

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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**RESPONDENT U.S. RE
CORPORATION'S RESPONSE TO
APPELLANT'S MOTION FOR
LEAVE TO FILE A RESPONSE TO
RESPONDENT'S REPLY
REGARDING 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

I. INTRODUCTION

Respondent U.S. Re Corporation (“Respondent” or “U.S. Re Corp.”) hereby responds to the Motion for Leave to File a Response to Respondent’s Reply Regarding Order Amending Caption and to Show Cause (“Motion for Leave”) filed by Appellant Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark LTC Risk Retention Group, Inc. (“Appellant” or “Receiver”).

Appellant’s Motion for Leave says:

This motion concerns the Order to Show Cause issued by the court on May 10, 2023, which directed Appellant to “show cause why the identified portions of this appeal should not be dismissed for lack of jurisdiction” regarding the interlocutory orders related to the

defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. Re Corporation.

Motion for Leave at pp. 2-3.

The Order to Show Cause cited in the Motion for Leave was issued in Case No. 85668, an appeal to which Respondent U.S. Re Corp. is not a party. However, Appellant's Motion for Leave then refers to Respondent U.S. Re Corporation's Reply to Appellant's Response to Order Amending Caption and to Show Cause ("Respondent's Reply") that Respondent U.S. Re Corp. filed in response to the Order Amending Caption and to Show Cause that this Court issued in Case No. 85907. Notwithstanding Appellant's confusion of the orders to show cause this Court has issued to it, presumably, Appellant's Motion for Leave is intended to address the Order Amending Caption and to Show Cause issued in Case No. 85907, so Respondent will respond to it as such.

As a practical matter, whether Appellant is granted leave to file a response is of no real consequence. If granted leave, Appellant will advise this Court that it has sought the district court's reconsideration of the June 29, 2023 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 (the "Vacating Order" included as Exhibit B to Respondent's Reply), and argue that Appellant was fraudulently induced to enter into the Settlement Agreement and Mutual Release (the "Settlement Agreement")

included as Exhibit A to Respondent's Reply). Neither the district court's reconsideration of the Vacating Order, nor Appellant's fraud allegation regarding the Settlement Agreement in any way cure the jurisdictional defect created by Appellant's premature notice of appeal.

II. ARGUMENT

A. THE RELIEF APPELLANT SEEKS IN THE DISTRICT COURT DOES NOT CURE THE JURISDICTIONAL DEFECT OF THIS APPEAL.

A review of Appellant's Motion For Partial Reconsideration and NRCP 60(B) Relief from the Court's June 29, 2023 Order Granting NRCP 60 Relief to U.S. Re Corporation, to Vacate the Satisfaction of Judgment Entered on June 30, 2023, and For A New Trial ("Motion for Reconsideration"), a copy of which is attached hereto (*sans* exhibits) as **Exhibit A**, reveals that the existent jurisdictional defect of this appeal will remain even if the district court were to grant the relief Appellant seeks. Appellant seeks only to vacate the Satisfaction of Judgment. *See* Motion for Reconsideration at 2:14-16 ("This Motion seeks partial relief from the Court's June 29, 2023 Order providing the Corporate Defendants a Satisfaction of Judgment, and for relief from the Satisfaction of Judgment entered by the Court the following day on June 30, 2023 (the 'Orders')"); 4:27-5:3 ("For these reasons, the Court should issue an order amending its June 29, 2023 Order regarding issuance of a Satisfaction of Judgment, and to vacate the Satisfaction of Judgment entered on June 30, 2023.').

In its response to this Court's order to show cause, Appellant argued that the jurisdictional defect created by its premature filing of the notice of appeal had been cured by the district court's entry of the April 12, 2023 Order resolving the tolling motion. *See* Response to Order Amending Caption and To Show Cause at 4-5 ("On April 12, 2023, the district court resolved the Appellant's Reconsideration Motion, approximately one month prior to this court's OSC being issued. . . . As a result, the Notice of Appeal is deemed not to be prematurely filed as of the date that the Order was entered.")

In response, Respondent advised the Court that the district court had vacated the April 12, 2023 Order upon which Appellant relied in arguing the jurisdictional defect of this appeal had been cured. *See* Respondent's Reply at 5-6; *see also* Vacating Order (Ex. B to Respondent's Reply) at 2:10-11 ("**IT IS HEREBY FURTHER ORDERED** that the Order on Motions for Reconsideration entered by this Court on April 12, 2023 is **VACATED.**" (emphasis in original)).

Appellant's Motion for Reconsideration is not requesting the district court to reconsider vacating the April 12, 2023 Order; as set forth above, Appellant only seeks to vacate the Satisfaction of Judgment. Thus, even if the district court were to grant the relief Appellant seeks in reconsideration, the April 12, 2023 Order would remain vacated, and the tolling motion would remain unresolved. Accordingly, the notice of appeal would remain premature and this Court would still lack jurisdiction.

Therefore, nothing Appellant could present to this Court in the response Appellant requests to file herein would affect the jurisdictional defect. As this Court recognized in its Order Amending Caption and To Show Cause, Appellant's notice of appeal was prematurely filed. With the district court vacating the April 12, 2023 Order, the jurisdictional defect remains, and Appellant's Motion for Reconsideration does not seek to modify the Vacating Order relative to this issue. As such, Respondent submits Appellant's request should be denied as futile.

B. APPELLANT'S CLAIM OF "FACTUAL INACCURACIES AND MISLEADING STATEMENTS" HAS NO MERIT.

In addition to the substantive argument above, Respondent is compelled to address Appellant's allegation of "important factual inaccuracies and misleading statements":

Appellant believes it important to provide a response to U.S. Re Corporation's Reply to correct important factual inaccuracies and misleading statements that are contained in the Reply. Furthermore, Appellant also believes it critical that Appellant update the court regarding new developments in the underlying district court action (A-711535-C) that have occurred since Respondent's Reply was filed on July 7, 2023 for the court's full consideration of this matter.

Motion for Leave at p. 3.

Given the fact that Respondent's Reply merely attached and quoted from the Settlement Agreement, the June 29, 2023 Vacating Order and the Satisfaction of Judgment entered in the district court, it is hard to imagine to what "important factual inaccuracies and misleading statements" Appellant could be referring.

The Settlement Agreement's release provision says what it says: Appellant released the Corporate Defendants and related individuals and entities (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, quasicontract, or any other theory of recovery or responsibility, that the Plaintiff now has or could have had against the Defendant Released Parties.

Settlement Agreement (Ex. A to Respondent's Reply). There is nothing factually inaccurate or misleading about quoting the Settlement Agreement's release provision.

Likewise, the June 12, 2023 Vacating Order entered in the district court says what it says:

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

Vacating Order (Ex. B to Respondent's Reply) at 2:10-11. Again, pursuant to this provision of the Vacating Order, the district court order upon which Appellant bases its argument that the jurisdictional defect has been remedied has been vacated. Therefore, as demonstrated above, the jurisdictional defect still exists.

Finally, the Satisfaction of Judgment also says what it says:

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

Satisfaction of Judgment (Ex. C to Respondent’s Reply). As Respondent’s Reply stated, the Satisfaction of Judgment expressly and dispositively brings to a conclusion Appellant’s pursuit of additional relief, including this appeal of the Fees Order. While Appellant is seeking reconsideration of the district court’s entry of the Satisfaction of Judgment, the Satisfaction of Judgment remains the law of the case. And, even if the district court were to grant the relief Appellant seeks, (i) nothing set forth in Respondent’s Reply regarding the Satisfaction of Judgment is “inaccurate” or “misleading”; and (ii) more importantly for purposes of the Appellant’s Motion for Leave, vacating the Satisfaction of Judgment does not cure the jurisdictional defect created by Appellant’s premature notice of appeal.

III. CONCLUSION

For the reasons set forth herein, Respondent U.S. Re Corp. respectfully requests that the Receiver's Motion for Leave to File a Response to Respondent's Reply Regarding Order Amending Caption and to Show Cause be denied as futile.

DATED this 28th day of July, 2023.

McDONALD CARANO LLP

By: /s/ George F. Ogilvie III

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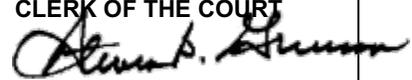
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano, LLP, and that on this 31st day of July, a copy of the foregoing **RESPONDENT U.S. RE CORPORATION'S OPPOSITION TO APPELLANT'S MOTION FOR LEAVE TO FILE A RESPONSE TO RESPONDENT'S REPLY REGARDING 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”



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7 **DISTRICT COURT OF NEVADA**
8 **CLARK COUNTY, NEVADA**

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

13 Plaintiff,

14 vs.

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

22 Defendants.

Case No.: A-14-711535-C

Dept. No.: XXVII

**MOTION FOR PARTIAL
RECONSIDERATION AND NRCP 60(b)
RELIEF FROM THE COURT’S JUNE 29,
2023 ORDER GRANTING NRCP 60
RELIEF TO U.S. RE CORPORATION, TO
VACATE THE SATISFACTION OF
JUDGMENT ENTERED ON
JUNE 30, 2023, AND
FOR A NEW TRIAL**

21 Plaintiff Commissioner of Insurance for the State of Nevada as Receiver of Lewis &
22 Clark LTC Risk Retention Group, Inc. (“Plaintiff” or “Commissioner”)¹ hereby submits the
23 following motion for partial reconsideration pursuant to EDCR 2.24 and NRCP 60(b) relief
24 from the Court’s June 29, 2023 Order granting NRCP 60 relief to Defendant U.S. Re
25 Corporation (“Defendant” or “U.S. Re” and together with the two Uni-Ter Defendants
26 “Corporate Defendants”, and collectively with Plaintiff the “Parties”), to alter or amend the
27 Satisfaction of Judgment entered June 30, 2023 pursuant to NRCP 59, and for a new trial

28 ¹ Lewis and Clark LTC Risk Retention Group, Inc. shall be referred to herein at “L&C.”

1 pursuant to NRCP 59 (“Motion”). This Motion is based on the following Memorandum of
2 Points and Authorities, all exhibits thereto, the pleadings and papers on file, and any
3 argument of counsel at the time of a hearing of the Motion.

4 DATED this 13th day of July, 2023.

5 HUTCHISON & STEFFEN

6 By: /s/ Brenoch Wirthlin

7 BRENOCH WIRTHLIN, ESQ. (10282)

8 Hutchison & Steffen

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14 *Attorneys for Plaintiff*

15 MEMORANDUM OF POINTS AND AUTHORITIES

16 I. INTRODUCTION AND SUMMARY OF ARGUMENT

17 This Motion seeks partial relief from the Court’s June 29, 2023 Order providing the
18 Corporate Defendants a Satisfaction of Judgment, and for relief from the Satisfaction of
19 Judgment entered by the Court the following day on June 30, 2023 (the “Orders”). These
20 Orders overturn the Court’s April 12, 2023 Order which found that as a matter of law the
21 Court lacked jurisdiction to decide any of U.S. Re’s pending motions. Critically, the Court
22 overturned its prior decisions without any intervening change in fact or law. The Orders
23 themselves seem to corroborate this point because they provide no supporting findings of
24 fact or conclusions of law justifying the Court’s decision.

25 A. Why the Court should grant Plaintiff relief from entry of Satisfaction of 26 Judgment in this matter

27 The Court is understandably motivated to see this nearly 10-year-old case finally
28 resolved. However, the decision by the Court to provide the Corporate Defendants with a
Satisfaction of Judgment was made without full and fair consideration of the impact that
decision would have on the Commissioner and the hundreds of claimants still waiting for
payment from L&C. The Court’s decision also seems to overlook that nearly two years ago,

1 a three-week trial was held in which a Jury unanimously found that the Corporate
2 Defendants were responsible for causing the insolvency of L&C. That same Jury would be
3 saddened to learn today that two weeks ago this Court’s Satisfaction of Judgment placed the
4 interests of providing “finality” to the Corporate Defendants above providing justice to
5 hundreds of people still waiting to receive payment of their claims from L&C. Families
6 should always come before the interests of corporations, especially corporations that are
7 defunct, dissolved, or are no longer in business like the Corporate Defendants. Instead of
8 providing a pathway that allows the Commissioner to collect additional money on behalf of
9 L&C, the Court’s Satisfaction of Judgment serves only to block the Commissioner’s
10 collection efforts in a multitude of ways.

11 For example, the Orders gravely impact the ability of the Commissioner to pursue
12 and collect additional money on behalf of L&C in other forums where cases are currently
13 pending. As this Court is aware, the Commissioner has cases currently pending before the
14 U.S. District Court and before the Nevada Supreme Court that allege parties other than the
15 Corporate Defendants have liability for the insolvency of L&C. The Satisfaction of
16 Judgment issued by this Court has the effect of providing defendants in those actions with a
17 defense that the claims for damages against them have all been satisfied, and that the cases
18 currently pending against them should be dismissed.

19 In sum, this Court’s decision to issue a Satisfaction of Judgment should be vacated
20 because such relief would unfairly damage the Commissioner and the Receivership, and is
21 legally unsupportable on a multitude grounds, including:

22 (1) The Satisfaction Judgment unfairly and prejudicially handcuffs the
23 Commissioner’s prosecution of cases currently pending in other forums.

24 (2) The Satisfaction Judgment places the interest of providing “finality” to
25 corporations no longer in business over the financial needs and interests of real families still
26 hopeful and patiently waiting for payment from the Receiver.

27 (3) The Satisfaction of Judgment modifies and adds terms to the settlement agreement
28 (“Agreement”) that the Parties never bargained for and are unambiguously absent from the

1 Agreement. The settlement agreement contains no provision that a Satisfaction of Judgment
2 will be provided by Plaintiff to the Corporate Defendants. The Commissioner would never
3 have agreed to such a term for all the reasons contained herein.

4 (4) The Satisfaction Judgment was procedurally improper because it was ordered by
5 the Court unilaterally without ever being requested by any party in this matter.

6 (5) The Satisfaction of Judgment was based on the Court's determination that
7 acceptance by Plaintiff of money from U.S. Re constituted waiver. Waiver is an issue of fact
8 and was determined by the Court without an evidentiary hearing in violation of due process.

9 **B. How the Court can provide finality to the Corporate Defendants as well**
10 **as to Plaintiff and the creditors of L&C**

11 Regarding providing finality to the Corporate Defendants, this Motion does not
12 request that the Court's order regarding the dismissal of U.S Re from this action be modified
13 or amended. The Commissioner does not want this case reopened and does not foresee any
14 need for the Court's further involvement. U.S. Re has already requested that the Nevada
15 Supreme Court dismiss any pending appeal concerning the Corporate Defendants. The
16 Receivership matter is still open, and as both this Court and the U.S. Re have repeatedly
17 stated, the open Receivership case is the appropriate forum in which U.S. Re can and should
18 bring any additional matters for adjudication.

19 Regarding providing finality to Plaintiff, the Receiver is still engaged in his fiduciary
20 duty to gather the assets of L&C so that the creditors of the insolvent insurance company
21 can be fully compensated. This Court can help provide finality to the families still waiting
22 for full payment on their claims by vacating the Satisfaction of Judgment issued by this
23 Court. The Receiver has a fiduciary responsibility to secure and provide whatever assets of
24 L&C are available to the individuals and families impacted by the insolvency of L&C.
25 Finality for these individuals will not take place until they are fully paid. Cases currently
26 pending before the Nevada Supreme Court and U.S. District Court could provide the money
27 needed by the Receivership to do so, but the Receiver's efforts in this regard have been
28 placed in jeopardy by the Satisfaction of Judgment issued by this Court. For these reasons,

1 the Court should issue an order amending its June 29, 2023 Order regarding issuance of a
2 Satisfaction of Judgment, and to vacate the Satisfaction of Judgment entered on June 30,
3 2023.

4 **II. FACTS**

- 5 1. The Corporate Defendants failed to pay the amounts remaining under their insurance
6 policies despite the outcome of the trial in this matter in which the Jury handed down
7 a unanimous \$15.2 million verdict against them.
- 8 2. Instead, the Corporate Defendants began negotiating for a full release for individuals
9 and entities not parties to this action in exchange for what was represented to be the
10 amounts remaining under the Corporate Defendants only two insurance policies.
- 11 3. On July 13, 2022, the Parties executed a Settlement Agreement (“Agreement”)
12 which contained a provision that it would not become effective only if the total
13 amount \$5,200,000.00 was paid to Plaintiff within 30 days.
- 14 4. The Agreement contains no provision regarding dismissal of US Re or any other
15 defendant.
- 16 5. Paragraph B(1) of the Agreement states as follows:

17
18 **Within 30 days after receipt of a fully-executed copy of this Agreement, a**
19 **W-9 from Plaintiff identifying the name and address of the payee, and**
20 **service of notice of entry of an order approving this Agreement** by the
21 Eighth Judicial District Court in Clark County, Nevada, in Case no.: A-12-
22 672047-B, STATE OF NEVADA, EX REL. COMMISSIONER OF
23 INSURANCE, IN HIS OFFICIAL CAPACITY AS STATUTORY
24 RECEIVER FOR DELINQUENT DOMESTIC INSURER vs. LEWIS &
25 CLARK LTC RISK RETENTION GROUP, INC. (the “Receivership”), the
26 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 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.

27 *See Agreement, Exhibit 1 hereto, at pp. 1-2 (emphasis added).*
28

- 1 6. This strict 30-day provision was specifically negotiated between counsel for the
2 parties. *See* emails between counsel, Exhibit 2 hereto.
- 3 7. On July 20, 2022, undersigned counsel forwarded a copy of the signed Agreement, a
4 W-9, and an notice of entry of order (“NOE”) as required by paragraph B(1) of the
5 Agreement. *See* Exhibit 3.
- 6 8. Thus, the 30 day period to receive the Settlement Funds (as defined in the
7 Agreement) ended on August 19, 2022.
- 8 9. On July 22, 2022, counsel for US Re responded stating that he had received these
9 items and had “forwarded them to the client and carriers.” *Id.*
- 10 10. In addition, undersigned counsel mailed the items to counsel for US Re. *See* Exhibit
11 4.
- 12 11. On August 19, 2022, Plaintiff’s representative received a check in the amount of
13 approximately \$400,000 from one insurer, but did not receive the remaining amount
14 of the Settlement Funds. *See* Exhibit 5.
- 15 12. On August 24, 2022, five (5) days after the expiration of the strict 30-day time period
16 for payment, Plaintiff received a check from another insurer for approximately
17 \$4.79M. *See* Exhibit 6.
- 18 13. Thus, because the Corporate Defendants failed to pay the total agreed amount on
19 time, and as a result the Settlement Agreement never had any force or effect pursuant
20 to its own unambiguous terms.
- 21 14. On October 21, 2022, U.S. Re filed a motion to dismiss and enforce the settlement
22 agreement in which the Court ruled that it was divested of jurisdiction by the filing
23 of a Notice of Appeal, and could not rule on the matter and took it off calendar.
- 24 15. On December 14, 2022, U.S. Re filed a motion for reconsideration of the Court’s
25 denial of U.S. Re’s motion to dismiss and enforce the settlement agreement.
- 26 16. On December 16, 2022, U.S. Re filed a motion for reconsideration of the Court’s
27 decision on U.S. Re’s motion regarding attorney fees and costs.
- 28

1 17. On March 31, 2023, Plaintiff was told by counsel for U.S. Re that there was an
2 insurance policy never before disclosed to Plaintiff that could potentially provide
3 additional money to further satisfy the Judgment against the Corporate Defendants.

4 18. On April 10, 2023, Plaintiff filed an action in U.S. District Court, District of Nevada
5 (Case No. 2:23-cv-00537) (“Federal Action”).

6 19. The defendants in the Federal Action are Ironshore Specialty Insurance Company,
7 Inc. (“Ironshore”) and Catlin Insurance Company, Inc. (“Catlin”, and collectively
8 with Ironshore, “Insurance Carriers”).

9 20. Ironshore and Catlin are the two Insurance Carriers that were obligated by the terms
10 of Settlement Agreement (“Agreement”) to pay Plaintiff the settlement funds within
11 30 days. The Federal Action alleges, among other things, that settlement funds were
12 not received by Plaintiff within 30 days, and that as a result, the Agreement was
13 rendered of no force and effect.

14 21. On April 11, 2023, Plaintiff submitted to the Court a proposed order denying U.S.
15 Re’s two motions for reconsideration and provided notice to U.S. Re’s counsel by
16 copying him on the email.

17 22. On April 12, 2023, the Court again denied U.S. Re’s Motions for reconsideration,
18 again stating that the Court lacked jurisdiction because of the pending appeals.

19 23. On May 2, 2023, U.S. Re again petitioned the Court for the same relief already
20 denied twice before through an “Emergency Request for Status Conference.”

21 24. On May 19, 2023, U.S. Re filed a motion for relief under NRCP 60 from the Court’s
22 order on motions for reconsideration.

23 25. At the hearing on U.S. Re’s motion for NRCP 60 relief, the Court’s started the
24 hearing by asking Plaintiff’s counsel, “how are we going to get this case resolved.”

25 26. Also at the hearing, counsel or U.S. Re stated that the motion for NRCP 60 was
26 brought because “at the status conference Your Honor said that if we wanted to bring
27 a motion to enforce the settlement agreement, it needed to be within the
28 receivership.”

1 27. On June 29, the Court issued its Order Granting Defendant U.S. Re Corporation’s
2 Motion to Vacate the Order Denying Motions for Reconsideration and on June 30,
3 2023 issued a Satisfaction of Judgment.

4 **III. ARGUMENT**

5 **A. Legal Standard**

6 EDCR 2.24(b) provides that “[a] party seeking reconsideration of a ruling of the
7 court, other than any order that may be addressed by motion pursuant to NRCP50(b), 52(b),
8 59 or 60 must file a motion for such relief withing 14 days after service of written notice of
9 the order . . .” EDCR 2.24 (emphasis added). Under NRCP 60(b) the court has the authority
10 to relieve a party from an order for various reasons, including, but not limited to, mistake,
11 inadvertence, fraud, or any other reason that justifies relief. *See* NRCP 60(b). This Court has
12 “wide discretion in deciding whether to grant or deny a motion” to set aside an order. *Cook*
13 *v. Cook*, 112 Nev. 179, 181, 912 P.2d 264, 265 (1996). Under NRCP 59, the court upon
14 motion has the authority to grant a new trial “on all or some of the issues—and to any
15 party—for any of the following causes or grounds materially affecting the substantial rights
16 of the moving party.” Various grounds are provided in Rule 59 including an “error in law
17 occurring at the trial.” NRCP 59 also provides relief upon motion to alter or amend a
18 Judgment.

19 **B. The Agreement never took effect and was null and void by its own terms**
20 **as the Corporate Defendants failed to comply with its terms. The**
21 **Satisfaction of Judgment added a new provision to the Agreement which**
22 **the Court cannot do and it must be vacated.**

22 As noted above, paragraph B(1) of the Agreement states as follows:

23 **Within 30 days after receipt of a fully-executed copy of this Agreement, a**
24 **W-9 from Plaintiff identifying the name and address of the payee, and**
25 **service of notice of entry of an order approving this Agreement** by the
26 Eighth Judicial District Court in Clark County, Nevada, in Case no.: A-12-
27 672047-B, STATE OF NEVADA, EX REL. COMMISSIONER OF
28 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

1 \$5,200,000 (US) by company check(s) (the “Settlement Funds”) as
2 consideration. **However, all Parties acknowledge and agree that this**
3 **Agreement is of no force and effect until said Settlement Funds are**
4 **actually received by the Plaintiff, and that this Agreement shall be null**
5 **and void in the event such Settlement Funds are not received by the**
6 **Plaintiff within the 30-day time period referenced herein.**

7 The Agreement provides very clearly that it “is of no force and effect until said Settlement
8 Funds are actually received” and that it is “null and void in the event such Settlement Funds
9 are not received by the Plaintiff within the 30-day time period referenced herein.” See
10 Exhibit 1. There is no dispute that the Settlement Funds were not received within the
11 required 30-day period. Thus, but its own terms the Agreement “is of no force and effect”
12 and because “null and void” upon the expiration of the 30-day period. Thus, entering a
13 Satisfaction of Judgment on a void Agreement is not proper.

14 Further, the Agreement contains no provision regarding Plaintiff allowing a
15 Satisfaction of Judgment to be entered in this matter. In fact, such a provision was
16 intentionally left out of the Agreement by Plaintiff for the reasons stated herein. Because of
17 this, the Court’s unilateral decision to issue a Satisfaction of Judgment violated the
18 longstanding legal principle that it is not the role of courts to add terms to contracts. The
19 Nevada Supreme Court has held and it is binding precedent in Nevada that Courts cannot
20 rewrite contracts. As the Nevada Supreme Court has unequivocally held:

21 **It is axiomatic that a court will not rewrite a contract for the parties,**
22 **especially when it would have to interject terms that would change the value**
23 **of the instrument.**

24 *Gartland v. Giesler*, 96 Nev. 53, 55, 604 P.2d 1238, 1239 (1980); *see also APCO*
25 *Constr., Inc. v. Helix Elec. of Nevada, LLC*, 138 Nev. Adv. Op. 31, 509 P.3d 49, 54 (2022)
26 (“Courts ‘should not rewrite contract provisions that are otherwise unambiguous ... [] or ...
27 attempt to increase the legal obligations of the parties where the parties intentionally limited
28 such obligations.’ ”).

1 As the Nevada Supreme Court stated in *Gartland*, the prohibition against Nevada
2 courts adding terms to contract is especially important when new “terms would change the
3 value of the instrument.” The Supreme Court of Nevada has stated, “A district court may
4 reconsider a previously decided issue if [1] substantially different evidence is subsequently
5 introduced or [2] the decision is clearly erroneous.” *Masonry and Tile Contractors Ass’n of*
6 *Southern Nevada v. Jolley, Urga & Wirth, Ltd.* 113 Nev. 737, 741 (Nev. 1997). A court
7 may rehear a motion even if “the facts and the law [a]re unchanged” because “the judge i[s]
8 more familiar with the case by the time the second motion [i]s heard[.]” *Harvey’s Wagon*
9 *Wheel, Inc. V. MacSween*, 96 Nev. 215, 218 (Nev. 1980).

10 In this matter, the Plaintiff would never have entered into the Agreement with the
11 Corporate Defendants if it was conditioned upon providing to a Satisfaction of Judgment to
12 them. The value to Plaintiff of the Agreement containing such a provision would have been
13 a complete deal breaker. Despite the unambiguous absence of a Satisfaction of Judgment
14 provision being part of the Agreement, the Court provided exactly this to U.S. Re in
15 response to U.S. Re’s efforts to enforce the Settlement Agreement. Accordingly, the
16 Satisfaction of Judgment provide to U.S. Re by the Court is contrary to Nevada law and
17 should be vacated.

18 **C. The Agreement is unenforceable as it was procured by fraud.**

19 The Agreement was procured by the Corporate Defendants’ fraudulent
20 misrepresentations. As courts across the country of recognized, “settlement agreements—
21 like all other contracts—are unenforceable if they are procured by fraud.” *Transcor Astra*
22 *Grp. S.A. v. Petrobras Am. Inc.*, 650 S.W.3d 462, 473 (Tex. 2022), reh’g denied (Sept. 2,
23 2022), cert. denied, No. 22-518, 2023 WL 3571493 (U.S. May 22, 2023) (citing *Italian*
24 *Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 331 (Tex. 2011)); see
25 also *Daneshmand v. City of San Juan Capistrano*, 60 Cal. App. 5th 923, 931, 275 Cal. Rptr.
26 3d 245, 253 (2021) (“**Where it is shown that deception has been practiced in obtaining a**
27 **release it may not be considered as a satisfaction of anything not consented to by the**
28

1 **claimant.”**). Here the Agreement was procured by the false representation of the Corporate
2 Defendants that only Catlin and Ironshore had contractually agreed to provide coverage for
3 the judgment. Plaintiff learned subsequent to the Agreement that this statement was false
4 and designed to induce Plaintiff to enter into the Agreement. This is, in part, the subject of
5 the Federal Action and it is improper for this Court to purport to enforce a fraudulent
6 Agreement that is the subject of the pending Federal Action. Accordingly, the Satisfaction
7 of Judgment must be vacated.

8 **D. The Satisfaction Judgment was procedurally improper because it was**
9 **ordered by the Court unilaterally without ever being requested by the**
10 **Parties to this matter.**

11 The Satisfaction of Judgment was granted by this Court in this matter without any
12 Party first moving the Court for such relief. There is no pleading filed that any party filed
13 that U.S. Re can point to containing a request that a Satisfaction of Judgment be entered by
14 the Court. As a result, Plaintiff was not afforded adequate notice and the ability to respond
15 to such relief because it was never even requested by U.S. Re. In other words, the Court
16 unilaterally made the decision to issue a Satisfaction of Judgment without any moving
17 papers requesting such relief. Specifically, a Satisfaction of Judgment was never requested
18 by U.S. Re its Motion or in any of the underlying motions for which U.S. Re has requested
19 relief. The only relief requested by U.S. Re in the Motion was for this Court to “vacate its
20 April 12, 2023 Order denying U.S. Re’s two motions for reconsideration.” Additionally,
21 U.S. did not request any additional, relief as the court may deem appropriate, but instead
22 concluded its Motion by stating that “U.S. Re respectfully requests that this Court grant its
23 motion to vacate the April 12, 2023 Order.” See U.S. Re’s Motion for NRCP 60 Relief,
24 page 12. It is improper, therefore, for the Court to enter a Satisfaction of Judgment which
25 was never requested by U.S. Re for which Plaintiff did not receive adequate and timely
26 notice.

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1 E. **The Satisfaction of Judgment was based on the Court’s determination**
2 **that acceptance by Plaintiff of money from U.S. Re constituted waiver.**
3 **Waiver is an issue of fact and was determined by the Court without an**
4 **evidentiary hearing in violation of due process.**

5 The Satisfaction of Judgment issued by the Court was based on the Court’s
6 determination that acceptance by Plaintiff of money from U.S. Re constituted waiver.
7 Waiver is an issue of fact and was determined by the Court without an evidentiary hearing in
8 violation of due process. Due process requires there be an evidentiary hearing on the issue of
9 whether the actions of the Parties constituted waiver. “Issues of whether a waiver has been
10 implied by conduct are questions for the finder of fact.” *Merrill v. DeMott*, 113 Nev. 1390,
11 1399, 951 P.2d 1040, 1045 (1997). Defendant has admitted that payment was not made to
12 Plaintiff within 30 days, but argues that subsequent acceptance of checks from the Insurance
13 Carrier carriers constituted a waiver of the timely payment provision contained in the
14 Agreement. As a result, any determination of Defendant’s waiver argument requires a due
15 process evidentiary hearing, and because no such hearing has been afforded to Plaintiff, any
16 ruling on waiver by this Court will be in violation of Plaintiff’s due process rights.

17 For this reason, the Court should vacate its Satisfaction of Judgment which was
18 based upon the Court’s advisory opinion that the conduct of the Parties constituted waiver.
19 Should the Court fail to do so, Plaintiff requests that he be afforded a full evidentiary
20 hearing on the issue of waiver pursuant to NRCPC 59. Had such a hearing been provided to
21 Plaintiff in this matter, the Court would have heard evidence not provided to the Court in
22 U.S. Re’s numerous pleadings on the matter, such as evidence that the Corporate Defendants
23 specifically negotiated the inclusion of the provision that they only had 30 days to provide
24 the settlement funds to Plaintiff, and such provision agreed on by the Parties that the
25 Agreement would be of “no force and effect” and that the “Agreement shall be null and void
26 in the event that such Settlement Funds are not received by the Plaintiff with the 30-day time
27 period reference herein.” As this Court is aware, a void contract is treated by courts as if the
28 contract had never existed, and it is impossible to waive breach of a contract that never
 existed. Plaintiff deserves a full and fair evidentiary hearing on these issues and is confident

1 that should such a hearing be provided to Plaintiff the Court will determine that the
2 Settlement Agreement by its own terms is unenforceable in Nevada.

3 **F. The Satisfaction of Judgment jeopardizes Plaintiff's ability to perform**
4 **his fiduciary duties to gather the assets of L&C to the insurer's creditors.**

5 The Orders gravely impact the ability of the Receiver to perform his fiduciary duties
6 to gather the assets of L&C. As this Court is aware, the Commissioner has cases currently
7 pending before the U.S. District Court and before the Nevada Supreme Court that allege
8 parties other than the Corporate Defendants have liability for the insolvency of L&C. The
9 Satisfaction of Judgment issued by this Court has the effect of providing defendants in those
10 actions with a defense that the claims for damages against them have all been satisfied, and
11 that the cases currently pending against them should be dismissed. As a result, the
12 Satisfaction of Judgment issued by this Court may damage the Commissioner's ability to
13 gain relief in other courts where these cases are currently pending. Hundreds of individual
14 and families are depending on the Receiver's efforts to gather as much money to pay claims
15 as possible. The cases currently pending in other courts could provide the money needed by
16 the Receivership to do so, but the Receiver's efforts in this regard have been placed in
17 jeopardy by the Satisfaction of Judgment issued by this Court. For these reasons, the Court
18 should issue an order amending its June 29, 2023 Order regarding issuance of a Satisfaction
19 of Judgment, and to vacate the Satisfaction of Judgment entered on June 30, 2023.

20 **G. The Satisfaction of Judgment unfairly prioritizes the Corporate**
21 **Defendant's need for finality over the needs of individuals and families to**
22 **receive money owed to them by L&C.**

23 The decision by the Court to provide the Corporate Defendants with a Satisfaction of
24 Judgment was made without full and fair consideration of the impact that decision would
25 have on the Commissioner and the hundreds of claimants still waiting for payment from
26 L&C. Families should always come before the interests of corporations, especially
27 corporations that are defunct, dissolved, or are no longer in business like the Corporate
28 Defendants. Instead of providing a pathway that allows the Commissioner to collect
additional money on behalf of L&C, the Court's Satisfaction of Judgment serves only to

1 block the Commissioner’s collection efforts in a multitude of ways. The Satisfaction of
2 Judgment issued by the Court placed the interests of providing “finality” to the Corporate
3 Defendants above providing justice to hundreds of people still waiting to receive payment of
4 their claims from L&C.

5 **IV. CONCLUSION**

6 For all these reasons, Plaintiff respectfully requests that the Court grant Plaintiff’s
7 Motion for Partial Reconsideration and NRCP 60(b) and NRCP 59 Relief from the Court’s
8 June 29, 2023 Order Granting NRCP 60 Relief to U.S. Re Corporation, to Vacate the
9 Satisfaction of Judgment entered on June 30, 2023, and for a New Trial under NRCP 59, and
10 to grant such other and further relief as the Court deems appropriate.

11 DATED this 13th day of July, 2023.

12 HUTCHISON & STEFFEN

13 By: /s/ Brenoch Wirthlin

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 13th day of July, 2023, I caused the document entitled **MOTION FOR PARTIAL RECONSIDERATION AND NRCP 60(b) RELIEF FROM THE COURT’S JUNE 29, 2023 ORDER GRANTING NRCP 60 RELIEF TO U.S. RE CORPORATION, TO VACATE THE SATISFACTION OF JUDGMENT ENTERED ON JUNE 30, 2023, AND FOR A NEW TRIAL** 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