

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.

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.

Case No. 85668

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Elizabeth A. Brown

**RESPONDENT U.S. RE  
CORPORATION'S APPENDIX OF  
EXHIBITS IN SUPPORT OF THE  
REPLY TO APPELLANT'S  
RESPONSE TO ORDER AMENDING  
CAPTION AND TO SHOW CAUSE**

Case No. 85728

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.

Case No. 85907

Respondent U.S. Re Corporation (“U.S. Re Corp.”), hereby respectfully submits its Appendix of Exhibits in Support of the Reply to Appellant’s Response to Order Amending Caption and to Show Cause.

### **TABLE OF CONTENTS**

<b>Exhibit</b>	<b>Exhibit Description</b>	<b>Bates No.</b>
A	Settlement Agreement and Mutual Release	001-011
B	June 29, 2023 Order Granting Defendant U.S. Re Corporation’s Motion to Vacate Order Denying Motions for Reconsideration and Denying Plaintiff’s Counter-motion for Sanctions for U.S. Re’s Violation of NRS 48.105	012-019
C	Satisfaction of Judgment	020-026
D	June 8, 2023 Recorder’s Transcript of Hearing: All Pending Motions	027-036

E	Defendant U.S. Re Corporation's Motion for Reconsideration of Order Denying Motion to Dismiss and Enforce Settlement Agreement	037-097
F	Defendant U.S. Re Corporation's Motion for Reconsideration of Order Granting Motion for Attorney Fees and Costs	098-158
G	Defendant U.S. Re Corporation's Motion to Vacate Order Denying Motions for Reconsideration	159-222

DATED this 7th day of July, 2023.

McDONALD CARANO LLP

By: /s/ George F. Ogilvie III

George F. Ogilvie III, Esq. (NSBN 3552)  
Karyna M. Armstrong (NSBN 16044)  
2300 West Sahara Avenue, Suite 1200  
Las Vegas, Nevada 89102

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

*Attorneys for U.S. RE Corporation*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano, LLP, and that on this 7th day of July, a copy of the foregoing **RESPONDENT U.S. RE CORPORATION'S APPENDIX OF EXHIBITS IN SUPPORT OF THE REPLY TO APPELLANT'S RESPONSE TO ORDER AMENDING CAPTION AND TO SHOW CAUSE** was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (E-Flex). Participants in the case who are registered with E-Flex as users will be served by the EFlex system.

/s/ Jelena Jovanovic  
An employee of McDonald Carano

**EXHIBIT “A”**

**EXHIBIT “A”**

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

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

### A. RECITALS

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

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

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

### B. TERMS OF AGREEMENT

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

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

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

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

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

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

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

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

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

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

**C. UNKNOWN CLAIMS.**

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

**D. ADEQUACY OF CONSIDERATION.**

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

**E. COSTS AND ATTORNEY FEES**

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

**F. ENTIRE AGREEMENT**

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

**G. APPLICABLE LAW**

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

## H. COUNTERPARTS

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

## I. MUTUAL WARRANTIES

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

## J. NOTICE

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

- 1) If to Plaintiff:  
Hutchison & Steffen  
Attn: Brenoch R. Wirthlin, Esq.  
Peccole Professional Park  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145  
Email: [bwirthlin@hutchlegal.com](mailto:bwirthlin@hutchlegal.com)
  
  - 2) If to the Corporate Defendants:  
George F. Ogilvie III, Esq.  
Nevada Bar No. 3552  
MCDONALD CARANO LLP  
2300 West Sahara Avenue, Suite 1200  
Las Vegas, NV 89102  
Telephone: (702) 873-4100  
Facsimile: (702) 873-9966  
[gogilvie@mcdonaldcarano.com](mailto:gogilvie@mcdonaldcarano.com)
- Jon M. Wilson, Esq. (Appearing *Pro Hac Vice*)  
LAW OFFICES OF JON WILSON  
13924 Marquesas Way, Unit 1308  
Marina Del Rey, CA. 90292  
Telephone: (310) 626-2216

**L. ADDITIONAL WARRANTIES**

The Parties represent and warrant as follows:

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

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

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

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

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

**O. MODIFICATION.**

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

**P. TAX CONSEQUENCES.**

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

**Q. ENFORCEABILITY.**

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

**R. WAIVER.**

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

**S. HEADINGS.**

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

**T. DISPUTES.**

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

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

[SIGNATURE PAGES TO FOLLOW]

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

Dated: JUNE 29, 2022 TAL FICONE

U.S. RE CORPORATION

New Jersey  
STATE OF NEVADA  
Berger  
COUNTY OF CLARK

BY TAL FICONE CHAIRMAN

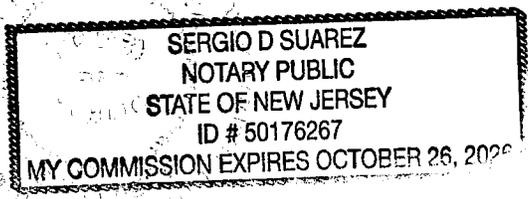
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ACKNOWLEDGED, AGREED, SUBSCRIBED, AND SWORN TO BEFORE ME in person by TAL FICONE, as Chairman, on behalf of U.S. RE CORPORATION, on this 29 day of June, 2022, to certify which witness my hand and seal of office.

Sergio D Suarez

NOTARY PUBLIC in and for said County and State

My commission expires: 10/26/2024



Dated: 6/29/2022 TAL PROCTOR  
UNI-TER UNDERWRITING MANAGEMENT CORP.

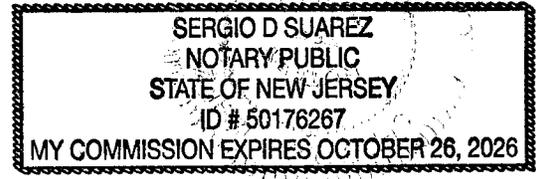
BY TAL PROCTOR CHAIRMAN

STATE OF NEVADA §  
COUNTY OF CLARK §

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

Sergio D Suarez  
NOTARY PUBLIC in and for said County and State

My commission expires: 10/26/2026



Dated: 6/29/2022 TAL PROCTOR  
UNI-TER CLAIMS SERVICES CORP.

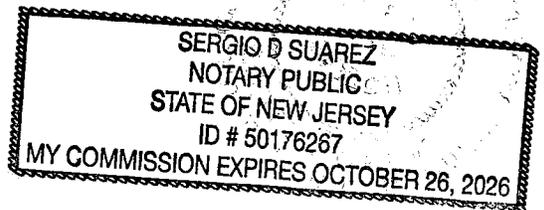
BY TAL PROCTOR CHAIRMAN

STATE OF NEVADA §  
COUNTY OF CLARK §

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

Sergio D Suarez  
NOTARY PUBLIC in and for said County and State

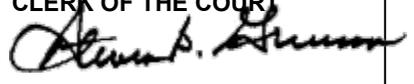
My commission expires: 10/26/2026





**EXHIBIT “B”**

**EXHIBIT “B”**



1 **NEOJ**  
2 George F. Ogilvie III (NSBN 3552)  
3 Karyna M. Armstrong (NSBN 16044)  
4 McDONALD CARANO LLP  
5 2300 West Sahara Avenue, Suite 1200  
6 Las Vegas, NV 89102  
7 Telephone: (702) 873-4100  
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9 [karmstrong@mcdonaldcarano.com](mailto:karmstrong@mcdonaldcarano.com)

10 Jon M. Wilson, Esq. (Appearing *Pro Hac Vice*)  
11 LAW OFFICES OF JON WILSON  
12 4712 Admiralty Way, Unit 361  
13 Marina Del Rey, CA. 90292  
14 Telephone: (310) 626-2216  
15 [jonwilson2013@gmail.com](mailto:jonwilson2013@gmail.com)

16 *Attorneys for Defendant*  
17 *U.S. RE Corporation*

18 **DISTRICT COURT**  
19 **CLARK COUNTY, NEVADA**

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

24 Plaintiff,  
25 vs.

26 ROBERT CHUR, STEVE FOGG, MARK  
27 GARBER, CAROL HARTER, ROBERT  
28 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 DEFENDANT U.S. RE  
CORPORATION'S MOTION TO VACATE  
ORDER DENYING MOTIONS FOR  
RECONSIDERATION AND DENYING  
PLAINTIFF'S COUNTERMOTION FOR  
SANCTIONS FOR U.S. RE'S VIOLATION  
OF NRS 48.105**

**TO ALL PARTIES AND COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE** an Order Granting Defendant U.S. Re Corporation's Motion to

1 Vacate Order Denying Motions for Reconsideration and Denying Plaintiff’s Countermotion for  
2 Sanctions for U.S. Re’s Violation of NRS 48.105 was entered in the above-captioned case on the  
3 29th day of June, 2023, a copy of which is attached hereto.

4 DATED this 29th day of June, 2023.

5  
6 McDONALD CARANO LLP

7 By: /s/ George F. Ogilvie III  
8 George F. Ogilvie III (NSBN 3552)  
9 Karyna M. Armstrong (NSBN 16044)  
10 2300 West Sahara Avenue, Suite 1200  
11 Las Vegas, NV 89102

12 Jon M. Wilson, Esq. (*Pro Hac Vice*)  
13 LAW OFFICES OF JON WILSON  
14 4712 Admiralty Way, Unit 361  
15 Marina Del Rey, CA. 90292

16 *Attorneys for Defendant U.S. RE*  
17 *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 29th day of June, 2023, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT U.S. RE CORPORATION’S MOTION TO VACATE ORDER DENYING MOTIONS FOR RECONSIDERATION AND DENYING PLAINTIFF’S COUNTERMOTION FOR SANCTIONS FOR U.S. RE’S VIOLATION OF NRS 48.105** 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

1 **OGM**

2 George F. Ogilvie III, Esq. (NSBN 3552)  
3 Karyna Armstrong, Esq. (NSBN 16044)  
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9 [karmstrong@mcdonaldcarano.com](mailto:karmstrong@mcdonaldcarano.com)

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15 [jonwilson2013@gmail.com](mailto:jonwilson2013@gmail.com)

16 *Attorneys for Defendant*  
17 *U.S. RE Corporation*

18 **DISTRICT COURT**  
19 **CLARK COUNTY, NEVADA**

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

Case No. A-14-711535-C

Dept. No.: XXVII

Plaintiffs,

v.

24 ROBERT CHUR, STEVE FOGG, MARK  
25 GARBER, CAROL HARTER, ROBERT  
26 HURLBUT, BARBARA LUMPKIN, JEFF  
27 MARSHALL, ERIC STICKELS, UNI-TER  
28 UNDERWRITING MANAGEMENT CORP.  
UNI-TER CLAIMS SERVICES CORP., and  
U.S. RE CORPORATION, DOES 1-50,  
inclusive; and ROES 51-100, inclusive,

**ORDER GRANTING DEFENDANT U.S.  
RE CORPORATION’S MOTION TO  
VACATE ORDER DENYING MOTIONS  
FOR RECONSIDERATION AND  
DENYING PLAINTIFF’S  
COUNTERMOTION FOR SANCTIONS  
FOR U.S. RE’S VIOLATION OF  
NRS 48.105**

Date of Hearing: June 8, 2023  
Time of Hearing: 10:00 a.m.

Defendants.

24 This matter came before the Court for hearing on June 8, 2023 on Defendant U.S. Re  
25 Corporation’s Motion to Vacate Order Denying Motions for Reconsideration (“Motion”) and  
26 Plaintiff’s Countermotion for Sanctions for U.S. Re’s Violation of NRS 48.105  
27 (“Countermotion”). George F. Ogilvie III, Esq. and Karyna Armstrong, Esq. of McDonald Carano  
28 LLP and Jon M. Wilson, Esq. of Law Offices of Jon Wilson appeared on behalf of U.S. Re

**McDONALD CARANO**  
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102  
PHONE 702.873.4100 • FAX 702.873.9966

1 Corporation. Brenoch R. Wirthlin, Esq. of Hutchison & Steffen, PLLC appeared on behalf of  
2 Plaintiff.

3 Having considered the record and the briefs filed in support of and in opposition to the  
4 Motion and Countermotion, and having entertained the oral arguments of counsel, the Court finds  
5 that the Corporate Defendants<sup>1</sup> fully satisfied the Settlement Agreement and that the belated tender  
6 of the Settlement Funds does not void the Settlement Agreement because Plaintiff indisputably  
7 accepted and deposited the Settlement Funds. Good cause appearing,

8 **IT IS HEREBY ORDERED** that U.S. Re Corporation’s Motion to Vacate Order Denying  
9 Motions for Reconsideration is **GRANTED**.

10 **IT IS HEREBY FURTHER ORDERED** that the Order on Motions for Reconsideration  
11 entered by this Court on April 12, 2023 is **VACATED**.

12 **IT IS HEREBY FURTHER ORDERED** that Plaintiff’s Countermotion for Sanctions  
13 for U.S. Re’s Violation of NRS 48.105 is **DENIED**.

14 **IT IS HEREBY FURTHER ORDERED** that a Satisfaction of Judgment evidencing the  
15 Corporate Defendants’ satisfaction of the terms of the Settlement Agreement shall be entered.

16 **IT IS HEREBY FURTHER ORDERED** that this case shall be and is closed without  
17 prejudice and Plaintiff’s appeal of this matter against the Corporate Defendants should be  
18 dismissed.

19 Dated this 29th day of June, 2023

20   
21 \_\_\_\_\_

22 **597 132 B672 B349**  
23 **Nancy Alif**  
24 **District Court Judge**

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28 <sup>1</sup> All capitalized terms not otherwise defined herein are defined in the Settlement Agreement and Mutual Release (“Settlement Agreement”) attached as Exhibit A to the Motion.

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Submitted By:  
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*Attorneys for Defendant*  
*U.S. RE Corporation*

Approved as to Form:  
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Mark A. Hutchison, Esq. (#4639)  
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Las Vegas, Nevada 89145  
  
*Attorneys for Plaintiff*

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Commissioner of Insurance for  
7 the State of Nevada as Receiver  
8 of Lewis and Clark, Plaintiff(s)

CASE NO: A-14-711535-C

DEPT. NO. Department 27

9 vs.

10 Robert Chur, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Order Granting Motion was served via the court's electronic eFile  
15 system to all recipients registered for e-Service on the above entitled case as listed below:

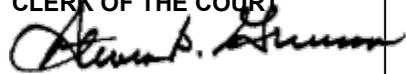
16 Service Date: 6/29/2023

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**EXHIBIT “C”**

**EXHIBIT “C”**



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16 *Attorneys for Defendant*  
17 *U.S. RE Corporation*

18 **DISTRICT COURT**  
19 **CLARK COUNTY, NEVADA**

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

24 Plaintiff,  
25 vs.

26 ROBERT CHUR, STEVE FOGG, MARK  
27 GARBER, CAROL HARTER, ROBERT  
28 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  
SATISFACTION OF JUDGMENT**

**TO ALL PARTIES AND COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE** a Satisfaction of Judgment was entered in the above-captioned

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case on the 30th day of June, 2023, a copy of which is attached hereto.

DATED this 30th day of June, 2023.

McDONALD CARANO LLP

By: /s/ George F. Ogilvie III  
George F. Ogilvie III (NSBN 3552)  
Karyna M. Armstrong (NSBN 16044)  
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Las Vegas, NV 89102

Jon M. Wilson, Esq. (*Pro Hac Vice*)  
LAW OFFICES OF JON WILSON  
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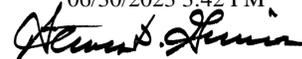
*Attorneys for Defendant U.S. RE  
Corporation*

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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 30th day of June, 2023, a true and correct copy of the foregoing **NOTICE OF ENTRY OF SATISFACTION OF JUDGMENT** 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



CLERK OF THE COURT

1 **SATF**

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17 *U.S. RE Corporation*

18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

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

24 Plaintiff,

25 vs.

26 ROBERT CHUR, STEVE FOGG, MARK  
27 GARBER, CAROL HARTER, ROBERT  
28 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

**SATISFACTION OF JUDGMENT**

FOR AND IN CONSIDERATION of the \$5,200,000.00 payment received by Plaintiff  
Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark LTC Risk Retention  
Group, Inc. ("Plaintiff" or "Commissioner") pursuant to that certain Settlement Agreement and Mutual  
Release into which the Commissioner, U.S. Re Corporation, Uni-Ter Underwriting Management Corp.,

1 and Uni-Ter Claims Services Corp. (together with U.S. Re Corporation and Uni-Ter Underwriting  
2 Management Corp., the “Corporate Defendants”) (collectively, the “Parties”) entered on or about July  
3 13, 2022, **full satisfaction is hereby acknowledged** of the Judgment on Jury Verdict in the amount of  
4 \$15,222,853.00 entered in said action in favor of Plaintiff and against the Corporate Defendants on  
5 December 30, 2021, as well as the Order Granting Attorney Fees And Costs entered on December 2,  
6 2022 in the amount of \$1,449,685.69 in attorney’s fees, and \$365,177.92 in costs, and all interest  
7 having accrued thereon through the entry of this Satisfaction of Judgment.

8 This Satisfaction of Judgment closes this case only, and is not intended to have any effect on  
9 Case No. 2:23-cv-00537 pending in the U.S. District Court for the District of Nevada.

10  
11 Dated this 30th day of June, 2023

12 Nancy L Alf

13  
14 **8B3 87F F01A 2648**  
15 **Nancy Alf**  
16 **District Court Judge**

17 Submitted By:  
18 McDONALD CARANO LLP

19 Approved as to Form:  
20 HUTCHISON & STEFFEN, PLLC

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22 George F. Ogilvie III, Esq. (#3552)  
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27 Brenoch R. Wirthlin, Esq. (#10282)  
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*Attorneys for Plaintiff*

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

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PHONE 702.873.4100 • FAX 702.873.9966

1 **CSERV**

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

5  
6 Commissioner of Insurance for  
7 the State of Nevada as Receiver  
8 of Lewis and Clark, Plaintiff(s)

CASE NO: A-14-711535-C

DEPT. NO. Department 27

9 vs.

10 Robert Chur, Defendant(s)

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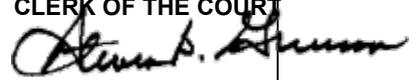
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**EXHIBIT “D”**

**EXHIBIT “D”**



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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#: A-14-711535-C

DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF,  
DISTRICT COURT JUDGE  
THURSDAY, JUNE 8, 2023

**RECORDER'S TRANSCRIPT OF HEARING:  
ALL PENDING MOTIONS**

APPEARANCES:

For the Plaintiff:

BRENOCH WIRTHLIN, ESQ.

For the Defendants:

KARYNA ARMSTRONG, ESQ.

JON M. WILSON, ESQ.

GEORGE F. OGILVIE III, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER  
TRANSCRIBE BY: PETRA ZIROS TRANSCRIPTION

1 Las Vegas, Nevada, Thursday, June 8, 2023

2  
3 [Case called at 10:34 a.m.]

4 THE COURT: Thanks, everyone. Please remain seated or  
5 please be seated. Let me call the case. Commissioner vs. Chur and  
6 let's take appearances, starting first with the Plaintiff.

7 MR. WIRTHLIN: Good morning, Your Honor. Brenoch  
8 Wirthlin on behalf of Plaintiff.

9 THE COURT: Thank you. For the Defendants?

10 MS. ARMSTRONG: Good morning, Your Honor. Karyna  
11 Armstrong, bar number 16044, on behalf of US Re.

12 THE COURT: Thank you.

13 MR. WILSON: Your Honor, Jon Wilson on behalf of US  
14 Re.

15 THE COURT: Thank you.

16 MR. OGILVIE: Good morning, Your Honor. George  
17 Ogilvie also on behalf of US Re.

18 THE COURT: Thank you. So we've got a Motion to  
19 Vacate, Denying Reconsideration, Opposition Countermotion, and  
20 rather than arguing all of that, Mr. Wirthlin, how are we going to get  
21 this case resolved?

22 MR. WIRTHLIN: Yes, Your Honor. If I could address that.  
23 I do think that the Defendants do deserve a forum to have their  
24 concerns, what they feel like variations, are addressed.

25 But I don't believe it's this forum. This case has been

1 closed as the Court knows for a year and a half and they do have the  
2 federal action. They have the appeals. And I believe at the last  
3 hearing where it was argued, I think it was set as a status check by  
4 Defendant.

5 The Court stated specifically that if the Defendant felt  
6 there was something that needed to be addressed in the  
7 receivership action, they should direct their pleadings there.

8 So we would -- our opinion, Your Honor, is that the  
9 pleadings that have continued to be filed in this closed case are not  
10 appropriate, then I think the resolution would be to have those  
11 issues if US Re feels they haven't been addressed in the appropriate  
12 forum.

13 THE COURT: But why should they pursue an appeal?  
14 They bought peace.

15 MR. WIRTHLIN: Yes, Your Honor. The -- the, well, the  
16 appeal would be certainly a fora for them to do that. But the -- the  
17 bottom line I guess for the case from the Plaintiff's perspective is  
18 that the Plaintiff has -- Commissioner of Insurance has a fiduciary  
19 obligation to pursue all avenues of recovery for the claimants.

20 We have discovered post, you know, after the issues that  
21 are -- that are -- have been raised now in front of this Court multiple  
22 times by US Re, that there were some inaccurate representations  
23 made to us by the Defendants about the insurance that was  
24 available to pay the judgment.

25 We believe that we have a fiduciary ethical obligation to

1 pursue the appropriate avenues of recovery on behalf of the  
2 claimants, Your Honor, and that's the purpose of the federal action  
3 and of course, the appeals that are currently pending.

4           So we do believe that there were -- there are multiple  
5 bases for setting aside the settlement agreement which according to  
6 the terms never came into effect and frankly was -- was breached by  
7 the Defendants as well, so for multiple reasons, Your Honor, we  
8 believe that we have an obligation for the claimants to pursue the  
9 federal action and the appeals.

10           THE COURT: Okay. So why can't we enter a satisfaction  
11 of judgment here and you can go resolve those issues elsewhere?

12           MR. WIRTHLIN: Well, the -- the main reason, Your Honor,  
13 is that the judgment was not satisfied. The agreement was to -- I  
14 guess I should say, the proposed agreement was in an effort to  
15 reach that result. But it was based on, as we had now learned,  
16 inaccurate representations by the other side about insurance  
17 availability and other issues.

18           In addition to that, Your Honor, it was breached. I don't  
19 think there's a dispute on their side. I let them speak to that. But  
20 they have acknowledged in pleadings that the -- the timelines were  
21 not adhered to.

22           They've raised some issues that are questions of facts,  
23 such as waiver and request an advisory opinion, Your Honor, but we  
24 do believe we have an obligation to pursue those in the appropriate  
25 forum.

1           If they believe that there is a basis for them to address  
2 those issues, they can do that in that forum or in whatever forum  
3 they feel is appropriate, just not a closed case that has been closed  
4 for a year and a half, Your Honor.

5           THE COURT: But you accepted the money. You waived it  
6 when you cashed that check.

7           MR. WIRTHLIN: Well, that is their argument, Your Honor,  
8 and I do understand that argument. I do think that needs to be  
9 addressed. But we don't believe that's accurate. We believe that the  
10 terms of the agreement were very clear that if the money was not  
11 delivered in a timely manner, the agreement really never took effect  
12 and was null and void once the agreement was breached.

13           So add that to the fact that after these issues happened  
14 that we have learned that the inaccurate representation -- that the  
15 representations on which we based the agreement from the  
16 Defendants were inaccurate. That there's a lot more insurance that  
17 they did not inform us about and that we have since learned about.

18           So we now feel that there are multiple bases to have that  
19 agreement set aside, not the least of which is the fact that it was  
20 breached and therefore by its own terms null and void upon the  
21 breach.

22           So if -- I'm sorry, go ahead.

23           THE COURT: No and I cut you off. Go ahead.

24           MR. WIRTHLIN: No, that's fine. I was almost done. I just  
25 feel like from the bottom line perspective, Your Honor, I feel like, you

1 know, we -- we did file a -- these motions really shouldn't have been  
2 filed. They should be stricken. That's the *Slack vs. United Airlines*  
3 case. And I don't mean to get into argument, but just from our  
4 perspective, the Plaintiff has to spend that money that could  
5 otherwise go towards paying claimants responding to these motions  
6 over and over again, which are really, this is basically by my count  
7 the fifth attempt by US Re to get a different ruling, which the Court  
8 has already said dismissal was not appropriate and the judgment  
9 has not been satisfied.

10           The Plaintiff was willing to take the -- a substantial  
11 discount on collection of the judgment because they believed that it  
12 would [indiscernible - audio distortion] best interest based upon the  
13 representations that had been made by the Defendants.

14           We have, again, since learned that those were not  
15 accurate and so add that to the fact that they breached the  
16 agreement, which nullified it, we believe we have an obligation, an  
17 ethical and moral obligation to pursue those avenues of recovery for  
18 the claimants.

19           And again, it goes back to that original jury verdict. The  
20 jury found the Defendants' actions warranted a 15 million dollar  
21 verdict and again, based upon representations we've learned are  
22 inaccurate, we were willing to pursue that avenue had the  
23 Defendants complied. But they failed to do that.

24           And once we learned that there were no -- or that we  
25 could put no faith unfortunately in representations that had been

1 made, Your Honor, we feel like we're in a position where we need to  
2 pursue this on their behalf.

3 THE COURT: And do you have a complete remedy or  
4 complete path to relief in the federal court case?

5 MR. WIRTHLIN: I'm not sure I understand the question,  
6 Your Honor.

7 THE COURT: My -- my question is, all right, so you filed a  
8 case in federal court I believe where you're seeking to set aside the  
9 settlement. Can you get complete relief in that case?

10 MR. WIRTHLIN: Well, if I understand the question, Your  
11 Honor, I think that the federal action is for declaratory relief in terms  
12 of the *Nettle* case and the insurance companies that are or that the  
13 insurance that was there, which we were told was not there, would  
14 apply to the judgment.

15 So I suppose from -- from that perspective I believe that  
16 the issues that US Re continues to attempt to raise multiple times,  
17 which we believe is in violation of local rules, can be addressed in  
18 that federal action. We do believe that's the case that the issues that  
19 they're raising can only be addressed in the federal action and can  
20 be addressed there completely if I understand your question  
21 correctly.

22 THE COURT: Thank you.

23 Do you want to respond to any of those comments I've  
24 just made?

25 MS. ARMSTRONG: Yes, Your Honor.

1 THE COURT: And I know that you argue today. I'm sorry  
2 that I cut you off.

3 MS. ARMSTRONG: It's okay. Thank you, Your Honor.

4 So just a few things that I want to touch base on. First, US  
5 Re isn't seeking an advisory opinion. We filed a motion to vacate  
6 the order specifically because at the status conference Your Honor  
7 said that if we wanted to bring a motion to enforce the settlement  
8 agreement, it needed to be within the receivership. But if we take a  
9 motion to enforce in the receivership, the judge is just going to point  
10 to your order, denying our motion to enforce the settlement  
11 agreement, which is why we've asked to vacate it, so we can bring it  
12 properly in front of the receivership judge.

13 Secondly, specifically for the representation that Plaintiff  
14 has now said, paragraph 2 under the settlement agreement  
15 specifically says, "The corporate defendants hereby represent that  
16 Catlin policy and the Ironshore policy are the only two policies  
17 issued by insurers that have agreed to provide coverage to the  
18 corporate defendants that have not been exhausted."

19 So US Re specifically would like to know what  
20 representation Plaintiff has and what other insurance policies that  
21 they've recovered as well as wonder why it wasn't provided in the  
22 declaration and we weren't given -- they didn't provide it. It wasn't  
23 in writing, there was no declaration of what other insurance  
24 companies or policies there are.

25 And then lastly, Your Honor, US Re isn't a Defendant in

1 the federal court action. The federal court action is against Catlin  
2 and Ironshore. So even though they, you know, they want to  
3 enforce -- they want to remove the settlement agreement and say it  
4 was null and void, US Re specifically isn't a Defendant in that case.

5 And as Your Honor has said and we briefed many times,  
6 they accepted the settlement funds and they've never claimed that  
7 they weren't tendered and cleared. So enforcing the settlement is  
8 very important, one to US Re, but also, they're saying the settlement  
9 is null and void but then argue that under the settlement agreement,  
10 US Re can't be dismissed.

11 So it's kind of, you kind of go back and forth. But I think  
12 US Re specifically wants to just acknowledge there has been no  
13 representations made and the settlement agreement specifically  
14 states that as well, as Plaintiff never provided a declaration or even  
15 explained or showed what other insurance policies they even had.

16 THE COURT: Thank you.

17 MS. ARMSTRONG: Thank you, Your Honor.

18 THE COURT: Is there anything further, Mr. Wirthlin?

19 All right. So for good cause of caring the motion will be  
20 granted. I direct the Defendants to prepare a satisfaction of  
21 judgment, which indicates it is based on a settlement amount that is  
22 now in dispute.

23 The case can be closed without prejudice and the appeal  
24 should be dismissed.

25 MR. WILSON: Thank you, Your Honor.

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MR. OGILVIE: Thank you.

MS. ARMSTRONG: Thank you, Your Honor.

THE COURT: Thank you both. Make sure Mr. Wirthlin has the ability to at least see that. Not to approve it, I understand, before it's submitted to me.

MR. WILSON: Thank you, Your Honor.

MR. OGILVIE: Thank you.

MS. ARMSTRONG: Thank you, Your Honor.

THE COURT: Thank you both.

[Hearing concluded at 10:46 a.m.]

\* \* \* \* \*

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

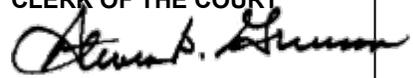


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Petra Ziros  
Transcriber

**EXHIBIT “E”**

**EXHIBIT “E”**



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9 *Attorneys for Defendant*  
10 *U.S. RE Corporation*

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

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

16 Plaintiff,

17 vs.

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

22 Defendants.

Case No. A-14-711535-C

Dept. No.: XXVII

**DEFENDANT U.S. RE  
CORPORATION'S MOTION  
FOR RECONSIDERATION  
OF ORDER DENYING MOTION  
TO DISMISS AND ENFORCE  
SETTLEMENT AGREEMENT**

**(HEARING REQUESTED)**

23  
24 Pursuant to EDCR 2.24,<sup>1</sup> Defendant U.S. Re Corporation (“U.S. Re”), by and through its  
25 undersigned counsel, hereby moves this Court for reconsideration of the Order on Motion to Dismiss  
26 and Enforce Settlement Agreement (“Order”).

27 \_\_\_\_\_  
28 <sup>1</sup> In accordance with EDCR 2.24, this Motion is filed within 14 days of the November 30, 2022  
service of written notice of the Court’s Order.

1 Consistent with the terms of the July 13, 2022 Settlement Agreement between Defendants U.S.  
2 Re, Uni-Ter Underwriting Management Corp. (“Uni-Ter UMC”), Uni-Ter Claims Services Corp. (“Uni-  
3 Ter CS” and, together with U.S. Re and Uni-Ter UMC, the “Corporate Defendants”) and Plaintiff  
4 Commissioner of Insurance for the State of Nevada as Receiver of the Lewis and Clark LTC Risk  
5 Retention Group, Inc. (“Plaintiff Commissioner”), the Corporate Defendants tendered payment (and  
6 Plaintiff Commissioner accepted payment) of the Settlement Amount specified in the Settlement  
7 Agreement. Therefore, the Settlement Agreement should be enforced, and the Corporate Defendants  
8 should be dismissed from this litigation.

9 At the November 10, 2022 hearing on the Motion to Dismiss and Enforce Settlement Agreement  
10 (“Motion to Dismiss/Enforce”), the Court ruled it was divested of jurisdiction because Plaintiff  
11 Commissioner filed an appeal the previous evening. *See* November 10, 2022 Transcript of Proceeding  
12 Regarding Motion to Dismiss and Enforce Settlement Agreement attached hereto as **Exhibit A**, at  
13 11:19-21. As U.S. Re’s counsel argued, however, this Court is not divested of jurisdiction because the  
14 enforcement of the Settlement Agreement and the dismissal of the Corporate Defendants is entirely  
15 collateral to and independent from the issues raised by Plaintiff Commissioner’s appeal, which relates  
16 solely to the dismissed Director Defendants. *See* Plaintiff Commissioner’s November 25, 2022 Case  
17 Appeal Statement attached hereto as **Exhibit B**; *see also* Plaintiff Commissioner’s December 13, 2022  
18 Docketing Statement attached hereto as **Exhibit C**. Under Nevada jurisprudence, this Court is not  
19 divested of jurisdiction and should grant U.S. Re’s Motion to Dismiss/Enforce. *See* Exhibit A at 11:22-  
20 24.

21 Accordingly, U.S. Re moves for reconsideration of the denial of its Motion to Dismiss/Enforce,  
22 and respectfully requests this Court to enforce the Settlement Agreement executed on July 13, 2022,  
23 and dismiss the Corporate Defendants from this litigation.

24 This Motion is made and based upon on the following Memorandum of Points and Authorities,  
25 the transcript from the November 10, 2022 hearing, all the papers and pleadings on file herein, and the  
26 arguments of counsel at any hearing that this Court may entertain on the Motion.

27 ...  
28 ...

1 DATED this 14th day of December, 2022.

2 McDONALD CARANO LLP

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

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11 Marina Del Rey, CA. 90292

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

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. INTRODUCTION AND RELEVANT FACTS**

15 Plaintiff Commissioner and Corporate Defendants fully executed the Settlement Agreement on  
16 July 13, 2022. *See* Settlement Agreement, attached hereto as **Exhibit D**. Under the Settlement  
17 Agreement, the insurance carriers for Corporate Defendants agreed to pay Plaintiff Commissioner the  
18 total amount of \$5,200,000.00 (“Settlement Funds”). *See id.* at p. 1. The Settlement Funds were paid  
19 by a Catlin Specialty Insurance Company (“Catlin”) check in the amount of \$407,337.22 and an  
20 Ironshore Insurance Company (“Ironshore”) check in the amount of \$4,792,662.78. *See* Motion to  
21 Dismiss/Enforce at Ogilvie Decl. at ¶ 5. The Catlin check was delivered pursuant to Plaintiff  
22 Commissioner’s instructions on August 19, 2022, and the Ironshore check was delivered on August  
23 24, 2022. *Id.* The Settlement Funds have been tendered and cleared yet Plaintiff Commissioner failed  
24 to agree to enforce the Settlement Agreement. *See id.* at ¶¶ 6-8. Because of Plaintiff Commissioner’s  
25 failure to stipulate to the Corporate Defendants’ dismissal from this action, U.S. Re filed its’ Motion  
26 to Dismiss/Enforce. The Court conducted a hearing on the motion on November 10, 2022.

27 At the November 10, 2022 hearing, the Court agreed that Plaintiff Commissioner waived its  
28 claim for breach “based upon the acceptance of the late tender” but stated it could not rule on the  
29 Motion to Dismiss/Enforce because it was divested of jurisdiction due to Plaintiff Commissioner’s  
30 appeal that was filed on November 9, 2022. *See Ex. A* at 11:18-24. Because the Motion to  
31 Dismiss/Enforce is entirely collateral to and independent of Plaintiff’s Commissioner’s appeal,

1 however, this Court is not divested of jurisdiction to rule on the Motion to Dismiss/Enforce.

2 **II. LEGAL STANDARD**

3 The Court has the inherent authority to “amend, correct, resettle, modify, or vacate, as the case  
4 may be, an order previously made and entered on motion.” *Trail v. Faretto*, 91 Nev. 401, 403, 536  
5 P.2d 1026, 1027 (1975); *City of L.A., Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 884 (9th  
6 Cir. 2001) (“As long as a district court has jurisdiction over the case, then it possesses the inherent  
7 procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be  
8 sufficient.”); *see also Halverson v. Hardcastle*, 123 Nev. 245, 270, 163 P.3d 428, 446 (2007) (trial  
9 court judges possess inherent power “of equity and of control over the exercise of their jurisdiction”).  
10 All that is required is “sufficient cause,” which exists “if substantially different evidence is  
11 subsequently introduced or the decision is clearly erroneous.” *Masonry & Tile Contractors Ass’n of*  
12 *S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997); *see also United*  
13 *States v. Matelabi*, No. 2:17-cv-34-JCM(NJK), 2021 WL 2583548 at \*1 (D. Nev. June 23, 2021)  
14 (stating no “precise rule” governs a district court’s “inherent power” to reconsider prior rulings).

15 Generally, “a timely notice of appeal divests the district court of jurisdiction to act and vests  
16 jurisdiction” in the Nevada Supreme Court. *Kantor v. Kantor*, 116 Nev. 886, 894, 8 P.3d 825, 830  
17 (2000) (citation omitted). However, when the issue is “entirely collateral to and independent from that  
18 part of the case taken up by appeal, and in no way affect[s] the merits of the appeal” the Nevada  
19 Supreme Court allows district courts to grant relief while the case is on appeal. *See id.* (citation  
20 omitted); *see also Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529 (2006) (“the district  
21 court retains jurisdiction to enter orders on matters that are collateral to and independent from the  
22 appealed order, *i.e.*, matters that in no way affect the appeal’s merit”).

23 **III. ARGUMENT**

24 **A. This Court is Not Divested of Jurisdiction Because the Motion to Dismiss/Enforce**  
25 **is Entirely Collateral and Independent From the Receiver’s Appeal.**

26 On November 9, 2022, Plaintiff Commissioner filed its Notice of Appeal with the Nevada  
27 Supreme Court. *See* Notice of Appeal on file with this Court. On November 18, 2022 Plaintiff  
28 Commissioner filed its Amended Notice of Appeal (“ANOA”) seeking relief on appeal for twenty-four

1 separate issues. *See* Amended Notice of Appeal on file with this Court. On November 25, 2022,  
2 Plaintiff Commissioner filed its Case Appeal Statement. *See* Ex. B. On December 13, 2022, Plaintiff  
3 Commissioner filed its Docketing Statement for the appeal. *See* Ex. C. In both its Case Appeal  
4 Statement and its Docketing Statement, Plaintiff Commissioner clearly identifies that the appeal does  
5 not seek any relief related to the Corporate Defendants; the appeal seeks relief from the Nevada  
6 Supreme Court due to the District Court’s “erroneous rulings” on twenty-four issues pertaining solely  
7 to the previously dismissed Director Defendants. More specifically, the Case Appeal Statement and  
8 the Docketing Statement identify the “Director Defendants” as the sole respondents to the appeal. *See*  
9 Ex. B at ¶ 4; Ex. C at ¶ 3. Both the Case Appeal Statement and the Docketing Statement indisputably  
10 reflect Plaintiff Commissioner’s appeal does not pertain to the Corporate Defendants.

11 U.S. Re filed its Motion to Dismiss/Enforce seeking to enforce the Settlement Agreement and  
12 Dismiss the Corporate Defendants from this litigation. *See generally* Motion to Dismiss/Enforce.  
13 Pursuant to the Settlement Agreement, Corporate Defendants’ insurance carriers paid Plaintiff  
14 Commissioner the total amount of \$5,200,000.00. *See id.* at Ogilvie Decl. at ¶ 4-7. Because Plaintiff  
15 Commissioner accepted the Settlement Funds – despite the five-day delay – the Settlement Agreement  
16 should be enforced in its entirety and dismissed from the case. *See* Motion at 6:26-28; 7:1-15. As  
17 stated above, the Motion to Dismiss/Enforce is “entirely collateral to and independent from that part of  
18 [Plaintiff’s Commissioner’s] appeal, and in no way affect[s] the merits of the appeal.” *Kantor*, 116  
19 Nev. at 894, 8 P.3d at 830 (citation omitted). Therefore, this Court is not divested of jurisdiction and  
20 should grant U.S. Re’s Motion to Dismiss/Enforce.

21 **B. This Court Should Make a Ruling Consistent With Its Advisory Opinion.**

22 Because this Court is not divested of jurisdiction, it should make a ruling consistent with its  
23 advisory opinion. Plaintiff Commissioner argues that the 5-day delay of the Settlement Funds  
24 constituted a breach of the Settlement Agreement by Corporate Defendants. *See* November 4, 2022  
25 Opposition to Motion to Dismiss/Enforce at 4:15-22. However, this Court stated, “[t]he settlement  
26 agreement, it would be appropriate for me to enforce it because the Plaintiff accepted the late tender.”  
27 **Ex. A** at 13:1-3. Therefore, Plaintiff Commissioner’s argument that the Settlement Agreement is not  
28 enforceable fails.

1 Accordingly, because this Court is not divested of jurisdiction and it stated it would enforce the  
2 Settlement Agreement, U.S. Re respectfully asks this Court to reconsider its Order and issue an order  
3 granting the Motion to Dismiss/Enforce.

4 **IV. CONCLUSION**

5 For the foregoing reasons, U.S. Re respectfully requests that this Court reconsider its Order On  
6 Motion To Dismiss And Enforce Settlement Agreement by enforcing the Settlement Agreement and  
7 dismissing the Corporate Defendants from this litigation.

8 DATED this 14th day of December, 2022.

9 McDONALD CARANO LLP

10 By: /s/ George F. Ogilvie III  
11 George F. Ogilvie III (NSBN 3552)  
12 Karyna M. Armstrong (NSBN 16044)  
13 2300 West Sahara Avenue, Suite 1200  
14 Las Vegas, NV 89102

15 Jon M. Wilson, Esq. (*Pro Hac Vice*)  
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17 13924 Marquesas Way, Unit 1308  
18 Marina Del Rey, CA. 90292

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

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**CERTIFICATE OF SERVICE**

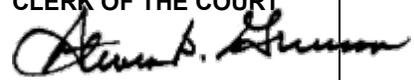
I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 14th day of December 2022, I caused a true and correct copy of the foregoing **DEFENDANT U.S. RE CORPORATION'S MOTION FOR RECONSIDERATION OF ORDER DENYING MOTION TO DISMISS AND ENFORCE SETTLEMENT AGREEMENT** to be electronically 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

**McDONALD CARANO**

2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102  
PHONE 702.873.4100 • FAX 702.873.9966

# **EXHIBIT “A”**



1 TRAN

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DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

COMMISSIONER OF INSURANCE FOR THE STATE OF )

8

NEVADA AS RECEIVER OF LEWIS AND CLARK, )

9

Plaintiff(s), )

CASE NO.: A-14-711535-C

DEPT. NO.: XXVII

10

v. )

11

ROBERT CHUR, )

12

Defendant(s). )

13

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

14

THURSDAY, NOVEMBER 10, 2022

15

**TRANSCRIPT OF HEARING RE:**

16

**MOTION TO DISMISS AND ENFORCE SETTLEMENT AGREEMENT**

17

APPEARANCES:

18

FOR THE PLAINTIFF:

BRENOCH WIRTHLIN, ESQ.

19

(VIA BLUEJEANS)

20

FOR THE DEFENDANT:

KARYNA ARMASTRONG, ESQ.

21

GEORGE F. OGILVIE, III, ESQ.

22

(VIA BLUEJEANS)

23

24

25

RECORDED BY: BRYNN WHITE, COURT RECORDER

1 Las Vegas, Nevada; Thursday, November 10, 2022

2 [Proceeding commenced at 10:01 a.m.]

3  
4 THE COURT: *Commissioner of Insurance versus Chur.* Have  
5 appearances, please, starting first with the plaintiff.

6 MR. WIRTHLIN: Good morning, Your Honor. Brenoch Wirthlin  
7 on behalf of plaintiff.

8 MS. ARMSTRONG: Good morning, Your Honor. Karyna  
9 Armstrong from McDonald Carano on behalf of Defendant U.S. Re  
10 Corporation.

11 THE COURT: Thank you.

12 MR. OGILVIE: Good morning, Your Honor. George Ogilvie  
13 also on behalf of U.S. Re.

14 THE COURT: Thank you. All right. Defendants, your  
15 motion to enforce settlement.

16 MS. ARMSTRONG: Good morning, Your Honor. As a  
17 preliminary matter, this Court is aware that McDonald Carano has  
18 withdrawn from representing the Uni-Ter defendants, and this motion  
19 is brought by and on behalf of U.S. Re Corporation. Nevertheless,  
20 the settlement agreement anticipates the resolution of all claims for  
21 both U.S. Re Corporation and Uni-Ter defendants as herein stated as  
22 corporate defendants. So as I move forward, I'm just going to refer  
23 to them as corporate defendants.

24 Your Honor, Plaintiff's opposition begs question, are they  
25 seeking settlement funds over the \$5.2 million as previously agreed

1 upon in the party settlement agreement? And if they are not seeking  
2 more in damages, then what is the point of keeping us in this  
3 litigation? However, if they are seeking more in damages in the  
4 amount more than the 5.2 million, their actions are improper and  
5 disingenuous.

6           The parties executed a settlement agreement whereby the  
7 insurance carriers of Corporate Defendants agreed to pay Plaintiff  
8 \$5.2 million. Approximately 400,000 would come from Catlin Specialty  
9 Insurance Company, and approximately 4.79 million from Ironshore  
10 Insurance Company.

11           Under paragraph B1 of the settlement agreement, the  
12 corporate defendants agreed to a 30-day limitation of when those  
13 settlement agreement funds should be given. Catlin Speciality  
14 Insurance paid on August 19th, 2022, and Ironshore insurance paid on  
15 August 24th, 2022. Both checks were accepted and cashed.

16           In its opposition, Plaintiff argues that because Corporate  
17 Defendants were just five days late on the settlement payment they  
18 have breached the settlement and, therefore, they do not have to  
19 waive and release Corporate Defendants from all potential claims.  
20 Yet, the basic premise of breach of contract includes a valid  
21 contract, a material breach of that contract, and the damages from  
22 the result of that breach.

23           Here, it's been established that a settlement agreement is  
24 a contract. And while a valid contract does exist between the  
25 parties, Plaintiff cannot claim breach of contract for two reasons.

1 First, Corporate Defendants did not materially breach the contract.  
2 When determining a party materially breached the contract, the Court  
3 must determine whether the failure to perform is so fundamental to a  
4 contract that it negates the essential purpose of that settlement  
5 agreement.

6 Corporate Defendants do not dispute that they gave the  
7 insured the Ironshore check for \$4.79 million on August 24th, 2022.  
8 But a late payment of just five days does not negate the essential  
9 purpose of the settlement agreement, nor does it negate the parties'  
10 intent when entering into the settlement agreement to begin with.

11 Second, Plaintiff did not incur any damages. A breach of  
12 contract without damages is not actionable. Plaintiff accepted and  
13 cashed both settlement checks. The five-day delay did not cause any  
14 other damages to Plaintiff.

15 Even if Your Honor believes that a five-day delay is a  
16 material breach of the settlement agreement which Corporate  
17 Defendants contend it is not, Plaintiff accepting and cashing the  
18 checks constitutes as a waiver of the claimed breach. Plaintiff  
19 cannot both accept the consideration from the settlement and then  
20 continue to pursue Corporate Defendants for additional damages.

21 When a non breaching party accepts defective performance,  
22 they choose to waive the claim of breach. Therefore, when Plaintiff  
23 accepted the benefit of the settlement agreement, Plaintiff chose to  
24 waive the Corporate Defendants' defective payment.

25 Since Corporate Defendants can establish that there was no

1 breach of contract claim, and even if there was the acceptance and  
2 cashing of the settlement checks constitutes Plaintiff's waiver of  
3 the defective performance, this Court should immediately dismiss  
4 Corporate Defendants from the litigation pursuant to the settlement  
5 agreement.

6           While in its opposition Plaintiff argues that the  
7 settlement agreement contains no provision regarding dismissal,  
8 section 8.3 expressly states the parties intend to resolve the  
9 present dispute including and all issues relating to the allegations  
10 that were or could have been made in the lawsuit. While the Court  
11 can look into the contracting party's intent when the intent is not  
12 clearly expressed in the contractual language, they can consider the  
13 circumstances surrounding the settlement agreement.

14           But this Court doesn't even have to do that. The -- the  
15 settlement agreement expressly put that Corporate Defendants should  
16 be released and dismissed. Section B.4 of the agreement states,  
17 Plaintiff hereby releases U.S. Re and the Uni-Ter defendants,  
18 defendant-released parties, from any and all charges, complaints,  
19 claims, actions, causes of action, suits, rights, demands, costs,  
20 losses, debts, and expenses, whether based on tort, subrogation,  
21 contract, quasi-contract, or any other theory of recovery or  
22 responsibility that the plaintiff now has or could have against the  
23 defendant-released parties.

24           The -- the release of the defendant-released parties  
25 includes the corporate defendants and the settlement agreement

1 expressly intends for the release and dismissal from the litigation.

2 THE COURT: But it doesn't specify that dismissal is  
3 required?

4 MS. ARMSTRONG: It says that they should be released. And  
5 when you look at the surrounding circumstances of their intent of  
6 releasing the parties, U.S. Re and Uni-Ter collectively as the  
7 defendant-released parties paired with section 8.3 that says the  
8 parties intend to resolve the present dispute including any and all  
9 issues relating to the allegations that have been made in the  
10 lawsuit, I think when you take the two of those and what the  
11 settlement agreement intended when they entered it, was to dismiss  
12 them out of litigation or they shouldn't have accepted the settlement  
13 funds in the first place if they didn't agree to those terms.

14 THE COURT: Thank you.

15 MS. ARMSTRONG: So Your Honor, as I stated before,  
16 Plaintiff's opposition begs the question, are they seeking settlement  
17 funds over the \$5.2 million as previously agreed upon in the party  
18 settlement agreement. Corporate Defendants fully satisfied the  
19 essential terms of the settlement agreement. No material breach  
20 occurred, and acceptance of the settlement funds by Plaintiff waives  
21 the claimed breach.

22 Therefore, Your Honor should enforce the settlement  
23 agreement and dismiss Defendants with prejudice as the settlement  
24 agreement intended. Thank you.

25 THE COURT: Thank you. Opposition, please.

1 MR. WIRTHLIN: Thank you, Your Honor. Brenoch Wirthlin on  
2 behalf of Plaintiff. I'll be brief.

3 Initially, one of the -- the Commissioner has filed a  
4 notice of appeal in this case and as the Court notes and for the  
5 record, the *Rust versus Clark County School District* case states  
6 that -- and according, a timely notice of appeal divests the District  
7 Court of jurisdiction to act and vests jurisdiction in this court,  
8 meaning the Supreme Court. And that is 103 Nev. 686. So Your Honor,  
9 we would submit that the -- the motion must be vacated. The hearing  
10 and -- cannot be decided as the notice of appeal has been filed in a  
11 timely manner.

12 As far as the substance of the argument, Your Honor, we  
13 believe that it's -- it's premature what -- what the U.S. Re is  
14 requesting. At this point, the -- the settlement agreement itself is  
15 very clear Your Honor, that -- and it states, and I'm just quoting  
16 very briefly, I know the Court's read all the pleadings, that the  
17 agreement, quote, shall be null and voiding in the event such  
18 settlement funds are not received by Plaintiff within the 30-day time  
19 period referenced herein.

20 And Your Honor, what the Commissioner was giving up, and  
21 again without waiving the argument on the appeal issue and the  
22 divestiture of jurisdiction should the Court consider the merits of  
23 the motion, what the Commissioner was giving up was effectively  
24 pursuit of the additional \$15 million in the judgment against the  
25 corporate defendants. And this was a heavily negotiated provision,

1 very specifically pointed out.

2           And in fact, during the negotiations, there was some  
3 question the Commissioner had -- had intended to exchange the  
4 settlement check for a signed copy of the settlement agreement. U.S.  
5 Re would not agree to that.

6           The Commissioner then suggested that a -- in exchange of  
7 the settlement funds when there was a notice of entry of order  
8 approving the settlement agreement in the receivership. U.S. Re  
9 would not agree to that.

10           The Commissioner requested that a certified check be  
11 prepared so that she could be sure that the funds were going to be  
12 delivered and U.S. Re would not agree to that.

13           So this provision was what the parties both negotiated,  
14 went back and forth on. We've attached those exhibits to our motion.  
15 And was -- was specifically and -- and very clearly negotiated, that  
16 this 30-day period would be the time frame for delivery of this  
17 entire amount that was going to be paid.

18           I don't think there's any dispute. In fact, I think  
19 Counsel acknowledged that the -- the funds were not delivered within  
20 that time frame. They were late. And therefore, whatever the impact  
21 of that is, though, Your Honor, is not before the Court. There is  
22 no -- excuse me.

23           Effectively what U.S. Re's trying to do is get some type  
24 of advisory opinion about whether or not the contract was breached,  
25 whether or not there were damages, whether or not there was an

1 effective release. And I think the -- the comments were very clearly  
2 made about intent of the parties.

3           Your Honor's question was exactly right on. The contract  
4 does -- the settlement agreement nowhere permits or  
5 even -- even -- or certainly, much less requires dismissal. And  
6 that's -- that's on purpose, Your Honor. The -- the dismissal of the  
7 corporate defendants would not be appropriate after the entry of a  
8 judgment, especially at this point with an appeal having been filed.

9           But that could impact -- dismissal of the corporate  
10 defendants could very negatively impact the appeal going forward as  
11 it pertains to the -- to the director defendants, which as the Court  
12 recalls were dismissed.

13           So dismissal would have never been something that the  
14 Commissioner would have agreed to. The Commission did not agree to  
15 that. And questions, Your Honor, about the intent of the parties,  
16 whether or not they -- the surrounding circumstances suggest that the  
17 parties may have contemplated dismissal are completely inappropriate.  
18 Those are raising issues of fact, questions of fact about issues  
19 that -- that are not before the Court that don't relate to anything.

20           If -- if U.S. Re feels like it needs to take some further  
21 action or -- or take some additional action, then it is free to do  
22 so, but to suggest that the Court can -- and request by U.S. Re that  
23 the Court rewrite the contract, dismiss the corporate defendants in a  
24 way that would -- would negatively impact the appeal against the  
25 director defendants is completely inappropriate, Your Honor, and

1 contrary to law and contrary to the very heavily negotiated terms of  
2 the agreement.

3           And finally, Your Honor, again, I think there is no  
4 dispute, although this issue is not in front of the Court, there's no  
5 dispute that those funds were not delivered in time, that the  
6 provisions of the agreement make it very clear that that was a -- a  
7 material term.

8           But again, we would submit that this motion cannot be  
9 decided. And certainly happy to answer any questions the Court may  
10 have. Thank you.

11           THE COURT: Thank you. Reply, please.

12           MS. ARMSTRONG: Despite what Plaintiff's counsel issued --  
13 despite what Plaintiff's counsel said, this issue is in front of this  
14 Court. And Your Honor, Plaintiff still has not answered the  
15 question, are they seeking settlement funds over the agreed-upon  
16 \$5.2 million? If not, then what's the purpose of keeping Corporate  
17 Defendants in this litigation? They received the settlement funds of  
18 5.2 million. They accepted and cashed it.

19           I think the facts here are very clear. The settlement  
20 agreement is a valid contract. The five-day delay is not a material  
21 breach because they received the amount of money that they intended  
22 to give and intended to receive. It doesn't negate the essential  
23 purpose of the settlement agreement was for the insurance -- the  
24 Corporate Defendants' insurance company to pay Plaintiff the  
25 \$5.2 million and they received those. Even if this Court believes

1 that was a breach, the breach was waived in the Plaintiff accepting  
2 and cashing the settlement checks.

3           Once the settlement checks were tendered and cleared,  
4 counsel tried to get Plaintiff to agree and sign the stipulation and  
5 order dismissing Corporate Defendants from the litigation with  
6 prejudice, and Plaintiff refused.

7           But section T of the settlement agreement, the dispute  
8 section, makes reference to any additional documents which may be  
9 necessary to carry on the purposes of this agreement, further  
10 indicating an anticipation that a stipulation to dismiss may be  
11 necessary to carry out the party's intent.

12           Therefore, Your Honor, this Court has the inherent  
13 authority to dismiss Corporate Defendants with prejudice. Even if  
14 the Court finds that the settlement agreement doesn't call for it or  
15 that the parties didn't agree to it, because Corporate Defendants  
16 have satisfied the obligations under the settlement agreement, they  
17 should be dismissed with prejudice. Thank you.

18           THE COURT: Thank you. This is the defendant's motion to  
19 dismiss and enforce settlement agreement. Due to the filing of the  
20 notice of appeal yesterday, I'm divested of jurisdiction so I can't  
21 consider the motion.

22           But when I prepared for the hearing, I would have granted  
23 the motion to enforce the settlement agreement based upon the  
24 acceptance of the late tender, and I would have denied the motion to  
25 dismiss. It just wasn't a bargained-for term in the agreement and

1 the agreement itself is not ambiguous.

2 So the matter is off calendar, but you have your advisory  
3 opinion.

4 MR. OGILVIE: Couple things --

5 THE COURT: Of course.

6 MR. OGILVIE: -- Your Honor, if I may.

7 THE COURT: Please.

8 MR. OGILVIE: A notice of appeal does not exhaustively  
9 divest the court.

10 THE COURT: But there's some things you can do --

11 MR. OGILVIE: If -- if it's not central -- if the issue  
12 before the Court is not central to the appeal, then the Court is not  
13 divested of authority. We will brief it --

14 THE COURT: Sure.

15 MR. OGILVIE: -- in a motion for reconsideration because I  
16 don't believe the Court is divested of --

17 THE COURT: And it was just filed yesterday.

18 MR. OGILVIE: Yes.

19 THE COURT: So it's not something that I --

20 MR. OGILVIE: Understood.

21 THE COURT: I would have taken a real close look at.

22 MR. OGILVIE: I -- I understand that completely. And I  
23 understand that we need to file a motion for reconsideration and  
24 that's just a hoop that we will jump through.

25 I didn't understand the advisory opinion though.

1 THE COURT: The settlement agreement, it would be  
2 appropriate for me to enforce it because the Plaintiff accepted the  
3 late tender.

4 MR. OGILVIE: Okay. Thank you.

5 THE COURT: All right. So I will task the plaintiff with  
6 preparing order to -- just that the matter is -- is not considered  
7 today due to the notice of appeal. And I -- if you guys need further  
8 briefing, happy to entertain it. Any questions --

9 MR. WIRTHLIN: Thank you, Your Honor. We'll prepare that  
10 and circulate it to opposing counsel.

11 THE COURT: Thank you, both.

12 MR. OGILVIE: Thank you, Your Honor.

13 MS. ARMSTRONG: Thank you, Your Honor.

14 [Court recessed at 10:18 a.m.]

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21 ATTEST: I do hereby certify that I have truly and correctly  
22 transcribed the audio/video proceedings in the above-entitled case to  
the best of my ability.

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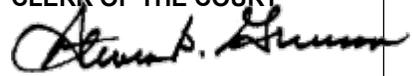


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Karisa J. Ekenseair  
Court Reporter/Transcriber

25

# **EXHIBIT “B”**



1 Brenoch R. Wirthlin, Esq. (10282)  
2 **Hutchison & Steffen**  
3 Peccole Professional Park  
4 10080 West Alta Drive, Suite 200  
5 Las Vegas, Nevada 89145  
6 Telephone: (702) 385.2500  
7 Facsimile: (702) 385.2086  
8 E-Mail: [bwirthlin@hutchlegal.com](mailto:bwirthlin@hutchlegal.com)  
9 *Attorneys for Plaintiff*

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 \* \* \*

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

17 Plaintiff,

18 vs.

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

27 Defendants.

Case No.: A-14-711535-C  
Dept. No.: XXVII

Nevada Supreme Court Docket No. 85668

**CASE APPEAL STATEMENT**

28 **1. Name of appellant filing this case appeal statement:** Commissioner of Insurance  
for the State of Nevada as Receiver for Lewis and Clark LTC Risk Retention Group, Inc.  
("Appellant" or "Commissioner of Insurance").

**2. Identify the judge issuing the decision, judgment, or order appealed from:**  
Honorable Nancy L. Allf, Department XXVII, of the Eighth Judicial District Court.



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

4           The Commissioner of Insurance of Nevada was appointed receiver of an insolvent Nevada  
5 insurer named Lewis and Clark LTC Risk Retention Group, Inc. (“L&C”), and filed suit against  
6 L&C’s directors, managers, and reinsurance broker, relying upon existing Nevada law when  
7 drafting her complaint, which was filed on December 24, 2014. Subsequently, the basis of  
8 pleading director liability in Nevada changed with the Court’s opinion in *Chur v. Eighth Judicial*  
9 *Dist. Court*, 136 Nev. 68, 458 P.3d 336 (2020), which substantively altered the law regarding  
10 director liability in Nevada. Within the time period allowed by the District Court for amending  
11 her pleadings, the Commissioner of Insurance moved to amend her complaint against the Director  
12 Defendants in order to comply with the change to Nevada law following Court’s opinion in *Chur*.  
13 The District Court, however, denied Appellant’s motion to amend, despite also having relied upon  
14 *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 640, 137 P.3d 1171, 1184 (2006), in its prior rulings.  
15 As a result of the District Court’s refusal to allow Plaintiff to amend her pleadings within the time  
16 period allowed by the District Court, the Director Defendants were dismissed from the action. The  
17 Commissioner of Insurance proceeded in the action against the remaining defendants, Uni-Ter  
18 Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. Re Corporation  
19 (“Corporate Defendants”), and on October 14, 2021 following a three-week trial, was awarded a  
20 unanimous jury verdict in the amount of \$15,222,853.00.  
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24           The Commissioner of Insurance seeks relief from the District Court’s erroneous rulings  
25 related and/or leading to the dismissal of the Director Defendants from the District Court action,  
26 and appeals the following judgments and orders granted by the District Court: (1) Order Denying  
27 Plaintiff’s Motion for Leave to File Fourth Amended Complaint dated and entered August 10,  
28 2020, which denied Plaintiff leave to file a fourth amended complaint; (2) Findings of Fact,

1 Conclusions of Law and Order Denying Plaintiff's Motion for Leave to File Fourth Amended  
2 Complaint dated and entered August 10, 2020, which denied Plaintiff leave to file a fourth  
3 amended complaint; (3) Order to Strike from Record dated August 13, 2020, which struck from  
4 the record a second version of the order inadvertently filed by the Court; (4) Order Granting  
5 Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara  
6 Lumpkin, Jeff Marshall, and Eric Stickels' Motion for Judgment on the Pleadings Pursuant to  
7 NRCP 12(c) and Judgment Thereon dated August 13, 2020 and entered August 14, 2020, granting  
8 judgment to the Director Defendants on the pleadings; (5) Findings of Fact, Conclusions of Law  
9 and Order Denying the Motion for Reconsideration of Motion for Leave to Amend Regarding  
10 Director Defendants dated September 9, 2020 and entered September 10, 2020, denying Plaintiff's  
11 motion for reconsideration of the District Court order denying Plaintiff leave to file a fourth  
12 amended complaint; (6) Order Denying Plaintiff's Motion to Retax and Settle Costs of Director  
13 Defendants dated July 16, 2021 and entered July 29, 2021, denying Plaintiff's motion to retax and  
14 settle costs with respect to the Director Defendants; (7) Order Granting in Part and Denying in Part  
15 Plaintiff's Motion for Declaratory Relief dated and entered August 17, 2021, which denied in part  
16 Plaintiff's motion for declaratory relief to the extent that there was no request for declaratory relief  
17 in the third amended complaint; (8) Discovery Commissioner's Report and Recommendations  
18 dated, filed and served on August 23, 2021, recommending denial of Plaintiff's motion to compel  
19 additional discovery; (9) Order Regarding Discovery Commissioner's Report and  
20 Recommendations dated September 17, 2021 and filed on September 18, 2021, adopting the  
21 recommendation of the discovery commissioner and denying Plaintiff's motion to compel  
22 additional discovery; (10) Order Granting In Part And Denying In Part Plaintiff's Motion In Limine  
23 No. 2 dated September 20, 2021, which denied in part testimony regarding unperformed solvency  
24 analysis; (11) Order Granting In Part And Denying In Part Plaintiff's Motion For Partial Summary  
25 Judgment As To U.S. Re Corporation dated September 20, 2021, which denied the motion to the  
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1 extent that it is a question for the trier of fact to determine the effect of U.S. Re Corporation's  
2 failure to obtain a Nevada license to broker reinsurance; (12) Order Denying Plaintiff's Motion In  
3 Limine Number 5 To Limit The Scope Of Expert Witness Testimony Regarding Speculation  
4 Concerning The Economy dated September 24, 2021, which allowed speculative testimony by  
5 expert witnesses regarding the economy at trial; (13) Order Denying Plaintiff's Motion In Limine  
6 Number 4: To Preclude Any Reference To Reinsurance Estimates dated September 24, 2021,  
7 which allowed testimony at trial regarding reinsurance estimates; (14) Order Denying Plaintiff's  
8 Motion In Limine Number 1 To Preclude Sam Hewitt From Providing Expert Testimony  
9 Regarding Insolvency Analysis dated September 24, 2021, which allowed expert witness  
10 testimony by Sam Hewitt regarding insolvency analysis at trial; (15) Order Denying Plaintiff's  
11 Motion In Limine Number 6 To Strike Proffered Expert Witness Alan Gray dated September 24,  
12 2021, which allowed expert witness testimony by Alan Gray at trial; (16) Order Denying Plaintiff  
13 s Motion For Partial Summary Judgment Regarding Uni-Ter Defendants Breach Of Their  
14 Fiduciary Duties dated September 27, 2021, which denied summary judgment to Plaintiff  
15 regarding breach of fiduciary duties by Uni-Ter Underwriting Management Corp. and Uni-Ter  
16 Claims Services Corp.; (17) Order Granting Motion to Exclude Interest dated December 15, 2021,  
17 which denied interest to accrue to Plaintiff during periods of stay; (18) Order of Dismissal Without  
18 Prejudice in favor of Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut,  
19 Barbara Lumpkin, Jeff Marshall, and Eric Stickels dated February 25, 2016 and docketed March  
20 3, 2016, granting the Director Defendants' motion for dismissal; (19) Order of Dismissal dated  
21 May 4, 2016, and docketed May 12, 2016, granting the Director Defendants' motion for dismissal;  
22 (20) Judgment in favor of Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut,  
23 Barbara Lumpkin, Jeff Marshall, and Eric Stickels dated August 13, 2020 and docketed August  
24 14, 2020, granting the Director Defendants judgment on the pleadings; (21) Order Denying  
25 Plaintiff's Motion to Lift Stay or Alternatively Grant Plaintiff Other Relief dated and entered  
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1 August 12, 2019, denying Plaintiff's motion to lift stay or grant other relief; (22) Order Denying  
2 Motion to Substitute dated February 21, 2019 and entered February 26, 2019, denying Plaintiff's  
3 motion to substitute the proper party in place of deceased Defendant Barbara Lumpkin; (23) Order  
4 Granting in Part Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut,  
5 Barbara Lumpkin, Jeff Marshall, and Eric Stickels Motion to Strike dated November 6, 2018,  
6 granting in part the Director Defendants' motion to strike Plaintiff's countermotion for summary  
7 judgment; and (24) Order Granting in Part Defendants Robert Chur, Steve Fogg, Mark Garber,  
8 Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels Motion to Dismiss  
9 dated February 25, 2016 and entered February 26, 2016, granting in part the Director Defendants'  
10 motion to dismiss.  
11

12 **11. Indicate whether the case has previously been the subject of an appeal to or**  
13 **original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court**  
14 **docket number of the prior proceeding:**  
15

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

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

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

25 Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara  
26 Lumpkin, Jeff Marshall and Eric Stickels vs. Commissioner of Insurance for the State of  
27 Nevada as Receiver of Lewis and Clark LTC Risk Retention Group, Inc.,  
Case No. 84311  
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**12. Indicate whether this appeal involves child custody or visitation:** This case does not involve child custody or visitation.

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

DATED this 25th day of November, 2022.

HUTCHISON & STEFFEN, PLLC

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

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that on this 25th day of November, 2022, I caused the document entitled **CASE APPEAL STATEMENT** to be served on the following by Electronic

Service to:

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

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

# **EXHIBIT “C”**

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 \* \* \*

3 COMMISSIONER OF INSURANCE  
4 FOR THE STATE OF NEVADA AS  
5 RECEIVER OF LEWIS AND CLARK  
6 LTC RISK RETENTION GROUP,  
7 INC.,

8 Appellant,

9 vs.

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

20 Respondents.

Supreme Court No. 85668  
District Court Case No. A751535  
Dec 13 2022 11:18 PM  
Electronically Filed  
Elizabeth A. Brown  
Clerk of Supreme Court  
**DOCKETING STATEMENT**

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

24 **GENERAL INFORMATION**

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



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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  
 **Dismissal**  
Lack of Jurisdiction  
 **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
- Other disposition (specify):**
- **Denial of Motion to Amend Complaint**
  - **Denial of Motion for Partial Reconsideration of Denial of Motion to Amend Complaint**
  - **Order Denying Motion for Leave to File Fourth Amended Complaint**
  - **Findings of Fact, Conclusions of Law and Order Denying Plaintiff's Motion for Leave to File Fourth Amended Complaint**
  - **Order to Strike from Record**
  - **Findings of Fact, Conclusions**

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

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

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

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

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

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

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

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

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

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

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

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

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

12  
13  
14 The Commissioner of Insurance seeks relief from the District Court's  
15 erroneous rulings related to denying her right to amend her complaint to comply with  
16 new Nevada law. Specifically, this appeal seeks relief from the District Court's  
17 order dated August 10, 2020, denying leave to file an amended complaint, the  
18 District Court's order dated August 1, 2020, granting the Director Defendants'  
19 motion for judgment on the pleadings, and the District Court's order dated  
20 September 9, 2020, denying partial reconsideration of the motion for leave to amend  
21 to file a fourth amended complaint.  
22

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

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

1 and public policy issues regarding: (1) the right of parties to amend pleadings in  
2 order to comply with changes in the underlying law which occur after a complaint  
3 has been filed but before the deadline for amending pleadings as provided in the trial  
4 court's scheduling order; (2) application of this Court's recent amendments to NRC  
5 41(e) regarding additional time provided under Nevada's 5-year rule in which a case  
6 must be brought to trial; (3) whether the District Court's factual mistake as to the  
7 time remaining until the close of discovery which formed that basis for the denial of  
8 a motion to amend a complaint in order to comply with new Nevada law was in  
9 error; and (4) correction of legal errors made by district court in all orders and  
10 judgment from which appeal is taken.  
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14 **10. Pending proceedings in this court raising the same or similar issues.** If  
15 you are aware of any proceeding presently pending before this court which  
16 raises the same or similar issues raised in this appeal, list the case name and  
17 docket number and identify the same or similar issues raised:

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

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

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- 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

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

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

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

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

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

20  
21 **TIMELINESS OF NOTICE OF APPEAL**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 Order of Dismissal dated May 4, 2016;

8 Judgment in favor of Robert Chur, Steve Fogg, Mark Garber, Carol Harter,  
9 Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels dated August  
10 13, 2020;

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

13 Order Denying Motion to Substitute dated February 21, 2019;

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

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

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

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

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

25 Findings of Fact, Conclusions of Law and Order Denying Plaintiff’s Motion  
26 for Leave to File Fourth Amended Complaint notice of entry served August 10,  
27 2020;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 entry of orders were filed.

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**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)**



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

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

6 Commissioner of Insurance:

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

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

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

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

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

18 Yes  X  No

19  
20 **25. If you answered "No" to question 24, complete the following:**

21 (a) Specify the claims remaining pending below:

22 (b) Specify the parties remaining below:

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

26 Yes   No

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

1 entry of judgment:

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

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

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

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

15 **VERIFICATION**

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

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

23 Name of counsel of record: Brenoch Wirthlin, Esq.  
24 Hutchison & Steffen, PLLC  
25 10080 W. Alta Drive, Ste. 200  
26 Las Vegas, Nevada 89145  
27 702-385-2500

28 Date: 12/13/2022 /s/Brenoch Wirthlin  
Signature of counsel of record

Clark County, Nevada  
State and county where signed

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON &  
3 STEFFEN, PLLC and that on this 13th day of December, 2022, I caused the above  
4 and foregoing document entitled: **DOCKETING STATEMENT** to be served via  
5 NOTICE OF ELECTRONIC FILING through the Electronic Case Filing System  
6 of the Nevada Supreme Court with the submission to the Clerk of the Court, who  
7 will serve the parties electronically, and to be served by mailing via first class mail  
8 with sufficient postage prepaid to the following addresses listed below.  
9  
10  
11

12  
13 */s/ Jon Linder*  
14 An employee of Hutchison & Steffen, PLLC  
15

16  
17  
18 **Lansford W. Levitt**  
19 **2072 Sea Island Drive**  
20 **Dana Point, CA 92629**  
21  
22  
23  
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# **EXHIBIT “D”**

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

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

### A. RECITALS

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

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

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

### B. TERMS OF AGREEMENT

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

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

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

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

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

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

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

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

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

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

**C. UNKNOWN CLAIMS.**

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

**D. ADEQUACY OF CONSIDERATION.**

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

**E. COSTS AND ATTORNEY FEES**

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

**F. ENTIRE AGREEMENT**

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

**G. APPLICABLE LAW**

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

## H. COUNTERPARTS

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

## I. MUTUAL WARRANTIES

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

## J. NOTICE

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

- 1) If to Plaintiff:  
Hutchison & Steffen  
Attn: Brenoch R. Wirthlin, Esq.  
Peccole Professional Park  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145  
Email: [bwirthlin@hutchlegal.com](mailto:bwirthlin@hutchlegal.com)
  
  - 2) If to the Corporate Defendants:  
George F. Ogilvie III, Esq.  
Nevada Bar No. 3552  
MCDONALD CARANO LLP  
2300 West Sahara Avenue, Suite 1200  
Las Vegas, NV 89102  
Telephone: (702) 873-4100  
Facsimile: (702) 873-9966  
[gogilvie@mcdonaldcarano.com](mailto:gogilvie@mcdonaldcarano.com)
- Jon M. Wilson, Esq. (Appearing *Pro Hac Vice*)  
LAW OFFICES OF JON WILSON  
13924 Marquesas Way, Unit 1308  
Marina Del Rey, CA. 90292  
Telephone: (310) 626-2216

**L. ADDITIONAL WARRANTIES**

The Parties represent and warrant as follows:

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

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

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

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

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

**O. MODIFICATION.**

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

**P. TAX CONSEQUENCES.**

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

**Q. ENFORCEABILITY.**

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

**R. WAIVER.**

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

**S. HEADINGS.**

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

**T. DISPUTES.**

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

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

[SIGNATURE PAGES TO FOLLOW]

///

///

///

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

Dated: 7/13/2022 \_\_\_\_\_  
COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA

BY Barbara Richardson, its Commissioner

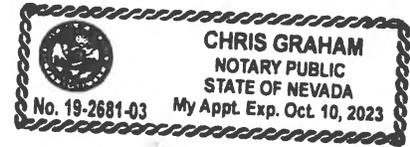
STATE OF NEVADA  
COUNTY OF CLARK  
Carson City CA

§  
§  
§

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

\_\_\_\_\_  
NOTARY PUBLIC in and for  
said County and State

My commission expires:  
10-10-23



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

Dated: JUNE 29, 2022 TAL PICONE

U.S. RE CORPORATION

New Jersey  
STATE OF NEVADA  
Berger  
COUNTY OF CLARK

BY TAL PICONE CHAIRMAN

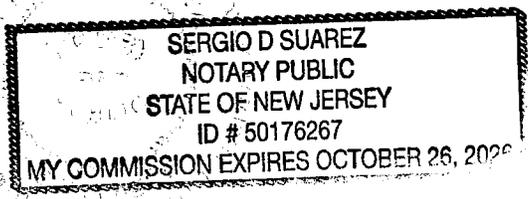
§  
§  
§

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

Sergio D Suarez

NOTARY PUBLIC in and for said County and State

My commission expires: 10/26/2024



Dated: 6/29/2022 TAL PROCTOR  
UNI-TER UNDERWRITING MANAGEMENT CORP.

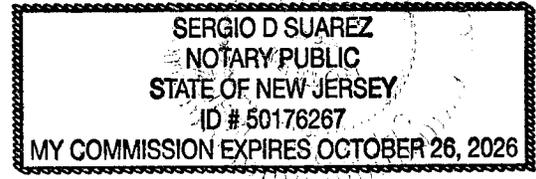
BY TAL PROCTOR CHAIRMAN

STATE OF NEVADA §  
COUNTY OF CLARK §

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

Sergio D Suarez  
NOTARY PUBLIC in and for said County and State

My commission expires: 10/26/2026



Dated: 6/29/2022 TAL PROCTOR  
UNI-TER CLAIMS SERVICES CORP.

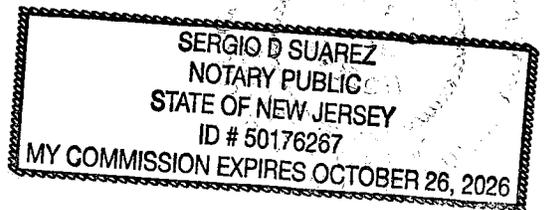
BY TAL PROCTOR CHAIRMAN

STATE OF NEVADA §  
COUNTY OF CLARK §

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

Sergio D Suarez  
NOTARY PUBLIC in and for said County and State

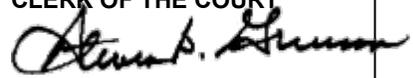
My commission expires: 10/26/2026





**EXHIBIT “F”**

**EXHIBIT “F”**



1 **MRCN**  
George F. Ogilvie III (NSBN 3552)  
2 Karyna Armstrong (NSBN 16044)  
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6 Jon M. Wilson, Esq. (Appearing *Pro Hac Vice*)  
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[jonwilson2013@gmail.com](mailto:jonwilson2013@gmail.com)

9 *Attorneys for Defendant*  
10 *U.S. RE Corporation*

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

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

15  
16 Plaintiff,

17 vs.

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

22  
23 Defendants.

Case No. A-14-711535-C

Dept. No.: XXVII

**DEFENDANT U.S. RE  
CORPORATION'S MOTION  
FOR RECONSIDERATION OF  
ORDER GRANTING MOTION  
FOR ATTORNEY FEES AND  
COSTS**

**(HEARING REQUESTED)**

24 Pursuant to EDCR 2.24,<sup>1</sup> Defendant U.S. Re Corporation (“U.S. Re”), by and through its  
25 undersigned counsel, hereby moves this Court for reconsideration of the Order Granting Attorney Fees  
26 and Costs (“Order”).

27  
28 <sup>1</sup> In accordance with EDCR 2.24, this Motion is filed within 14 days of the December 2, 2022  
service of written notice of the Order.

1 In the Motion for Attorney Fees and Costs (“Motion”) filed on behalf of Plaintiff Commissioner  
2 of Insurance for the State of Nevada as Receiver of the Lewis and Clark LTC Risk Retention Group,  
3 Inc. (“Plaintiff Commissioner”), Plaintiff Commissioner argued that attorney fees and costs of  
4 \$1,509,820.00 be “awarded jointly and severally, or alternatively divided among the Corporate  
5 Defendants in accordance with the liability percentages set by the jury at trial.” Motion at 19:13-16.  
6 However, on July 13, 2022, Plaintiff Commissioner and U.S. Re, Uni-Ter Underwriting Management  
7 Corp., and Uni-Ter Claims Services Corp. (collectively, “Corporate Defendants”) agreed upon and fully  
8 executed a settlement agreement whereby Corporate Defendants would pay Plaintiff Commissioner the  
9 total amount of \$5,200,000.00 (“Settlement Funds”). See Settlement Agreement at p. 1, attached hereto  
10 as **Exhibit A**. Corporate Defendants fully satisfied their obligations under the Settlement Agreement  
11 and, therefore, should be released and not subjected to pay the attorney fees and costs as Plaintiff  
12 Commissioner asserts. At the November 10, 2022 hearing regarding U.S. Re’s Motion to  
13 Enforce Settlement Agreement and Dismiss (“Motion to Enforce”), the Court gave its advisory  
14 opinion that it would enforce the settlement agreement. See November 10, 2022 Transcript of  
15 Proceeding Regarding Motion to Enforce at 13:1-3, attached hereto as **Exhibit B**.

16 U.S. Re therefore moves for reconsideration of this Courts’ December 2, 2022 Order awarding  
17 Plaintiff Commissioner attorney fees and costs. U.S. Re bases its Motion on the following  
18 Memorandum of Points and Authorities, the transcript from the hearing, all the papers and pleadings  
19 on file herein, and the arguments of counsel at any hearing that this Court may entertain on the Motion.

20 DATED this 16th day of December, 2022.

21 McDONALD CARANO LLP

22 By: /s/ George F. Ogilvie III

23 George F. Ogilvie III (NSBN 3552)  
24 Karyna M. Armstrong (NSBN 16044)  
25 2300 West Sahara Avenue, Suite 1200  
26 Las Vegas, NV 89102

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

*Attorneys for Defendant U.S. RE Corporation*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND RELEVANT FACTS**

3 On February 3, 2022, Plaintiff Commissioner filed its Motion requesting the Court to award  
4 Plaintiff Commissioner “\$1,509,820.00 in attorney fees, as well as costs, awarded jointly and severally,  
5 or alternatively divided among the Corporate Defendants in accordance with the liability percentages  
6 set by the jury at trial.” Motion at 19:13-16. At the September 7, 2022 hearing, the Court directed  
7 counsel to submit any supplemental pleadings within thirty days as to fees and costs. On October 7,  
8 2022, Plaintiff Commissioner filed a Supplement to Motion for Attorney Fees and Costs which  
9 indicated that “after review of the records at issue, Plaintiff [Commissioner] now requests  
10 \$1,449,685.69 (\$60,131.31 less than the original request) in attorney fees.” October 7, 2022  
11 Supplement to Motion for Attorney Fees and Costs (“Supplement”) at 2:3-5.

12 U.S. Re did not oppose the Motion or the Supplement because the parties had previously  
13 executed the Settlement Agreement, and the Corporate Defendants had fully satisfied the obligations  
14 of the Settlement Agreement by tendering \$5,200,000.00 to Plaintiff Commissioner. While at the  
15 November 10, 2022 hearing for U.S. Re’s Motion to Enforce, this Court stated in its advisory opinion  
16 that it would enforce the settlement agreement had Plaintiff Commissioner not filed the appeal the day  
17 before the hearing on November 9, 2022. *See Ex. B* at 11:19-25. U.S. Re’s Motion is entirely  
18 independent of Plaintiff’s Commissioner’s appeal, so this Court has jurisdiction to reconsider the  
19 Order. Because the Settlement Agreement includes a lump sum amount, Plaintiff Commissioner  
20 should not have been awarded attorney fees and costs.

21 Thus, U.S. Re respectfully requests this Court reconsider its December 2, 2022 Order (“Order”)  
22 awarding Plaintiff Commissioner attorney fees in the amount of \$1,449,685.69, and costs in the amount  
23 of \$365,177.92. *See Order* at 2:18-22.

24 **II. LEGAL STANDARD**

25 The Court has the inherent authority to “amend, correct, resettle, modify, or vacate, as the case  
26 may be, an order previously made and entered on motion.” *Trail v. Faretto*, 91 Nev. 401, 403, 536  
27 P.2d 1026, 1027 (1975); *City of L.A., Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 884 (9th  
28 Cir. 2001) (“As long as a district court has jurisdiction over the case, then it possesses the inherent

1 procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be  
2 sufficient.”); *see also Halverson v. Hardcastle*, 123 Nev. 245, 270, 163 P.3d 428, 446 (2007) (trial  
3 court judges possess inherent power “of equity and of control over the exercise of their jurisdiction”).  
4 All that is required is “sufficient cause,” which exists “if substantially different evidence is  
5 subsequently introduced or the decision is clearly erroneous.” *Masonry & Tile Contractors Ass’n of*  
6 *S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997); *see also United*  
7 *States v. Matelabi*, No. 2:17-cv-34-JCM(NJK), 2021 WL 2583548 at \*1 (D. Nev. June 23, 2021)  
8 (stating no “precise rule” governs a district court’s “inherent power” to reconsider prior rulings).

9 Generally, “a timely notice of appeal divests the district court of jurisdiction to act and vests  
10 jurisdiction” in the Nevada Supreme Court. *Kantor v. Kantor*, 116 Nev. 886, 894, 8 P.3d 825, 830  
11 (2000) (citation omitted). But when the issue is “entirely collateral to and independent from that part  
12 of the case taken up by appeal, and in no way affect[s] the merits of the appeal” the Nevada Supreme  
13 Court allows district courts to grant relief while the case is on appeal. *See id.* (citation omitted); *see*  
14 *also Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529 (2006) (“the district court retains  
15 jurisdiction to enter orders on matters that are collateral to and independent from the appealed order,  
16 *i.e.*, matters that in no way affect the appeal’s merit”).

17 **III. ARGUMENT**

18 **A. This Court is Not Divested of Jurisdiction Because this Motion is Entirely**  
19 **Collateral and Independent From the Receiver’s Appeal.**

20 On November 9, 2022, Plaintiff Commissioner filed its Notice of Appeal with the Nevada  
21 Supreme Court. *See* Notice of Appeal on file with this Court. On November 18, 2022 Plaintiff  
22 Commissioner filed its Amended Notice of Appeal (“ANOA”) seeking relief on appeal for twenty-four  
23 separate issues. *See* Amended Notice of Appeal on file with this Court. On November 25, 2022,  
24 Plaintiff Commissioner filed its Case Appeal Statement, a copy of which is attached hereto as **Exhibit**  
25 **C.** On December 13, 2022, Plaintiff Commissioner filed its Docketing Statement for the appeal a copy  
26 of which is attached hereto as **Exhibit D.** In both its Case Appeal Statement and its Docketing  
27 Statement, Plaintiff Commissioner clearly identifies that the appeal does not seek any relief related to  
28 the Corporate Defendants; the appeal seeks relief from the Nevada Supreme Court due to the District

1 Court’s “erroneous rulings” on twenty-four issues pertaining solely to the previously dismissed  
2 Director Defendants. More specifically, the Case Appeal Statement and the Docketing Statement  
3 identify the “Director Defendants” as the sole respondents to the appeal. *See* Ex. C at ¶ 4; Ex. D at ¶  
4 3. Both the Case Appeal Statement and the Docketing Statement indisputably reflect Plaintiff  
5 Commissioner’s appeal does not pertain to the Corporate Defendants. Because the instant Motion is  
6 “entirely collateral to and independent from” Plaintiff’s Commissioner’s appeal, this Court is not  
7 divested of jurisdiction and should make its ruling on U.S. Re’s Motion. *Kantor*, 116 Nev. at 894, 8  
8 P.3d at 830 (citation omitted).

9 **B. This Court Should Reconsider Its Order Awarding Attorney Fees and Costs**  
10 **Because the Parties Have Entered and Fully Executed an Enforceable Settlement**  
11 **Agreement.**

12 On July 13, 2022, Plaintiff Commissioner and Corporate Defendants agreed upon and fully  
13 executed a settlement agreement whereby Corporate Defendants would pay Plaintiff Commissioner the  
14 total amount of \$5,200,000.00. *See* Ex. A at p. 1. Corporate Defendants fully satisfied the obligations  
15 of the Settlement Agreement by August 24, 2022 when the \$5,200,000.00 was delivered to Plaintiff  
16 Commissioner and the Settlement Funds were tendered and cleared. However, despite Plaintiff  
17 Commissioner receiving the Settlement Funds, in full, on August 24, 2022, Plaintiff Commissioner  
18 proceeded to argue that it was entitled to an award of \$1,449,685.69 by filing the October 7, 2022  
19 Supplement. *See* Supplement at 2:3-5. Nearly a month and half after the parties satisfied their  
20 requirements and obligations under the Settlement Agreement.

21 Consistent with its advisory opinion, if the Settlement Agreement is enforced, an award of  
22 attorney fees in the amount of \$1,449,685.69, and costs in the amount of \$365,177.92 (*see* Order at  
23 2:18-22) is improper. U.S. Re did not oppose the Motion or the Supplement because the parties had  
24 entered into the Settlement Agreement, and the Corporate Defendants had satisfied all obligations of  
25 the Settlement Agreement by August 24, 2022.

26 Accordingly, U.S. Re respectfully asks this Court to reconsider its December 2, 2022 Order and  
27 issue a new order excluding the Corporate Defendants from the award of attorney’s fees and costs.

28 ...  
...

1 **IV. CONCLUSION**

2 For the foregoing reasons, U.S. Re, respectfully requests that this Court reconsider its December  
3 2, 2022 Order awarding attorney fees and costs by enforcing the Settlement Agreement and excluding  
4 the Corporate Defendants from the Order.

5 DATED this 16th day of December, 2022.

6 McDONALD CARANO LLP

7 By: /s/ George F. Ogilvie III

8 George F. Ogilvie III (NSBN 3552)  
9 Karyna M. Armstrong (NSBN 16044)  
10 2300 West Sahara Avenue, Suite 1200  
11 Las Vegas, NV 89102

12 Jon M. Wilson, Esq. (*Pro Hac Vice*)  
13 LAW OFFICES OF JON WILSON  
14 13924 Marquesas Way, Unit 1308  
15 Marina Del Rey, CA. 90292

16 *Attorneys for Defendant 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 the 16th day of December 2022, I caused a true and correct copy of the foregoing **DEFENDANT U.S. RE CORPORATION'S MOTION FOR RECONSIDERATION OF ORDER GRANTING MOTION FOR ATTORNEY FEES AND COSTS** to be 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

# **EXHIBIT “A”**

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

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

### A. RECITALS

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

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

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

### B. TERMS OF AGREEMENT

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

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

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

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

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

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

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

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

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

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

**C. UNKNOWN CLAIMS.**

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

**D. ADEQUACY OF CONSIDERATION.**

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

**E. COSTS AND ATTORNEY FEES**

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

**F. ENTIRE AGREEMENT**

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

**G. APPLICABLE LAW**

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

## H. COUNTERPARTS

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

## I. MUTUAL WARRANTIES

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

## J. NOTICE

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

1) If to Plaintiff:  
Hutchison & Steffen  
Attn: Brenoch R. Wirthlin, Esq.  
Peccole Professional Park  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145  
Email: [bwirthlin@hutchlegal.com](mailto:bwirthlin@hutchlegal.com)

2) If to the Corporate Defendants:  
George F. Ogilvie III, Esq.  
Nevada Bar No. 3552  
MCDONALD CARANO LLP  
2300 West Sahara Avenue, Suite 1200  
Las Vegas, NV 89102  
Telephone: (702) 873-4100  
Facsimile: (702) 873-9966  
[gogilvie@mcdonaldcarano.com](mailto:gogilvie@mcdonaldcarano.com)

Jon M. Wilson, Esq. (Appearing *Pro Hac Vice*)  
LAW OFFICES OF JON WILSON  
13924 Marquesas Way, Unit 1308  
Marina Del Rey, CA. 90292  
Telephone: (310) 626-2216

**L. ADDITIONAL WARRANTIES**

The Parties represent and warrant as follows:

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

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

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

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

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

**O. MODIFICATION.**

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

**P. TAX CONSEQUENCES.**

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

**Q. ENFORCEABILITY.**

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

**R. WAIVER.**

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

**S. HEADINGS.**

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

**T. DISPUTES.**

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

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

[SIGNATURE PAGES TO FOLLOW]

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

Dated: JUNE 29, 2022 TAL PICONE

U.S. RE CORPORATION

New Jersey  
STATE OF NEVADA  
Berger  
COUNTY OF CLARK

BY TAL PICONE CHAIRMAN

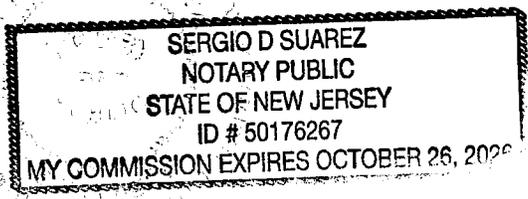
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ACKNOWLEDGED, AGREED, SUBSCRIBED, AND SWORN TO BEFORE ME in person by TAL PICONE, as Chairman, on behalf of U.S. RE CORPORATION, on this 29 day of June, 2022, to certify which witness my hand and seal of office.

Sergio D Suarez

NOTARY PUBLIC in and for said County and State

My commission expires: 10/26/2024



Dated: 6/29/2022 TAL PROCTOR  
UNI-TER UNDERWRITING MANAGEMENT CORP.

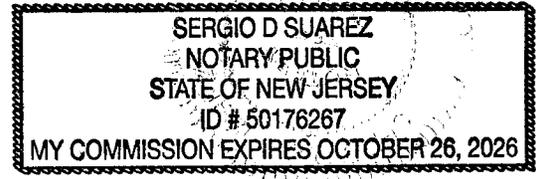
BY TAL PROCTOR CHAIRMAN

STATE OF NEVADA §  
COUNTY OF CLARK §

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

Sergio D Suarez  
NOTARY PUBLIC in and for said County and State

My commission expires: 10/26/2026



Dated: 6/29/2022 TAL PROCTOR  
UNI-TER CLAIMS SERVICES CORP.

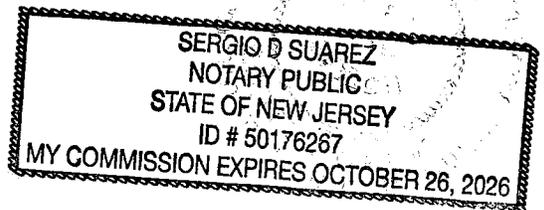
BY TAL PROCTOR CHAIRMAN

STATE OF NEVADA §  
COUNTY OF CLARK §

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

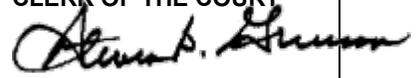
Sergio D Suarez  
NOTARY PUBLIC in and for said County and State

My commission expires: 10/26/2026





# **EXHIBIT “B”**



1 TRAN

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DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

COMMISSIONER OF INSURANCE FOR THE STATE OF )

8

NEVADA AS RECEIVER OF LEWIS AND CLARK, )

9

Plaintiff(s), )

CASE NO.: A-14-711535-C

DEPT. NO.: XXVII

10

v. )

11

ROBERT CHUR, )

12

Defendant(s). )

13

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

14

THURSDAY, NOVEMBER 10, 2022

15

**TRANSCRIPT OF HEARING RE:**

16

**MOTION TO DISMISS AND ENFORCE SETTLEMENT AGREEMENT**

17

APPEARANCES:

18

FOR THE PLAINTIFF:

BRENOCH WIRTHLIN, ESQ.

19

(VIA BLUEJEANS)

20

FOR THE DEFENDANT:

KARYNA ARMASTRONG, ESQ.

21

GEORGE F. OGILVIE, III, ESQ.

22

(VIA BLUEJEANS)

23

24

25

RECORDED BY: BRYNN WHITE, COURT RECORDER

1 Las Vegas, Nevada; Thursday, November 10, 2022

2 [Proceeding commenced at 10:01 a.m.]

3  
4 THE COURT: *Commissioner of Insurance versus Chur.* Have  
5 appearances, please, starting first with the plaintiff.

6 MR. WIRTHLIN: Good morning, Your Honor. Brenoch Wirthlin  
7 on behalf of plaintiff.

8 MS. ARMSTRONG: Good morning, Your Honor. Karyna  
9 Armstrong from McDonald Carano on behalf of Defendant U.S. Re  
10 Corporation.

11 THE COURT: Thank you.

12 MR. OGILVIE: Good morning, Your Honor. George Ogilvie  
13 also on behalf of U.S. Re.

14 THE COURT: Thank you. All right. Defendants, your  
15 motion to enforce settlement.

16 MS. ARMSTRONG: Good morning, Your Honor. As a  
17 preliminary matter, this Court is aware that McDonald Carano has  
18 withdrawn from representing the Uni-Ter defendants, and this motion  
19 is brought by and on behalf of U.S. Re Corporation. Nevertheless,  
20 the settlement agreement anticipates the resolution of all claims for  
21 both U.S. Re Corporation and Uni-Ter defendants as herein stated as  
22 corporate defendants. So as I move forward, I'm just going to refer  
23 to them as corporate defendants.

24 Your Honor, Plaintiff's opposition begs question, are they  
25 seeking settlement funds over the \$5.2 million as previously agreed

1 upon in the party settlement agreement? And if they are not seeking  
2 more in damages, then what is the point of keeping us in this  
3 litigation? However, if they are seeking more in damages in the  
4 amount more than the 5.2 million, their actions are improper and  
5 disingenuous.

6           The parties executed a settlement agreement whereby the  
7 insurance carriers of Corporate Defendants agreed to pay Plaintiff  
8 \$5.2 million. Approximately 400,000 would come from Catlin Specialty  
9 Insurance Company, and approximately 4.79 million from Ironshore  
10 Insurance Company.

11           Under paragraph B1 of the settlement agreement, the  
12 corporate defendants agreed to a 30-day limitation of when those  
13 settlement agreement funds should be given. Catlin Speciality  
14 Insurance paid on August 19th, 2022, and Ironshore insurance paid on  
15 August 24th, 2022. Both checks were accepted and cashed.

16           In its opposition, Plaintiff argues that because Corporate  
17 Defendants were just five days late on the settlement payment they  
18 have breached the settlement and, therefore, they do not have to  
19 waive and release Corporate Defendants from all potential claims.  
20 Yet, the basic premise of breach of contract includes a valid  
21 contract, a material breach of that contract, and the damages from  
22 the result of that breach.

23           Here, it's been established that a settlement agreement is  
24 a contract. And while a valid contract does exist between the  
25 parties, Plaintiff cannot claim breach of contract for two reasons.

1 First, Corporate Defendants did not materially breach the contract.  
2 When determining a party materially breached the contract, the Court  
3 must determine whether the failure to perform is so fundamental to a  
4 contract that it negates the essential purpose of that settlement  
5 agreement.

6 Corporate Defendants do not dispute that they gave the  
7 insured the Ironshore check for \$4.79 million on August 24th, 2022.  
8 But a late payment of just five days does not negate the essential  
9 purpose of the settlement agreement, nor does it negate the parties'  
10 intent when entering into the settlement agreement to begin with.

11 Second, Plaintiff did not incur any damages. A breach of  
12 contract without damages is not actionable. Plaintiff accepted and  
13 cashed both settlement checks. The five-day delay did not cause any  
14 other damages to Plaintiff.

15 Even if Your Honor believes that a five-day delay is a  
16 material breach of the settlement agreement which Corporate  
17 Defendants contend it is not, Plaintiff accepting and cashing the  
18 checks constitutes as a waiver of the claimed breach. Plaintiff  
19 cannot both accept the consideration from the settlement and then  
20 continue to pursue Corporate Defendants for additional damages.

21 When a non breaching party accepts defective performance,  
22 they choose to waive the claim of breach. Therefore, when Plaintiff  
23 accepted the benefit of the settlement agreement, Plaintiff chose to  
24 waive the Corporate Defendants' defective payment.

25 Since Corporate Defendants can establish that there was no

1 breach of contract claim, and even if there was the acceptance and  
2 cashing of the settlement checks constitutes Plaintiff's waiver of  
3 the defective performance, this Court should immediately dismiss  
4 Corporate Defendants from the litigation pursuant to the settlement  
5 agreement.

6           While in its opposition Plaintiff argues that the  
7 settlement agreement contains no provision regarding dismissal,  
8 section 8.3 expressly states the parties intend to resolve the  
9 present dispute including and all issues relating to the allegations  
10 that were or could have been made in the lawsuit. While the Court  
11 can look into the contracting party's intent when the intent is not  
12 clearly expressed in the contractual language, they can consider the  
13 circumstances surrounding the settlement agreement.

14           But this Court doesn't even have to do that. The -- the  
15 settlement agreement expressly put that Corporate Defendants should  
16 be released and dismissed. Section B.4 of the agreement states,  
17 Plaintiff hereby releases U.S. Re and the Uni-Ter defendants,  
18 defendant-released parties, from any and all charges, complaints,  
19 claims, actions, causes of action, suits, rights, demands, costs,  
20 losses, debts, and expenses, whether based on tort, subrogation,  
21 contract, quasi-contract, or any other theory of recovery or  
22 responsibility that the plaintiff now has or could have against the  
23 defendant-released parties.

24           The -- the release of the defendant-released parties  
25 includes the corporate defendants and the settlement agreement

1 expressly intends for the release and dismissal from the litigation.

2 THE COURT: But it doesn't specify that dismissal is  
3 required?

4 MS. ARMSTRONG: It says that they should be released. And  
5 when you look at the surrounding circumstances of their intent of  
6 releasing the parties, U.S. Re and Uni-Ter collectively as the  
7 defendant-released parties paired with section 8.3 that says the  
8 parties intend to resolve the present dispute including any and all  
9 issues relating to the allegations that have been made in the  
10 lawsuit, I think when you take the two of those and what the  
11 settlement agreement intended when they entered it, was to dismiss  
12 them out of litigation or they shouldn't have accepted the settlement  
13 funds in the first place if they didn't agree to those terms.

14 THE COURT: Thank you.

15 MS. ARMSTRONG: So Your Honor, as I stated before,  
16 Plaintiff's opposition begs the question, are they seeking settlement  
17 funds over the \$5.2 million as previously agreed upon in the party  
18 settlement agreement. Corporate Defendants fully satisfied the  
19 essential terms of the settlement agreement. No material breach  
20 occurred, and acceptance of the settlement funds by Plaintiff waives  
21 the claimed breach.

22 Therefore, Your Honor should enforce the settlement  
23 agreement and dismiss Defendants with prejudice as the settlement  
24 agreement intended. Thank you.

25 THE COURT: Thank you. Opposition, please.

1 MR. WIRTHLIN: Thank you, Your Honor. Brenoch Wirthlin on  
2 behalf of Plaintiff. I'll be brief.

3 Initially, one of the -- the Commissioner has filed a  
4 notice of appeal in this case and as the Court notes and for the  
5 record, the *Rust versus Clark County School District* case states  
6 that -- and according, a timely notice of appeal divests the District  
7 Court of jurisdiction to act and vests jurisdiction in this court,  
8 meaning the Supreme Court. And that is 103 Nev. 686. So Your Honor,  
9 we would submit that the -- the motion must be vacated. The hearing  
10 and -- cannot be decided as the notice of appeal has been filed in a  
11 timely manner.

12 As far as the substance of the argument, Your Honor, we  
13 believe that it's -- it's premature what -- what the U.S. Re is  
14 requesting. At this point, the -- the settlement agreement itself is  
15 very clear Your Honor, that -- and it states, and I'm just quoting  
16 very briefly, I know the Court's read all the pleadings, that the  
17 agreement, quote, shall be null and voiding in the event such  
18 settlement funds are not received by Plaintiff within the 30-day time  
19 period referenced herein.

20 And Your Honor, what the Commissioner was giving up, and  
21 again without waiving the argument on the appeal issue and the  
22 divestiture of jurisdiction should the Court consider the merits of  
23 the motion, what the Commissioner was giving up was effectively  
24 pursuit of the additional \$15 million in the judgment against the  
25 corporate defendants. And this was a heavily negotiated provision,

1 very specifically pointed out.

2           And in fact, during the negotiations, there was some  
3 question the Commissioner had -- had intended to exchange the  
4 settlement check for a signed copy of the settlement agreement. U.S.  
5 Re would not agree to that.

6           The Commissioner then suggested that a -- in exchange of  
7 the settlement funds when there was a notice of entry of order  
8 approving the settlement agreement in the receivership. U.S. Re  
9 would not agree to that.

10           The Commissioner requested that a certified check be  
11 prepared so that she could be sure that the funds were going to be  
12 delivered and U.S. Re would not agree to that.

13           So this provision was what the parties both negotiated,  
14 went back and forth on. We've attached those exhibits to our motion.  
15 And was -- was specifically and -- and very clearly negotiated, that  
16 this 30-day period would be the time frame for delivery of this  
17 entire amount that was going to be paid.

18           I don't think there's any dispute. In fact, I think  
19 Counsel acknowledged that the -- the funds were not delivered within  
20 that time frame. They were late. And therefore, whatever the impact  
21 of that is, though, Your Honor, is not before the Court. There is  
22 no -- excuse me.

23           Effectively what U.S. Re's trying to do is get some type  
24 of advisory opinion about whether or not the contract was breached,  
25 whether or not there were damages, whether or not there was an

1 effective release. And I think the -- the comments were very clearly  
2 made about intent of the parties.

3           Your Honor's question was exactly right on. The contract  
4 does -- the settlement agreement nowhere permits or  
5 even -- even -- or certainly, much less requires dismissal. And  
6 that's -- that's on purpose, Your Honor. The -- the dismissal of the  
7 corporate defendants would not be appropriate after the entry of a  
8 judgment, especially at this point with an appeal having been filed.

9           But that could impact -- dismissal of the corporate  
10 defendants could very negatively impact the appeal going forward as  
11 it pertains to the -- to the director defendants, which as the Court  
12 recalls were dismissed.

13           So dismissal would have never been something that the  
14 Commissioner would have agreed to. The Commission did not agree to  
15 that. And questions, Your Honor, about the intent of the parties,  
16 whether or not they -- the surrounding circumstances suggest that the  
17 parties may have contemplated dismissal are completely inappropriate.  
18 Those are raising issues of fact, questions of fact about issues  
19 that -- that are not before the Court that don't relate to anything.

20           If -- if U.S. Re feels like it needs to take some further  
21 action or -- or take some additional action, then it is free to do  
22 so, but to suggest that the Court can -- and request by U.S. Re that  
23 the Court rewrite the contract, dismiss the corporate defendants in a  
24 way that would -- would negatively impact the appeal against the  
25 director defendants is completely inappropriate, Your Honor, and

1 contrary to law and contrary to the very heavily negotiated terms of  
2 the agreement.

3           And finally, Your Honor, again, I think there is no  
4 dispute, although this issue is not in front of the Court, there's no  
5 dispute that those funds were not delivered in time, that the  
6 provisions of the agreement make it very clear that that was a -- a  
7 material term.

8           But again, we would submit that this motion cannot be  
9 decided. And certainly happy to answer any questions the Court may  
10 have. Thank you.

11           THE COURT: Thank you. Reply, please.

12           MS. ARMSTRONG: Despite what Plaintiff's counsel issued --  
13 despite what Plaintiff's counsel said, this issue is in front of this  
14 Court. And Your Honor, Plaintiff still has not answered the  
15 question, are they seeking settlement funds over the agreed-upon  
16 \$5.2 million? If not, then what's the purpose of keeping Corporate  
17 Defendants in this litigation? They received the settlement funds of  
18 5.2 million. They accepted and cashed it.

19           I think the facts here are very clear. The settlement  
20 agreement is a valid contract. The five-day delay is not a material  
21 breach because they received the amount of money that they intended  
22 to give and intended to receive. It doesn't negate the essential  
23 purpose of the settlement agreement was for the insurance -- the  
24 Corporate Defendants' insurance company to pay Plaintiff the  
25 \$5.2 million and they received those. Even if this Court believes

1 that was a breach, the breach was waived in the Plaintiff accepting  
2 and cashing the settlement checks.

3           Once the settlement checks were tendered and cleared,  
4 counsel tried to get Plaintiff to agree and sign the stipulation and  
5 order dismissing Corporate Defendants from the litigation with  
6 prejudice, and Plaintiff refused.

7           But section T of the settlement agreement, the dispute  
8 section, makes reference to any additional documents which may be  
9 necessary to carry on the purposes of this agreement, further  
10 indicating an anticipation that a stipulation to dismiss may be  
11 necessary to carry out the party's intent.

12           Therefore, Your Honor, this Court has the inherent  
13 authority to dismiss Corporate Defendants with prejudice. Even if  
14 the Court finds that the settlement agreement doesn't call for it or  
15 that the parties didn't agree to it, because Corporate Defendants  
16 have satisfied the obligations under the settlement agreement, they  
17 should be dismissed with prejudice. Thank you.

18           THE COURT: Thank you. This is the defendant's motion to  
19 dismiss and enforce settlement agreement. Due to the filing of the  
20 notice of appeal yesterday, I'm divested of jurisdiction so I can't  
21 consider the motion.

22           But when I prepared for the hearing, I would have granted  
23 the motion to enforce the settlement agreement based upon the  
24 acceptance of the late tender, and I would have denied the motion to  
25 dismiss. It just wasn't a bargained-for term in the agreement and

1 the agreement itself is not ambiguous.

2 So the matter is off calendar, but you have your advisory  
3 opinion.

4 MR. OGILVIE: Couple things --

5 THE COURT: Of course.

6 MR. OGILVIE: -- Your Honor, if I may.

7 THE COURT: Please.

8 MR. OGILVIE: A notice of appeal does not exhaustively  
9 divest the court.

10 THE COURT: But there's some things you can do --

11 MR. OGILVIE: If -- if it's not central -- if the issue  
12 before the Court is not central to the appeal, then the Court is not  
13 divested of authority. We will brief it --

14 THE COURT: Sure.

15 MR. OGILVIE: -- in a motion for reconsideration because I  
16 don't believe the Court is divested of --

17 THE COURT: And it was just filed yesterday.

18 MR. OGILVIE: Yes.

19 THE COURT: So it's not something that I --

20 MR. OGILVIE: Understood.

21 THE COURT: I would have taken a real close look at.

22 MR. OGILVIE: I -- I understand that completely. And I  
23 understand that we need to file a motion for reconsideration and  
24 that's just a hoop that we will jump through.

25 I didn't understand the advisory opinion though.

1 THE COURT: The settlement agreement, it would be  
2 appropriate for me to enforce it because the Plaintiff accepted the  
3 late tender.

4 MR. OGILVIE: Okay. Thank you.

5 THE COURT: All right. So I will task the plaintiff with  
6 preparing order to -- just that the matter is -- is not considered  
7 today due to the notice of appeal. And I -- if you guys need further  
8 briefing, happy to entertain it. Any questions --

9 MR. WIRTHLIN: Thank you, Your Honor. We'll prepare that  
10 and circulate it to opposing counsel.

11 THE COURT: Thank you, both.

12 MR. OGILVIE: Thank you, Your Honor.

13 MS. ARMSTRONG: Thank you, Your Honor.

14 [Court recessed at 10:18 a.m.]

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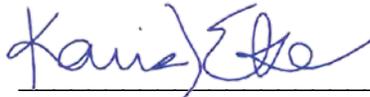
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21 ATTEST: I do hereby certify that I have truly and correctly  
22 transcribed the audio/video proceedings in the above-entitled case to  
the best of my ability.

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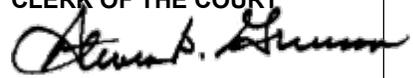


Karisa J. Ekenseair  
Court Reporter/Transcriber

24

25

# **EXHIBIT “C”**



1 Brenoch R. Wirthlin, Esq. (10282)  
2 **Hutchison & Steffen**  
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4 10080 West Alta Drive, Suite 200  
5 Las Vegas, Nevada 89145  
6 Telephone: (702) 385.2500  
7 Facsimile: (702) 385.2086  
8 E-Mail: [bwirthlin@hutchlegal.com](mailto:bwirthlin@hutchlegal.com)  
9 *Attorneys for Plaintiff*

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 \* \* \*

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

17 Plaintiff,

18 vs.

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

27 Defendants.

Case No.: A-14-711535-C  
Dept. No.: XXVII

Nevada Supreme Court Docket No. 85668

**CASE APPEAL STATEMENT**

28 **1. Name of appellant filing this case appeal statement:** Commissioner of Insurance  
for the State of Nevada as Receiver for Lewis and Clark LTC Risk Retention Group, Inc.  
("Appellant" or "Commissioner of Insurance").

**2. Identify the judge issuing the decision, judgment, or order appealed from:**  
Honorable Nancy L. Allf, Department XXVII, of the Eighth Judicial District Court.



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

4           The Commissioner of Insurance of Nevada was appointed receiver of an insolvent Nevada  
5 insurer named Lewis and Clark LTC Risk Retention Group, Inc. (“L&C”), and filed suit against  
6 L&C’s directors, managers, and reinsurance broker, relying upon existing Nevada law when  
7 drafting her complaint, which was filed on December 24, 2014. Subsequently, the basis of  
8 pleading director liability in Nevada changed with the Court’s opinion in *Chur v. Eighth Judicial*  
9 *Dist. Court*, 136 Nev. 68, 458 P.3d 336 (2020), which substantively altered the law regarding  
10 director liability in Nevada. Within the time period allowed by the District Court for amending  
11 her pleadings, the Commissioner of Insurance moved to amend her complaint against the Director  
12 Defendants in order to comply with the change to Nevada law following Court’s opinion in *Chur*.  
13 The District Court, however, denied Appellant’s motion to amend, despite also having relied upon  
14 *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 640, 137 P.3d 1171, 1184 (2006), in its prior rulings.  
15 As a result of the District Court’s refusal to allow Plaintiff to amend her pleadings within the time  
16 period allowed by the District Court, the Director Defendants were dismissed from the action. The  
17 Commissioner of Insurance proceeded in the action against the remaining defendants, Uni-Ter  
18 Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. Re Corporation  
19 (“Corporate Defendants”), and on October 14, 2021 following a three-week trial, was awarded a  
20 unanimous jury verdict in the amount of \$15,222,853.00.  
21  
22  
23

24           The Commissioner of Insurance seeks relief from the District Court’s erroneous rulings  
25 related and/or leading to the dismissal of the Director Defendants from the District Court action,  
26 and appeals the following judgments and orders granted by the District Court: (1) Order Denying  
27 Plaintiff’s Motion for Leave to File Fourth Amended Complaint dated and entered August 10,  
28 2020, which denied Plaintiff leave to file a fourth amended complaint; (2) Findings of Fact,

1 Conclusions of Law and Order Denying Plaintiff's Motion for Leave to File Fourth Amended  
2 Complaint dated and entered August 10, 2020, which denied Plaintiff leave to file a fourth  
3 amended complaint; (3) Order to Strike from Record dated August 13, 2020, which struck from  
4 the record a second version of the order inadvertently filed by the Court; (4) Order Granting  
5 Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara  
6 Lumpkin, Jeff Marshall, and Eric Stickels' Motion for Judgment on the Pleadings Pursuant to  
7 NRCP 12(c) and Judgment Thereon dated August 13, 2020 and entered August 14, 2020, granting  
8 judgment to the Director Defendants on the pleadings; (5) Findings of Fact, Conclusions of Law  
9 and Order Denying the Motion for Reconsideration of Motion for Leave to Amend Regarding  
10 Director Defendants dated September 9, 2020 and entered September 10, 2020, denying Plaintiff's  
11 motion for reconsideration of the District Court order denying Plaintiff leave to file a fourth  
12 amended complaint; (6) Order Denying Plaintiff's Motion to Retax and Settle Costs of Director  
13 Defendants dated July 16, 2021 and entered July 29, 2021, denying Plaintiff's motion to retax and  
14 settle costs with respect to the Director Defendants; (7) Order Granting in Part and Denying in Part  
15 Plaintiff's Motion for Declaratory Relief dated and entered August 17, 2021, which denied in part  
16 Plaintiff's motion for declaratory relief to the extent that there was no request for declaratory relief  
17 in the third amended complaint; (8) Discovery Commissioner's Report and Recommendations  
18 dated, filed and served on August 23, 2021, recommending denial of Plaintiff's motion to compel  
19 additional discovery; (9) Order Regarding Discovery Commissioner's Report and  
20 Recommendations dated September 17, 2021 and filed on September 18, 2021, adopting the  
21 recommendation of the discovery commissioner and denying Plaintiff's motion to compel  
22 additional discovery; (10) Order Granting In Part And Denying In Part Plaintiff's Motion In Limine  
23 No. 2 dated September 20, 2021, which denied in part testimony regarding unperformed solvency  
24 analysis; (11) Order Granting In Part And Denying In Part Plaintiff's Motion For Partial Summary  
25 Judgment As To U.S. Re Corporation dated September 20, 2021, which denied the motion to the  
26  
27  
28

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

12 **11. Indicate whether the case has previously been the subject of an appeal to or**  
13 **original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court**  
14 **docket number of the prior proceeding:**  
15

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

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

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

25 Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara  
26 Lumpkin, Jeff Marshall and Eric Stickels vs. Commissioner of Insurance for the State of  
27 Nevada as Receiver of Lewis and Clark LTC Risk Retention Group, Inc.,  
Case No. 84311  
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**12. Indicate whether this appeal involves child custody or visitation:** This case does not involve child custody or visitation.

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

DATED this 25th day of November, 2022.

HUTCHISON & STEFFEN, PLLC

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

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that on this 25th day of November, 2022, I caused the document entitled **CASE APPEAL STATEMENT** to be served on the following by Electronic

Service to:

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

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

# **EXHIBIT “D”**

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 \* \* \*

3 COMMISSIONER OF INSURANCE  
4 FOR THE STATE OF NEVADA AS  
5 RECEIVER OF LEWIS AND CLARK  
6 LTC RISK RETENTION GROUP,  
7 INC.,

8 Appellant,

9 vs.

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

20 Respondents.

Supreme Court No. 85668  
District Court Case No. A751535  
Dec 13 2022 11:18 PM  
Electronically Filed  
Elizabeth A. Brown  
Clerk of Supreme Court  
**DOCKETING STATEMENT**

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

24 **GENERAL INFORMATION**

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



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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  | Grant/Denial of NRCP 60(b) relief  |
| Judgment after jury verdict   | Grant/Denial of Injunction   |
| Summary Judgment  | Grant/Denial of Declaratory Relief   |
| Default Judgment  | Review of Agency Determination   |
| <input checked="" type="checkbox"/> <b>Dismissal</b>                | Divorce Decree   |
| Lack of Jurisdiction  | Original      Modification   |
| <input checked="" type="checkbox"/> <b>Failure to State a Claim</b> | <input checked="" type="checkbox"/> <b>Other disposition (specify):</b>  |
| Failure to Prosecute  | • <b><u>Denial of Motion to Amend Complaint</u></b>  |
| Other (specify)   | • <b><u>Denial of Motion for Partial Reconsideration of Denial of Motion to Amend Complaint</u></b>                                  |
|   | • <b><u>Order Denying Motion for Leave to File Fourth Amended Complaint</u></b>  |
|   | • <b><u>Findings of Fact, Conclusions of Law and Order Denying Plaintiff's Motion for Leave to File Fourth Amended Complaint</u></b> |
|   | • <b><u>Order to Strike from Record</u></b>  |
|   | • <b><u>Findings of Fact, Conclusions</u></b>  |

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

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

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

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

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

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

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

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

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

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

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

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

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

12  
13  
14 The Commissioner of Insurance seeks relief from the District Court's  
15 erroneous rulings related to denying her right to amend her complaint to comply with  
16 new Nevada law. Specifically, this appeal seeks relief from the District Court's  
17 order dated August 10, 2020, denying leave to file an amended complaint, the  
18 District Court's order dated August 1, 2020, granting the Director Defendants'  
19 motion for judgment on the pleadings, and the District Court's order dated  
20 September 9, 2020, denying partial reconsideration of the motion for leave to amend  
21 to file a fourth amended complaint.  
22

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

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

1 and public policy issues regarding: (1) the right of parties to amend pleadings in  
2 order to comply with changes in the underlying law which occur after a complaint  
3 has been filed but before the deadline for amending pleadings as provided in the trial  
4 court's scheduling order; (2) application of this Court's recent amendments to NRCP  
5 41(e) regarding additional time provided under Nevada's 5-year rule in which a case  
6 must be brought to trial; (3) whether the District Court's factual mistake as to the  
7 time remaining until the close of discovery which formed that basis for the denial of  
8 a motion to amend a complaint in order to comply with new Nevada law was in  
9 error; and (4) correction of legal errors made by district court in all orders and  
10 judgment from which appeal is taken.  
11

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

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

21 **11. Constitutional issues.** If this appeal challenges the constitutionality of a  
22 statute, and the state, any state agency, or any officer or employee thereof is  
23 not a party to this appeal, have you notified the clerk of this court and the  
24 attorney general in accordance with NRAP 44 and NRS 30.130?  
25

26 This appeal does not challenge the constitutionality of a statute.  
27

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

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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

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

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

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

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

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

20  
21 **TIMELINESS OF NOTICE OF APPEAL**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 Order of Dismissal dated May 4, 2016;

8 Judgment in favor of Robert Chur, Steve Fogg, Mark Garber, Carol Harter,  
9 Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels dated August  
10 13, 2020;

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

13 Order Denying Motion to Substitute dated February 21, 2019;

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

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

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

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

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

25 Findings of Fact, Conclusions of Law and Order Denying Plaintiff’s Motion  
26 for Leave to File Fourth Amended Complaint notice of entry served August 10,  
27 2020;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 entry of orders were filed.

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**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)**



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

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

6 Commissioner of Insurance:

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

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

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

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

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

18 Yes  X  No

19  
20 **25. If you answered "No" to question 24, complete the following:**

21 (a) Specify the claims remaining pending below:

22 (b) Specify the parties remaining below:

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

26 Yes   No

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

1 entry of judgment:

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

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

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

- 7 ● The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- 8 ● Any tolling motion(s) and order(s) resolving tolling motion(s)
- 9 ● 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
- 10 ● Any other order challenged on appeal
- 11 ● Notices of entry for each attached order

12  
13 **VERIFICATION**

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

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

21 Name of counsel of record: Brenoch Wirthlin, Esq.  
22 Hutchison & Steffen, PLLC  
23 10080 W. Alta Drive, Ste. 200  
24 Las Vegas, Nevada 89145  
25 702-385-2500

26 Date: 12/13/2022 /s/Brenoch Wirthlin  
27 Signature of counsel of record

28 Clark County, Nevada  
State and county where signed



**EXHIBIT “G”**

**EXHIBIT “G”**

1 **MVAC**  
2 George F. Ogilvie III (NSBN 3552)  
3 Karyna M. Armstrong (NSBN 16044)  
4 McDONALD CARANO LLP  
5 2300 West Sahara Avenue, Suite 1200  
6 Las Vegas, NV 89102  
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13 *Attorneys for Defendant U.S. RE Corporation*

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

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

20 Plaintiff,

21 vs.

22 ROBERT CHUR, STEVE FOGG, MARK  
23 GARBER, CAROL HARTER, ROBERT  
24 HURLBUT, BARBARA LUMPKIN, JEFF  
25 MARSHALL, ERIC STICKELS, UNI-TER  
26 UNDERWRITING MANAGEMENT CORP.  
27 UNI-TER CLAIMS SERVICES CORP., and U.S.  
28 RE CORPORATION, DOES 1-50, inclusive; and  
ROES 51-100, inclusive,

Defendants.

CASE NO.: A-14-711535-C  
DEPT. NO.: XXVII

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

**(REQUESTED ON ORDER  
SHORTENING TIME)**

OST Hearing Date:  
OST Hearing Time:

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

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

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

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

10 DATED this 18th day of May 2023.

11 McDONALD CARANO LLP

12  
13 By: /s/ George F. Ogilvie III  
14 George F. Ogilvie III (NSBN 3552)  
15 Karyna M. Armstrong (NSBN 16044)  
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28  
*Attorneys for Defendant U.S. RE Corporation*

**ORDER SHORTENING TIME**

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

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

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

Dated this 19th day of May, 2023

*Nancy L Alif*

4A1 F6E 2C4F 4540

Nancy Alif  
~~District Court Judge~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19           19.     At the May 11, 2023 Status Conference, among other arguments, I explained to this  
20 Court that the federal court action was improper under the Settlement Agreement, that the April 12,  
21 2023 Order was improperly submitted and that the legal bases set forth therein were contrary to law,  
22 and that the April 12, 2023 Order should be vacated.

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

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

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



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

9 Despite multiple tries to reconcile and come to an agreement or agree to a satisfaction of  
10 judgment U.S. Re had no other choice and on April 7, 2023, U.S. Re filed its Status Report In Advance  
11 Of April 11, 2023 Chambers Calendar, submitting that this Court should proceed with ruling on U.S.  
12 Re Corporation’s Motion for Reconsideration of Order Denying U.S. Re’s Motion To Dismiss And  
13 Enforce Settlement Agreement. *See* U.S. Re Corporation’s Status Report In Advance Of April 11,  
14 2023 Chambers Calendar. On April 10, 2023, Plaintiff Commissioner filed its status report ahead of  
15 the April 11, 2023 Status Check on chambers calendar, advising that Plaintiff Commissioner had filed  
16 a federal court lawsuit seeking to void the settlement agreement and asking this Court to deny U.S. Re  
17 Corporation’s Motion for Reconsideration of Order Denying U.S. Re’s Motion To Dismiss And  
18 Enforce Settlement Agreement. *See* Plaintiff’s Status Report in Advance of April 11, 2023 Chambers  
19 Calendar.

20 On April 11, 2023, without notifying U.S. Re’s counsel or giving U.S. Re’s counsel the  
21 opportunity to review and comment, Plaintiff Commissioner’s counsel submitted to chambers a  
22 proposed order denying U.S. Re’s two motions for reconsideration. *See* Ogilvie Decl. at ¶ 9. Later, on  
23 April 11, 2023, this Court issued an Order directing the parties to appear for a Status Check on June 8,  
24 2023. *See id.* at ¶ 10; *see also* April 11, 2023 Order. But the next day, on April 12, 2023 this Court  
25 issued the signed Order submitted by Plaintiff Commissioner that U.S. Re was not provided the  
26 opportunity to review. *See id.* at ¶ 11.

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

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

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

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

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

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

2 **II. ARGUMENT**

3 **A. Legal Standard**

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

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

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

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

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

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

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

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

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

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

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

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

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

7 Similar to Plaintiff Commissioner’s failure to name U.S. Re as an Appellee in Case No. 85907,  
8 there are several reasons why the federal action does not divest this Court of power and jurisdiction to  
9 grant U.S. Re relief. First, Plaintiff Commissioner’s federal court action (“Federal Action”), Case No.  
10 2:23-cv-00537-JCM-BNW, names Ironshore Specialty Insurance Company and Catlin Insurance  
11 Company, Inc. (the “Insurance Carriers”) as the defendants. *See* Federal Action Complaint at ¶¶ 7-8,  
12 attached as **Exhibit D**. Further, in the Federal Action Complaint Plaintiff Commissioner asks this Court  
13 to issue a declaratory judgment finding that the Insurance Carriers “owe Plaintiff [Commissioner] the  
14 remaining unpaid amounts of the Judgment pursuant to the applicable insurance contracts.” *Id.* at ¶ 33.  
15 Even the relief Plaintiff Commissioner seeks does not include U.S. Re and, therefore, this Court is not  
16 divested of jurisdiction.

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

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

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

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

20 ...

21 ...

22 ...

23 ...

24 ...

---

25  
26  
27 <sup>1</sup> The only possible way in which this Court could be divested of jurisdiction is if the court reached  
28 finality in the interim and therefore issue or claim preclusion would apply. *See Five Star Cap. Corp.*  
*v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008); *Weddell v. Sharp*, 131 Nev. 233, 350 P.3d 80  
(2015).

1 **III. CONCLUSION**

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

4 DATED this 18th day of May 2023.

5 McDONALD CARANO LLP

6  
7 By: /s/ George F. Ogilvie III  
8 George F. Ogilvie III (NSBN 3552)  
9 Karyna M. Armstrong (NSBN 16044)  
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14 *Attorneys for Defendant U.S. RE Corporation*

# **EXHIBIT “A”**

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

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

### A. RECITALS

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

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

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

### B. TERMS OF AGREEMENT

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

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

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

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

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

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

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

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

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

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

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

### A. RECITALS

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

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

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

### B. TERMS OF AGREEMENT

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

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

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

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

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

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

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

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

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

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

**C. UNKNOWN CLAIMS.**

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

**D. ADEQUACY OF CONSIDERATION.**

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

**E. COSTS AND ATTORNEY FEES**

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

**F. ENTIRE AGREEMENT**

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

**G. APPLICABLE LAW**

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

## H. COUNTERPARTS

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

## I. MUTUAL WARRANTIES

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

## J. NOTICE

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

1) If to Plaintiff:  
Hutchison & Steffen  
Attn: Brenoch R. Wirthlin, Esq.  
Peccole Professional Park  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145  
Email: [bwirthlin@hutchlegal.com](mailto:bwirthlin@hutchlegal.com)

2) If to the Corporate Defendants:  
George F. Ogilvie III, Esq.  
Nevada Bar No. 3552  
MCDONALD CARANO LLP  
2300 West Sahara Avenue, Suite 1200  
Las Vegas, NV 89102  
Telephone: (702) 873-4100  
Facsimile: (702) 873-9966  
[gogilvie@mcdonaldcarano.com](mailto:gogilvie@mcdonaldcarano.com)

Jon M. Wilson, Esq. (Appearing *Pro Hac Vice*)  
LAW OFFICES OF JON WILSON  
13924 Marquesas Way, Unit 1308  
Marina Del Rey, CA. 90292  
Telephone: (310) 626-2216

**L. ADDITIONAL WARRANTIES**

The Parties represent and warrant as follows:

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

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

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

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

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

**O. MODIFICATION.**

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

**P. TAX CONSEQUENCES.**

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

**Q. ENFORCEABILITY.**

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

**R. WAIVER.**

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

**S. HEADINGS.**

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

**T. DISPUTES.**

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

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

[SIGNATURE PAGES TO FOLLOW]

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

Dated: JUNE 29, 2022 TAL PICONE

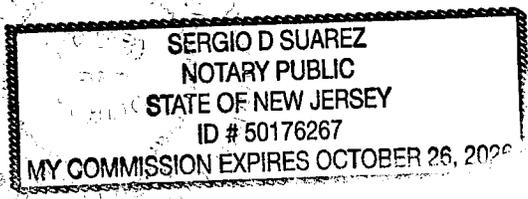
U.S. RE CORPORATION

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

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

Sergio D Suarez  
NOTARY PUBLIC in and for  
said County and State

My commission expires:  
10/26/2024



Dated: 6/29/2022 TAL PROCTOR  
UNI-TER UNDERWRITING MANAGEMENT CORP.

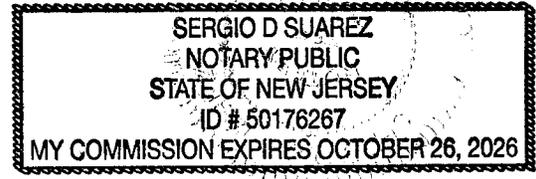
BY TAL PROCTOR CHAIRMAN

STATE OF NEVADA §  
COUNTY OF CLARK §

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

Sergio D Suarez  
NOTARY PUBLIC in and for said County and State

My commission expires: 10/26/2026



Dated: 6/29/2022 TAL PROCTOR  
UNI-TER CLAIMS SERVICES CORP.

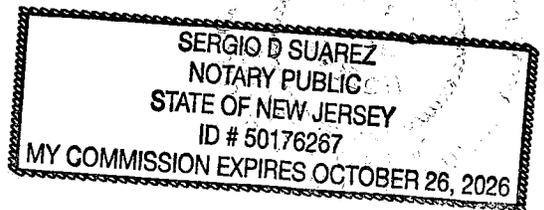
BY TAL PROCTOR CHAIRMAN

STATE OF NEVADA §  
COUNTY OF CLARK §

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

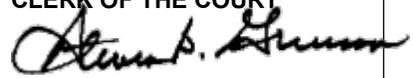
Sergio D Suarez  
NOTARY PUBLIC in and for said County and State

My commission expires: 10/26/2026





# **EXHIBIT “B”**



1 Brenoch R. Wirthlin, Esq. (10282)  
2 **Hutchison & Steffen**  
3 Peccole Professional Park  
4 10080 West Alta Drive, Suite 200  
5 Las Vegas, Nevada 89145  
6 Telephone: (702) 385.2500  
7 Facsimile: (702) 385.2086  
8 E-Mail: [bwirthlin@hutchlegal.com](mailto:bwirthlin@hutchlegal.com)  
9 *Attorneys for Plaintiff*

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 \* \* \*

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

17 Plaintiff,

18 vs.

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

27 Defendants.

Case No.: A-14-711535-C  
Dept. No.: XXVII

Nevada Supreme Court Docket No. 85668

**CASE APPEAL STATEMENT**

28 **1. Name of appellant filing this case appeal statement:** Commissioner of Insurance  
for the State of Nevada as Receiver for Lewis and Clark LTC Risk Retention Group, Inc.  
("Appellant" or "Commissioner of Insurance").

**2. Identify the judge issuing the decision, judgment, or order appealed from:**  
Honorable Nancy L. Allf, Department XXVII, of the Eighth Judicial District Court.



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

4           The Commissioner of Insurance of Nevada was appointed receiver of an insolvent Nevada  
5 insurer named Lewis and Clark LTC Risk Retention Group, Inc. (“L&C”), and filed suit against  
6 L&C’s directors, managers, and reinsurance broker, relying upon existing Nevada law when  
7 drafting her complaint, which was filed on December 24, 2014. Subsequently, the basis of  
8 pleading director liability in Nevada changed with the Court’s opinion in *Chur v. Eighth Judicial*  
9 *Dist. Court*, 136 Nev. 68, 458 P.3d 336 (2020), which substantively altered the law regarding  
10 director liability in Nevada. Within the time period allowed by the District Court for amending  
11 her pleadings, the Commissioner of Insurance moved to amend her complaint against the Director  
12 Defendants in order to comply with the change to Nevada law following Court’s opinion in *Chur*.  
13 The District Court, however, denied Appellant’s motion to amend, despite also having relied upon  
14 *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 640, 137 P.3d 1171, 1184 (2006), in its prior rulings.  
15 As a result of the District Court’s refusal to allow Plaintiff to amend her pleadings within the time  
16 period allowed by the District Court, the Director Defendants were dismissed from the action. The  
17 Commissioner of Insurance proceeded in the action against the remaining defendants, Uni-Ter  
18 Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. Re Corporation  
19 (“Corporate Defendants”), and on October 14, 2021 following a three-week trial, was awarded a  
20 unanimous jury verdict in the amount of \$15,222,853.00.  
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24           The Commissioner of Insurance seeks relief from the District Court’s erroneous rulings  
25 related and/or leading to the dismissal of the Director Defendants from the District Court action,  
26 and appeals the following judgments and orders granted by the District Court: (1) Order Denying  
27 Plaintiff’s Motion for Leave to File Fourth Amended Complaint dated and entered August 10,  
28 2020, which denied Plaintiff leave to file a fourth amended complaint; (2) Findings of Fact,

1 Conclusions of Law and Order Denying Plaintiff's Motion for Leave to File Fourth Amended  
2 Complaint dated and entered August 10, 2020, which denied Plaintiff leave to file a fourth  
3 amended complaint; (3) Order to Strike from Record dated August 13, 2020, which struck from  
4 the record a second version of the order inadvertently filed by the Court; (4) Order Granting  
5 Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara  
6 Lumpkin, Jeff Marshall, and Eric Stickels' Motion for Judgment on the Pleadings Pursuant to  
7 NRCP 12(c) and Judgment Thereon dated August 13, 2020 and entered August 14, 2020, granting  
8 judgment to the Director Defendants on the pleadings; (5) Findings of Fact, Conclusions of Law  
9 and Order Denying the Motion for Reconsideration of Motion for Leave to Amend Regarding  
10 Director Defendants dated September 9, 2020 and entered September 10, 2020, denying Plaintiff's  
11 motion for reconsideration of the District Court order denying Plaintiff leave to file a fourth  
12 amended complaint; (6) Order Denying Plaintiff's Motion to Retax and Settle Costs of Director  
13 Defendants dated July 16, 2021 and entered July 29, 2021, denying Plaintiff's motion to retax and  
14 settle costs with respect to the Director Defendants; (7) Order Granting in Part and Denying in Part  
15 Plaintiff's Motion for Declaratory Relief dated and entered August 17, 2021, which denied in part  
16 Plaintiff's motion for declaratory relief to the extent that there was no request for declaratory relief  
17 in the third amended complaint; (8) Discovery Commissioner's Report and Recommendations  
18 dated, filed and served on August 23, 2021, recommending denial of Plaintiff's motion to compel  
19 additional discovery; (9) Order Regarding Discovery Commissioner's Report and  
20 Recommendations dated September 17, 2021 and filed on September 18, 2021, adopting the  
21 recommendation of the discovery commissioner and denying Plaintiff's motion to compel  
22 additional discovery; (10) Order Granting In Part And Denying In Part Plaintiff's Motion In Limine  
23 No. 2 dated September 20, 2021, which denied in part testimony regarding unperformed solvency  
24 analysis; (11) Order Granting In Part And Denying In Part Plaintiff's Motion For Partial Summary  
25 Judgment As To U.S. Re Corporation dated September 20, 2021, which denied the motion to the  
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1 extent that it is a question for the trier of fact to determine the effect of U.S. Re Corporation's  
2 failure to obtain a Nevada license to broker reinsurance; (12) Order Denying Plaintiff's Motion In  
3 Limine Number 5 To Limit The Scope Of Expert Witness Testimony Regarding Speculation  
4 Concerning The Economy dated September 24, 2021, which allowed speculative testimony by  
5 expert witnesses regarding the economy at trial; (13) Order Denying Plaintiff's Motion In Limine  
6 Number 4: To Preclude Any Reference To Reinsurance Estimates dated September 24, 2021,  
7 which allowed testimony at trial regarding reinsurance estimates; (14) Order Denying Plaintiff's  
8 Motion In Limine Number 1 To Preclude Sam Hewitt From Providing Expert Testimony  
9 Regarding Insolvency Analysis dated September 24, 2021, which allowed expert witness  
10 testimony by Sam Hewitt regarding insolvency analysis at trial; (15) Order Denying Plaintiff's  
11 Motion In Limine Number 6 To Strike Proffered Expert Witness Alan Gray dated September 24,  
12 2021, which allowed expert witness testimony by Alan Gray at trial; (16) Order Denying Plaintiff  
13 s Motion For Partial Summary Judgment Regarding Uni-Ter Defendants Breach Of Their  
14 Fiduciary Duties dated September 27, 2021, which denied summary judgment to Plaintiff  
15 regarding breach of fiduciary duties by Uni-Ter Underwriting Management Corp. and Uni-Ter  
16 Claims Services Corp.; (17) Order Granting Motion to Exclude Interest dated December 15, 2021,  
17 which denied interest to accrue to Plaintiff during periods of stay; (18) Order of Dismissal Without  
18 Prejudice in favor of Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut,  
19 Barbara Lumpkin, Jeff Marshall, and Eric Stickels dated February 25, 2016 and docketed March  
20 3, 2016, granting the Director Defendants' motion for dismissal; (19) Order of Dismissal dated  
21 May 4, 2016, and docketed May 12, 2016, granting the Director Defendants' motion for dismissal;  
22 (20) Judgment in favor of Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut,  
23 Barbara Lumpkin, Jeff Marshall, and Eric Stickels dated August 13, 2020 and docketed August  
24 14, 2020, granting the Director Defendants judgment on the pleadings; (21) Order Denying  
25 Plaintiff's Motion to Lift Stay or Alternatively Grant Plaintiff Other Relief dated and entered  
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1 August 12, 2019, denying Plaintiff's motion to lift stay or grant other relief; (22) Order Denying  
2 Motion to Substitute dated February 21, 2019 and entered February 26, 2019, denying Plaintiff's  
3 motion to substitute the proper party in place of deceased Defendant Barbara Lumpkin; (23) Order  
4 Granting in Part Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut,  
5 Barbara Lumpkin, Jeff Marshall, and Eric Stickels Motion to Strike dated November 6, 2018,  
6 granting in part the Director Defendants' motion to strike Plaintiff's countermotion for summary  
7 judgment; and (24) Order Granting in Part Defendants Robert Chur, Steve Fogg, Mark Garber,  
8 Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels Motion to Dismiss  
9 dated February 25, 2016 and entered February 26, 2016, granting in part the Director Defendants'  
10 motion to dismiss.  
11

12 **11. Indicate whether the case has previously been the subject of an appeal to or**  
13 **original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court**  
14 **docket number of the prior proceeding:**  
15

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

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

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

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

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

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

DATED this 25th day of November, 2022.

HUTCHISON & STEFFEN, PLLC

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

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that on this 25th day of November, 2022, I caused the document entitled **CASE APPEAL STATEMENT** to be served on the following by Electronic

Service to:

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

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

# **EXHIBIT “C”**

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 \* \* \*

3 COMMISSIONER OF INSURANCE  
4 FOR THE STATE OF NEVADA AS  
5 RECEIVER OF LEWIS AND CLARK  
6 LTC RISK RETENTION GROUP,  
7 INC.,

8 Appellant,

9 vs.

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

20 Respondents.

Supreme Court No. 85668  
District Court Case No. A751535  
Dec 13 2022 11:18 PM  
Electronically Filed  
Elizabeth A. Brown  
Clerk of Supreme Court  
**DOCKETING STATEMENT**

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

24 **GENERAL INFORMATION**

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



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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  | Grant/Denial of NRCP 60(b) relief  |
| Judgment after jury verdict   | Grant/Denial of Injunction   |
| Summary Judgment  | Grant/Denial of Declaratory Relief   |
| Default Judgment  | Review of Agency Determination   |
| <input checked="" type="checkbox"/> <b>Dismissal</b>                | Divorce Decree   |
| Lack of Jurisdiction  | Original      Modification   |
| <input checked="" type="checkbox"/> <b>Failure to State a Claim</b> | <input checked="" type="checkbox"/> <b>Other disposition (specify):</b>  |
| Failure to Prosecute  | • <b><u>Denial of Motion to Amend Complaint</u></b>  |
| Other (specify)   | • <b><u>Denial of Motion for Partial Reconsideration of Denial of Motion to Amend Complaint</u></b>                                  |
|   | • <b><u>Order Denying Motion for Leave to File Fourth Amended Complaint</u></b>  |
|   | • <b><u>Findings of Fact, Conclusions of Law and Order Denying Plaintiff's Motion for Leave to File Fourth Amended Complaint</u></b> |
|   | • <b><u>Order to Strike from Record</u></b>  |
|   | • <b><u>Findings of Fact, Conclusions</u></b>  |

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

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

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

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

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

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

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

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

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

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

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

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

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

12  
13  
14 The Commissioner of Insurance seeks relief from the District Court's  
15 erroneous rulings related to denying her right to amend her complaint to comply with  
16 new Nevada law. Specifically, this appeal seeks relief from the District Court's  
17 order dated August 10, 2020, denying leave to file an amended complaint, the  
18 District Court's order dated August 1, 2020, granting the Director Defendants'  
19 motion for judgment on the pleadings, and the District Court's order dated  
20 September 9, 2020, denying partial reconsideration of the motion for leave to amend  
21 to file a fourth amended complaint.  
22

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

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

1 and public policy issues regarding: (1) the right of parties to amend pleadings in  
2 order to comply with changes in the underlying law which occur after a complaint  
3 has been filed but before the deadline for amending pleadings as provided in the trial  
4 court's scheduling order; (2) application of this Court's recent amendments to NRC  
5 41(e) regarding additional time provided under Nevada's 5-year rule in which a case  
6 must be brought to trial; (3) whether the District Court's factual mistake as to the  
7 time remaining until the close of discovery which formed that basis for the denial of  
8 a motion to amend a complaint in order to comply with new Nevada law was in  
9 error; and (4) correction of legal errors made by district court in all orders and  
10 judgment from which appeal is taken.  
11

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

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

21 **11. Constitutional issues.** If this appeal challenges the constitutionality of a  
22 statute, and the state, any state agency, or any officer or employee thereof is  
23 not a party to this appeal, have you notified the clerk of this court and the  
24 attorney general in accordance with NRAP 44 and NRS 30.130?  
25

26 This appeal does not challenge the constitutionality of a statute.  
27

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

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- 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

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

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

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

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

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

20  
21 **TIMELINESS OF NOTICE OF APPEAL**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 Order of Dismissal dated May 4, 2016;

8 Judgment in favor of Robert Chur, Steve Fogg, Mark Garber, Carol Harter,  
9 Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels dated August  
10 13, 2020;

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

13 Order Denying Motion to Substitute dated February 21, 2019;

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

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

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

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

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

25 Findings of Fact, Conclusions of Law and Order Denying Plaintiff’s Motion  
26 for Leave to File Fourth Amended Complaint notice of entry served August 10,  
27 2020;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 entry of orders were filed.

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**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)**



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

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

7 Commissioner of Insurance:

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

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

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

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

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

19 Yes  X  No

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

21 (a) Specify the claims remaining pending below:

22 (b) Specify the parties remaining below:

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

26 Yes   No

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

1 entry of judgment:

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

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

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

- 7 ● The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- 8 ● Any tolling motion(s) and order(s) resolving tolling motion(s)
- 9 ● 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
- 10 ● Any other order challenged on appeal
- 11 ● Notices of entry for each attached order

12  
13 **VERIFICATION**

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

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

21 Name of counsel of record: Brenoch Wirthlin, Esq.  
22 Hutchison & Steffen, PLLC  
23 10080 W. Alta Drive, Ste. 200  
24 Las Vegas, Nevada 89145  
25 702-385-2500

26 Date: 12/13/2022 /s/Brenoch Wirthlin  
27 Signature of counsel of record

28 Clark County, Nevada  
State and county where signed

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**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**

# **EXHIBIT “D”**

1 BRENOCH WIRTHLIN, ESQ. (10282)  
TRACI CASSITY, ESQ. (9648)  
2 Hutchison & Steffen  
10080 West Alta Drive, Suite 200  
3 Las Vegas, Nevada 89145  
4 Telephone: (702) 385.2500  
Facsimile: (702) 385.2086  
5 E-Mail: [bwirthlin@hutchlegal.com](mailto:bwirthlin@hutchlegal.com)  
*Attorneys for Plaintiff*

6  
7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**

9  
10 COMMISSIONER OF INSURANCE FOR  
THE STATE OF NEVADA AS RECEIVER  
11 OF LEWIS AND CLARK LTC RISK  
RETENTION GROUP, INC.,

12  
13 Plaintiff,

14 vs.

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

17 Defendants.  
18  
19

Case No.:

**COMPLAINT**

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

26 **INTRODUCTION**

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

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

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

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

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

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

22 **PARTIES**

23 **A. PLAINTIFF**

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

28 ///



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

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

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

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

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

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

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

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

1 Agreement) ended on August 19, 2022.

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

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

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

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

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

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

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

18 **FIRST CAUSE OF ACTION**

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

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

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

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

28 32. This issue is ripe for judicial determination.



1 **CSERV**

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

5  
6 Commissioner of Insurance for  
7 the State of Nevada as Receiver  
8 of Lewis and Clark, Plaintiff(s)

CASE NO: A-14-711535-C

DEPT. NO. Department 27

9 vs.

10 Robert Chur, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Order Shortening Time was served via the court's electronic eFile  
15 system to all recipients registered for e-Service on the above entitled case as listed below:

16 Service Date: 5/19/2023

17 Adrina Harris .	aharris@fclaw.com
18 Angela T. Nakamura Ochoa .	aochoa@lipsonneilson.com
19 Ashley Scott-Johnson .	ascott-johnson@lipsonneilson.com
20 Brenoch Wirthlin .	bwirthli@fclaw.com
21 CaraMia Gerard .	cgerard@mcdonaldcarano.com
22 George F. Ogilvie III .	gogilvie@mcdonaldcarano.com
23 Jessica Ayala .	jayala@fclaw.com
24 Joanna Grigoriev .	jgrigoriev@ag.nv.gov
25 Jon M. Wilson .	jwilson@broadandcassel.com
26 Kathy Barrett .	kbarrett@mcdonaldcarano.com

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26	Jon Linder	jlinder@hutchlegal.com
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28		