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

VS.

## Respondents.

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

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

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

**1. Judicial District:**

Department: XXVII

Judge: Honorable Nancy L. Alf

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

Firm: Hutchison & Steffen, PLLC

Las Vegas, Nevada 89145

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

Page 2 of 12

concur in the filing of this statement

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

Attorney: George F. Ogilvie III, Esq.  
McDonald Carano  
2300 W. Sahara Ave., Suite 1200  
Las Vegas, NV 89102

Client(s): Uni-Ter Underwriting Management Corp., Uni-Ter Claims  
Services Corp., and U.S. RE Corporation. (collectively the  
“Corporate Defendants”)

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

Judgment after bench trial  
Judgment after jury verdict

Grant/Denial of NRCP 60(b) relief  
Grant/Denial of Injunction

Summary Judgment  
Default Judgment  
Dismissal

Grant/Denial of Declaratory Relief  
Review of Agency Determination  
Divorce Decree

Lack of Jurisdiction  
Failure to State a Claim  
Failure to Prosecute  
Other (specify)

Original Modification

**X Other disposition (specify):**

- **Order Granting Attorney Fees and Costs**

**5. Does this appeal raise issues concerning any of the following:**

Child custody (visitation rights only)  
Venue  
Termination of parental rights

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

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

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

4 Commissioner of Insurance for the State of Nevada as Receiver of Lewis and  
5 Clark LTC Risk Retention Group, Inc. vs. The Eight Judicial District Court  
6 of the State of Nevada, in and for the County of Clark and the Honorable  
Nancy L. Allf, District Judge, Case No. 81857.

7  
8 Commissioner of Insurance for the State of Nevada as Receiver of Lewis and  
9 Clark LTC Risk Retention Group, Inc. vs. Robert Chur, Steve Fogg, Mark  
10 Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and  
Eric Stickels, Case No. 84253.

11 Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara  
12 Lumpkin, Jeff Marshall, and Eric Stickels vs. Commissioner of Insurance for  
13 the State of Nevada as Receiver of Lewis and Clark LTC Risk Retention  
Group, Inc., Case No. 84311.

14 Commissioner of Insurance for the State of Nevada as Receiver of Lewis and  
15 Clark LTC Risk Retention Group, Inc. vs. Robert Chur, Steve Fogg, Mark  
16 Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, Eric  
17 Stickels, Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services  
Corp., and U.S. RE Corporation, Case No. 85668.

18 Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara  
19 Lumpkin, Jeff Marshall, and Eric Stickels vs. Commissioner of Insurance for  
20 the State of Nevada as Receiver of Lewis and Clark LTC Risk Retention  
21 Group, Inc., Case No. 85728.

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

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

1 matter is still open.

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

4 The Commissioner of Insurance brought this action against multiple  
5 defendants, including U.S. Re Corporation, Uni-Ter Underwriting Management  
6 Corporation, and Uni-Ter Claims Services Corporation (collectively the “Corporate  
7 Defendants”) for their role in causing the insolvency of a Nevada-based insurer,  
8 Lewis and Clark LTC Risk Retention Group, Inc. Trial against the Corporate  
9 Defendants commenced on September 20, 2021 and was submitted to the jury on  
10 October 14, 2021, which rendered a verdict in favor of Plaintiff.  
11  
12

13 The Commissioner of Insurance seeks relief from the District Court’s  
14 erroneous rulings regarding the proper calculation of attorneys’ fees and costs.  
15 Specifically, this appeal seeks relief from the District Court’s Order Granting  
16 Attorney Fees and Costs, dated, served and noticed on December 2, 2022.  
17  
18

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

21 This District Court’s Order Granting Attorney Fess and Costs reduced the  
22 amount of attorney fees and costs requested by Plaintiff, which raises important  
23 precedential issues regarding: (1) the proper method under Nevada law to calculate  
24 an award of attorneys’ fees; (2) how attorney fees awards should be calculated in  
25 cases involving multiple parties; (3) how attorney fees awards should be calculated  
26 during periods of a stay; and (4) the proper method under Nevada law to calculate  
27  
28

1 an award of costs; (5) what types of expenses that are considered to be costs related  
2 to the underlying litigation; and (6) how to calculate post judgment interest on  
3 attorney's fees and costs.  
4

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

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

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

16  
17 This appeal does not challenge the constitutionality of a statute.

18  
19 **12. Other issues.** Does this appeal involve any of the following:

20  
21 Reversal of well-settled Nevada precedent (on an attachment, identify the  
22 case(s))

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

24 A substantial issue of first-impression

25 An issue of public policy

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

28 A ballot question

If so, explain

This appeal does not involve any of the categories listed above.

1  
2 **13. Assignment to the Court of appeals or retention in the Supreme Court.**

3 Briefly set forth whether the matter is presumptively retained by the  
4 Supreme Court or assigned to the Court of appeals under NRAP 17, and cite  
5 the subparagraph(s) of the Rule under which the matter falls. If appellant  
6 believes that the Supreme Court should retain the case despite its  
7 presumptive assignment to the Court of Appeals, identify the specific  
8 issue(s) or circumstances(s) that warrant retaining the case, and include an  
9 explanation of their importance or significance:  
10

11 This case is presumptively retained by the Supreme Court under NRAP  
12 17(a)(9). This appeal originates in business court which is a presumptive category  
13 of retention by the Supreme Court.  
14

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

17 The underlying action proceeded to a jury trial against Uni-Ter Underwriting  
18 Management Corp., Uni-Ter Claims Services Corp., and U.S. Re Corporation  
19 (“Corporate Defendants”) which began on September 20, 2021, and concluded on  
20 October 14, 2021.  
21

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

25 The Commissioner of Insurance does not anticipate at this time filing a  
26 motion to disqualify or have a justice recuse him/herself from participation in this  
27 appeal.  
28

1 **TIMELINESS OF NOTICE OF APPEAL**

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

3 Order Granting Attorney Fees and Costs, dated, served, and noticed on  
4 December 2, 2022.

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

6 Notice of entry of order regarding this appeal were served by electronic  
7 service through the District Court's e-service system on the same day the notice of  
8 entry of orders were filed.

9  
10 **18. If the time for filing the notice of appeal was tolled by a post-judgment**  
11 **motion (NRCP 50(b), 52 (b), or 59,**

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

14 The time for filing the notice of appeal was not tolled by a post-judgment  
15 motion.

16  
17 NRCP 50(b) Date of filing \_\_\_\_\_

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

19 NRCP 59 Date of filing \_\_\_\_\_  
20

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

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

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

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

27 **19. Date notice of appeal was filed: \_\_\_\_\_ December 30, 2022**  
28

If more than one party has appealed from the judgment or order, list date



each notice of appeal was filed and identify by name the party filing the notice of appeal:

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

NRAP 4(a)

### **SUBSTANTIVE APPEALABILITY**

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

Explain how each authority provides a basis for appeal from the judgment or order:

The basis for appeal herein is pursuant to NRAP 3A(a) and (b)(9), a special order entered after final judgment.

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

(a) Parties:

Plaintiff:

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

Defendants:

Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, Eric Stickels, Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation.

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

Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels (“Director

Defendants”), were dismissed from the underlying action and Plaintiff proceeded to trial against the remaining Corporate Defendants.

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

Commissioner of Insurance:

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

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

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

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

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

Yes   X   No           

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

Yes            No           

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

entry of judgment:

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

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

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

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

### VERIFICATION

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

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

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

Date: 02/08/2023

/s/Brenoch Wirthlin

Signature of counsel of record

Clark County, Nevada

State and county where signed

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

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### INDEX OF EXHIBITS

Exhibit Number	Description
1	Third Amended Complaint
2	Order and Notice of Entry of Order Granting Motion for Attorney Fees and Costs

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EXHIBIT PAGE ONLY

## EXHIBIT 1

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

  
CLERK OF THE COURT

1 ACOM  
JAMES L. WADHAMS, ESQ.  
2 Nevada Bar No. 1115  
BRENOCH WIRTHLIN, ESQ.  
3 Nevada Bar No. 10282  
FENNEMORE CRAIG, P.C.  
4 300 South Fourth Street, Suite 1400  
Las Vegas, Nevada 89101  
5 Telephone: (702) 692-8000  
Facsimile: (702) 692-8099  
6 [bwirthlin@fclaw.com](mailto:bwirthlin@fclaw.com)  
*Attorneys for Plaintiff Commissioner of Insurance*  
7 *For the State of Nevada*

8  
9 DISTRICT COURT OF NEVADA  
10 CLARK COUNTY, NEVADA

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

14 Plaintiff,

15  
16 vs.

17 ROBERT CHUR, STEVE FOGG, MARK  
18 GARBER, CAROL HARTER, ROBERT  
19 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.  
23

Case No.: A-14-711535-C

Dept No.: XXVII

THIRD AMENDED COMPLAINT

[Request for Exemption to be Filed]  
[Damages in Excess of \$50,000]

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

27 ///

28 ///

**PARTIES, JURISDICTION AND VENUE**

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 10 GENERAL ALLEGATIONS

#### 11 A. Introduction

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

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

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

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

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

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

5 **B. Acquisitions and Growth of L&C**

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

9 36. L&C acquired Sophia Palmer Nurses Risk Retention Group ("Sophia Palmer") in  
10 2009. Sophia Palmer wrote general and professional liability policies to nurses mostly in Florida.  
11 L&C assumed all outstanding liabilities of Sophia Palmer.

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

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

19 **C. Agreements with the Uni-Ter Entities and Brokers**

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

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

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

26 ///

27 ///

28 ///

1           (1)     **Management Agreements**

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

5           a.     2004 Management Agreement

6           43.     L&C and Uni-Ter UMC entered into a Management Agreement dated January 1,  
7     2004 ("2004 Management Agreement") for a period of seven years. A copy of the 2004  
8     Management Agreement is attached hereto as **Exhibit 2**.

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

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

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

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

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

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

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

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

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

16 (ii) Claims handling fees of \$250 per file setup for each claim or investigation,  
17 \$95 per hour for claim adjuster/nurse professional time, and actual travel  
18 expenses.

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

23 *See id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13                 b.     2011 Management Agreement

14          64.     At the expiration of the 2004 Management Agreement, L&C and Uni-Ter UMC  
15 (and Uni-Ter's subsidiary Uni-Ter CS) entered into a similar Management Agreement on January  
16 1, 2011 ("2011 Management Agreement") for a period of five years. A copy of the 2011  
17 Management Agreement is attached hereto as **Exhibit 3**.

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

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

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

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

- (ii) Exhibit A was revised regarding the territory to include all of the U.S. except for Hawaii and Alaska and excluding long term care and home healthcare in Florida.
- (iii) The limitations of Uni-Ter's authority in Article III(Y) are revised to delete the limitations set forth in items 2, 6, and 9 of the 2004 agreement. Uni-Ter's new allowed duties (i.e., no longer a limitation) included that it had full authority to settle claims on L&C's behalf or commit L&C to pay claims.
- (iv) The profit sharing bonus provision was revised to apply from 2007 forward with 2006 being the last year under the 2004 Management Agreement. For 2007 onward, the profit sharing bonus was to be 20% of L&C's Profit as defined to be pre-tax net income as adjusted for the applicable year's loss ratio, ALAE ratio, and reinsurance payables and receivables through December 31 of the fourth year following the applicable year.
- Id.

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

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

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

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



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

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

6 (2) U.S. RE Agreement

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

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

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

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

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

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

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

1 coverage as specifically requested by any underwriter of [L&C].” *Id.*

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

5 81. The Supreme Court of Nevada has held that “[a]n agency relationship is formed  
6 when one who hires another retains a contractual right to control the other’s manner of  
7 performance.” *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 108 Nev. 811, 815, 839 P.2d  
8 599, 602 (1992) (citation omitted).

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

13 83. Further, Nevada law makes clear that “[a]n agent, such as respondent in these  
14 circumstances, owes to the principal the highest duty of fidelity, loyalty and honesty in the  
15 performance of the duties by the agent on behalf of the principal.” *LeMon v. Landers*, 81 Nev.  
16 329, 332, 402 P.2d 648, 649 (1965) (holding that the agent breached her fiduciary obligations)  
17 (emphasis added); *see also Chem. Bank v. Sec. Pac. Nat. Bank*, 20 F.3d 375, 377 (9th Cir. 1994)  
18 (“The very meaning of being an agent is assuming fiduciary duties to one’s principal.”) (*citing*  
19 *Restatement (Second) of Agency* § 1(1)).

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

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

1 2013 WL 7155078, at \*2 (Nev. Dec. 18, 2013).

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

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

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

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

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

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

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

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

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

5           (3) Reinsurance Contracts

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

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

9           (ii) January 1, 2005-December 31, 2006 Treaty.

- 10                   - Applicable to \$750,000 excess of \$250,000 per claim
- 11                   - Aggregate limit is lesser of \$3,500,000 or 225% of ceded premium.
- 12                   - Ceded premium is 25% of gross net written premium income (GNWPI)

13           (iii) January 1, 2007-December 31, 2007 Treaty (Commutated in early 2008)

- 14                   - Applicable to \$750,000 excess of \$250,000 per claim
- 15                   - Deductible is 22% of GNWPI.
- 16                   - Aggregate limit is 300% of ceded premium.
- 17                   - Ceded premium is 20% of GNWPI.

18           (iv) July 1, 2005-December 31, 2006 Treaty.

- 19                   - Applicable to \$1,000,000 excess of \$1,000,000 per claim
- 20                   - Aggregate limit is \$3,000,000 or 300% of ceded premium.
- 21                   - Ceded premium is 100% of gross premiums for policies with limits greater than \$1,000,000 per claim.

22           (v) January 1, 2008-March 31, 2009 Treaty.

- 23                   - Applicable to \$650,000 excess of \$350,000 per claim
- 24                   - Deductible is greater of 13% of GNWPI or \$1,274,000.
- 25                   - Aggregate limit is 300% of ceded premium.
- 26                   - Ceded premium is 17.08% of GNWPI for all policies subject to a minimum of \$1,575,000.

27           (vi) April 1, 2009-March 31, 2010 Treaty.

- 28                   - Applicable to \$650,000 excess of \$350,000 per claim
- 29                   - Deductible is greater of 11% of GNWPI or \$1,100,000.
- 30                   - Aggregate limit is 300% of ceded premium.
- 31                   - Ceded premium is 17.93% of GNWPI for all policies subject to a minimum of \$1,613,700.

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

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

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

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

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

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

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

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

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

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

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

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

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

Dear President Marshall:

1           The [DOI]'s review of the June 30, 2010 financial statement of [L&C]  
2 revealed a deteriorating financial condition which the company's management  
must address. The following are items that must be considered:

- 3           • Increase in reserves has increased liabilities \$3.1 million above  
4 the 12/31/10 pro-forma accounts and has resulted in a liquidity  
ratio ... of 116.0%.
- 5           • Due to underwriting and operating losses, \$1.1 million and  
\$792.7 thousand, respectively, policyholder surplus has  
6 declined by 11.6% from December 31, 2009.
- 7           • Underwriting losses are the result of increasing loss and loss  
administration expense coupled with high other  
8 underwriting/administrative expenses (which exceed 12/31/10  
pro-forma amounts by \$744 thousand), all of which result in a  
combined ratio of 131.1%.
- 9           • Risk Based Capital (RBC) ratio of 210.5% is hardly  
adequate....

10  
11 *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

1 another letter to Marshall regarding the now disastrous financial condition of L&C ("September  
2 2011 Letter"). A copy of the September 2011 Letter is attached hereto as **Exhibit 7**.

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

- 6 • Of particular concern is the Combined ratio which has increased  
7 since prior year-end from 99.4% to 153.9% - a 54.8% increase post-  
8 merger.
- 9 • A major concern is Risk Based Capital ("RBC") - 208.8%. This  
10 RBC calculation results from year-end 2010 financial statement.  
11 The RBC is now well below that level considering the reserve  
12 (Liability) increases and net loss reducing policyholder surplus by  
13 40.3% for only one-half (Six Months) of a year of operating  
14 activity.
- 15 • Net underwriting loss has deteriorated to \$3.1 million
- 16 • Net loss = \$1.8 million

17 *Id.*

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

20 Since prior year-end, **policyholder surplus has declined by 40.3%**. Company is  
21 experiencing adverse claims Development and is becoming extremely leveraged.  
22 **Total Liabilities have increased by 26.5%** ... Net Loss is \$1.8 million, a **result**  
23 **of \$3.1 million net underwriting loss for six months and \$1.7 million**  
24 **underwriting loss for just the second quarter**. Unassigned Funds have  
25 deteriorated further to a negative (\$1.4 million). Since prior year-to-date, net  
26 premiums earned have improved nominally by 5.8% while net losses incurred has  
27 increased by 117.6% **causing a net loss ratio of 114.4% and resulting in a**  
28 **153.9% combined ratio**. Company is highly leveraged. Cash and invested assets  
only represent 59.2% of total assets resulting in a 148.7% liquidity ratio  
coupled with gross premiums written representing 571.6% of policyholder surplus  
and net premiums written representing 499.9% of policyholder surplus ...

29 *Id.* (emphasis added).

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



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

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

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

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

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

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

22 **D. L&C Board Meeting Minutes**

23 118. On information and belief, the Board met generally once per quarter starting in late  
24 2004 and continuing to September 2012 related to L&C. Minutes of said meetings were kept by  
25 L&C (“Minutes”).

26 119. On information and belief, because Uni-Ter UMC was managing all of the  
27 business aspects of L&C’s business, Mr. Sanford Elsass (“Elsass”), President of Uni-Ter UMC  
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 144. On October 5, 2011 the Board held a special meeting and approved capital  
18 contributions by shareholders Oneida, Eagle Healthcare, Pinnacle, Marquis, Elderwood, Rohm,  
19 and Uni-Ter in exchange for surplus notes. The action of the Board in lieu of a special meeting,  
20 attached hereto as **Exhibit 22** ("Action"), also noted that depending on the fourth quarter, the  
21 same parties other than Oneida would commit to an additional amount of \$550,000 in the fourth  
22 quarter of 2011 and first quarter of 2012 as the stated proportions (with Uni-Ter having 20/55 or  
23 4/11 responsibility). The Minutes also noted approval of the new underwriting philosophy.

24 145. On information and belief, the minutes of the October 5, 2011 action by the Board  
25 demonstrate that the Board was well aware it was not receiving accurate and complete  
26 information from Uni-Ter as the Board requested "more frequent financial reporting to the Board  
27 as discussed at the last meeting, preferably monthly." (Emphasis added). On information and  
28

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

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

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

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

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

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

28

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

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

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

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

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

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

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

6           158. On information and belief, the Board did not meet for another two and a half (2  
7 ½) months regarding the financial conditions of L&C. The Board met telephonically on June 6,  
8 2012, the Minutes for which are attached hereto as **Exhibit 30**, but the only business noted was  
9 the approval of reinsurance. There is no entry regarding a discussion of the financial status of  
10 L&C.

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

16           160. At the July 25, 2012 meeting, the Minutes for which are attached hereto as **Exhibit**  
17 **31**, Uni-Ter and U.S. RE presented a report of second quarter financial results in which a  
18 significant increase in loss reserves was reported. The Board then discussed possible courses of  
19 action. The Board requested that Uni-Ter contact Fishlinger to conduct an independent roll  
20 forward of its last claims reserve review preferably by August 7, 2012. The Board also resolved  
21 that the preliminary second quarter results not be filed until the Fishlinger review is done and that  
22 the results should be approved by the Board before filing. Finally, the Minutes noted that no new  
23 business should be written by L&C and no capital raised until further notice, but that renewals  
24 may be processed until notice otherwise.

25           161. The August 15, 2012 was the last meeting Elsass and Uni-Ter or U.S. RE attended.  
26 At that meeting, the Board discussed the filing with the Nevada DOI of financial information with  
27 notice of further deterioration of L&C's finances.  
28



1           162. At the August 22, 2012 meeting, Minutes for which are attached hereto as **Exhibit**  
2 **32**, L&C's counsel reported on recent discussions with Uni-Ter and U.S. RE. Uni-Ter personnel  
3 were not present at the meeting.

4           163. On information and belief the Board held a telephonic meeting on September 24,  
5 2012, the Minutes for which are attached hereto as **Exhibit 33**. The Board's grossly negligent  
6 failure to inform itself of the basic financial condition of the Company was made clear as the  
7 Board tacitly acknowledged it was not aware whether the Company was financially solvent at that  
8 time, resolving that "a request be made to the Nevada Division [sic] of Insurance that the  
9 Corporation be placed in rehabilitation, in view of the fact that the Corporation is or may be  
10 insolvent." *Id.* (emphasis added).

11           **E. Information Available to the Officers and Directors**

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

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

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

23           167. L&C's Internal Unaudited Financial Statements as of December 31, 2007, attached  
24 hereto as **Exhibit 36**, states that unpaid losses and loss expenses were \$578,000 in 2004,  
25 \$1,142,000 in 2005, \$2,636,000 in 2006, and \$3,013,000 in 2007. This is a growth of over 500%  
26 in only four (4) years.

27           168. On information and belief, Uni-Ter's management fees grew from nothing in  
28 2004, to \$120,000 in 2005, to \$126,000 in 2006, to \$760,000 in 2007. Between 2005 and 2007,

1 this is a growth of 633% in three years.

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

5 Policy Year	6 Written Premium	7 Earned Premium	8 Paid Losses	9 Reserves	10 Totals Incurred	11 Loss Ratio
2004	\$1,344,358	\$1,344,358	\$223,232	\$---	\$208,232	15.49%
2005	\$3,124,474	\$3,124,474	\$745,466	\$80,720	\$782,438	24.23%
2006	\$5,821,739	\$5,821,739	\$1,311,965	\$477,775	\$1,751,740	30.64%
2007	\$5,958,904	\$4,184,641	\$1,555,249	\$1,621,520	\$3,111,769	52.38%
2008	\$8,340,000	\$5,203,834	\$1,211,943	\$3,941,000	\$1,687,006	34.77%
2009	\$10,705,229	\$7,792,504	\$1,545,000	\$6,255,488	\$3,947,463	50.66% with Sophia Palmer being 80.96%

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

15 171. Further, L&C's Summary Balance Sheet as of December 31, 2008, attached hereto  
16 as **Exhibit 37**, states that while unpaid losses and loss expenses grew from \$3,013,000 to  
17 \$3,941,000 between 2007 and 2008, Uni-Ter's management fees went from \$760,312 in 2007 to  
18 \$1,372,915 in 2008.

19 172. L&C's Internal Unaudited Financial Statements as of December 31, 2009, attached  
20 hereto as **Exhibit 38**, state that unpaid losses and loss expenses jumped to \$6,255,488 in 2009  
21 from \$3,941,000 in 2008. Uni-Ter's management fees jumped to \$1,717,482 for 2009 from  
22 \$1,372,915 in 2008.

23 173. The 2009 Milliman Report, which supports the corresponding Statement of  
24 Actuarial Opinion attached hereto as **Exhibit 39**, states that the existing risk factors, "coupled  
25 with the variability that is inherent in any estimate of unpaid loss and loss adjustment expense  
26 obligations, could result in material adverse deviation from the carried net reserve amounts." The  
27 Milliman Report concludes that L&C's actual net outstanding losses and loss adjustment expense  
28

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

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

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

16 176. On information and belief, Mr. Shatoff stated in said email correspondence that the  
17 April 1, 2004 to December 31, 2004 treaty was commuted, the January 1, 2007 to December 31,  
18 2007 treaty was commuted, and the January 1, 2005 to December 31, 2006 treaty was "swing  
19 rated" and had been adjusted to the minimum premium. Regarding the January 1, 2008 to April  
20 1, 2009 reinsurance treaty, Mr. Shatoff said that it covers all claims reported on occurrence  
21 policies up to April 1, 2012. Mr. Shatoff further stated that L&C was subject to a 13% aggregate  
22 deductible for an amount of \$1,690,673, and that L&C had paid reinsurance premiums of  
23 \$2,278,400, which at a 25% refund rate would result in a refund of \$569,600 if no claims were  
24 paid by the reinsurers. Further, Mr. Shatoff's communications state that there had been no losses  
25 reported under that treaty. Mr. Shatoff noted that L&C could commute at any time before  
26 January 1, 2013 to obtain the "profit commission" - how he referred to the 25% refund.

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

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

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

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

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

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

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

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

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

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

3 185. On information and belief, the information provided to the directors for the  
4 September 2011 Board meeting also contains a power point presentation from Milliman which  
5 shows that L&C steadily decreased its reinsurance deductible across the years 2008 to 2011,  
6 demonstrating that L&C's reinsurance deductible was set too high, especially in years 2009 and  
7 2010.

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

15 187. L&C's Annual Statement for the year ending December 31, 2011 ("2011 Annual  
16 Statement"), attached as **Exhibit 40**, stated a drastic increase in incurred losses and LAE and a  
17 significant drop in shareholder's surplus. Pursuant to that statement, reserves for losses and LAE  
18 increased from a total of \$9,181,477 at the end of 2010 to \$14,026,020 at the end of 2011, almost  
19 a \$5 million increase. Note 24 to L&C's 2011 Financial Statements (which is presented below)  
20 stated that unpaid losses and LAE increased from \$9,153,000 at the beginning of 2011 to  
21 \$14,843,000 at the end of 2011, a \$5,700,000 increase. Meanwhile, the company's policyholder's  
22 surplus amount decreased from \$4,579,710 at the end of 2010 to \$3,625,317 at the  
23 end of 2011.

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

25	Balance-January 1, 2011	\$9,153,000
26	Incurred related to:	
27	Current year	7,418,000
28	2010	3,039,000
	2009	2,284,000

1	2008	747,000
	2007	162,000
2	2006	375,000
	2005	(359,000)
3	2004	(1,000)
	Total Incurred:	13,665,000
4	Paid related to:	
5	Current year	1,878,000
6	2010	3,571,000
	2009	1,545,000
7	2008	222,000
	2007	630,000
8	2006	131,000
	2005	(1,000)
9	2004	(1,000)
	Total Paid:	7,975,000
10	Balance-December 31, 2011	\$ 14,843,000
11	(emphasis added)	

12 *Id.*

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

18 190. On February 2, 2012, Milliman provided a preliminary draft of certain schedules  
19 to its actuarial reports ("2012 Milliman Schedules"). Exhibit 1 Page 2 states that, as of December  
20 30, 2011, L&C's Discounted Net Loss & LAE Reserve (after Ceded Loss and LAE Reserve) was  
21 Low Estimate of \$13,019,000, Central Estimate of \$14,973,000, and High Estimate of  
22 \$18,635,000. Exhibit 3 of that document shows that Incurred Loss and ALAE had grown  
23 substantially from 2005 (\$373,816) to 2010 (\$9,068,552) while showing estimated reserves only  
24 growing to \$4,048,241. It also shows that for 2011, Ultimate Loss & ALAE was \$7,620,000 and  
25 Incurred Loss & ALAE was \$5,744,385, but estimate reserves was only \$5,938,479, which is  
26 over \$1.6 million less than the Ultimate Loss & ALAE.

27 191. The 2011 Milliman Report, attached hereto as **Exhibit 41**, in the section entitled  
28

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

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

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

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

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

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

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

14 197. A spreadsheet document dated February 2012 and entitled “L&C Loss Ratio  
15 Report” shows a substantial reduction of loss payments for 2011. The document states that the  
16 information is through 02/29/2012, but says that earned premium for 2011 dropped to \$5,209,362  
17 from \$12,798,406 in 2010 and \$11,776,406 in 2009. It also shows that earned premium was only  
18 \$240,573 through February which, extrapolated through December, would be only \$1,443,438.  
19 Meanwhile, total incurred losses for 2011 were only \$1,573,965 even though total incurred losses  
20 were almost \$9.5 million in 2010 and almost \$8 million in 2009.

21 198. On information and belief, the loss ratios shown for 2006 through 2010 were  
22 78.92%, 65.33%, 67.83%, and 73.59%, respectively. The loss ratio chart in the April 2008 Board  
23 meeting directors’ package states that the 2006 loss ratio was only 25.25% and the 2007 loss ratio  
24 was stated to be only 22.41%. The loss ratio for 2011 was only 30.21%. Paid losses in all of  
25 2011 were only \$264,000 even though those were almost \$5 million in 2010, \$5.4 million in  
26 2009, and over \$3.5 million in 2008.

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



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

3 200. L&C's Comparative Summary Balance Sheet dated through March 2012, attached  
4 as **Exhibit 44**, shows the growth of L&C's losses and Uni-Ter's fees. Unpaid losses and LAE  
5 was \$3,624,000 as of March 2008, \$4,325,000 as of March 2009, \$7,313,000 as of March 2010,  
6 \$9,953,000 as of March 2011, and \$12,381,985 as of March 2012. Uni-Ter's management fees  
7 were \$728,000 as of March 2008, \$1,329,000 as of March 2009, \$1,607,000 as of March 2010,  
8 \$830,000 as of March 2011, and \$104,000 as of March 2012.

9 201. The 2012 Milliman Report states that L&C reserves of \$16,333,000 were  
10 \$1,367,000 below the Central Estimate of what L&C's loss reserves should be. The report states  
11 that L&C's reserves were over \$7 million below the High Estimate of what L&C's reserves  
12 should be. There is no mention of the report in the Board Minutes. The report states as follows:

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

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

20 202. In the D&O policy application submitted by Uni-Ter on behalf of L&C on or  
21 about May 23, 2012, attached as **Exhibit 45**, Uni-Ter stated in the supplement that "[t]o improve  
22 the financial stability of [L&C], UUMC has reviewed the entire book of business and intends to  
23 only renew accounts that have maintained a favorable historical loss ratio. This may result in a  
24 35-40% reduction in its premium volume." The underwriting philosophy change completed in  
25 late 2011, while stating limitations for loss ratios in soft and hard market facilities, does not state  
26 that the policy would apply to renewals and also does not discuss the loss of such a large  
27 premium amount. This reduction would apply to the \$6,825,864 total premiums of inforce  
28 policies as of February 2012. With no new policies, that would result in total premiums for 2012

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

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

	2009	2010	2011	March 2012	June 2012
Losses and LAE	\$6,255,488 (this was \$3,941,000 for 2008)	\$9,161,477	\$14,026,020	\$12,381,985	\$11,594,038
Premiums earned	\$10,864,100 with \$4,149,333 being new for that year.	\$12,514,066	\$11,498,294	\$1,957,716 (compared to \$2,776,612 for March 2011)	\$3,753,489 (compared to \$6,720,334 for June 2011)
Ceded reinsurance premiums payable	\$1,969,682	\$2,050,400	\$750,084	\$26,523	\$624,029
Amount recoverable from reinsurance		\$2,819,800	\$3,039,002	\$3,039,002 with \$1.553M from AR and \$1.087 from other amounts receivable	\$1,530,415
Management fees payable	\$1,717,482	\$1,084,400	\$87,617	\$104,690	\$63,164
Total liabilities	\$13,887,255	\$15,625,439	\$21,840,572	\$19,777,205	\$16,397,861
Cash and invested assets		\$13,942,322	\$13,514,557	\$13,064,932	\$9,525,379
Shareholders' equity, i.e., surplus	\$4,031,351	\$4,579,710	\$3,625,317	\$3,713,503 (versus \$3,760,925 for March 2011)	\$1,675,694 (versus \$2,732,826 for June 2011)

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

**F. Gross Negligence by the Board**

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

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

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

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

12	o Oneida Bank	\$750,000
13	o Eagle Healthcare	\$220,000
14	o Pinnacle Healthcare	\$220,000
15	o Marquis Companies	\$220,000
16	o Elderwood Senior Care	\$220,000
17	o Rohm Services	\$220,000
18	o Uni-ter	\$300,000

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

23	o Eagle Healthcare	\$70,000
24	o Pinnacle Healthcare	\$70,000
25	o Marquis Companies	\$70,000
26	o Elderwood Senior Care	\$70,000
27	o Rohm Services	\$70,000
28	o Uni-ter	\$200,000

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

1 Directors of L&C.

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

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

7 212. On information and belief, using the low end of the ranges of reserves established  
8 by Praxis, Fishlinger concluded a low end of strengthening could be approximately a million  
9 dollars less than determined by Praxis. Although the Board had requested that Fishlinger conduct  
10 its review independently, ultimately it used the work of Praxis in coming to a similar conclusion  
11 on the reserve strengthening needed. Based on these two reviews, the additional capitalization of  
12 \$480,000 was determined to be adequate by the Board.

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

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

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

## CLAIMS

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

### FIRST CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

5 223. This information available in late 2011 included rapid and drastic increase in loss  
6 reserves, reports of inadequate reserves requiring repeated capital infusions in late 2011 and early  
7 2012, high loss ratios, drastically decreasing realized premiums, absence of any adjustment of  
8 premium rates, implementation of a new underwriting philosophy that would result in a 35-40%  
9 drop in premiums, and a drastically decreasing company surplus.

10 224. These reports included the following summarized facts:

- 11 • In September 2005, Elsass reported on appropriate loss reserves.
- 12 • L&C had substantial growth of premiums and reserves between 2004 and 2009.  
13 By 2009, written premium was \$10.7 million and reserves were \$6.2 million. Uni-  
14 Ter's management fees also increased rapidly to \$1.4 million in 2008 and \$1.7  
15 million in 2009.
- 16 • Losses and LAE grew to \$9.1 million in 2010 and \$14 million in 2011.
- 17 • Loss ratios were generally in the 30% range and below until 2009 when the  
18 addition of the Sophia Palmer work caused a loss ratio over 50% (because of  
19 Sophia Palmer claims having a loss ratio over 80%).
- 20 • A new underwriting philosophy was discussed at the September 2011 meeting.  
21 Although it does not appear that the Board questioned how this would affect  
22 premiums earned, Uni-Ter expected this new philosophy would only renew  
23 accounts that had a favorable historical loss ratio and that that could result in a 35-  
24 40% reduction in premium volume.
- 25 • In the 3<sup>rd</sup> quarter 2011, adverse development on claims incurred in 2009 showed  
26 up on L&C's financial results. Uni-Ter brought in Praxis to improve the reserve  
27 setting process. Uni-Ter brought in Praxis to analyze and recommend reserves.  
28 Praxis recommended reserve strengthening of \$2.2 million.
- Capital contributions totaling \$2.22 million were approved by the Board at the  
October 5, 2011 meeting. That same meeting said that an additional \$550,000 in  
capital could be raised in the 4<sup>th</sup> quarter 2011 and 1<sup>st</sup> quarter 2012.
- Financial information shows L&C was not paying losses in 2011. 12/19/11 draft  
report from Milliman shows \$2.23 million paid losses and ALAE in 2009, \$2.44  
million in 2010, but only \$199,000 in 2011.
- On 12/20/2011, Uni-Ter reported claims reserves increased \$5 million from the  
November 2011 figures.
- Uni-Ter's pro forma 12/31/11 financials show that L&C was neither impaired nor  
insolvent, but the 2011 Annual Statement shows losses and ALAE increased from  
\$9.1 million at the beginning of 2011 to \$14.8 million at the end of the year.

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

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

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

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

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

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

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

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

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

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

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

25 233. As a proximate result, Plaintiff has been damaged in an amount in excess of  
26 \$10,000, the exact amount to be proven at trial in this matter.

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



1 recover herein.

2 WHEREFORE, Plaintiff prays for relief as set forth herein.

3 **SECOND CLAIM FOR RELIEF**

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

5 235. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through  
6 234, as though fully set forth herein.

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

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

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

15 239. As a proximate result, Plaintiff has been damaged in an amount in excess of  
16 \$10,000, the exact amount to be proven at trial in this matter.

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

20 WHEREFORE, Plaintiff prays for relief as set forth herein.

21 **THIRD CLAIM FOR RELIEF**

22 **(Negligent Misrepresentation by Uni-Ter UMC)**

23 241. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through  
24 240, as though fully set forth herein.

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

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

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

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

8 245. Uni-Ter and Milliman told the Board that the large losses that started appearing in  
9 the 3<sup>rd</sup> quarter of 2010 were primarily because of three insureds who had been non-renewed in  
10 2011, thus giving the impression that this would resolve the large losses issue. These  
11 representations are representative of how the Board was kept in the dark regarding the actual  
12 financial condition of L&C.

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

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

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

19 WHEREFORE, Plaintiff prays for relief as set forth herein.

#### 20 **FOURTH CLAIM FOR RELIEF**

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

22 249. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through  
23 248, as though fully set forth herein.

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

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

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

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

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

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

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

WHEREFORE, Plaintiff prays for relief as set forth herein.

#### FIFTH CLAIM FOR RELIEF

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

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

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

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

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

4           261. The Supreme Court of Nevada has held that "[a]n agency relationship is formed  
5 when one who hires another retains a contractual right to control the other's manner of  
6 performance." *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 108 Nev. 811, 815, 839 P.2d  
7 599, 602 (1992) (citation omitted).

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

12           263. Further, Nevada law makes clear that "[a]n agent, such as respondent in these  
13 circumstances, owes to the principal the highest duty of fidelity, loyalty and honesty in the  
14 performance of the duties by the agent on behalf of the principal." *LeMon v. Landers*, 81 Nev.  
15 329, 332, 402 P.2d 648, 649 (1965) (holding that the agent breached her fiduciary obligations)  
16 (emphasis added); *see also Chem. Bank v. Sec. Pac. Nat. Bank*, 20 F.3d 375, 377 (9th Cir. 1994)  
17 ("The very meaning of being an agent is assuming fiduciary duties to one's principal.") (citing  
18 *Restatement (Second) of Agency* § 1(1)).

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

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

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

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

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

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

WHEREFORE, Plaintiff prays for relief and judgment as follows:

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

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

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

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

DATED this 5th day of August, 2016.

FENNEMORE CRAIG, P.C.

By: /s/ Brenoch Wirthlin

JAMES L. WADHAMS, ESQ.

Nevada Bar No. 1115

BRENOCH WIRTHLIN, ESQ.

Nevada Bar No. 10282

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Las Vegas, Nevada 89101

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Facsimile: (702) 692-8099

bwirthlin@felaw.com

Attorneys for Plaintiff Commissioner of  
Insurance For the State of Nevada

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EXHIBIT PAGE ONLY

## EXHIBIT 2

HUTCHISON & STEFFEN  

---

A PROFESSIONAL LLC

**OGM**

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TANYA M. FRASER, ESQ. (13872)  
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[tfraser@hutchlegal.com](mailto:tfraser@hutchlegal.com)

*Attorneys for Plaintiff*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\* \* \*

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

Plaintiff,

vs.

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

Defendants.

Case No.: A-14-711535-C

Dept. No.: XXVII

**ORDER GRANTING ATTORNEY FEES  
AND COSTS**

This matter came before the Court for hearing (“Hearing”) on September 7, 2022 on the Plaintiff’s<sup>1</sup> Motion for Attorney Fees and Costs filed on February 3, 2022, (“Plaintiff’s Fee Motion”), and Defendant U.S. RE Corporation’s (“US RE”) Motion to Retax Memorandum of

---

<sup>1</sup> “Plaintiff” is defined as the Commissioner of Insurance for the State of Nevada as Receiver of Lewis & Clark LTC Risk Retention Group, Inc.

1 Costs filed on March 16, 2022 (“US RE’s Motion to Retax”).<sup>2</sup> Brenoch R. Wirthlin, Esq.  
2 appeared on behalf of Plaintiff Commissioner of Insurance for the State of Nevada (“Plaintiff”);  
3 George F. Ogilvie III, Esq. appeared on behalf of Defendant US RE.<sup>3</sup> No opposition to the  
4 Plaintiff’s Fee Motion was filed. Plaintiff filed an opposition to US Re’s Motion to Retax, and  
5 no reply to US Re’s Motion to Retax was filed. The Court having read and considered the  
6 Motions, as well as having heard and considered the arguments of counsel at the Hearing on the  
7 Motions, and good cause appearing,

8 COURT FINDS after review that on September 7, 2022, all pending motions were heard  
9 on Motion Calendar. The Court directed counsel to submit any supplemental pleadings within  
10 Thirty (30) Days as to fees and costs. COURT ORDERED, status check set on a chambers  
11 calendar in sixty (60) days for Court to rule on the outstanding issues.

12 COURT FINDS after review that on October 7, 2022, a Supplement to Errata to Plaintiff  
13 s Verified Memorandum of Costs (Supplement) was filed by Plaintiff.

14 COURT FURTHER FINDS after review EDCR 2.20(e) provides in relevant part: [f]ailure  
15 of the opposing party to serve and file written opposition may be construed as an admission that  
16 the motion and/or joinder is meritorious and a consent to granting the same. COURT FURTHER  
17 FINDS after review no opposition to the Supplement has been filed.

18 THEREFORE COURT ORDERS for good cause appearing and after review the  
19 Supplement is hereby GRANTED and the Court hereby awards Plaintiff attorney fees in the  
20 amount of \$1,449,685.69, and costs in the amount of \$365,177.92, which amounts shall be added  
21 to the Judgment herein, jointly and severally against all Defendants, and which shall accrue  
22 interest as permitted by law at the legal rate, both pre- and post-judgment interest.

---

23  
24 <sup>2</sup> Collectively the Plaintiff’s Fee Motion and US RE’s Motion to Retax are referred to as the “Motions.”

25  
26 <sup>3</sup> Mr. Ogilvie and his firm, McDonald Carano, LLP, have withdrawn from representing Uni-Ter Underwriting  
27 Management Corp., Uni-Ter Claims Services Corp. (“Uni-Ter Defendants” and collectively with US Re referred to  
28 as the “Defendants”). The Uni-Ter Defendants did not file an opposition to the Motion or appear at the Hearing.  
Defendant US Re also filed Motion to Alter or Amend Judgment Pursuant to Rule 59(e), for Relief from Judgment  
and Pursuant to Rule 60(b), and for Stay of Execution Pursuant to 62(b)(3) and (4) (“US Re’s Motion to Amend”).  
At the Hearing US Re withdrew its Motion to Amend. Thus this order also resolves US Re’s Motion to Amend and  
the Court hereby acknowledges US Re’s Motion to Amend is withdrawn.

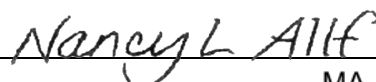


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*Commissioner of Insurance v. Chur et al.*  
*Case No.: A-14-711535-C*

IT IS HEREBY FURTHER ORDERED that the matter scheduled for November 8, 2022,  
on Chamber Calendar is hereby vacated.

Dated this 2nd day of December, 2022

  
MA

AFB 8B7 3B74 060E  
Nancy Alf  
District Court Judge

Respectfully submitted by:

Dated this 30<sup>th</sup> day of November, 2022.

HUTCHISON & STEFFEN

/s/Brenoch Wirthlin  
BRENOCH R. WIRTHLIN, ESQ.  
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*Attorneys for Plaintiff*

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Commissioner of Insurance for  
7 the State of Nevada as Receiver  
of Lewis and Clark, Plaintiff(s)

CASE NO: A-14-711535-C

DEPT. NO. Department 27

8 vs.

9 Robert Chur, Defendant(s)  
10

11 **AUTOMATED CERTIFICATE OF SERVICE**

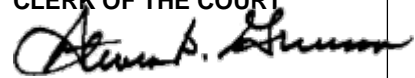
12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Order was served via the court's electronic eFile system to all  
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 12/2/2022

16 Adrina Harris .	aharris@fclaw.com
17 Angela T. Nakamura Ochoa .	aochoa@lipsonneilson.com
18 Ashley Scott-Johnson .	ascott-johnson@lipsonneilson.com
19 Brenoch Wirthlin .	bwirthli@fclaw.com
20 CaraMia Gerard .	cgerard@mcdonaldcarano.com
21 George F. Ogilvie III .	gogilvie@mcdonaldcarano.com
22 Jessica Ayala .	jayala@fclaw.com
23 Joanna Grigoriev .	jgrigoriev@ag.nv.gov
24 Jon M. Wilson .	jwilson@broadandcassel.com
25 Kathy Barrett .	kbarrett@mcdonaldcarano.com

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20	S. Dianne Pomonis	dpomonis@klnevada.com
21	Brenoch Wirthlin	bwirthlin@hutchlegal.com
22	Jon Linder	jlinder@hutchlegal.com



1 **NEO**

2 MARK A. HUTCHISON, ESQ. (4639)

3 BRENOCH R. WIRTHLIN, ESQ. (10282)

4 TANYA M FRASER, ESQ. (13872)

5 **HUTCHISON & STEFFEN**

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13 *Attorneys for Plaintiff*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

20 Plaintiff,

21 vs.

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

Defendants.

Case No.: A-14-711535-C

Dept. No.: XXVII

**NOTICE OF ENTRY OF ORDER**

Please take notice that an Order Granting Attorney Fees and Costs was entered on the 2nd  
day of December, 2022,

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///

///

1 a copy of which is attached hereto.

2 DATED this 2nd day of December, 2022.

3 HUTCHISON & STEFFEN

4  
5 By /s/Brenoch Wirthlin  
6 MARK A. HUTCHISON, ESQ. (4639)  
7 BRENOCH R. WIRTHLIN, ESQ. (10282)  
8 TANYA M FRASER, ESQ. (13872)  
9 10080 West Alta Drive, Suite 200  
10 Las Vegas, Nevada 89145  
11 *Attorneys for Plaintiff*  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that on this 2nd day of December, 2022, I caused the document entitled **NOTICE OF ENTRY OF ORDER** to be served on the following by Electronic Service to:

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

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

**OGM**

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TANYA M. FRASER, ESQ. (13872)  
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Las Vegas, Nevada 89145  
Telephone: (702) 385.2500  
Facsimile: (702) 385.2086  
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[tfraser@hutchlegal.com](mailto:tfraser@hutchlegal.com)  
*Attorneys for Plaintiff*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\* \* \*

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

Plaintiff,

vs.

ROBERT CHUR, STEVE FOGG, MARK  
GARBER, CAROL HARTER, ROBERT  
HURLBUT, BARBARA LUMPKIN, JEFF  
MARSHALL, ERIC STICKELS, UNI-TER  
UNDERWRITING MANAGEMENT CORP.,  
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U.S. RE CORPORATION,; DOES 1-50,  
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Defendants.

Case No.: A-14-711535-C

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**ORDER GRANTING ATTORNEY FEES  
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2 appeared on behalf of Plaintiff Commissioner of Insurance for the State of Nevada (“Plaintiff”);  
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4 Plaintiff’s Fee Motion was filed. Plaintiff filed an opposition to US Re’s Motion to Retax, and  
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11 calendar in sixty (60) days for Court to rule on the outstanding issues.

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21 to the Judgment herein, jointly and severally against all Defendants, and which shall accrue  
22 interest as permitted by law at the legal rate, both pre- and post-judgment interest.

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Defendant US Re also filed Motion to Alter or Amend Judgment Pursuant to Rule 59(e), for Relief from Judgment  
and Pursuant to Rule 60(b), and for Stay of Execution Pursuant to 62(b)(3) and (4) (“US Re’s Motion to Amend”).  
At the Hearing US Re withdrew its Motion to Amend. Thus this order also resolves US Re’s Motion to Amend and  
the Court hereby acknowledges US Re’s Motion to Amend is withdrawn.



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*Commissioner of Insurance v. Chur et al.*  
*Case No.: A-14-711535-C*

IT IS HEREBY FURTHER ORDERED that the matter scheduled for November 8, 2022,  
on Chamber Calendar is hereby vacated.

Dated this 2nd day of December, 2022

Nancy L Alf  
MA

AFB 8B7 3B74 060E  
Nancy Alf  
District Court Judge

Respectfully submitted by:

Dated this 30<sup>th</sup> day of November, 2022.

HUTCHISON & STEFFEN

/s/Brenoch Wirthlin  
BRENOCH R. WIRTHLIN, ESQ.  
Nevada Bar No. 10282  
TANYA M. FRASER, ESQ. (13872)  
Nevada Bar No. 13872  
Peccole Professional Park  
10080 West Alta Drive, Suite 200  
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 was served via the court's electronic eFile system to all  
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 12/2/2022

16 Adrina Harris .	aharris@fclaw.com
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19 Brenoch Wirthlin .	bwirthli@fclaw.com
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20	S. Dianne Pomonis	dpomonis@klnevada.com
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22	Jon Linder	jlinder@hutchlegal.com
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