 F.2d 1189 (2d Cir. 1969) (holding that the liability of fiduciaries who act together in breach of their fiduciary obligations is joint and several); *Anchor Reef Ass'n, Inc. v. Anchor Reef Club at Branford, LLC*, No. X07HHDCV155043896S, 2017 WL 3080882, at *2 (Conn. Super. Ct. June 14, 2017) ("This misconduct is reflected in the $578,950.59 Ziegler was ordered to pay in the earlier opinion for the breaches of fiduciary duty that arose from Ziegler's financial shenanigans. Rounding upward, the court doubles those damages, awarding against Ziegler and the developer **jointly and severally** an additional $579,000 as CUTPA punitive damages."); *Magaraci v. Espinosa*, No. 03-14-00515-CV, 2016 WL 858989, at *2 (Tex. App. Mar. 4, 2016) ("Salvatore Magaraci and Estate Protection Planning were determined to be jointly and severally liable for $271,658.55, plus interest and attorney's fees" with regard to claims for breach of fiduciary duty); *Abbott v. Chesley*, 413 S.W.3d 589, 599 (Ky. 2013) (CGM challenged the entry of summary judgment on the **breach of fiduciary duty claim and the assessment of joint and several liability**); *Ryder v. Bates*, No. 215CV02526SHLCGC, 2019 WL 12762965,

at *3 (W.D. Tenn. Mar. 5, 2019) ("The Court requested that the Receiver provide a detailed calculation of damages as to each Defendant under each claim it advanced. **The calculation of damages per Defendant is complicated somewhat by the multiple avenues of recovery, the joint and several liability that applies to breach of fiduciary duty** and the need to insure that there is no double recovery. Consequently, the Court will first address damages from the breach of fiduciary duty, for which all Defendants are jointly and severally liable, before moving to any additional damages that may be owed by individual Defendants."); *Mannix v. Tighe*, No. MICV 2008-0690, 2009 WL 5909266, at *2 (Mass. Super. Dec. 30, 2009) ("Finally, Tighe and Callahan are jointly and severally liable for breaches of fiduciary duties. Breach of fiduciary duty is considered a tort under Massachusetts law. See, *Doe v. Harbor Schools, Inc.*, 446 Mass. 245, 254, 843 N.E.2d 1058 (2006) and "**it is a familiar rule of law, that in cases in tort, where two or more are liable to an action, they are liable jointly and severally**...." *Donnelly v. Larkin*, 327 Mass. 287, 296, 98 N.E.2d 280 (1951), and cases cited.); *Kunz v. Warren*, 725 P.2d 794, 795 (Colo. App. 1986) ("A judgment was also entered against Bruce A. Jarnagin, Harold P. Warren, and Cascade Marketing Corporation, **jointly and severally, in the amount of $158,000 for breach of fiduciary duty**.").

In this case Plaintiff prevailed on all of its claims for breaches of fiduciary duty to the Company by the Corporate Defendants. Accordingly, Plaintiff requests that the Judgment be amended to reflect joint and several liability for all damages by all Corporate Defendants.

III. CONCLUSION

For all these reasons, the Plaintiff respectfully requests that this Court grant the relief requested in the motion pursuant to NRCP 59 and amend or alter the Judgment as set forth herein,

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and grant such other and further relief as the Court deems appropriate.

Dated this 10th day of February, 2022.

By:___/s/ *Brenoch Wirthlin*_____

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BRENOCH WIRTHLIN, ESQ. (10282)
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 10th day of February, 2022, I caused the document entitled **PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO NRCP 59** 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

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

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12/30/2021 9:18 AM
CLERK OF THE COURT

JGJV

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION,; DOES 1-50, inclusive; and ROES 51-100, inclusive; Defendants.	Case No.: A-14-711535-C Dept. No.: XXVII **JUDGMENT ON JURY VERDICT** **Trial: 9/20/2021 – 10/14/2021**

This matter having been tried before a jury ("Jury") beginning September 20, 2021 through October 14, 2021; Plaintiff Commissioner of Insurance for the State of Nevada as Receiver for Lewis & Clark LTC Risk Retention Group, Inc. ("Plaintiff") having been represented by Brenoch Wirthlin, Esq., Chris Orme, Esq., and Tanya Fraser, Esq. of the law firm of Hutchison & Steffen, PLLC; Defendants U.S. Re Corporation ("U.S. Re"), Uni-Ter Underwriting Management Corp. ("Uni-Ter UMC") and Uni-Ter Claims Services Corp. ("Uni-Ter CS" and collectively with U.S.

Case Number: A-14-711535-C

Re and Uni-Ter UMC referred to as the "Corporate Defendants") having been represented by Jon M. Wilson, Esq. of the Law Offices of Jon M. Wilson, George F. Ogilvie III of the law firm of McDonald Carano LLP, and Kimberly Freedman and Erin Kolmansberger of the law firm of Nelson Mullins; the Jury having rendered its verdict which was presented in open Court on October 14, 2021 ("Verdict"); the Jury having made the following findings as set forth in the Verdict:

1. The Jury having found by clear and convincing evidence that Uni-Ter UMC made a negligent misrepresentation(s) to Lewis & Clark LTC Risk Retention Group, Inc. ("Lewis & Clark") regarding Lewis & Clark's financial condition, on which Lewis & Clark justifiably relied;
2. The Jury having found by clear and convincing evidence that Un-Ter UMC's negligent misrepresentation(s) was a legal cause of damages to Lewis & Clark;
3. The Jury having found by a preponderance of the evidence that a fiduciary relationship existed between Uni-Ter UMC and Lewis & Clark where Uni-Ter UMC was under a duty to act for or give advice for the benefit of Lewis & Clark upon matters within the scope of their relationship;
4. The Jury having found by a preponderance of the evidence that Uni-Ter UMC breached its fiduciary duty to Lewis & Clark;
5. The Jury having found by a preponderance of the evidence that Uni-Ter UMC's breach of its fiduciary duty to Lewis & Clark was a legal cause of damages to Lewis & Clark;
6. The Jury having found by a preponderance of the evidence that a fiduciary relationship existed between Uni-Ter CS and Lewis & Clark where Uni-Ter CS was under a duty to act for or to give advice for the benefit of Lewis & Clark upon matters within the scope of their relationship;
7. The Jury having found by a preponderance of the evidence that Uni-Ter CS breached its fiduciary duty to Lewis & Clark;
8. The Jury having found by a preponderance of the evidence that Uni-Ter CS's breach of its fiduciary duty to Lewis & Clark was a legal cause of damages to Lewis & Clark;
9. The Jury having found by a preponderance of the evidence that a fiduciary relationship

existed between U.S. Re and Lewis & Clark where U.S. Re was under a duty to act for or to give advice for the benefit of Lewis & Clark upon matters within the scope of their relationship;

10. The Jury having found by a preponderance of the evidence that U.S. Re breached its fiduciary duty to Lewis & Clark;
11. The Jury having found by a preponderance of the evidence that U.S. Re's breach of its fiduciary duty to Lewis & Clark was a legal cause of damages to Lewis & Clark;
12. The Jury having found that the amount of damages incurred by Lewis & Clark totaled the principal amount of $15,222,853.00;
13. The Jury having determined that the liability for Plaintiff's claims of negligent misrepresentation and breach of fiduciary duty should be allocated with respect to each of the Corporate Defendants as follows:
    a. Fifty-five percent (55%) to U.S. Re Corporation;
    b. Twenty-five percent (25%) to Uni-Ter Underwriting Management Corporation;
    c. Twenty percent (20%) to Uni-Ter Claims Services Corporation.

NOW THEREFORE, based upon the findings by the Jury as set forth in its Verdict, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that based upon the Jury's Verdict, judgment against defendant U.S. Re Corporation is hereby entered in the principal amount of $8,372,569.15.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, U.S. Re Corporation having been served with the summons and complaint in this matter on March 12, 2015, pre-judgment interest is hereby awarded against U.S. Re Corporation pursuant to NRS § 17.130(2) in the additional amount of $2,109,887.43[1], for a total principal judgment against U.S. Re Corporation in the amount of $10,482,456.58, which amount does not include post-judgment

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[1] Calculated at the rate of 5.25% over 1,752 days (March 12, 2015, when U.S. Re Corporation was served with the summons and complaint, through December 23, 2021, less 726 days during periods of stay) pursuant to NRS § 17.130.

interest, attorney fees or costs, which amounts may be awarded by post trial motion.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that based upon the Jury's Verdict, judgment against defendant Uni-Ter Underwriting Management Corporation is hereby entered in the principal amount of $3,805,713.25.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, Uni-Ter Underwriting Management Corporation having been served with the summons and complaint in this matter on March 11, 2015, pre-judgment interest is hereby awarded against Uni-Ter Underwriting Management Corporation pursuant to NRS § 17.130(2) in the additional amount of $959,587.14[2], for a total principal judgment against Uni-Ter Underwriting Management Corporation in the amount of $4,765,300.39, which amount does not include post-judgment interest, attorney fees or costs, which amounts may be awarded by post trial motion.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that based upon the Jury's Verdict, judgment against defendant Uni-Ter Claims Services Corporation is hereby entered in the principal amount of $3,044,570.60.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, Uni-Ter Claims Services Corporation having been served with the summons and complaint in this matter on March 11, 2015, pre-judgment interest is hereby awarded against Uni-Ter Claims Services Corporation pursuant to NRS § 17.130(2) in the additional amount of $767,669.71[3], for a total principal judgment against Uni-Ter Underwriting Claims Services Corporation in the amount of $3,812,240.31, which amount does not include post-judgment interest, attorney fees or costs, which amounts may be awarded by post trial motion.[4]

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED, pursuant to NRS

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[2] Calculated at the rate of 5.25% over 1,753 days (March 11, 2015, when Uni-Ter Underwriting Management Corporation was served with the summons and complaint, through December 23, 2021, less 726 days during periods of stay) pursuant to NRS § 17.130.

[3] Calculated at the rate of 5.25% over 1,753 days (March 11, 2015, when Uni-Ter Claims Services Corporation was served with the summons and complaint, through December 23, 2021, less 726 days during periods of stay) pursuant to NRS § 17.130.

[4] Pursuant to NRS § 18.120, the following blank is left in this judgment for costs to be included within the judgment once the same shall be taxed or ascertained:_____.

§ 18.120, and other applicable law, that all said judgment amounts hereby entered against the Corporate Defendants, and each of them, shall bear post-judgment interest at the Nevada statutory

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interest rate per annum from the date of award until fully satisfied, for all of which let execution and garnishment issue forthwith.[5]

DATED: December 27, 2021.

Dated this 30th day of December, 2021

Nancy L Allf

HON. NANCY L. ALLF TW
DISTRICT COURT JUDGE
449 33C 9DF7 6302
Nancy Allf
District Court Judge

HUTCHISON & STEFFEN, PLLC

By: */s/ Brenoch Wirthlin*
MARK A. HUTCHISON, ESQ. (4639)
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Attorneys for Plaintiff

Approved as to Form:

By: */s/ George Ogilvie*
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[5] Plaintiff expressly reserves the right to seek costs against the Corporate Defendants, and each of them, pursuant to NRS § 18.110 or other applicable law, and attorney fees against the Corporate Defendants, and each of them, pursuant to NRCP 68 and NRS § 17.117 or other applicable law.

RE: Lewis & Clark

Reply | Reply All | Forward | ...

GF George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
To Brenoch R. Wirthlin; Christian M. Orme; Tanya M. Fraser
Cc Jon; Jon Wilson; Kimberly Freedman; erin Kolmansberger; Amanda Yen; Jon Linder; No Scrub
Wed 12/22/2021 6:18 PM

Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.

Brenoch,

I have reviewed the revised judgment and checked your math. It is in compliance with our requested edits and the math is accurate. Therefore, you may affix my electronic signature.

I see what you are saying about NRS 18.120; however, that will lead to two different documents entitled "Judgment" in the record. I think it is cleaner to exclude the footnote and the blank in the Judgment, and then submit an Amended Judgment once the costs and attorney's fees issues are adjudicated, but I am not adamant about it.

George F. Ogilvie III | Partner

McDONALD CARANO

P: 702.873.4100 | **E:** gogilvie@mcdonaldcarano.com

From: Brenoch R. Wirthlin <bwirthlin@hutchlegal.com>
Sent: Wednesday, December 22, 2021 4:36 PM
To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Christian M. Orme <COrme@hutchlegal.com>; Tanya M. Fraser <tfraser@hutchlegal.com>
Cc: Jon <jonwilson@jonmwilsonattorney.com>; Jon Wilson <jonwilson2013@gmail.com>; Kimberly Freedman <Kimberly.Freedman@nelsonmullins.com>; erin Kolmansberger <erin.kolmansberger@nelsonmullins.com>; Amanda Yen <ayen@mcdonaldcarano.com>; Jon Linder <jlinder@hutchlegal.com>; No Scrub <NoScrub@mcdonaldcarano.com>
Subject: RE: Lewis & Clark

George and Jon, I accepted all the changes you made and revised the amounts based on the calculation of pre-judgment interest through tomorrow, December 23. In addition, my reading of 18.120 says we're supposed to leave a blank for costs so I added a footnote with a blank for costs. A redline and clean copy pdf are attached.

If we can attach your electronic signature and submit to the Court, please let me know. Alternatively, we can submit a joint email to the Court's clerk and see if the judge has a preference one way or the other.

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

*** * ***

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION,; DOES 1-50, inclusive; and ROES 51-100, inclusive; Defendants.	Case No.: A-14-711535-C Dept. No.: XXVII **ORDER GRANTING PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO NRCP 59**

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

[1] Mr. Ogilvie and his firm, McDonald Carano, LLP, have withdrawn from representing Uni-Ter Underwriting

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

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

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

IT IS HEREBY FURTHER ORDERED that the judgment in this matter ("Judgment") shall be and is hereby amended to reflect joint and several liability among all Corporate Defendants

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Management Corp., Uni-Ter Claims Services Corp. ("Uni-Ter Defendants" and collectively with US Re referred to as the "Corporate Defendants"). The Uni-Ter Defendants did not file an opposition to the Motion or appear at the Hearing. Defendant US Re also filed Motion to Alter or Amend Judgment Pursuant to Rule 59(e), for Relief from Judgment and Pursuant to Rule 60(b), and for Stay of Execution Pursuant to 62(b)(3) and (4) ("US Re's Motion to Amend"). At the Hearing US Re withdrew its Motion to Amend. Thus this order also resolves US Re's Motion to Amend and the Court hereby acknowledges US Re's Motion to Amend is withdrawn.

for all damages and amounts awarded in the Judgment.

Dated this 18th day of October, 2022

Nancy L Allf

MA

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

Respectfully submitted by:

Dated this 18th day of October, 2022.

HUTCHISON & STEFFEN

/s/Brenoch Wirthlin

BRENOCH R. WIRTHLIN, ESQ.
Nevada Bar No. 10282
TANYA M. FRASER, ESQ. (13872)
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Las Vegas, Nevada 89145
Attorneys for Plaintiff

Approved as to form and content:

Dated this ____ day of October, 2022.

MCDONALD CARANO LLP

Did not sign

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Jon M. Wilson, Esq.
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Attorneys for U.S. Re

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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IN THE SUPREME COURT OF THE STATE OF NEVADA

*** * ***

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, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, Respondents.	Supreme Court No. 85668 **EXHIBIT 1 TO APPELLANT'S OPPOSITION TO MOTION TO DISMISS PAGES 91 - 300**
ROBERT CHUR; STEVE FOGG; MARK GARBER; CAROL HARTER; ROBERT HURLBUT; BARBARA LUMPKIN; JEFF MARSHALL; AND ERIC STICKELS, Appellants, vs. THE STATE OF NEVADA COMMISSIONER OF INSURANCE AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Respondents.	Supreme Court No. 85728

Docket 85668 Document 2023-19211

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; UNI-TER UNDERWRITING MANAGEMENT CORP.; UNI-TER CLAIMS SERVICES CORP.; AND U.S. RE CORPORATION, Respondents.	Supreme Court No. 85907

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP. UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	Case No. A-14-711535-C Dept. No.: XXVII **DEFENDANT U.S. RE CORPORATION'S MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(e), FOR RELIEF FROM JUDGMENT PURSUANT TO RULE 60(b), AND FOR STAY OF EXECUTION PURSUANT TO 62(b)(3) and (4).** **HEARING REQUESTED**

Pursuant to Rules 59(e), 60(b), and 62(b)(3) and (4) of the Nevada Rules of Civil Procedure, Defendant, U.S. Re Corporation ("U.S. Re"), through its undersigned attorneys, hereby moves for

Case Number: A-14-711535-C

relief from, and amendment to, the December 30, 2021 Judgment on Jury Verdict ("Judgment") awarding Plaintiff, the Commissioner of Insurance for the State of Nevada as Receiver of Lewis & Clark LTC Risk Retention Group, Inc ("Receiver"), a total of $10,482,456.58 against U.S. Re. U.S. Re also requests that this Court stay any execution on the Judgment against U.S. Re pending disposition of this motion.

This motion is made and based on the following Memorandum of Points and Authorities, the existing record in this action, and any argument the Court may entertain at any hearing on this matter.

DATED this 10th day of February, 2022.

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

On October 14, 2021, after a nearly four-week trial, the jury returned a verdict in favor of Plaintiff, Commissioner of Insurance for the State of Nevada as Receiver of Lewis & Clark LTC Risk Retention Group, Inc. ("Receiver"), finding the remaining defendants, Uni-Ter Underwriting Management Corp. ("Uni-Ter UMC"), Uni-Ter Claims Services Corp. ("Uni-Ter CS"), and U.S. Re Corporation ("U.S. Re"), liable for damages totaling $15,222,853.00. *See* Verdict Form, attached hereto as **Exhibit A**, at 6. The jury allocated 55% of that liability to U.S. Re. *Id.* On December 30, 2021, this Court entered its Judgment on Jury Verdict ("Judgment"), awarding $8,372,569.15 (55% of the total liability) against U.S. Re, plus $2,109,887.43 in pre-judgment interest, for a total of $10,482,456.58 against U.S. Re. *See* Judgment, attached hereto as **Exhibit B**, at 3-4.[1]

The damages imposed against U.S. Re, however, cannot stand. The only possible damages attributable to U.S. Re, the reinsurance broker for Lewis & Clark ("L&C"), are damages that stemmed from the reinsurance program procured by U.S. Re for L&C—referred to by the Receiver's experts as "reinsurance damages." Yet, the Receiver's liability expert, Mark Tharp, created a reinsurance damages calculation that was based on a legally incorrect measure of damages, was entirely speculative, and was not supported by the evidence. These flawed calculations were, in turn, adopted ***to the penny*** by the Receiver's damages expert, Mark Kuga, as the basis for his "net reinsurance ceded" model, which he then testified entitled the Receiver to $7,986,000 in reinsurance damages. Because Dr. Kuga's conclusion that L&C sustained $7,986,000 in reinsurance damages relies entirely on Mr. Tharp's unsubstantiated reinsurance damages calculation, Dr. Kuga's conclusion is likewise flawed. Accordingly, there is no basis to impose damages against U.S. Re, and the Court should relieve U.S. Re from all damages imposed against it.

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[1] The Receiver served notice of entry of the Judgment on January 13, 2022. *See* Notice of Entry of Order, attached hereto as **Exhibit C**. Accordingly, this motion is timely filed. *See* Nev. R. Civ. P. 59(e) ("A motion to alter or amend a judgment must be filed no later than 28 days after service of written notice of entry of judgment."); Nev. R. Civ. P. 60(c)(1) ("A motion under Rule 60(b) must be made within a reasonable time--and for reasons (1), (2), and (3) no more than 6 months after the date of the proceeding or the date of service of written notice of entry of the judgment or order, whichever date is later.").

Even assuming, however, that this Court concludes that Mr. Tharp's computation was a legally sufficient measure of damages (which it was not) and that Dr. Kuga properly relied on it (which he could not), the $8,372,569.15 awarded against U.S. Re exceeds the $7,986,000 maximum possible amount of reinsurance damages that could be awarded based on the Receiver's experts' own testimony. Thus, there was no support in the record for an award of $8,372,569.15 against U.S. Re, and U.S. Re should be relieved from all damages imposed against it on this basis as well.

For these reasons, discussed more fully below, it would be contrary to law and unjust for the Court to allow the portion of the Judgment imposed against U.S. Re to stand. Accordingly, the Court should enter an order relieving U.S. Re from any obligation to satisfy the Judgment against it and amend the Judgment to reflect that no damages are attributable to U.S. Re.

LEGAL STANDARDS

The Court may grant a motion to amend a judgment under Rule 59(e), Nevada Rule of Civil Procedure, to correct manifest errors of law or to prevent manifest injustice. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010); *see also Panorama Towers Condo. Unit Owners' Ass'n v. Hallier*, 137 Nev. Adv. Op. 67, 498 P.3d 222, 224 (2021) ("An NRCP 59(e) motion to alter or amend a judgment may be appropriate to correct 'manifest errors of law or fact,' address 'newly discovered or previously unavailable evidence,' 'prevent manifest injustice,' or address a 'change in controlling law.'"). Additionally, Rule 60(b)(6) allows the Court, "[o]n motion and just terms," to relieve a party, such as U.S. Re, from a final judgment for "any . . . reason that justifies relief."

ARGUMENT

I. Mr. Tharp's Computation of the Purported Loss to L&C from the Reinsurance Procured by U.S. Re is Legally Incorrect and Was Not Supported by the Evidence Presented at Trial.

The Receiver's liability expert, Mark D. Tharp, who conceded he is not a damages expert, is actually the individual who calculated the alleged losses attributable to L&C's reinsurance program. This number was then adopted by the Receiver's damages expert, Dr. Kuga. Mr. Tharp's own testimony, however, demonstrates that the damages imposed against U.S. Re are flawed for two reasons: 1) Mr. Tharp utilized an incorrect measure to determine the alleged damage from the

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reinsurance program and 2) the amount of reinsurance damages Mr. Tharp identified is entirely speculative.

A. Mr. Tharp did not apply a proper measure of damages to determine what loss to L&C, if any, was attributable to the reinsurance program procured by U.S. Re.

At trial, Mr. Tharp first testified that U.S. Re was responsible for recommending and procuring the reinsurance program for L&C:

> Q. With respect simply to the procurement aspect of Re Insurance for Lewis and Clark, what obligations and actions did U.S. RE take with respect to just the procurement?
>
> A. Well, it -- U.S. RE recommended a reinsurance program to Lewis and Clark. And that -- that reinsurance program was approved by the board of directors.
>
> Q. When you say that U.S. RE recommended a reinsurance program, what went into the process of that recommendation?
>
> A. Identification of a reinsurance program that U.S. RE recommended for Lewis and Clark.

See Sept. 28, 2021 Trial Tr., excerpts of which are attached hereto as **Exhibit D**, at 46:6-15. He also testified that the reinsurance obtained by U.S. Re was "detrimental and damaging" to L&C:

> Q. What did you see in terms of -- when you talk about the scrutiny and the related party transactions, what did you see in terms of U.S. RE's -- specifically, U.S. RE's brokering of reinsurance for Lewis and Clark?
>
> A. Yeah. What I saw was the brokering of a reinsurance program that was wholly detrimental and damaging to Lewis and Clark over a nine-year period of time without any scrutiny whatsoever from the board of directors, because the board of directors knew absolutely nothing about reinsurance. They depended 100 percent on U.S. RE for that.

See Oct. 1, 2021 Trial Tr., excerpts of which are attached hereto as **Exhibit E**, at 52:23-53:7.

Mr. Tharp then testified that—based on his review of L&C's financial statements and books and records—the excess of loss reinsurance program recommended by U.S. Re "contributed significantly to the insolvency" of L&C and had an "$8 million adverse impact" on L&C. *See* Oct. 5, 2021 Trial Tr., excerpts of which are attached hereto as **Exhibit F**, at 50:11-51:1. He explained

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how he calculated the purported $8 million in reinsurance damages as follows:

> A. So Lewis and Clark paid 10 -- over time -- over a nine-year period of time, Lewis and Clark paid $10,000,000 of premium to the excess of loss reinsurers. And during that same period of time, only $2,000,000 of losses were reimbursed. So it was an -- it was a -- it was a $8,000,000 loss to Lewis and Clark during that period of time.

See Sept. 28, 2021 Trial Tr. at 47:24-48:3. In other words, Mr. Tharp simply took the amount of premiums paid by L&C over time (approximately $10,000,000) less the amount of losses actually reimbursed (approximately $2,000,000) to arrive at the purported reinsurance damages of approximately $8,000,000—or, to be exact, $7,986,000. *See* Oct. 12, 2021 Trial Tr., excerpts of which are attached hereto as **Exhibit I**, at 39:1-6 (Tharp recognizing his computation was simply the "delta" between the premiums paid and the amount reimbursed); Oct. 5, 2021 Trial Tr. at 79:19-25) ("So when you sum it all up -- and this number I believe is also in Mr. -- I know it is in Mr. Tharp's report -- but these numbers come ultimately -- he probably got them from the same place I did -- from the annual statements; there's a schedule in there that has these numbers -- is $7,986,000. So what I'm saying is they paid $7,986,000 more for the reinsurance than they received in assistance in paying the claims and expenses. So that cost them almost $8 million").

This seemingly simplistic calculation, however, is not the correct measure of damages to determine what loss, if any, was sustained by L&C as a result of the reinsurance program recommended by its reinsurance broker, U.S. Re. As a general rule, the liability of a broker, with respect to a loss caused by a breach of said broker's duty is:

> that which would have fallen on the company had the insurance been properly effected, or, in other words, the amount that would have been due under the policy, together with such other damages as proximately result from the breach, less such insurance recovery as was in fact paid, and less the amount of unpaid premiums or cost of the insurance.

44 C.J.S. Insurance § 330.[2]

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[2] "The rules of practice in actions on original insurance policies generally are applicable to actions on contracts of reinsurance." 46A C.J.S. Insurance § 2092. Indeed, the procurement of reinsurance by U.S. Re for L&C is analogous to an insurance broker's procurement of insurance

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Thus, for example, in *Kearney Conv. Ctr. v. Anderson-Divan-Cottrell Ins., Inc.*, 370 N.W.2d 86 (Neb. 1985), the court held that "where insurance broker has negligently failed to obtain adequate insurance coverage for insured, insured's measure of damages for loss caused thereby is amount of actual loss as would have been covered by adequate insurance less any amount paid by insurance effectuated by broker." Similarly, in *Klonis for Use and Benefit of Consol. Am. Ins. Co. v. Armstrong*, 436 So. 2d 213, 216 (Fla. 1st Dist. App. 1983), the court held that damages recoverable from a broker who procured inadequate insurance are calculated by comparing what the insured would have recovered had the proper insurance been obtained, with the insured's actual net recovery.

Indeed, this is precisely the calculation that ***Defendants'*** damages expert in this matter, Sam Hewitt, found was the appropriate calculation to determine L&C's purported reinsurance damages. Mr. Hewitt testified:

> A. Any damages calculation is a comparison of a but for world . . . that would have existed but for the Defendant's alleged inappropriate actions and compares that to what actually occurred and you subtract the difference.
>
> . . . .
>
> Q. Let's assume you want to do a but for analysis using quota share as the alternative. How would you do the analysis?
>
> A. You would figure out how much it would have cost you, what sort of losses you would have been able to recover, what the net cost of that reinsurance was and compare it to the actual amount that [the Receiver's expert] calculated. ***That comparison was not done***.

See Oct. 11, 2021 Trial Tr. of Sam Hewitt, excerpts of which are attached hereto as **Exhibit G**, at 42:13-16, 44:16-21 (emphasis added). The Receiver's damages expert, Dr. Kuga, likewise acknowledged that a "but for" analysis of L&C's reinsurance damages would involve comparing the difference between the cost and the amount recovered under L&C's excess of loss reinsurance

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for an insured. Therefore, cases involving claims by insureds against their insurance brokers for failure to procure proper insurance are instructive.

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(*i.e.*, $10 million paid *less* $2 million recovered) with the cost and recovery under the alternative reinsurance. *See* Oct. 5, 2021 Trial Tr. (Ex. F) at 99:11-100:8.

As Mr. Hewitt testified, Mr. Tharp's calculation did not take into account ***any*** alternative reinsurance option or establish that, "but for" the excess of loss reinsurance program procured by U.S. Re, the outcome to L&C would have "been both different, and more favorable," which would have required evidence of a better alternative reinsurance program. *See Tri-Town Marine, Inc. v. J.C. Milliken Agency, Inc.*, 924 A.2d 1066, 1070 (Me. 2007) (recognizing that, "there is abundant authority that proof of better alternative coverage in failure to procure insurance cases is required."); *see also Metro Allied Ins. Agency, Inc. v. Lin*, 304 S.W.3d 830 (Tex. 2009) (holding that to establish proximate cause, the plaintiff is required to prove the availability of an insurance policy that would have provided the requested coverage). Instead, Mr. Tharp simply took the amount of premiums paid by L&C, subtracted the amount of losses reimbursed, and concluded that the reinsurance damages were equal to the difference. Therefore, Mr. Tharp's conclusion that L&C sustained approximately $8 million in reinsurance damages was not based on the correct measure of damages for calculating the loss to L&C, if any, caused by U.S. Re's failure to procure proper reinsurance.

B. Mr. Tharp's testimony that L&C sustained $8 million in reinsurance damages is pure speculation and unsupported by the evidence, and his testimony cannot serve as a basis for imposing damages against U.S. Re.

In addition to utilizing an improper measure of damages, Mr. Tharp's testimony regarding the very existence of an allegedly more appropriate, alternative reinsurance program was based upon mere speculation, which is insufficient to establish damages. It is well settled that damages "cannot be based solely upon possibilities and speculative testimony." *Franchise Tax Board of State of California v. Hyatt*, 407 P.3d 717, 749, 133 Nev. 826, 865–66 (Nev. 2017) quoting *United Exposition Serv. Co. v. State Indus. Ins. Sys.,* 109 Nev. 421, 424, 851 P.2d 423, 425 (Nev. 1993). A plaintiff therefore has the burden to furnish "an evidentiary basis upon which [the jury] may properly determine the amount of plaintiff's damages." *Mort Waliin of Lake Tahoe, Inc. v. Commercial Cabinet Co.*, 784 P.2d 954, 955 (Nev. 1989) (vacating damage award finding there was insufficient evidence in the record); *see also Ezzo's Investments, Inc. v. Royal Beauty Supply,*

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Inc., 243 F.3d 980, 991 (6th Cir. 2001) (plaintiff's damages model was insufficient to support a reasonable jury verdict, where plaintiff's expert admitted he had not considered several factors that could have caused the claimed injury); *Toscano v. Greene Music*, 21 Cal. Rptr. 3d 732, 740 (Cal. App. 4th Dist. 2004) (vacating damage award after finding plaintiff's expert's damage calculations were speculative).

As noted above, the Receiver's own damages expert, Dr. Kuga, testified at trial that in order to do a "but for" analysis of L&C's reinsurance damages he would have to know the cost and recovery under the alternative reinsurance. *See* Oct. 5, 2021 Trial Tr. (Ex. F) at 99:11-100:8. In addition, the defendants' damages expert, Mr. Hewitt, noted that a "but for" analysis also required evidence of a reinsurer who was willing to write alternative reinsurance for L&C. He testified:

> A. . . . By the way, you know, one of the things you have to keep in mind when you think about how much -- how --what kind of availability there is for quota share, you have to find a reinsurer who's willing to say hey I'll take a portion of your business exactly the way that you're doing it, even though I'm not going to have any control over you know, exactly how you're adjusting the claims. I'm going to take your loss ratio, your LAE ratio and a portion of your percentages and that's if Lewis & Clark's losses were actually as bad as Mr. Tharp has indicated. That may have been tough to find.

See Oct. 11, 2021 Trial Tr. of Sam Hewitt (Ex. G) at 44:25-45:8.

At trial, Mr. Tharp testified that U.S. Re should have cancelled L&C's excess of loss reinsurance program and replaced it with a quota share reinsurance program. *See* Oct. 5, 2021 Trial Tr. (Ex. F) at 66:9-10. However, Mr. Tharp outright admitted he had no evidence of any specific quota reinsurance program that was available to L&C, nor did he analyze any quota share program to determine if indeed it would have been more favorable to L&C than the reinsurance actually placed for L&C by U.S. Re:

> Q. You didn't do any analysis, did you?
>
> A. ***I didn't do any analysis on the quota share***, but it was available in the marketplace through a negotiation process if you wanted that type of reinsurance.

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Q. Is quota share more expensive than excess loss?

A. Yes.

. . .

Q. Tell me what company -- do you know any companies where you could have placed quota share for Lewis and Clark between 2004 and 2012? Any company. Just name one.

A. ***I don't have a specific company, but there are lots of companies.*** There are – you know, there's 7,000-plus insurance companies that do business in the United States.

Q. I'm just asking you whether or not you can name one company. You say it's available and should have been placed by U.S. RE. Can you give me the name of one company where it could be placed?

A. There were hundreds. Hundreds of insurance –

Q. Can you just give me a name?

A. ***I'm not prepared to give you a name of an insurance company***, but I can tell you that the marketplace is such that if you put the word out that you want a quota share reinsurance program for nursing homes, you can get -- you can get companies to write that, absolutely no question about it.

See Oct. 1, 2021 Trial Tr. (Ex. E) at 99:4-100:6 (emphasis added). Thus, Mr. Tharp, by his own admissions, could not name ***one single company*** that was willing and able to place quota share reinsurance for L&C, much less provide any concrete information about what that program would cost or the benefits it would provide to L&C in comparison to the excess of loss reinsurance program that was in place. Notably, the defendants' reinsurance expert, Richard DeCoux, testified he actually inquired from three different sources in the reinsurance industry whether quota share reinsurance was available from 2005 to 2012, and all three sources confirmed "there wouldn't have been availability" for quota share reinsurance for "a company that was a startup that was involved in the healthcare industry" such as L&C. *See* Oct. 11, 2021 Trial Tr. of Richard DeCoux, excerpts of which are attached hereto as **Exhibit H**, at 26:7-27:4. Thus, Mr. Tharp's testimony that because there are "7,000-plus insurance companies that do business in the United States" there must have been some company willing to provide a quota share reinsurance program for

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"nursing homes" was pure speculation, and such conjecture is insufficient to support a damage award against U.S. Re.

A recent case from the Wisconsin Supreme Court is instructive on this point. In *Emer's Camper Corral, LLC v. Alderman*, 943 N.W.2d 513, 515 (Wis. 2020), the plaintiff claimed its insurance broker procured insurance with higher damage deductible than requested. *Id*. at 515. At trial, the court entered a directed verdict in favor of the broker, finding that because the plaintiff failed to "introduce evidence that an insurer would have insured the company with the deductible limits" desired, it did not prove a "causal link between the broker's negligence and the sustained loss." *Id*. On appeal, the Wisconsin Supreme Court held that to establish causation the plaintiff must prove "not just that an insurance policy with the requested deductibles was commercially available, but also that an insurer would actually write that policy for [the plaintiff] in particular." *Id.* In reaching its conclusion, the court observed that "commercial availability" is a "necessary prerequisite" to establishing causation because "if the insured requests a policy that is not available in the market, the insured's harm comes from its unavailability, not from the broker's failure to obtain what does not exist." *Id.* at 519. Nonetheless, the Wisconsin Supreme Court concluded that commercial availability is not itself "sufficient for that causal link," explaining:

> An insurance policy is not a mass-produced good or service that is available to the public without regard for the circumstances of the prospective purchaser. Instead, the coverage, terms, and premium depend on factors specific to the insured company, such as, for example, its claims history. . . . So when we say a policy with certain deductible limits is "commercially available," what we mean is that somewhere in the market there is an insurance company willing to write that policy for a hypothetical company with a hypothetical set of insurability factors.
>
> But just because an insurance company would write a specific policy for one company does not mean it would insure all companies under the same terms. Consequently, "commercial availability" of the policy requested by [the plaintiff] establishes, at most, that some company somewhere could get the desired deductible limits. It does not answer whether such a policy was available to [the plaintiff]. So, if general commercial unavailability prevents formation of a causal link between a broker's negligence and an insured's loss, then it necessarily follows that the policy's unavailability to [the plaintiff] in particular must also prevent formation of a causal link. **Whether the unavailability is general, or instead particular to**

> **[the plaintiff], the policy's unavailability exists independently of any negligence on behalf of the broker. And if that is so, then the broker's negligence cannot be a substantial factor in producing Camper Corral's loss because it would have occurred even if the broker had not been negligent**.

Id. at 519-20 (emphasis added).

Here, Mr. Tharp's testimony that quota share reinsurance programs were generally available in the marketplace is wholly insufficient and entirely speculative. As Mr. DeCoux, testified, quota share reinsurance would ***not*** have been available to a company like L&C. (Oct. 11, 2021 Trial Tr. at 26:7-27:4). But, even assuming (as Mr. Tharp has done) that quota share reinsurance was "commercially available" in the marketplace, he did not testify – and the Receiver presented no other evidence – that a reinsurer actually would have issued quota share reinsurance to L&C or that L&C's recovery under a quota share reinsurance program would have been more favorable. Without evidence that an alternative more favorable quota share reinsurance program was in fact available to L&C, the Receiver failed to establish that the reinsurance program procured by U.S. Re caused any damage to L&C.

II. Because the Receiver's Damages Expert, Dr. Kuga, Relied Entirely on Mr. Tharp's Flawed Reinsurance Calculations, the Reinsurance Damages Imposed Against U.S. Re Cannot Stand.

As discussed above, Mr. Tharp created a reinsurance damages calculation that is contrary to the established measure of damages used to determine the liability, if any, of a reinsurance broker, is based on speculation, and is not supported by evidence. Dr. Kuga, in turn, used this flawed calculation as the basis for the "net reinsurance ceded" model he prepared, (*see* Exhibit 3.1 to Mark Kuga's Expert Report, attached hereto as **Exhibit J**), and testified that L&C suffered $7,986,000 in reinsurance damages based on that model.[3] *See* Oct. 5, 2021 Trial Tr. (Ex. F) at 79:19-80:11, 95:24-96:4, 97:1-8. Because Dr. Kuga's reinsurance damages against U.S. Re are, to the penny, based on Mr. Tharp's flawed reinsurance damages measure, Dr. Kuga's damages model is likewise flawed, and there is no basis in law or fact for the damages imposed against U.S.

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[3] Dr. Kuga further testified that the $7,986,000 in reinsurance damages was ***included in*** his calculation of insolvency damages, which totaled $15,222,853, the exact amount of damages awarded by the jury. *See* Oct. 5, 2021 Trial Tr. (Ex. F) at 86:24-87:23.

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Re.

As the Court may recall, Defendants previously sought to exclude Dr. Kuga's testimony during pretrial motions because each and every opinion he rendered simply parroted Mr. Tharp's conclusions, with no independent analysis to validate Mr. Tharp's findings. Dr. Kuga's testimony at trial was no different. Indeed, at trial, Dr. Kuga testified that he relied on Mr. Tharp's reinsurance calculation as the basis for the "net reinsurance ceded" model he prepared and upon which he based his testimony that L&C sustained $7,986,000 in reinsurance damages. *See* Oct. 5, 2021 Trial Tr. (Ex. F) at 79:19-80:11, 95:24-96:4, 97:1-8, 102:7-8). Moreover, his trial testimony made clear that he did not conduct any independent analysis beyond simply checking Mr. Tharp's math:

> Q. Did you do an -- what type of analysis did you do to come up with those numbers?
>
> A. Well, so Mr. Tharp has a schedule similar to this, not exactly like this, but with these same data -- these first two columns of data. But those numbers ultimately come from schedule P in the annual statements. ***So I checked to make sure where Mr. Tharp got those numbers from was accurate*** and it reflected the numbers that were in the annual statements. . . .

Id. at 80:4-11 (emphasis added). Further, to the extent the Receiver may argue that Dr. Kuga did, in fact, conduct an independent analysis to reach his reinsurance damages number, Dr. Kuga's own testimony shows that he just repeated the same insufficient calculation that Mr. Tharp did, by merely taking the total amount of reinsurance premiums paid and subtracting the amount of losses actually reimbursed to get the purported reinsurance damages:

> A. So when you sum it all up -- and this number I believe is also in Mr. -- I know it is in Mr. Tharp's report -- but these numbers come ultimately -- he probably got them from the same place I did -- from the annual statements; there's a schedule in there that has these numbers -- is $7,986,000. ***So what I'm saying is they paid $7,986,000 more for the reinsurance than they received in assistance in paying the claims and expenses. So that cost them almost $8 million***.

Id. at 79:19-25 (emphasis added). Thus, it is abundantly clear, based on Dr. Kuga's trial testimony, that Dr. Kuga blindly relied on and accepted Mr. Tharp's flawed and legally

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insufficient calculations to conclude that L&C suffered $7,986,000 in reinsurance damages.

It is well settled that an expert cannot blindly rely on another expert's conclusions without independently verifying that expert's work. *See Muhsin v. Pac. Cycle, Inc.*, 2010-060, 2012 WL 2062396, at *4 (D.V.I. June 8, 2012) ("[T]he rules do not permit an expert to rely upon opinions developed by another expert for purposes of litigation without independent verification of the underlying expert's work"); *Cholakyan v. Mercedes-Benz, USA, LLC*, 281 F.R.D. 534, 546 (C.D. Cal. 2012) ("The evidence he has adduced does not adequately demonstrate that Waters exercised independent judgment; rather, it strongly suggests he took Potok's conclusions, engaged in little, if any, evaluation of their merits, and reproduced Potok's declaration wholesale (*including its typographical errors*) as his own work. The court cannot rely on such 'testimony.'").

Likewise, where an expert's opinions are, in turn, based entirely on a legally insufficient or unreliable opinion of another expert, the opinions that are based upon the flawed underlying opinions must be disregarded, because they are without legitimate support or an evidentiary basis. *See In re Cathode Ray Tube (CRT) Antitrust Litig.*, 2017 WL 10434367, at *2 ("Where an expert bases her opinion on—or simply repeats—the unreliable opinion of another expert, a district court may properly exclude the first expert's testimony. . . . Defendants concede that Dr. Ordover incorporated Dr. Carlton's overcharge estimates into his own analysis, and that those estimates are unreliable . . . . Thus, applying the rules just stated, the portions of Dr. Ordover's report that rely on Dr. Carlton's estimates should be excluded."). *Batchelor-Robjohns,* 03-20164-CIV, 2005 WL 1761429, at *5 (S.D. Fla. June 3, 2005) ("Without Medland's asset valuations, May and Gartrell have no evidentiary basis for the conclusions they reach. In turn, May and Gartrell's opinions are unreliable under Rule 702 because they admittedly relied on Medland's valuations without performing any independent calculations themselves.").

As detailed above, Mr. Tharp's trial testimony established that his reinsurance calculations were based on a legally incorrect measure of damages, were entirely speculative, and were not supported by evidence. Dr. Kuga's testimony, in turn, establishes that he blindly relied on Mr. Tharp's improper reinsurance calculations to conclude that the damages stemming from U.S. Re's procurement of purportedly improper reinsurance caused L&C to suffer $7,986,000 in damages.

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Because the reinsurance damages presented to the jury by Dr. Kuga were based entirely on a flawed reinsurance damages calculation, the jury's verdict awarding reinsurance damages against U.S. Re was improper. Accordingly, the Court should grant U.S. Re relief from the Judgment and amend the Judgment to reflect an award of zero damages against U.S. Re.

III. The Reinsurance Damages Against U.S. Re are Improper Because They Exceed the Amount Identified by Dr. Kuga and, Accordingly, Are Not Supported by the Evidence.

Finally, even assuming, solely for purposes of argument, that the Court were to find that Mr. Tharp's computation was a legally sufficient measure of damages and that Dr. Kuga properly relied on it (neither of which is supported by the record) U.S. Re must still be relieved from the Judgment against it because the damages awarded against U.S. Re by the jury – 55% of the total damages, or $8,372,569.15 – exceeds $7,986,000, the amount of damages Dr. Kuga testified were incurred as a result of U.S. Re's purported failure to procure appropriate reinsurance.

The testimony at trial does not support the allocation of any damages to U.S. Re separate and apart from damages directly related to reinsurance. Indeed, Mr. Tharp testified at trial U.S. Re's involvement in L&C's insolvency was limited to U.S. Re's recommendation and procurement of reinsurance. (Sept. 28, 2021 Trial Tr. at 46:6-15, 63:8-13). He also testified that, while the total insolvency damages were approximately $15 million dollars, the reinsurance program's detrimental impact on the insolvency of Lewis and Clark was approximately $8 million dollars, or, more specifically, $7,986,000. *See* Oct. 1, 2021 Trial Tr. (Ex. E) at 72:9-24; Oct. 5, 2021 Trial Tr. (Ex. F) at 79:19-25). Mr. Kuga then testified that the $7,986,000 in reinsurance damages were included in, or in other words were part of, his total calculation for insolvency damages, which was $15,222,853. *See* Oct. 5, 2021 Trial Tr. (Ex. F) at 86:24-87:23.

The maximum amount of reinsurance damages attributable to U.S. Re, therefore, is $7,986,000. The jury, however, exceeded this amount when it attributed 55% of the entire insolvency—or $8,372,569.15—to U.S. Re. Because there is no basis in the record for an award of $8,372,569.15 against U.S. Re, the damages awarded against U.S. Re cannot stand, and U.S. Re should be relieved from all damages imposed against it on this basis as well.

. . .

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CONCLUSION

U.S. Re should be relieved from the judgment entered against it because the jury relied on a flawed damages calculation, which (i) did not apply the proper measure of damages, (ii) was based on speculative testimony, and (iii) do not have a basis in the record, and the judgment should be amended to reflect that no damages against U.S. Re are proper. *See e.g. Gramanz v. T-Shirts and Souvenirs, Inc.*, 894 P.2d 342, 347, 111 Nev. 478, 485 (Nev. 1995) (vacating damage award where testimony and evidence at trial did not meet the "required evidentiary basis for determining a reasonably accurate award of damages.") citing *Advent Systems Ltd. v. Unisys Corp*., 925 F.2d 670, 682 (3d Cir.1991) ("a verdict may not be based on speculation, whether the testimony comes from the mouth of a lay witness or an expert").

Accordingly, U.S. Re respectfully requests that the Court enter an order granting it relief from the December 30, 2021 Judgment and amending the Judgment to reflect that **no** damages shall be awarded against U.S. Re. Additionally, pursuant to Rule 62(b)(3) and (4), U.S. Re requests that this Court stay any execution of the Judgment pending disposition of this motion. *See* NRCP 62(b) (providing that the Court may stay execution on a judgment or any proceedings to enforce it pending disposition of, among other things, a motion to alter or amend a judgment under Rule 59 or a motion for relief from judgment under Rule 60).

DATED this 10th day of February, 2022.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
George F. Ogilvie III (NSBN 3552)
Amanda C. Yen (NSBN 9726)
2300 West Sahara Avenue, Suite 1200
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Jon M. Wilson, Esq. (Appearing *Pro Hac Vice*)
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19724 Marquesas Way, Unit 1308
Marina Del Rey, CA. 90292

Attorneys for Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on or about the 10th day of February, 2022, a true and correct copy of the foregoing **MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO RULE 60(b), TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(e), AND FOR STAY OF EXECUTION PURSUANT TO 62(b)(3) and (4)** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

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EXHIBIT “A”

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
OCT 14 2021
5:21pm
BY, Nicole McDevitt
NICOLE MCDEVITT, DEPUTY

VER

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

VERDICT FORM

A-14-711535-C
VER
Verdict
4970826

SPECIAL INTERROGATORIES AND VERDICT

We, the jury in the above-entitled action, find the following verdict on the questions submitted to us:

Negligent misrepresentation against Uni-Ter UMC:

1. Do you find by clear and convincing evidence that Uni-Ter UMC made a negligent misrepresentation to Lewis & Clark regarding Lewis & Clark's financial condition, on which Lewis & Clark justifiably relied?

ANSWER: YES X NO _____

If your answer to question 1 directly above is "YES," go to question 2 directly below. If your answer to question 1 directly above is "NO," skip to question 3.

2. Do you find by clear and convincing evidence that Uni-Ter UMC's negligent misrepresentation was a legal cause of damages to Lewis & Clark?

ANSWER: YES X NO _____

Please proceed to question 3.

Breach of fiduciary duty against Uni-Ter UMC:

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

ANSWER: YES X NO _____

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

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

ANSWER: YES X NO _____

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

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

ANSWER: YES X NO _____

Please proceed to question 6.

Breach of fiduciary duty against Uni-Ter CS:

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

ANSWER: YES X NO _____

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

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

ANSWER: YES X NO _____

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

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

ANSWER: YES X NO _____

Please proceed to question 9.

Breach of fiduciary duty against U.S. Re:

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

ANSWER: YES X NO _____

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

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

ANSWER: YES X NO _____

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

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

ANSWER: YES X NO _____

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

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

Damages

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

$ 15,222,853

Please proceed to question 13.

Allocation of Liability

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

a. U.S. RE Corporation, Inc.: 55

b. Uni-Ter Underwriting Management Corporation: 25

c. Uni-Ter Claims Services Corporation 20

Total: 100%

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

DATED THIS 14 day of October, 2021.

FOREPERSON

EXHIBIT “B”

Electronically Filed
12/30/2021 9:18 AM
CLERK OF THE COURT

JGJV

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION,; DOES 1-50, inclusive; and ROES 51-100, inclusive; Defendants.	Case No.: A-14-711535-C Dept. No.: XXVII **JUDGMENT ON JURY VERDICT** **Trial: 9/20/2021 – 10/14/2021**

This matter having been tried before a jury ("Jury") beginning September 20, 2021 through October 14, 2021; Plaintiff Commissioner of Insurance for the State of Nevada as Receiver for Lewis & Clark LTC Risk Retention Group, Inc. ("Plaintiff") having been represented by Brenoch Wirthlin, Esq., Chris Orme, Esq., and Tanya Fraser, Esq. of the law firm of Hutchison & Steffen, PLLC; Defendants U.S. Re Corporation ("U.S. Re"), Uni-Ter Underwriting Management Corp. ("Uni-Ter UMC") and Uni-Ter Claims Services Corp. ("Uni-Ter CS" and collectively with U.S.

Re and Uni-Ter UMC referred to as the "Corporate Defendants") having been represented by Jon M. Wilson, Esq. of the Law Offices of Jon M. Wilson, George F. Ogilvie III of the law firm of McDonald Carano LLP, and Kimberly Freedman and Erin Kolmansberger of the law firm of Nelson Mullins; the Jury having rendered its verdict which was presented in open Court on October 14, 2021 ("Verdict"); the Jury having made the following findings as set forth in the Verdict:

1. The Jury having found by clear and convincing evidence that Uni-Ter UMC made a negligent misrepresentation(s) to Lewis & Clark LTC Risk Retention Group, Inc. ("Lewis & Clark") regarding Lewis & Clark's financial condition, on which Lewis & Clark justifiably relied;
2. The Jury having found by clear and convincing evidence that Un-Ter UMC's negligent misrepresentation(s) was a legal cause of damages to Lewis & Clark;
3. The Jury having found by a preponderance of the evidence that a fiduciary relationship existed between Uni-Ter UMC and Lewis & Clark where Uni-Ter UMC was under a duty to act for or give advice for the benefit of Lewis & Clark upon matters within the scope of their relationship;
4. The Jury having found by a preponderance of the evidence that Uni-Ter UMC breached its fiduciary duty to Lewis & Clark;
5. The Jury having found by a preponderance of the evidence that Uni-Ter UMC's breach of its fiduciary duty to Lewis & Clark was a legal cause of damages to Lewis & Clark;
6. The Jury having found by a preponderance of the evidence that a fiduciary relationship existed between Uni-Ter CS and Lewis & Clark where Uni-Ter CS was under a duty to act for or to give advice for the benefit of Lewis & Clark upon matters within the scope of their relationship;
7. The Jury having found by a preponderance of the evidence that Uni-Ter CS breached its fiduciary duty to Lewis & Clark;
8. The Jury having found by a preponderance of the evidence that Uni-Ter CS's breach of its fiduciary duty to Lewis & Clark was a legal cause of damages to Lewis & Clark;
9. The Jury having found by a preponderance of the evidence that a fiduciary relationship

existed between U.S. Re and Lewis & Clark where U.S. Re was under a duty to act for or to give advice for the benefit of Lewis & Clark upon matters within the scope of their relationship;

10. The Jury having found by a preponderance of the evidence that U.S. Re breached its fiduciary duty to Lewis & Clark;
11. The Jury having found by a preponderance of the evidence that U.S. Re's breach of its fiduciary duty to Lewis & Clark was a legal cause of damages to Lewis & Clark;
12. The Jury having found that the amount of damages incurred by Lewis & Clark totaled the principal amount of $15,222,853.00;
13. The Jury having determined that the liability for Plaintiff's claims of negligent misrepresentation and breach of fiduciary duty should be allocated with respect to each of the Corporate Defendants as follows:
    a. Fifty-five percent (55%) to U.S. Re Corporation;
    b. Twenty-five percent (25%) to Uni-Ter Underwriting Management Corporation;
    c. Twenty percent (20%) to Uni-Ter Claims Services Corporation.

NOW THEREFORE, based upon the findings by the Jury as set forth in its Verdict, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that based upon the Jury's Verdict, judgment against defendant U.S. Re Corporation is hereby entered in the principal amount of $8,372,569.15.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, U.S. Re Corporation having been served with the summons and complaint in this matter on March 12, 2015, pre-judgment interest is hereby awarded against U.S. Re Corporation pursuant to NRS § 17.130(2) in the additional amount of $2,109,887.43[1], for a total principal judgment against U.S. Re Corporation in the amount of $10,482,456.58, which amount does not include post-judgment

[1] Calculated at the rate of 5.25% over 1,752 days (March 12, 2015, when U.S. Re Corporation was served with the summons and complaint, through December 23, 2021, less 726 days during periods of stay) pursuant to NRS § 17.130.

interest, attorney fees or costs, which amounts may be awarded by post trial motion.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that based upon the Jury's Verdict, judgment against defendant Uni-Ter Underwriting Management Corporation is hereby entered in the principal amount of $3,805,713.25.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, Uni-Ter Underwriting Management Corporation having been served with the summons and complaint in this matter on March 11, 2015, pre-judgment interest is hereby awarded against Uni-Ter Underwriting Management Corporation pursuant to NRS § 17.130(2) in the additional amount of $959,587.14[2], for a total principal judgment against Uni-Ter Underwriting Management Corporation in the amount of $4,765,300.39, which amount does not include post-judgment interest, attorney fees or costs, which amounts may be awarded by post trial motion.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that based upon the Jury's Verdict, judgment against defendant Uni-Ter Claims Services Corporation is hereby entered in the principal amount of $3,044,570.60.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, Uni-Ter Claims Services Corporation having been served with the summons and complaint in this matter on March 11, 2015, pre-judgment interest is hereby awarded against Uni-Ter Claims Services Corporation pursuant to NRS § 17.130(2) in the additional amount of $767,669.71[3], for a total principal judgment against Uni-Ter Underwriting Claims Services Corporation in the amount of $3,812,240.31, which amount does not include post-judgment interest, attorney fees or costs, which amounts may be awarded by post trial motion.[4]

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED, pursuant to NRS

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[2] Calculated at the rate of 5.25% over 1,753 days (March 11, 2015, when Uni-Ter Underwriting Management Corporation was served with the summons and complaint, through December 23, 2021, less 726 days during periods of stay) pursuant to NRS § 17.130.

[3] Calculated at the rate of 5.25% over 1,753 days (March 11, 2015, when Uni-Ter Claims Services Corporation was served with the summons and complaint, through December 23, 2021, less 726 days during periods of stay) pursuant to NRS § 17.130.

[4] Pursuant to NRS § 18.120, the following blank is left in this judgment for costs to be included within the judgment once the same shall be taxed or ascertained:_____.

§ 18.120, and other applicable law, that all said judgment amounts hereby entered against the Corporate Defendants, and each of them, shall bear post-judgment interest at the Nevada statutory

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interest rate per annum from the date of award until fully satisfied, for all of which let execution and garnishment issue forthwith.[5]

DATED: December 27, 2021.

Dated this 30th day of December, 2021

Nancy L Allf

HON. NANCY L. ALLF
DISTRICT COURT JUDGE

TW

449 33C 9DF7 6302
Nancy Allf
District Court Judge

HUTCHISON & STEFFEN, PLLC

By: */s/ Brenoch Wirthlin*
MARK A. HUTCHISON, ESQ. (4639)
BRENOCH R. WIRTHLIN, ESQ. (10282)
CHRISTIAN ORME, ESQ. (10175)
TANYA M. FRASER, ESQ. (13872)
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Attorneys for Plaintiff

Approved as to Form:

By: */s/ George Ogilvie*
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Nevada Bar No. 3552
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[5] Plaintiff expressly reserves the right to seek costs against the Corporate Defendants, and each of them, pursuant to NRS § 18.110 or other applicable law, and attorney fees against the Corporate Defendants, and each of them, pursuant to NRCP 68 and NRS § 17.117 or other applicable law.

RE: Lewis & Clark

Reply | Reply All | Forward | ...

GF George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
To Brenoch R. Wirthlin; Christian M. Orme; Tanya M. Fraser
Cc Jon; Jon Wilson; Kimberly Freedman; erin Kolmansberger; Amanda Yen; Jon Linder; No Scrub
Wed 12/22/2021 6:18 PM

Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.

Brenoch,

I have reviewed the revised judgment and checked your math. It is in compliance with our requested edits and the math is accurate. Therefore, you may affix my electronic signature.

I see what you are saying about NRS 18.120; however, that will lead to two different documents entitled "Judgment" in the record. I think it is cleaner to exclude the footnote and the blank in the Judgment, and then submit an Amended Judgment once the costs and attorney's fees issues are adjudicated, but I am not adamant about it.

George F. Ogilvie III | Partner

McDONALD CARANO

P: 702.873.4100 | **E:** gogilvie@mcdonaldcarano.com

From: Brenoch R. Wirthlin <bwirthlin@hutchlegal.com>
Sent: Wednesday, December 22, 2021 4:36 PM
To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Christian M. Orme <COrme@hutchlegal.com>; Tanya M. Fraser <tfraser@hutchlegal.com>
Cc: Jon <jonwilson@jonmwilsonattorney.com>; Jon Wilson <jonwilson2013@gmail.com>; Kimberly Freedman <Kimberly.Freedman@nelsonmullins.com>; erin Kolmansberger <erin.kolmansberger@nelsonmullins.com>; Amanda Yen <ayen@mcdonaldcarano.com>; Jon Linder <jlinder@hutchlegal.com>; No Scrub <NoScrub@mcdonaldcarano.com>
Subject: RE: Lewis & Clark

George and Jon, I accepted all the changes you made and revised the amounts based on the calculation of pre-judgment interest through tomorrow, December 23. In addition, my reading of 18.120 says we're supposed to leave a blank for costs so I added a footnote with a blank for costs. A redline and clean copy pdf are attached.

If we can attach your electronic signature and submit to the Court, please let me know. Alternatively, we can submit a joint email to the Court's clerk and see if the judge has a preference one way or the other.

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 12/30/2021

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EXHIBIT “C”

Electronically Filed
1/13/2022 1:57 PM
Steven D. Grierson
CLERK OF THE COURT

NEO

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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 **NOTICE OF ENTRY OF ORDER**

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

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///

///

Case Number: A-14-711535-C

a copy of which is attached hereto.

DATED this 13th day of January, 2022.

HUTCHISON & STEFFEN

By */s/Brenoch Wirthlin*

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 13th day of January, 2022, I caused the document entitled **NOTICE OF ENTRY OF ORDER** to be served on the following by Electronic Service to:

ALL PARTIES ON THE E-SERVICE LIST

/s/Danielle Kelley
An Employee of Hutchison & Steffen, PLLC

ELECTRONICALLY SERVED
12/30/2021 9:18 AM

Electronically Filed
12/30/2021 9:18 AM
CLERK OF THE COURT

JGJV

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION,; DOES 1-50, inclusive; and ROES 51-100, inclusive; Defendants.	Case No.: A-14-711535-C Dept. No.: XXVII **JUDGMENT ON JURY VERDICT** **Trial: 9/20/2021 – 10/14/2021**

This matter having been tried before a jury ("Jury") beginning September 20, 2021 through October 14, 2021; Plaintiff Commissioner of Insurance for the State of Nevada as Receiver for Lewis & Clark LTC Risk Retention Group, Inc. ("Plaintiff") having been represented by Brenoch Wirthlin, Esq., Chris Orme, Esq., and Tanya Fraser, Esq. of the law firm of Hutchison & Steffen, PLLC; Defendants U.S. Re Corporation ("U.S. Re"), Uni-Ter Underwriting Management Corp. ("Uni-Ter UMC") and Uni-Ter Claims Services Corp. ("Uni-Ter CS" and collectively with U.S.

Re and Uni-Ter UMC referred to as the "Corporate Defendants") having been represented by Jon M. Wilson, Esq. of the Law Offices of Jon M. Wilson, George F. Ogilvie III of the law firm of McDonald Carano LLP, and Kimberly Freedman and Erin Kolmansberger of the law firm of Nelson Mullins; the Jury having rendered its verdict which was presented in open Court on October 14, 2021 ("Verdict"); the Jury having made the following findings as set forth in the Verdict:

1. The Jury having found by clear and convincing evidence that Uni-Ter UMC made a negligent misrepresentation(s) to Lewis & Clark LTC Risk Retention Group, Inc. ("Lewis & Clark") regarding Lewis & Clark's financial condition, on which Lewis & Clark justifiably relied;
2. The Jury having found by clear and convincing evidence that Un-Ter UMC's negligent misrepresentation(s) was a legal cause of damages to Lewis & Clark;
3. The Jury having found by a preponderance of the evidence that a fiduciary relationship existed between Uni-Ter UMC and Lewis & Clark where Uni-Ter UMC was under a duty to act for or give advice for the benefit of Lewis & Clark upon matters within the scope of their relationship;
4. The Jury having found by a preponderance of the evidence that Uni-Ter UMC breached its fiduciary duty to Lewis & Clark;
5. The Jury having found by a preponderance of the evidence that Uni-Ter UMC's breach of its fiduciary duty to Lewis & Clark was a legal cause of damages to Lewis & Clark;
6. The Jury having found by a preponderance of the evidence that a fiduciary relationship existed between Uni-Ter CS and Lewis & Clark where Uni-Ter CS was under a duty to act for or to give advice for the benefit of Lewis & Clark upon matters within the scope of their relationship;
7. The Jury having found by a preponderance of the evidence that Uni-Ter CS breached its fiduciary duty to Lewis & Clark;
8. The Jury having found by a preponderance of the evidence that Uni-Ter CS's breach of its fiduciary duty to Lewis & Clark was a legal cause of damages to Lewis & Clark;
9. The Jury having found by a preponderance of the evidence that a fiduciary relationship

existed between U.S. Re and Lewis & Clark where U.S. Re was under a duty to act for or to give advice for the benefit of Lewis & Clark upon matters within the scope of their relationship;

10. The Jury having found by a preponderance of the evidence that U.S. Re breached its fiduciary duty to Lewis & Clark;
11. The Jury having found by a preponderance of the evidence that U.S. Re's breach of its fiduciary duty to Lewis & Clark was a legal cause of damages to Lewis & Clark;
12. The Jury having found that the amount of damages incurred by Lewis & Clark totaled the principal amount of $15,222,853.00;
13. The Jury having determined that the liability for Plaintiff's claims of negligent misrepresentation and breach of fiduciary duty should be allocated with respect to each of the Corporate Defendants as follows:
    a. Fifty-five percent (55%) to U.S. Re Corporation;
    b. Twenty-five percent (25%) to Uni-Ter Underwriting Management Corporation;
    c. Twenty percent (20%) to Uni-Ter Claims Services Corporation.

NOW THEREFORE, based upon the findings by the Jury as set forth in its Verdict, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that based upon the Jury's Verdict, judgment against defendant U.S. Re Corporation is hereby entered in the principal amount of $8,372,569.15.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, U.S. Re Corporation having been served with the summons and complaint in this matter on March 12, 2015, pre-judgment interest is hereby awarded against U.S. Re Corporation pursuant to NRS § 17.130(2) in the additional amount of $2,109,887.43[1], for a total principal judgment against U.S. Re Corporation in the amount of $10,482,456.58, which amount does not include post-judgment

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[1] Calculated at the rate of 5.25% over 1,752 days (March 12, 2015, when U.S. Re Corporation was served with the summons and complaint, through December 23, 2021, less 726 days during periods of stay) pursuant to NRS § 17.130.

interest, attorney fees or costs, which amounts may be awarded by post trial motion.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that based upon the Jury's Verdict, judgment against defendant Uni-Ter Underwriting Management Corporation is hereby entered in the principal amount of $3,805,713.25.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, Uni-Ter Underwriting Management Corporation having been served with the summons and complaint in this matter on March 11, 2015, pre-judgment interest is hereby awarded against Uni-Ter Underwriting Management Corporation pursuant to NRS § 17.130(2) in the additional amount of $959,587.14[2], for a total principal judgment against Uni-Ter Underwriting Management Corporation in the amount of $4,765,300.39, which amount does not include post-judgment interest, attorney fees or costs, which amounts may be awarded by post trial motion.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that based upon the Jury's Verdict, judgment against defendant Uni-Ter Claims Services Corporation is hereby entered in the principal amount of $3,044,570.60.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, Uni-Ter Claims Services Corporation having been served with the summons and complaint in this matter on March 11, 2015, pre-judgment interest is hereby awarded against Uni-Ter Claims Services Corporation pursuant to NRS § 17.130(2) in the additional amount of $767,669.71[3], for a total principal judgment against Uni-Ter Underwriting Claims Services Corporation in the amount of $3,812,240.31, which amount does not include post-judgment interest, attorney fees or costs, which amounts may be awarded by post trial motion.[4]

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED, pursuant to NRS

---

[2] Calculated at the rate of 5.25% over 1,753 days (March 11, 2015, when Uni-Ter Underwriting Management Corporation was served with the summons and complaint, through December 23, 2021, less 726 days during periods of stay) pursuant to NRS § 17.130.

[3] Calculated at the rate of 5.25% over 1,753 days (March 11, 2015, when Uni-Ter Claims Services Corporation was served with the summons and complaint, through December 23, 2021, less 726 days during periods of stay) pursuant to NRS § 17.130.

[4] Pursuant to NRS § 18.120, the following blank is left in this judgment for costs to be included within the judgment once the same shall be taxed or ascertained:_____.

§ 18.120, and other applicable law, that all said judgment amounts hereby entered against the Corporate Defendants, and each of them, shall bear post-judgment interest at the Nevada statutory

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interest rate per annum from the date of award until fully satisfied, for all of which let execution and garnishment issue forthwith.[5]

DATED: December 27, 2021.

Dated this 30th day of December, 2021

Nancy L Allf

HON. NANCY L. ALLF TW
DISTRICT COURT JUDGE
449 33C 9DF7 6302
Nancy Allf
District Court Judge

HUTCHISON & STEFFEN, PLLC

By: */s/ Brenoch Wirthlin*
MARK A. HUTCHISON, ESQ. (4639)
BRENOCH R. WIRTHLIN, ESQ. (10282)
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10080 West Alta Drive, Suite 200
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Attorneys for Plaintiff

Approved as to Form:

By: */s/ George Ogilvie*
George F. Ogilvie III, Esq.
Nevada Bar No. 3552
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Jon M. Wilson, Esq. (Appearing *Pro Hac Vice*)
200 Biscayne Blvd Way, Suite 5107
Miami, FL 33131
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[5] Plaintiff expressly reserves the right to seek costs against the Corporate Defendants, and each of them, pursuant to NRS § 18.110 or other applicable law, and attorney fees against the Corporate Defendants, and each of them, pursuant to NRCP 68 and NRS § 17.117 or other applicable law.

RE: Lewis & Clark

Reply | Reply All | Forward | ...

GF

George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
To Brenoch R. Wirthlin; Christian M. Orme; Tanya M. Fraser
Cc Jon; Jon Wilson; Kimberly Freedman; erin Kolmansberger; Amanda Yen; Jon Linder; No Scrub

Wed 12/22/2021 6:18 PM

Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.

Brenoch,

I have reviewed the revised judgment and checked your math. It is in compliance with our requested edits and the math is accurate. Therefore, you may affix my electronic signature.

I see what you are saying about NRS 18.120; however, that will lead to two different documents entitled "Judgment" in the record. I think it is cleaner to exclude the footnote and the blank in the Judgment, and then submit an Amended Judgment once the costs and attorney's fees issues are adjudicated, but I am not adamant about it.

George F. Ogilvie III | Partner

McDONALD CARANO

P: 702.873.4100 | **E:** gogilvie@mcdonaldcarano.com

From: Brenoch R. Wirthlin <bwirthlin@hutchlegal.com>
Sent: Wednesday, December 22, 2021 4:36 PM
To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Christian M. Orme <COrme@hutchlegal.com>; Tanya M. Fraser <tfraser@hutchlegal.com>
Cc: Jon <jonwilson@jonmwilsonattorney.com>; Jon Wilson <jonwilson2013@gmail.com>; Kimberly Freedman <Kimberly.Freedman@nelsonmullins.com>; erin Kolmansberger <erin.kolmansberger@nelsonmullins.com>; Amanda Yen <ayen@mcdonaldcarano.com>; Jon Linder <jlinder@hutchlegal.com>; No Scrub <NoScrub@mcdonaldcarano.com>
Subject: RE: Lewis & Clark

George and Jon, I accepted all the changes you made and revised the amounts based on the calculation of pre-judgment interest through tomorrow, December 23. In addition, my reading of 18.120 says we're supposed to leave a blank for costs so I added a footnote with a blank for costs. A redline and clean copy pdf are attached.

If we can attach your electronic signature and submit to the Court, please let me know. Alternatively, we can submit a joint email to the Court's clerk and see if the judge has a preference one way or the other.

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 12/30/2021

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EXHIBIT “D”

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK, Plaintiff, vs. ROBERT CHUR, ET AL., Defendants.	CASE#: A-14-711535-C DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF
DISTRICT COURT JUDGE
TUESDAY, SEPTEMBER 28, 2021

RECORDER'S PARTIAL TRANSCRIPT OF JURY TRIAL - TESTIMONY OF MARK D. THARP

APPEARANCES:

For the Plaintiff: BRENOCH WIRTHLIN, ESQ.
CHRISTIAN M. ORME, ESQ.
TONYA FRASER, ESQ.

For the Defendants: GEORGE F. OGILVIE, III, ESQ.
JON M. WILSON, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

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WITNESSES FOR THE PLAINTIFF

MARK D. THARP

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None		

FOR THE DEFENDANT	MARKED	RECEIVED
None		

MR. WIRTHLIN: Yes. He simply answered the question. However, I would withdraw that aspect of it and ask it separately.

THE COURT: So disregard the last question and answer, and there will be another question.

BY MR. WIRTHLIN:

Q With respect simply to the procurement aspect of Re Insurance for Lewis and Clark, what obligations and actions did U.S. RE take with respect to just the procurement?

A Well, it -- U.S. RE recommended a reinsurance program to Lewis and Clark. And that -- that reinsurance program was approved by the board of directors.

Q When you say that U.S. RE recommended a reinsurance program, what went into the process of that recommendation?

A Identification of a reinsurance program that U.S. RE recommended for Lewis and Clark.

Q When we talk -- you talked a little bit about -- I think it was actually brought up earlier -- different types of reinsurance. What are those? And can you explain just briefly to the jury how those -- I guess, what exactly the types of reinsurance are that U.S. procured or tried to procure?

A Yeah. Sure. So the excess of loss reinsurance is reinsurance that is out of reach in large part for Lewis & Clark because of the high deductible on the front end, the $350,000, or what we call retention sometimes. Which is to say most claims that are incurred by Lewis and Clark were within the $350,000 deductible. So it's not until claims go

above $350,000, that there's some transfer or session to the reinsurer. And that was somewhat rare. There's also a quota share arrangement of reinsurance, which is a percentage session on every loss. So if there's, for example, a $50,000 quota -- 50 percent quota share -- I'm sorry -- 50 percent quota share reinsurance treaty in place, and there's $100,000 claim, Lewis & Clark keeps $50,000 of the premium and would cover $50,000 of the losses. And the reinsurer would get 50 percent of the premium and would cover 50 percent of the losses.

There are also various other kinds of reinsurance, one of which is facultative. And it's a risk-by-risk session to a reinsurer, which doesn't apply here. But at least two options for Lewis and Clark would be the excess of loss that was recommended by U.S. RE, and the quota share program, which was not recommended by U.S. RE.

Q And in developing your opinions in this case with respect to reinsurance, what specific documents did you review in -- in making those determinations?

A I used -- I reviewed the reinsurance agreements and the accountings of -- under the excess of loss reinsurance program.

Q And what did you do in terms of the impact of the reinsurance program that Lewis and Clark had?

A Yeah. The impact of the excess of loss reinsurance program was hurtful to Lewis and Clark in a big way.

Q What do you mean by that?

A So Lewis and Clark paid 10 -- over time -- over a nine-year period of time, Lewis and Clark paid $10,000,000 of premium to the

excess of loss reinsurers. And during that same period of time, only $2,000,000 of losses were reimbursed. So it was an -- it was a -- it was a $8,000,000 loss to Lewis and Clark during that period of time.

Q Let's go back a little bit to the mergers. We talked a little bit earlier about Henry Hudson and Sophia Palmer. What did -- what type of business did Sophia Palmer handle?

A Nurses. Nurses and allied nonprofessionals.

Q And how did that relate to the business that Lewis and Clark had been insuring up to that point?

A It didn't. It did not relate to the nursing home business. In fact, it was a deviation under the business plan and the articles and corporation of Lewis and Clark. A new line of business that Lewis and Clark was unfamiliar with.

Q What are economies of scale?

A Economies of scale, it's a business term. You've all probably heard of it. It has to do with being able to enjoy cost reduction in an income stream that remains steady. So you might have the same amount of income coming in over time. But if you're able to reduce cost, then that's what's referred to as economies of scale because of the cost reduction that you're able to enjoy.

Q And what impact, if any, with respect to economies of scale did either the merger of Henry Hudson or Sophia Palmer have on Lewis and Clark?

A The documents talk in terms of the mergers resulting in certain economies of scale. But the economies of scale were not -- if

Insurance has for you.

Q And we'll talk about some of those terms, but roughly -- or I guess generally, what is a -- how do you do -- perform a solvency analysis?

A Yes. I talked a -- I talked a little bit about that this morning. On Lewis and Clark, we had two adjustments. One was the deferred tax asset year over year, which I can talk about in a minute, if you'd like, and the other one is, you know, the adjustments to the reserves that were necessary to bring them up to adequate levels.

Q Again, please talk about each of those.

A Okay. So the deferred tax asset is an -- is an asset that was carried on the balance sheet of Lewis and Clark, and it was a -- it was an asset in recognition of losses that had occurred previously -- operating losses that had occurred previously in the history of Lewis and Clark. And -- or were meant to be used to offset future income and future operating losses that Lewis and Clark was projected to have.

But there are some very strict rules to that asset. Not the least of which are the company, Lewis and Clark has to be a growing concern. Lewis and Clark has to have operating income, operating gains. Lewis and Clark has to be not in some form of receivership and not in a position to stop writing business. And then the main requirement is that it's more likely than not that Lewis and Clark will continue to be profitable. And none of those were true so that asset was inappropriate to be carried on Lewis and Clark's balance sheet.

Q We talked a little bit earlier, and you were mentioning, you

know, we were talking about kind of the corporate structure of Uni-Ter and U.S. RE. What oversight if any was there on U.S. RE with respect to Uni-Ter and U.S. RE in terms of their work that they were doing for Lewis and Clark?

A Oversight by U.S. RE over Uni-Ter?

Q Yes, or vice versa or anything else related to that aspect of carrying out those responsibilities for Lewis and Clark.

A Yeah. Well, there was -- there seemed to be autonomy as between the operations of Lewis and Clark and the placement of reinsurance. They were mutually exclusive, so Uni-Ter was the manager -- was the management team of Lewis and Clark. U.S. RE was only concerned it seemed with placing reinsurance. And so the two were separate and apart.

Q And what overlap if any was there between the management of the Uni-Ter entities and U.S. RE?

A There was overlap in the -- on the board of directors, and then the officers and directors.

Q Could you talk about that a little bit?

A And in what regard?

Q Well, what overlap was there in terms of who was on those boards and the management aspect of that?

A Yeah. So on U.S. RE companies and U.S. RE Corporation, Tal Piccione was the CEO. Dick Davies was an officer. They were also on the board. Same with U.S. RE Corporation. I believe Mr. Fedor was on the board. Oh, Sandy Elsass by the way, was on the board of U.S. RE

EXHIBIT “E”

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK, Plaintiff, vs. ROBERT CHUR, ET AL., Defendants.	CASE#: A-14-711535-C DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF
DISTRICT COURT JUDGE
FRIDAY, OCTOBER 1, 2021

RECORDER'S PARTIAL TRANSCRIPT OF JURY TRIAL - TESTIMONY OF MARK D. THARP

APPEARANCES:

For the Plaintiff: BRENOCH WIRTHLIN, ESQ.
CHRISTIAN M. ORME, ESQ.
TONYA FRASER, ESQ.

For the Defendants: GEORGE F. OGILVIE, III, ESQ.
JON M. WILSON, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

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None		

FOR THE DEFENDANT	MARKED	RECEIVED
None		

A Well, nobody within the holding company provided that scrutiny.

Q How'd that impact Lewis and Clark?

A Negatively.

Q In what ways?

A Well, it's -- you know, you have the -- you have the common interlocking directorates managing all aspects of Lewis and Clark, both day to day to the management agreement, which is all encompassing. You know, all the areas of an -- all the operational areas of an insurance company. And then you have another entity in the interlocking directors, U.S. RE, that's providing the reinsurance programs for Lewis and Clark, recommending the reinsurance programs to Lewis and Clark, and then acting as a consultant to Lewis and Clark.

Q And what would -- oh, I'm sorry.

A Well, no. I was done. Thank you.

Q What would you have expected to see in that kind of situation?

MR. WILSON: Objection, Your Honor. What he expected to see.

THE COURT: Objection sustained.

MR. WIRTHLIN: That's fine. I'll withdraw the question.

BY MR. WIRTHLIN:

Q What did you see in terms of -- when you talk about the scrutiny and the related party transactions, what did you see in terms of U.S. RE's -- specifically, U.S. RE's brokering of reinsurance for Lewis and

Clark?

A Yeah. What I saw was the brokering of a reinsurance program that was wholly detrimental and damaging to Lewis and Clark over a nine-year period of time without any scrutiny whatsoever from the board of directors, because the board of directors knew absolutely nothing about reinsurance. They depended 100 percent on U.S. RE for that. And the same with regard to the day-to-day management of Lewis and Clark, the suppression of reserves and the like. You know, the board of directors had no knowledge whatsoever about how to run an insurance company. They depended on the U.S. RE Defendants in that regard, A to Z. They didn't know how to run an insurance company. That's why they hired the U.S. RE Defendants.

And, you know, I would just say the board was very competent in their own skills sets, in running a -- nursing homes and would have -- was a good tool for -- to assist in studying reserves and the like, but certainly no knowledge whatsoever about now to run an insurance company.

Q Look at Exhibit 399 if you could. And do you recognize that document, Mr. Tharp?

A Yes. It's a broker authorization contract.

Q Okay. And you see that's -- paragraph 2 there, it's June 12, 2012?

A Yes.

Q And then on the last page of that document, paragraph 13, both parties will comply with all statutes and regulations governing this

than honest. There's no evidence of any kind. And he's -- to sit there and call somebody and impugn somebody that they're not honest is inappropriate.

MR. WIRTHLIN: Your Honor, there's been sufficient evidence on that issue specifically.

THE COURT: Objection is overruled.

MR. WIRTHLIN: Thank you.

BY MR. WIRTHLIN:

Q Now, Mr. Tharp -- and I'm not sure if I've asked you if I had not. What was the total insolvency for Lewis and Clark that you determined?

A Yeah, it's -- I have an exhibit on that, if it's handy. It's Exhibit AB in -- in my report. So yeah. Very good. Thank you. So if you look at the September 30, 2019 column, the first column. So you'll see that the cert -- the line -- the line about two-thirds of the way down, it's called -- one more click. Thank you. It's called surplus -- to the left. And I'm sorry. It's called surplus paren -- insolvency paren, and you'll see $12,082,657. That's the insolvency of Lewis and Clark with respect to the nursing home claimants, the insureds that had claimants. And then below that, you'll see surplus notes for 3.7 million. So if you take those debt instruments into consideration, the insolvency is 15,782,000.

Q And what impact did the reinsurance program have on the insolvency of Lewis and Clark in your opinion?

A It had a detrimental effect of $8 million on Lewis and Clark.

Q How did you factor in, to the extent you did, approvals by the

not a reinsurance intermediary broker and you never have been an insurance -- reinsurance intermediary broker, have you?

A That's correct.

Q Now, we talked about -- or you talked about on direct, quota share. You talked about excessive loss reinsurance. You talked about other types of reinsurance on an individual basis, facultative reinsurance. What other reinsurance was available in the marketplace that you could have placed for Lewis and Clark that would have been more financially beneficial?

MR. WILSON: I'll just -- withdrawn, let me restate that question.

BY MR. WILSON:

Q There wasn't any other reinsurance in the marketplace that you could have placed Lewis and Clark that would have been more beneficial than what was placed, correct?

A Incorrect.

Q Is it -- it's accurate that quota share was not available in the marketplace for insuring risk retention groups, which insured long-term health care facilities, nursing homes, and things of that nature, between the time period of 2004 to 2012, correct?

A Quota share was available.

Q Tell me one -- do you know -- you don't know any particular quota share policy or company that would have placed or could have placed reinsurance for Lewis and Clark between 2004 and 2012?

A There would have been many.

Q All right, sir. You don't know for a fact that quota share was available for a company like Lewis and Clark, do you?

A Yes. It's a negotiated process.

Q You didn't do any analysis, did you?

A I didn't do any analysis on the quota share, but it was available in the marketplace through a negotiation process if you wanted that type of reinsurance.

Q Is quota share more expensive than excess loss?

A Yes.

Q Heck of a lot more expensive, isn't it?

A It's more expensive.

Q A lot more expensive.

A Well, I don't know what you mean by a lot, but it's more expensive.

Q Tell me what company -- do you know any companies where you could have placed quota share for Lewis and Clark between 2004 and 2012? Any company. Just name one.

A I don't have a specific company, but there are lots of companies. There are -- you know, there's 7,000-plus insurance companies that do business in the United States.

Q I'm just asking you whether or not you can name one company. You say it's available and should have been placed by U.S. RE. Can you give me the name of one company where it could be placed?

A There were hundreds. Hundreds of insurance --

Q Can you just give me a name?

A I'm not prepared to give you a name of an insurance company, but I can tell you that the marketplace is such that if you put the word out that you want a quota share reinsurance program for nursing homes, you can get -- you can get companies to write that, absolutely no question about it.

Q And you -- but you can't -- you cannot -- can't give me any name of any company, any little town, whether it's London, Bermuda, or the U.S., that would have, in fact, reinsured a thinly-capitalized company, high-risk, like Lewis and Clark, between that time period, can you?

A No, I'm not going to give you a name. But there will be -- there would be many.

Q I'm just saying you've answered the question.

A Okay, fine.

Q Now, in your report, you had the analysis of 23 claims where you made certain observations. Do you recall that?

A Yes.

Q And as it relates to those 23 claims and the observations you made, you didn't read any of the files before you made the observations, correct?

A The point I was making is -- can I just answer --

Q I've asked you a question. Did you read any of the files before making your observations in your report?

A That wasn't the point of that list.

Q I'm asking --

EXHIBIT “F”

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK, Plaintiff, vs. ROBERT CHUR, ET AL., Defendants.	CASE#: A-14-711535-C DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF
DISTRICT COURT JUDGE
TUESDAY, OCTOBER 5, 2021

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 10

APPEARANCES:

For the Plaintiff: BRENOCH WIRTHLIN, ESQ.
CHRISTIAN M. ORME, ESQ.
TONYA FRASER, ESQ.

For the Defendants: GEORGE F. OGILVIE, III, ESQ.
JON M. WILSON, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

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None		

FOR THE DEFENDANT	MARKED	RECEIVED
None		

A Yeah, it was produced on the evening of July 9th, 2021. Just after my deposition by Mr. Wilson.

Q And how many depositions were taken of you in this case?

A Two depositions.

Q When was the second one?

A The second one was on August 12th. And the purpose of the second deposition was to look at that model so Mr. Wilson could ask me questions about the model. And so that was the reason for the carryover of the July 9th, 2021, deposition to August -- I believe it was August 12th, 2021.

Q You talked a little bit with Mr. Wilson about -- and I'm sorry for jumping around. I'm just trying to focus on what was talked about. You talked a little bit about, with Mr. Wilson, calculating reinsurance. You know, I guess amounts paid and that type of thing. Viable support and what they received, and so forth. How did you calculate those amounts?

A Yeah, it was just -- you know, it was from the books and records of the company. The financial statements as well as the underlying records in the case. To determine that the reinsurance program was a very, very bad idea for Lewis and Clark.

Q And what -- when you say that's a very bad idea, what do you mean specifically?

A Yeah, it contributed significantly to the insolvency of Lewis and Clark in that the reinsurer was paid $10 million in premiums and were only at risk for $2 million in claims of the life of Lewis and Clark.

So it had a $8 million adverse impact on Lewis and Clark.

Q Were there any other numbers or calculations that went into that determination?

A Could you be more specific?

Q Specifically reinsurance recoverables?

A Oh, yes. Yes. Yes.

Q The fact they were [indiscernible].

A Well, there was a -- there's been some talk about a reinsurance recoverable and in this case as a potential recovery that remains out there. And I think that's what you're talking about.

Q I am, yes. How did that factor into your analysis?

A Yeah, I accounted for that 100 percent. In fact, during -- I guess it was during my first deposition by Mr. Wilson, I went through every component of that in my deposition with him, such that all of the numbers were in the September 30, 2019, liquidating balance sheet, which I prepared in this matter. Exhibit A-B in this case.

MR. WIRTHLIN: Can we take a look at that very briefly?

BY MR. WIRTHLIN:

Q While we're pulling that up, let's look to another matter, just in the interest of time. You talked a little bit about claims manuals and round tables and there were two claims manuals. How did the round tables relate to those -- what was -- the directives in those claims manuals?

A Yeah, all of those concepts were important to the process and begins with the '05, the probable ultimate cost, and 30 days to post

conclusion.

MR. WIRTHLIN: Your Honor, they've opened the door.

THE COURT: Overruled.

THE WITNESS: In no way. And, you know, I'm just reminding the jury that the board of directors are not defendants in this case.

MR. WIRTHLIN: Thank you. No further questions.

THE COURT: And last bite at the apple?

FURTHER RECROSS-EXAMINATION

BY MR. WILSON:

Q Mr. Tharp, the board of directors were defendants in this little right of appeal as Mr. Wirthlin said in his opening statement, correct?

A I'm not a lawyer.

MR. WILSON: Thank you. No more questions.

THE COURT: One last bite at the apple?

MR. WIRTHLIN: No further questions, Your Honor.

THE COURT: Does the jury have questions for Mr. Tharp? If we have -- good, we have a question. All right. Any other questions being written? Come on up, you guys.

[Sidebar at 10:35 a.m., ending at 10:37 a.m., inaudible, not transcribed]

THE COURT: Okay. Thank you. And I get to ask the question. In your opinion or experience, is there a standard/average amount or percentage of loss with reinsurance?

THE WITNESS: Yeah. Good question. So certainly, if you are at an insurance company, and you have your hand on the pulse of the reinsurance programs, you're going to monitor them very closely year to year to year because they're costing you a lot of premium, $10 million in this case. So I can say comfortably, if you're in charge of the reinsurance programs, you would never ever sit there year after year after year and ignore the results that were coming home to roost in the form of losses to the insurance company.

So these programs should have absolutely been canceled and be -- and be rewritten in the quota share, or a permitted practice that I testified about. You can take your premium, place it in a trust, earn interest on it, and at the end of the day, be the beneficiary of whatever the trust account was to the -- to the insurance company's benefit.

THE COURT: Any other follow-up questions from the jury based upon that? Any follow-up questions from the Plaintiff based upon the jury's question?

MR. WIRTHLIN: No, Your Honor. Thank you.

THE COURT: Any follow-up from the Defense?

FURTHER RECROSS-EXAMINATION

BY MR. WILSON:

Q Mr. Tharp, U.S. RE Corp is not the insurance company, is it, yes or no?

A That's not what I said. No. It's --

Q I know. I'm just asking.

A U.S. Re Corporation is not the insurance company.

had.

MR. ORME: Okay.

THE COURT: We -- do have a microphone.

THE WITNESS: Perfect.

THE MARSHAL: You want me to --

THE WITNESS: Yeah, why don't you just put both of them. Okay. Just put that in here? Okay.

All right. So this is the first schedule that I prepared. If you could just drop it down a little so they could see all of the heading. There we go. So this -- okay. Can you bring it up to just here? Just so that they can see net there, please.

BY MR. ORME:

Q Well, what is -- what is Exhibit 3.1?

A Exhibit 3.1 -- well, I guess you should show the heading. Look at the heading. 3.1 is at the top. It's the calculation -- this is the reinsurance damages. So the first of the two components that I just went over. Now, if you could bring it up to the net. So this shows by year the reinsurance. So the second column or first column with numbers, this is the ceded premium. So that's the portion of the premium -- and you may recall or know, Lewis and Clark collects premiums for the insurance it sells.

However, they used reinsurance to try to defer some of that risk. So they had to share, if you will, this portion of the premiums that they collected. So they collected a larger amount of premiums. But this the part that they then had to pay to the reinsurer in order for them to take

on some of the risk of having to pay out the money. So that's the first column. And it shows from 2004 through 2011, because this is in the inception of the company and this is the last year for which we have this kind of data in the annual statements because once they went into receivership, they stopped filing annual statements with the Department of Insurance.

The second column is what's called the ceded loss and LAE. And LAE you may have heard stands for Loss Adjustment Expense. So this is the amount of claims and expenses that were then absorbed by the reinsurer. So that's the part that Lewis and Clark avoided having to pay out of their own pocket because she shared some of the premiums in the first column. Okay.

These totals here are only for that first time period, from 2004 through the end of 2009. So if you go from 2004 to 2009, that's the 6.1 million -- 6.133, or 6,133,000. And I'll try to talk slower.

BY MR. ORME:

Q And, Dr. Kuga, why did you put those two years in --

A The two --

Q -- into the --

A The two years in later?

Q No. The 2010 to 2011.

A Oh, I'll come to that in a second.

Q Okay.

A I'm coming to that. Sorry. So it's the same for the stated loss. And there should be a zero here. I just noticed this. This -- there

was -- there is no ceded loss really in this year. So, again, if you just total those first -- it's actually six years, right, '4, '5, '6, '7, '8, '9, you get a million dollars. So it excludes these last two years. And that was to just show you that's how much the reinsurance had cost them, and once they had been able to recover as a result of the reinsurance, this $5,133,000. So they were out of pocket $5,133,000 as of the time they became insolvent. They paid more for that reinsurance than they got back in terms of sharing the risk.

If you take the full time periods of all of the years, including '10, and '11, it tells you year by year what that difference is. So this means in 2004, they shared $100,000 of the premium. The way it worked out, they didn't get any assistance or any relief from the reinsurance in terms of paying the claims and the expenses. So net, they were out $100,000. In the following year, $633,000. By the third year, 2006, they did receive some back of that premium. So the difference between 1,152,000 -- and I won't go through all of these -- and 358,000 is the 794,000. So still in that year it cost them more to buy reinsurance than they got back in benefit.

So when you sum it all up -- and this number I believe is also in Mr. -- I know it is in Mr. Tharp's report -- but these numbers come ultimately -- he probably got them from the same place I did -- from the annual statements; there's a schedule in there that has these numbers -- is $7,986,000. So what I'm saying is they paid $7,986,000 more for the reinsurance than they received in assistance in paying the claims and expenses. So that cost them almost $8 million.

Q Now, you've said that you know that Dr. -- that Mr. Tharp has that in his report?

A Yes.

Q Did you do an -- what type of analysis did you do to come up with those numbers?

A Well, so Mr. Tharp has a schedule similar to this, not exactly like this, but with these same data -- these first two columns of data. But those numbers ultimately come from schedule P in the annual statements. So I checked to make sure where Mr. Tharp got those numbers from was accurate and it reflected the numbers that were in the annual statements. Now, recall, these are the annual statements that are prepared by Lewis and Clark, which was managed by Uni-Ter.

Q Okay.

A Because Lewis and Clark, as you know, had no employees. They had no one to run the insurance company. They had to depend on someone else to do that.

MR. ORME: Go ahead and move the table to 3.2.

THE WITNESS: So let's start with the heading so they can see the heading. The -- Exhibit 3. -- yeah, there we go. So Exhibit 3.2 is a calculation of the insolvency damages.

BY MR. ORME:

Q Okay. Can you tell us what insolvency means?

A So the second component that I talked about. Insolvency means that basically you have more assets than liabilities. Some people may refer to it as being upside down. You've heard of that analysis.

source of funding for Lewis and Clark. That amount was reduced, because they were repaid some of that money, to a million dollars. And then as Lewis and Clark got into a great deal of financial difficulty in 2011 or 2010, some of the members, the nursing homes that were members as well as Uni-Ter, contributed an additional $2.7 million to try to shore up the finances of that institution. But those are all liabilities that theoretically the receiver, if there's money left over, has a pay back to those entities.

And just so you know, it's not like traditional equity that you might think of like when you buy stock. When -- if a company goes bankrupt, if you bought -- Amazon's not a good example -- but some start-up that, you know -- say Tesla hadn't worked out that and you bought stock in Tesla and they weren't as successful as they are now and they went bankrupt, as a stockholder, you'd get nothing. You'd lose your whole investment.

This was a little bit different because it was a surplus note. So they were going to get interest and more interest that they were owed on money that they contributed. So when you add that $3.7 million that was contributed plus the insolvency, you get $15,782,657. But we're not quite done. If you recall, when they were impaired, they still had $440,000 of equity. So I deducted that from that number to then come up with the $15,222,853 that I conclude is the insolvency damages in this dispute.

Q What is the interrelationship between the damages for reinsurance and the damages for insolvency?

A So the reinsurance is also rolled into these numbers. It's included. So if the trier of fact, however the Judge instructs you to what decisions you have to make, decides that there are damages for the reinsurance, in my opinion, you can award up to the 8 -- or $7,900,000, whatever that was. However, if you find that there's liability for insolvency itself, it's this up to 15 -- we'll call it 15.22 million. But I don't want to mislead you into thinking, well, when you find liability both for the reinsurance as well as for the insolvency, you should somehow award both, so award something like $23 million, because we know, at most, this is how much they went in the hole.

But 8 million of it, 7.9, whatever that was, million of that is in this number. And so you need to make sure that you don't double count and award both. But, again, it will depend on what the trier of fact is instructed by the jury -- or by the Judge decides -- you know, if you find somebody liable and then how you want to award damages and then what more -- amount you pick.

Q So, Dr. Kuga, the $7,986,000 of damages associated with the reinsurance damages are already in the $15,222,853 worth of damages?

A Yes. It's reflected in this analysis. However you want to break out this -- the reinsurance, you can look at Exhibit 3.1. If you want to look at the insolvency in its entirety, you can look at 3.2. And if you want to do some differencing, you can do that as well. It's however they decide that -- whoever decides this case has that option.

Q Okay. And are your opinions to a reasonable degree of economic certainty?

A Right. And they're -- and they're typically people that own businesses.

Q Right.

A But there -- but there are some employees too as well.

Q And that's what you primarily have testified to in court proceedings?

A Is commercial and personal litigation. That's correct.

Q Now, in terms of your area of expertise, this happens to be the first reinsurance case you've ever testified in?

A That's correct.

Q And the numbers you're using in terms of the 7 million 9 down to the very dollar, and the 15 million down to the, what is it, 853, you said -- I can't remember the exact numbers --

A Okay. Go ahead.

Q -- are the exact same dollars that Mr. Tharp came up with in his report, isn't that accurate?

A It is with respect to the surplus, it is [sic] respect to the amount when you add the 3.9 -- 7 million and surplus notes. But my ultimate number I don't believe appears anywhere on Mr. Tharp's report, although the differential I used, that $440,000 credit, appears on Mr. Tharp's report as well as -- well, I'll leave it at that -- on Mr. Tharp's report. That's correct. Because he made ceded adjustments.

Q Your damages associated with reinsurance were identical?

A Well, I don't know that he concludes a damage figure. But my schedule 3.1 is identical, at least with the underlying numbers, not

the totals necessarily -- I don't remember if he does the totals or not -- but it's to the dollar the same as his reinsurance damage -- or reinsurance ceded and -- ceded premium and ceded loss figures that come from the annual statements. That is true.

Q Now, the model you used is called, what is it net, a net ceded premium?

A For the reinsurance?

Q Yes.

A Yes.

Q Yeah. I'm going to focus my questions now -- I'm sorry -- so that we can be clear -- on the reinsurance component of your analysis.

A Okay.

Q It's net ceded premium, correct?

A Correct.

Q Now, at any point in time before today -- not before today --

A Well, at --

Q -- before being hired in this case -- what?

A Excuse me. Just to clarify, the column actually reads, net reinsurance ceded. I think you're talking about the last column. So we don't confuse them, that it's not just that first column, ceded premium, but --

Q I just --

A -- but --

Q -- want to talk --

A -- I figured --

Q -- about the formula. What would be the best way to describe the formulas so we're both talking about the same thing?

A It would be for each given year, ceded premium minus ceded loss and Loss Adjustment Expense, or LAE, equals net reinsurance ceded. So that net difference, that far right column, if you add all those up for all the years, you get the $7,986,000.

Q You call that net ceded reinsurance?

A Net reinsurance ceded. That's correct.

Q Net reinsurance ceded. Okay. That's what I'm talking about.

Now, you never in your life before this case had ever heard of a model called net ceded -- net reinsurance ceded, have you?

A No. I don't know that --

Q You had never used it?

A No, I hadn't, because this is my first reinsurance -- or risk retention group case and reinsurance case. That's true.

Q And when you looked at why somebody should be liable, was it because we did not place the best insurance for Lewis and Clark and some other -- either regressed -- excuse me -- reinsurance -- some other reinsurance either that was available in the marketplace or alternatively we could have gone without reinsurance, correct?

MR. ORME: Objection. Outside the scope again.

MR. WILSON: He's talking about --

THE COURT: Please approach. Please approach.

[Sidebar at 11:28 a.m., ending at 11:29 a.m., inaudible, not transcribed]

THE COURT: Okay. The objection is overruled.

MR. WILSON: I'm not sure I remember the question particularly as I can. So let me -- let me -- I'll probably ask a different one.

BY MR. WILSON:

Q In terms of damages, you're familiar with what's called the but-for damage, correct, theory?

A Yes.

Q And that's a recognized theory of damages among people like you who do damage testimony?

A Yes.

Q And the but-for theory says as it relates to all reinsurance, U.S. RE, you place excess of loss reinsurance, which costs -- as you have it up there, it'd be 10 million dollars?

A Yes.

Q And that's not right. That's -- you didn't do the right thing. You could have placed the quota share, correct? And I'm just using this as a hypothetical.

A Yeah. I don't have an opinion on that.

Q I understand that.

A But that's -- okay.

Q I'm just using it. And I'm not going to ask you to opine on it. I'm just saying --

A Sure.

Q -- it's a damage model. You used excess of loss, and that

costs 10 million. I could have had another product available that would have cost less and saved me money; is that -- that's what Mr. Tharp was saying about quota share, correct?

A Again, you'd have to ask Mr. Tharp.

Q Well, you --

A I'm not trying to evade your question. I just don't have an opinion on that.

Q Let's talk about as a damage expert, a hypothetical way of doing a but-for analysis.

A Okay.

Q What is the hypothetical way of doing a but-for analysis on this reinsurance damage issue?

A I thought about that question long and hard. And I did not come up with a way to do it.

Q You don't recall testifying to it in the deposition?

A If I did, I don't recall it. But please refresh my memory.

Q I will.

A Okay.

Q Wouldn't you look at -- this is what a cost of 10 million quota share -- I mean, 10 million of excess of loss. I could have put quota share in, and it would have cost me 7 million. And you look at the differences. And isn't your damage the difference between what you've got and what you could have gotten that was better?

A In your hypothetical world, I guess the only other piece of information we'd have to know is what was the recovery under the

alternative reinsurance?

Q Right.

A So it'd be ten versus the two versus seven versus whatever --

Q Right.

A -- is the recovery.

Q To see what the recovery is?

A Sure. Sure. If you could apply that approach to that, that would be potentially one way to do it.

Q And if you did what was called permanent practice where you had notary insurance --

A Right.

Q -- you could take the excess of loss insurance that was placed, and then you could look and see what it cost you by going uninsured at some time period, and then doing an improvement of practices, correct?

A Boy, I don't know on that one because it gets a little more confusing as you describe it because we have this -- we have this other element of the claims and the reserving. And again, that's outside my area of expertise. But that factors into this, as well.

Q Now, you are not an expert in reinsurance, are you?

A No.

Q You're not an expert in claims reserve?

A No.

Q And you're not an expert in doing solvency analysis? You said you've done them, but you've not -- you've never done one on an

expert basis?

A That's correct. This is the first time.

Q Do you know whether there's three accepted methods to do solvency analysis?

A According to Mr. Hewitt, there is.

Q I said did you know.

A No.

Q Okay.

MR. WILSON: Now, if you'd look at -- if you'd pull up Exhibit 3.2.

THE WITNESS: Yup.

MR. WILSON: Your Honor, may I go down to the --

THE COURT: Certainly. You have permission to move about.

BY MR. WILSON:

Q And if you look at this exhibit, what do the numbers represent here under losses? Those would be the amount -- those would be the amount of reserves adjusted by Mr. Tharp?

A Yes.

Q Now, do they include the original amount that Uni-Ter had reserved, plus the additional amount that he said was under reserved?

A Yes.

Q And you don't have any idea why --

A Well --

Q I'm sorry, go ahead.

A Yeah. Actually, the -- there is no reference to the Uni-Ter

amount reserve. In other words, the Uni-Ter amount reserve could be anything. And it doesn't really impact this analysis. But from a dollar standpoint, that is a fair point. In other words, Mr. Tharp's saying it should be up here, and Uni-Ter did something down here. So implicitly it's in there. But it's not explicitly anywhere in Mr. Tharp's model, as I understand it.

Q But you accepted Mr. Tharp's model?

A Yes.

Q And to accept somebody's model, you need to test it, don't you --

A Potent --

Q -- as an expert?

A Potentially.

Q If you're going to rely on another expert, you've got to test it?

A Yes.

Q How did you test the model that was created by Mr. Tharp, which resulted in --

A The adjustments.

Q -- the significant adjustments?

A Yeah. It's a very complicated analysis because I had them show me that, Mr. Tharp and his colleague, Mr. Todd, T-O-D-D. They built a model, as I understand it, claim by claim. And so they looked at something that was filed by Uni-Ter in 2012, that told you the ultimate disposition as of that date that Uni-Ter felt each of those claims had. And they looked at all that, compared it to the amount that had been

EXHIBIT “G”

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS & CLARK, Plaintiff, vs. ROBERT CHUR, ET AL., Defendants.	CASE#: A-14-711535-C DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF
DISTRICT COURT JUDGE
MONDAY, OCTOBER 11, 2021

RECORDER'S PARTIAL TRANSCRIPT OF JURY TRIAL - TESTIMONY OF SAMUEL JACKSON HEWITT

APPEARANCES:

For the Plaintiff: BRENOCH WIRTHLIN, ESQ.
CHRISTIAN M. ORME, ESQ.
TANYA FRASER, ESQ.

For the Defendants: GEORGE F. OGILVIE, III, ESQ.
JON M. WILSON, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

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THE COURT: Thank you. Please be seated.

DIRECT EXAMINATION CONTINUED

BY MR. WILSON:

Q Mr. Hewitt, we were starting to get into some issues with respect to damages testimony.

A Yes, sir.

Q I'd like to focus first on Dr. Kuga's reinsurance damage model. Are you familiar with that?

A Yes.

Q And do you agree with that model?

A No.

Q Why do you not agree with the model?

A Any damages calculation is a comparison of a but for world, which I'll define in a moment, that would have existed but for the Defendant's alleged inappropriate actions and compares that to what actually occurred and you subtract the difference. Mr. Kuga's but for world was in -- in his analysis, was simply that Lewis & Clark did not buy any reinsurance. As I understand it, without an exception from the Nevada Department of Insurance, which Lewis & Clark never obtained, they had to buy reinsurance. The statute, which -- I can't cite the number -- basically says that any insurance company cannot write a risk whose policy limits, the maximum loss that's payable under the policy, is more than ten percent of the company's surplus.

Lewis & Clark was -- there's the phrase, thinly capitalized. They never had a great deal of surplus. The highest their surplus was -- was --

ever was was about $4,600,000. Ten percent of that is about $460,000. Lewis & Clark started out when they very first began doing business writing policies with a policy limit of half a million dollars. Half a million is more than 460. I understand that some of their policies, maybe even a majority of their policies had policy limits of a million dollars.

So Mr. Kuga's -- Dr. Kuga's but for analysis would have required Lewis & Clark to violate Nevada statutes, which they probably would not have been allowed to do as soon of the Department of Insurance learned of it through a triennial examination or presumes that they were able to obtain an exception from the statute. But again, they never applied for and frankly, in my opinion, doesn't look like it would be very likely that they could have been able to do it.

You're in a situation where they're -- you know, if the purpose is to keep the amount of loss that you can lose on a policy to not be more than 10 percent of your surplus, well, their two largest claims that we saw on the list were about a million dollars a piece. At the highest point, that's almost -- you know, that's 20 -- almost 20 percent of their surplus each -- with each one of those losses. They've never had more than 4.6 million. The rest of the time it was less than that. Insurance regulators tend to be a conservative bunch. I'm not sure that they would have granted that. Have no way of knowing one way or the other, but I've been arou -- I was around the insurance industry for a long time.

Q Did Mr. Tharp or Dr. Kuga indicate that they were reasonably confident that they could be permitted an exception?

A No. I don't think they did any research about any permitted exceptions that had ever occurred. I frankly don't know. And I don't know what that history is, either, but it seems unlikely in -- based off my own experience.

Q Are you -- were you aware that Mr. Tharp testified that there were a number -- maybe hundreds of possibilities in quota sharing in insurance as a better alternative than the excess of loss reinsurance placed by US Re Corp?

A Yes, I'm aware of that. And --

Q Did you get -- was there --

A I'm sorry. I didn't hear you, sir.

Q All right. In terms of quota share, are you aware that Mr. Tharp couldn't provide or didn't provide the name of any company that would provide that type of reinsurance to Lewis & Clark?

A Yes, I am aware of that.

Q Let's assume you want to do a but for analysis using quota share as the alternative. How would you do the analysis?

A You would figure out how much it would have cost you, what sort of losses you would have been able to recover, what the net cost of that reinsurance was and compare it to the actual amount that Dr. Kuga calculated. That comparison was not done. Instead, the -- Dr. Kuga's analysis just assumes there was no reinsurance. And if you actually believe there could have been a quota share policy, that's overstating the amount of the damages.

By the way, you know, one of the things you have to keep in mind

when you think about how much -- how -- what kind of availability there is for quota share, you have to find a reinsurer who's willing to say hey I'll take a portion of your business exactly the way that you're doing it, even though I'm not going to have any control over you know, exactly how you're adjusting the claims. I'm going to take your loss ratio, your LAE ratio and a portion of your percentages and that's if Lewis & Clark's losses were actually as bad as Mr. Tharp has indicated. That may have been tough to find.

Q Now, in terms of Dr. Kuga's analysis of reinsurance damages -- and I'm using round numbers, $10 million of premium and $2 million that were actually paid back by the reinsurers. And that leaves 7.9 some million dollars of damages.

A Yes.

Q Are there -- is there anything that in your opinion should have been included as offset to any damages?

A Yes. There's another 3.1, $3.2 million that is on the receivership balance sheets sitting there right now saying that they have that as an asset, which is something that can be recovered. Mr. -- Dr. Kuga did not consider those assets in calculating his reinsurance damages. If he did, it would reduce the damage amount. And again, rough terms, it would reduce it to about or roughly eight less, 3.2. That's going to reduce it to about -- what is that -- 4.2 -- 8 million dollars. I think that amount's right.

Q So in your opinion, what should have happened with respect to that $3.1 million of anticipated recovery from the reinsurer?

EXHIBIT “H”

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS & CLARK, Plaintiff, vs. ROBERT CHUR, ET AL., Defendants.	CASE#: A-14-711535-C DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF
DISTRICT COURT JUDGE
MONDAY, OCTOBER 11, 2021

RECORDER'S PARTIAL TRANSCRIPT OF JURY TRIAL - TESTIMONY OF RICHARD DECOUX

APPEARANCES:

For the Plaintiff: BRENOCH WIRTHLIN, ESQ.
CHRISTIAN M. ORME, ESQ.
TANYA FRASER, ESQ.

For the Defendants: GEORGE F. OGILVIE, III, ESQ.
JON M. WILSON, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

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& Clark?

A Well, yes. Because -- well, yes, I did investigate that. I did review the terms of the -- the contract and I reviewed the reason that were given for wanting to commute with Imagine Re. And apparently, based on the correspondences I saw between Larry Shatoff and the -- the managing company as well as between the L&C board and -- and the US Re with Larry Shatoff, the -- essentially what they were saying is we don't -- we don't have to submit as many special acceptances or we don't have to submit as many new business opportunities to Imagine Re as we did to the London markets.

But they are -- they are -- at this point, Imagine Re is much more intrusive. They're -- they're very much more difficult for us to deal with and explain why it is we want to bring this member company in or we want to -- or we want to make changes to a member company that we're already reinsuring. And so in that case, I felt that because of Imagine Re's position relative to the -- relative to the business relationship that they didn't want to have them reinsuring them anymore.

Q Now, are you aware that Mr. Tharp has discussed that quota share was a better form of reinsurance than excess of loss for Lewis & Clark in the relevant time period, let's say, of 2005, 6, 7, 8, 9 time period. Are you aware of that?

A Yes, I am. I read Mr. Tharp's report, the sections of the report that deal with reinsurance, thoroughly. And I saw his -- I saw his opinion that -- that quota share would have been a better product for

Lewis & Clark. The -- and I don't want to put this in -- in totally negative terms, but the problem with -- with quota share was, first of all, Lewis & Clark didn't have a large -- first of all, didn't have a large amount of -- of cash or premium. And their premium projections were simply that; they were just estimates of what they would eventually write.

But in order to place a quota share contract, you normally have to have a volume of money in hand, a volume of -- of cash that you're willing to share with the reinsurers. And it has to be a large enough volume that the reinsurers feel that that the risk that they're taking on, whatever percentage they take -- decide to take of the quota share, they have to be sure that what they're getting is worth the cash that's going to be given to them. Well, Lewis & Clark at the -- at the outset had virtually no cash, so there was really no opportunity to do a -- any kind of a quota share program.

Q (Indiscernible) --

A Second of all --

Q Go ahead. I'm sorry. Go ahead.

A I'm sorry. Yeah. Well, second of all, quota share reinsurance besides requiring that kind of an outlay of cash also -- again, it's written usually for companies that are writing high volumes of premium and have high volumes of losses. The most typical quota shares that I've seen in my reinsurance career involve companies that underwrite personal auto policies.

Say like, you know, for an example, Progressive Insurance Company, since -- since we know all -- I hope we all know who they are.

But Progressive would have hundreds of millions of dollars of premium coming in from their -- from those people that they provide auto insurance to, and they have hundreds of millions of dollars going out because of losses that they have for accidents. And therefore, you know, they would be a company that would be very attractive to underwriters of quota share because there's large volumes of money that make it worth everybody's while. In this case, that -- that didn't exist.

And then the market in the U.S. -- again, by 2005, the US Reinsurance -- the domestic US Reinsurance market was significantly smaller than it had been in the period 19 -- from 1985 or 1986 through the early 2000s. And part of the reason for that was -- and it was the reason that my company, PMA, ended up shutting up its reinsurance division was 9/11. 9/11 was a catastrophic event that -- that caused numerous reinsurance companies and numerous companies that had reinsurance divisions to shut them down.

So not only did PMA RE quit underwriting business by -- at the end of 2003, The Hartford Reinsurance Company, Allstate's underwriting -- Allstate still remains as reinsurer but their underwriting volume decreased significantly. Besides Hartford, the Kemper insurance company was no longer in business -- the reinsurance company. The Kemper Reinsurance Company was no longer in business. Continental Reinsurance had decided that they were going to shut down their reinsurance division.

So what was available in the U.S. -- those companies that were available in the U.S. were not necessarily going to be, first of all,

enticed or have any interest in writing high-risk casualty business such as the kind of bodily injury or exposures that a long term care facility would put in their way. And then the second thing is it would -- if you went to London, there was no -- London did not write quota share. And so the only opportunities they had for placing reinsurance at that point for L&C was excess of loss.

Q Did you make any inquiry or do any investigation or contact people in the reinsurance business to determine whether or not there was quota share available from the -- like 2005 to 2012?

A Yes, I did. So when I --

Q What did you do?

A When -- when I was writing my original report of 2020, and then my subsequent rebuttal report 2021, and very recently as well. I went to the gentleman who was the lead -- who was the vice -- the senior vice president in charge of underwriting at PMA RE. I went to one of our senior PMA RE underwriters. And I also went to the -- the gentleman who was the president of PMA RE. I went to those three sources and I said -- and I asked them, you know, in the broadest sense possible terms, what was -- what was the quota share market like in the U.S. basically from 2005 through 2011?

Now, two of those individuals are now no longer reinsurance underwriters. They are both working for brokering -- large, international brokering operations. And in both -- in all three instances, they said there was -- there wouldn't have been availability for, you know, any kind of a company that was a startup that was involved in the healthcare

industry. And then also, you know, if you were brokering it, where would you have gone? And in all three cases, they said the only market that was available during that period of time for this type of business was London.

And I think there's one other -- there's one further point I'd like to make, if I could? And that -- one of the -- one of the brokers I spoke to -- and this is just in the last two weeks -- indicated to me, stated to me that he was in the process of placing a long term healthcare facility, a Risk Retention Group reinsurance program, in the companies in the State of Michigan. And he said that he -- he was unable to find any quota share whatsoever even in today's market.

And this was a company -- from what I could gather from what he was telling me, that would have had -- that would have a premium base far in excess of what L&C had at the time they were trying to reinsure their program. And the -- you know, even in today's market, he still has to go to London and he's going to have to do an excess of loss reinsurance program that's probably going to look very similar to what L&C -- the type of program that L&C had.

Q Mr. DeCoux, I have one more area. Are you aware that there's a contention that US Re was not properly licensed in the State of Nevada for reinsurance (indiscernible)?

A I'm aware of that. In my -- in my review of the various correspondences, I noted that in 2009, I believe it was the -- Mr. Burge (phonetic) from ranch -- from the Nevada DOI, Department of Insurance, had indicated to -- that had indicated to Lewis & Clark that their

EXHIBIT “I”

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS & CLARK, Plaintiff, vs. ROBERT CHUR, ET AL., Defendants.	CASE#: A-14-711535-C DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF
DISTRICT COURT JUDGE
TUESDAY, OCTOBER 12, 2021

RECORDER'S PARTIAL TRANSCRIPT OF JURY TRIAL - TESTIMONY OF MARK THARP

APPEARANCES:

For the Plaintiff: BRENOCH WIRTHLIN, ESQ.
CHRISTIAN M. ORME, ESQ.
TANYA FRASER, ESQ.

For the Defendants: GEORGE F. OGILVIE, III, ESQ.
JON M. WILSON, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

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BY MR. WILSON:

Q Take your seat, Mr. Tharp.

A Oh, sure.

Q Now, under your permitted practice approach, would Lewis & Clark have any reinsurance?

A Well, it would depend upon the permitted practice that was requested.

Q Okay. Well, you're the one that says it would succeed. And you're the one that said that the reinsurance was awful. Would you have reinsurance as part of the permitted practice?

A The answer to that's no if the department approved the permitted practice.

Q So you wouldn't have reinsurance, but you would take the premium dollars that would have been paid for the reinsurance that would have protected you from large losses?

A Yeah. My testimony was in my report said that I'd put those into trust as an alternative to reinsurance.

Q How much would you put in trust?

A All the premiums that would otherwise be paid to the reinsurers.

Q That's $10 million, right? That's what you had on the list?

A Well, that's how much they were paid overtime, yes.

Q Right. So how much would you put in in year one?

A Well, I would put all the premiums from the point that the permitted practice was approved going forward.

Q Okay. So you have how much -- do you have a chart? There's a chart 3.1 in Mr. Kuga's report and you also did an analysis in your report where you came up with 7.9 some million dollars. A difference between the premiums paid and the amount [indiscernible] back from the reinsured, correct?

A Yeah. That was the delta between the two.

Q Right. So in that you have a listing of how much was the premium in for example year 2004?

A Yeah. It would depend upon when the permitted practice was approved, which is to say some of the premium may have been paid already to the reinsures

Q Would you have reinsurance? Do you have to have reinsurance?

A No. That's the point of the permitted practice.

Q If you don't have a permitted practice fee, you have to have reinsurance?

A Well, there's a statute that indicates that if any one loss is greater than 10 percent surplus, you need to have reinsurance in place.

Q Right. And in terms of the policies size wise in 2004, what was the size of policies being written by Lewis & Clark?

A Million-dollar policies.

Q Right. So you've got to have surplus -- that's right. You got to have -- well, let me ask it this way. What is the 10 percent rule you just described, part of the statute?

A What statute is it?

EXHIBIT “J”

EXPERT WITNESS REPORT OF MARK KUGA, Ph.D.

Commissioner of Insurance for the State of Nevada
as Receiver of Lewis and Clark LTC Risk Retention Group, Inc.
v.
Uni-Ter Underwriting Management Corp.,
Uni-Ter Claims Services, Corp., and U.S. Re Corp.

I. QUALIFICATIONS

I am President of Delta Economic Consulting Corporation (Delta). Delta provides economic and valuation analyses for businesses and individuals. Delta also provides expert witness testimony services in litigated cases, applying forensic economic and valuation analyses.

A copy of my current curriculum vitae describing my education, previous professional and teaching experience, and professional affiliations is included at **Exhibit 1** with this expert witness statement. Prior to starting Delta, I was a principal and director of economic analysis and litigation services with Willamette Management Associates, a nationally recognized valuation consulting, economic analysis, and financial advisory firm. Previously, I was an economist with Economic Analysis Corporation and Lexecon, Inc., two prominent economic consulting firms.

In addition to my consulting work, I have taught finance and economics in the MBA programs at Portland State University and Marylhurst University (formerly College). I have been invited to give presentations and seminars to the American Institute for Certified Public Accountants, the American Rehabilitation Economics Association, the National Association of Business Economics, and various other accountant and attorney groups. I have been a member of the Board of Directors of the National Association of Forensic Economics and the American Academy of Economic and Financial Experts.

I have been a professional economist in the field of forensic economic and valuation analysis for more than 30 years. I have been retained as an expert witness (by both plaintiffs as well as defendants) in excess of 250 cases. I have testified at trial and in deposition at least 30 times each as an expert witness (enclosed at **Exhibit 2** is a listing of my most recent expert testimony at trial and in deposition in the past four years).

II. DESCRIPTION OF MY ASSIGNMENT

I have been asked, by the Plaintiff, the Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark LTC Risk Retention Group, Inc. (hereafter "Receiver"), to perform the following:

1. To analyze the economic damages alleged in this matter; and

2. To review, critique, and if appropriate rebut, any expert testimony prepared on behalf of the defendants with respect to the damages alleged in this matter.

This report is only addressing the economic damages alleged in this matter based upon the facts developed thus far in the case. Any rebuttal will be prepared following disclosure of the defendants expert reports, if any, and will be produced consistent with applicable deadlines. I reserve the right to amend or supplement this report as appropriate.

III. DOCUMENTS PROVIDED FOR MY REVIEW

I have been provided with numerous documents which have been produced by the parties in the course of this litigation including:

- Financial documents relevant to my analysis including: L&C Annual Statements to the Nevada Dept. of Insurance, audited financial statements of L&C.
- Pleadings (Third Amended Complaint and Answers thereto), requests for production of documents, interrogatory requests, and responses.
- Deposition transcripts and exhibits.
- Documents produced by the parties in this litigation.
- Documents produced by relevant third parties to this litigation.
- I have been provided access (in electronic format) to search the universe of documents that have been produced in this matter.

I have also been provided with the following:

- Expert report of Mark D. Tharp, dated July 1, 2020.

I have also utilized the following references:

- *The Merriam-Webster Dictionary*, Pocket Books edition, 1974.
- Casey D. Karlsen and Jacob Jackson, Esq., "Measuring and Defending Economic Damages in Breach of Fiduciary Duty Tort Claims", ***Insights***, Spring 2018, pgs. 19-26. http://www.willamette.com/insights_journal/18/spring_2018_3.pdf

IV. SUMMARY OF MY FINDINGS AND OPINIONS

At the request of the Receiver, I have prepared an analysis of the damages alleged in this matter. The Receiver has alleged damages as a result of the claims contained in its Third Amended Complaint ("Complaint"). The Receiver's insurance industry expert, Mark D. Tharp, has prepared a report which contains financial analyses which I have reviewed and applied as the basis for elements of my damage calculations.

Based on the information available to me to date, if called upon to testify, I expect to express the following findings and opinions:

1. Causation:

The Receiver's Third Amended Complaint alleges breach of fiduciary duty against Uni-Ter UMC and Uni-Ter CS (hereinafter collectively referred to at times as "Uni-Ter") as well as U.S. RE Corporation ("US RE"). Furthermore, the Complaint alleges negligent misrepresentation against Uni-Ter UMC.

The factual allegations asserted in the Third Amended Complaint, as well as evidence obtained through discovery thus far, strongly support the trier of fact ultimately determining that Defendants, and each of them, are liable for breach of fiduciary, as the facts demonstrate the

existence of the requisite elements of causation:[1] (i) L&C has sustained losses; (ii) L&C's loss could have been prevented if each of the Defendants (Uni-Ter UMC, Uni-Ter CS, and US RE) had performed their fiduciary duties as required; (iii) Each of the Defendants' acts or omissions were a substantial factor in bringing about the Receiver's losses; and (iv) L&C's loss would have been reasonably foreseeable to a person in the defendants positions under similar circumstances. Further, the factual allegations asserted in the Third Amended Complaint, as well as evidence obtained through discovery thus far, strongly support the trier of fact ultimately determining that Uni-Ter UMC made negligent misrepresentations to L&C.

The evidence of causation in this matter includes, without limitation, the Third Amended Complaint (and exhibits attached thereto) and the opinion of expert Mark Tharp as contained in his expert report dated July 31, 2020, as well as the documents relied upon by Mr. Tharp in his report. In his report, Mr. Tharp opines that L&Cs reinsurance program was not in compliance with the relevant statutes and/or regulations, and that this, along with the breaches of fiduciary duty by Uni-ter and US RE, resulted in L&C operating while in a hazardous financial condition, and/or being statutorily impaired and/or insolvent (as of no later than December 31, 2009). This opinion is supported by, without limitation, the following: (i) Uni-Ter was prohibited from committing or binding L&C to enter into a reinsurance agreement;[2] (ii) US RE was not allowed to broker reinsurance for L&C without being licensed in Nevada; (iii) "... reinsurance ceded arrangements brokered by US RE and recommended and advocated by Uni-Ter were structured for the benefit of US RE (and the reinsurers) rather than L&C (which structure was to the detriment of L&C)", which also constituted breaches of their fiduciary duties. (emphasis added)

In addition, Mr. Tharp found in his report that there existed strong evidence to support a fact-finder determining that L&C's operation at such time that it was in a hazardous financial condition and/or was statutorily impaired and/or insolvent, constituted breaches of the Defendants Uni-Ter's fiduciary duties, as well as a failure to comply with relevant statutes and/or regulations, and that this resulted in a negative surplus which increased dramatically as L&C continued to operate in violation of law. This opinion was supported in Mr. Tharp's report,

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[1] See *Commercial Torts Instruction* 15CT.18 at 15.22 citing: *Leavitt v. Leisure Sports Incorporation*, 103 Nev. 81, 734 P.2d 1221 (1987).

[2] NAC 683A.530 Prohibited acts of agent. (NRS 679B.130) "A managing general agent shall not: 1. Bind reinsurance or retrocessions on behalf of the insurer". Mark Tharp expert report at pg. 71.

which found, among other things, that : (i) L&C was prohibited from operating while in a hazardous financial condition and/or was statutorily impaired and/or insolvent;[3] and (ii) "UniTer's withholding of material information from L&C and the regulators and its failure to implement appropriate systems and procedures … were also a substantial factor of the insolvency of L&C", which also constituted breaches of their fiduciary duties.[4] (emphasis added)

Further, as a result of the aforementioned wrongful actions by the Defendants, L&C sustained damages as further indicated below. Had the Defendants each performed their fiduciary duties mentioned above, L&C would not have sustained damages associated with reinsurance and insolvency. As explained above and opined by Mr. Tharp, each of the Defendants' breaches, acts or omissions were a substantial factor in L&C sustaining damages. L&C damages were reasonably foreseeable to a person in Defendants' position under similar circumstances in that, among other things, the Defendants were aware of their fiduciary duties owed to L&C, including, without limitation, compliance with reinsurance and insolvency laws, regulations and requirements, and that in Defendants breaching those duties, it was reasonably foreseeable that L&C would sustain financial harm.

2. Relevant Measures of Damages:

The factual allegations asserted in the Third Amended Complaint, as well as evidence obtained through discovery thus far, strongly support the trier of fact ultimately determining that Defendants liable for the resulting damages from their breaches of fiduciary duties and the requisite elements of measure of damages have been met in this matter.[5] The principal amount of damages includes, without limitation, an award for each item of harm that was caused by each of the Defendants' wrongful conduct. The Third Amended Complaint asserts claims against three Defendants: Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation.

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[3] Ibid., at pg. 74.
[4] Ibid., at pg. 11.
[5] See *Commercial Torts Instruction* 15CT.19, 15.23 citing: *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 62 P.3d 720 (2009).

The damages suffered by Plaintiff occurred in three key intervals related to wrongful conduct by the Defendants in this matter: (i) Damages from the reinsurance beginning on April 1, 2005 to September 30, 2009 – the date (determined by expert Mark Tharp) at which L&C began operating while in a hazardous financial condition and/or was statutorily impaired and/or insolvent; and (ii) Damages associated with L&C operating while in a hazardous financial condition and/or statutorily impaired and/or insolvent, which resulted in a negative surplus (which continued to grow) after December 31, 2009; and (iii) Damages from the receivership administrative expenses incurred as a result of L&C's insolvency which resulted from L&C being placed into receivership. The relevant measure of damages that are alleged in the Third Amended Complaint, therefore, includes a measure of damages related to reinsurance and a measure of damages related to the insolvency beginning on January 1, 2010.

The included measure of damages was selected because: (1) This measure comports best with the allegations contained in the Third Amended Complaint; (2) The business nature, operation, and financial reporting of an insurance company such as L&C are atypical in that premium revenues are received initially but there is typically a lag before the corresponding claims paid and loss adjustment expenses are paid out in future years; and (3) The damage measures utilized in my analysis flow naturally from: (i) the losses that occurred; (ii) which culminated in the insolvency of L&C; and (iii) L&Cs resulting placement by the Nevada Dept. of Insurance into receivership.

Other measures of damages such as lost profits (or loss of business value) were considered but rejected for purposes of this analysis for the following reasons: (1) The losses suffered by an insurance company (such as L&C) do not meaningfully translate nor are conducive to the traditional lost profits or loss of business value analysis utilized in many commercial litigation disputes; (2) Other methods of measuring economic damages, such as comparing the income or the value of a company prior to and after the alleged damaging acts occurred, were not possible in this case because damaging acts occurred throughout the operating history of L&C making comparisons with other timeframes not possible; and (3) Other methods of measuring economic damages were also not possible given the unique nature risk retention

group industry in which no reliable data is available sufficient to create a benchmark for the purposes of comparison.

3. Amount of Damages:

Reinsurance

The first category of damages relates to reinsurance, and is measured by the ***"net reinsurance ceded"*** (loss to L&C) equal to the difference between "ceded premium" and "ceded loss & LAE" calculated by expert Mark D. Tharp. The amount of the damages resulting from reinsurance is the ***"net reinsurance ceded"*** by L&C which amounts to not less than **$7,986,000.** (See Kuga **Exhibit 3.1**)

Insolvency

The second category of damages is associated with L&C operating while in a hazardous financial condition and/or statutorily impaired and/or insolvent, which caused a ***negative surplus*** calculated by expert Mark Tharp which occurred after the date of hazardous financial condition and/or statutory impairment and/or insolvency through the most recent available negative surplus amount (currently as of September 30, 2019). The most recent negative surplus amount is no less than **$15,222,853**. (See Kuga **Exhibit 3.2**)

4. Allocation of Damages:

The principal amount of damages further includes an award for each item of harm that was caused by each of the defendants' wrongful conduct. The specific items of damage claimed in the Third Amended Complaint, for which a trier of fact may find each of the defendants to be liable is as follows:

Uni-Ter Underwriting Management Corp.

The Third Amended Complaint, as well as the evidence produced and discovered thus far in this matter, strongly supports a trier of fact determining specific items of damage against Uni-Ter UMC, including, without limitation, recommending and binding inappropriate

reinsurance through an unlicensed reinsurance intermediary in 2004, 2005-2006, 2007, 2008, 2009, 2010, 2011, and 2012, which was a substantial factor in the insolvency of L&C; negligently misrepresenting the financial condition of L&C and breaches of fiduciary duty associated with L&C operating while in a hazardous financial condition and/or statutorily impaired and/or insolvent from 3Q 2009 through September 2012. In my expert opinion, based upon the itemization of damages as calculated and set forth in Kuga **Exhibit 4** hereto, the total principal amount of damages for which Uni-Ter UMC is liable[6] is as follows: (1) as to damages associated with reinsurance, no less than **$7,986,000**; and (2) as for damages associated with insolvency, no less than **$15,222,853.**

Uni-Ter Claims Services Corp.

The Third Amended Complaint, as well as the evidence produced and discovered thus far in this matter, strongly support, strongly supports a trier of fact determining specific items of damage alleged in the Complaint against Uni-Ter CS, including, without limitation, recommending and binding inappropriate reinsurance through an unlicensed reinsurance intermediary in 2004, 2005-2006, 2007, 2008, 2009, 2010, 2011, and 2012, which was a substantial factor in the insolvency of L&C; breaching its fiduciary duty to L&C by, among other things, suppressing reserves and breaches of fiduciary duty associated with L&C operating while in a hazardous financial condition and/or statutorily impaired and/or insolvent from 3Q 2009 through September 2012. In my expert opinion, based upon the itemization of damages as calculated and set forth in Kuga **Exhibit 4** hereto, the total principal amount of damages for which Uni-Ter CS is liable[7] is as follows: (1) as to damages associated with reinsurance, no less than **$7,986,000;** and (2) as for damages associated with insolvency, no less than **$15,222,853.**

U.S. RE Corporation

The Third Amended Complaint, as well as the evidence produced and discovered thus far in this matter, strongly support, strongly supports a trier of fact determining specific items of damage against US RE, including damages related to US RE's numerous breaches of its

[6] All assertions of damages are dependent upon a final determination by the trier of fact.
[7] All assertions of damages are dependent upon a final determination by the trier of fact.

fiduciary duties, including, without limitation, recommending and binding inappropriate reinsurance as an unlicensed reinsurance intermediary in 2004, 2005-2006, 2007, 2008, 2009, 2010, 2011, and 2012, which was a substantial factor in the insolvency of L&C. In my expert opinion, based upon the itemization of damages as calculated and set forth in Kuga **Exhibit 4** hereto, the total principal amount of damages for which US RE is liable[8] is as follows: (1) as to damages associated with reinsurance, no less than **$7,986,000**; and (2) as for damages associated with insolvency, no less than **$15,222,853.**

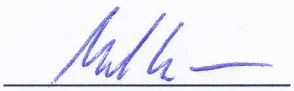
These findings and opinions are based on my review of the documents produced by the parties and provided to me by counsel as well as any additional material I have identified earlier in this statement, including without limitation the expert report of Mark Tharp and the Third Amended Complaint, as well as documents and exhibits thereto. My findings and opinions are also based upon my knowledge of the relevant economic, financial, and valuation theory, my professional experience, and my analysis of the relevant data and information I have thus far identified and obtained for this matter.

Should additional documents or information become available to me prior to trial, I reserve the right to supplement this expert witness statement accordingly.

In addition, I have not yet been provided with copies of any reports of the expert witness(es) retained by the defendants in this matter. Once those reports are completed and provided to me, I may find it necessary to conduct additional analyses to evaluate the findings and opinions of the defendant's expert witness(es). I reserve the right to supplement this expert witness statement accordingly to reflect any additional analyses conducted or opinions reached in this matter.

I am compensated at my billing rate of $350 per hour for my work in this matter. *See* Fee Schedule attached as **Exhibit 5.**

[8] All assertions of damages are dependent upon a final determination by the trier of fact.



Mark Kuga, Ph.D.

July 31, 2020

EXHIBIT 1

Mark W. Kuga, Ph.D.

Mark Kuga is President of Delta Economic Consulting.

Dr. Kuga specializes in economic and valuation analyses for businesses and individuals. He has conducted analyses of numerous companies, industries, and business situations. Dr. Kuga also has extensive expert witness experience performing forensic economic and valuation analyses in commercial and personal litigation disputes.

EDUCATION

Doctor of Philosophy, Economics, University of California, Los Angeles.

Master of Arts, Economics, University of California, Los Angeles.

Bachelor of Arts, Economics, University of Washington.

PREVIOUS EXPERIENCE

Principal and Director of Economic Analysis and Litigation Services, Willamette Management Associates, Portland, Oregon.

Senior Economist, Economic Analysis Corporation, Los Angeles, California.

Economist, Lexecon Inc., Chicago, Illinois.

TEACHING EXPERIENCE

Adjunct Instructor, Marylhurst University (formerly College), Business and Management Department, Graduate Program, 1996, 1998.

Adjunct Instructor, Portland State University, School of Business Administration and Statewide MBA Program, 1993-94, 1996.

PROFESSIONAL AFFILIATIONS

Past Member of Board of Directors, American Academy of Economic and Financial Experts, 1999-2001.

Past Member of Board of Directors, National Association of Forensic Economics, 2000-2002.

PUBLICATIONS

"Measuring Commercial Damages Via Lost Profits or Loss of Business Value: Are These Measures Redundant or Distinguishable?," (with Kenneth M. Kolaski), *The Journal of Law and Commerce*, Vol. 18, No. 1, Fall 1998

"Measuring the Lost Profit Damages of a New Business," *FCA Expert*, Vol. 4, No. 3, Fall 1998 (reprinted also in *Business Valuation Digest,* Vol. 5, Issue 2, November 1999)

"Evaluating Damages in Business Litigation Claims." Willamette Management Associates *Valuation Insights*, Autumn 1993

"Economic Analysis and Litigation Support." Willamette Management Associates *Valuation Insights*, Summer 1993

"The Decision to Franchise: Theory and Evidence," doctoral dissertation, 1989

EXHIBIT 2

MARK W. KUGA
PREVIOUS EXPERT TESTIMONY

PREVIOUS TRIAL TESTIMONY:

Trial – Gregg Lawrence v. Oregon State Fair Council
Circuit Court for the State of Oregon, County of Marion

Retained by defendant to analyze economic damages of a business owner in a personal injury dispute.

Retained by Drew K. Baumchen, Senior Assistant Attorney General, Trial Division, Civil Litigation Section, Oregon Dept. of Justice.

Provided trial testimony before court and jury on October 29, 2019.

Trial – Wendie L. Herkamp v. Jane Ann Hicks
Circuit Court for the State of Oregon, County of Marion

Retained by plaintiff to analyze economic damages in a personal injury dispute.

Retained by Lance D. Youd, Attorney at Law, Salem, Oregon.

Provided trial testimony before court and jury on October 8, 2019.

Arbitration – Katherine Olson-Engel v. State Farm

Retained by defendant to analyze economic damages of a business owner in a personal injury dispute.

Retained by Bill Martin of Schulte, Anderson, Downes, Aronson & Bittner, Portland, Oregon.

Provided arbitration testimony on April 22, 2019 before three arbitrators: Molly Jo Mullen, Lawrence Schuckman and Steve Piucci.

(There is no transcript of this testimony as no reporter was present during these proceedings.)

Trial – Saratoga Investments, LLC v. Westchester Surplus Lines Insurance Co., et al.
Circuit Court for the State of Oregon, County of Multnomah

Retained by plaintiff to analyze economic damages in a breach of contract dispute involving a forest products firm.

Retained by William A. Drew and John D. Ostrander, of Elliott, Ostrander & Preston, PC, Portland, Oregon.

Provided trial testimony before court and jury on April 4, 2019.

Arbitration – Danny Clifton v. State Farm

Retained by defendant to analyze economic damages of a business owner in personal injury dispute.

Retained by Bill Martin of Schulte, Anderson, Downes, Aronson & Bittner, Portland, Oregon.

Provided arbitration testimony on March 21, 2019 before three arbitrators: Judge Dale R. Koch, J. Brad Lewis and Hala J. Gores.

(There is no transcript of this testimony as no reporter was present during these proceedings.)

Trial – Tamara Trattner v. Marion County & Mike S. Harmel
Circuit Court for the State of Oregon, County of Marion

Retained by plaintiff to analyze economic damages in a personal injury dispute.

Retained by Travis S. Prestwich, Swanson , Lathen, Prestwich, Salem, Oregon.

Provided trial testimony before court and jury on October 24, 2018.

Arbitration – Steven Heinrich v. State Farm

Retained by defendant to analyze economic damages of an estate planning and elder law attorney in a personal injury dispute

Retained by Nicole M. Nowlin of Lewis Brisbois, Portland, Oregon.

Provided arbitration testimony on September 26, 2018 before three arbitrators: Carl R. Amala, Joe Durkee and Ken Elmore.

(There is no transcript of this testimony as no reporter was present during these proceedings.)

Trial – Stuart Wagner v. Brewer & Brewer, Inc.
Circuit Court for the State of Oregon, County of Lane
Case No. 16CV37586

Retained by defendant to analyze economic damages in a personal injury dispute.

Retained by Kathryn R. Morton, Law Office of Kathryn Reynolds Morton, Portland, Oregon.

Provided trial testimony before court and jury on March 1, 2018.

Trial – Ramona Abney-DeCamara v. City of Salem
Circuit Court for the State of Oregon, County of Marion
Case No. 16CV31872

Retained by plaintiff to analyze economic damages of a computer circuit board design professional in a personal injury dispute.

Retained by Carl R. Amala of Harris, Wyatt & Amala, LLC, Salem, Oregon.

Provided trial testimony before court and jury on September 21, 2017.

Trial – Estate of Michael Dominguez v. Jason Rodriguez, et al.
Circuit Court for the State of Oregon, County of Multnomah
Case No. 14-cv-11452

Retained by defendants to analyze economic damages in a wrongful death dispute.

Retained by Simon J. Harding of Schulte, Anderson, Downes, Aronson & Bittner, Portland, Oregon; Danny Hitt and James Hiller of Hitt Hiller Monfils Williams, LLP, Portland, Oregon.

Provided trial testimony before court and jury on August 3, 2017.

Trial – Quantum, Inc. v. Akeso Health Sciences, LLC
Akeso Health Sciences, LLC v. Quantum, Inc.
United States District Court, District of Oregon, Portland Division
Case No. 3:16-cv-00334-JE

Retained by plaintiff/counterclaim defendant to analyze the economic damages in a breach of implied contract and trademark infringement dispute regarding an exclusive and non-exclusive sales rights contract involving a patented nutritional supplement product.

Retained by Jon P. Stride of Tonkon Torp LLP, Portland, Oregon.

Provided trial testimony before court and jury on June 9, 2017.

Trial –
District Court for Clark County, Nevada
Case No. A-12-661338-B

Retained by plaintiff to analyze the economic damages in a breach of contract and unjust enrichment dispute regarding a supply agreement for rolled galvanized steel.

Retained by William Quinlan of Quinlan Law Firm, Chicago, Illinois.

Provided trial testimony before court on January 19, 2017.

PREVIOUS DEPOSITION TESTIMONY:

Fremont Food Emporium, LLC v. New El Portal, LLC, et al.

Retained by plaintiff to analyze and evaluate alleged economic damages in a breach of contract dispute involving a lease commercial real estate property.

Retained by Robert Ryan and Jordan Smith of Pisanelli Bice PLLC, Las Vegas, Nevada.

Provided deposition testimony on January 13, 2020.

BM-Bank JSC (f/k/a BM-Bank PJSC and Bank of Moscow) v. Marker Craig, LLC, and Marker, LLC

Retained by defendant to analyze and evaluate alleged economic damages in an alleged fraudulent transfer dispute involving a bank and a real estate investment company involving the funding of the acquisition of commercial real estate property.

Retained by Todd E. Kennedy of Kennedy & Couvillier, Las Vegas, Nevada.

Provided deposition testimony on July 11, 2019.

Witcraft v. Hix and A&R Aviation Services, Inc.

Retained by defendant to analyze and evaluate alleged economic damages in a breach of contract dispute between two shareholders in a closely-held private company.

Retained by Alan J. Wertjes of Wertjes Law Group, Olympia, Washington.

Provided deposition testimony on January 17, 2019.

Pinnacle Marketing Group, Inc. v. Golin/Harris International, Inc., et al.

Retained by plaintiff to analyze and evaluate the economic damages in a breach of contract and unjust enrichment dispute involving a marketing services firm.

Retained by John D. Ostrander, Elliott, Ostrander and Preston, Portland, Oregon.

Provided deposition testimony on July 16, 2018.

EXHIBIT 3.1

CALCULATION OF REINSURANCE DAMAGES

Commissioner of Ins. for Lewis & Clark RRG v. Uni-Ter UMC, Uni-Ter CS, & U.S. RE Corp.

Officers of L&C, Uni-Ter, & US RE:

Year	*Ceded Premium*	*Ceded Loss & LAE*	*Net Reinsurance Ceded*
2004	$100,000	$0	$100,000
2005	$633,000	$0	$633,000
2006	$1,152,000	$358,000	$794,000
2007	$1,108,000	$3,000	$1,105,000
2008	$1,343,000	$639,000	$704,000
2009	$1,797,000	$0	$1,797,000
2010	$2,465,000		$2,465,000
2011	$1,431,000	$1,043,000	$388,000
Total	$6,133,000	$1,000,000	**$7,986,000**

Sources:

2011 Annual Statement, Schedule P, Part 1 -- Summary (LC001338).

Tharp report, Exhibit AD.

EXHIBIT 3.2
CALCULATION OF INSOLVENCY DAMAGES
Commissioner of Ins. for Lewis & Clark RRG v. Uni-Ter UMC, Uni-Ter CS, & U.S. RE Corp.

Officers of L&C, Uni-Ter, & US RE:

	12/31/2008	***9/30/2009***	***12/31/2009***	***12/31/2010***	***12/31/2011***
Assets:					
Bonds (line 1)	$8,718,960	$9,028,839	$10,596,542	$12,668,070	$10,618,359
Cash (line 5)	$2,108,079	$2,461,186	$2,635,206	$1,274,252	$2,896,198
Investment income due and accrued (line 12/14)	$138,521	$67,481	$96,184	$95,414	$77,287
Uncollected premiums (line 13.1/15.1-15.3)	$1,235,706	$227,247	$871,340	$2,328,164	$122,031
Other amounts receivable under reinsurance contracts (line 14.3/16.3)	$1,700,000	$2,101,998	$1,793,000	$2,819,600	$3,039,002
Current federal income tax receivable (line 16.1/18.1)	$0	$62,355	$214,246	$61,213	$438,985
Net deferred tax asset (line 16.2/18.2)	***$0***	***$0***	***$0***	***$0***	***$0***
Aggregate write-ins (lines 17-23/19-25)	$1,191,771	$933,386	$1,420,904	$1,432,726	$2,455,209
Total assets	$15,093,037	$14,882,492	$17,627,422	$20,679,439	$19,647,071
Liabilities:					
Losses (line 1)	***$6,013,509***	***$7,153,578***	***$11,845,805***	***$17,956,687***	***$18,483,314***
Loss adjustment expense (line 3)	$720,951	$954,751	$1,233,678	$1,798,188	$2,259,096
Other expenses (line 5)	$1,448,456	$1,147,348	$1,827,168	$1,140,454	$200,354
Taxes, licenses and fees (line 6)	$218,159	$106,985	$211,888	$227,521	$138,243
Current federal income taxes (line 7.1)	$43,833	$0	$18,524	$0	$0
Unearned premiums (line 9-10)	$3,711,768	$4,223,356	$4,659,935	$4,099,449	$3,013,041
Ceded reinsurance premiums payable (line 12)	$1,325,517	$825,210	$1,372,251	$2,050,400	$750,084
Aggregate write-ins (line 23)	$269,419	$31,068	$42,863	$32,794	$87,514
Total liabilities	$13,751,612	$14,442,296	$21,212,112	$27,305,493	$24,931,646
Surplus (Insolvency)	$1,341,425	$440,196	($3,584,690)	($6,626,054)	($5,284,575)
Surplus Notes	$1,250,000	$1,000,000	$1,000,000	$1,000,000	$3,700,000
Total	$91,425	($559,804)	($4,584,690)	($7,626,054)	($8,984,575)
Net Insolvency from 9/30/2009:					
Reported Net Income (before Federal income taxes)	$887,115	$715,342	$333,017	$548,987	($5,631,435)
Adjustments	($2,765,594)	($3,750,368)	($7,616,038)	($11,205,764)	($8,909,891)
Adjusted Net Income	($1,878,479)	($3,035,026)	($7,283,021)	($10,656,777)	($14,541,326)
Sources:					
Annual (quarterly for 9/30/2009) statements	LC001523-24	LC001956-57	LC001523-24	LC001305-06	LC001305-06
Italized figures are adjusted per Mark Tharp	***Tharp Ex. AC***	***Tharp Ex. V***	***Tharp Ex. W***	***Tharp Ex. X***	***Tharp Ex. Y***
Annual (quarterly for 9/30/2009) statements	LC001219	LC001958	LC001219	LC001307	LC001307

EXHIBIT 4

CALCULATION OF ALLEGED DAMAGES

Commissioner of Ins. for Lewis & Clark RRG v. Uni-Ter UMC, Uni-Ter CS, & U.S. RE Corp.

Officers of L&C, Uni-Ter, & US RE:

Damages Associated with Reinsurance:	**$7,986,000**	**Exhibit 3.1**
Damages Associated with Insolvency:	**($15,222,853)**	**Exhibit 3.2**

EXHIBIT 5

EXPERT WITNESS FEE SCHEDULE
Mark Kuga, Ph.D.

Expert Witness Consulting, Reports, and Testimony	$350 per hour
Retainer	Due at time of retention based on scope of assignment.
Billing	Services billed at end of each calendar month and upon conclusion of case.
Travel	Airfare, Hotel & Ground Transportation (with prior approval of client).
Expenses	Parking and incidental expenses (all other with prior approval of client).

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EXHIBIT PAGE ONLY

EXHIBIT 4

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

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Erin.Kolmansberger@nelsonmullins.com

Attorneys for Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiffs, v. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP. UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	Case No. A-14-711535-C Dept. No.: XXVII **ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO FILE FOURTH AMENDED COMPLAINT**

This matter came before the Court for hearing on July 23, 2020 on Plaintiff's Motion for Leave to File Fourth Amended Complaint ("Motion"). Brenoch R. Wirthlin, Esq. appeared on behalf of Plaintiff Commissioner of Insurance for the State of Nevada ("Plaintiff"); George F. Ogilvie III, Esq., Jon N. Wilson, Esq. and Erin Kolmansberger, Esq. appeared on behalf of Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation; and Angela T. Nakamura Ochoa, Esq. appeared on behalf of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels.

Having considered the record and the briefs submitted in support of and in opposition to the Motion, and having entertained the arguments of counsel, the Court finds that the Motion is untimely; that Plaintiff unduly delayed the assertion of the new allegations and claims for relief set forth in the proposed Fourth Amended Complaint; that granting Plaintiff leave to file the Fourth Amended Complaint would unduly prejudice defendants; that the new defendant sought to be added was known to Plaintiff at the time of the filing of the original Complaint; and that the proposed new claims for relief do not relate back to the filing of the original Complaint and are, therefore, time-barred. Based on these findings and good cause appearing therefor,

IT IS HEREBY ORDERED that Plaintiff's Motion for Leave to File Fourth Amended Complaint is **DENIED**.

DATED this ____ day of July, 2020.

Dated this 10th day of August, 2020

Nancy L Allf

NANCY L. ALLF
District Court Judge

B19 B66 6A18 37FC
Nancy Allf
District Court Judge

McDONALD CARANO
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Approved as to Form and Content:

HUTCHISON & STEFFEN

By: /s/
Brenoch Wirthlin, Esq.
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145

Attorneys for Plaintiff Commissioner of Insurance for the State of Nevada

LIPSON NEILSON, P.C.

By: /s/
Angela T. Nakamura Ochoa, Esq.
9900 Covington Cross Drive, Ste. 120
Las Vegas, Nevada 89144

Attorneys for Robert Chur, et al.,

Submitted By:

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
George F. Ogilvie III, Esq. (#3552)
2300 West Sahara Avenue, Suite 1200
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Kimberly Freedman, Esq. (Appearing *Pro Hac Vice*)
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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 8/10/2020

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION,; DOES 1-50, inclusive; and ROES 51-100, inclusive; Defendants.	Case No.: A-14-711535-C Dept. No.: XXVII **NOTICE OF ENTRY OF ORDER**

Please take notice that an Order Denying Plaintiff's Motion for Leave to File Fourth Amended Complaint was entered on the 8th day of August, 2020, a copy of which is attached

///

///

hereto.

DATED this 8th day of August, 2020.

HUTCHISON & STEFFEN

By */s/Brenoch Wirthlin*

BRENOCH R. WIRTHLIN, ESQ.
Nevada Bar No. 10282
CHRIS ORME, ESQ.
Nevada Bar No. 10175
STUART J. TAYLOR, ESQ.
Nevada Bar No. 14285
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 8th day of August, 2020, I caused the document entitled **NOTICE OF ENTRY OF ORDER** to be served on the following by Electronic Service to:

ALL PARTIES ON THE E-SERVICE LIST

/s/Danielle Kelley
An Employee of Hutchison & Steffen, PLLC

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiffs, v. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP. UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	Case No. A-14-711535-C Dept. No.: XXVII **ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO FILE FOURTH AMENDED COMPLAINT**

This matter came before the Court for hearing on July 23, 2020 on Plaintiff's Motion for Leave to File Fourth Amended Complaint ("Motion"). Brenoch R. Wirthlin, Esq. appeared on behalf of Plaintiff Commissioner of Insurance for the State of Nevada ("Plaintiff"); George F. Ogilvie III, Esq., Jon N. Wilson, Esq. and Erin Kolmansberger, Esq. appeared on behalf of Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation; and Angela T. Nakamura Ochoa, Esq. appeared on behalf of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels.

Having considered the record and the briefs submitted in support of and in opposition to the Motion, and having entertained the arguments of counsel, the Court finds that the Motion is untimely; that Plaintiff unduly delayed the assertion of the new allegations and claims for relief set forth in the proposed Fourth Amended Complaint; that granting Plaintiff leave to file the Fourth Amended Complaint would unduly prejudice defendants; that the new defendant sought to be added was known to Plaintiff at the time of the filing of the original Complaint; and that the proposed new claims for relief do not relate back to the filing of the original Complaint and are, therefore, time-barred. Based on these findings and good cause appearing therefor,

IT IS HEREBY ORDERED that Plaintiff's Motion for Leave to File Fourth Amended Complaint is **DENIED**.

DATED this ____ day of July, 2020.

Dated this 10th day of August, 2020

Nancy L Allf

NANCY L. ALLF
District Court Judge

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DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiffs, v. 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 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO FILE FOURTH AMENDED COMPLAINT**

Case Number: A-14-711535-C

This matter came before the Court for hearing on July 23, 2020 on Plaintiff's Motion for Leave to File Fourth Amended Complaint ("Motion"). Brenoch R. Wirthlin, Esq. appeared on behalf of Plaintiff Commissioner of Insurance for the State of Nevada ("Plaintiff" or "Receiver"); George F. Ogilvie III, Esq., Jon N. Wilson, Esq. and Erin Kolmansberger, Esq. appeared on behalf of Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation; and Angela T. Nakamura Ochoa, Esq. appeared on behalf of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels.

Having considered the record and the briefs submitted in support of and in opposition to the Motion, and having entertained the arguments of counsel, and being fully informed in the premises, the Court makes the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. Lewis and Clark LTC Risk Retention Group, Inc. ("L&C") was formed in 2004. Between 2004 and February 28, 2013, L&C provided general and professional liability coverage to long term care facilities and home health providers. *See* Third Amended Complaint ("TAC") at ¶1.

2. Defendants Uni-Ter Underwriting Management Corp. ("Uni-Ter UMC") and Uni-Ter Claims Services Corp. ("Uni-Ter CS"), were retained to manage Lewis & Clark.

3. In the summer of 2011 L&C suffered adverse loss development.

4. The Nevada Division of Insurance ("DOI") filed a Receivership Action related to L&C in November, 2012, commencing case number A-12-672047-B ("Receivership Action"). Plaintiff Commissioner of Insurance for the State of Nevada was appointed as the Receiver.

5. On February 28, 2013, an order of liquidation ("Liquidation Order") was entered in the Receivership Action, appointing the Commissioner of Insurance as the Receiver of L&C. *See* Liquidation Order.

6. On December 23, 2014, the Receiver instituted this lawsuit against former directors of L&C Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels ("Director Defendants"), Uni-Ter UMC, Uni-Ter CS, and U.S. Re.

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In the initial complaint, the Receiver alleged claims of gross negligence and deepening of the insolvency against the Director Defendants, negligent misrepresentation against Uni-Ter UMC, breach of fiduciary duty against Uni-Ter UMC and Uni-Ter CS, and breach of fiduciary duty against U.S. Re.

7. On December 11, 2015, Director Defendants filed their Motion to Dismiss, challenging the sufficiency of the allegations of gross negligence and asserting that a claim for deepening insolvency required allegations of fraud such that the claims must be pled with specificity.

8. On June 13, 2016, the Receiver filed its Second Amended Complaint, and, subsequently, on August 5, 2016, the Receiver filed its Third Amended Complaint—the currently operative complaint—which contains the same claims against Defendants as the original Complaint and nearly 500 pages of exhibits.

9. On April 18, 2016, Director Defendants filed a Motion to Dismiss the First Amended Complaint, asserting that claims against officers and directors needed to be supported by claims of intentional misconduct, fraud or knowing violation of the law. Said Motion was subsequently denied.

10. During the period of September 5, 2017 through April 13, 2018, Director Defendants propounded written discovery upon Plaintiff.

11. Due to the multiple requests to extend discovery in this action and the then approaching 5-year rule expiration, this Court expressly conditioned its May 16, 2018 Order continuing discovery deadlines that it would be the "last stipulation to continue."

12. On August 14, 2018, the Director Defendants filed a Motion For Judgment On The Pleadings Pursuant To NRCP 12(C) ("Motion For Judgment On The Pleadings"). On October 11, 2020, this Court denied the Director Defendants' Motion for Judgment on the Pleadings.

13. Notwithstanding this Court's May 16, 2018 preclusion of further extensions, on December 12, 2018, the Receiver filed Plaintiff's Motion for Extension of Discovery Deadlines and to Continue Trial on Order Shortening Time (Fourth Request), which this Court granted in part and denied in part, extending discovery for sixty (60) days and ordering a firm trial setting.

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14. In and around July, 2018, Director Defendant Barbara Lumpkin passed away.

15. On November 8, 2018, the deposition of the NRCP 30(b)(6) witness for the Commissioner of Insurance for the State of Nevada took place, in which he frequently responded that the complaint spoke for itself and that he would be relying upon experts in response to the Defendants questioning. Mr. Greer also testified regarding the unavailability of certain Division of Insurance former employees. On March 8, 2019, the Director Defendants filed a Motion to Stay Proceedings Pending Petition for Writ of Mandamus on an Order Shortening Time. The Receiver joined in the request for a stay of these proceedings; Uni-Ter UMC, Uni-Ter CS and US Re opposed the imposition of a stay in significant part due to the ongoing and increasing prejudice it had experienced and would continue to experience in delaying the trial of the Receiver's claims.

16. On March 12, 2019, the Director Defendants filed their Notice of Filing of Petition for Writ of Mandamus with the Nevada Supreme Court. In their Petition for Writ of Mandamus, the Director Defendants challenged this Court's denial of the Director Defendants' Motion for Judgment on the Pleadings.

17. On March 14, 2019, this Court granted the Motion to Stay Proceedings Pending Petition for Writ of Mandamus, and imposed an immediate stay (the "Stay") of all proceedings in this matter.

18. Prior to the March 14, 2019 imposition of the Stay, the deadlines for moving to amend pleadings or add parties and for the Receiver to serve its initial expert reports were March 15, 2018.

19. On February 27, 2020, the Nevada Supreme Court issued its Opinion ("NSC Opinion") granting the Director Defendants' Petition for Writ of Mandamus, and instructed this Court to vacate its order denying the Director Defendants' Motion for Judgment on the Pleadings, and to enter a new order granting the Director Defendants' Motion for Judgment on the Pleadings. The NSC Opinion left to this Court's discretion whether to grant the Receiver leave to file a fourth amended complaint.

20. On April 6, 2020, the Receiver filed in this Court Plaintiff's Motion for Clarification on Order Shortening Time ("Plaintiff's Motion for Clarification").

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21. On April 29, 2020, the Receiver filed its Petition for Rehearing ("Plaintiff's Petition") regarding the Nevada Supreme Court's granting of the Director Defendants' Petition for Writ of Mandamus.

22. On May 10, 2020, the Receiver filed its Second Supplemental Brief to the Motion for Clarification ("Second Supplemental Brief"). In the Second Supplemental Brief, the Receiver represented:

> **Motion to Amend**. Given the recent decision by the Nevada Supreme Court (in Chur), Plaintiff will be filing a Motion to Amend its Complaint ***consistent with the Chur decision***. As a result of the Nevada Supreme Court disavowing *Shoen*, Plaintiff is asserting allegations ***to support its Complaint and claims previously asserted therein with respect to the Director Defendants***. This will likely result in additional motion practice and require targeted discovery.

See Second Supplemental Brief at 5 (emphasis added).

23. On May 14, 2020, because the writ petition proceedings before the Nevada Supreme Court were not concluded, the parties entered into a stipulation continuing the hearing on Plaintiff's Motion for Clarification and extending the Stay until June 18, 2020.

24. On May 22, 2020, the Nevada Supreme Court issued its Order Denying Rehearing, thereby affirming the Opinion, and directing this Court to enter an order granting the Director Defendants' Motion for Judgment on the Pleadings, but leaving to this Court's discretion whether to grant the Receiver leave to file a fourth amended complaint.

25. At the time of the June 18, 2020 hearing on Plaintiff's Motion for Clarification, the Receiver again represented its intention to seek leave to file a Fourth Amended Complaint to remedy the deficiencies identified in the NSC Opinion; the Receiver did not express or intimate that it would be seeking to add new claims against Uni-Ter UMC, Uni-Ter CS or US Re, or seeking to add a new party.

26. Also at the time of the June 18, 2020 hearing, the Receiver requested that the Stay be extended to July 1, 2020; the Defendants objected to the Receiver's request, and requested that the Stay be lifted immediately. This Court granted Plaintiff's Motion for Clarification, and ordered that the Stay be lifted as of July 1, 2020.

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27. On June 24, 2020, the Receiver filed Plaintiff's Motion for Preferential Trial Setting And For Issuance of A New Discovery Scheduling Order or, In the Alternative, Motion to Stay All Discovery During the Pendency of Motion For Leave to File Fourth Amended Complaint; On Order Shortening Time ("Plaintiff's Motion for Preferential Trial Setting") seeking, *inter alia*, to extend the July 2, 2020 deadline for the Receiver to serve its initial expert disclosures.

28. At the time of the July 1, 2020 hearing on Plaintiff's Motion for Preferential Trial Setting, the Receiver sought a further extension of the July 2, 2020 deadline for the Receiver to serve its initial expert disclosures. The Defendants objected to the Receiver's request, and requested that the Court direct the Receiver to serve its initial expert disclosures on July 2. This Court granted the Receiver's request, and extended the deadline for the Receiver to served its initial expert disclosures to the conclusion of the hearing of Receiver's anticipated Motion for Leave to File Fourth Amended Complaint. As of the date of the hearing on the Receiver's Motion for Leave to File Fourth Amended Complaint, Plaintiff had still not made her initial expert disclosure.

29. On July 2, 2020, the Receiver filed its Motion for Leave to File Fourth Amended Complaint, falsely representing to this Court that "[o]ther than seeking to add Piccione as a Defendant and asserting ***a new claim against him***, the Fourth Amended Complaint ***does not add new claims against the Defendants***—it simply adds factual allegations to support the claims that have been pending against the Defendants for years and substitutes causes of action (i.e., breach of fiduciary duty in place of gross negligence)." *See* Motion for Leave to File Fourth Amended Complaint at 30:15-18 (emphasis added).

30. In actuality, the Receiver's proposed Fourth Amended Complaint seeks: (i) to amend the allegations against the Director Defendants in accordance with the NSC Opinion, and (ii) to assert three causes of action against a new defendant, Tal Piccione, for deepening of the insolvency and aiding and abetting breach of fiduciary duty (Ninth, Seventeenth, and Eighteenth Claims), two ***new*** causes of action against Uni-Ter UMC for deepening of the insolvency and aiding and abetting breach of fiduciary duty (Ninth and Fourteenth Claims); two ***new*** causes of action against Uni-Ter CS for deepening of the insolvency and aiding and abetting breach of

fiduciary duty (Ninth and Fifteenth Claims); and two ***new*** causes of action against U.S. Re for deepening of the insolvency and aiding and abetting breach of fiduciary duty (Ninth and Sixteenth Claims). *See* proposed Fourth Amended Complaint at ¶¶ 697-727).

31. The Receiver's failure to seek to add the new defendant and the new claims against Uni-Ter UMC, Uni-Ter CS or US Re in the four (4) years and three (3) months between the Receiver's December 23, 2014 filing of the original Complaint and the March 14, 2019 imposition of the Stay constitutes undue delay.

32. The Receiver's failure to disclose its intention to add a new defendant and new claims against Uni-Ter UMC, Uni-Ter CS or US Re in its filings and oral representations to counsel and this Court prior to the filing of its Motion for Leave to File Fourth Amended Complaint constitutes bad faith and reflects dilatory motives. *See MEI-GSR Holdings, LLC v. Peppermill Casinos*, Inc., 416 P.3d 249, 254–55 (Nev. 2018).

33. The Receiver's attempt to add a new defendant and new claims against Uni-Ter UMC, Uni-Ter CS and U.S. Re will further delay this litigation. Allowing the new claims will broaden the scope of the litigation, will likely result in motions to dismiss being filed, and will require additional discovery, including depositions of several individuals who have already been deposed, with less than five (5) months remaining before discovery cutoff.

34. The identity of the individual whom Plaintiff seeks to add as a defendant was known to Plaintiff at the time of the December 23, 2014 filing of the original Complaint. *See* proposed Fourth Amended Complaint at ¶¶ 29-30 ("***at all relevant times including as of the time the Receivership Action was filed***," Mr. Piccione was the "Chairman, President, Chief Executive Officer, and a Director of U.S. RE" and "Chairman and a Director of Uni-Ter." (emphasis added).

35. The factual predicate and the legal basis for the new claims for deepening of the insolvency and aiding and abetting breach of fiduciary duty Plaintiff seeks to assert against the new defendant, Uni-Ter UMC, Uni-Ter CS and US Re were known or should have been known to Plaintiff at the time of the December 23, 2014 filing of the original Complaint.

36. The Receiver acted dilatorily in failing to seek to amend the TAC to assert the new claims for deepening of the insolvency and aiding and abetting breach of fiduciary duty Plaintiff

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seeks to assert against the new defendant, Uni-Ter UMC, Uni-Ter CS and US Re much earlier. *See Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 288, 357 P.3d 966, 972 (2015).

37. Uni-Ter UMC, Uni-Ter CS and U.S. Re have ceased doing business and now must rely on former employees, over whom they have no control, to testify on their behalf and who are outside the jurisdiction of this Court for subpoena purposes. Uni-Ter UMC, UniTer CS and U.S. Re have consistently advised of counsel and this Court of the difficulties associated with locating former employees to depose or, presumably, call to testify at trial. Allowing the Receiver to amend the TAC will be detrimental to Uni-Ter UMC, Uni-Ter CS and U.S. Re's ability to properly defend themselves at the eventual trial in this case, resulting in undue prejudice.

38. As it relates to the Director Defendants, Plaintiff's proposed Fourth Amended Complaint seeks to add claims and allegations that the Director Defendants knowingly violated the law.

39. Between the deposition testimony of Plaintiff's NRCP 30(b)(6) designee and Plaintiff's responses to written discovery, there is no factual basis for Plaintiff's new allegation that Director Defendants knowingly violated the law, as Plaintiff's proposed Fourth Amended Complaint alleges.

40. With the great passage of time of the alleged violations of law and the fact that witnesses are unavailable, the Director Defendants will be unduly prejudiced in establishing their defenses to Plaintiff's new theory that the Director Defendants knowingly violated the law.If any of these findings of fact should more properly be identified as a conclusion of law, then it shall be deemed a conclusion of law.

CONCLUSIONS OF LAW

1. While leave to amend should be freely given when justice so requires, "[t]his does not, however, mean that a trial judge may not, in a proper case, deny a motion to amend." *Stephens v. S. Nevada Music Co., Inc.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973). Indeed, "[i]f that were the intent, leave of court would not be required." *Id*.

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2. A denial of leave to amend may be warranted if undue delay, bad faith, or dilatory motives are involved. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000).

3. Where a plaintiff has previously amended her complaint, the discretion to deny further amendment is "particularly broad." *Cafasso v. Gen. Dynamics C4 Sys.*, 637 F.3d 1047, 1058 (9th Cir. 2011).

4. Leave to amend should not be granted if the proposed amendment would be futile. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Halcrow, Inc. v. Eighth Jud. Dist. Ct.*, 129 Nev. 394, 398, 302 P.3d 1148, 1152 (2013), *as corrected* (Aug. 14, 2013).

5. A proposed amendment may be deemed futile if the plaintiff seeks to amend the complaint in order to plead an impermissible claim. *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 289, 357 P.3d 966, 973 (Nev. App. 2015).

6. In Nevada, the three-year statute of limitations in NRS § 11.190(3)(d) applies to a claim for aiding and abetting a breach of fiduciary duty. *See USA CM Liquidating Trust v. Deloitte & Touche, LLP*, 764 F.Supp.2d 1210, 1231 (D.Nev.2011), *aff'd sub nom.*, 523 Fed. Appx. 488 (9th Cir. 2013)(unpublished).

7. The Plaintiff's proposed claims for aiding and abetting accrued when the Plaintiff "knew or reasonably should have known, of the facts giving rise to the breach" of fiduciary duty claims. *See In re Amerco Derivative Litig.*, 127 Nev. 196, 252 P.3d 681 (2011).

8. Since the Plaintiff's original Complaint filed in December 2014 included claims for breach of fiduciary duty against Uni-Ter and U.S. Re., the Plaintiff's proposed claims for aiding and abetting those purported breaches of fiduciary duty would have expired in December 2017, which is three years after the filing of the original Complaint.

9. The proposed aiding and abetting claims are therefore time-barred unless they relate back to the original Complaint pursuant to NRCP 15(c).

10. A new claim based upon a new theory of liability asserted in an amended pleading does not relate back under NRCP 15(c) after the statute of limitations has run. *Badger v. Eighth Jud. Dist. Ct.*, 373 P.3d 89, 94–95 (Nev. 2016).

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11. The fictitious defendant rule in NRCP 10(d) provides a "narrow exception, allowing the pleading of fictitious defendants only where there is an uncertainty as to their names." *Lunn v. American Maintenance Corp*., 96 Nev. 787, 618 P.2d 343 (1980). The fictitious defendant rule, however, does not apply to the "addition of a party defendant." *Id*.

12. In order to substitute a newly-named defendant for a previously named Doe defendant under NCRP 10(d), the party seeking the substitution must satisfy the requirements set forth in *Nurenberger Hercules-Werke GMBH v. Virostek*, 107 Nev. 873, 822 P.2d 1100 (1991), which include: (1) "pleading the basis for naming defendants by other than their true identity, and clearly specifying the connection between the intended defendants and the conduct, activity, or omission upon which the cause of action is based;" and (2) "exercising reasonable diligence in ascertaining the true identity of the intended defendants and promptly moving to amend the complaint in order to substitute the actual for the fictional." *Id.* at 881. Satisfaction of these elements is "necessary to the granting of an amendment that relates back to the date of the filing of the original complaint." *Id*.

13. While the Plaintiff vaguely pled fictitious defendants in its original Complaint, she has failed to meet the requirements of *Nurenberger*.

14. The Plaintiff's attempt to add the new defendant, Tal Piccione, is not substitution of a Doe defendant under NRCP 10(d), but an attempt to add a new party defendant under NRCP 15(c).

15. As a new claim based upon a new theory of liability asserted against a new party defendant in an amended pleading does not relate back under NRCP 15(c) after the statute of limitations has run, the Plaintiff's attempt to add the new party defendant is futile.

16. Justice does not require granting leave to amend in this instance because the Receiver acted dilatorily in failing to seek to amend the TAC to assert the new claims for deepening of the insolvency and aiding and abetting breach of fiduciary duty Plaintiff seeks to assert against the new defendant, Uni-Ter UMC, Uni-Ter CS and US Re much earlier. *See Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 288, 357 P.3d 966, 972 (2015).

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17. Justice does not require granting leave to amend for Plaintiff to file the proposed Fourth Amended Complaint as to the Director Defendants because Plaintiff unduly delayed bringing said complaint and it would be unduly prejudicial for the Director Defendants to defend such theories of liability at this point.

18. If any of these conclusions of law should more properly be identified as a finding of fact, then it shall be deemed a finding of fact.

ORDER

IT IS HEREBY ORDERED that Plaintiff's Motion for Leave to File Fourth Amended Complaint is **DENIED**.

DATED this ____ day of August, 2020.

Dated this 10th day of August, 2020

Nancy L Allf

NANCY L. ALLF
District Court Judge

B48 88C D21A 9B68
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DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP. UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	Case No. A-14-711535-C Dept. No.: XXVII **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO FILE FOURTH AMENDED COMPLAINT**

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Case Number: A-14-711535-C

PLEASE TAKE NOTICE that Findings of Fact, Conclusions of Law and Order Denying Plaintiff's Motion for Leave to File Fourth Amended Complaint was entered in the above-referenced case on the 10th day of August, a copy of which is attached hereto.

Dated this 10th day of August, 2020.

McDONALD CARANO LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on or about the 10th day of August, 2020, a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO FILE FOURTH AMENDED COMPLAINT** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiffs, v. 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 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO FILE FOURTH AMENDED COMPLAINT**

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This matter came before the Court for hearing on July 23, 2020 on Plaintiff's Motion for Leave to File Fourth Amended Complaint ("Motion"). Brenoch R. Wirthlin, Esq. appeared on behalf of Plaintiff Commissioner of Insurance for the State of Nevada ("Plaintiff" or "Receiver"); George F. Ogilvie III, Esq., Jon N. Wilson, Esq. and Erin Kolmansberger, Esq. appeared on behalf of Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation; and Angela T. Nakamura Ochoa, Esq. appeared on behalf of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels.

Having considered the record and the briefs submitted in support of and in opposition to the Motion, and having entertained the arguments of counsel, and being fully informed in the premises, the Court makes the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. Lewis and Clark LTC Risk Retention Group, Inc. ("L&C") was formed in 2004. Between 2004 and February 28, 2013, L&C provided general and professional liability coverage to long term care facilities and home health providers. *See* Third Amended Complaint ("TAC") at ¶1.

2. Defendants Uni-Ter Underwriting Management Corp. ("Uni-Ter UMC") and Uni-Ter Claims Services Corp. ("Uni-Ter CS"), were retained to manage Lewis & Clark.

3. In the summer of 2011 L&C suffered adverse loss development.

4. The Nevada Division of Insurance ("DOI") filed a Receivership Action related to L&C in November, 2012, commencing case number A-12-672047-B ("Receivership Action"). Plaintiff Commissioner of Insurance for the State of Nevada was appointed as the Receiver.

5. On February 28, 2013, an order of liquidation ("Liquidation Order") was entered in the Receivership Action, appointing the Commissioner of Insurance as the Receiver of L&C. *See* Liquidation Order.

6. On December 23, 2014, the Receiver instituted this lawsuit against former directors of L&C Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels ("Director Defendants"), Uni-Ter UMC, Uni-Ter CS, and U.S. Re.

In the initial complaint, the Receiver alleged claims of gross negligence and deepening of the insolvency against the Director Defendants, negligent misrepresentation against Uni-Ter UMC, breach of fiduciary duty against Uni-Ter UMC and Uni-Ter CS, and breach of fiduciary duty against U.S. Re.

7. On December 11, 2015, Director Defendants filed their Motion to Dismiss, challenging the sufficiency of the allegations of gross negligence and asserting that a claim for deepening insolvency required allegations of fraud such that the claims must be pled with specificity.

8. On June 13, 2016, the Receiver filed its Second Amended Complaint, and, subsequently, on August 5, 2016, the Receiver filed its Third Amended Complaint—the currently operative complaint—which contains the same claims against Defendants as the original Complaint and nearly 500 pages of exhibits.

9. On April 18, 2016, Director Defendants filed a Motion to Dismiss the First Amended Complaint, asserting that claims against officers and directors needed to be supported by claims of intentional misconduct, fraud or knowing violation of the law. Said Motion was subsequently denied.

10. During the period of September 5, 2017 through April 13, 2018, Director Defendants propounded written discovery upon Plaintiff.

11. Due to the multiple requests to extend discovery in this action and the then approaching 5-year rule expiration, this Court expressly conditioned its May 16, 2018 Order continuing discovery deadlines that it would be the "last stipulation to continue."

12. On August 14, 2018, the Director Defendants filed a Motion For Judgment On The Pleadings Pursuant To NRCP 12(C) ("Motion For Judgment On The Pleadings"). On October 11, 2020, this Court denied the Director Defendants' Motion for Judgment on the Pleadings.

13. Notwithstanding this Court's May 16, 2018 preclusion of further extensions, on December 12, 2018, the Receiver filed Plaintiff's Motion for Extension of Discovery Deadlines and to Continue Trial on Order Shortening Time (Fourth Request), which this Court granted in part and denied in part, extending discovery for sixty (60) days and ordering a firm trial setting.

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14. In and around July, 2018, Director Defendant Barbara Lumpkin passed away.

15. On November 8, 2018, the deposition of the NRCP 30(b)(6) witness for the Commissioner of Insurance for the State of Nevada took place, in which he frequently responded that the complaint spoke for itself and that he would be relying upon experts in response to the Defendants questioning. Mr. Greer also testified regarding the unavailability of certain Division of Insurance former employees. On March 8, 2019, the Director Defendants filed a Motion to Stay Proceedings Pending Petition for Writ of Mandamus on an Order Shortening Time. The Receiver joined in the request for a stay of these proceedings; Uni-Ter UMC, Uni-Ter CS and US Re opposed the imposition of a stay in significant part due to the ongoing and increasing prejudice it had experienced and would continue to experience in delaying the trial of the Receiver's claims.

16. On March 12, 2019, the Director Defendants filed their Notice of Filing of Petition for Writ of Mandamus with the Nevada Supreme Court. In their Petition for Writ of Mandamus, the Director Defendants challenged this Court's denial of the Director Defendants' Motion for Judgment on the Pleadings.

17. On March 14, 2019, this Court granted the Motion to Stay Proceedings Pending Petition for Writ of Mandamus, and imposed an immediate stay (the "Stay") of all proceedings in this matter.

18. Prior to the March 14, 2019 imposition of the Stay, the deadlines for moving to amend pleadings or add parties and for the Receiver to serve its initial expert reports were March 15, 2018.

19. On February 27, 2020, the Nevada Supreme Court issued its Opinion ("NSC Opinion") granting the Director Defendants' Petition for Writ of Mandamus, and instructed this Court to vacate its order denying the Director Defendants' Motion for Judgment on the Pleadings, and to enter a new order granting the Director Defendants' Motion for Judgment on the Pleadings. The NSC Opinion left to this Court's discretion whether to grant the Receiver leave to file a fourth amended complaint.

20. On April 6, 2020, the Receiver filed in this Court Plaintiff's Motion for Clarification on Order Shortening Time ("Plaintiff's Motion for Clarification").

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21. On April 29, 2020, the Receiver filed its Petition for Rehearing ("Plaintiff's Petition") regarding the Nevada Supreme Court's granting of the Director Defendants' Petition for Writ of Mandamus.

22. On May 10, 2020, the Receiver filed its Second Supplemental Brief to the Motion for Clarification ("Second Supplemental Brief"). In the Second Supplemental Brief, the Receiver represented:

> **Motion to Amend**. Given the recent decision by the Nevada Supreme Court (in Chur), Plaintiff will be filing a Motion to Amend its Complaint ***consistent with the Chur decision***. As a result of the Nevada Supreme Court disavowing *Shoen*, Plaintiff is asserting allegations ***to support its Complaint and claims previously asserted therein with respect to the Director Defendants***. This will likely result in additional motion practice and require targeted discovery.

See Second Supplemental Brief at 5 (emphasis added).

23. On May 14, 2020, because the writ petition proceedings before the Nevada Supreme Court were not concluded, the parties entered into a stipulation continuing the hearing on Plaintiff's Motion for Clarification and extending the Stay until June 18, 2020.

24. On May 22, 2020, the Nevada Supreme Court issued its Order Denying Rehearing, thereby affirming the Opinion, and directing this Court to enter an order granting the Director Defendants' Motion for Judgment on the Pleadings, but leaving to this Court's discretion whether to grant the Receiver leave to file a fourth amended complaint.

25. At the time of the June 18, 2020 hearing on Plaintiff's Motion for Clarification, the Receiver again represented its intention to seek leave to file a Fourth Amended Complaint to remedy the deficiencies identified in the NSC Opinion; the Receiver did not express or intimate that it would be seeking to add new claims against Uni-Ter UMC, Uni-Ter CS or US Re, or seeking to add a new party.

26. Also at the time of the June 18, 2020 hearing, the Receiver requested that the Stay be extended to July 1, 2020; the Defendants objected to the Receiver's request, and requested that the Stay be lifted immediately. This Court granted Plaintiff's Motion for Clarification, and ordered that the Stay be lifted as of July 1, 2020.

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27. On June 24, 2020, the Receiver filed Plaintiff's Motion for Preferential Trial Setting And For Issuance of A New Discovery Scheduling Order or, In the Alternative, Motion to Stay All Discovery During the Pendency of Motion For Leave to File Fourth Amended Complaint; On Order Shortening Time ("Plaintiff's Motion for Preferential Trial Setting") seeking, *inter alia*, to extend the July 2, 2020 deadline for the Receiver to serve its initial expert disclosures.

28. At the time of the July 1, 2020 hearing on Plaintiff's Motion for Preferential Trial Setting, the Receiver sought a further extension of the July 2, 2020 deadline for the Receiver to serve its initial expert disclosures. The Defendants objected to the Receiver's request, and requested that the Court direct the Receiver to serve its initial expert disclosures on July 2. This Court granted the Receiver's request, and extended the deadline for the Receiver to served its initial expert disclosures to the conclusion of the hearing of Receiver's anticipated Motion for Leave to File Fourth Amended Complaint. As of the date of the hearing on the Receiver's Motion for Leave to File Fourth Amended Complaint, Plaintiff had still not made her initial expert disclosure.

29. On July 2, 2020, the Receiver filed its Motion for Leave to File Fourth Amended Complaint, falsely representing to this Court that "[o]ther than seeking to add Piccione as a Defendant and asserting ***a new claim against him***, the Fourth Amended Complaint ***does not add new claims against the Defendants***—it simply adds factual allegations to support the claims that have been pending against the Defendants for years and substitutes causes of action (i.e., breach of fiduciary duty in place of gross negligence)." *See* Motion for Leave to File Fourth Amended Complaint at 30:15-18 (emphasis added).

30. In actuality, the Receiver's proposed Fourth Amended Complaint seeks: (i) to amend the allegations against the Director Defendants in accordance with the NSC Opinion, and (ii) to assert three causes of action against a new defendant, Tal Piccione, for deepening of the insolvency and aiding and abetting breach of fiduciary duty (Ninth, Seventeenth, and Eighteenth Claims), two ***new*** causes of action against Uni-Ter UMC for deepening of the insolvency and aiding and abetting breach of fiduciary duty (Ninth and Fourteenth Claims); two ***new*** causes of action against Uni-Ter CS for deepening of the insolvency and aiding and abetting breach of

fiduciary duty (Ninth and Fifteenth Claims); and two ***new*** causes of action against U.S. Re for deepening of the insolvency and aiding and abetting breach of fiduciary duty (Ninth and Sixteenth Claims). *See* proposed Fourth Amended Complaint at ¶¶ 697-727).

31. The Receiver's failure to seek to add the new defendant and the new claims against Uni-Ter UMC, Uni-Ter CS or US Re in the four (4) years and three (3) months between the Receiver's December 23, 2014 filing of the original Complaint and the March 14, 2019 imposition of the Stay constitutes undue delay.

32. The Receiver's failure to disclose its intention to add a new defendant and new claims against Uni-Ter UMC, Uni-Ter CS or US Re in its filings and oral representations to counsel and this Court prior to the filing of its Motion for Leave to File Fourth Amended Complaint constitutes bad faith and reflects dilatory motives. *See MEI-GSR Holdings, LLC v. Peppermill Casinos*, Inc., 416 P.3d 249, 254–55 (Nev. 2018).

33. The Receiver's attempt to add a new defendant and new claims against Uni-Ter UMC, Uni-Ter CS and U.S. Re will further delay this litigation. Allowing the new claims will broaden the scope of the litigation, will likely result in motions to dismiss being filed, and will require additional discovery, including depositions of several individuals who have already been deposed, with less than five (5) months remaining before discovery cutoff.

34. The identity of the individual whom Plaintiff seeks to add as a defendant was known to Plaintiff at the time of the December 23, 2014 filing of the original Complaint. *See* proposed Fourth Amended Complaint at ¶¶ 29-30 ("***at all relevant times including as of the time the Receivership Action was filed***," Mr. Piccione was the "Chairman, President, Chief Executive Officer, and a Director of U.S. RE" and "Chairman and a Director of Uni-Ter." (emphasis added).

35. The factual predicate and the legal basis for the new claims for deepening of the insolvency and aiding and abetting breach of fiduciary duty Plaintiff seeks to assert against the new defendant, Uni-Ter UMC, Uni-Ter CS and US Re were known or should have been known to Plaintiff at the time of the December 23, 2014 filing of the original Complaint.

36. The Receiver acted dilatorily in failing to seek to amend the TAC to assert the new claims for deepening of the insolvency and aiding and abetting breach of fiduciary duty Plaintiff

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seeks to assert against the new defendant, Uni-Ter UMC, Uni-Ter CS and US Re much earlier. *See Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 288, 357 P.3d 966, 972 (2015).

37. Uni-Ter UMC, Uni-Ter CS and U.S. Re have ceased doing business and now must rely on former employees, over whom they have no control, to testify on their behalf and who are outside the jurisdiction of this Court for subpoena purposes. Uni-Ter UMC, UniTer CS and U.S. Re have consistently advised of counsel and this Court of the difficulties associated with locating former employees to depose or, presumably, call to testify at trial. Allowing the Receiver to amend the TAC will be detrimental to Uni-Ter UMC, Uni-Ter CS and U.S. Re's ability to properly defend themselves at the eventual trial in this case, resulting in undue prejudice.

38. As it relates to the Director Defendants, Plaintiff's proposed Fourth Amended Complaint seeks to add claims and allegations that the Director Defendants knowingly violated the law.

39. Between the deposition testimony of Plaintiff's NRCP 30(b)(6) designee and Plaintiff's responses to written discovery, there is no factual basis for Plaintiff's new allegation that Director Defendants knowingly violated the law, as Plaintiff's proposed Fourth Amended Complaint alleges.

40. With the great passage of time of the alleged violations of law and the fact that witnesses are unavailable, the Director Defendants will be unduly prejudiced in establishing their defenses to Plaintiff's new theory that the Director Defendants knowingly violated the law.If any of these findings of fact should more properly be identified as a conclusion of law, then it shall be deemed a conclusion of law.

CONCLUSIONS OF LAW

1. While leave to amend should be freely given when justice so requires, "[t]his does not, however, mean that a trial judge may not, in a proper case, deny a motion to amend." *Stephens v. S. Nevada Music Co., Inc.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973). Indeed, "[i]f that were the intent, leave of court would not be required." *Id*.

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2. A denial of leave to amend may be warranted if undue delay, bad faith, or dilatory motives are involved. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000).

3. Where a plaintiff has previously amended her complaint, the discretion to deny further amendment is "particularly broad." *Cafasso v. Gen. Dynamics C4 Sys.*, 637 F.3d 1047, 1058 (9th Cir. 2011).

4. Leave to amend should not be granted if the proposed amendment would be futile. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Halcrow, Inc. v. Eighth Jud. Dist. Ct.*, 129 Nev. 394, 398, 302 P.3d 1148, 1152 (2013), *as corrected* (Aug. 14, 2013).

5. A proposed amendment may be deemed futile if the plaintiff seeks to amend the complaint in order to plead an impermissible claim. *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 289, 357 P.3d 966, 973 (Nev. App. 2015).

6. In Nevada, the three-year statute of limitations in NRS § 11.190(3)(d) applies to a claim for aiding and abetting a breach of fiduciary duty. *See USA CM Liquidating Trust v. Deloitte & Touche, LLP*, 764 F.Supp.2d 1210, 1231 (D.Nev.2011), *aff'd sub nom.*, 523 Fed. Appx. 488 (9th Cir. 2013)(unpublished).

7. The Plaintiff's proposed claims for aiding and abetting accrued when the Plaintiff "knew or reasonably should have known, of the facts giving rise to the breach" of fiduciary duty claims. *See In re Amerco Derivative Litig.*, 127 Nev. 196, 252 P.3d 681 (2011).

8. Since the Plaintiff's original Complaint filed in December 2014 included claims for breach of fiduciary duty against Uni-Ter and U.S. Re., the Plaintiff's proposed claims for aiding and abetting those purported breaches of fiduciary duty would have expired in December 2017, which is three years after the filing of the original Complaint.

9. The proposed aiding and abetting claims are therefore time-barred unless they relate back to the original Complaint pursuant to NRCP 15(c).

10. A new claim based upon a new theory of liability asserted in an amended pleading does not relate back under NRCP 15(c) after the statute of limitations has run. *Badger v. Eighth Jud. Dist. Ct.*, 373 P.3d 89, 94–95 (Nev. 2016).

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11. The fictitious defendant rule in NRCP 10(d) provides a "narrow exception, allowing the pleading of fictitious defendants only where there is an uncertainty as to their names." *Lunn v. American Maintenance Corp*., 96 Nev. 787, 618 P.2d 343 (1980). The fictitious defendant rule, however, does not apply to the "addition of a party defendant." *Id*.

12. In order to substitute a newly-named defendant for a previously named Doe defendant under NCRP 10(d), the party seeking the substitution must satisfy the requirements set forth in *Nurenberger Hercules-Werke GMBH v. Virostek*, 107 Nev. 873, 822 P.2d 1100 (1991), which include: (1) "pleading the basis for naming defendants by other than their true identity, and clearly specifying the connection between the intended defendants and the conduct, activity, or omission upon which the cause of action is based;" and (2) "exercising reasonable diligence in ascertaining the true identity of the intended defendants and promptly moving to amend the complaint in order to substitute the actual for the fictional." *Id.* at 881. Satisfaction of these elements is "necessary to the granting of an amendment that relates back to the date of the filing of the original complaint." *Id*.

13. While the Plaintiff vaguely pled fictitious defendants in its original Complaint, she has failed to meet the requirements of *Nurenberger*.

14. The Plaintiff's attempt to add the new defendant, Tal Piccione, is not substitution of a Doe defendant under NRCP 10(d), but an attempt to add a new party defendant under NRCP 15(c).

15. As a new claim based upon a new theory of liability asserted against a new party defendant in an amended pleading does not relate back under NRCP 15(c) after the statute of limitations has run, the Plaintiff's attempt to add the new party defendant is futile.

16. Justice does not require granting leave to amend in this instance because the Receiver acted dilatorily in failing to seek to amend the TAC to assert the new claims for deepening of the insolvency and aiding and abetting breach of fiduciary duty Plaintiff seeks to assert against the new defendant, Uni-Ter UMC, Uni-Ter CS and US Re much earlier. *See Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 288, 357 P.3d 966, 972 (2015).

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17. Justice does not require granting leave to amend for Plaintiff to file the proposed Fourth Amended Complaint as to the Director Defendants because Plaintiff unduly delayed bringing said complaint and it would be unduly prejudicial for the Director Defendants to defend such theories of liability at this point.

18. If any of these conclusions of law should more properly be identified as a finding of fact, then it shall be deemed a finding of fact.

ORDER

IT IS HEREBY ORDERED that Plaintiff's Motion for Leave to File Fourth Amended Complaint is **DENIED**.

DATED this ____ day of August, 2020.

Dated this 10th day of August, 2020

Nancy L Allf

NANCY L. ALLF
District Court Judge

B48 88C D21A 9B68
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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 8/10/2020

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EXHIBIT 6

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * *

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK Plaintiff(s), v. ROBERT CHUR Defendant(s).	CASE NO.: A-18-711535-C DEPARTMENT 27

ORDER TO STRIKE FROM RECORD

COURT FINDS after review the Findings of Fact/ Conclusions of Law and Order Denying Plaintiff's Motion for Leave to File Fourth Amended Complaint was signed erroneously on August 10, 2020.

THEREFORE, COURT ORDERS for good cause appearing and after review that the Findings of Fact/Conclusions of Law and Order Denying Plaintiff's Motion for Leave to File Fourth Amended Complaint be stricken from the record.

Dated: August 13, 2020

Dated this 13th day of August, 2020

Nancy L Allf

NANCY ALLF
DISTRICT COURT JUDGE

338 DD8 771A 099D
Nancy Allf
District Court Judge

Case Number: A-14-711535-C

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 8/13/2020

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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 8/14/2020

George Ogilvie	McDonald Carano Wilson LLP Attn: George F. Ogilvie, III 2300 West Sahara Avenue - Suite 1200 Las Vegas, NV, 89102
Joseph Garin	Lipson Neilson P.C. Attn: Joseph P. Garin 9900 Covington Cross Drive, Suite 120 Las Vegas, NV, 89144

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Steven D. Grierson
CLERK OF THE COURT

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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 **NOTICE OF ENTRY OF ORDER**

Please take notice that an Order to Strike from Record was entered on the 13th day of August, 2020,

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a copy of which is attached hereto.

DATED this 14th day of August, 2020.

HUTCHISON & STEFFEN

By */s/Brenoch Wirthlin*

BRENOCH R. WIRTHLIN, ESQ.
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CHRIS ORME, ESQ.
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10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 14th day of August, 2020, I caused the document entitled **NOTICE OF ENTRY OF ORDER** to be served on the following by Electronic Service to:

ALL PARTIES ON THE E-SERVICE LIST

/s/Danielle Kelley
An Employee of Hutchison & Steffen, PLLC

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * *

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK Plaintiff(s), v. ROBERT CHUR Defendant(s).	CASE NO.: A-18-711535-C DEPARTMENT 27

ORDER TO STRIKE FROM RECORD

COURT FINDS after review the Findings of Fact/ Conclusions of Law and Order Denying Plaintiff's Motion for Leave to File Fourth Amended Complaint was signed erroneously on August 10, 2020.

THEREFORE, COURT ORDERS for good cause appearing and after review that the Findings of Fact/Conclusions of Law and Order Denying Plaintiff's Motion for Leave to File Fourth Amended Complaint be stricken from the record.

Dated: August 13, 2020

Dated this 13th day of August, 2020

Nancy L Allf

NANCY ALLF
DISTRICT COURT JUDGE

338 DD8 771A 099D
Nancy Allf
District Court Judge

Case Number: A-14-711535-C

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 8/13/2020

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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 8/14/2020

George Ogilvie	McDonald Carano Wilson LLP Attn: George F. Ogilvie, III 2300 West Sahara Avenue - Suite 1200 Las Vegas, NV, 89102
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EXHIBIT 7

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

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ORDG
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Mark Garber, Carol Harter,
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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	CASE NO.: A-14-711535-C DEPT. NO.: 27 **ORDER GRANTING DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO NRCP 12(C)** **AND** **JUDGMENT THEREON**

Pursuant to the Nevada Supreme Court's Order Granting the Petition for Writ of Mandamus and Notice in Lieu of Remittitur,

THE COURT HEREBY ORDERS that its November 2, 2018 Order Denying Director Defendants' Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) is hereby VACATED.

THE COURT FURTHER ORDERS that Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels' Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) is GRANTED.

With Plaintiff's Motion for Leave to file an Amended Complaint having been denied by this Court on August 10, 2020, Judgment is hereby entered in favor of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall.

DATED this 1 day of August, 2020.

Dated this 13th day of August, 2020

Nancy L Allf

JUDGE NANCY ALLF

1FA 835 11BE 21AF
Nancy Allf
District Court Judge

NB

Submitted by:
LIPSON NEILSON P.C.

/s/ Angela Nakamura Ochoa

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 8/13/2020

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CLERK OF THE COURT

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Attorneys for Defendants/Third-Party Plaintiffs Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels

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.: 27 **NOTICE OF ENTRY OF ORDER**

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9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

Case Number: A-14-711535-C

NOTICE OF ENTRY OF ORDER

Please take notice that the Order Granting Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels' Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) and Judgment Theron was filed with this court on the 13th day of August, 2020, a copy of which is attached hereto, as **Exhibit A**.

Dated this 14th day of August, 2020.

LIPSON NEILSON P.C.

/s/ Angela Ochoa

By:_____

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Attorneys for Defendants/Third-Party Plaintiffs Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 14th day of August, 2020, I electronically transmitted the foregoing **NOTICE OF ENTRY OF ORDER** to the Clerk's Office using the Odyssey E-File & Serve System for filing and transmittal to the following Odyssey E-File & Serve registrants:

E-Service Master List
For Case

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/s/ Sydney Ochoa

An employee of LIPSON NEILSON P.C.

.

EXHIBIT “A”

EXHIBIT “A”

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8/13/2020 6:57 PM

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Mark Garber, Carol Harter,
Robert Hurlbut, Barbara Lumpkin,
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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	CASE NO.: A-14-711535-C DEPT. NO.: 27 **ORDER GRANTING DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO NRCP 12(C)** **AND** **JUDGMENT THEREON**

Pursuant to the Nevada Supreme Court's Order Granting the Petition for Writ of Mandamus and Notice in Lieu of Remittitur,

THE COURT HEREBY ORDERS that its November 2, 2018 Order Denying Director Defendants' Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) is hereby VACATED.

Case Number: A-14-711535-C

THE COURT FURTHER ORDERS that Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels' Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) is GRANTED.

With Plaintiff's Motion for Leave to file an Amended Complaint having been denied by this Court on August 10, 2020, Judgment is hereby entered in favor of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall.

DATED this 1 day of August, 2020.

Dated this 13th day of August, 2020

Nancy L Allf

JUDGE NANCY ALLF

1FA 835 11BE 21AF
Nancy Allf
District Court Judge

NB

Submitted by:
LIPSON NEILSON P.C.

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DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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EXHIBIT 8

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IN THE SUPREME COURT OF THE STATE OF NEVADA

*** * ***

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, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, Respondents.	Supreme Court No. 85668 **EXHIBIT 1 TO APPELLANT'S OPPOSITION TO MOTION TO DISMISS PAGES 301 - 600**
ROBERT CHUR; STEVE FOGG; MARK GARBER; CAROL HARTER; ROBERT HURLBUT; BARBARA LUMPKIN; JEFF MARSHALL; AND ERIC STICKELS, Appellants, vs. THE STATE OF NEVADA COMMISSIONER OF INSURANCE AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Respondents.	Supreme Court No. 85728

Docket 85668 Document 2023-19211

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; UNI-TER UNDERWRITING MANAGEMENT CORP.; UNI-TER CLAIMS SERVICES CORP.; AND U.S. RE CORPORATION, Respondents.	Supreme Court No. 85907

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	CASE NO.: A-14-711535-C DEPT. NO.: 27 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING THE MOTION FOR PARTIAL RECONSIDERATION OF MOTION FOR LEAVE TO AMEND REGARDING DIRECTOR DEFENDANTS**

This matter came before the Court for hearing on August 26, 2020 on Plaintiff's Motion for Partial Reconsideration of Motion for Leave to Amend Regarding Director Defendants ("Motion"). Angela T. Nakamura Ochoa, Esq. appeared on behalf of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut,

Case Number: A-14-711535-C

Barbara Lumpkin, Jeff Marshall and Eric Stickels; Mark A. Hutchison, Esq. and Brenoch R. Wirthlin, Esq. appeared on behalf of Plaintiff Commissioner of Insurance for the State of Nevada ("Plaintiff" or "Commissioner"); and George F. Ogilvie III, Esq., appeared on behalf of Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation; and

Having considered the record and the briefs submitted in support of and in opposition to the Motion, and having entertained the arguments of counsel, and being fully informed in the premises, the Court makes the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. Lewis and Clark LTC Risk Retention Group, Inc. ("L&C") was formed in 2003. Between 2004 and February 28, 2013, L&C provided general and professional liability coverage to long term care facilities and home health providers. *See* Third Amended Complaint ("TAC") at ¶1.

2. The Nevada Division of Insurance ("DOI") filed a Receivership Action related to L&C in November, 2012, commencing case number A-12-672047-B ("Receivership Action"). Plaintiff Commissioner of Insurance for the State of Nevada was appointed as the receiver.

3. On February 28, 2013, an order of liquidation ("Liquidation Order") was entered in the Receivership Action, appointing the Commissioner as the receiver of L&C. *See* Liquidation Order.

4. On December 23, 2014, the Commissioner instituted this lawsuit against, among other defendants, eight of the former directors of L&C Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels ("Director Defendants"). In the initial complaint, the Commissioner alleged

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claims of gross negligence and deepening of the insolvency against the Director Defendants.

5. On December 11, 2015, Director Defendants filed their Motion to Dismiss, challenging the sufficiency of the allegations of gross negligence and asserting that a claim for deepening insolvency required allegations of fraud such that the claims must be pled with specificity.

6. On June 13, 2016, the Commissioner filed its Second Amended Complaint, and, subsequently, on August 5, 2016, the Commissioner filed its Third Amended Complaint.

7. On April 18, 2016, Director Defendants filed a Motion to Dismiss the First Amended Complaint, asserting that claims against officers and directors needed to be supported by claims of intentional misconduct, fraud or knowing violation of the law. Said Motion was subsequently denied.

8. During the period of September 5, 2017 through April 13, 2018, Director Defendants propounded written discovery upon Plaintiff.

9. Due to the multiple requests to extend discovery in this action and the then approaching 5-year rule expiration, this Court expressly conditioned its May 16, 2018 Order continuing discovery deadlines that it would be the "last stipulation to continue."

10. On August 14, 2018, the Director Defendants filed a Motion For Judgment On The Pleadings Pursuant To NRCP 12(C) ("Motion For Judgment On The Pleadings"). On November 2, 2018, this Court denied the Director Defendants' Motion for Judgment on the Pleadings.

11. On December 12, 2018, the Commissioner filed Plaintiff's Motion for Extension of Discovery Deadlines and to Continue Trial on Order Shortening Time (Fourth Request), which this Court granted in part and denied in part, extending discovery for sixty (60) days and ordering a firm trial setting.

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12. In and around July, 2018, Director Defendant Barbara Lumpkin passed away.

13. On November 8, 2018, the deposition of the NRCP 30(b)(6) witness for the Commissioner of Insurance for the State of Nevada took place, in which he frequently responded that the complaint spoke for itself and that he would be relying upon experts in response to the Defendants questioning. Mr. Greer also testified regarding the unavailability of certain Division of Insurance former employees. At no time, did he state that the Director Defendants violated the law.

14. On March 8, 2019, the Director Defendants filed a Motion to Stay Proceedings Pending Petition for Writ of Mandamus on an Order Shortening Time. The Commissioner filed a Limited Joinder to Directors' Motion to Stay Proceedings Pending Petition for Writ of Mandamus.

15. On March 12, 2019, the Director Defendants filed their Notice of Filing of Petition for Writ of Mandamus with the Nevada Supreme Court. In their Petition for Writ of Mandamus, the Director Defendants challenged this Court's denial of the Director Defendants' Motion for Judgment on the Pleadings.

16. On March 14, 2019, this Court granted the Motion to Stay Proceedings Pending Petition for Writ of Mandamus, and imposed an immediate stay (the "Stay") of all proceedings in this matter.

17. On February 27, 2020, the Nevada Supreme Court issued its Opinion ("NSC Opinion") granting the Director Defendants' Petition for Writ of Mandamus, and instructed this Court to vacate its order denying the Director Defendants' Motion for Judgment on the Pleadings, and to enter a new order granting the Director Defendants' Motion for Judgment on the Pleadings. The NSC Opinion left to this Court's discretion whether to grant the Commissioner leave to file a fourth amended complaint.

18. On May 14, 2020, because the writ petition proceedings before the Nevada Supreme Court were not concluded, the parties entered into a stipulation

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continuing the hearing on the Plaintiff's Motion for Clarification and extending the Stay until June 18, 2020.

19. On May 22, 2020, the Nevada Supreme Court issued its Order Denying Rehearing, thereby affirming the Opinion, and directing this Court to enter an order granting the Director Defendants' Motion for Judgment on the Pleadings, but leaving to this Court's discretion whether to grant the Commissioner leave to file a fourth amended complaint.

20. At the time of the June 18, 2020 hearing, the Commissioner requested that the Stay be extended to July 1, 2020; the Defendants objected to the Plaintiff's request, and requested that the Stay be lifted immediately. This Court granted Plaintiff's Motion for Clarification, and ordered that the Stay be lifted as of July 1, 2020.

21. On June 24, 2020, the Commissioner filed Plaintiff's Motion for Preferential Trial Setting And For Issuance of A New Discovery Scheduling Order or, In the Alternative, Motion to Stay All Discovery During the Pendency of Motion For Leave to File Fourth Amended Complaint; On Order Shortening Time ("Plaintiff's Motion for Preferential Trial Setting").

22. At the time of the July 1, 2020 hearing on Plaintiff's Motion for Preferential Trial Setting, the Commissioner advised the court that it would file a Motion for Leave to Amend on July 2, 2020. The Defendants requested that the Court direct the Receiver to serve its initial expert disclosures on July 2. Over the Defendants' objection, this Court extended the deadline for the Commissioner to serve its initial expert disclosures to the conclusion of the hearing of Plaintiff's anticipated Motion for Leave to File Fourth Amended Complaint[1].

23. On July 2, 2020, Plaintiff filed its Motion for Leave to File Fourth Amended Complaint.

[1] The hearing was scheduled for July 23, 2020.

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24. The hearing on Plaintiff's Motion for Leave to File Fourth Amended Complaint was held on July 23, 2020.

25. The court subsequently ruled that discovery would close on December 17, 2020.

26. As it relates to the Director Defendants, the Commissioner contends that her proposed Fourth Amended Complaint alleges that the Director Defendants knowingly violated the law. The court makes no findings as to the futility of the proposed Fourth Amended Complaint.

27. With the passage of time, the Director Defendants will be unduly prejudiced in establishing their defenses to Plaintiff's new theory that the Director Defendants knowingly violated the law.

If any of these findings of fact should more properly be identified as a conclusion of law, then it shall be deemed a conclusion of law.

CONCLUSIONS OF LAW

1. "A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Title Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.,* 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

2. "Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." *Moore v. Las Vegas* (1976) 92 Nev. 402,405.

3. Whether to allow amendment to a pleading resides within the sound discretion of the trial court. *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000).

4. In "the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant – [leave to amend] should

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be freely given." *Stephens v. Southern Nev. Music Co*., 89 Nev. 104, 105-106, 507 P.2d 138, 139 (1973) (emphasis added) (citing *Foman v. Davis*, 371 U.S. 178 (1962)). While leave to amend should be freely given when justice so requires, "[t]his does not, however, mean that a trial judge may not, in a proper case, deny a motion to amend." *Stephens v. S. Nevada Music Co., Inc.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973). Indeed, "[i]f that were the intent, leave of court would not be required." *Id*.

5. Where a plaintiff has previously amended her complaint, the discretion to deny further amendment is "particularly broad." *Cafasso v. Gen. Dynamics C4 Sys.*, 637 F.3d 1047, 1058 (9th Cir. 2011).

6. In evaluating whether a party timely moved for leave to amend, a court is not confined to solely reviewing whether a motion was filed during the time allotted by a scheduling order. *AmerisourceBergen Corp. v. Dialysist West, Inc.,* 465 F.3D 946, 951-952 (9th Cir. 2006).

7. There has been a clarification by the Supreme Court of the *Shoen* case [*See Shoen v. SAC Holding Corp*., 122 Nev. 621, 640, 137 P.3d 1171, 1184 (2006)], that despite the existence of hardship to the Plaintiff, the Court finds that it would not be fair to the Director Defendants to have to defend a fourth amended complaint two months before the discovery deadline and with a five-year rule looming. Justice does not require granting leave to amend for Plaintiff to file the proposed Fourth Amended Complaint as to the Director Defendants because Plaintiff unduly delayed bringing said complaint and it would be unduly prejudicial for the Director Defendants to defend such theories of liability at this point. Plaintiff did not provide any new evidence to warrant reconsideration. Further, this Court did not err in denying Plaintiff's Motion for Leave to Amend.

If any of these conclusions of law should more properly be identified as a finding of fact, then it shall be deemed a finding of fact.

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ORDER

IT IS HEREBY ORDERED that Plaintiff's Motion for Reconsideration of Motion for Leave to Amend Regarding Director Defendants is DENIED.

DATED this 9 day of September, 2020.

Dated this 9th day of September, 2020

Nancy L Allf

NANCY L. ALLF
District Court Judge

39B 7F7 F34A 1E07
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DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION; DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	CASE NO.: A-14-711535-C DEPT. NO.: 27 **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING THE MOTION FOR PARTIAL RECONSIDERATION OF MOTION FOR LEAVE TO AMEND REGARDING DIRECTOR DEFENDANTS**

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Please take notice that the Findings of Fact, Conclusions of Law and Order Denying the Motion for Partial Reconsideration of Motion for Leave to Amend Regarding Director Defendants was filed with this court on the 9th day of September, 2020, a copy of which is attached hereto, as **Exhibit A**.

Dated this 10th day of September, 2020.

LIPSON NEILSON P.C.

/s/ Angela Ochoa

By:_____

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 10th day of September, 2020, I electronically transmitted the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING THE MOTION FOR PARTIAL RECONSIDERATION OF MOTION FOR LEAVE TO AMEND REGARDING DIRECTOR DEFENDANTS** to the Clerk's Office using the Odyssey E-File & Serve System for filing and transmittal to the following Odyssey E-File & Serve registrants:

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EXHIBIT "A"

EXHIBIT "A"

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Barbara Lumpkin, Jeff Marshall and Eric Stickels; Mark A. Hutchison, Esq. and Brenoch R. Wirthlin, Esq. appeared on behalf of Plaintiff Commissioner of Insurance for the State of Nevada ("Plaintiff" or "Commissioner"); and George F. Ogilvie III, Esq., appeared on behalf of Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation; and

Having considered the record and the briefs submitted in support of and in opposition to the Motion, and having entertained the arguments of counsel, and being fully informed in the premises, the Court makes the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. Lewis and Clark LTC Risk Retention Group, Inc. ("L&C") was formed in 2003. Between 2004 and February 28, 2013, L&C provided general and professional liability coverage to long term care facilities and home health providers. *See* Third Amended Complaint ("TAC") at ¶1.

2. The Nevada Division of Insurance ("DOI") filed a Receivership Action related to L&C in November, 2012, commencing case number A-12-672047-B ("Receivership Action"). Plaintiff Commissioner of Insurance for the State of Nevada was appointed as the receiver.

3. On February 28, 2013, an order of liquidation ("Liquidation Order") was entered in the Receivership Action, appointing the Commissioner as the receiver of L&C. *See* Liquidation Order.

4. On December 23, 2014, the Commissioner instituted this lawsuit against, among other defendants, eight of the former directors of L&C Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels ("Director Defendants"). In the initial complaint, the Commissioner alleged

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claims of gross negligence and deepening of the insolvency against the Director Defendants.

5. On December 11, 2015, Director Defendants filed their Motion to Dismiss, challenging the sufficiency of the allegations of gross negligence and asserting that a claim for deepening insolvency required allegations of fraud such that the claims must be pled with specificity.

6. On June 13, 2016, the Commissioner filed its Second Amended Complaint, and, subsequently, on August 5, 2016, the Commissioner filed its Third Amended Complaint.

7. On April 18, 2016, Director Defendants filed a Motion to Dismiss the First Amended Complaint, asserting that claims against officers and directors needed to be supported by claims of intentional misconduct, fraud or knowing violation of the law. Said Motion was subsequently denied.

8. During the period of September 5, 2017 through April 13, 2018, Director Defendants propounded written discovery upon Plaintiff.

9. Due to the multiple requests to extend discovery in this action and the then approaching 5-year rule expiration, this Court expressly conditioned its May 16, 2018 Order continuing discovery deadlines that it would be the "last stipulation to continue."

10. On August 14, 2018, the Director Defendants filed a Motion For Judgment On The Pleadings Pursuant To NRCP 12(C) ("Motion For Judgment On The Pleadings"). On November 2, 2018, this Court denied the Director Defendants' Motion for Judgment on the Pleadings.

11. On December 12, 2018, the Commissioner filed Plaintiff's Motion for Extension of Discovery Deadlines and to Continue Trial on Order Shortening Time (Fourth Request), which this Court granted in part and denied in part, extending discovery for sixty (60) days and ordering a firm trial setting.

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12. In and around July, 2018, Director Defendant Barbara Lumpkin passed away.

13. On November 8, 2018, the deposition of the NRCP 30(b)(6) witness for the Commissioner of Insurance for the State of Nevada took place, in which he frequently responded that the complaint spoke for itself and that he would be relying upon experts in response to the Defendants questioning. Mr. Greer also testified regarding the unavailability of certain Division of Insurance former employees. At no time, did he state that the Director Defendants violated the law.

14. On March 8, 2019, the Director Defendants filed a Motion to Stay Proceedings Pending Petition for Writ of Mandamus on an Order Shortening Time. The Commissioner filed a Limited Joinder to Directors' Motion to Stay Proceedings Pending Petition for Writ of Mandamus.

15. On March 12, 2019, the Director Defendants filed their Notice of Filing of Petition for Writ of Mandamus with the Nevada Supreme Court. In their Petition for Writ of Mandamus, the Director Defendants challenged this Court's denial of the Director Defendants' Motion for Judgment on the Pleadings.

16. On March 14, 2019, this Court granted the Motion to Stay Proceedings Pending Petition for Writ of Mandamus, and imposed an immediate stay (the "Stay") of all proceedings in this matter.

17. On February 27, 2020, the Nevada Supreme Court issued its Opinion ("NSC Opinion") granting the Director Defendants' Petition for Writ of Mandamus, and instructed this Court to vacate its order denying the Director Defendants' Motion for Judgment on the Pleadings, and to enter a new order granting the Director Defendants' Motion for Judgment on the Pleadings. The NSC Opinion left to this Court's discretion whether to grant the Commissioner leave to file a fourth amended complaint.

18. On May 14, 2020, because the writ petition proceedings before the Nevada Supreme Court were not concluded, the parties entered into a stipulation

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continuing the hearing on the Plaintiff's Motion for Clarification and extending the Stay until June 18, 2020.

19. On May 22, 2020, the Nevada Supreme Court issued its Order Denying Rehearing, thereby affirming the Opinion, and directing this Court to enter an order granting the Director Defendants' Motion for Judgment on the Pleadings, but leaving to this Court's discretion whether to grant the Commissioner leave to file a fourth amended complaint.

20. At the time of the June 18, 2020 hearing, the Commissioner requested that the Stay be extended to July 1, 2020; the Defendants objected to the Plaintiff's request, and requested that the Stay be lifted immediately. This Court granted Plaintiff's Motion for Clarification, and ordered that the Stay be lifted as of July 1, 2020.

21. On June 24, 2020, the Commissioner filed Plaintiff's Motion for Preferential Trial Setting And For Issuance of A New Discovery Scheduling Order or, In the Alternative, Motion to Stay All Discovery During the Pendency of Motion For Leave to File Fourth Amended Complaint; On Order Shortening Time ("Plaintiff's Motion for Preferential Trial Setting").

22. At the time of the July 1, 2020 hearing on Plaintiff's Motion for Preferential Trial Setting, the Commissioner advised the court that it would file a Motion for Leave to Amend on July 2, 2020. The Defendants requested that the Court direct the Receiver to serve its initial expert disclosures on July 2. Over the Defendants' objection, this Court extended the deadline for the Commissioner to serve its initial expert disclosures to the conclusion of the hearing of Plaintiff's anticipated Motion for Leave to File Fourth Amended Complaint[1].

23. On July 2, 2020, Plaintiff filed its Motion for Leave to File Fourth Amended Complaint.

[1] The hearing was scheduled for July 23, 2020.

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24. The hearing on Plaintiff's Motion for Leave to File Fourth Amended Complaint was held on July 23, 2020.

25. The court subsequently ruled that discovery would close on December 17, 2020.

26. As it relates to the Director Defendants, the Commissioner contends that her proposed Fourth Amended Complaint alleges that the Director Defendants knowingly violated the law. The court makes no findings as to the futility of the proposed Fourth Amended Complaint.

27. With the passage of time, the Director Defendants will be unduly prejudiced in establishing their defenses to Plaintiff's new theory that the Director Defendants knowingly violated the law.

If any of these findings of fact should more properly be identified as a conclusion of law, then it shall be deemed a conclusion of law.

CONCLUSIONS OF LAW

1. "A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Title Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.,* 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

2. "Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." *Moore v. Las Vegas* (1976) 92 Nev. 402,405.

3. Whether to allow amendment to a pleading resides within the sound discretion of the trial court. *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000).

4. In "the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant – [leave to amend] should

be freely given." *Stephens v. Southern Nev. Music Co.*, 89 Nev. 104, 105-106, 507 P.2d 138, 139 (1973) (emphasis added) (citing *Foman v. Davis*, 371 U.S. 178 (1962)). While leave to amend should be freely given when justice so requires, "[t]his does not, however, mean that a trial judge may not, in a proper case, deny a motion to amend." *Stephens v. S. Nevada Music Co., Inc.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973). Indeed, "[i]f that were the intent, leave of court would not be required." *Id.*

5. Where a plaintiff has previously amended her complaint, the discretion to deny further amendment is "particularly broad." *Cafasso v. Gen. Dynamics C4 Sys.*, 637 F.3d 1047, 1058 (9th Cir. 2011).

6. In evaluating whether a party timely moved for leave to amend, a court is not confined to solely reviewing whether a motion was filed during the time allotted by a scheduling order. *AmerisourceBergen Corp. v. Dialysist West, Inc.,* 465 F.3D 946, 951-952 (9th Cir. 2006).

7. There has been a clarification by the Supreme Court of the *Shoen* case [*See Shoen v. SAC Holding Corp.*, 122 Nev. 621, 640, 137 P.3d 1171, 1184 (2006)], that despite the existence of hardship to the Plaintiff, the Court finds that it would not be fair to the Director Defendants to have to defend a fourth amended complaint two months before the discovery deadline and with a five-year rule looming. Justice does not require granting leave to amend for Plaintiff to file the proposed Fourth Amended Complaint as to the Director Defendants because Plaintiff unduly delayed bringing said complaint and it would be unduly prejudicial for the Director Defendants to defend such theories of liability at this point. Plaintiff did not provide any new evidence to warrant reconsideration. Further, this Court did not err in denying Plaintiff's Motion for Leave to Amend.

If any of these conclusions of law should more properly be identified as a finding of fact, then it shall be deemed a finding of fact.

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ORDER

IT IS HEREBY ORDERED that Plaintiff's Motion for Reconsideration of Motion for Leave to Amend Regarding Director Defendants is DENIED.

DATED this 9 day of September, 2020.

Dated this 9th day of September, 2020

Nancy L Allf

NANCY L. ALLF
District Court Judge

39B 7F7 F34A 1E07
Nancy Allf
District Court Judge

NB

Submitted by:
LIPSON NEILSON P.C.

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By: Would not Agree to Form or Content
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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

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EXHIBIT 9

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ORDER

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DISTRICT COURT

CLARK COUNTY, NEVADA

*** * ***

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION,; DOES 1-50, inclusive; and ROES 51-100, inclusive; Defendants.	Case No.: A-14-711535-C Dept. No.: XXVII **ORDER DENYING PLAINTIFF'S MOTION TO RETAX AND SETTLE COSTS OF DIRECTOR DEFENDANTS**

This matter was set for hearing before the Court on the July 1, 2021, Motions calendar on Plaintiff Commissioner of Insurance for the State of Nevada ("Plaintiff" or "Commissioner") as Receiver of Lewis & Clark LTC Risk Retention Group, Inc.'s Motion to Retax and Settle Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall,

and Eric Stickels'[1] Verified Memorandum of Costs and Disbursements ("Motion to Retax") which was filed on August 21, 2020; the Director Defendants having filed their opposition ("Opposition") to the Motion on May 13, 2021; Plaintiff having filed her reply in support of the Motion on June 24, 2021; the Court having read and considered the Motion, Opposition, and Reply; good cause appearing,

THE COURT HEREBY FINDS after review that NRS 696B.565(3) provides: The Commissioner, all present and former deputy receivers, special deputy receivers and their employees, and the other officers, agents, employees and attorneys of the Division must be indemnified for all expenses, attorney s fees, judgments, settlements decrees, or amounts due or paid in satisfaction of, or incurred in the defense of, such a legal action, unless it is determined upon a final adjudication on the merits of the case that the alleged acts, error or omission of the officer, agent, employee or attorney of the division did not arise out of or by reason of his or her duties or employment and was caused by actual malice.

THE COURT HEREBY FINDS that the Director Defendants filed a motion for attorney fees and costs which was denied by the Court, rendering the Motion to Retax moot.

THEREFORE COURT ORDERS for good cause appearing and after review that the Motion to Retax is hereby DENIED and the matter scheduled on July 1, 2021 on Motions calendar is

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[1] Collectively the "Director Defendants."

hereby VACATED.

July 15, 2021

Dated this 16th day of July, 2021

Nancy L Allf

TW

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Nancy Allf
District Court Judge

Respectfully submitted by:

Dated this 15th day of July, 2021.

HUTCHISON & STEFFEN

/s/Brenoch Wirthlin

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Attorneys for Plaintiff

APPROVED AS TO FORM:

Dated this ___ day of July, 2021.

LIPSON NEILSON

Declined

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION,; DOES 1-50, inclusive; and ROES 51-100, inclusive; Defendants.	Case No.: A-14-711535-C Dept. No.: XXVII **NOTICE OF ENTRY OF ORDER**

Please take notice that an Order Denying Plaintiff's Motion to Retax and Settle Costs of Director Defendants was entered on the 16th day of July, 2021,

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a copy of which is attached hereto.

DATED this 29th day of July, 2021.

HUTCHISON & STEFFEN

By */s/Brenoch Wirthlin*

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 29th day of July, 2021, I caused the document entitled **NOTICE OF ENTRY OF ORDER** to be served on the following by Electronic Service to:

ALL PARTIES ON THE E-SERVICE LIST

/s/Danielle Kelley
An Employee of Hutchison & Steffen, PLLC

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ORDER

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DISTRICT COURT

CLARK COUNTY, NEVADA

*** * ***

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION,; DOES 1-50, inclusive; and ROES 51-100, inclusive; Defendants.	Case No.: A-14-711535-C Dept. No.: XXVII **ORDER DENYING PLAINTIFF'S MOTION TO RETAX AND SETTLE COSTS OF DIRECTOR DEFENDANTS**

This matter was set for hearing before the Court on the July 1, 2021, Motions calendar on Plaintiff Commissioner of Insurance for the State of Nevada ("Plaintiff" or "Commissioner") as Receiver of Lewis & Clark LTC Risk Retention Group, Inc.'s Motion to Retax and Settle Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall,

Case Number: A-14-711535-C

and Eric Stickels'[1] Verified Memorandum of Costs and Disbursements ("Motion to Retax") which was filed on August 21, 2020; the Director Defendants having filed their opposition ("Opposition") to the Motion on May 13, 2021; Plaintiff having filed her reply in support of the Motion on June 24, 2021; the Court having read and considered the Motion, Opposition, and Reply; good cause appearing,

THE COURT HEREBY FINDS after review that NRS 696B.565(3) provides: The Commissioner, all present and former deputy receivers, special deputy receivers and their employees, and the other officers, agents, employees and attorneys of the Division must be indemnified for all expenses, attorney s fees, judgments, settlements decrees, or amounts due or paid in satisfaction of, or incurred in the defense of, such a legal action, unless it is determined upon a final adjudication on the merits of the case that the alleged acts, error or omission of the officer, agent, employee or attorney of the division did not arise out of or by reason of his or her duties or employment and was caused by actual malice.

THE COURT HEREBY FINDS that the Director Defendants filed a motion for attorney fees and costs which was denied by the Court, rendering the Motion to Retax moot.

THEREFORE COURT ORDERS for good cause appearing and after review that the Motion to Retax is hereby DENIED and the matter scheduled on July 1, 2021 on Motions calendar is

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[1] Collectively the "Director Defendants."

hereby VACATED.

July 15, 2021

Dated this 16th day of July, 2021

Nancy L Allf

TW

1E9 3D1 86DD F3FB
Nancy Allf
District Court Judge

Respectfully submitted by:

Dated this 15th day of July, 2021.

HUTCHISON & STEFFEN

/s/Brenoch Wirthlin

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APPROVED AS TO FORM:

Dated this ___ day of July, 2021.

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DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

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EXHIBIT 10

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A PROFESSIONAL LLC

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MARK A. HUTCHISON, ESQ.
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BRENOCH R. WIRTHLIN, ESQ.
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

*** * ***

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION,; DOES 1-50, inclusive; and ROES 51-100, inclusive; Defendants.	Case No.: A-14-711535-C Dept. No.: XXVII **ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR DECLARATORY RELIEF**

This matter having come before the Honorable Nancy Allf at a hearing on August 2, 2021 ("Hearing"), on Plaintiff's Motion for Declaratory Relief ("Motion") filed herein on June 20, 2021; George F. Ogilvie III, Esq. having appeared on behalf of Defendants Uni-Ter Underwriting

Case Number: A-14-711535-C

Management Corp. and U.S. Re Corporation (collectively the "Corporate Defendants"); Brenoch Wirthlin, Esq., having appeared on behalf of Plaintiff Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark LTC Risk Retention Group ("Plaintiff"); the Corporate Defendants having filed an opposition ("Corporate Defendants' Opposition") to the Motion on July 6, 2021; the Plaintiff having filed its reply ("Reply") in support of the Motion on July 19, 2021; the Court having read and considered the Motion, the Corporate Defendants' Opposition, and the Reply, as well as having heard and considered the arguments of counsel at the Hearing on the Motion; good cause appearing;

IT IS HEREBY ORDERED that the Motion is granted in part and denied in part as set forth herein.

IT IS HEREBY FURTHER ORDERED that the Motion will be denied to the extent that there was not a request in the third amended complaint for declaratory relief, which would have been a remedy.

IT IS HEREBY FURTHER ORDERED that the Motion will be granted to the extent that the admissions of the Corporate Defendants at issue are undisputed facts, with the effect of those admissions to be determined.

IT IS HEREBY FURTHER ORDERED that it is deemed admitted by U.S. Re Corporation that U.S. Re Corporation was never licensed in Nevada as a reinsurance intermediary or broker to broker reinsurance on behalf of Lewis and Clark LTC Risk Retention Group, Inc.

IT IS HEREBY FURTHER ORDERED that it is deemed admitted by Uni-Ter Underwriting Management Corp. that Uni-Ter Underwriting Management Corp., through Sanford

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Elsass, bound reinsurance on behalf of Lewis and Clark LTC Risk Retention Group, Inc.

DATED this 17 day of August, 2021.

Dated this 17th day of August, 2021

Nancy L Allf

DISTRICT COURT JUDGE

TW

23B 741 7CC8 1B7F
Nancy Allf
District Court Judge

Respectfully submitted by:

HUTCHISON & STEFFEN

/s/ Brenoch Wirthlin
Brenoch Wirthlin, Esq.
Nevada Bar No. 10282
Stuart J. Taylor, Esq.
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Attorneys for Plaintiff

Approved as to form and content by:

MCDONALD CARANO LLP

Did not sign
George F. Ogilvie III, Esq.
Nevada Bar No. 3352
2300 West Sahara Avenue, Ste 1200
Las Vegas, Nevada 89102

Jon M. Wilson, Esq.
Jon M Wilson Attorney
200 Biscayne Blvd Way
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Miami, Fl 33131
Attorneys for Defendants U.S. Re Corporation, Uni-Ter Management Corp., and Uni-Ter Claims Services Corp

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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Service Date: 8/17/2021

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Jon Linder jlinder@hutchlegal.com

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CLERK OF THE COURT

NEO

MARK A. HUTCHISON, ESQ. (4639)
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION,; DOES 1-50, inclusive; and ROES 51-100, inclusive; Defendants.	Case No.: A-14-711535-C Dept. No.: XXVII **NOTICE OF ENTRY OF ORDER**

Please take notice that an Order Granting in Part and Denying in Part Plaintiff's Motion for Declaratory Relief was entered on the 17th day of August, 2021,

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a copy of which is attached hereto.

DATED this 17th day of August, 2021.

HUTCHISON & STEFFEN

By */s/Brenoch Wirthlin*

MARK A. HUTCHISON, ESQ. (4639)
BRENOCH R. WIRTHLIN, ESQ. (10282)
CHRISTIAN ORME, ESQ. (10175)
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 17th day of August, 2021, I caused the document entitled **NOTICE OF ENTRY OF ORDER** to be served on the following by Electronic Service to:

ALL PARTIES ON THE E-SERVICE LIST

/s/Danielle Kelley
An Employee of Hutchison & Steffen, PLLC

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E-Mail: corme@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 **ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR DECLARATORY RELIEF**

This matter having come before the Honorable Nancy Allf at a hearing on August 2, 2021 ("Hearing"), on Plaintiff's Motion for Declaratory Relief ("Motion") filed herein on June 20, 2021; George F. Ogilvie III, Esq. having appeared on behalf of Defendants Uni-Ter Underwriting

Case Number: A-14-711535-C

Management Corp. and U.S. Re Corporation (collectively the "Corporate Defendants"); Brenoch Wirthlin, Esq., having appeared on behalf of Plaintiff Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark LTC Risk Retention Group ("Plaintiff"); the Corporate Defendants having filed an opposition ("Corporate Defendants' Opposition") to the Motion on July 6, 2021; the Plaintiff having filed its reply ("Reply") in support of the Motion on July 19, 2021; the Court having read and considered the Motion, the Corporate Defendants' Opposition, and the Reply, as well as having heard and considered the arguments of counsel at the Hearing on the Motion; good cause appearing;

IT IS HEREBY ORDERED that the Motion is granted in part and denied in part as set forth herein.

IT IS HEREBY FURTHER ORDERED that the Motion will be denied to the extent that there was not a request in the third amended complaint for declaratory relief, which would have been a remedy.

IT IS HEREBY FURTHER ORDERED that the Motion will be granted to the extent that the admissions of the Corporate Defendants at issue are undisputed facts, with the effect of those admissions to be determined.

IT IS HEREBY FURTHER ORDERED that it is deemed admitted by U.S. Re Corporation that U.S. Re Corporation was never licensed in Nevada as a reinsurance intermediary or broker to broker reinsurance on behalf of Lewis and Clark LTC Risk Retention Group, Inc.

IT IS HEREBY FURTHER ORDERED that it is deemed admitted by Uni-Ter Underwriting Management Corp. that Uni-Ter Underwriting Management Corp., through Sanford

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Elsass, bound reinsurance on behalf of Lewis and Clark LTC Risk Retention Group, Inc.

DATED this 17 day of August, 2021.

Dated this 17th day of August, 2021

Nancy L Allf

DISTRICT COURT JUDGE

TW

23B 741 7CC8 1B7F
Nancy Allf
District Court Judge

Respectfully submitted by:

HUTCHISON & STEFFEN

/s/ Brenoch Wirthlin
Brenoch Wirthlin, Esq.
Nevada Bar No. 10282
Stuart J. Taylor, Esq.
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Las Vegas, Nevada 89145
Attorneys for Plaintiff

Approved as to form and content by:

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Jon M. Wilson, Esq.
Jon M Wilson Attorney
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Miami, Fl 33131
Attorneys for Defendants U.S. Re Corporation, Uni-Ter Management Corp., and Uni-Ter Claims Services Corp

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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Service Date: 8/17/2021

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EXHIBIT 11

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E-Mail: corme@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 **DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATION** **Hearing Date: July 29, 2021** **Hearing Time: 9:30 a.m.**

Case Number: A-14-711535-C

DISCOVERY COMMISSIONER'S
REPORT and RECOMMENDATIONS

Hearing Date: July 29, 2021 ("Hearing")

Hearing Time: 9:30 a.m.

Attorney for Plaintiff: Brenoch Wirthlin and Chris Orme, Hutchinson & Steffen

Attorney for Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. Re Corporation: George F. Ogilvie III, McDonald Carano LLP

I. FINDINGS

1. In November 2012, the Commissioner of Insurance for the State of Nevada initiated a receivership action, Case No. A-12-672047-B ("Receivership Action") and was appointed as Receiver of Lewis and Clark LTC Risk Retention Group, Inc. ("L&C").

2. Subsequently, on December 23, 2014, the Receiver filed this lawsuit against Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp. (collectively "Uni-Ter"), and U.S. Re Corporation ("U.S. Re"), as well as several former directors of L&C.

3. In May 2018, Uni-Ter and U.S. Re produced approximately 1.5 million pages of documents. Shortly thereafter, Uni-Ter and U.S. Re produced approximately 200,000 additional pages of documents for a total of approximately 1.7 million pages of documents.

4. Following a meet and confer, on July 13, 2021, Plaintiff filed her Motion to Compel Discovery Pursuant to NRCP 37(a)(4) on Order Shortening Time ("Motion to Compel"). The Motion to Compel requested the Court to: 1) compel Uni-Ter and U.S. Re to produce or permit for inspection all documents in their alleged "secret database" dated between January 1, 2008 through February 28, 2013; 2) compel Uni-Ter and U.S. Re to provide information necessary to identify and locate which documents are responsive to which requests for production served by Plaintiff; and 3) compel Uni-Ter and U.S. Re to produce any additional documentation that has been inappropriately withheld.

5. On July 27, 2021, Uni-Ter and U.S. Re filed their Response in Opposition to Plaintiff's Motion to Compel ("Response in Opposition").

6. A firm jury trial setting in this matter is scheduled for September 20, 2021. At the time of the hearing of this motion, only one (1) week remained before the discovery cut-off.

7. The Discovery Commissioner finds that there is insufficient time to complete the requested discovery prior to the date set for the close of discovery in this matter, which is on August 5, 2021.

8. After reviewing the Motion to Compel, the Response in Opposition, and entertaining argument from counsel, the Discovery Commissioner recommends as follows:

II. RECOMMENDATIONS

IT IS HEREBY RECOMMENDED that the Motion to Compel is **GRANTED IN PART** and **DENIED IN PART**.

IT IS FURTHER RECOMMENDED that the Motion to Compel is **DENIED** without prejudice to the extent the Receiver seeks to compel the production of additional documents within the discovery period. If the district court reopens discovery, the Discovery Commissioner may reconsider this recommendation.

IT IS FURTHER RECOMMENDED that Uni-Ter UMC, Uni-Ter CS, and U.S. Re are hereby required within 30 days of the date of the Hearing, on or before August 30, 2021, to provide appropriate responses to the Receiver's requests for production of documents with bates numbers or bates ranges responsive to the requests for production.

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The Discovery Commissioner, having met with counsel for the parties, having discussed the issues noted above and having reviewed any materials proposed in support thereof, hereby submits the above recommendations.

DATED this 20th day of August, 2021.

DISCOVERY COMMISSIONER, ERIN L. TRUMAN

Respectfully submitted by:

HUTCHISON & STEFFEN

/s/ Brenoch Wirthlin
MARK A. HUTCHISON, ESQ.
NEVADA BAR NO.: 4639
BRENOCH R. WIRTHLIN, ESQ.
NEVADA BAR NO. 10282
CHRIS ORME, ESQ.
NEVADA BAR NO. 10175
Attorneys for Plaintiff

Approved as to form and content by:

MCDONALD CARANO LLP

Did Not Sign

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Jon M Wilson Attorney
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Suite 4405
Miami, Fl 33131
Attorneys for Defendants U.S. Re Corporation, Uni-Ter Management Corp., and Uni-Ter Claims Services Corp

NOTICE

Pursuant to NRCP 16.3(c)(2), you are hereby notified that within fourteen (14) days after being served with a report any party may file and serve written objections to the recommendations. Written authorities may be filed with objections, but are not mandatory. If written authorities are filed, any other party may file and serve responding authorities within seven (7) days after being served with objections.

Objection time will expire on September 7, 2021.

A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to Plaintiff/Defendant at the following address on the ____ day of _____ 2021:

✓ Electronically filed and served counsel on **August 23**, 2021, Pursuant to N.E.F.C.R. Rule 9.

By: /s/ Sandy Gerety
COMMISSIONER DESIGNEE

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EXHIBIT 12

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff(s), v. ROBERT CHUR, et al., Defendant(s).	CASE NO. A-14-711535-C DEPT NO. XXVII HEARING DATE: July 29, 2021 HEARING TIME: 9:30 AM

ORDER

RE: DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS

The Court, having reviewed the above report and recommendations prepared by the Discovery Commissioner and,

_____ No timely objection having been filed,

X After reviewing the objections to the Report and Recommendations and good cause appearing,

* * *

AND

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted.

__X__ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following manner. (attached hereto) Plaintiff are to prioritize 20 requests for production of documents and Defendants are required to search and provide the Bates ranges and numbers for the top 20 that they choose.

_____ IT IS HEREBY ORDERED this matter is remanded to the Discovery Commissioner for reconsideration or further action.

_____ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report is set for _____, 2021, at _____:_____ a.m.

DATED this 17th day of September, 2021.

Dated this 18th day of September, 2021

Nancy L Allf
DISTRICT COURT JUDGE TW

B99 184 1CEF 7442
Nancy Allf
District Court Judge

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Steven D. Grierson
CLERK OF THE COURT

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E-Mail: corme@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 **DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATION** **Hearing Date: July 29, 2021** **Hearing Time: 9:30 a.m.**

Case Number: A-14-711535-C

DISCOVERY COMMISSIONER'S
REPORT and RECOMMENDATIONS

Hearing Date: July 29, 2021 ("Hearing")

Hearing Time: 9:30 a.m.

Attorney for Plaintiff: Brenoch Wirthlin and Chris Orme, Hutchinson & Steffen

Attorney for Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. Re Corporation: George F. Ogilvie III, McDonald Carano LLP

I. FINDINGS

1. In November 2012, the Commissioner of Insurance for the State of Nevada initiated a receivership action, Case No. A-12-672047-B ("Receivership Action") and was appointed as Receiver of Lewis and Clark LTC Risk Retention Group, Inc. ("L&C").

2. Subsequently, on December 23, 2014, the Receiver filed this lawsuit against Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp. (collectively "Uni-Ter"), and U.S. Re Corporation ("U.S. Re"), as well as several former directors of L&C.

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4. Following a meet and confer, on July 13, 2021, Plaintiff filed her Motion to Compel Discovery Pursuant to NRCP 37(a)(4) on Order Shortening Time ("Motion to Compel"). The Motion to Compel requested the Court to: 1) compel Uni-Ter and U.S. Re to produce or permit for inspection all documents in their alleged "secret database" dated between January 1, 2008 through February 28, 2013; 2) compel Uni-Ter and U.S. Re to provide information necessary to identify and locate which documents are responsive to which requests for production served by Plaintiff; and 3) compel Uni-Ter and U.S. Re to produce any additional documentation that has been inappropriately withheld.

5. On July 27, 2021, Uni-Ter and U.S. Re filed their Response in Opposition to Plaintiff's Motion to Compel ("Response in Opposition").

6. A firm jury trial setting in this matter is scheduled for September 20, 2021. At the time of the hearing of this motion, only one (1) week remained before the discovery cut-off.

7. The Discovery Commissioner finds that there is insufficient time to complete the requested discovery prior to the date set for the close of discovery in this matter, which is on August 5, 2021.

8. After reviewing the Motion to Compel, the Response in Opposition, and entertaining argument from counsel, the Discovery Commissioner recommends as follows:

II. RECOMMENDATIONS

IT IS HEREBY RECOMMENDED that the Motion to Compel is **GRANTED IN PART** and **DENIED IN PART**.

IT IS FURTHER RECOMMENDED that the Motion to Compel is **DENIED** without prejudice to the extent the Receiver seeks to compel the production of additional documents within the discovery period. If the district court reopens discovery, the Discovery Commissioner may reconsider this recommendation.

IT IS FURTHER RECOMMENDED that Uni-Ter UMC, Uni-Ter CS, and U.S. Re are hereby required within 30 days of the date of the Hearing, on or before August 30, 2021, to provide appropriate responses to the Receiver's requests for production of documents with bates numbers or bates ranges responsive to the requests for production.

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The Discovery Commissioner, having met with counsel for the parties, having discussed the issues noted above and having reviewed any materials proposed in support thereof, hereby submits the above recommendations.

DATED this 20th day of August, 2021.

DISCOVERY COMMISSIONER, ERIN L. TRUMAN

Respectfully submitted by:

HUTCHISON & STEFFEN

/s/ Brenoch Wirthlin
MARK A. HUTCHISON, ESQ.
NEVADA BAR NO.: 4639
BRENOCH R. WIRTHLIN, ESQ.
NEVADA BAR NO. 10282
CHRIS ORME, ESQ.
NEVADA BAR NO. 10175
Attorneys for Plaintiff

Approved as to form and content by:

MCDONALD CARANO LLP

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Jon M Wilson Attorney
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Attorneys for Defendants U.S. Re Corporation, Uni-Ter Management Corp., and Uni-Ter Claims Services Corp

NOTICE

Pursuant to NRCP 16.3(c)(2), you are hereby notified that within fourteen (14) days after being served with a report any party may file and serve written objections to the recommendations. Written authorities may be filed with objections, but are not mandatory. If written authorities are filed, any other party may file and serve responding authorities within seven (7) days after being served with objections.

Objection time will expire on September 7, 2021.

A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to Plaintiff/Defendant at the following address on the ____ day of _____ 2021:

✓ Electronically filed and served counsel on **August 23**, 2021, Pursuant to N.E.F.C.R. Rule 9.

By: /s/ Sandy Gerety
COMMISSIONER DESIGNEE

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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Steven D. Grierson
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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No. A-14-711535-C

Dept. No.: XXVII

NOTICE OF ENTRY OF ORDER RE: DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS

Case Number: A-14-711535-C

PLEASE TAKE NOTICE that an Order Re: Discovery Commissioner's Report and Recommendations was entered in the above-captioned case on the 18th day of September, 2021, a copy of which is attached hereto.

DATED this 20th day of September, 2021.

McDONALD CARANO LLP

By: /s/ *George F. Ogilvie III*
George F. Ogilvie III (NSBN 3552)
2300 West Sahara Avenue, Suite 1200
Las Vegas, NV 89102

Jon M. Wilson, Esq. (Appearing *Pro Hac Vice*)
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PHONE 702.873.4100 • FAX 702.873.9966

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on or about the 20th day of September, 2021, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER RE: DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

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9/18/2021 4:14 PM

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09/18/2021 4:14 PM
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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff(s), v. ROBERT CHUR, et al., Defendant(s).	CASE NO. A-14-711535-C DEPT NO. XXVII HEARING DATE: July 29, 2021 HEARING TIME: 9:30 AM

ORDER

RE: DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS

The Court, having reviewed the above report and recommendations prepared by the Discovery Commissioner and,

_____ No timely objection having been filed,

__X__ After reviewing the objections to the Report and Recommendations and good cause appearing,

* * *

Case Number: A-14-711535-C

AND

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted.

__X__ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following manner. (attached hereto) Plaintiff are to prioritize 20 requests for production of documents and Defendants are required to search and provide the Bates ranges and numbers for the top 20 that they choose.

_____ IT IS HEREBY ORDERED this matter is remanded to the Discovery Commissioner for reconsideration or further action.

_____ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report is set for _____, 2021, at _____:_____ a.m.

DATED this 17th day of September, 2021.

Dated this 18th day of September, 2021

Nancy L Allf
DISTRICT COURT JUDGE TW

B99 184 1CEF 7442
Nancy Allf
District Court Judge

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CLERK OF THE COURT

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E-Mail: corme@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 **DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATION** **Hearing Date: July 29, 2021** **Hearing Time: 9:30 a.m.**

Case Number: A-14-711535-C

DISCOVERY COMMISSIONER'S
REPORT and RECOMMENDATIONS

Hearing Date: July 29, 2021 ("Hearing")

Hearing Time: 9:30 a.m.

Attorney for Plaintiff: Brenoch Wirthlin and Chris Orme, Hutchinson & Steffen

Attorney for Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. Re Corporation: George F. Ogilvie III, McDonald Carano LLP

I. FINDINGS

1. In November 2012, the Commissioner of Insurance for the State of Nevada initiated a receivership action, Case No. A-12-672047-B ("Receivership Action") and was appointed as Receiver of Lewis and Clark LTC Risk Retention Group, Inc. ("L&C").

2. Subsequently, on December 23, 2014, the Receiver filed this lawsuit against Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp. (collectively "Uni-Ter"), and U.S. Re Corporation ("U.S. Re"), as well as several former directors of L&C.

3. In May 2018, Uni-Ter and U.S. Re produced approximately 1.5 million pages of documents. Shortly thereafter, Uni-Ter and U.S. Re produced approximately 200,000 additional pages of documents for a total of approximately 1.7 million pages of documents.

4. Following a meet and confer, on July 13, 2021, Plaintiff filed her Motion to Compel Discovery Pursuant to NRCP 37(a)(4) on Order Shortening Time ("Motion to Compel"). The Motion to Compel requested the Court to: 1) compel Uni-Ter and U.S. Re to produce or permit for inspection all documents in their alleged "secret database" dated between January 1, 2008 through February 28, 2013; 2) compel Uni-Ter and U.S. Re to provide information necessary to identify and locate which documents are responsive to which requests for production served by Plaintiff; and 3) compel Uni-Ter and U.S. Re to produce any additional documentation that has been inappropriately withheld.

5. On July 27, 2021, Uni-Ter and U.S. Re filed their Response in Opposition to Plaintiff's Motion to Compel ("Response in Opposition").

6. A firm jury trial setting in this matter is scheduled for September 20, 2021. At the time of the hearing of this motion, only one (1) week remained before the discovery cut-off.

7. The Discovery Commissioner finds that there is insufficient time to complete the requested discovery prior to the date set for the close of discovery in this matter, which is on August 5, 2021.

8. After reviewing the Motion to Compel, the Response in Opposition, and entertaining argument from counsel, the Discovery Commissioner recommends as follows:

II. RECOMMENDATIONS

IT IS HEREBY RECOMMENDED that the Motion to Compel is **GRANTED IN PART** and **DENIED IN PART**.

IT IS FURTHER RECOMMENDED that the Motion to Compel is **DENIED** without prejudice to the extent the Receiver seeks to compel the production of additional documents within the discovery period. If the district court reopens discovery, the Discovery Commissioner may reconsider this recommendation.

IT IS FURTHER RECOMMENDED that Uni-Ter UMC, Uni-Ter CS, and U.S. Re are hereby required within 30 days of the date of the Hearing, on or before August 30, 2021, to provide appropriate responses to the Receiver's requests for production of documents with bates numbers or bates ranges responsive to the requests for production.

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The Discovery Commissioner, having met with counsel for the parties, having discussed the issues noted above and having reviewed any materials proposed in support thereof, hereby submits the above recommendations.

DATED this 20th day of August, 2021.

DISCOVERY COMMISSIONER, ERIN L. TRUMAN

Respectfully submitted by:

HUTCHISON & STEFFEN

/s/ Brenoch Wirthlin
MARK A. HUTCHISON, ESQ.
NEVADA BAR NO.: 4639
BRENOCH R. WIRTHLIN, ESQ.
NEVADA BAR NO. 10282
CHRIS ORME, ESQ.
NEVADA BAR NO. 10175
Attorneys for Plaintiff

Approved as to form and content by:

MCDONALD CARANO LLP

Did Not Sign

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Jon M. Wilson, Esq.
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Miami, Fl 33131
Attorneys for Defendants U.S. Re Corporation, Uni-Ter Management Corp., and Uni-Ter Claims Services Corp

NOTICE

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Objection time will expire on September 7, 2021.

A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to Plaintiff/Defendant at the following address on the ____ day of _____ 2021:

✓ Electronically filed and served counsel on **August 23**, 2021, Pursuant to N.E.F.C.R. Rule 9.

By: /s/ Sandy Gerety
COMMISSIONER DESIGNEE

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

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EXHIBIT PAGE ONLY

EXHIBIT 13

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 **ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION IN LIMINE NO. 2**

This matter having come before the Honorable Nancy Allf at the hearing on all pending motions on September 2, 2021 (the "Hearing"), on Plaintiff's Motion in *Limine* No. 2 to Preclude Testimony by Joseph Petrelli, Richard Lord, and Jim Murphy Regarding Unperformed Solvency Analysis (the "Motion") filed on August 13, 2021; Brenoch Wirthlin, Esq., Christian M. Orme, Esq. and Tanya M. Fraser, Esq. of Hutchison & Steffen, PLLC appearing on behalf of Plaintiff; Jon M. Wilson, Esq. of the Law Offices of Jon Wilson, and George F. Ogilvie III, Esq., of McDonald Carano, LLP, appearing on behalf of Defendants Uni-Ter Underwriting Management Corp, Uni-Ter Claims Services Corp., and U.S. RE Corporation (the "Corporate Defendants"); the Corporate Defendants having filed an opposition ("Opposition") to the Motion on August 27,

2021; the Plaintiff having filed its reply ("Reply") in support of the Motion on August 31, 2021; the Court having read and considered the Motion, the Corporate Defendants' Opposition, and the Reply, as well as having heard and considered the arguments of counsel at the Hearing on the Motion; good cause appearing:

THE COURT HEREBY FINDS that neither Mr. Petrelli, Mr. Lord, nor Mr. Murphy performed any insolvency analysis with respect to Lewis & Clark.

IT IS HEREBY ORDERED that the Motion is **GRANTED in part** and **DENIED in part**, as set forth herein.

IT IS HEREBY FURTHER ORDERED that the Motion is granted to the extent to preclude any testimony with regard to insolvency, because Mr. Petrelli, Mr. Lord, and Mr. Murphy didn't do insolvency analyses. Mr. Petrelli, Mr. Lord, and Mr. Murphy can talk about how they rated, what they did as an actuary and what they did as an auditor.

IT IS HEREBY ORDERED.

September 20, 2021

Dated this 20th day of September, 2021

Nancy L Allf

TW

8C8 8A8 EB49 9095
Nancy Allf
District Court Judge

Respectfully submitted by:

HUTCHISON & STEFFEN, PLLC

/s/Brenoch Wirthlin
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Attorneys for Plaintiffs

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Attorneys for Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

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CLERK OF THE COURT

NEO

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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 **NOTICE OF ENTRY OF ORDER**

Please take notice that an Order Granting in Part and Denying in Part Plaintiff's Motion in Limine No. 2 was entered on the 20th day of September, 2021,

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a copy of which is attached hereto.

DATED this 21st day of September, 2021.

HUTCHISON & STEFFEN

By */s/Brenoch Wirthlin*

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 21st day of September, 2021, I caused the document entitled **NOTICE OF ENTRY OF ORDER** to be served on the following by Electronic Service to:

ALL PARTIES ON THE E-SERVICE LIST

/s/Danielle Kelley
An Employee of Hutchison & Steffen, PLLC

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DISTRICT COURT
CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION; DOES 1-50, inclusive; and ROES 51-100, inclusive; Defendants.	Case No.: A-14-711535-C Dept. No.: XXVII **ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION IN LIMINE NO. 2**

This matter having come before the Honorable Nancy Allf at the hearing on all pending motions on September 2, 2021 (the "Hearing"), on Plaintiff's Motion in *Limine* No. 2 to Preclude Testimony by Joseph Petrelli, Richard Lord, and Jim Murphy Regarding Unperformed Solvency Analysis (the "Motion") filed on August 13, 2021; Brenoch Wirthlin, Esq., Christian M. Orme, Esq. and Tanya M. Fraser, Esq. of Hutchison & Steffen, PLLC appearing on behalf of Plaintiff; Jon M. Wilson, Esq. of the Law Offices of Jon Wilson, and George F. Ogilvie III, Esq., of McDonald Carano, LLP, appearing on behalf of Defendants Uni-Ter Underwriting Management Corp, Uni-Ter Claims Services Corp., and U.S. RE Corporation (the "Corporate Defendants"); the Corporate Defendants having filed an opposition ("Opposition") to the Motion on August 27,

2021; the Plaintiff having filed its reply ("Reply") in support of the Motion on August 31, 2021; the Court having read and considered the Motion, the Corporate Defendants' Opposition, and the Reply, as well as having heard and considered the arguments of counsel at the Hearing on the Motion; good cause appearing:

THE COURT HEREBY FINDS that neither Mr. Petrelli, Mr. Lord, nor Mr. Murphy performed any insolvency analysis with respect to Lewis & Clark.

IT IS HEREBY ORDERED that the Motion is **GRANTED in part** and **DENIED in part**, as set forth herein.

IT IS HEREBY FURTHER ORDERED that the Motion is granted to the extent to preclude any testimony with regard to insolvency, because Mr. Petrelli, Mr. Lord, and Mr. Murphy didn't do insolvency analyses. Mr. Petrelli, Mr. Lord, and Mr. Murphy can talk about how they rated, what they did as an actuary and what they did as an auditor.

IT IS HEREBY ORDERED.

September 20, 2021

Dated this 20th day of September, 2021

Nancy L Allf

TW

8C8 8A8 EB49 9095
Nancy Allf
District Court Judge

Respectfully submitted by:

HUTCHISON & STEFFEN, PLLC

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 9/21/2021

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EXHIBIT 14

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DISTRICT COURT
CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION; DOES 1-50, inclusive; and ROES 51-100, inclusive; Defendants.	Case No.: A-14-711535-C Dept. No.: XXVII **ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO U.S. RE CORPORATION**

This matter having come before the Honorable Nancy Allf at the hearing on all pending motions on September 2, 2021 (the "Hearing"), on Plaintiff's Motion for Partial Summary Judgment as to U.S. RE Corporation (the "Motion") filed on August 13, 2021; Brenoch Wirthlin, Esq., Christian M. Orme, Esq. and Tanya M. Fraser, Esq. of Hutchison & Steffen, PLLC appearing on behalf of Plaintiff; Jon M. Wilson, Esq. of the Law Offices of Jon Wilson, and George F. Ogilvie III, Esq., of McDonald Carano, LLP, appearing on behalf of Defendants Uni-Ter Underwriting Management Corp, Uni-Ter Claims Services Corp., and U.S. RE Corporation (the "Corporate Defendants"); the Corporate Defendants having filed an opposition ("Opposition") to the Motion on August 27, 2021; Plaintiff having filed its Reply in Support of the Motion ("Reply")

on August 31, 2021; the Court having read and considered Plaintiff's Motion, the Corporate Defendants' Opposition, and the Reply, as well as having heard and considered the arguments of counsel at the Hearing on the Motion; good cause appearing:

THE COURT HEREBY FINDS upon the admissions that Defendant U.S. RE Corporation did not obtain a Nevada license authorizing it to serve as a reinsurance broker for Lewis and Clark.

THE COURT HEREBY FINDS that Defendant U.S. Re Corporation brokered the reinsurance contracts for Lewis and Clark.

Based upon the foregoing, good cause appearing, and after review:

IT IS HEREBY ORDERED that Plaintiff's Motion for Partial Summary Judgment as to U.S. RE Corporation is **GRANTED in part** and **DENIED in part.**

IT IS HEREBY FURTHER ORDERED that the Motion is granted in part based upon the admissions that Defendant U.S. RE Corporation was not licensed in Nevada for the brokering of reinsurance for Lewis & Clark.

IT IS HEREBY FURTHER ORDERED that the Motion is denied to the extent that it is a question for the trier of fact to determine the effect of Defendant U.S. RE Corporation's failure to obtain a Nevada license for brokering reinsurance for Lewis & Clark.

IT IS SO ORDERED.

September 19, 2021

Dated this 20th day of September, 2021

Nancy L Allf

TW

F9A 8EC C31F 73A1
Nancy Allf
District Court Judge

Respectfully submitted by:

HUTCHISON & STEFFEN, PLLC

/s/Brenoch Wirthlin

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Attorneys for Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

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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 **NOTICE OF ENTRY OF ORDER**

Please take notice that an Order Granting in Part and Denying in Part Plaintiff's Motion for Partial Summary Judgment as to U.S. Re Corporation was entered on the 20th day of September, 2021,

///

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a copy of which is attached hereto.

DATED this 21st day of September, 2021.

HUTCHISON & STEFFEN

By */s/Brenoch Wirthlin*

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 21st day of September, 2021, I caused the document entitled **NOTICE OF ENTRY OF ORDER** to be served on the following by Electronic Service to:

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DISTRICT COURT
CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION; DOES 1-50, inclusive; and ROES 51-100, inclusive; Defendants.	Case No.: A-14-711535-C Dept. No.: XXVII **ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO U.S. RE CORPORATION**

This matter having come before the Honorable Nancy Allf at the hearing on all pending motions on September 2, 2021 (the "Hearing"), on Plaintiff's Motion for Partial Summary Judgment as to U.S. RE Corporation (the "Motion") filed on August 13, 2021; Brenoch Wirthlin, Esq., Christian M. Orme, Esq. and Tanya M. Fraser, Esq. of Hutchison & Steffen, PLLC appearing on behalf of Plaintiff; Jon M. Wilson, Esq. of the Law Offices of Jon Wilson, and George F. Ogilvie III, Esq., of McDonald Carano, LLP, appearing on behalf of Defendants Uni-Ter Underwriting Management Corp, Uni-Ter Claims Services Corp., and U.S. RE Corporation (the "Corporate Defendants"); the Corporate Defendants having filed an opposition ("Opposition") to the Motion on August 27, 2021; Plaintiff having filed its Reply in Support of the Motion ("Reply")

on August 31, 2021; the Court having read and considered Plaintiff's Motion, the Corporate Defendants' Opposition, and the Reply, as well as having heard and considered the arguments of counsel at the Hearing on the Motion; good cause appearing:

THE COURT HEREBY FINDS upon the admissions that Defendant U.S. RE Corporation did not obtain a Nevada license authorizing it to serve as a reinsurance broker for Lewis and Clark.

THE COURT HEREBY FINDS that Defendant U.S. Re Corporation brokered the reinsurance contracts for Lewis and Clark.

Based upon the foregoing, good cause appearing, and after review:

IT IS HEREBY ORDERED that Plaintiff's Motion for Partial Summary Judgment as to U.S. RE Corporation is **GRANTED in part** and **DENIED in part.**

IT IS HEREBY FURTHER ORDERED that the Motion is granted in part based upon the admissions that Defendant U.S. RE Corporation was not licensed in Nevada for the brokering of reinsurance for Lewis & Clark.

IT IS HEREBY FURTHER ORDERED that the Motion is denied to the extent that it is a question for the trier of fact to determine the effect of Defendant U.S. RE Corporation's failure to obtain a Nevada license for brokering reinsurance for Lewis & Clark.

IT IS SO ORDERED.

September 19, 2021

Dated this 20th day of September, 2021

Nancy L Allf

TW

F9A 8EC C31F 73A1
Nancy Allf
District Court Judge

Respectfully submitted by:

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/s/Brenoch Wirthlin

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DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

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EXHIBIT 15

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiffs, v. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP. UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	Case No. A-14-711535-C Dept. No.: XXVII **ORDER DENYING PLAINTIFF'S MOTION IN LIMINE NUMBER 5: TO LIMIT THE SCOPE OF EXPERT WITNESS TESTIMONY REGARDING SPECULATION CONCERNING THE ECONOMY** Date of Hearing: September 2, 2021 Time of Hearing: 10:00 a.m.

This matter came before the Court for hearing on September 2, 2021 on Plaintiff's Motion In Limine Number 5: To Limit The Scope Of Expert Witness Testimony Regarding Speculation Concerning The Economy. Brenoch Wirthlin, Esq., Christian M. Orme, Esq. and Tanya M. Fraser, Esq. of Hutchison & Steffen, PLLC appeared on behalf of Plaintiff. George F. Ogilvie III, Esq. of McDonald Carano LLP and Jon N. Wilson, Esq. of the Law Offices of Jon Wilson appeared on behalf of Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation.

The Court having considered the record and the briefs filed in support of and in opposition to the Motion, having entertained the oral arguments of counsel, and good cause appearing,

IT IS HEREBY ORDERED that Plaintiff's Motion In Limine Number 5: To Limit The Scope Of Expert Witness Testimony Regarding Speculation Concerning The Economy is **DENIED**. However, the Court will prohibit cumulative evidence of the economy.

DATED this 24th day of September, 2021.

Dated this 24th day of September, 2021

Nancy L Allf

NANCY L. ALLF
District Court Judge

TW

CE8 F01 6EDB 9C5C
Nancy Allf
District Court Judge

Submitted By:

McDONALD CARANO LLP

By: /s/ *George F. Ogilvie III*
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Subject: FW: Emailing: Order Denying Plaintiffs Motion In Limine Number 5 To Limit The Scope Of Expert Witness Testimony Regarding Speculation Concerning The Economy 09 - Redline, Order Denying Plaintiffs Motion In Limine Number 6 To Strike Proffered Expert Witne

Attachments: Order Denying Plaintiffs Motion In Limine Number 5 To Limit The Scope Of Expert Witness Testimony Regarding Speculation Concerning The Economy 09 - Redline.docx; Order Denying Plaintiffs Motion In Limine Number 6 To Strike Proffered Expert Witness Alan Gray 091921 - version 1 - Redline.docx; Order Denying Plaintiffs Motion For Partial Summary Judgment Regarding The Uni-Ter Defendants Fiduciary Duties 091921 - version 1 - Redline.docx; Order Denying Plaintiffs Motion For Partial Summary Judgment Regarding Uni-Ter Defendants Breach Of Their Fiduciary Duties 091921 - version 1 - Redline.docx; Order Denying Plaintiffs Motion In Limine Number 1 To Preclude Sam Hewitt From Providing Expert Testimony Regarding Insolvency Analysis 091921 - Redline.docx; Order Denying Plaintiffs Motion In Limine Number 4 To Preclude Any Reference To Reinsurance Estimates 091921 - version 1 - Redline.docx

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We are ok with the following redline versions.

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DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No. A-14-711535-C

Dept. No.: XXVII

NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION IN LIMINE NO. 5: TO LIMIT THE SCOPE OF EXPERT WITNESS TESTIMONY REGARDING SPECULATION CONCERNING THE ECONOMY

PLEASE TAKE NOTICE that an Order Denying Plaintiff's Motion in Limine No. 5, to Limit the Scope of Expert Witness Testimony Regarding Speculation Concerning the Economy was entered in the above-captioned case on the 24th day of September, 2021, a copy of which is attached hereto.

DATED this 30th day of September, 2021.

McDONALD CARANO LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on or about the 30th day of September, 2021, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION IN LIMINE NO. 5: TO LIMIT THE SCOPE OF EXPERT WITNESS TESTIMONY REGARDING SPECULATION CONCERNING THE ECONOMY** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiffs, v. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP. UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	Case No. A-14-711535-C Dept. No.: XXVII **ORDER DENYING PLAINTIFF'S MOTION IN LIMINE NUMBER 5: TO LIMIT THE SCOPE OF EXPERT WITNESS TESTIMONY REGARDING SPECULATION CONCERNING THE ECONOMY** Date of Hearing: September 2, 2021 Time of Hearing: 10:00 a.m.

Case Number: A-14-711535-C

This matter came before the Court for hearing on September 2, 2021 on Plaintiff's Motion In Limine Number 5: To Limit The Scope Of Expert Witness Testimony Regarding Speculation Concerning The Economy. Brenoch Wirthlin, Esq., Christian M. Orme, Esq. and Tanya M. Fraser, Esq. of Hutchison & Steffen, PLLC appeared on behalf of Plaintiff. George F. Ogilvie III, Esq. of McDonald Carano LLP and Jon N. Wilson, Esq. of the Law Offices of Jon Wilson appeared on behalf of Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation.

The Court having considered the record and the briefs filed in support of and in opposition to the Motion, having entertained the oral arguments of counsel, and good cause appearing,

IT IS HEREBY ORDERED that Plaintiff's Motion In Limine Number 5: To Limit The Scope Of Expert Witness Testimony Regarding Speculation Concerning The Economy is **DENIED**. However, the Court will prohibit cumulative evidence of the economy.

DATED this 24th day of September, 2021.

Dated this 24th day of September, 2021

Nancy L Allf

NANCY L. ALLF
District Court Judge

TW

CE8 F01 6EDB 9C5C
Nancy Allf
District Court Judge

Submitted By:

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Subject: FW: Emailing: Order Denying Plaintiffs Motion In Limine Number 5 To Limit The Scope Of Expert Witness Testimony Regarding Speculation Concerning The Economy 09 - Redline, Order Denying Plaintiffs Motion In Limine Number 6 To Strike Proffered Expert Witne

Attachments: Order Denying Plaintiffs Motion In Limine Number 5 To Limit The Scope Of Expert Witness Testimony Regarding Speculation Concerning The Economy 09 - Redline.docx; Order Denying Plaintiffs Motion In Limine Number 6 To Strike Proffered Expert Witness Alan Gray 091921 - version 1 - Redline.docx; Order Denying Plaintiffs Motion For Partial Summary Judgment Regarding The Uni-Ter Defendants Fiduciary Duties 091921 - version 1 - Redline.docx; Order Denying Plaintiffs Motion For Partial Summary Judgment Regarding Uni-Ter Defendants Breach Of Their Fiduciary Duties 091921 - version 1 - Redline.docx; Order Denying Plaintiffs Motion In Limine Number 1 To Preclude Sam Hewitt From Providing Expert Testimony Regarding Insolvency Analysis 091921 - Redline.docx; Order Denying Plaintiffs Motion In Limine Number 4 To Preclude Any Reference To Reinsurance Estimates 091921 - version 1 - Redline.docx

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We are ok with the following redline versions.

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

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EXHIBIT PAGE ONLY

EXHIBIT 16

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiffs, v. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP. UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	Case No. A-14-711535-C Dept. No.: XXVII **ORDER DENYING PLAINTIFF'S MOTION IN LIMINE NUMBER 4: TO PRECLUDE ANY REFERENCE TO REINSURANCE ESTIMATES** Date of Hearing: September 2, 2021 Time of Hearing: 10:00 a.m.

Case Number: A-14-711535-C

This matter came before the Court for hearing on September 2, 2021 on Plaintiff's Motion In Limine Number 4: To Preclude Any Reference To Reinsurance Estimates. Brenoch Wirthlin, Esq., Christian M. Orme, Esq. and Tanya M. Fraser, Esq. of Hutchison & Steffen, PLLC appeared on behalf of Plaintiff. George F. Ogilvie III, Esq. of McDonald Carano LLP and Jon N. Wilson, Esq. of the Law Offices of Jon Wilson appeared on behalf of Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation.

The Court having considered the record and the briefs filed in support of and in opposition to the Motion, having entertained the oral arguments of counsel, and good cause appearing,

IT IS HEREBY ORDERED that Plaintiff's Motion In Limine Number 4: To Preclude Any Reference To Reinsurance Estimates is **DENIED**.

DATED this 24th day of September, 2021.

Dated this 24th day of September, 2021

Nancy L Allf

NANCY L. ALLF
District Court Judge

TW

348 9B3 D885 A999
Nancy Allf
District Court Judge

Submitted By:

McDONALD CARANO LLP

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Attorneys for Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation

Approved as to Form and Content:

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Subject: FW: Emailing: Order Denying Plaintiffs Motion In Limine Number 5 To Limit The Scope Of Expert Witness Testimony Regarding Speculation Concerning The Economy 09 - Redline, Order Denying Plaintiffs Motion In Limine Number 6 To Strike Proffered Expert Witne

Attachments: Order Denying Plaintiffs Motion In Limine Number 5 To Limit The Scope Of Expert Witness Testimony Regarding Speculation Concerning The Economy 09 - Redline.docx; Order Denying Plaintiffs Motion In Limine Number 6 To Strike Proffered Expert Witness Alan Gray 091921 - version 1 - Redline.docx; Order Denying Plaintiffs Motion For Partial Summary Judgment Regarding The Uni-Ter Defendants Fiduciary Duties 091921 - version 1 - Redline.docx; Order Denying Plaintiffs Motion For Partial Summary Judgment Regarding Uni-Ter Defendants Breach Of Their Fiduciary Duties 091921 - version 1 - Redline.docx; Order Denying Plaintiffs Motion In Limine Number 1 To Preclude Sam Hewitt From Providing Expert Testimony Regarding Insolvency Analysis 091921 - Redline.docx; Order Denying Plaintiffs Motion In Limine Number 4 To Preclude Any Reference To Reinsurance Estimates 091921 - version 1 - Redline.docx

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We are ok with the following redline versions.

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DISTRICT COURT
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Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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Service Date: 9/24/2021

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No. A-14-711535-C

Dept. No.: XXVII

NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION IN LIMINE NO. 4: TO PRECLUDE ANY REFERENCE TO REINSURANCE ESTIMATES

Case Number: A-14-711535-C

PLEASE TAKE NOTICE that an Order Denying Plaintiff's Motion in Limine No. 4: to Preclude any Reference to Reinsurance Estimates was entered in the above-captioned case on the 24th day of September, 2021, a copy of which is attached hereto.

DATED this 30th day of September, 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on or about the 30th day of September, 2021, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION IN LIMINE NO. 4: TO PRECLUDE ANY REFERENCE TO REINSURANCE ESTIMATES** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiffs, v. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP. UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	Case No. A-14-711535-C Dept. No.: XXVII **ORDER DENYING PLAINTIFF'S MOTION IN LIMINE NUMBER 4: TO PRECLUDE ANY REFERENCE TO REINSURANCE ESTIMATES** Date of Hearing: September 2, 2021 Time of Hearing: 10:00 a.m.

Case Number: A-14-711535-C

This matter came before the Court for hearing on September 2, 2021 on Plaintiff's Motion In Limine Number 4: To Preclude Any Reference To Reinsurance Estimates. Brenoch Wirthlin, Esq., Christian M. Orme, Esq. and Tanya M. Fraser, Esq. of Hutchison & Steffen, PLLC appeared on behalf of Plaintiff. George F. Ogilvie III, Esq. of McDonald Carano LLP and Jon N. Wilson, Esq. of the Law Offices of Jon Wilson appeared on behalf of Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation.

The Court having considered the record and the briefs filed in support of and in opposition to the Motion, having entertained the oral arguments of counsel, and good cause appearing,

IT IS HEREBY ORDERED that Plaintiff's Motion In Limine Number 4: To Preclude Any Reference To Reinsurance Estimates is **DENIED**.

DATED this 24th day of September, 2021.

Dated this 24th day of September, 2021

Nancy L Allf

NANCY L. ALLF
District Court Judge

TW

348 9B3 D885 A999
Nancy Allf
District Court Judge

Submitted By:

McDONALD CARANO LLP

By: /s/ *George F. Ogilvie III*
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Subject: FW: Emailing: Order Denying Plaintiffs Motion In Limine Number 5 To Limit The Scope Of Expert Witness Testimony Regarding Speculation Concerning The Economy 09 - Redline, Order Denying Plaintiffs Motion In Limine Number 6 To Strike Proffered Expert Witne

Attachments: Order Denying Plaintiffs Motion In Limine Number 5 To Limit The Scope Of Expert Witness Testimony Regarding Speculation Concerning The Economy 09 - Redline.docx; Order Denying Plaintiffs Motion In Limine Number 6 To Strike Proffered Expert Witness Alan Gray 091921 - version 1 - Redline.docx; Order Denying Plaintiffs Motion For Partial Summary Judgment Regarding The Uni-Ter Defendants Fiduciary Duties 091921 - version 1 - Redline.docx; Order Denying Plaintiffs Motion For Partial Summary Judgment Regarding Uni-Ter Defendants Breach Of Their Fiduciary Duties 091921 - version 1 - Redline.docx; Order Denying Plaintiffs Motion In Limine Number 1 To Preclude Sam Hewitt From Providing Expert Testimony Regarding Insolvency Analysis 091921 - Redline.docx; Order Denying Plaintiffs Motion In Limine Number 4 To Preclude Any Reference To Reinsurance Estimates 091921 - version 1 - Redline.docx

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Subject: Emailing: Order Denying Plaintiffs Motion In Limine Number 5 To Limit The Scope Of Expert Witness Testimony Regarding Speculation Concerning The Economy 09 - Redline, Order Denying Plaintiffs Motion In Limine Number 6 To Strike Proffered Expert Witness A

We are ok with the following redline versions.

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DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

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EXHIBIT PAGE ONLY

EXHIBIT 17

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiffs, v. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP. UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	Case No. A-14-711535-C Dept. No.: XXVII **ORDER DENYING PLAINTIFF'S MOTION IN LIMINE NUMBER 1: TO PRECLUDE SAM HEWITT FROM PROVIDING EXPERT TESTIMONY REGARDING INSOLVENCY ANALYSIS** Date of Hearing: September 2, 2021 Time of Hearing: 10:00 a.m.

This matter came before the Court for hearing on September 2, 2021 on Plaintiff's Motion In Limine Number 1: To Preclude Sam Hewitt From Providing Expert Testimony Regarding Insolvency Analysis. Brenoch Wirthlin, Esq., Christian M. Orme, Esq. and Tanya M. Fraser, Esq. of Hutchison & Steffen, PLLC appeared on behalf of Plaintiff. George F. Ogilvie III, Esq. of McDonald Carano LLP and Jon N. Wilson, Esq. of the Law Offices of Jon Wilson appeared on behalf of Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation.

The Court having considered the record and the briefs filed in support of and in opposition to the Motion, having entertained the oral arguments of counsel, and good cause appearing,

IT IS HEREBY ORDERED that Plaintiff's Motion In Limine Number 1: To Preclude Sam Hewitt From Providing Expert Testimony Regarding Insolvency Analysis is **DENIED**. However, a proper foundation will have to be laid if Mr. Hewitt is to testify regarding the timing of Lewis and Clark LTC Risk Retention Group, Inc.'s insolvency.

DATED this 24th day of September, 2021.

Dated this 24th day of September, 2021

Nancy L Allf

NANCY L. ALLF TW
District Court Judge

1F8 DB5 80A3 E618
Nancy Allf
District Court Judge

Submitted By:

McDONALD CARANO LLP

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Subject: FW: Emailing: Order Denying Plaintiffs Motion In Limine Number 5 To Limit The Scope Of Expert Witness Testimony Regarding Speculation Concerning The Economy 09 - Redline, Order Denying Plaintiffs Motion In Limine Number 6 To Strike Proffered Expert Witne

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We are ok with the following redline versions.

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DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No. A-14-711535-C

Dept. No.: XXVII

NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION IN LIMINE NO. 1: TO PRECLUDE SAM HEWITT FROM PROVIDING EXPERT TESTIMONY REGARDING INSOLVENCY ANALYSIS

Case Number: A-14-711535-C

PLEASE TAKE NOTICE that an Order Denying Plaintiff's Motion in Limine No. 1: to Preclude Sam Hewitt from Providing Expert Testimony Regarding Insolvency Analysis was entered in the above-captioned case on the 24th day of September, 2021, a copy of which is attached hereto.

DATED this 30th day of September, 2021.

McDONALD CARANO LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on or about the 30th day of September, 2021, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION IN LIMINE NO. 1: TO PRECLUDE SAM HEWITT FROM PROVIDING EXPERT TESTIMONY REGARDING INSOLVENCY ANALYSIS** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiffs, v. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP. UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	Case No. A-14-711535-C Dept. No.: XXVII **ORDER DENYING PLAINTIFF'S MOTION IN LIMINE NUMBER 1: TO PRECLUDE SAM HEWITT FROM PROVIDING EXPERT TESTIMONY REGARDING INSOLVENCY ANALYSIS** Date of Hearing: September 2, 2021 Time of Hearing: 10:00 a.m.

This matter came before the Court for hearing on September 2, 2021 on Plaintiff's Motion In Limine Number 1: To Preclude Sam Hewitt From Providing Expert Testimony Regarding Insolvency Analysis. Brenoch Wirthlin, Esq., Christian M. Orme, Esq. and Tanya M. Fraser, Esq. of Hutchison & Steffen, PLLC appeared on behalf of Plaintiff. George F. Ogilvie III, Esq. of McDonald Carano LLP and Jon N. Wilson, Esq. of the Law Offices of Jon Wilson appeared on behalf of Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation.

The Court having considered the record and the briefs filed in support of and in opposition to the Motion, having entertained the oral arguments of counsel, and good cause appearing,

IT IS HEREBY ORDERED that Plaintiff's Motion In Limine Number 1: To Preclude Sam Hewitt From Providing Expert Testimony Regarding Insolvency Analysis is **DENIED**. However, a proper foundation will have to be laid if Mr. Hewitt is to testify regarding the timing of Lewis and Clark LTC Risk Retention Group, Inc.'s insolvency.

DATED this 24th day of September, 2021.

Dated this 24th day of September, 2021

Nancy L Allf

NANCY L. ALLF
District Court Judge

TW

1F8 DB5 80A3 E618
Nancy Allf
District Court Judge

Submitted By:

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Subject: FW: Emailing: Order Denying Plaintiffs Motion In Limine Number 5 To Limit The Scope Of Expert Witness Testimony Regarding Speculation Concerning The Economy 09 - Redline, Order Denying Plaintiffs Motion In Limine Number 6 To Strike Proffered Expert Witne

Attachments: Order Denying Plaintiffs Motion In Limine Number 5 To Limit The Scope Of Expert Witness Testimony Regarding Speculation Concerning The Economy 09 - Redline.docx; Order Denying Plaintiffs Motion In Limine Number 6 To Strike Proffered Expert Witness Alan Gray 091921 - version 1 - Redline.docx; Order Denying Plaintiffs Motion For Partial Summary Judgment Regarding The Uni-Ter Defendants Fiduciary Duties 091921 - version 1 - Redline.docx; Order Denying Plaintiffs Motion For Partial Summary Judgment Regarding Uni-Ter Defendants Breach Of Their Fiduciary Duties 091921 - version 1 - Redline.docx; Order Denying Plaintiffs Motion In Limine Number 1 To Preclude Sam Hewitt From Providing Expert Testimony Regarding Insolvency Analysis 091921 - Redline.docx; Order Denying Plaintiffs Motion In Limine Number 4 To Preclude Any Reference To Reinsurance Estimates 091921 - version 1 - Redline.docx

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Subject: Emailing: Order Denying Plaintiffs Motion In Limine Number 5 To Limit The Scope Of Expert Witness Testimony Regarding Speculation Concerning The Economy 09 - Redline, Order Denying Plaintiffs Motion In Limine Number 6 To Strike Proffered Expert Witness A

We are ok with the following redline versions.

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

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EXHIBIT PAGE ONLY

EXHIBIT 18

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiffs, v. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP. UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	Case No. A-14-711535-C Dept. No.: XXVII **ORDER DENYING PLAINTIFF'S MOTION IN LIMINE NUMBER 6 TO STRIKE PROFFERED EXPERT WITNESS ALAN GRAY** Date of Hearing: September 2, 2021 Time of Hearing: 10:00 a.m.

Case Number: A-14-711535-C

This matter came before the Court for hearing on September 2, 2021 on Plaintiff's Motion In Limine Number 6 To Strike Proffered Expert Witness Alan Gray. Brenoch Wirthlin, Esq., Christian M. Orme, Esq. and Tanya M. Fraser, Esq. of Hutchison & Steffen, PLLC appeared on behalf of Plaintiff. George F. Ogilvie III, Esq. of McDonald Carano LLP and Jon N. Wilson, Esq. of the Law Offices of Jon Wilson appeared on behalf of Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation.

The Court having considered the record and the briefs filed in support of and in opposition to the Motion, having entertained the oral arguments of counsel, and good cause appearing,

IT IS HEREBY ORDERED that Plaintiff's Motion In Limine Number 6 To Strike Proffered Expert Witness Alan Gray is **DENIED**.

DATED this 24th day of September, 2021.

Dated this 24th day of September, 2021

Nancy L Allf

NANCY L. ALLF
District Court Judge

TW

CEB 83E 1A01 89D8
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District Court Judge

Submitted By:

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Subject: FW: Emailing: Order Denying Plaintiffs Motion In Limine Number 5 To Limit The Scope Of Expert Witness Testimony Regarding Speculation Concerning The Economy 09 - Redline, Order Denying Plaintiffs Motion In Limine Number 6 To Strike Proffered Expert Witne

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We are ok with the following redline versions.

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DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No. A-14-711535-C

Dept. No.: XXVII

NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION IN LIMINE NUMBER 6 TO STRIKE PROFFERED EXPERT WITNESS ALAN GRAY

Case Number: A-14-711535-C

PLEASE TAKE NOTICE that an Order Denying Plaintiff's Motion in Limine Number 6 to Strike Proffered Expert Witness Alan Gray was entered in the above-captioned case on the 24th day of September, 2021, a copy of which is attached hereto.

DATED this 30th day of September, 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on or about the 30th day of September, 2021, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION IN LIMINE NUMBER 6 TO STRIKE PROFFERED EXPERT WITNESS ALAN GRAY** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiffs, v. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP. UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	Case No. A-14-711535-C Dept. No.: XXVII **ORDER DENYING PLAINTIFF'S MOTION IN LIMINE NUMBER 6 TO STRIKE PROFFERED EXPERT WITNESS ALAN GRAY** Date of Hearing: September 2, 2021 Time of Hearing: 10:00 a.m.

This matter came before the Court for hearing on September 2, 2021 on Plaintiff's Motion In Limine Number 6 To Strike Proffered Expert Witness Alan Gray. Brenoch Wirthlin, Esq., Christian M. Orme, Esq. and Tanya M. Fraser, Esq. of Hutchison & Steffen, PLLC appeared on behalf of Plaintiff. George F. Ogilvie III, Esq. of McDonald Carano LLP and Jon N. Wilson, Esq. of the Law Offices of Jon Wilson appeared on behalf of Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation.

The Court having considered the record and the briefs filed in support of and in opposition to the Motion, having entertained the oral arguments of counsel, and good cause appearing,

IT IS HEREBY ORDERED that Plaintiff's Motion In Limine Number 6 To Strike Proffered Expert Witness Alan Gray is **DENIED**.

DATED this 24th day of September, 2021.

Dated this 24th day of September, 2021

Nancy L Allf

NANCY L. ALLF
District Court Judge

TW

CEB 83E 1A01 89D8
Nancy Allf
District Court Judge

Submitted By:

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Subject: FW: Emailing: Order Denying Plaintiffs Motion In Limine Number 5 To Limit The Scope Of Expert Witness Testimony Regarding Speculation Concerning The Economy 09 - Redline, Order Denying Plaintiffs Motion In Limine Number 6 To Strike Proffered Expert Witne

Attachments: Order Denying Plaintiffs Motion In Limine Number 5 To Limit The Scope Of Expert Witness Testimony Regarding Speculation Concerning The Economy 09 - Redline.docx; Order Denying Plaintiffs Motion In Limine Number 6 To Strike Proffered Expert Witness Alan Gray 091921 - version 1 - Redline.docx; Order Denying Plaintiffs Motion For Partial Summary Judgment Regarding The Uni-Ter Defendants Fiduciary Duties 091921 - version 1 - Redline.docx; Order Denying Plaintiffs Motion For Partial Summary Judgment Regarding Uni-Ter Defendants Breach Of Their Fiduciary Duties 091921 - version 1 - Redline.docx; Order Denying Plaintiffs Motion In Limine Number 1 To Preclude Sam Hewitt From Providing Expert Testimony Regarding Insolvency Analysis 091921 - Redline.docx; Order Denying Plaintiffs Motion In Limine Number 4 To Preclude Any Reference To Reinsurance Estimates 091921 - version 1 - Redline.docx

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Subject: Emailing: Order Denying Plaintiffs Motion In Limine Number 5 To Limit The Scope Of Expert Witness Testimony Regarding Speculation Concerning The Economy 09 - Redline, Order Denying Plaintiffs Motion In Limine Number 6 To Strike Proffered Expert Witness A

We are ok with the following redline versions.

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiffs, v. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP. UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	Case No. A-14-711535-C Dept. No.: XXVII **ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING UNI-TER DEFENDANTS' BREACH OF THEIR FIDUCIARY DUTIES** Date of Hearing: September 2, 2021 Time of Hearing: 10:00 a.m.

Case Number: A-14-711535-C

This matter came before the Court for hearing on September 2, 2021 on Plaintiff's Motion For Partial Summary Judgment Regarding Uni-Ter Defendants' Breach Of Their Fiduciary Duties. Brenoch Wirthlin, Esq., Christian M. Orme, Esq. and Tanya M. Fraser, Esq. of Hutchison & Steffen, PLLC appeared on behalf of Plaintiff. George F. Ogilvie III, Esq. of McDonald Carano LLP and Jon N. Wilson, Esq. of the Law Offices of Jon Wilson appeared on behalf of Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation.

The Court having considered the record and the briefs filed in support of and in opposition to the Motion, having entertained the oral arguments of counsel, and good cause appearing,

IT IS HEREBY ORDERED that Plaintiff's Motion For Partial Summary Judgment Regarding Uni-Ter Defendants' Breach Of Their Fiduciary Duties is **DENIED**.

DATED this 27th day of September, 2021.

Dated this 27th day of September, 2021

Nancy L Allf

NANCY L. ALLF
District Court Judge

TW

34A E03 24FF DABE
Nancy Allf
District Court Judge

Submitted By:

McDONALD CARANO LLP

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DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No. A-14-711535-C

Dept. No.: XXVII

NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING UNI-TER DEFENDANTS' BREACH OF THEIR FIDUCIARY DUTIES

Case Number: A-14-711535-C

PLEASE TAKE NOTICE that an Order Denying Plaintiff's Motion for Partial Summary Judgment Regarding Uni-Ter Defendants' Breach of Their Fiduciary Duties was entered in the above-captioned case on the 27th day of September, 2021, a copy of which is attached hereto.

DATED this 30th day of September, 2021.

McDONALD CARANO LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on or about the 30th day of September, 2021, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING UNI-TER DEFENDANTS' BREACH OF THEIR FIDUCIARY DUTIES** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiffs, v. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP. UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	Case No. A-14-711535-C Dept. No.: XXVII **ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING UNI-TER DEFENDANTS' BREACH OF THEIR FIDUCIARY DUTIES** Date of Hearing: September 2, 2021 Time of Hearing: 10:00 a.m.

Case Number: A-14-711535-C

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The Court having considered the record and the briefs filed in support of and in opposition to the Motion, having entertained the oral arguments of counsel, and good cause appearing,

IT IS HEREBY ORDERED that Plaintiff's Motion For Partial Summary Judgment Regarding Uni-Ter Defendants' Breach Of Their Fiduciary Duties is **DENIED**.

DATED this 27th day of September, 2021.

Dated this 27th day of September, 2021

Nancy L Allf

NANCY L. ALLF
District Court Judge

TW

34A E03 24FF DABE
Nancy Allf
District Court Judge

Submitted By:

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DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiffs, v. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP. UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	Case No. A-14-711535-C Dept. No.: XXVII **ORDER GRANTING DEFENDANTS UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., AND U.S. RE CORPORATION'S MOTION FOR ORDER EXCLUDING INTEREST ACCRUED DURING STAY PERIODS** Date of Hearing: November 24, 2021 Time of Hearing: 10:00 a.m.

Case Number: A-14-711535-C

This matter came before the Court for hearing on November 24, 2021 on Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. Re Corporation's Motion for Order Excluding Interest Accrued During Stay Periods. Brenoch Wirthlin, Esq., of Hutchison & Steffen, PLLC appeared on behalf of Plaintiff. George F. Ogilvie III, Esq. of McDonald Carano LLP appeared on behalf of Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation.

The Court having considered the record and the briefs filed in support of and in opposition to the Motion, having entertained the oral arguments of counsel, and good cause appearing,

IT IS HEREBY ORDERED that the Motion for Order Excluding Interest Accrued During Stay Periods is **GRANTED**. The computation of pre-judgment interest included in the judgment shall exclude the 726 days during which this matter was stayed pending the Nevada Supreme Court's adjudication of pre-trial writ petitions.

DATED this ___ day of December, 2021.

Dated this 15th day of December, 2021

Nancy L Allf

NANCY L. ALLF
District Court Judge

8CB AB0 441A 42E9
Nancy Allf
District Court Judge

Submitted By:

McDONALD CARANO LLP

By: /s/ *George F. Ogilvie III*
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Subject: FW: Lewis & Clark

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Sent: Tuesday, December 14, 2021 7:48 AM
To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Christian M. Orme <COrme@hutchlegal.com>; Tanya M. Fraser <tfraser@hutchlegal.com>
Cc: Jon <jonwilson@jonmwilsonattorney.com>; Jon Wilson <jonwilson2013@gmail.com>; Kimberly Freedman <Kimberly.Freedman@nelsonmullins.com>; erin Kolmansberger <erin.kolmansberger@nelsonmullins.com>
Subject: RE: Lewis & Clark

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Sent: Wednesday, December 08, 2021 7:24 PM
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Subject: Lewis & Clark

Brenoch,

My apologies for the delay in submitting the attached proposed Order to you. The Thanksgiving holiday immediately followed the hearing, I was traveling last week and in an arbitration hearing this week. In any event, the attached is provided for your review and comment.

George

George F. Ogilvie III | Partner

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DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No. A-14-711535-C

Dept. No.: XXVII

NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., AND U.S. RE CORPORATION'S MOTION FOR ORDER EXCLUDING INTEREST ACCRUED DURING STAY PERIODS

Case Number: A-14-711535-C

PLEASE TAKE NOTICE that an Order Granting Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. Re Corporation's Motion for Order Excluding Interest Accrued During Stay Periods was entered in the above-captioned case on the 15th day of December 2021, a copy of which is attached hereto.

DATED this 16th day of December, 2021.

McDONALD CARANO LLP

By: /s/ *George F. Ogilvie III*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on or about the 16th day of December, 2021, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., AND U.S. RE CORPORATION'S MOTION FOR ORDER EXCLUDING INTEREST ACCRUED DURING STAY PERIODS** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiffs, v. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP. UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	Case No. A-14-711535-C Dept. No.: XXVII **ORDER GRANTING DEFENDANTS UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., AND U.S. RE CORPORATION'S MOTION FOR ORDER EXCLUDING INTEREST ACCRUED DURING STAY PERIODS** Date of Hearing: November 24, 2021 Time of Hearing: 10:00 a.m.

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The Court having considered the record and the briefs filed in support of and in opposition to the Motion, having entertained the oral arguments of counsel, and good cause appearing,

IT IS HEREBY ORDERED that the Motion for Order Excluding Interest Accrued During Stay Periods is **GRANTED**. The computation of pre-judgment interest included in the judgment shall exclude the 726 days during which this matter was stayed pending the Nevada Supreme Court's adjudication of pre-trial writ petitions.

DATED this ___ day of December, 2021.

Dated this 15th day of December, 2021

Nancy L Allf

NANCY L. ALLF
District Court Judge

8CB AB0 441A 42E9
Nancy Allf
District Court Judge

Submitted By:

McDONALD CARANO LLP

By: /s/ *George F. Ogilvie III*
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Approved as to Form:

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DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

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EXHIBIT 21

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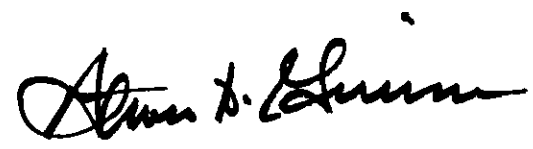

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION,; DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	CASE NO.: A-14-711535-C DEPT. NO.: 27 **ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION TO DISMISS** **Date of Hearing: January 27, 2016** **Time of Hearing: 10:00 a.m.**

Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshal and Eric Stickels' Motion to Dismiss was heard on January 27, 2016. In attendance were Angela Ochoa, Esq. on behalf of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshal and Eric Stickels; Karl Nielson, Esq. and Brenoch Wirthlin, Esq. on behalf

of Plaintiff, Commissioner of Insurance for the State of Nevada as Receiver for the Lewis & Clark Risk Retention Group, Inc.; and George Ogilive, III, Esq. on behalf of U.S. RE Corporation, Uni-Ter Underwriting Management Corp., and Uni-Ter Claims Servicing Corp.

The Honorable Nancy Allf presiding, and the Court having heard oral argument, reviewed the pleadings and papers on file herein and being fully advised in the premises and for good cause appearing,

THE COURT HEREBY ORDERS that Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshal and Eric Stickels' Motion to Dismiss is GRANTED in PART and DENIED in PART.

Specifically, the Court grants the Motion to Dismiss without prejudice based on NRCP 12(b)(5), that Plaintiff failed to state a claim for which relief can be granted, as to the claim for gross negligence. The Court finds that Plaintiff's Complaint states a claim for mere negligence rather than gross negligence. Plaintiff shall be granted leave to amend its complaint to support a claim for gross negligence (Plaintiff's First Claim for Relief) within 30 days of the entry of this order.

The Motion to Dismiss is denied as to the second claim for relief for deepening the insolvency. The Court finds the decision in *In re AgriBioTech, Inc.*, 319 B.R. 216, 224 (D. Nev. 2004) to be persuasive law, and finds that the Complaint states a claim for deepening the insolvency which is a recognized claim in Nevada. However, the Court finds that this claim is a collateral cause of action to the gross negligence claim. Should the Plaintiff choose to amend the Complaint to state a claim for gross negligence, the

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claim for deepening the insolvency will proceed as well.

DATED this 23 day of February, 2016.

Nancy L Allf

JUDGE NANCY ALLF

Submitted by:
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION,; DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	CASE NO.: A-14-711535-C DEPT. NO.: 27 **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION TO DISMISS**

PLEASE TAKE NOTICE that on the 25th day of February, 2016, an Order Granting in Part and Denying in Part Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels' Motion to Dismiss, was entered. A copy of said Order is attached hereto and made part

hereof.

DATED this 26th day of February, 2016.

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

By: */s/ Angela T. Nakamura Ochoa*

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 26th day of February, 2016, I electronically transmitted the foregoing **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION TO DISMISS** to the Clerk's Office using the Odyssey E-File & Serve System for filing and transmittal to the following Odyssey E-File & Serve registrants:

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION,; DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	CASE NO.: A-14-711535-C DEPT. NO.: 27 **ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION TO DISMISS** **Date of Hearing: January 27, 2016** **Time of Hearing: 10:00 a.m.**

Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshal and Eric Stickels' Motion to Dismiss was heard on January 27, 2016. In attendance were Angela Ochoa, Esq. on behalf of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshal and Eric Stickels; Karl Nielson, Esq. and Brenoch Wirthlin, Esq. on behalf

of Plaintiff, Commissioner of Insurance for the State of Nevada as Receiver for the Lewis & Clark Risk Retention Group, Inc.; and George Ogilive, III, Esq. on behalf of U.S. RE Corporation, Uni-Ter Underwriting Management Corp., and Uni-Ter Claims Servicing Corp.

The Honorable Nancy Allf presiding, and the Court having heard oral argument, reviewed the pleadings and papers on file herein and being fully advised in the premises and for good cause appearing,

THE COURT HEREBY ORDERS that Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshal and Eric Stickels' Motion to Dismiss is GRANTED in PART and DENIED in PART.

Specifically, the Court grants the Motion to Dismiss without prejudice based on NRCP 12(b)(5), that Plaintiff failed to state a claim for which relief can be granted, as to the claim for gross negligence. The Court finds that Plaintiff's Complaint states a claim for mere negligence rather than gross negligence. Plaintiff shall be granted leave to amend its complaint to support a claim for gross negligence (Plaintiff's First Claim for Relief) within 30 days of the entry of this order.

The Motion to Dismiss is denied as to the second claim for relief for deepening the insolvency. The Court finds the decision in *In re AgriBioTech, Inc.*, 319 B.R. 216, 224 (D. Nev. 2004) to be persuasive law, and finds that the Complaint states a claim for deepening the insolvency which is a recognized claim in Nevada. However, the Court finds that this claim is a collateral cause of action to the gross negligence claim. Should the Plaintiff choose to amend the Complaint to state a claim for gross negligence, the

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claim for deepening the insolvency will proceed as well.

DATED this 23 day of February, 2016.

Nancy L Allf

JUDGE NANCY ALLF

Submitted by:
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

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EXHIBIT PAGE ONLY

EXHIBIT 22

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

ORDR

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,

v.

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
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DEPARTMENT XXVII

CLERK OF THE COURT

CMC

DECISION AND ORDER

These matters having come on for hearing on February 25, 2016; Brenoch Wirthlin, Esq., appearing for and on behalf of Plaintiff, Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark LTC Risk Retention Group, Inc. (hereinafter "Plaintiff"); George F. Ogilvie, III, Esq. and Jon M. Wilson, Esq., appearing for and on behalf of Defendants, Uni-Ter Underwriting Management Corp.; Uni-Ter Claims Services Corp.; and U.S. RE Corporation (hereinafter collectively "Entity Defendants"), and the Court having heard arguments of counsel, and being fully advised of the matters herein, the **COURT FINDS** after review:

This action is brought by Plaintiff, the Court-appointed receiver for Lewis and Clark LTC Risk Retention Group, Inc. ("L&C"). It is brought against L&C's former officers and directors ("Individual Defendants") and against the Entity Defendants L&C's

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underwriting managers and reinsurance broker. L&C was formed in 2004 and between 2004 and February 28, 2013 it provided general and professional liability coverage to long term care facilities and home health providers. See Complaint ¶1.

L&C's relationship with Entity Defendant Uni-Ter Underwriting Management Corp. began in 2004 when the parties entered into a Management Agreement providing the specifics of their relationship. Id. ¶42. This 2004 Management Agreement was amended in minor ways until 2011 when a new Management Agreement was executed. Id. ¶¶50, 56. This 2011 Management Agreement was substantially similar to the prior one with a few revisions and the addition of and Defendant Uni-Ter Claims Services Corp. Id. ¶¶56, 58–59. The 2011 Management Agreement was also amended in minor ways. Id. ¶¶60–62.

The 2004 Management Agreements explicitly stated that Defendant Uni-Ter Underwriting Management Corp. would "serve L&C in a fiduciary capacity for all legal duties." Id. ¶44. The 2011 Management Agreement also explicitly stated that Defendant Uni-Ter Underwriting Management Corp. and Defendant Uni-Ter Claims Services Corp. would "serve L&C in a fiduciary capacity for all legal duties." Id. ¶58.

L&C's relationship with Entity Defendant U.S. RE Corporation began in December, 2003 when the parties entered into a Letter Agreement whereby L&C appointed U.S. RE Corporation as its exclusive reinsurance intermediary/broker. Id. ¶64. The Letter Agreement specifically states "[a]ll funds collected for [L&C]'s account will be handled by U.S. RE in a fiduciary capacity in a bank which is a qualified United States financial institution." Id. ¶65, Ex. 4. This is the only mention of fiduciary duty with regard to U.S. RE Corporation.

In November, 2012 the Nevada Division of Insurance filed a receivership action against L&C and the Court entered a liquidation order on February 28, 2013. Id. ¶2. The liquidation order gave Plaintiff, as receiver, the express power to prosecute any action which may exist on behalf of the policyholders, members, or shareholders of L&C against any officer of L&C or any other person. Id. ¶2, Ex. 1.

COURT FURTHER FINDS after review Plaintiff filed its Complaint on December 23, 2014 and it stated claims for 1) Gross Negligence of the Former Officers and Directors of L&C; 2) Deepening of the Insolvency of L&C Caused by the Former Officers and Directors; 3) Negligent Misrepresentation by Uni-Ter Underwriting Management Corp.; 4) Breach of Fiduciary Duty by Uni-Ter Underwriting Management Corp. and Uni-Ter Claims Services Corp.; 5) Breach of Fiduciary Duty against U.S. RE Corporation.

On February 25, 2016 the Court took Defendants Uni-Ter Underwriting Management Corp. and Uni-Ter Claims Services Corp.'s Motion to Dismiss and U.S. RE Corporation's Motion to Dismiss under advisement. The Motions only concern claims 3, 4, and 5.

COURT FURTHER FINDS after review Defendants move to Dismiss Plaintiff's claims 3, 4, and 5 under NRCP 5(b)(5) because the complaint does not state a claim upon which relief can be granted. Nevada is a notice-pleading jurisdiction, and as such does not have a strict requirement for pleading. "The test for determining whether the allegations of a cause of action are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature of the basis of the claim and the relief requested." Ravera v. City of Reno, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984).

Defendants Uni-Ter Underwriting Management Corp. and Uni-Ter Claims Services Corp. argue that the economic loss doctrine requires dismissal of the claim for negligent misrepresentation because Defendants duties were created by the 2004 and 2011 Management Agreements, so an alleged failure to provide the services in the Management Agreements would lead to a breach of contract claim. Likewise, Defendants argue that the economic loss doctrine requires dismissal of the claim for breach of fiduciary duty because this claim arises from an alleged breach of the Management Agreements.

Defendant U.S. RE Corporation also argues that the economic loss doctrine requires dismissal of the claim for breach of fiduciary duty because any alleged duty was created by the contract provided in the Letter Agreement. Furthermore, Defendant U.S. RE Corporation argues that even if the claim is not barred by the economic loss doctrine, it must be dismissed because the Complaint does not adequately describe the duties owed by Defendant U.S. RE Corporation, how exactly those same duties were breached, and how an alleged breach proximately caused damages and what those damages were.

Plaintiff rebuts the arguments proffered by Defendants Uni-Ter Underwriting Management Corp. and Uni-Ter Claims Services Corp. by arguing that claims for negligent misrepresentation are not barred by the economic loss doctrine when the misstatements are regarding financial matters. Plaintiff also argues that claims for breach of fiduciary duty are not barred by the economic loss doctrine because the economic loss doctrine does not bar intentional torts.

Additionally, Plaintiff rebuts the arguments proffered by Defendant U.S. RE Corporation by arguing that, similar to the prior argument, breach of fiduciary duty is an intentional tort under NRS 78.138(7) and as such, is not barred by the economic loss

doctrine. Plaintiff also argues that it has sufficiently set forth the elements of a breach of fiduciary duty; specifically, it argued that there are multiple additional bases for fiduciary duties. Alternatively, Plaintiff requests leave to amend the Complaint if breach of fiduciary duty is not pled with sufficient detail.

COURT FURTHER FINDS after review that the economic loss doctrine "marks the fundamental boundary between contract law, which is designed to enforce the expectancy interests of the parties, and tort law, which imposes a duty of reasonable care and thereby [generally] encourages citizens to avoid causing physical harm to others." Terracon Consultants W., Inc. v. Mandalay Resort Grp., 125 Nev. 66, 72–73, 206 P.3d 81, 86 (2009). Thus, the economic loss doctrine applies to bar claims for "unintentional tort actions when the plaintiff seeks to recover purely economic losses." Id. It is accepted that the economic loss doctrine does not apply to bar intentional torts. Halcrow, Inc. v. Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. 42, 302 P.3d 1148, 1154 fn. 2 (2013), as corrected (Aug. 14, 2013) ("Intentional torts are not barred by the economic loss doctrine.").

However, there are established exceptions to the economic loss doctrine's bar on unintentional tort actions; specifically, "[l]iability is proper in cases where there is significant risk that the law would not exert significant financial pressures to avoid such negligence. These types of cases encompass economic losses sustained, for example, as a result of defamation, **intentionally caused harm, negligent misstatements about financial matters**, and loss of consortium." Id. at 1153 (emphasis added) (internal citations and quotations omitted).

COURT FURTHER FINDS after review that the economic loss doctrine does not apply to bar Plaintiff's claims for relief against Defendants Uni-Ter Underwriting

Management Corp. and Uni-Ter Claims Services Corp. for negligent misrepresentation or breach of fiduciary duty. Thus, claims 3 and 4 will not be dismissed.

Plaintiff's claim for negligent misrepresentation is not barred because in the Complaint Plaintiff alleges that the misrepresentations were regarding financial matters; specifically, Plaintiff alleges "Uni-Ter UMC, through its employees, negligently misrepresented the specific financial conditions of L&C including the level of losses and LAE." See Complaint ¶¶174–177. Thus, under Halcrow, the allegations in the Complaint are sufficient to plead an exception to the economic loss doctrine.

Plaintiff's claim for breach of fiduciary duty is likewise not barred because the economic loss doctrine does not apply, because breach of fiduciary duty is an intentional tort. NRS 78.138(7) is clear that only intentional conduct can form the basis for a violation because "intentional misconduct, fraud or a knowing violation of law" must be proven. Here, Plaintiff alleges that Defendants took actions that were not authorized by the Board of L&C which caused damage to the company. See Complaint ¶¶183–186. These allegations are sufficient to allege that the economic loss doctrine does not apply to this claim of intentional misconduct.

COURT FURTHER FINDS after review that to plead a claim for breach of fiduciary duty Plaintiff must allege "the existence of a fiduciary duty, the breach of that duty, and that the breach proximately caused the damages." Brown v. Kinross Gold U.S.A., Inc., 531 F. Supp. 2d 1234, 1245 (D. Nev. 2008) (citing Clark v. Lubritz, 113 Nev. 1089, 944 P.2d 861, 866–67 (1997)). "[T]o hold a director or officer individually liable, the shareholder must prove that the director's breach of his or her fiduciary duty of loyalty involved intentional misconduct, fraud or a knowing violation of law." In re

Amerco Derivative Litig., 127 Nev. Adv. Op. 17, 252 P.3d 681, 701 (2011) (internal alterations and quotations omitted) (citing NRS 78.138(7)(b)).

COURT FURTHER FINDS after review that the Court is unable to determine at this time if the economic loss doctrine bars Plaintiff's claim for relief against Defendant U.S. RE Corporation for breach of fiduciary duty because the claim for breach of fiduciary duty is not sufficiently plead. In order to determine whether the economic loss doctrine bars the claim, the Court must determine whether the conduct states a claim for an intentional tort. Here, Plaintiff alleges that Defendant failed to secure appropriate reinsurance because the insurance that it did obtain contained deductible rates that were consistently too high. See Complaint ¶¶190–193. It appears that Plaintiff is attempting to state a claim for an intentional tort because it labeled this claim "breach of fiduciary duty." See Complaint ¶¶189–195. However, the allegations do not actually allege that this was an intentional act. Indeed, NRS 78.138(7)(b), which codifies a breach of fiduciary duty requires "intentional misconduct, fraud or a knowing violation of law."

In the briefing in opposition to Defendant U.S. RE Corporation's Motion to Dismiss, Plaintiff argues that Defendant and L&C were in an agency relationship; however, this agency relationship has not been plead in the Complaint and in order to state a claim for breach of fiduciary duty Plaintiff still must comply with NRS 78.138(7)(b). Thus, claim 5 will be dismissed with leave to amend to clarify the basis for the duty owed, the actual duty owed, the actions that constituted a breach of the duty, and the damages incurred by the breach.

THEREFORE, THE COURT ORDERS for good cause appearing and for the reasons stated above, Defendants Uni-Ter Underwriting Management Corp. and Uni-Ter

Claims Services Corp.'s Motion to Dismiss **DENIED** and U.S. RE Corporation's Motion to Dismiss under advisement **GRANTED WITH LEAVE TO AMEND**.

COURT FURTHER ORDERS for good cause appearing and for the reasons stated above, Plaintiff has **30 DAYS LEAVE TO AMEND** from the Notice of Entry of Order.

COURT FURTHER ORDERS for good cause appearing and for the reasons stated above, the **STATUS CHECK** set for **CHAMBERS CALENDAR** on May 17, 2016 is **VACATED**.

Dated: April 27, 2016

Nancy L Alf

NANCY ALLF
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on or about the date signed I caused the foregoing document to be electronically served pursuant to EDCR 8.05(a) and 8.05(f) through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail to:

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Judicial Executive Assistant

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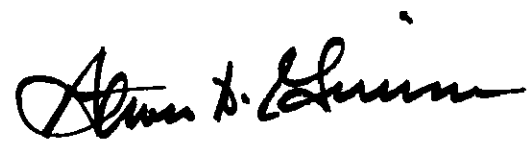

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For the State of Nevada

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.: 27 **NOTICE OF ENTRY OF DECISION AND ORDER**

PLEASE TAKE NOTICE that a Decision and Order was entered by the Court on May 4, 2016, a copy of which is attached hereto.

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/ / /

DATED this 10th day of May, 2016.

FENNEMORE CRAIG, P.C.

By: /s/ Karl L. Nielson
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Attorneys for Plaintiff Commissioner of Insurance For the State of Nevada

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Fennemore Craig, P.C. and that on May 10, 2016, service of the foregoing NOTICE OF ENTRY OF DECISION AND ORDER was made on the following counsel of record and/or parties via the Court's electronic filing system as follows:

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Uni-Ter Claims Services Corp. and U.S. RE Corporation

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/s/ Cheryl Landis
An employee of Fennemore Craig, P.C.

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DISTRICT COURT
CLARK COUNTY, NEVADA

* * * *

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

Plaintiff,

v.

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
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DEPARTMENT XXVII

CLERK OF THE COURT

CMC

DECISION AND ORDER

These matters having come on for hearing on February 25, 2016; Brenoch Wirthlin, Esq., appearing for and on behalf of Plaintiff, Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark LTC Risk Retention Group, Inc. (hereinafter "Plaintiff"); George F. Ogilvie, III, Esq. and Jon M. Wilson, Esq., appearing for and on behalf of Defendants, Uni-Ter Underwriting Management Corp.; Uni-Ter Claims Services Corp.; and U.S. RE Corporation (hereinafter collectively "Entity Defendants"), and the Court having heard arguments of counsel, and being fully advised of the matters herein, the **COURT FINDS** after review:

This action is brought by Plaintiff, the Court-appointed receiver for Lewis and Clark LTC Risk Retention Group, Inc. ("L&C"). It is brought against L&C's former officers and directors ("Individual Defendants") and against the Entity Defendants L&C's

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underwriting managers and reinsurance broker. L&C was formed in 2004 and between 2004 and February 28, 2013 it provided general and professional liability coverage to long term care facilities and home health providers. See Complaint ¶1.

L&C's relationship with Entity Defendant Uni-Ter Underwriting Management Corp. began in 2004 when the parties entered into a Management Agreement providing the specifics of their relationship. Id. ¶42. This 2004 Management Agreement was amended in minor ways until 2011 when a new Management Agreement was executed. Id. ¶¶50, 56. This 2011 Management Agreement was substantially similar to the prior one with a few revisions and the addition of and Defendant Uni-Ter Claims Services Corp. Id. ¶¶56, 58–59. The 2011 Management Agreement was also amended in minor ways. Id. ¶¶60–62.

The 2004 Management Agreements explicitly stated that Defendant Uni-Ter Underwriting Management Corp. would "serve L&C in a fiduciary capacity for all legal duties." Id. ¶44. The 2011 Management Agreement also explicitly stated that Defendant Uni-Ter Underwriting Management Corp. and Defendant Uni-Ter Claims Services Corp. would "serve L&C in a fiduciary capacity for all legal duties." Id. ¶58.

L&C's relationship with Entity Defendant U.S. RE Corporation began in December, 2003 when the parties entered into a Letter Agreement whereby L&C appointed U.S. RE Corporation as its exclusive reinsurance intermediary/broker. Id. ¶64. The Letter Agreement specifically states "[a]ll funds collected for [L&C]'s account will be handled by U.S. RE in a fiduciary capacity in a bank which is a qualified United States financial institution." Id. ¶65, Ex. 4. This is the only mention of fiduciary duty with regard to U.S. RE Corporation.

In November, 2012 the Nevada Division of Insurance filed a receivership action against L&C and the Court entered a liquidation order on February 28, 2013. Id. ¶2. The liquidation order gave Plaintiff, as receiver, the express power to prosecute any action which may exist on behalf of the policyholders, members, or shareholders of L&C against any officer of L&C or any other person. Id. ¶2, Ex. 1.

COURT FURTHER FINDS after review Plaintiff filed its Complaint on December 23, 2014 and it stated claims for 1) Gross Negligence of the Former Officers and Directors of L&C; 2) Deepening of the Insolvency of L&C Caused by the Former Officers and Directors; 3) Negligent Misrepresentation by Uni-Ter Underwriting Management Corp.; 4) Breach of Fiduciary Duty by Uni-Ter Underwriting Management Corp. and Uni-Ter Claims Services Corp.; 5) Breach of Fiduciary Duty against U.S. RE Corporation.

On February 25, 2016 the Court took Defendants Uni-Ter Underwriting Management Corp. and Uni-Ter Claims Services Corp.'s Motion to Dismiss and U.S. RE Corporation's Motion to Dismiss under advisement. The Motions only concern claims 3, 4, and 5.

COURT FURTHER FINDS after review Defendants move to Dismiss Plaintiff's claims 3, 4, and 5 under NRCP 5(b)(5) because the complaint does not state a claim upon which relief can be granted. Nevada is a notice-pleading jurisdiction, and as such does not have a strict requirement for pleading. "The test for determining whether the allegations of a cause of action are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature of the basis of the claim and the relief requested." Ravera v. City of Reno, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984).

Defendants Uni-Ter Underwriting Management Corp. and Uni-Ter Claims Services Corp. argue that the economic loss doctrine requires dismissal of the claim for negligent misrepresentation because Defendants duties were created by the 2004 and 2011 Management Agreements, so an alleged failure to provide the services in the Management Agreements would lead to a breach of contract claim. Likewise, Defendants argue that the economic loss doctrine requires dismissal of the claim for breach of fiduciary duty because this claim arises from an alleged breach of the Management Agreements.

Defendant U.S. RE Corporation also argues that the economic loss doctrine requires dismissal of the claim for breach of fiduciary duty because any alleged duty was created by the contract provided in the Letter Agreement. Furthermore, Defendant U.S. RE Corporation argues that even if the claim is not barred by the economic loss doctrine, it must be dismissed because the Complaint does not adequately describe the duties owed by Defendant U.S. RE Corporation, how exactly those same duties were breached, and how an alleged breach proximately caused damages and what those damages were.

Plaintiff rebuts the arguments proffered by Defendants Uni-Ter Underwriting Management Corp. and Uni-Ter Claims Services Corp. by arguing that claims for negligent misrepresentation are not barred by the economic loss doctrine when the misstatements are regarding financial matters. Plaintiff also argues that claims for breach of fiduciary duty are not barred by the economic loss doctrine because the economic loss doctrine does not bar intentional torts.

Additionally, Plaintiff rebuts the arguments proffered by Defendant U.S. RE Corporation by arguing that, similar to the prior argument, breach of fiduciary duty is an intentional tort under NRS 78.138(7) and as such, is not barred by the economic loss

doctrine. Plaintiff also argues that it has sufficiently set forth the elements of a breach of fiduciary duty; specifically, it argued that there are multiple additional bases for fiduciary duties. Alternatively, Plaintiff requests leave to amend the Complaint if breach of fiduciary duty is not pled with sufficient detail.

COURT FURTHER FINDS after review that the economic loss doctrine "marks the fundamental boundary between contract law, which is designed to enforce the expectancy interests of the parties, and tort law, which imposes a duty of reasonable care and thereby [generally] encourages citizens to avoid causing physical harm to others." Terracon Consultants W., Inc. v. Mandalay Resort Grp., 125 Nev. 66, 72–73, 206 P.3d 81, 86 (2009). Thus, the economic loss doctrine applies to bar claims for "unintentional tort actions when the plaintiff seeks to recover purely economic losses." Id. It is accepted that the economic loss doctrine does not apply to bar intentional torts. Halcrow, Inc. v. Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. 42, 302 P.3d 1148, 1154 fn. 2 (2013), as corrected (Aug. 14, 2013) ("Intentional torts are not barred by the economic loss doctrine.").

However, there are established exceptions to the economic loss doctrine's bar on unintentional tort actions; specifically, "[l]iability is proper in cases where there is significant risk that the law would not exert significant financial pressures to avoid such negligence. These types of cases encompass economic losses sustained, for example, as a result of defamation, **intentionally caused harm, negligent misstatements about financial matters,** and loss of consortium." Id. at 1153 (emphasis added) (internal citations and quotations omitted).

COURT FURTHER FINDS after review that the economic loss doctrine does not apply to bar Plaintiff's claims for relief against Defendants Uni-Ter Underwriting

Management Corp. and Uni-Ter Claims Services Corp. for negligent misrepresentation or breach of fiduciary duty. Thus, claims 3 and 4 will not be dismissed.

Plaintiff's claim for negligent misrepresentation is not barred because in the Complaint Plaintiff alleges that the misrepresentations were regarding financial matters; specifically, Plaintiff alleges "Uni-Ter UMC, through its employees, negligently misrepresented the specific financial conditions of L&C including the level of losses and LAE." See Complaint ¶¶174–177. Thus, under Halcrow, the allegations in the Complaint are sufficient to plead an exception to the economic loss doctrine.

Plaintiff's claim for breach of fiduciary duty is likewise not barred because the economic loss doctrine does not apply, because breach of fiduciary duty is an intentional tort. NRS 78.138(7) is clear that only intentional conduct can form the basis for a violation because "intentional misconduct, fraud or a knowing violation of law" must be proven. Here, Plaintiff alleges that Defendants took actions that were not authorized by the Board of L&C which caused damage to the company. See Complaint ¶¶183–186. These allegations are sufficient to allege that the economic loss doctrine does not apply to this claim of intentional misconduct.

COURT FURTHER FINDS after review that to plead a claim for breach of fiduciary duty Plaintiff must allege "the existence of a fiduciary duty, the breach of that duty, and that the breach proximately caused the damages." Brown v. Kinross Gold U.S.A., Inc., 531 F. Supp. 2d 1234, 1245 (D. Nev. 2008) (citing Clark v. Lubritz, 113 Nev. 1089, 944 P.2d 861, 866–67 (1997)). "[T]o hold a director or officer individually liable, the shareholder must prove that the director's breach of his or her fiduciary duty of loyalty involved intentional misconduct, fraud or a knowing violation of law." In re

Amerco Derivative Litig., 127 Nev. Adv. Op. 17, 252 P.3d 681, 701 (2011) (internal alterations and quotations omitted) (citing NRS 78.138(7)(b)).

COURT FURTHER FINDS after review that the Court is unable to determine at this time if the economic loss doctrine bars Plaintiff's claim for relief against Defendant U.S. RE Corporation for breach of fiduciary duty because the claim for breach of fiduciary duty is not sufficiently plead. In order to determine whether the economic loss doctrine bars the claim, the Court must determine whether the conduct states a claim for an intentional tort. Here, Plaintiff alleges that Defendant failed to secure appropriate reinsurance because the insurance that it did obtain contained deductible rates that were consistently too high. See Complaint ¶¶190–193. It appears that Plaintiff is attempting to state a claim for an intentional tort because it labeled this claim "breach of fiduciary duty." See Complaint ¶¶189–195. However, the allegations do not actually allege that this was an intentional act. Indeed, NRS 78.138(7)(b), which codifies a breach of fiduciary duty requires "intentional misconduct, fraud or a knowing violation of law."

In the briefing in opposition to Defendant U.S. RE Corporation's Motion to Dismiss, Plaintiff argues that Defendant and L&C were in an agency relationship; however, this agency relationship has not been plead in the Complaint and in order to state a claim for breach of fiduciary duty Plaintiff still must comply with NRS 78.138(7)(b). Thus, claim 5 will be dismissed with leave to amend to clarify the basis for the duty owed, the actual duty owed, the actions that constituted a breach of the duty, and the damages incurred by the breach.

THEREFORE, THE COURT ORDERS for good cause appearing and for the reasons stated above, Defendants Uni-Ter Underwriting Management Corp. and Uni-Ter

Claims Services Corp.'s Motion to Dismiss **DENIED** and U.S. RE Corporation's Motion to Dismiss under advisement **GRANTED WITH LEAVE TO AMEND.**

COURT FURTHER ORDERS for good cause appearing and for the reasons stated above, Plaintiff has **30 DAYS LEAVE TO AMEND** from the Notice of Entry of Order.

COURT FURTHER ORDERS for good cause appearing and for the reasons stated above, the **STATUS CHECK** set for **CHAMBERS CALENDAR** on May 17, 2016 is **VACATED.**

Dated: April 27, 2016

Nancy L Alf

NANCY ALLF
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on or about the date signed I caused the foregoing document to be electronically served pursuant to EDCR 8.05(a) and 8.05(f) through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail to:

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EXHIBIT 23

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	CASE NO.: A-14-711535-C DEPT. NO.: 27 **ORDER GRANTING DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO NRCP 12(C)** **AND** **JUDGMENT THEREON**

Pursuant to the Nevada Supreme Court's Order Granting the Petition for Writ of Mandamus and Notice in Lieu of Remittitur,

THE COURT HEREBY ORDERS that its November 2, 2018 Order Denying Director Defendants' Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) is hereby VACATED.

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THE COURT FURTHER ORDERS that Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels' Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) is GRANTED.

With Plaintiff's Motion for Leave to file an Amended Complaint having been denied by this Court on August 10, 2020, Judgment is hereby entered in favor of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall.

DATED this 1 day of August, 2020.

Dated this 13th day of August, 2020

Nancy L Allf

JUDGE NANCY ALLF

1FA 835 11BE 21AF
Nancy Allf
District Court Judge

NB

Submitted by:
LIPSON NEILSON P.C.

/s/ Angela Nakamura Ochoa

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DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION; DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	CASE NO.: A-14-711535-C DEPT. NO.: 27 **NOTICE OF ENTRY OF ORDER**

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Case Number: A-14-711535-C

NOTICE OF ENTRY OF ORDER

Please take notice that the Order Granting Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels' Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) and Judgment Theron was filed with this court on the 13th day of August, 2020, a copy of which is attached hereto, as **Exhibit A**.

Dated this 14th day of August, 2020.

LIPSON NEILSON P.C.

/s/ Angela Ochoa

By: _____

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 14th day of August, 2020, I electronically transmitted the foregoing **NOTICE OF ENTRY OF ORDER** to the Clerk's Office using the Odyssey E-File & Serve System for filing and transmittal to the following Odyssey E-File & Serve registrants:

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/s/ Sydney Ochoa

An employee of LIPSON NEILSON P.C.

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EXHIBIT “A”

EXHIBIT “A”

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	CASE NO.: A-14-711535-C DEPT. NO.: 27 **ORDER GRANTING DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO NRCP 12(C)** **AND** **JUDGMENT THEREON**

Pursuant to the Nevada Supreme Court's Order Granting the Petition for Writ of Mandamus and Notice in Lieu of Remittitur,

THE COURT HEREBY ORDERS that its November 2, 2018 Order Denying Director Defendants' Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) is hereby VACATED.

THE COURT FURTHER ORDERS that Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels' Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) is GRANTED.

With Plaintiff's Motion for Leave to file an Amended Complaint having been denied by this Court on August 10, 2020, Judgment is hereby entered in favor of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall.

DATED this 1 day of August, 2020.

Dated this 13th day of August, 2020

Nancy L Allf

JUDGE NANCY ALLF

1FA 835 11BE 21AF
Nancy Allf
District Court Judge

NB

Submitted by:
LIPSON NEILSON P.C.

/s/ Angela Nakamura Ochoa

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DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

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EXHIBIT 24

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION,; DOES 1-50, inclusive; and ROES 51-100, INCLUSIVE; Defendants.	**Case No.:** A-14-711535-C **Dept. No.:** XXVII **ORDER DENYING PLAINTIFF'S MOTION TO LIFT STAY OR ALTERNATIVELY GRANT PLAINTIFF OTHER RELIEF ON ORDER SHORTENING TIME**

This matter having come before the Honorable Nancy Allf on July 11, 2019, on Plaintiff's Motion to Lift Stay or Alternatively Grant Plaintiff Other Relief on Order Shortening Time ("Motion"); Steven Peek, Esq., having appeared on behalf of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels (collectively the "Director Defendants"); George F. Ogilvie III, Esq. having appeared on behalf of Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. Re Corporation; Brenoch R. Wirthlin, Esq., having appeared on behalf of Plaintiff Commissioner

Case Number: A-14-711535-C

of Insurance for the State of Nevada as Receiver of Lewis and Clark LTC Risk Retention Group; the Court having read and considered the Motion and responses thereto, considered the arguments of counsel, being fully advised of the premises, and good cause appearing therefore;

The Court finds that the prior stay order entered April 4, 2019, stayed all proceedings in this matter. Furthermore, at the hearing on the Motion the parties conceded that the stay applies to all parties in the case. Thus, the effect of the prior stay order as it pertains to the 5 year rule of NRCP 41(e) is governed by *Las Vegas Sands Corp. et al. v. Eighth Judicial District Court*, Supreme Court of Nevada case no.: 68309, wherein the Supreme Court of Nevada held that an order staying all proceedings "serve[s] to toll NRCP 41(e)'s five-year time frame because the stay

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prevent[s] the parties from bringing the action to trial while the stay [is] in place." (*Citing Boren v. City of N. Las Vegas, 98 Nev. 5, 6, 638 P.2d 404, 404 (1982)).*

Therefore, it is hereby ordered, adjudged and decreed that the Motion is DENIED.

DATED this 9 day of Aug, 2019.

Nancy L. Allf
DISTRICT COURT JUDGE

Respectfully submitted by:

Dated this 7th day of ~~July~~ August, 2019.

FENNEMORE CRAIG, P.C.

Brenoch Wirthlin, Esq.
Nevada Bar No. 10282
300 South Fourth Street, Suite 1400
Las Vegas, Nevada 89101

Attorneys for Plaintiff Commissioner of Insurance for the State of Nevada

Approved as to form and content:
MCDONALD CARANO WILSON LLP

By:_____

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Jon M. Wilson, Esq.
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Attorney for Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Services Corp. and U.S. RE Corporation

Approved as to form and content:

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Attorneys for Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels

prevent[s] the parties from bringing the action to trial while the stay [is] in place." (*Citing Boren v. City of N. Las Vegas, 98 Nev. 5, 6, 638 P.2d 404, 404 (1982)).*

Therefore, it is hereby ordered, adjudged and decreed that the Motion is DENIED.

DATED this _____ day of _____, 2019.

_____
DISTRICT COURT JUDGE

Respectfully submitted by:

Dated this ___ day of July, 2019.

FENNEMORE CRAIG, P.C.

_____
Brenoch Wirthlin, Esq.
Nevada Bar No. 10282
300 South Fourth Street, Suite 1400
Las Vegas, Nevada 89101

Attorneys for Plaintiff Commissioner of Insurance for the State of Nevada

Approved as to form and content:
MCDONALD CARANO WILSON LLP

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Attorney for Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Services Corp. and U.S. RE Corporation

Approved as to form and content:

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Attorneys for Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels

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Steven D. Grierson
CLERK OF THE COURT

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Attorneys for Plaintiff Commissioner of Insurance For the State of Nevada

DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, 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 **NOTICE OF ENTRY ORDER**

PLEASE TAKE NOTICE that on the 12th day of August, 2019, an ORDER DENYING PLAINTIFF'S MOTION TO LIFT STAY OR ALTERNATIVELY GRANT PLAINTIFF OTHER RELIEF ON ORDER SHORTENING TIME, was entered in the above case. A copy is attached hereto.

DATED August 12, 2019.

FENNEMORE CRAIG, P.C.

By: */s/ Brenoch Wirthlin*
Brenoch Wirthlin (NV Bar No. 10282)
300 South Fourth Street, Suite 1400
Las Vegas, Nevada 89101
Attorneys for Plaintiff Commissioner of Insurance For the State of Nevada

Case Number: A-14-711535-C

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2019, service of the foregoing **NOTICE OF ENTRY ORDER** was made on the following counsel of record and/or parties via the Court's electronic filing system, addressed as follows:

Joseph P. Garin, Esq.
Angela Ochoa, Esq.
LIPSON, NEILSON
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

-AND-

J. Stephen Peek
Jessica E. Qhelan
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George Oglive, III
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Attorneys for Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation

Jon M. Wilson, Esq.
Kimberly Freedman, Esq.
NELSON MULLINS BROAD AND CASSEL
2 South Biscayne Blvd., 21st Floor
Miami Florida 33131
Attorneys for Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation

DATED: August 12, 2019

/s/ Morganne N. Westover
An employee of **Fennemore Craig, P.C.**

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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION,; DOES 1-50, inclusive; and ROES 51-100, INCLUSIVE; Defendants.	**Case No.:** A-14-711535-C **Dept. No.:** XXVII **ORDER DENYING PLAINTIFF'S MOTION TO LIFT STAY OR ALTERNATIVELY GRANT PLAINTIFF OTHER RELIEF ON ORDER SHORTENING TIME**

This matter having come before the Honorable Nancy Allf on July 11, 2019, on Plaintiff's Motion to Lift Stay or Alternatively Grant Plaintiff Other Relief on Order Shortening Time ("Motion"); Steven Peek, Esq., having appeared on behalf of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels (collectively the "Director Defendants"); George F. Ogilvie III, Esq. having appeared on behalf of Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. Re Corporation; Brenoch R. Wirthlin, Esq., having appeared on behalf of Plaintiff Commissioner

Case Number: A-14-711535-C

of Insurance for the State of Nevada as Receiver of Lewis and Clark LTC Risk Retention Group; the Court having read and considered the Motion and responses thereto, considered the arguments of counsel, being fully advised of the premises, and good cause appearing therefore;

The Court finds that the prior stay order entered April 4, 2019, stayed all proceedings in this matter. Furthermore, at the hearing on the Motion the parties conceded that the stay applies to all parties in the case. Thus, the effect of the prior stay order as it pertains to the 5 year rule of NRCP 41(e) is governed by *Las Vegas Sands Corp. et al. v. Eighth Judicial District Court*, Supreme Court of Nevada case no.: 68309, wherein the Supreme Court of Nevada held that an order staying all proceedings "serve[s] to toll NRCP 41(e)'s five-year time frame because the stay

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prevent[s] the parties from bringing the action to trial while the stay [is] in place." (*Citing Boren v. City of N. Las Vegas, 98 Nev. 5, 6, 638 P.2d 404, 404 (1982)).*

Therefore, it is hereby ordered, adjudged and decreed that the Motion is DENIED.

DATED this 9 day of Aug, 2019.

Nancy L. Allf
DISTRICT COURT JUDGE

Respectfully submitted by:

Dated this 7th day of ~~July~~ August, 2019.

FENNEMORE CRAIG, P.C.

Brenoch Wirthlin, Esq.
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300 South Fourth Street, Suite 1400
Las Vegas, Nevada 89101

Attorneys for Plaintiff Commissioner of Insurance for the State of Nevada

Approved as to form and content:
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By:_____

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Attorney for Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Services Corp. and U.S. RE Corporation

Approved as to form and content:

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Attorneys for Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels

prevent[s] the parties from bringing the action to trial while the stay [is] in place." (*Citing Boren v. City of N. Las Vegas, 98 Nev. 5, 6, 638 P.2d 404, 404 (1982)).*

Therefore, it is hereby ordered, adjudged and decreed that the Motion is DENIED.

DATED this _____ day of _____, 2019.

_____
DISTRICT COURT JUDGE

Respectfully submitted by:

Dated this ___ day of July, 2019.

FENNEMORE CRAIG, P.C.

_____
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Attorneys for Plaintiff Commissioner of Insurance for the State of Nevada

Approved as to form and content:
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Attorney for Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Services Corp. and U.S. RE Corporation

Approved as to form and content:

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EXHIBIT PAGE ONLY

EXHIBIT 25

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Steven D. Grierson
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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	CASE NO.: A-14-711535-C DEPT. NO.: 27 **ORDER DENYING THE MOTION TO SUBSTITUTE** **Date of Hearing: January 24, 2019** **Time of Hearing: 9:30 a.m.**

Plaintiff's Motion for Substitution of Deceased Party Pursuant to NRCP 25(a) was heard on January 24, 2019. In attendance were Angela Ochoa, Esq. on behalf of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels; Brenoch Wirthlin, Esq. on behalf of Plaintiff, Commissioner of Insurance for the State of Nevada as Receiver for the Lewis

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Case Number: A-14-711535-C

& Clark Risk Retention Group, Inc.; and George Ogilive, III, Esq. on behalf of U.S. RE Corporation, Uni-Ter Underwriting Management Corp., and Uni-Ter Claims Servicing Corp.

The Honorable Nancy Allf presiding, and the Court having heard oral argument, reviewed the pleadings and papers on file herein and being fully advised in the premises and for good cause appearing,

THE COURT HEREBY FINDS that the 90-day period referenced in NRCP 25 was not triggered by the Suggestion of Death Upon the Record Pursuant to NRCP 25(a) filed on November 2, 2018.

THE COURT FURTHER FINDS that it is not defense counsel's duty to find a personal representative for the deceased.

THE COURT FURTHER FINDS that the Philis Oeters declaration stating that she is not the personal representative for the deceased, Barbara Lumpkin, is persuasive.

Therefore, THE COURT HEREBY ORDERS that the Motion to Substitute is Denied.

DATED this 19 day of February, 2019.

Nancy L Allf

JUDGE NANCY ALLF

Submitted by:
LIPSON NEILSON, P.C.

Joseph P. Garin, Esq. (NV Bar No. 6653)
Angela Ochoa, Esq. (NV Bar No. 10164)
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Attorneys for Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall & Eric Stickels

Approved as to Form and Content:
FENNEMORE CRAIG

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Attorneys for Plaintiff

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Attorneys for Defendants/Third-Party Plaintiffs Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels

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.: 27 **NOTICE OF ENTRY OF ORDER**

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Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

Case Number: A-14-711535-C

NOTICE OF ENTRY OF ORDER

Please take notice that the Order Denying the Motion to Substitute was filed with this court on the 21st day of February, 2019, a copy of which is attached.

Dated this 25th day of February, 2019.

LIPSON NEILSON, P.C.

By: _____

Joseph P. Garin, Esq. (6653)
Angela T. Nakamura Ochoa, Esq. (10164)
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Attorneys for Defendants/Third-Party Plaintiffs Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 26th day of February, 2019, I electronically transmitted the foregoing **NOTICE OF ENTRY OF ORDER** to the Clerk's Office using the Odyssey E-File & Serve System for filing and transmittal to the following Odyssey E-File & Serve registrants:

E-Service Master List
For Case

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Ashley Scott
Employee of LIPSON NEILSON, P.C.

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2/21/2019 9:35 AM
Steven D. Grierson
CLERK OF THE COURT

ORD
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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	CASE NO.: A-14-711535-C DEPT. NO.: 27 **ORDER DENYING THE MOTION TO SUBSTITUTE** **Date of Hearing: January 24, 2019** **Time of Hearing: 9:30 a.m.**

Plaintiff's Motion for Substitution of Deceased Party Pursuant to NRCP 25(a) was heard on January 24, 2019. In attendance were Angela Ochoa, Esq. on behalf of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels; Brenoch Wirthlin, Esq. on behalf of Plaintiff, Commissioner of Insurance for the State of Nevada as Receiver for the Lewis

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& Clark Risk Retention Group, Inc.; and George Ogilive, III, Esq. on behalf of U.S. RE Corporation, Uni-Ter Underwriting Management Corp., and Uni-Ter Claims Servicing Corp.

The Honorable Nancy Allf presiding, and the Court having heard oral argument, reviewed the pleadings and papers on file herein and being fully advised in the premises and for good cause appearing,

THE COURT HEREBY FINDS that the 90-day period referenced in NRCP 25 was not triggered by the Suggestion of Death Upon the Record Pursuant to NRCP 25(a) filed on November 2, 2018.

THE COURT FURTHER FINDS that it is not defense counsel's duty to find a personal representative for the deceased.

THE COURT FURTHER FINDS that the Philis Oeters declaration stating that she is not the personal representative for the deceased, Barbara Lumpkin, is persuasive.

Therefore, THE COURT HEREBY ORDERS that the Motion to Substitute is Denied.

DATED this 19 day of February, 2019.

Nancy L Allf

JUDGE NANCY ALLF

Submitted by:
LIPSON NEILSON, P.C.

Joseph P. Garin, Esq. (NV Bar No. 6653)
Angela Ochoa, Esq. (NV Bar No. 10164)
9900 Covington Cross Dr., Suite 120
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Attorneys for Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall & Eric Stickels

Approved as to Form and Content:
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Brenoch Wirthlin, Esq. (NV Bar No. 10282)
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Attorneys for Plaintiff

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EXHIBIT PAGE ONLY

EXHIBIT 26

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A PROFESSIONAL LLC

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Steven D. Grierson
CLERK OF THE COURT

ORDG
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Mark Garber, Carol Harter,
Robert Hurlbut, Barbara Lumpkin,
Jeff Marshall, and Eric Stickels

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.: 27 **ORDER GRANTING IN PART DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION TO STRIKE** **Date of Hearing: October 11, 2018** **Time of Hearing: 9:30 a.m.**

Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshal and Eric Stickels' Motion to Strike was heard on October 11, 2018. In attendance were Angela Ochoa, Esq. on behalf of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshal and Eric Stickels; Brenoch Wirthlin, Esq., and Dan Cereghino, Esq. on

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Case Number: A-14-711535-C

behalf of Plaintiff, Commissioner of Insurance for the State of Nevada as Receiver for the Lewis & Clark Risk Retention Group, Inc.; and George Ogilive, III, Esq. on behalf of U.S. RE Corporation, Uni-Ter Underwriting Management Corp., and Uni-Ter Claims Servicing Corp.

The Honorable Nancy Allf presiding, and the Court having heard oral argument, reviewed the pleadings and papers on file herein and being fully advised in the premises and for good cause appearing,

THE COURT HEREBY ORDERS that Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshal and Eric Stickels' Motion to Strike is GRANTED in PART.

Specifically, the Court grants the Motion to Strike, such that the Plaintiff's Countermotion for Summary Judgment shall not be heard on October 11, 2018. Plaintiff may file a Motion for Summary Judgment, to be heard in normal course.

DATED this 31 day of October, 2018.

Nancy L Allf
JUDGE NANCY ALLF

Submitted by:
LIPSON NEILSON, P.C.

Joseph P. Garin, Esq. (NV Bar No. 6653)
Angela Ochoa, Esq. (NV Bar No. 10164)
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Attorneys for Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall & Eric Stickels

Approved as to Form and Content:
FENNEMORE CRAIG

#11710 for

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Brenoch Wirthlin, Esq. (NV Bar No. 10282)
Dan Cereghino, Esq. (NV Bar No. 11534)
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11/7/2018 9:59 AM
Steven D. Grierson
CLERK OF THE COURT

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Jeff Marshall, and Eric Stickels

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.: 27 **NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that the Order Granting in part Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels' Motion to Strike was filed with the court this 6th day of

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Case Number: A-14-711535-C

November, 2018, a copy of which is attached.

DATED this 7th day of November, 2018.

LIPSON NEILSON, P.C.

By: _____

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Attorneys for Defendants/Third-Party Plaintiffs Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 7th day of November, 2018, I electronically transmitted the foregoing **NOTICE OF ENTRY OF ORDER** to the Clerk's Office using the Odyssey E-File & Serve System for filing and transmittal to the following Odyssey E-File & Serve registrants:

E-Service Master List
For Case

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Ashley Scott
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Steven D. Grierson
CLERK OF THE COURT

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Jeff Marshall, and Eric Stickels

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.: 27

ORDER GRANTING IN PART DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION TO STRIKE

Date of Hearing: October 11, 2018

Time of Hearing: 9:30 a.m.

Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshal and Eric Stickels' Motion to Strike was heard on October 11, 2018. In attendance were Angela Ochoa, Esq. on behalf of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshal and Eric Stickels; Brenoch Wirthlin, Esq., and Dan Cereghino, Esq. on

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behalf of Plaintiff, Commissioner of Insurance for the State of Nevada as Receiver for the Lewis & Clark Risk Retention Group, Inc.; and George Ogilive, III, Esq. on behalf of U.S. RE Corporation, Uni-Ter Underwriting Management Corp., and Uni-Ter Claims Servicing Corp.

The Honorable Nancy Allf presiding, and the Court having heard oral argument, reviewed the pleadings and papers on file herein and being fully advised in the premises and for good cause appearing,

THE COURT HEREBY ORDERS that Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshal and Eric Stickels' Motion to Strike is GRANTED in PART.

Specifically, the Court grants the Motion to Strike, such that the Plaintiff's Countermotion for Summary Judgment shall not be heard on October 11, 2018. Plaintiff may file a Motion for Summary Judgment, to be heard in normal course.

DATED this 31 day of October, 2018.

Nancy L. Allf
JUDGE NANCY ALLF

Submitted by:
LIPSON NEILSON, P.C.

Joseph P. Garin, Esq. (NV Bar No. 6653)
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Approved as to Form and Content:
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EXHIBIT PAGE ONLY

EXHIBIT 27

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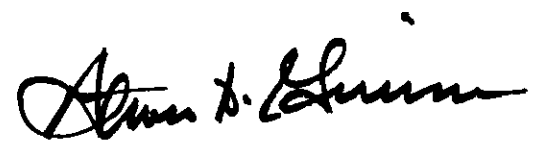

CLERK OF THE COURT

ORDG
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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION,; DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	CASE NO.: A-14-711535-C DEPT. NO.: 27 **ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION TO DISMISS** **Date of Hearing: January 27, 2016** **Time of Hearing: 10:00 a.m.**

Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshal and Eric Stickels' Motion to Dismiss was heard on January 27, 2016. In attendance were Angela Ochoa, Esq. on behalf of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshal and Eric Stickels; Karl Nielson, Esq. and Brenoch Wirthlin, Esq. on behalf

of Plaintiff, Commissioner of Insurance for the State of Nevada as Receiver for the Lewis & Clark Risk Retention Group, Inc.; and George Ogilive, III, Esq. on behalf of U.S. RE Corporation, Uni-Ter Underwriting Management Corp., and Uni-Ter Claims Servicing Corp.

The Honorable Nancy Allf presiding, and the Court having heard oral argument, reviewed the pleadings and papers on file herein and being fully advised in the premises and for good cause appearing,

THE COURT HEREBY ORDERS that Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshal and Eric Stickels' Motion to Dismiss is GRANTED in PART and DENIED in PART.

Specifically, the Court grants the Motion to Dismiss without prejudice based on NRCP 12(b)(5), that Plaintiff failed to state a claim for which relief can be granted, as to the claim for gross negligence. The Court finds that Plaintiff's Complaint states a claim for mere negligence rather than gross negligence. Plaintiff shall be granted leave to amend its complaint to support a claim for gross negligence (Plaintiff's First Claim for Relief) within 30 days of the entry of this order.

The Motion to Dismiss is denied as to the second claim for relief for deepening the insolvency. The Court finds the decision in *In re AgriBioTech, Inc.*, 319 B.R. 216, 224 (D. Nev. 2004) to be persuasive law, and finds that the Complaint states a claim for deepening the insolvency which is a recognized claim in Nevada. However, the Court finds that this claim is a collateral cause of action to the gross negligence claim. Should the Plaintiff choose to amend the Complaint to state a claim for gross negligence, the

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claim for deepening the insolvency will proceed as well.

DATED this 23 day of February, 2016.

Nancy L Allf

JUDGE NANCY ALLF

Submitted by:
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

Joseph P. Garin, Esq. (NV Bar No. 6653)
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Attorneys for Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall & Eric Stickels

Approved as to Form and Content:
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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION,; DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	CASE NO.: A-14-711535-C DEPT. NO.: 27 **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION TO DISMISS**

PLEASE TAKE NOTICE that on the 25th day of February, 2016, an Order Granting in Part and Denying in Part Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels' Motion to Dismiss, was entered. A copy of said Order is attached hereto and made part

hereof.

DATED this 26th day of February, 2016.

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

By: */s/ Angela T. Nakamura Ochoa*

Joseph P. Garin, Esq. (6653)
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Attorneys for Defendants/Third-Party Plaintiffs Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 26th day of February, 2016, I electronically transmitted the foregoing **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION TO DISMISS** to the Clerk's Office using the Odyssey E-File & Serve System for filing and transmittal to the following Odyssey E-File & Serve registrants:

James L. Wadhams, Esq.
Karl L. Nielson, Esq.
Brenoch, Wirthlin, Esq.
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Attorneys for Defendants U.S. RE Corporation, Uni-Ter Underwriting Management Corp. and Uni-Ter Claims Services Corp.

Employee of
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

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CLERK OF THE COURT

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Attorneys for Defendants/Third-Party Plaintiffs Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION,; DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	CASE NO.: A-14-711535-C DEPT. NO.: 27 **ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION TO DISMISS** **Date of Hearing: January 27, 2016** **Time of Hearing: 10:00 a.m.**

Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshal and Eric Stickels' Motion to Dismiss was heard on January 27, 2016. In attendance were Angela Ochoa, Esq. on behalf of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshal and Eric Stickels; Karl Nielson, Esq. and Brenoch Wirthlin, Esq. on behalf

of Plaintiff, Commissioner of Insurance for the State of Nevada as Receiver for the Lewis & Clark Risk Retention Group, Inc.; and George Ogilive, III, Esq. on behalf of U.S. RE Corporation, Uni-Ter Underwriting Management Corp., and Uni-Ter Claims Servicing Corp.

The Honorable Nancy Allf presiding, and the Court having heard oral argument, reviewed the pleadings and papers on file herein and being fully advised in the premises and for good cause appearing,

THE COURT HEREBY ORDERS that Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshal and Eric Stickels' Motion to Dismiss is GRANTED in PART and DENIED in PART.

Specifically, the Court grants the Motion to Dismiss without prejudice based on NRCP 12(b)(5), that Plaintiff failed to state a claim for which relief can be granted, as to the claim for gross negligence. The Court finds that Plaintiff's Complaint states a claim for mere negligence rather than gross negligence. Plaintiff shall be granted leave to amend its complaint to support a claim for gross negligence (Plaintiff's First Claim for Relief) within 30 days of the entry of this order.

The Motion to Dismiss is denied as to the second claim for relief for deepening the insolvency. The Court finds the decision in *In re AgriBioTech, Inc.*, 319 B.R. 216, 224 (D. Nev. 2004) to be persuasive law, and finds that the Complaint states a claim for deepening the insolvency which is a recognized claim in Nevada. However, the Court finds that this claim is a collateral cause of action to the gross negligence claim. Should the Plaintiff choose to amend the Complaint to state a claim for gross negligence, the

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claim for deepening the insolvency will proceed as well.

DATED this 23 day of February, 2016.

Nancy L All F

JUDGE NANCY ALLF

Submitted by:
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

Joseph P. Garin, Esq. (NV Bar No. 6653)
Angela Ochoa, Esq. (NV Bar No. 10164)
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Attorneys for Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall & Eric Stickels

Approved as to Form and Content:
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