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14 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 STATE OF NEVADA, EX REL.
17 COMMISSIONER OF INSURANCE, IN HER
18 OFFICIAL CAPACITY AS STATUTORY
19 RECEIVER FOR DELINQUENT DOMESTIC
20 INSURER,

CASE NO. A-15-725244-C
Department 1

Plaintiff,

v.

NEVADA HEALTH CO-OP,

Defendant.

21
22 **SEVENTEENTH STATUS REPORT**

23 COME NOW, Commissioner of Insurance Barbara D. Richardson in her capacity as
24 Receiver of Nevada Health CO-OP (“NHC,” or the “CO-OP”), and CANTILO & BENNETT,
25 L.L.P., Special Deputy Receiver (“SDR” - SDR and the Commissioner as Receiver are
26 referred to collectively herein as “Receiver”) and file this Seventeenth Status Report in the
27 above-captioned receivership.

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1 **I. INTRODUCTION AND HISTORICAL BACKGROUND**

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

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

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1 Via a Notice of Substitution of Receiver dated April 6, 2016, Deputy Attorney General
2 Joanna N. Grigoriev informed interested parties of the substitution of Commissioner Barbara
3 D. Richardson, in place and stead of former Acting Commissioner Amy L. Parks, as the
4 Receiver of NHC. This substitution of Receiver was subsequent to Commissioner
5 Richardson’s appointment as Commissioner of Insurance for the State of Nevada.

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

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

13 **II. RECEIVERSHIP ADMINISTRATION**

14 **Receivership Administrative Services and Oversight**

15 CANTILO & BENNETT, L.L.P., as SDR of NHC, manages the receivership estate and
16 conducts its affairs. PALOMAR FINANCIAL, LC, an affiliate of the SDR, performs
17 administration, information technology, and other related services for the Receiver under the
18 supervision of the SDR. The Receiver has included an informational copy, as Exhibit 1 to
19 this Seventeenth Status Report, of the invoices either deferred or paid to the SDR and other
20 receivership consultants since the last status report to this Court.¹

21 _____
22 ¹ The *in camera* materials are being submitted in a separate envelope that reflect paid or
23 deferred invoices. The Receiver has elected to defer certain administrative expenses until a later date
24 when further assets 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.

25 Certain billings submitted to the Court are appropriate for *in camera* review (as opposed to
26 being made part of a public filing). More particularly, and as discussed in further detail below, certain
27 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.

28 In this regard, courts have held that the bills of legal counsel and experts may be withheld
from legal discovery and are not subject to legal disclosure, as this information may provide
indications or context concerning potential litigation strategy and the nature of the expert services

1 **Resolution of Outstanding Receivership Matters**

2 ***Claims Adjudications & Distributions***

3 As the SDR reported in its Sixteenth Status Report to this Court, Notices of Claim
4 Determination (“NCDs”) have been finalized and mailed for healthcare claims previously
5 submitted by providers to NHC’s Javelina Claims Processing Database. The total allowed
6 amount of these approved claims is approximately \$33.7 million. The NHC members also
7 received NCDs that showed them the amount that the SDR has approved to be paid to their
8 providers and the amount of member responsibility (*i.e.*, the co-pays, deductibles, and
9 coinsurance), if any, that they may owe on their providers’ outstanding claims. The SDR has
10 received approval from the Court to make a distribution of certain estate assets for the partial
11 payment of these providers’ claims, which have been classified by the SDR as claims made
12 under NHC policies pursuant to NRS 696B.420(1)(b)).² The SDR is collecting IRS W-9
13 forms and other necessary documentation from the providers in advance of making any claim

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17 being provided. *See, e.g., Avnet, Inc. v. Avana Technologies Inc.*, No. 2:13-cv-00929-GMN-PAL,
18 2014 WL 6882345, at *1 (D. Nev. Dec. 4, 2014) (finding that billing entries were privileged because
19 they reveal a party’s strategy and the nature of services provided); *Fed. Sav. & Loan Ins. Corp. v.*
20 *Ferm*, 909 F.2d 372, 374-75 (9th Cir. 1990) (considering whether or not fee information revealed
21 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).

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

28 ² See, *infra* section titled “Sale of Risk Corridors Receivable.”

1 payments, to assure that the estate can meet any mandatory federal tax reporting
2 requirements.

3 The SDR has also mailed all of the NCDs for those proofs of claim submitted to the
4 SDR relating to Policy Claims (*i.e.*, Class B claims pursuant to NRS 696B.420(1)(b)). The
5 total allowed amount for these claims is \$5,102.64. The SDR recently mailed checks to the
6 members for the partial payment of these policy claims. The Court, on December 6, 2019,
7 granted the SDR's Motion for Order Authorizing Satisfaction of Hardship Claims, which
8 allows these member claims to be paid in full.³ The SDR is preparing to mail the remainder
9 payments to the members (*i.e.*, for the \$5,102.64 in approved claims of members). The total
10 allowed amount for the members' claims is subject to a potential small increase as two (2) of
11 the NCDs that have been mailed to members are still subject to potential appeal and two other
12 NCD appeals have been filed and remain pending. The SDR will keep the Court apprised of
13 the resolution of these matters, and a resolution of these remaining claims is expected very
14 soon. The Receiver will provide an updated report showing the determinations of the
15 Receiver on each claim approved in whole or in part to date.

16 The SDR is continuing to evaluate outstanding appeals and anticipates that such
17 appeals will be resolved soon. Once all appeal deadlines have run, and all appeals have been
18 reviewed by the SDR, the SDR will inform the Receivership Court of any unresolved appeals
19 so that a hearing or hearings may be set.

20 There are approximately \$3.36M in outstanding proofs of claim which have been
21 assigned to a priority Class 'C' (*i.e.*, NRS 696B.420(1)(c)) or lower.⁴ The SDR has not
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24 ³ The SDR also received approval to pay in full the provider claims submitted under the
25 hardship payment request procedure, and will make these payments once the appropriate tax forms
26 and documentation have been collected from the providers as discussed *supra*.

27 ⁴ This does not include a claim by the U.S. Department of Health and Human Services,
28 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 reached the merits of these claims, and may not do so until it appears that there may be assets
2 available for distribution to these classes of claims, per NRS 696B.330(4).

3 *CMS Receivables*

4 As explained in prior status reports, and throughout the pendency of the receivership,
5 the Receiver is working to resolve certain outstanding matters relating to the collection of
6 amounts due under the various federal receivables programs, of which the CO-OP was a
7 participant, and which are administered primarily by CMS. Considering the size of these
8 federal receivables in relation to the CO-OP's potential total liabilities, the receipt of these
9 funds by the receivership estate represents a key component of the largest expected portion
10 of future claim payments by NHC – as is the legal determination of the government's asserted
11 right to be paid ahead of all other creditors in the estate (including providers and members).
12 CMS has maintained the position that any monies deemed owed to NHC (and thus the
13 receivership estate) are to be offset against the amounts CMS asserts it is owed under the
14 start-up loan awarded to NHC. To date, CMS has offset approximately \$12.9 million against
15 the start-up loan that, the Receiver maintains, should have instead been paid to NHC. When
16 the full amount of 2014 - 2015 Risk Corridors payments (*i.e.*, not just the prorated amount⁵)
17 are included in the total, NHC is owed over \$55 million by CMS.⁶

18 As of the date of filing of this Seventeenth Status Report, the Receiver asserts that the
19 CO-OP, according to the various formulae applicable to Qualified Health Plans under the
20 ACA, and notwithstanding prior attempts by CMS to offset these receivables against start-up
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22 ⁵ Due to a shortfall in risk corridor collections, CMS asserts it can only pay a prorated
23 percentage of issuers' 2014 Risk Corridors payments and it will use all collections in subsequent
24 years towards the 2014 payments (*i.e.*, they are unable to make payments for the subsequent years
25 at all). DEP'T OF HEALTH & HUMAN SERVICES & CENTERS FOR MEDICARE &
26 MEDICAID SERVICES ("CMS"), CCIIO MEMORANDUM, RISK CORRIDORS PAYMENT
27 AND CHARGE AMOUNTS FOR THE 2015 BENEFIT YEAR (November 18, 2016) (available
28 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>).

⁶ See "Sale of Risk Corridors Receivable" discussion later herein.

1 loan funds in contravention of Nevada’s laws relating to the regulation of insurer solvency,
2 is owed over \$12.9M more in promised payments under various other CMS programs. The
3 Receiver reserves the right to revise, adjust, or otherwise restate her basis for the CMS
4 receivables claims as new information is received and litigation progresses with CMS. As
5 described further below in this report, the Supreme Court of the United States heard oral
6 argument on December 10, 2019, in the case of *Maine Community Health Options v. United*
7 *States*, No. 18-1023, in order to address the legal status and collectability of amounts owed
8 to CO-OPs by CMS and the federal government under the Risk Corridors program. A
9 decision in that case is pending.

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

11 The Receiver utilized the services of several third-party contractors that had been
12 engaged before commencement of the receivership, and some that were engaged after the
13 receivership commenced to assist in management of NHC’s affairs. As part of its efforts to
14 wind-down the operations of the company and reduce administrative expenses of the estate,
15 the Receiver has now terminated the services of all remaining third-party vendors.

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

17 Based on the current needs of the receivership, the Receiver has trimmed existing staff
18 to one part-time staff member who now works on a contract basis. The Receiver may contract
19 to use the services of certain former employees for specific, limited-term receivership
20 projects. The Receiver completed the wind down and closure of NHC’s administrative office
21 this spring. The Receiver has reduced the Information Technology needs of the CO-OP to
22 reduce estate expenses, and will continue to do so as ongoing receivership responsibilities
23 permit.

24 **Continuation of Action Against Various Professionals and Other Firms Who Performed** 25 **Services for and on Behalf of NHC**

26 On August 25, 2017, Counsel for the Receiver filed in Clark County District Court a
27 complaint (Case No. A-17-760558-C in Department No. 18) against various persons, third-
28 party vendors, and professional service firms which are alleged to have contributed to NHC’s

1 losses by, among other things, failing to adhere to applicable standards of professional care
2 and requirements imposed by law, misrepresentation concerning quality and standard of care
3 for services performed, and breaches of contract, duty, and implied covenants of good faith
4 and fair dealing. The complaint names, among others, NHC's former actuaries, accountants,
5 auditors, and providers of certain business operations and utilization review services, as well
6 as those individuals who specifically performed, or who were in the role of supervising the
7 performance of, those services. The complaint also names several NHC former directors and
8 executive management.

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

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

1 Via an Opposition to Plaintiff’s Motion for Reconsideration filed April 16, 2018,
2 Milliman sought to challenge the Receiver’s effort to avoid compelled arbitration, largely
3 restating the grounds set forth in Milliman’s original November 6, 2017, Motion to Compel
4 Arbitration. The Receiver filed her Reply in Support of Motion for Reconsideration on
5 April 24, 2018. On May 1, 2018, argument on the Motion for Reconsideration was heard by
6 Judge Delaney, who subsequently ordered the proceedings continued to May 29, 2018, and
7 requested more briefing from the parties on the most relevant legal questions underlying the
8 Motion for Reconsideration. The Receiver filed her Sur-Reply in Support of Motion for
9 Reconsideration on June 29, 2018, elaborating on the relevant choice-of-law and forum
10 selection questions at issue in the dispute. Hearing was held on the Motion for
11 Reconsideration before Judge Delaney on July 24, 2018. Through an order dated August 7,
12 2018, Judge Delaney denied Plaintiff’s Motion for Reconsideration of that Court’s March 12,
13 2018, order granting Milliman’s Motion to Compel Arbitration.

14 The Receiver then determined it was necessary to file, and did file on December 17,
15 2018, a Petition under Nevada Rule of Appellate Procedure 21 for Writ of Mandamus in the
16 Supreme Court of the State of Nevada (the “Petition for Writ”). The Petition for Writ requests
17 that the Supreme Court of Nevada “issue a writ of mandamus directing the District Court to
18 exercise subject matter jurisdiction over the claims raised by Petitioner against Real Parties
19 in Interest.” In response, and on March 20, 2019, Milliman filed its Response of Real Parties
20 in Interest to Petition for Writ of Mandamus, asserting *inter alia* its rights to compel
21 arbitration in this action. The Receiver filed her Reply in Support of Petition for Writ of
22 Mandamus on May 1, 2019, after having received an earlier extension of filing deadlines.
23 On December 19, 2019, the Nevada Supreme Court ruled against intervening to overturn the
24 order to compel arbitration regarding Milliman.

25 The Receiver’s claims are ongoing against Milliman, Inc. (and individually named
26 Milliman defendants), NHC’s former directors and officers, InsureMonkey and Alex Rivlin,
27 Larson & Company (and individually named Larson defendants), Nevada Health Solutions,
28 LLC, and Unite Here Health. Discovery is underway, and the following deadlines have been

1 set by Judge Timothy C. Williams, per the November 19, 2019, 3rd Amended Order Setting
2 Civil Jury Trial, Pre-Trial, Calendar Call, and Deadlines Motions; Amended Discovery
3 Scheduling Order:

- 4 1. **April 8, 2020:** Motions to Amend Pleadings or add parties
- 5 2. **February 8, 2020:** Designation of Experts Pursuant to NRCP 16.1(a)(2)
6 (initially April 8, 2020, per the 3rd Amended Order, later moved via the Amended
7 Discovery Scheduling Order dated November 26, 2019)
- 8 3. **April 8, 2020:** Designation of Rebuttal Experts Pursuant to
9 NRCP 16.1(a)(2) (initially May 8, 2020, later moved via the Order dated
10 November 26, 2019)
- 11 4. **July 7, 2020:** Discovery Cut Off
- 12 5. **August 6, 2020:** Motions in Limine or other Dispositive Motions
- 13 6. **October 2, 2020:** Pre-Trial Memorandum filing deadline
- 14 7. **September 17, 2020:** Pre-trial conference/calendar call
- 15 8. **October 5, 2020:** Case is set to be tried to a jury on a five-week stack

16 As of the date of filing of this Status Report, no new scheduling orders have been
17 issued extending these deadlines, although certain expert reporting dates may be amended by
18 stipulation of the parties in the near future if deemed necessary and approved by the court.

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

22 Defendants Unite Here Health and Nevada Health Solutions filed, on August 21, 2019,
23 their Motion to Stay on Order Shortening Time (the “Motion to Stay”), requesting that the
24 court in Case No. A-17-760558-C stay all pending proceedings on the basis, as described
25 below, of the decision of the Supreme Court of the United States to grant certiorari to review
26 decisions rendered by the United States Court of Federal Claims (“CFC”) in *Moda Health*
27 *Plan, Inc. v. United States*, *Land of Lincoln Mutual Insurance Company v. United States*, and
28 *Maine Community Health Options v. United States* (collectively, “Supreme Court Appeal

1 Cases”). The Supreme Court Appeal Cases all concern lawsuits against the federal
2 government for amounts owed to ACA-compliant CO-OPs under the “Risk Corridor” federal
3 receivables program, of which this Court has been noticed throughout the term of this
4 receivership.

5 The Motion to Stay’s primary argument is that the damages model articulated in the
6 Receiver’s instant suit against NHC’s former directors, officers, vendors, and others depends
7 in part upon establishing that the United States was required to make full “Risk Corridors”
8 payments, and therefore the decision in the Supreme Court Appeal Cases would therefore
9 substantially affect the Defendants’ overall extent of liability by tens of millions of dollars.
10 As Defendants’ arguments in the Motion to Stay assert, if the United States were not liable
11 to NHC, for one reason or another, to make Risk Corridors payments, then Defendants cannot
12 be liable for damaging NHC’s right to collect such amounts.

13 The Receiver filed her Plaintiff’s Opposition to the Motion to Stay on August 26,
14 2019, on the basis that delay of the proceedings in the instant litigation sought by the
15 Defendants represented an unwarranted attempt to forestall other aspects of the litigation not
16 directly tied to the legal questions being considered on appeal. The Opposition to the Motion
17 to Stay asserts that none of the Receiver’s claims and state-law causes of action against the
18 Defendants in the instant litigation are bound up in the United States Supreme Court’s review
19 of the decision in the Supreme Court Appeal Cases, and that the outcome of these cases will
20 not seriously affect how the parties in the instant litigation will prepare for trial.

21 The Motion to Stay and the Opposition to same were heard by Judge Timothy C.
22 Williams on August 27, 2019, and were continued on that date to permit for additional
23 supplemental briefing on essential questions of law. On September 10, 2019, Defendants
24 Unite Here Health and Nevada Health Solutions filed their Supplemental Brief in support of
25 their Motion to Stay, providing additional legal authorities. The Receiver responded with her
26 own Supplemental Brief in Response to the Motion to Stay on September 24, 2019. The
27 matter was heard again before Judge Williams on October 1, 2019, and the matter was
28 continued for another hearing until November 6, 2019. On October 23, 2019, the court

1 approved certain defendants' Motion for Leave to file supplemental briefing in connection
2 with the Motion to Stay. As discussed just above, the court in this matter has not approved
3 the Motion to Stay the litigation, and under the terms of the 3rd Amended Order Setting Civil
4 Jury Trial, the proceedings shall continue as previously scheduled.

5 On September 30, 2019, counsel for defendants InsureMonkey and Alex Rivlin filed
6 a Motion for Summary Judgment and Declaratory Relief, seeking summary judgment on the
7 Receiver's claims against them, *inter alia*, on the basis that such claims are based on conduct
8 since August 1, 2014, and are thus barred by the one-year contractual period of limitations
9 contained in that document. Further, defendants assert that all of the Receiver's claims based
10 on conduct prior to August 1, 2014, are barred by the applicable statute of limitations, except
11 the breach of contract claims. This September 30, 2019, Motion for Summary Judgment and
12 Declaratory Relief also maintains, and seeks a judicial determination, that all damages for the
13 Receiver's claim for breach of contract are limited by the 2013 agreement between
14 InsureMonkey/Rivlin and NHC to twice the expected total value of fees at the time of
15 execution. Following an October 15, 2019, Stipulation and Order extending time for
16 response, the Receiver filed her Opposition to that Motion on October 17, 2019, disputing
17 the limitations on liability.

18 On October 29, 2019, the NHC former directors and officers filed their Motion in
19 Limine No. 1, seeking to exclude trial testimony from eleven persons, including members of
20 the Nevada Division of Insurance, the Special Deputy Receiver, the CO-OP, and NHC's
21 former counsel. The Motion in Limine sought to exclude such testimony on the basis that
22 such individuals identified by the Receiver as witnesses were in fact improperly disclosed,
23 non-retained experts who are competent only to testify as to matters of lay opinion, and
24 seeking to limit any such testimony these persons may give to lay matters outside the scope
25 of expert review. On November 8, 2019, the Receiver filed her Opposition to that Motion in
26 Limine, disputing the former directors and officers characterization of the expertise of the
27 designated witnesses, and asserting that such persons are permitted to offer their opinions and
28 inferences as an extension of the particularized knowledge they have obtained concerning the

1 insurance industry generally, and NHC specifically. The Opposition further asserted that the
2 Motion in Limine was impermissibly overbroad in what it sought to exclude, and that the
3 remaining time available in the discovery period could be utilized by defendants to obtain a
4 clear understanding of the opinions likely to be offered by such witnesses at trial. Per a
5 December 3, 2019, Stipulation and Order, the October 29, 2019, Motion in Limine was
6 withdrawn.

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

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

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

24 The CFC Complaint’s Count V (breach of contract by offset) and Count VI (illegal
25 exaction) plead alternate theories for recovery of money damages resulting from the United
26 States, through its agents at HHS and CMS, offsetting payments that CMS owed to NHC
27 against funds NHC allegedly owed to the government pursuant to the terms of the CO-OP
28 start-up loan.

1 On March 7, 2019, the United States filed a motion to dismiss the CFC Complaint’s
2 (“Motion to Dismiss”) argument that none of Counts I through VI state claims upon which
3 relief can be granted. NHC’s deadline for responding to the Motion to Dismiss was July 9,
4 2019. However, on June 24, 2019, the United States Supreme Court granted certiorari in
5 three Risk Corridors appeals, *i.e.*, the Supreme Court Appeal Cases.

6 Subsequent to a Motion for Enlargement of Time to Respond to Government’s
7 Motion to Dismiss, filed on June 28, 2019, the Receiver filed her Opposition to Motion to
8 Dismiss, and Cross-Motion for Final Partial Summary Judgment on July 31, 2019, which
9 sought from the CFC, *inter alia*, an adjudication in favor of the Receiver regarding that
10 Counts II through IV of the CFC Complaint, the counts not taken up by the United States
11 Supreme Court for review. The Cross-Motion for Partial Summary Judgment predicated its
12 arguments on the basis that the United States had already admitted prior liability and damages
13 concerning the amounts sought by the CFC Complaints under counts II-IV (*i.e.*, the Federal
14 Transitional Reinsurance program, the Risk Adjustment program, and the Cost-Sharing
15 Reduction programs provided for explicitly by ACA statutes), save for their affirmative
16 defense of offset, and that the affirmative defense of offset must fail as a matter of law as the
17 circumstances provided for in applicable federal law and regulation permitting an offset of
18 amounts owed under the ACA receivables programs were not satisfied in this case.

19 On August 7, 2019, the United States filed with the CFC its Motion to Stay, or in the
20 Alternative, for an Enlargement of Time, asserting that the interrelated issues of fact and law
21 at the center of the CFC litigation, alongside countervailing concerns of judicial economy,
22 justified a general suspension of proceedings during the pendency of the United States
23 Supreme Court’s review of the legal and constitutional questions in the Supreme Court
24 Appeal Cases, notwithstanding the theoretical separability of the various federal receivables
25 programs under which NHC presented its claims. The CFC granted the United States’
26 Motion to Stay on August 12, 2019. As discussed previously in this Status Report, the United
27 States Supreme Court has, as of December 10, 2019, heard oral argument on the relevant
28 legal questions at issue in the Motion to Stay, and will likely render a dispositive decision on

1 the matter(s) therein some time in 2020. It is likely that these proceedings will be stayed until
2 that decision is made and entered, whereupon the Receiver shall evaluate and direct the
3 litigation as circumstances warrant.

4 **Sale of Risk Corridors Receivable**

5 On September 16, 2019, the Receiver filed with the Receivership Court her Motion
6 for Determination of Good Faith Sale of Interest in Receivables by Plaintiff, Order Approving
7 Sale and Permitting Distribution of Certain Funds (the “Motion for Sale and Disbursement”) in
8 connection with a contemplated sale transaction between NHC and CM Squared RC IV,
9 LLC, the prospective purchaser of NHC’s interest in the aforementioned Risk Corridors
10 receivable at issue in the litigation between the Receiver and the United States. The Motion
11 for Sale and Disbursement, among other things, sought judicial approval for NHC to sell most
12 of its interest in any recoveries made against the United States in connection with the Risk
13 Corridors receivable to the prospective purchaser in exchange for an initial payment of
14 \$10,000,000, and certain subsequent funds retained as part of NHC retaining a minority
15 interest in litigation recoveries as received. The exact nature of the transaction is more
16 completely described in the proposed agreement documents attached as exhibits to that
17 Motion. The Motion for Sale and Disbursement also sought judicial authorization to disburse
18 as much as \$5 million from the funds obtained from this sale to estate claimants in the order
19 provided by law. On October 16, 2019, a hearing on the Motion was held and the Court
20 entered its Order Approving Sale of Receivables Interest and Permitting Distribution of
21 Certain Funds, which approved the requests made in that Motion in all relevant respects. The
22 Receiver has thus undertaken to begin the process of making disbursements to claimants of
23 the estate using the funds so obtained from that sale, and expects to make partial payments to
24 all claimants within the priority level specified under NRS 696B.420(1)(b). In addition to
25 those hardship claimants (discussed prior in the report) approved via Court order for payment
26 at 100% of approved amounts, the Receiver’s evaluation of available estate assets currently
27 supports making a *pro rata* payment of approximately fourteen percent of approved amounts
28

1 to claimants in “class (b).” The Receiver shall continue reviewing NHC’s finances to
2 determine when this *pro rata* share may be increased.

3 **Current Receivership Assets**

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

8 1. The unrestricted cash assets of the CO-OP have fluctuated with post-
9 receivership expenses and claim payments, as well as with the Receiver’s receipt of member
10 premiums. The currently available, unrestricted cash assets of the CO-OP as of
11 November 30, 2019, were approximately \$10,114,363. The majority of NHC’s currently
12 available and liquid assets not otherwise marked for disbursement have been invested, or
13 shall be soon invested, in a bond mutual fund, with the remainder of such assets held in bank
14 deposits.

15 2. The financial information of NHC in this Seventeenth Status Report
16 provides estimates. NHC’s financials may materially vary depending upon the estate’s
17 receipt of the promised federal receivables payments under the various ACA programs
18 described in this report, and future litigation recoverables. These figures will remain
19 estimates until the estate receives clearer indications from CMS and the federal government
20 as to the amount and timing of any federal payments or future appropriations, as well as the
21 final disposition of CMS receivable balances in which CMS has placed an administrative
22 hold and asserted rights to setoff, many of these matters are being litigated currently.

23 3. The Receiver is including, as Exhibit 2 attached hereto, a cash flow
24 report for NHC for the period covering the inception of the receivership through
25 November 30, 2019. This report reflects a summary of disbursements and collections made
26 by NHC during this period.

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CONCLUSION

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

DATED this 6TH day of January 2020.

Respectfully submitted:

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

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

Respectfully submitted by:

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