



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SR**  
MARK E. FERRARIO, ESQ.  
Nevada Bar No. 1625  
ERIC W. SWANIS, ESQ.  
Nevada Bar No. 6840  
GREENBERG TRAUIG, LLP  
10845 Griffith Peak Drive  
Suite 600  
Las Vegas, Nevada 89135  
Telephone: (702) 792-3773  
Facsimile: (702) 792-9002  
Emails: [ferrariom@gtlaw.com](mailto:ferrariom@gtlaw.com)  
[swanise@gtlaw.com](mailto:swanise@gtlaw.com)

*Counsel for Barbara D. Richardson, Commissioner of Insurance,  
as the Permanent Receiver for Nevada Health CO-OP*

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

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

**EIGHTEENTH 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 to collectively herein as “Receiver”) and file this Eighteenth Status Report in the above-captioned receivership.

///  
///

**Greenberg Traurig, LLP**  
10845 Griffith Peak Drive, Suite 600  
Las Vegas, Nevada 89135

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

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

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

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

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

## 8 II. RECEIVERSHIP ADMINISTRATION

### 9 Receivership Administrative Services and Oversight

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

---

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

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

22 In this regard, courts have held that the bills of legal counsel and experts may be withheld from legal  
23 discovery and are not subject to legal disclosure, as this information may provide indications or context concerning  
24 potential litigation strategy and the nature of the expert services being provided. See, e.g., *Avnet, Inc. v. Avana  
25 Technologies Inc.*, No. 2:13-cv-00929- GMN-PAL, 2014 WL 6882345, at \*1 (D. Nev. Dec. 4, 2014) (finding that  
26 billing entries were privileged because they reveal a party’s strategy and the nature of services provided); *Fed.  
27 Sav. & Loan Ins. Corp. v. Ferm*, 909 F.2d 372, 374-75 (9th Cir. 1990) (considering whether or not fee information  
28 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).

The *in-camera* review should apply not only to documentation concerning attorneys’ fees, but it also  
extends to “details of work revealed in [an] expert’s work description [which] would relate to tasks for which she  
[or he] was compensated[.]” a situation which is “analogous to protecting 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 *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

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  
7 approved to be paid to their providers, and the amount of member responsibility (*i.e.*, the co-  
8 pays, deductibles, and coinsurance), if any, that they may owe on their providers’ outstanding  
9 claims. The SDR has received approval from the Court to make a distribution of certain estate  
10 assets for the partial payment of these Provider Claims, which have been classified by the SDR  
11 as claims made under NHC policies pursuant to NRS 696B.420(1)(b)).<sup>2</sup> At this time, based on  
12 the available assets in the estate, NHC is able to distribute payments of approximately 14.6%  
13 of the total approved amount of each Class B provider claim.

14 The SDR must collect U.S. Internal Revenue Service (“IRS”) W-9 forms and other  
15 necessary documentation from the providers in advance of making any claim payments, to  
16 assure that the estate can meet any mandatory federal tax reporting requirements. The SDR  
17 is being diligent in collecting the required documentation to avoid any IRS penalties to the  
18 estate that could be caused by inaccurate Tax Identification Number (“TIN”) reporting by  
19 providers. There are over 1,500 providers owed money for their Class B Provider Claims.<sup>3</sup>  
20 The SDR sent letters to these providers, requesting a current W-9 Form. Additionally, the SDR  
21 requires the provider’s affidavit attesting to both the accuracy of the W-9, and the provider’s  
22 understanding that the SDR will rely on the information in the form to (a) report payments to  
23 the IRS, and (b) issue and mail payment to the providers. The SDR has received responsive  
24 documentation from around 665 providers, and Palomar is processing this documentation.

25 \_\_\_\_\_  
26 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> See *infra* section titled “Sale of Risk Corridors Receivable.”

28 <sup>3</sup> Nearly 1,800 providers received a Notice of Claim Determination, but a number of these notices were  
effectively claim denials as they showed zero dollars owed by NHC to the provider. There are 1,549 providers  
owed a payment by the estate. Some of these payments will be very small but the SDR has not set any minimum  
amount under which the claim would be deemed *de minimus* and not eligible to receive a payment.

1 Numerous providers sent documentation that was defective in some way and this has required  
2 Palomar to follow up and retrieve corrected documents from the providers.

3 The “NCD ID” listed on each provider NCD sent by the Receiver was the same number  
4 as the TIN that each provider gave to NHC when submitting its claims. A number of providers  
5 are no longer using the TIN associated with their NHC claims (*i.e.*, the TIN shown on the NCD).<sup>4</sup>  
6 The SDR is working with these providers to collect the necessary attestations, forms, and  
7 documentation to establish their right to legal successorship to the prior TIN—and the  
8 percentage of the NHC distribution which they have a right to be paid. Once satisfactory  
9 documentation has been approved by the SDR, distribution payments will be issued to these  
10 providers as well.

11 Palomar has begun issuing payments to those providers that have sent in their complete  
12 paperwork. The SDR also mailed NCDs for those Proofs of Claim submitted to the SDR  
13 relating to Policy Claims (*i.e.*, Class B claims pursuant to NRS 696B.420(1)(b)). The total  
14 allowed amount for these claims is \$5,102.64, and every allowed claim was submitted by an  
15 NHC member. The SDR initially mailed checks to the members for the partial payment of these  
16 policy claims. After the Court granted the SDR’s Motion for Order Authorizing Satisfaction of  
17 Hardship Claims on December 6, 2019, the SDR mailed the remaining payments to the  
18 members along with a cover letter explaining to each of the claimants that their claim against  
19 the estate has now been paid in full. The total allowed amount for the members’ claims is  
20 subject to a potential small increase as two NCD appeals have been filed and remain pending.  
21 For one of these appeals, a hearing will be needed as set out in the attached Exhibit 2.<sup>5</sup> For  
22 the other appeal, the SDR believes that a hearing may not be necessary as the NHC member  
23 may only require the SDR’s assistance with certain provider collection activities.<sup>6</sup> The SDR  
24

---

25 <sup>4</sup> In one common scenario, the TIN shown on the NCD is inactive because the facility associated with that  
26 TIN has since been acquired by a larger provider facility and is now doing business under the acquiring company’s  
TIN.

27 <sup>5</sup> The *in camera* Exhibit 2 claim report is being submitted in a separate envelope. The Receiver has  
28 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.

1 will keep the Court apprised of the resolution of these matters, and a resolution of these  
2 remaining claims is expected very soon.

3 In addition to the two member appeals described above, there are forty-two (42)  
4 outstanding appeals sent by NHC members of the NCDs that were mailed for outstanding  
5 healthcare claims submitted by providers to NHC's Javelina Claims Processing Database.<sup>7</sup>  
6 The SDR is not requesting that hearings be set on these appeals at this time, but may do so in  
7 the near future (*i.e.*, upon the resolution of COVID-19 issues – which in addition to preventing  
8 in-person appearances could also make it difficult for claimants to prepare for hearings). The  
9 SDR believes that a number of these appeals may still be resolved without the need for a  
10 hearing (*i.e.*, through communication and through education about plan benefits and  
11 deductibles) and will keep working to that end in the meantime. The SDR is continuing to  
12 evaluate outstanding appeals and anticipates that such appeals will be resolved soon. Once  
13 all appeals have been reviewed by the SDR, the SDR will inform the Receivership Court of any  
14 unresolved appeals 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>8</sup> The SDR has not reached  
17 the merits of these claims, and may not do so until a later date.

### 18 ***CMS Receivables***

19 As explained in prior status reports, and throughout the pendency of the receivership,  
20 the Receiver is working to resolve certain outstanding matters relating to the collection of  
21 amounts due under the various federal receivables programs, of which the CO-OP was a  
22 participant, and which are administered primarily by CMS. Considering the size of these federal  
23 receivables in relation to the CO-OP's potential total liabilities, the receipt of these funds by the

---

24 <sup>6</sup> The SDR will follow up with the member to attempt to resolve the member's issues and assist in any  
25 way possible. If a hearing is needed after all, we will recommend to the Court that a hearing should be set.

26 <sup>7</sup> Members received a copy of the claim determinations that were sent to their providers, so that the  
27 members could see any denied claims, and the deductible, co-pay, and coinsurance that was applied to each of  
28 the allowed provider claims (*i.e.*, the amount of the member's responsibility on each claim) and have an opportunity  
to appeal.

<sup>8</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 receivership estate represents a large portion of future claim payments by NHC – as is the  
2 legal determination of the government’s asserted right to be paid ahead of all other creditors in  
3 the estate (including providers and members). CMS has maintained the position that any  
4 monies deemed owed to NHC (and thus the receivership estate) are to be offset against the  
5 amounts CMS asserts it is owed under the start-up loan awarded to NHC. To date, CMS has  
6 offset approximately \$12.9 million against the start-up loan that, the Receiver maintains, should  
7 have instead been paid to NHC. When the full amount of 2014 - 2015 Risk Corridors payments  
8 (*i.e.*, not just the prorated amount<sup>9</sup>) are included in the total, NHC is owed over \$55 million by  
9 CMS.<sup>10</sup>

10 As of the date of filing of this Eighteenth Status Report, the Receiver asserts that the  
11 CO-OP, according to the various formulae applicable to Qualified Health Plans under the ACA,  
12 and notwithstanding prior attempts by CMS to offset these receivables against start-up loan  
13 funds in contravention of Nevada’s laws relating to the regulation of insurer solvency, is owed  
14 over \$12.9M more in promised payments under various other CMS programs. The Receiver  
15 reserves the right to revise, adjust, or otherwise restate her basis for the CMS receivables  
16 claims as new information is received and litigation progresses with CMS. As described further  
17 below in this report, the Supreme Court of the United States heard oral argument on December  
18 10, 2019, in the case of *Maine Community Health Options v. United States*, No. 18-1023, in  
19 order to address the legal status and collectability of amounts owed to CO-OPs by CMS and  
20 the federal government under the Risk Corridors program. A decision in that case is pending.

---

24 <sup>9</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>).

<sup>10</sup> See “Sale of Risk Corridors Receivable” discussion later herein.

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

2 The Receiver utilized 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. As part of its efforts to  
5 wind-down the operations of the company and reduce administrative expenses of the estate,  
6 the Receiver has now terminated the services of all remaining third-party vendors.

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

8 Based on the current needs of the receivership, the Receiver has trimmed existing staff  
9 to one part-time staff member who now works on a very limited contract basis. The Receiver  
10 may contract to use the services of certain former employees for specific, limited-term  
11 receivership projects. The Receiver completed the wind down and closure of NHC’s  
12 administrative office in 2019. The Receiver has reduced the Information Technology needs of  
13 the CO-OP to reduce estate expenses and will continue to do so as ongoing receivership  
14 responsibilities permit.

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

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

28 ///



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

9 Milliman filed its Motion to Compel Arbitration on November 6, 2017, a motion which  
10 was challenged by the December 11, 2017, filing of Plaintiff's Opposition to Milliman's Motion  
11 to Compel Arbitration. The related Order Granting Milliman's Motion to Compel Arbitration,  
12 dated March 12, 2018, held that a requirement to arbitrate the pre-receivership agreements  
13 between NHC and Milliman did apply to the Receiver's claims against Milliman. The Receiver  
14 filed a Motion for Reconsideration of the Milliman arbitration ruling, dated March 29, 2018. The  
15 Motion for Reconsideration sought review of the prior judgment compelling arbitration on  
16 various grounds. On December 19, 2019, the Nevada Supreme Court ruled against intervening  
17 to overturn the order to compel arbitration regarding Milliman.

18 The Receiver's claims are ongoing against NHC's former directors and officers,  
19 InsureMonkey and Alex Rivlin, Larson & Company (and individually named Larson  
20 defendants), Nevada Health Solutions, LLC, and Unite Here Health. Discovery is underway,  
21 and the following deadlines have been set by Judge Timothy C. Williams, per the November  
22 19, 2019, 3<sup>rd</sup> Amended Order Setting Civil Jury Trial, Pre-Trial, Calendar Call, and Deadlines  
23 Motions; Amended Discovery Scheduling Order, and later revised via the January 14, 2020,

24 ///

25 ///

26 ///

27 ///

28 ///

1 Second Amended Discovery Scheduling Order, the March 4, 2020, Stipulation and Order to  
2 Extend Discovery Deadlines, and the most recent Stipulation and Order filed March 23, 2020:

- 3 1. **July 24, 2020:** Motions to Amend Pleadings or Add Parties
- 4 2. **February 7, 2020:** Plaintiff's designation of initial experts pursuant to NRCPC  
5 16.1(a)(2) (initially April 8, 2020, per the 3<sup>rd</sup> Amended Order, later moved via,  
6 *inter alia*, the Amended Discovery Scheduling Order dated November 26, 2019)
- 7 3. **June 9, 2020:** Defendant's designation of initial experts
- 8 4. **June 26, 2020:** Defendant's designation of rebuttal experts
- 9 5. **August 24, 2020:** Plaintiff's designation of rebuttal experts (initially May 8, 2020,  
10 later moved via the Orders dated November 26, 2019, and March 4 and 23, 2020)
- 11 6. **August 31, 2020:** Discovery Cut Off (for non-expert discovery)
- 12 7. **September 25, 2020:** Discovery Cut Off (for expert discovery)
- 13 8. **October 2, 2020:** Motions *in Limine* or other Dispositive Motions
- 14 9. **October 5, 2020:** Case is set to be tried to a jury on a five-week stack.

15 As of the date of filing of this Status Report, no later scheduling orders have been issued  
16 extending these deadlines, although certain deadlines may be amended by stipulation of the  
17 parties in the near future if deemed necessary and approved by the Court. On March 25, 2020,  
18 the Court issued its Notice of Scheduling Status Check Hearing, providing therein as follows:

19 *...The Stipulation and Order efiled on March 25, 2020 should have read that the trial*  
20 *date of October 5, 2020 may (not will) need to be vacated and continued to the January*  
21 *19, 2021 five-week stack....*

22 The telephonic status check hearing will be held on April 30, 2021.

23 The Receiver has settled its claims against Millennium, and the settlement agreement  
24 was approved by the Court. Millennium has thus far made the settlement progress payments  
25 required under the settlement agreement.

26 Defendants Unite Here Health and Nevada Health Solutions filed, on August 21, 2019,  
27 their Motion to Stay on Order Shortening Time (the "Motion to Stay"), requesting that the court  
28 in Case No. A-17-760558-C stay all pending proceedings on the basis, as described below, of

1 the decision of the Supreme Court of the United States to grant certiorari to review decisions  
2 rendered by the United States Court of Federal Claims (“CFC”) in *Moda Health Plan, Inc. v.*  
3 *United States, Land of Lincoln Mutual Insurance Company v. United States*, and *Maine*  
4 *Community Health Options v. United States* (collectively, “Supreme Court Appeal Cases”). The  
5 Supreme Court Appeal Cases all concern lawsuits against the federal government for amounts  
6 owed to ACA-compliant CO-OPs under the “Risk Corridor” federal receivables program, of  
7 which this Court has been noticed throughout the term of this receivership.

8 The Receiver filed her Plaintiff’s Opposition to the Motion to Stay on August 26, 2019,  
9 on the basis that delay of the proceedings in the instant litigation sought by the Defendants  
10 represented an unwarranted attempt to forestall other aspects of the litigation not directly tied  
11 to the legal questions being considered on appeal. The court in this matter has not approved  
12 the Motion to Stay the litigation, though under the terms of the 3<sup>rd</sup> Amended Order Setting Civil  
13 Jury Trial and later orders, most recently the March 23, 2020, Stipulation and Order, the  
14 proceedings shall progress according to the schedule described above.

15 On September 30, 2019, counsel for defendants InsureMonkey and Alex Rivlin filed a  
16 Motion for Summary Judgment and Declaratory Relief, seeking summary judgment on the  
17 Receiver’s claims against them, *inter alia*, on the basis that such claims are based on conduct  
18 since August 1, 2014, and are thus barred by the one-year contractual period of limitations  
19 contained in that document. Further, defendants assert that all of the Receiver’s claims based  
20 on conduct prior to August 1, 2014, are barred by the applicable statute of limitations, except  
21 the breach of contract claims. This September 30, 2019, Motion for Summary Judgment and  
22 Declaratory Relief also maintains, and seeks a judicial determination, that all damages for the  
23 Receiver’s claim for breach of contract are limited by the 2013 agreement between  
24 InsureMonkey/Rivlin and NHC to twice the expected total value of fees at the time of execution.  
25 Following an October 15, 2019, Stipulation and Order extending time for response, the  
26 Receiver filed her Opposition to that Motion on October 17, 2019, disputing the limitations on  
27 liability. The Court, subsequent to a hearing which occurred on January 29, 2020, denied the  
28 Motion for Summary Judgment and Declaratory Relief without prejudice.

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

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

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

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

27 Subsequent to a Motion for Enlargement of Time to Respond to Government’s Motion  
28 to Dismiss, filed on June 28, 2019, the Receiver filed her Opposition to Motion to Dismiss, and

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

12 On August 7, 2019, the United States filed with the CFC its Motion to Stay, or in the  
13 Alternative, for an Enlargement of Time, asserting that the interrelated issues of fact and law  
14 at the center of the CFC litigation, alongside countervailing concerns of judicial economy,  
15 justified a general suspension of proceedings during the pendency of the United States  
16 Supreme Court's review of the legal and constitutional questions in the Supreme Court Appeal  
17 Cases, notwithstanding the theoretical separability of the various federal receivables programs  
18 under which NHC presented its claims. The CFC granted the United States' Motion to Stay on  
19 August 12, 2019. As discussed previously in this Status Report, the United States Supreme  
20 Court has, as of December 10, 2019, heard oral argument on the relevant legal questions at  
21 issue in the Motion to Stay, and will likely render a dispositive decision on the matter(s) therein  
22 some time in 2020. It is likely that these proceedings will be stayed until that decision is made  
23 and entered, whereupon the Receiver shall evaluate and direct the litigation as circumstances  
24 warrant. As of the date of filing of this Status Report, the proceedings remain stayed pending  
25 the determination of the relevant legal and constitutional questions at issue in the case, which  
26 directly affects the Receiver's rights to pursue the estate's claims under the Risk Corridors.

27 ///

28 ///

1 **Sale of Risk Corridors Receivable**

2 On September 16, 2019, the Receiver filed with the Receivership Court her Motion for  
3 Determination of Good Faith Sale of Interest in Receivables by Plaintiff, Order Approving Sale  
4 and Permitting Distribution of Certain Funds (the "Motion for Sale and Disbursement") in  
5 connection with a contemplated sale transaction between NHC and CM Squared RC IV, LLC,  
6 the prospective purchaser of NHC's interest in the aforementioned Risk Corridors receivable  
7 at issue in the litigation between the Receiver and the United States. The Motion for Sale and  
8 Disbursement, among other things, sought judicial approval for NHC to sell most of its interest  
9 in any recoveries made against the United States in connection with the Risk Corridors  
10 receivable to the prospective purchaser in exchange for an initial payment of \$10,000,000, and  
11 certain subsequent funds retained as part of NHC retaining a minority interest in litigation  
12 recoveries as received. The exact nature of the transaction is more completely described in  
13 the proposed agreement documents attached as exhibits to that Motion. The Motion for Sale  
14 and Disbursement also sought judicial authorization to disburse as much as \$5 million from the  
15 funds obtained from this sale to estate claimants in the order provided by law.

16 On October 16, 2019, a hearing on the Motion was held and the Court entered its Order  
17 Approving Sale of Receivables Interest and Permitting Distribution of Certain Funds, which  
18 approved the requests made in that Motion in all relevant respects. The Receiver has thus  
19 begun making disbursements to claimants of the estate using the funds so obtained from that  
20 sale, and expects to make partial payments to all claimants within the priority level specified  
21 under NRS 696B.420(1)(b).

22 **Current Receivership Assets**

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

27 1. The unrestricted cash assets of the CO-OP have fluctuated with post-  
28 receivership expenses and claim payments, as well as with the Receiver's receipt of member

1 premiums. The currently available, unrestricted cash assets of the CO-OP as of February 29,  
2 2020, were approximately \$6,143,722. The majority of NHC's currently available and liquid  
3 assets are held in bank deposits.

4 2. The financial information of NHC in this Eighteenth Status Report provides  
5 estimates. NHC's financials may materially vary depending upon the estate's receipt of the  
6 promised federal receivables payments under the various ACA programs described in this  
7 report, and future litigation recoverables. These figures will remain estimates until the estate  
8 receives clearer indications from CMS and the federal government as to the amount and timing  
9 of any federal payments or future appropriations, as well as the final disposition of CMS  
10 receivable balances in which CMS has placed an administrative hold and asserted rights to  
11 setoff, many of these matters are being litigated currently.

12 3. The Receiver is including, as Exhibit 3 attached hereto, a cash flow report for  
13 NHC for the period covering the inception of the receivership through February 29, 2020. This  
14 report reflects a summary of disbursements and collections made by NHC during this period.

### 15 **CONCLUSION**

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

19 DATED this 1<sup>st</sup> day of April 2020.

20 Respectfully submitted:

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

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

1 Respectfully submitted :

2 GREENBERG TRAURIG, LLP

3 By: /s/ Eric W. Swanis

4 MARK E. FERRARIO, ESQ.

5 Nevada Bar No. 1625

6 ERIC W. SWANIS, ESQ.

7 Nevada Bar No. 6840

8 10845 Griffith Peak Drive

9 Suite 600

10 Las Vegas, Nevada 89135

11 Telephone: (702) 792-3773

12 Facsimile: (702) 792-9002

13 Emails: ferrariom@gtlaw.com

14 swanise@gtlaw.com

15 Counsel for Barbara D. Richardson,  
16 Commissioner of Insurance, as the  
17 Permanent Receiver for Nevada  
18 Health CO-OP