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15 *Commissioner of Insurance,*  
16 *as the Permanent Receiver for*  
17 *Nevada Health CO-OP*

18  
19 IN THE EIGHTH JUDICIAL DISTRICT COURT  
20 CLARK COUNTY, NEVADA  
21

22	STATE OF NEVADA, EX REL.	)	Case No. A-15-725244-C
23	COMMISSIONER OF INSURANCE, IN HER	)	
24	OFFICIAL CAPACITY AS STATUTORY	)	Dept. No. 1
25	RECEIVER FOR DELINQUENT DOMESTIC	)	
26	INSURER,	)	
27		)	
28	Plaintiff,	)	
		)	
	vs.	)	
		)	
	NEVADA HEALTH CO-OP,	)	
		)	
	Defendant.	)	
		)	
		)	
		)	

29 **FIFTEENTH STATUS REPORT**

30 COME NOW, Commissioner of Insurance Barbara D. Richardson in her capacity as  
31 Receiver of Nevada Health CO-OP ("NHC," or the "CO-OP"), and CANTILO & BENNETT, L.L.P.,  
32 Special Deputy Receiver ("SDR" - SDR and the Commissioner as Receiver are referred to  
33 collectively herein as "Receiver") and file this Fifteenth Status Report in the above-captioned  
34 receivership.

## I. INTRODUCTION AND HISTORICAL BACKGROUND

The CO-OP is a state-licensed health insurer, formed in 2012 as a Health Maintenance Organization, with a Certificate of Authority granted by the State of Nevada Division of Insurance effective January 2, 2013. NHC was an Internal Revenue Code 501(c)(29) Qualified Non-Profit Health Insurance Issuer, entitled to tax exemption by the Internal Revenue Service. NHC was formed under a provision of the Patient Protection and Affordable Care Act (“ACA”) providing for the formation of Consumer Operated and Oriented Plans. Having received from the Centers for Medicare and Medicaid Services (“CMS”) of the United States Department of Health and Human Services (“HHS”) a start-up loan of \$17,080,047, and a “solvency” loan of \$48,820,349, NHC was required to operate as a non-profit, consumer-driven health insurance issuer for the benefit of the public. The CO-OP’s primary business was to provide ACA-compliant health coverage to residents of Nevada, and it operated its business for the benefit of Nevadans within the state, save for certain arrangements to provide nationwide health coverage to Nevadans traveling outside the state in certain circumstances. NHC began selling products on and off the Silver State Health Insurance Exchange (the “Exchange”) on January 1, 2014. Its products included individual, small group, and large group managed care coverages.

On October 1, 2015, this Court issued its Order Appointing the Acting Insurance Commissioner, Amy L. Parks as Temporary Receiver of NHC Pending Further Orders of the Court and Granting Temporary Injunctive Relief Pursuant to NRS 696B.270 (the “Temporary Receivership Order”). Further, on October 14, 2015, the Receivership Court entered its Permanent Injunction and Order Appointing Commissioner as Permanent Receiver of Nevada Health CO-OP (the “Permanent Receivership Order”), appointing the law firm of CANTILLO & BENNETT, L.L.P. (“C&B”) as SDR of NHC, in accordance with Chapter 696B of the Nevada Revised Statutes.

Via a Notice of Substitution of Receiver dated April 6, 2016, Ms. Joanna N. Grigoriev informed interested parties of the substitution of Commissioner Barbara D. Richardson, in place and stead of former Acting Commissioner Amy L. Parks, as the Receiver of NHC. This

1 substitution of Receiver was subsequent to Commissioner Richardson's appointment as  
2 Commissioner of Insurance for the State of Nevada.

3 This Court, through its Final Order Finding and Declaring Nevada Health CO-OP to be  
4 Insolvent and Placing Nevada Health CO-OP into Liquidation (the "Final Order") dated  
5 September 20, 2016, adjudged NHC to be insolvent on grounds that it was unable to meet  
6 obligations as they mature. The Final Order also authorized the Receiver to liquidate the  
7 business of NHC and wind up its ceased operations pursuant to applicable Nevada law. The  
8 Receiver has since transitioned the receivership estate from rehabilitation to liquidation.

9 The Receiver continues to file quarterly status reports as ordered by this Court.

## 10 II. RECEIVERSHIP ADMINISTRATION

### 11 Receivership Administrative Services and Oversight

12 CANTILO & BENNETT, L.L.P., as SDR of NHC, manages the receivership estate and  
13 conducts its affairs. PALOMAR FINANCIAL, LC ("Palomar"), an affiliate of the SDR, performs  
14 administration, information technology, and other related services for the Receiver under the  
15 supervision of the SDR. The Receiver has included an informational copy, as Exhibit 1 to this  
16 Fifteenth Status Report, of the invoices either deferred or paid to the SDR and other  
17 receivership consultants since the last status report to this Court.<sup>1</sup>

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18 <sup>1</sup> The *in camera* materials are being submitted in a separate envelope that reflect paid or deferred  
19 invoices. The Receiver has elected to defer certain administrative expenses until a later date when further assets  
20 become available to the Receiver. The Receiver has included copies of all invoices that have been approved but  
deferred as to the payment of fee amounts only.

21 Certain billings submitted to the Court are appropriate for *in camera* review (as opposed to being made  
22 part of a public filing). More particularly, and as discussed in further detail below, certain consultants in this matter  
are providing expert witness related services. As such, the billing entries relating thereto should be considered  
confidential and/or otherwise not subject to discovery.

23 In this regard, courts have held that the bills of legal counsel and experts may be withheld from legal  
24 discovery and are not subject to legal disclosure, as this information may provide indications or context concerning  
25 potential litigation strategy and the nature of the expert services being provided. See, e.g., *Avnet, Inc. v. Avana  
26 Technologies Inc.*, No. 2:13-cv-00929- GMN-PAL, 2014 WL 6882345, at \*1 (D. Nev. Dec. 4, 2014) (finding that  
27 billing entries were privileged because they reveal a party's strategy and the nature of services provided); *Fed.  
28 Sav. & Loan Ins. Corp. v. Ferm*, 909 F.2d 372, 374-75 (9th Cir. 1990) (considering whether or not fee information  
revealed counsel's mental impressions concerning litigation strategy). Other courts that have addressed this issue  
have recognized that the "attorney-client privilege embraces attorney time, records and statements to the extent  
that they reveal litigation strategy and the nature of the services provided." *Real v. Cont'l Grp., Inc.*, 116 F.R.D.  
211, 213 (N.D. Cal. 1986).

1 **Resolution of Outstanding Receivership Matters**

2 ***Claims Adjudications***

3 NHC has finalized and mailed the claims adjudications and applicable Notices of Claim  
4 Determination (“NCD”) for healthcare claims previously submitted by providers to NHC’s  
5 Javelina Claims Processing Database. The total allowed amount of these claims is  
6 approximately \$33.7 million. In addition to provider claims, the SDR has also mailed NCDs for  
7 those Proofs of Claim submitted to NHC relating to Policy Claims (*i.e.*, Class B claims pursuant  
8 to NRS 696B.420(1)(b)). The total allowed amount of these claims is approximately  
9 \$20,836.91. The Receiver has included as Exhibit 2 to this Fifteenth Status Report, a report  
10 on the determination of the Receiver on each claim approved in whole or in part to date.<sup>2</sup> The  
11 SDR is evaluating appeals as they are received and will attempt to resolve them when possible  
12 without the need for a hearing. Once all appeal deadlines have run, and all appeals have been  
13 reviewed by the SDR, the SDR will inform the Receivership Court of any unresolved appeals  
14 so that a hearing or hearings may be set.

15 There are approximately \$3.36M in outstanding proofs of claim which have been  
16 assigned to a priority Class ‘C’ (*i.e.*, NRS 696B.420(1)(c)) or lower.<sup>3</sup> The SDR has not reached  
17 the merits of these claims, and may not do so until it appears that there may be assets available  
18 for distribution to these classes of claims, per NRS 696B.330(4).

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21 The *in-camera* review should apply not only to documentation concerning attorneys’ fees, but it also  
22 extends to “details of work revealed in [an] expert’s work description [which] would relate to tasks for which she  
23 [or he] was compensated[.]” a situation which is “analogous to protecting attorney-client privileged information  
24 contained in counsel’s bills describing work performed.” *See DaVita Healthcare Partners, Inc. v. United States*,  
25 128 Fed. Cl. 584, 592-93 (2016); *see also Chaudhry v. Gallerizzo*, 174 F.3d 394, 402 (4th Cir. 1999) (recognizing  
26 that “correspondence, bills, ledgers, statements, and time records which also reveal the motive of the client in  
27 seeking representation, litigation strategy, or the specific nature of the services provided, such as researching  
28 particular areas of law,” are protected from disclosure) (quoting *Clarke v. Am. Commerce Nat’l Bank*, 974 F.2d  
127, 129 (9th Cir. 1992)).

<sup>2</sup> The *in camera* Exhibit 2 claim report is being submitted in a separate envelope. The Receiver has  
elected, out of an abundance of caution, to keep confidential the names of the individual claimants (including NHC  
plan members) and the amounts that have been approved for their claims.

<sup>3</sup> This does not include a claim by the U.S. Department of Health and Human Services, which the SDR  
has previously reported to this Court. That claim was denied in full by the SDR, and the government did not file  
an appeal of the SDR’s determination. This determination is now final and non-appealable.

1           **CMS Receivables**

2           As explained in prior status reports, and throughout the pendency of the receivership,  
3 the Receiver is working to resolve certain outstanding matters relating to the collection of  
4 amounts due under the various federal receivables programs of which the CO-OP was a  
5 participant, and which are administered primarily by CMS. Considering the size of these federal  
6 receivables in relation to the CO-OP's potential total liabilities, the receipt of these funds by the  
7 receivership estate represents a key component of any future claim payments by NHC – as is  
8 the legal determination of the government's asserted right to be paid ahead of all other creditors  
9 in the estate (including providers and members). CMS has maintained the position that any  
10 monies deemed owed to NHC (and thus the receivership estate) are to be offset against the  
11 amounts CMS asserts it is owed under the start-up loan awarded to NHC. To date, CMS has  
12 offset approximately \$12.9 million against the start-up loan that, the Receiver maintains, should  
13 have instead been paid to NHC. When the full amount of 2014 - 2015 risk corridors payments  
14 (*i.e.*, not just the prorated amount<sup>4</sup>) are included in the total, NHC is owed over \$55 million by  
15 CMS.

16           As of the date of filing of this Fifteenth Status Report, the Receiver asserts that the CO-  
17 OP, according to the various formulae applicable to Qualified Health Plans under the ACA, and  
18 notwithstanding prior attempts by CMS to offset these receivables against start-up loan funds  
19 in contravention of Nevada's laws relating to the regulation of insurer solvency, is owed over  
20 \$12.9M more in promised payments under various other CMS programs. The Receiver  
21 reserves the right to revise, adjust, or otherwise restate her basis for the CMS Receivables  
22 claims as new information is received and litigation progresses with CMS.

23  
24           <sup>4</sup> Due to a shortfall in risk corridor collections, CMS asserts it can only pay a prorated percentage of  
25 issuers' 2014 Risk Corridors payments and it will use all collections in subsequent years towards the 2014  
26 payments (*i.e.*, they are unable to make payments for the subsequent years at all). DEP'T OF HEALTH & HUMAN  
27 SERVICES & CENTERS FOR MEDICARE & MEDICAID SERVICES ("CMS"), CCIIO MEMORANDUM, RISK  
28 CORRIDORS PAYMENT AND CHARGE AMOUNTS FOR THE 2015 BENEFIT YEAR (November 18, 2016)  
(available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2015-RC-Issuer-level-Report-11-18-16-FINAL-v2.pdf>); CMS, CCIIO MEMORANDUM, RISK CORRIDORS PAYMENT AND  
CHARGE AMOUNTS FOR THE 2016 BENEFIT YEAR (November 15, 2017) (available at <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/Risk-Corridors-Amounts-2016.pdf>).

1 **Use of Third-Party Contractors as Part of Business Operations**

2 The Receiver utilizes the services of several third-party contractors that had been  
3 engaged before commencement of the receivership, and some that were engaged after the  
4 receivership commenced to assist in management of NHC's affairs. The Receiver has also  
5 subsequently engaged the services of some third-party contractors (*i.e.*, Jacobson and ADP)  
6 to perform administrative and support services to assist the administration of the Company.

7 The following is a list of independent contractors currently assisting the receivership:

8 1. Eldorado, a division of Mphasis Corporation, the former hosting and software  
9 service for claims data, to provide continued storage and read-only access to historical claims  
10 and enrollment data. The SDR is terminating Eldorado's services as of July 31, 2019.

11 2. The Jacobson Group, to provide customer service staffing support. These  
12 support services are scheduled to end on July 1, 2019.

13 3. ADP, to provide payroll support and processing for employee compensation and  
14 benefits.

15 **Internal Administrative Matters Related to Wind Down**

16 Based on the current needs of the receivership, the Receiver has trimmed existing staff  
17 to one part-time staff member as of June 1, 2019. The Receiver completed the wind down and  
18 closure of NHC's administrative office this spring. The Receiver has reduced the Information  
19 Technology needs of the CO-OP to reduce estate expenses and will continue to do so.

20 **Continuation of Action Against Various Professionals and Other Firms Who Performed**  
21 **Services for and on Behalf of NHC**

22 On August 25, 2017, Counsel for the Receiver filed in Clark County District Court a  
23 complaint (Case No. A-17-760558-C in Department No. 18) against various persons, third-  
24 party vendors, and professional service firms which are alleged to have contributed to NHC's  
25 losses by, among other things, failing to adhere to applicable standards of professional care  
26 and requirements imposed by law, misrepresentation concerning quality and standard of care  
27 for services performed, and breaches of contract, duty, and implied covenants of good faith  
28 and fair dealing. The complaint names, among others, NHC's former actuaries, accountants,

1 auditors, and providers of certain business operations and utilization review services, as well  
2 as those individuals who specifically performed, or who were in the role of supervising the  
3 performance of, those services. The Complaint also names several NHC former directors and  
4 executive management.

5 Via Plaintiff's Motion to Amend Complaint, filed on July 17, 2018, the Receiver sought  
6 an order granting leave to amend the August 25, 2017, complaint against certain of NHC's  
7 various directors, officers, and third-party contractors, citing the discovery of additional facts in  
8 support of assertions made in the first complaint, as well as the need to add a new defendant  
9 to the existing proceedings. This Motion to Amend Complaint was filed in judicial department  
10 number 16, in line with the terms of contemporaneous Notice of Department Reassignment  
11 assigning the proceedings to Judge Timothy C. Williams. The Motion to Amend Complaint was  
12 approved via an order entered on September 18, 2018.

13 Milliman filed its Motion to Compel Arbitration on November 6, 2017, a motion which  
14 was challenged by the December 11, 2017, filing of Plaintiff's Opposition to Milliman's Motion  
15 to Compel Arbitration. The hearing to address this issue was scheduled for December 12,  
16 2017, but had been reset for a hearing on January 9, 2018. Milliman would again state its  
17 bases to compel arbitration of those matters raised in the instant litigation via a reply dated  
18 January 3, 2018. This motion and related briefing were heard by Judge Kathleen Delaney on  
19 January 9, 2018. The related Order Granting Milliman's Motion to Compel Arbitration, dated  
20 March 12, 2018, held that a requirement to arbitrate in the pre-receivership agreements  
21 between NHC and Milliman did apply to the Receiver's claims against Milliman. The Receiver  
22 filed a Motion for Reconsideration of the Milliman arbitration ruling, dated March 29, 2018. The  
23 Motion for Reconsideration sought review of the prior judgment compelling arbitration on  
24 various grounds.

25 Via an Opposition to Plaintiff's Motion for Reconsideration filed April 16, 2018, Milliman  
26 sought to challenge the Receiver's effort to avoid compelled arbitration, largely restating the  
27 grounds set forth in Milliman's original November 6, 2017, Motion to Compel Arbitration. The  
28 Receiver filed her Reply in Support of Motion for Reconsideration on April 24, 2018. On May 1,

1 2018, argument on the Motion for Reconsideration was heard by Judge Delaney, who  
2 subsequently ordered the proceedings continued to May 29, 2018, and requested more briefing  
3 from the parties on the most relevant legal questions underlying the Motion for Reconsideration.  
4 The Receiver filed her Sur-Reply in Support of Motion for Reconsideration, elaborating on the  
5 relevant choice-of-law and forum selection questions at issue in the dispute, dated June 29,  
6 2018. Hearing was held on the Motion for Reconsideration before Judge Delaney on July 24,  
7 2018. Through an order dated August 7, 2018, Judge Delaney denied Plaintiff's Motion for  
8 Reconsideration of that Court's March 12, 2018, order granting Milliman's Motion to Compel  
9 Arbitration.

10 The Receiver then determined it was necessary to file, and did file on December 17,  
11 2018, a Petition under Nevada Rule of Appellate Procedure 21 for Writ of Mandamus in the  
12 Supreme Court of the State of Nevada (the "Petition for Writ"). The Petition for Writ requests  
13 that the Supreme Court of Nevada "issue a writ of mandamus directing the District Court to  
14 exercise subject matter jurisdiction over the claims raised by Petitioner against Real Parties in  
15 Interest." In response, and on March 20, 2019, Milliman filed its Response of Real Parties in  
16 Interest to Petition for Writ of Mandamus, asserting *inter alia* its rights to compel arbitration in  
17 this action. The Petition for Writ remains pending.

18 The Receiver has settled its claims against Millennium, and the settlement agreement  
19 was approved by the Court. Millennium has made two of the required settlement progress  
20 payments, and all payments to date were timely made.

21 The Receiver's claims are ongoing against Milliman, Inc. (and individually named  
22 Milliman defendants), NHC's former directors and officers, InsureMonkey and Alex Rivlin,  
23 Larson & Company (and individually named Larson defendants), Nevada Health Solutions,  
24 LLC, and Unite Here Health. Discovery is underway, and the following deadlines have been  
25 set by Judge Timothy C. Williams, per the May 1, 2019 2<sup>nd</sup> Amended Order Setting Civil Jury  
26 Trial, Pre-Trial, Calendar Call, and Deadlines Motions; Amended Discovery Scheduling Order:

- 27 1. **July 30, 2019:** Motions to Amend Pleadings or add parties; and Designation of  
28 Experts Pursuant to NRCP 16.1(a)(2)

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- 1           2.     **August 29, 2019:** Designation of Rebuttal Experts Pursuant to NRCP 16.1(a)(2)
- 2                     is due
- 3           3.     **October 28, 2019:** Discovery Cut-Off
- 4           4.     **November 27, 2019:** Motions in Limine or other Dispositive Motions
- 5           5.     **January 8, 2019:** Pre-Trial Memorandum filing deadline
- 6           6.     **January 9, 2020:** Pre-trial conference/calendar call
- 7           7.     **January 27, 2020:** Case is set to be tried to a jury on a five-week stack

### 8 **Pending Action Against the United States in the Court of Federal Claims**

9           On November 8, 2018, the Receiver filed a Complaint in the United States Court of  
10 Federal Claims (“CFC Complaint”) against the United States for monetary amounts owed to  
11 NHC under the Consumer Operated and Oriented Plan program organized pursuant to the  
12 ACA. The Receiver determined that such litigation was necessary in order to advance the  
13 interests of the receivership estate’s various creditors, and to protect and conserve assets that  
14 rightfully belong to the estate.

15           In Counts I through IV, the CFC Complaint prays for relief in the form of an award of  
16 damages and monetary relief equal to the difference between the amount NHC actually  
17 received in payments under Sections 1342, 1341, 1343, and 1401 of the ACA – the statutes  
18 which describe and enact the risk corridors, transitional reinsurance, risk adjustment, and cost  
19 sharing reduction programs respectively – and the amount NHC should have received under  
20 those laws. Count IV also seeks an award of damages and monetary relief equal to the  
21 difference between what NHC actually received in premium tax credits for 2015 under Section  
22 1401 and the amount it should have received (however, subsequent communications with CMS  
23 have resulted in the Receiver determining that no premium tax credits are still owed, such that  
24 the Receiver will no longer pursue that particular claim).

25           The CFC Complaint’s Count V (breach of contract by offset) and Count VI (illegal  
26 exaction) plead alternate theories for recovery of money damages resulting from the United  
27 States, through its agents at HHS and CMS, offsetting payments that CMS owed to NHC  
28

1 against funds NHC allegedly owed to the government pursuant to the terms of the CO-OP start-  
2 up loan.

3 On March 7, 2019, the United States filed a motion to dismiss the CFC Complaint's  
4 ("Motion to Dismiss") argument that none of Counts I through VI state claims upon which relief  
5 can be granted. NHC's current deadline for responding to the Motion to Dismiss is July 9,  
6 2019. However, on June 24, 2019, the United States Supreme Court granted certiorari in three  
7 risk corridors appeals: *Moda Health Plan, Inc. v. United States*, 892 F.3d 1311, 1329 (Fed. Cir.  
8 2018), *Land of Lincoln Mutual Health Ins. Co. v. United States*, 892 F.3d 1184 (Fed. Cir. 2018),  
9 and *Maine Cmty. Health Options v. United States*, 729 Fed. Appx. 939 (2018). In light of that  
10 development, the Receiver anticipates that the United States Court of Federal Claims will stay  
11 Count I of the CFC Complaint pending the Supreme Court's decision in the risk corridors  
12 appeals but will permit NHC to continue pursuing Counts II – VI in the meantime, given that  
13 none of the risk corridors opinions involve any question of law relevant to Counts II – VI.

#### 14 **Current Receivership Assets**

15 The Receiver's evaluation of the assets and liabilities of the CO-OP is ongoing, and  
16 adjusted periodically to accommodate new authorized payments, receipts, and transfers.  
17 Below is an overview of some key asset matters thus far identified by the Receiver (other than  
18 those already mentioned herein):

19 1. The unrestricted cash assets of the CO-OP have fluctuated with post-  
20 receivership expenses and claim payments, as well as with the Receiver's receipt of member  
21 premiums. The currently-available, unrestricted cash assets of the CO-OP as of May 31, 2019,  
22 were approximately \$521,826. The majority of NHC's currently available and liquid assets have  
23 been invested in a bond mutual fund, with the remainder of such assets held in bank deposits.

24 2. The financial information of NHC in this Fifteenth Status Report provides  
25 estimates. NHC's financials may materially vary depending upon the estate's receipt of the  
26 promised federal receivables payments under the various ACA programs described in this  
27 report and future litigation recoverables. These figures will remain estimates until the estate  
28 receives clearer indications from CMS and the federal government as to the amount and timing

1 of any federal payments or future appropriations, as well as the final disposition of CMS  
2 receivable balances in which CMS has placed an administrative hold and asserted rights to  
3 setoff, many of these matters are being litigated currently.

4 3. The Receiver is including, as Exhibit 3 attached hereto, a cash flow report for  
5 NHC for the period covering the inception of the receivership through May 31, 2019. This  
6 report reflects a summary of disbursements and collections made by NHC during this period.

### 7 **CONCLUSION**

8 The Receiver has submitted this report in compliance with the Receivership Court's  
9 instructions for a status report on NHC. The Receiver requests that the Court approve this  
10 Fifteenth Status Report and the actions taken by the Receiver.

11 DATED this 8th day of July 2019.

12 Respectfully submitted:

13 Barbara D. Richardson, Commissioner of  
14 Insurance of the State of Nevada, in her  
15 Official Capacity as Statutory Receiver of  
16 Delinquent Domestic Insurer

17 By: /s/ CANTILO & BENNETT, L.L.P.  
18 Special Deputy Receiver  
19 By Its Authorized Representative  
20 Patrick H. Cantilo

21 Respectfully submitted by:

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