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

17 **IN THE EIGHTH JUDICIAL DISTRICT COURT**  
18 **CLARK COUNTY, NEVADA**

19 STATE OF NEVADA, EX REL. ) Case No. A-15-725244-C  
20 COMMISSIONER OF INSURANCE, IN HER ) Department 21  
21 OFFICIAL CAPACITY AS STATUTORY )  
22 RECEIVER FOR DELINQUENT DOMESTIC )  
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**TWENTY-FIRST STATUS REPORT**

COME NOW, Commissioner of Insurance Barbara D. Richardson in her capacity as Receiver of Nevada Health CO-OP (“NHC,” or the “CO-OP”), and CANTILO & BENNETT, L.L.P., Special Deputy Receiver (“SDR” - SDR and the Commissioner as Receiver are referred

1 to collectively herein as “Receiver”) and file this Twenty-First Status Report in the above-  
2 captioned receivership.

3 **I. INTRODUCTION AND HISTORICAL BACKGROUND**

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

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

26 Via a Notice of Substitution of Receiver dated April 6, 2016, Deputy Attorney General  
27 Joanna N. Grigoriev informed interested parties of the substitution of Commissioner Barbara D.  
28 Richardson, in place and stead of former Acting Commissioner Amy L. Parks, as the Receiver

1 of NHC. This substitution of Receiver was subsequent to Commissioner Richardson’s  
2 appointment as 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 Twenty-First Status Report, of the invoices paid to the SDR and other receivership consultants  
17 since the last status report to this Court.<sup>1</sup>

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18  
19 <sup>1</sup> The *in camera* materials are being submitted in a separate envelope that reflect paid invoices.

20 Certain billings submitted to the Court are appropriate for *in camera* review (as opposed to being  
21 made part of a public filing). More particularly, and as discussed in further detail below, certain  
22 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  
24 legal discovery and are not subject to legal disclosure, as this information may provide indications or  
25 context concerning potential litigation strategy and the nature of the expert services being provided. *See,*  
26 *e.g., Avnet, Inc. v. Avana Technologies Inc.*, No. 2:13-cv-00929- GMN-PAL, 2014 WL 6882345, at \*1  
27 (D. Nev. Dec. 4, 2014) (finding that billing entries were privileged because they reveal a party’s strategy  
28 and the nature of services provided); *Fed. 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 & Distributions***

3 Notices of Claim Determination (“NCDs”) were mailed for healthcare claims previously  
4 submitted by providers to NHC’s Javelina Claims Processing Database (the “Provider Claims”).  
5 The total allowed amount of these approved Provider Claims is approximately \$33.7 million.  
6 The NHC members also received NCDs that showed them the amount that the SDR has approved  
7 to be paid to their providers, and the amount of member responsibility (*i.e.*, the co-pays,  
8 deductibles, and coinsurance), if any, that they may owe on their providers’ outstanding claims.  
9 The SDR has received approval from the Court to make a distribution of certain estate assets for  
10 the partial payment of these Provider Claims, which have been classified by the SDR as claims  
11 made under NHC policies pursuant to NRS 696B.420(1)(b).<sup>2</sup>

12 As previously reported, the SDR must collect U.S. Internal Revenue Service W-9 forms  
13 and other necessary documentation from the providers in advance of making any claim  
14 payments, to assure that the estate can meet any mandatory federal tax reporting requirements.  
15 Four hundred seventy-seven (477) providers have submitted the necessary documentation, and  
16 have received a distribution payment. However, the remaining 1,306 providers either did not  
17 respond or sent back defective paperwork. The SDR will follow-up with these providers to  
18 collect the necessary paperwork.

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22 The *in-camera* review should apply not only to documentation concerning attorneys’ fees, but it  
23 also extends to “details of work revealed in [an] expert’s work description [which] would relate to tasks  
24 for which she [or he] was compensated[,]” a situation which is “analogous to protecting attorney-client  
25 privileged information contained in counsel’s bills describing work performed.” *See, DaVita Healthcare*  
26 *Partners, Inc. v. United States*, 128 Fed. Cl. 584, 592-93 (2016); *see also Chaudhry v. Gallerizzo*, 174  
F.3d 394, 402 (4th Cir. 1999) (recognizing that “correspondence, bills, 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)).

27 <sup>2</sup> As detailed in the Receiver’s Seventeenth Status Report, within the section of the report titled  
28 “Sale of Risk Corridors Receivable,” the Court entered an order permitting the distribution of certain  
funds on October 16, 2019.

1 The SDR also mailed NCDs for those Proofs of Claim submitted to the SDR relating to  
2 Policy Claims (*i.e.*, Class B claims pursuant to NRS 696B.420(1)(b)). The total allowed amount  
3 for the members' claims, \$5,102.64, is subject to a potential small increase as two NCD appeals  
4 have been filed and remain pending.

5 In addition to the two member appeals described above, there are forty-two (42)  
6 outstanding appeals sent by NHC members of the NCDs that were mailed for outstanding  
7 healthcare claims submitted by providers to NHC's Javelina Claims Processing Database.<sup>3</sup> The  
8 SDR is not requesting that hearings be set on these appeals at this time, but may do so in the near  
9 future (*i.e.*, upon the resolution of COVID-19 issues – which in addition to preventing in-person  
10 appearances could also make it difficult for claimants to prepare for hearings). Once all appeals  
11 have been reviewed by the SDR, the SDR will inform the Receivership Court of any unresolved  
12 appeals so that a hearing or hearings may be set. The SDR is working on a resolution of any  
13 outstanding appeals.

14 There are fifty-one proofs of claim ("POC") assigned to a priority Class "C" (*i.e.*,  
15 NRS 696B.420(1)(c)) or lower.<sup>4</sup> The SDR has now issued NCDs to nearly all of these claimants  
16 (*i.e.*, forty-two (42) out of fifty-one (51) NCDs have been sent).<sup>5</sup> It appears unlikely at this time  
17 that the estate will have sufficient assets to make distributions to claims assigned priority below  
18 Class B. The Receiver has included as **Exhibit 2** to this Twenty-First Status Report, an updated  
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20 <sup>3</sup> Members received a copy of the claim determinations that were sent to their providers, so that  
21 the members could see any denied claims, and the deductible, co-pay, and coinsurance that was applied  
22 to each of the allowed provider claims (*i.e.*, the amount of the member's responsibility on each claim)  
and have an opportunity to appeal.

23 <sup>4</sup> This does not include a claim by the U.S. Department of Health and Human Services, which  
24 the SDR has previously reported to this Court. That claim was denied by the SDR, and the government  
did not file an appeal of the SDR's determination. This determination is now final and non-appealable.

25 <sup>5</sup> One of the "NCDs" relates to a very late-filed POC, and as such the notice sent to that claimant  
26 does not provide a claim determination but instead advises that the claim cannot be processed due to  
27 having been filed after the bar date. The Receiver does not process late-filed claims, due to the limited  
28 assets and resources of the estate – and this forms part of the rationale for having a Claims Filing  
Deadline in place – to provide a stopping point for the work of resolving the claims of the estate so that  
the Receiver can wind down the estate and bring it to a closure. Late filed claims (*i.e.*, if allowed or  
approved) may (and likely will) also diminish distributions for timely filed claims.

1 report on the determination of the Receiver on each claim, assigned to a Class C-L, that has been  
2 approved in whole or in part to date.

3 On August 24, 2020, the Silver State Health Insurance Exchange (the “Exchange”)  
4 submitted a POC. The Receiver sent a letter in response to advise that the POC cannot be  
5 processed due to having been filed after the Claims Filing Deadline. The Exchange filed a  
6 Motion to Intervene in the receivership proceeding, for the purpose of having its claim allowed  
7 irrespective of this Court’s order entered on September 21, 2019, that “no claim received after  
8 the Claims Filing Deadline may share in the assets of the estate and NHC shall have no liabilities  
9 as to any such late-filed claims.” On November 4, 2020, this Court denied the Exchange’s  
10 Motion to Intervene and to file a late-filed claim.

11 ***CMS Receivables***

12 As explained in prior status reports, and throughout the pendency of the receivership, the  
13 Receiver is working to resolve certain outstanding matters relating to the collection of amounts  
14 due under the various federal receivables programs, of which the CO-OP was a participant, and  
15 which are administered primarily by CMS. The recovery of these assets will allow the SDR to  
16 make further claim payments to estate creditors. It is also necessary to resolve the receivership’s  
17 dispute of the government’s asserted right to be paid ahead of all other creditors in the estate  
18 (including providers and members). CMS has maintained the position that any monies deemed  
19 owed to NHC (and thus the receivership estate) are to be offset against the amounts CMS asserts  
20 it is owed under the start-up loan awarded to NHC. To date, CMS has offset approximately  
21 \$12.9 million against the start-up loan that, the Receiver maintains, should have instead been

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1 paid to NHC. When the full amount of 2014 - 2015 Risk Corridors payments (*i.e.*, not just the  
2 prorated amount<sup>6</sup>) are included in the total, NHC is owed over \$55 million.<sup>7</sup>

3 In light of the United States Supreme Court’s recent decision in *Maine Community Health*  
4 *Options v. United States, No. 18-1023* (described further below), the Receiver is trying to resolve  
5 some or all of the claims with CMS.<sup>8</sup> The asset recovery litigation against CMS has since  
6 continued on the questions of debt, rights to offset, and claim and issue preclusion matters. CMS  
7 has filed a motion to dismiss the Receiver’s claims, while the Receiver has filed a motion for  
8 summary judgment on NHC’s claims—and both motions remain pending before the United  
9 States Court of Federal Claims.

### 10 **Internal Administrative Matters Related to Wind Down**

11 The Receiver may, in her discretion and as necessary to advance the receivership, contract  
12 to use the services of certain former employees for specific, limited-term projects. The Receiver  
13 completed the wind down and closure of NHC’s administrative office in 2019, and has since  
14 transferred estate records, property, and operations to the SDR’s offices.

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18 <sup>6</sup> Due to a shortfall in risk corridor collections, CMS asserted it could only pay a prorated  
19 percentage of issuers’ 2014 Risk Corridors payments and that it would use all collections in subsequent  
20 years towards the 2014 payments (*i.e.*, they are unable to make payments for the subsequent years at all).  
21 DEP’T OF HEALTH & HUMAN SERVICES & CENTERS FOR MEDICARE & MEDICAID  
22 SERVICES (“CMS”), CCIIO MEMORANDUM, RISK CORRIDORS PAYMENT AND CHARGE  
23 AMOUNTS FOR THE 2015 BENEFIT YEAR (November 18, 2016) (available at  
24 <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  
25 AND CHARGE AMOUNTS FOR THE 2016 BENEFIT YEAR (November 15, 2017) (available at  
26 <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/Risk-Corridors-Amounts-2016.pdf>).

27 <sup>7</sup> NHC sold a significant portion of its interest in the Risk Corridors receivables, as detailed in  
28 the Receiver’s Seventeenth Status Report to this Court. However, NHC will still participate in actions  
to recover CMS receivables.

<sup>8</sup> See, Amy Howe, OPINION ANALYSIS: DECISIVE WIN FOR HEALTH INSURERS SEEKING  
COMPENSATION FOR ACA LOSSES, SCOTUS BLOG (2020), <https://www.scotusblog.com/2020/04/opinion-analysis-decisive-win-for-health-insurers-seeking-compensation-for-aca-losses/> (last visited June 26,  
2020).

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

3 On August 25, 2017, Counsel for the Receiver filed in Clark County District Court a  
4 Complaint (Case No. A-17-760558-C in Department No. 18) against various persons, third-  
5 party vendors, and professional service firms which are alleged to have contributed to NHC's  
6 losses by, among other things, failing to adhere to applicable standards of professional care and  
7 requirements imposed by law, misrepresentation concerning quality and standard of care for  
8 services performed, and breaches of contract, duty, and implied covenants of good faith and fair  
9 dealing. The complaint names, among others, NHC's former actuaries, accountants, auditors,  
10 and providers of certain business operations and utilization review services, as well as those  
11 individuals who specifically performed, or who were in the role of supervising the performance  
12 of, those services. The Complaint also names several NHC former directors and executive  
13 management.

14 Via Plaintiff's Motion to Amend Complaint, filed on July 17, 2018, the Receiver sought  
15 an order granting leave to amend the August 25, 2017, complaint against certain of NHC's  
16 various directors, officers, and third-party contractors, citing the discovery of additional facts in  
17 support of assertions made in the first complaint, as well as the need to add a new defendant to  
18 the existing proceedings. This Motion to Amend Complaint was filed in Judicial Department  
19 Sixteen, in line with the terms of contemporaneous Notice of Department Reassignment  
20 assigning the proceedings to Judge Timothy C. Williams. The Motion to Amend Complaint was  
21 approved via an order entered on September 18, 2018. Subsequently, the Court ordered that the  
22 case against Milliman must be arbitrated. On December 19, 2019, the Nevada Supreme Court  
23 denied the Receiver's Writ of Mandamus seeking extraordinary relief against the order  
24 compelling arbitration, noting the availability of subsequent appellate relief, as well as  
25 disagreeing that clear legal error had occurred in the underlying proceedings. On October 16,  
26 2020, Plaintiff filed a Motion for Leave to File Second Amended Complaint, which contains  
27 additional factual allegations, theories of injury, and other context concerning NHC's resulting

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1 insolvency. Hearing on this Motion was scheduled for November 18, 2020, but was vacated  
2 later, as explained below.

3 On October 8, 2020, Unite Here Health and Nevada Health Solutions, each Defendants  
4 in the instant asset recovery litigation, filed their Motion with the Receivership Court to:  
5 (1) Disqualify Greenberg Traurig, LLP as Counsel for the Statutory Receiver of Nevada Health  
6 CO-OP, and (2) Disgorge Attorneys' Fees Paid by Nevada Health CO-OP to Greenberg Traurig,  
7 LLP. Defendants' allegations are that Plaintiff's counsel cannot sufficiently represent NHC's  
8 interests due to having provided prior legal services to a specific creditor of the estate, as well  
9 as other entities which Defendants assert should have been named in the asset recovery litigation  
10 (to which they themselves are parties) and were not so named because of the pre-existing  
11 professional relationship. Greenberg Traurig, LLP, filed its Opposition to the Motion to  
12 Disqualify on November 16, 2020, asserting that Defendants' did not have legal standing to  
13 challenge Plaintiff's choice of representation, that counsel's representation of the prior parties  
14 does not create a conflict because the circumstances of the legal services rendered to Plaintiff  
15 are unrelated, that disqualification would work to the extreme prejudice of the Plaintiff, and that  
16 Defendants' had waived this form of procedural objection by delaying, making it until more than  
17 three years into the litigation. Plaintiff filed her Joinder to Greenberg Traurig's Opposition on  
18 November 16, 2020, and Defendants Unite Here Health and Nevada Health Solutions filed their  
19 Reply in Support of the Motion on December 8, 2020. Following a series of stipulated  
20 continuances, Judge Cory heard the arguments and evidence for and against the Motion to  
21 Disqualify on December 15, 2020. The Court issued a Minute Order on December 16, 2020,  
22 denying the Motion to Disqualify.

23 Pursuing the same theories as underlined in their Motion to Disqualify, Unite Here Health  
24 and Nevada Health Solutions filed on October 15, 2020, their Motion for Leave to File Third-  
25 Party Complaint, seeking permission from the Court to file a complaint alleging that the Silver  
26 State Health Insurance Exchange and Xerox State Healthcare, LLC, are responsible for a  
27 significant number of NHC's injuries, such that concerns for judicial economy and the  
28 consolidation of related proceedings should merit the cross-complaint and addition of these

1 parties to the instant asset recovery litigation. This Motion was joined by Defendant former  
2 directors and officers on October 16, 2020, and by InsureMonkey on October 22, 2020. These  
3 actions were quickly followed by the filing on October 19, 2020, of a Motion to Consolidate  
4 seeking to consolidate A-20-816161-C, the recently-filed asset recovery suit against the Silver  
5 State Health Insurance Exchange, with the instant asset recovery proceedings. As with the  
6 Motion seeking the filing of the Third-Party Complaint, the Motion to Consolidate asserts that  
7 the alleged similarities between the factual circumstances of the cases merit this outcome.

8 On October 20, 2020, Defendants Unite Here Health and Nevada Health Solutions filed  
9 their Motion to Strike Jury Demand, alongside a request for redaction and submission of exhibits  
10 under seal. On October 21, 2020, Defendant former directors and officers filed their Motion for  
11 Partial Summary Judgment on the pleadings pursuant to NRCP (12)(c), primarily on the basis  
12 that many of the causes of action asserted in the First Amended Complaint (*i.e.*, negligent  
13 misrepresentation, constructive fraud, negligent performance of an undertaking) are acts that  
14 directors and officers of non-profit organizations (such as NHC) cannot be liable for under  
15 Nevada law and statutes regulating the governance of non-profit organizations.

16 In light of the pending Motion to Disqualify before the Receivership Court, Plaintiff's  
17 counsel filed, on November 2, 2020, the Motion for Entry of Stay on Order Shortening Time,  
18 informing the court that the resolution of the questions concerning Greenberg Traurig's  
19 representation of Plaintiff directly bears upon the course of the related asset recovery litigation,  
20 and understandably requires the placement of that litigation into abeyance for the duration of  
21 those proceedings. By an Order Staying the Litigation dated November 10, 2020, the court in  
22 A-17-760558-B stayed all schedules or actions involving the motions for the filing of a Third-  
23 Party Complaint, consolidation, partial summary judgment, the filing of a Second Amended  
24 Complaint, and the request to strike the Jury Demand.

25 As well, this Order Staying the Litigation explicitly vacates all open discovery deadlines,  
26 including those for expert reports, and requires the parties to the litigation to meet and confer  
27 about new deadlines for the remaining matters, which shall be entered into a new scheduling  
28 order upon the lifting of the stay. Through a December 14, 2020, Stipulation and Order agreed

1 to by the parties, the Status Check hearing on the litigation stay originally scheduled for  
2 December 16, 2020, has been continued to January 6, 2021. The Status Check has now been  
3 continued until January 14, 2021.

4 As of the date of filing of this Status Report, no later scheduling orders have been issued  
5 extending these deadlines, although certain deadlines may be amended by stipulation of the  
6 parties in the near future if deemed necessary and approved by the Court.

7 The Receiver has settled its claims against Millennium, and the settlement agreement was  
8 approved by the Court. Millennium has made all of the settlement progress payments required  
9 under the settlement agreement.

10 On April 13, 2020, the Defendant directors and officers filed their Motion to Compel  
11 Production of Lynn Fulstone documents, seeking to compel certain documents held by the  
12 Receiver but not produced in discovery in response to a Defendant's request on the basis that  
13 such documents are privileged and protected from disclosure as attorney-client communications  
14 and as files falling under the work product doctrine.

15 An Opposition by the Receiver was filed on April 27, 2020, setting forth responses to  
16 these allegations and describing relevant legal authorities. The Opposition maintains that no  
17 such partial disclosure of files was made, that none of the documents that the Motion to Compel  
18 seeks to produce were relied upon by NHC in the making of the Complaint against the  
19 Defendants, and that numerous legal doctrines would protect the documents being sought from  
20 disclosure in any case. A Reply by the Defendant directors and officers in support of the Motion  
21 to Compel was filed under seal on June 16, 2020, and joined by Unite Here Health and Nevada  
22 Health Solutions the same day. Although set initially for hearing on June 17, 2020, per a June 15,  
23 2020, Stipulation and Order, the hearing on the Motion to Compel was re-set for June 24, 2020.  
24 Via a Minute Order dated August 10, 2020, the Court denied the Motion to Compel and the  
25 associated joinders. A formal, written Order Denying the Motion to Compel dated October 2,  
26 2020, was recorded on the Court's docket as of November 2, 2020.

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1           Discovery continues in the litigation before the recent stay of litigation, with Plaintiff  
2 having delivered to Defendant former directors and officers the First Supplemental Response to  
3 the Sixth Set of Requests for Production on October 16, 2020, alongside the Twenty-Ninth  
4 Supplemental Rule 16.1 Production. Subject to the Court’s recently ordered stay, additional or  
5 supplemental discovery requests made by Defendants are being responded to as received, with  
6 the Special Deputy Receiver coordination with counsel as necessary in the identification and  
7 production of responsive documents. As mentioned above, the relevant discovery deadlines have  
8 been vacated in light of the pending Motion to Disqualify and will be reset upon agreement of  
9 parties.

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

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

17           In Counts I through IV, the CFC Complaint prays for relief in the form of an award of  
18 damages and monetary relief equal to the difference between the amount NHC actually received  
19 in payments under Sections 1342, 1341, 1343, and 1401 of the ACA – the statutes which describe  
20 and enact the Risk Corridors, transitional reinsurance, risk adjustment, and cost sharing reduction  
21 programs respectively – and the amount NHC should have received under those laws.

22           The CFC Complaint’s Count V (breach of contract by offset) and Count VI (illegal  
23 exaction) plead alternate theories for recovery of money damages resulting from the United  
24 States, through its agents at HHS and CMS, offsetting payments that CMS owed to NHC against  
25 funds NHC allegedly owed to the government pursuant to the terms of the CO-OP start-up loan.  
26 On March 7, 2019, the United States filed a motion to dismiss the CFC Complaint’s (“Motion  
27 to Dismiss”) argument that none of Counts I through VI state claims upon which relief can be  
28 granted. NHC’s deadline for responding to the Motion to Dismiss was July 9, 2019. However,

1 on June 24, 2019, the United States Supreme Court granted certiorari in three Risk Corridors  
2 appeals, *i.e.*, the Supreme Court Appeal Cases.

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

16 On August 7, 2019, the United States filed with the Court of Federal Claims its Motion  
17 to Stay, or in the Alternative, for an Enlargement of Time, asserting that the interrelated issues  
18 of fact and law at the center of the Court of Federal Claims litigation, alongside countervailing  
19 concerns of judicial economy, justified a general suspension of proceedings during the pendency  
20 of the United States Supreme Court’s review of the legal and constitutional questions in the  
21 Supreme Court Appeal Cases, notwithstanding the theoretical separability of the various federal  
22 receivables programs under which NHC presented its claims. The Court of Federal Claims  
23 granted the United States’ Motion to Stay on August 12, 2019, until such legal and constitutional  
24 questions were resolved.

25 The United States Supreme Court, through its April 27, 2020, decision, found in favor of  
26 the CO-OPs, and held that the Risk Corridors statutes did indeed create a government obligation  
27 to pay insurers the full amount set out in Section 1342’s formula. Despite the decision of  
28 Congress to disallow by specific legislative rider the making of Risk Corridors payments from

1 funding sources which would have otherwise been available under the annual appropriations  
2 omnibus, the plain text of the legislative rider at issue in the litigation did not indicate an intention  
3 to impliedly, retroactively repeal Risk Corridors obligations, and that therefore the CO-OPs  
4 properly relied upon the Tucker Act to bring suits for damages against the United States in the  
5 Court of Federal Claims.

6 Subsequent to this decision, the Court of Federal Claims issued its May 4, 2020, Order  
7 scheduling a status conference to take place on May 19, 2020, concerning the remaining matters  
8 at issue in the litigation. This telephone conference did occur on May 19, 2020, and the issues  
9 discussed on that call were later summarized in the Court of Federal Claims' May 21, 2020,  
10 Order staying proceedings for a further forty-five days and requiring the filing of a joint status  
11 report on or before July 6, 2020, addressing the topics discussed during the telephone conference.  
12 This deadline was later moved to July 10, 2020, upon approval by the Court of Plaintiff's July 6,  
13 2020, Unopposed Motion for Extension of Time for Filing Joint Status Report. The Joint Status  
14 Report was filed on July 10, 2020, and proposed August 3, 2020, as the deadline for NHC's  
15 Updated Opposition to the United States' Motion to Dismiss and Cross Motion for Summary  
16 Judgment, with the United States' reply in support of the Motion being due on September 18,  
17 2020, and NHC's own reply due on November 13, 2020.

18 On August 3, 2020, Plaintiff filed her Unopposed Motion to Set Briefing Schedule, which  
19 was approved and ordered the same day. Per this Motion, August 24, 2020, was proposed as the  
20 deadline for NHC's Updated Opposition to the Motion to Dismiss and Cross Motion for  
21 Summary Judgment, with the government's reply due October 9, 2020, and NHC's reply due  
22 October 26, 2020. A subsequent Unopposed Motion for Extension of Time, filed on August 19,  
23 2020, and approved on August 20, 2020, established September 9, 2020, as the deadline for  
24 NHC's Updated Opposition, with the United States' reply due October 26, 2020, and NHC's  
25 own reply due November 13, 2020.

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1 On September 9, 2020, Plaintiff filed her Response and Reply to the United States'  
2 Motion to Dismiss and Cross-Motion for Summary Judgment.

3 The United States filed its Reply in Support of its Motion to Dismiss and Opposition to  
4 Cross-Motion for Summary Judgment on October 26, 2020, reiterating its prior arguments that  
5 offsets are proper in amounts alleged to be owed between the two creditors at issue here. These  
6 proceedings, in the same manner as with the state court asset recovery proceedings, were sought  
7 to be stayed by the filing by Plaintiff of a November 5, 2020, Motion to Stay Proceedings. On  
8 December 16, 2020, the Receivership Court entered its Minute Order denying the Motion to  
9 Disqualify, noting the failure of Defendants to cite either to clear and substantial evidence of  
10 possible conflicts or to binding legal authority mandating the disclosure of all potential or  
11 supposed conflicts which may implicate counsel. The Motion to Disqualify having been denied,  
12 the Motion to Stay Proceedings filed in the United States Court of Federal Claims has now been  
13 rendered moot. The motion to dismiss of the United States and the Receiver's motion for  
14 summary judgment remain pending before the United States Court of Federal Claims.

15 **Pending Action Against the Silver State Health Insurance Exchange**

16 Through the filing of a Complaint dated June 5, 2020, in Case Number A-20-816161-C,  
17 in Department Number Eight of the Eighth Judicial District Court, the Receiver has brought an  
18 action against the Exchange for, *inter alia*, damages of approximately one-half million dollars  
19 in premiums received from on-exchange insureds on behalf of NHC, but never remitted to the  
20 CO-OP. The Complaint alleges that the retention of these funds by the Exchange, without  
21 explanation or justification, constitutes a violation of the existing agreement between the parties,  
22 unjust enrichment of the Exchange at the expense of receivership claimants, and an appropriate  
23 basis for the imposition of a constructive trust over the assets at issue. The Exchange filed its  
24 Answer on August 24, 2020, denying the relevant allegations and asserting conventional  
25 affirmative defenses such as the doctrine of assumption of risk, sovereign immunity,  
26 contributory negligence, offset, and unclean hands. Following the October 8, 2020, Joint Case  
27 Conference Report, and the November 19, 2020, Mandatory Rule 16 Conference, the  
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1 proceedings are now continuing along the schedules set out in the relevant November 24, 2020,  
2 Scheduling Order and Order Setting Civil Bench Trial.

3 Defendant then filed, as of September 29, 2020, a Motion to Intervene with NHC’s  
4 Receivership Court, seeking authorization to file a POC for amounts allegedly owed to the  
5 Exchange by NHC, but which was never filed timely by the Exchange despite having the  
6 opportunity do so (and is therefore barred by law from collecting from estate assets). The Motion  
7 to Intervene claimed that the Exchange had previously filed a POC, but lost its records  
8 concerning the same, and that nonetheless the Exchange be entitled to register its claims against  
9 NHC at a low statutory priority level because the Receiver had actual knowledge of the  
10 Exchange’s claims notwithstanding the failure to file. Plaintiff’s Opposition to the Motion to  
11 Intervene was filed on October 13, 2020, and asserted several bases to deny the Exchange’s  
12 relief, including the absence of evidence supporting the prior attempts to file a POC, the  
13 Exchange’s failure to show its ability to intervene in Receivership proceedings as a matter of  
14 right, and the explicit requirements of Nevada receivership law and court orders disallowing  
15 late-filed claims from sharing in the assets of the estate. Following the Exchange’s October 28,  
16 2020, Reply to the Opposition, the Receivership Court decided, on November 4, 2020, to deny  
17 the Exchange’s attempt to intervene and held that the attempted late-claim filing was untimely  
18 and unwarranted by law.

19 **Civil Action Against WellHealth Medical Associates, Medsource, and Certain Persons**

20 Through the filing of a Complaint dated July 16, 2020, in case Number A-20-818118-C,  
21 in Department Number Nineteen of the Eighth Judicial District Court, the Receiver has brought  
22 an action against WellHealth Medical Associates, PLLC, Medsource Management Group, LLC,  
23 and certain individual persons in positions of responsibility within those organizations, for the  
24 recovery of amounts owed in connection with certain illegal, unethical, negligent, and  
25 intentionally fraudulent transactions which took place with NHC in health plan years 2014 and  
26 2015. The primary allegations involve WellHealth’s entry into an illegal and unapproved  
27 services contract with NHC, which, as per the Receiver’s allegations, constitute a material  
28 shifting of insurance risk from a licensed carrier (NHC) to an unlicensed insurer (Wellhealth)—



1 and Wellhealth was also expressly disapproved by the Nevada Division of Insurance as a  
2 Delivery Service Intermediary. Defendants in this action received millions of dollars from NHC  
3 in exchange for their services, which are alleged in the Complaint to not have been performed at  
4 the standard required, or with necessary licenses and legal authority. The Receiver has not yet  
5 received an Answer from defendants in this matter but will proceed to discovery and further  
6 litigation when appropriate.

7 **Current Receivership Assets**

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

12 1. The unrestricted cash assets of the CO-OP have fluctuated with post-  
13 receivership expenses and claim payments, as well as with the Receiver's receipt of member  
14 premiums. The currently available, unrestricted cash assets of the CO-OP as of November 30,  
15 2020, were approximately \$4,690,708.00. The majority of NHC's currently available and liquid  
16 assets are held in bank deposits.

17 2. The financial information of NHC in this Twenty-First Status Report  
18 provides estimates. NHC's financials may materially vary depending upon the estate's receipt  
19 of the promised federal receivables payments under the various ACA programs described in this  
20 report, and future litigation recoverables.

21 3. The Receiver is including, as **Exhibit 3** attached hereto, a cash flow report  
22 for NHC for the period covering the inception of the receivership through November 30, 2020.  
23 This report reflects a summary of disbursements and collections made by NHC during this  
24 period.

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1 **CONCLUSION**

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

5 DATED this 8th day of January 2021.

6 Respectfully submitted:

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

10 By: /s/ Cantilo & Bennett, L.L.P.

11 Special Deputy Receiver

12 By Its Authorized Representative Patrick  
H. Cantilo

13 Respectfully submitted by:  
14 GREENBERG TRAURIG, LLP

15 /s/ Donald L. Prunty

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