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

19 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

20 **CLARK COUNTY, NEVADA**

21 STATE OF NEVADA, EX REL. )  
22 COMMISSIONER OF INSURANCE, IN HER )  
23 OFFICIAL CAPACITY AS STATUTORY )  
24 RECEIVER FOR DELINQUENT DOMESTIC )  
25 INSURER, )

26 Plaintiff, )

27 vs. )

28 NEVADA HEALTH CO-OP, )

29 Defendant. )  
30 )

31 CASE NO. A-15-725244-C  
32 DEPARTMENT 1

33 **TWENTIETH STATUS REPORT**

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

1 to collectively herein as “Receiver”) and file this Twentieth Status Report in the above-captioned  
2 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 Twentieth Status Report, of the invoices paid to the SDR and other receivership consultants since  
17 the last status report to this Court.<sup>1</sup>

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

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

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

27 The *in-camera* review should apply not only to documentation concerning attorneys’ fees, but it also  
28 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

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 United States Internal Revenue Service W-  
13 9 forms 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 The SDR will follow-up with these providers to collect the necessary paperwork.

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

20 In addition to the two member appeals described above, there are forty-two (42)  
21 outstanding appeals sent by NHC members of the NCDs that were mailed for outstanding  
22  
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24 contained in counsel’s bills describing work performed.” *See DaVita Healthcare Partners, Inc. v. United States*,  
25 128 Fed. Cl. 584, 592-93 (2016); *see also Chaudhry v. Gallerizzo*, 174 F.3d 394, 402 (4th Cir. 1999) (recognizing  
26 that “correspondence, bills, ledgers, statements, and time records which also reveal the motive of the client in  
27 seeking representation, litigation strategy, or the specific nature of the services provided, such as researching  
28 particular areas of law,” are protected from disclosure) (quoting, *Clarke v. Am. Commerce Nat’l Bank*, 974 F.2d  
127, 129 (9th Cir. 1992)).

<sup>2</sup> See *infra* section titled “Sale of Risk Corridors Receivable.”

1 healthcare claims submitted by providers to NHC’s Javelina Claims Processing Database.<sup>3</sup> The  
2 SDR is not requesting that hearings be set on these appeals at this time, but may do so in the near  
3 future (*i.e.*, upon the resolution of COVID-19 issues – which in addition to preventing in-person  
4 appearances could also make it difficult for claimants to prepare for hearings). Once all appeals  
5 have been reviewed by the SDR, the SDR will inform the Receivership Court of any unresolved  
6 appeals so that a hearing or hearings may be set. The SDR is working on a resolution of any  
7 outstanding appeals.

8 As reported in the previous Nineteenth Status Report, there were fifty outstanding proofs  
9 of claim (“POC”) assigned to a priority Class “C” (*i.e.*, NRS 696B.420(1)(c)) or lower.<sup>4</sup> The  
10 SDR has now issued NCDs to nearly all of these claimants (*i.e.*, forty (40) out of fifty (50) NCDs  
11 have been sent).<sup>5</sup> It appears unlikely at this time that the estate will have sufficient assets to make  
12 distributions to claims assigned priority below Class B. The Receiver has included as Exhibit 2  
13 to this Twentieth Status Report, a report on the determination of the Receiver on each claim,  
14 assigned to a Class C-L, that has been approved in whole or in part to date.

15 On August 24, 2020, the Silver State Health Insurance Exchange (the “Exchange”)  
16 submitted a POC. The Receiver sent a letter in response to advise that the POC cannot be  
17 processed due to having been filed after the Claims Filing Deadline. The Exchange has now  
18 filed a Motion to Intervene in the receivership proceeding, for the purpose of having its claim  
19 allowed in spite of this Court’s order entered on September 21, 2019, that “no claim received  
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21 <sup>3</sup> Members received a copy of the claim determinations that were sent to their providers, so that the  
22 members could see any denied claims, and the deductible, co-pay, and coinsurance that was applied to each of  
23 the allowed provider claims (*i.e.*, the amount of the member’s responsibility on each claim) and have an opportunity  
to appeal.

24 <sup>4</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  
25 an appeal of the SDR’s determination. This determination is now final and non-appealable.

26 <sup>5</sup> One of the forty (40) “NCDs” relates to a very late-filed POC, and as such the notice sent to that claimant  
does not provide a claim determination but instead advises that the claim cannot be processed due to having  
27 been filed after the bar date. The Receiver does not process late-filed claims, due to the limited assets and  
resources of the estate – and this forms part of the rationale for having a Claims Filing Deadline in place – to  
28 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 after the Claims Filing Deadline may share in the assets of the estate and NHC shall have no  
2 liabilities as to any such late-filed claims.”

### 3 ***CMS Receivables***

4 As explained in prior status reports, and throughout the pendency of the receivership, the  
5 Receiver is working to resolve certain outstanding matters relating to the collection of amounts  
6 due under the various federal receivables programs, of which the CO-OP was a participant, and  
7 which are administered primarily by CMS. The recovery of these assets will allow the SDR to  
8 make claim payments to estate creditors. It is also necessary to resolve the receivership’s dispute  
9 of the government’s asserted right to be paid ahead of all other creditors in the estate (including  
10 providers and members). CMS has maintained the position that any monies deemed owed to  
11 NHC (and thus the receivership estate) are to be offset against the amounts CMS asserts it is  
12 owed under the start-up loan awarded to NHC. To date, CMS has offset approximately \$12.9  
13 million against the start-up loan that, the Receiver maintains, should have instead been paid to  
14 NHC. When the full amount of 2014 - 2015 Risk Corridors payments (*i.e.*, not just the prorated  
15 amount<sup>6</sup>) are included in the total, NHC is owed over \$55 million.

16 In light of the U.S. Supreme Court’s recent decision in *Maine Community Health Options*  
17 *v. United States*, No. 18-1023 (described further below), the Receiver is trying to resolve some  
18 or all of the claims with CMS.<sup>7</sup> The asset recovery litigation against CMS has since continued  
19 on the questions of debt, rights to offset, and claim and issue preclusion matters.

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22 <sup>6</sup> Due to a shortfall in risk corridor collections, CMS asserts it can only pay a prorated percentage of  
23 issuers’ 2014 Risk Corridors payments and it will use all collections in subsequent years towards the 2014  
24 payments (*i.e.*, they are unable to make payments for the subsequent years at all). DEP’T OF HEALTH & HUMAN  
25 SERVICES & CENTERS FOR MEDICARE & MEDICAID SERVICES (“CMS”), CCIIO MEMORANDUM, RISK  
26 CORRIDORS PAYMENT AND CHARGE AMOUNTS FOR THE 2015 BENEFIT YEAR (November 18, 2016)  
27 (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  
28 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>7</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 Jun 26, 2020).

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

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

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

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

19 Via Plaintiff’s Motion to Amend Complaint, filed on July 17, 2018, the Receiver sought  
20 an order granting leave to amend the August 25, 2017, complaint against certain of NHC’s  
21 various directors, officers, and third-party contractors, citing the discovery of additional facts in  
22 support of assertions made in the first complaint, as well as the need to add a new defendant to  
23 the existing proceedings. This Motion to Amend Complaint was filed in judicial department  
24 number 16, in line with the terms of contemporaneous Notice of Department Reassignment  
25 assigning the proceedings to Judge Timothy C. Williams. The Motion to Amend Complaint was  
26 approved via an order entered on September 18, 2018. Subsequently, the Court ordered that the  
27 case against Milliman must be arbitrated.

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1 The Receiver's claims are ongoing against NHC's former directors and officers,  
2 InsureMonkey and Alex Rivlin, Larson & Company (and individually named Larson  
3 defendants), Nevada Health Solutions, LLC, and Unite Here Health. Discovery is underway,  
4 and the following deadlines have been set by Judge Timothy C. Williams, per the August 11,  
5 2020, Order Granting Defendants' Joint Motion to Extend Deadline for Defendants' Expert  
6 Disclosures (and Other Associated Deadlines) Due to COVID-19 Pandemic on Order Shortening  
7 Time:

- 8 1. **November 4, 2020:** Status Check regarding Discovery and Case Schedule
- 9 2. **October 2, 2020:** Defendants' designation of initial and rebuttal experts
- 10 3. **October 16, 2020:** Motions to Amend Pleadings or Add Parties
- 11 4. **December 1, 2020:** Plaintiff's designation of rebuttal experts
- 12 5. **February 19, 2021:** Discovery Cut Off
- 13 6. **March 12, 2021:** Dispositive Motions
- 14 7. **March 19, 2021:** Motions *in Limine*
- 15 8. **April 22, 2021 at 10:30 a.m.:** Pre-Trial Conference/Calendar call
- 16 9. **April 29, 2021:** Pre-Trial Memorandum filing deadline
- 17 10. **May 3, 2021:** Case is set to be tried to a jury on a five-week stack.

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

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

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



1 Health and Nevada Health Solutions via a Joinder filed on April 22, 2020, and essentially asserts  
2 that a waiver of such privileges has been effected due to the partial disclosure of documents on  
3 the same subject matter in litigation.

4 An Opposition by the Receiver was filed on April 27, 2020, setting forth responses to  
5 these allegations and describing relevant legal authorities. The Opposition maintains that no  
6 such partial disclosure of files was made, that none of the documents that the Motion to Compel  
7 seeks to produce were relied upon by NHC in the making of the Complaint against the  
8 Defendants, and that numerous legal doctrines would protect the documents being sought from  
9 disclosure in any case. A Reply by the Defendant directors and officers in support of the Motion  
10 to Compel was filed under seal on June 16, 2020, and joined by Unite Here Health and Nevada  
11 Health Solutions the same day. Although set initially for hearing on June 17, 2020, per a June  
12 15, 2020, Stipulation and Order, the hearing on the Motion to Compel was re-set for June 24,  
13 2020. Via a Minute Order dated August 10, 2020, the Court denied the Motion to Compel and  
14 the associated joinders. Discovery continues in the litigation, with Plaintiff having provided her  
15 27th Supplemental Disclosure to Defendants as of September 24, 2020, and having responded  
16 to the Defendant directors' and officers' 7th Set of Requests for Production as of September 18,  
17 2020. Plaintiff also responded, as of September 21, 2020, to Defendant Larson's First Set of  
18 Requests for Admissions. The Receiver and SDR remain vigilant in responding to, and in  
19 sending, discovery requests and related correspondence expediently so as to advance this matter  
20 to trial in a timely fashion, though proceedings have been delayed by the ongoing COVID-19  
21 pandemic.

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

23 On November 8, 2018, the Receiver filed a Complaint in the United States Court of  
24 Federal Claims ("CFC Complaint") against the United States for monetary amounts owed to  
25 NHC under the Consumer Operated and Oriented Plan program organized pursuant to the ACA.  
26 The Receiver determined that such litigation was necessary in order to advance the interests of  
27 the receivership estate's various creditors, and to protect and conserve assets that rightfully  
28 belong to the estate.

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

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

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

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1 On August 7, 2019, the United States filed with the CFC its Motion to Stay, or in the  
2 Alternative, for an Enlargement of Time, asserting that the interrelated issues of fact and law at  
3 the center of the CFC litigation, alongside countervailing concerns of judicial economy, justified  
4 a general suspension of proceedings during the pendency of the United States Supreme Court’s  
5 review of the legal and constitutional questions in the Supreme Court Appeal Cases,  
6 notwithstanding the theoretical separability of the various federal receivables programs under  
7 which NHC presented its claims. The CFC granted the United States’ Motion to Stay on August  
8 12, 2019, until such legal and constitutional questions were resolved.

9 The United States Supreme Court, through its April 27, 2020, decision, found in favor of  
10 the CO-OPs, and held that the Risk Corridors statutes did indeed create a government obligation  
11 to pay insurers the full amount set out in Section 1342’s formula. Despite the decision of  
12 Congress to disallow by specific legislative rider the making of Risk Corridors payments from  
13 funding sources which would have otherwise been available under the annual appropriations  
14 omnibus, the plain text of the legislative rider at issue in the litigation did not indicate an intention  
15 to impliedly, retroactively repeal Risk Corridors obligations, and that therefore the CO-OPs  
16 properly relied upon the Tucker Act to bring suits for damages against the United States in the  
17 Court of Federal Claims.

18 Subsequent to this decision, the CFC issued its May 4, 2020, Order scheduling a status  
19 conference to take place on May 19, 2020, concerning the remaining matters at issue in the  
20 litigation. This telephone conference did occur on May 19, 2020, and the issues discussed on  
21 that call were later summarized in the CFC’s May 21, 2020, Order staying proceedings for a  
22 further forty-five days and requiring the filing of a joint status report on or before July 6, 2020,  
23 addressing the topics discussed during the telephone conference. This deadline was later moved  
24 to July 10, 2020, upon approval by the Court of Plaintiff’s July 6, 2020, Unopposed Motion for  
25 Extension of Time for Filing Joint Status Report. The Joint Status Report was filed on July 10,  
26 2020, and proposed August 3, 2020, as the deadline for NHC’s Updated Opposition to the United  
27 States’ Motion to Dismiss and Cross Motion for Summary Judgment, with the United States’

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1 reply in support of the Motion being due on September 18, 2020, and NHC’s own reply due on  
2 November 13, 2020.

3 On August 3, 2020, Plaintiff filed her Unopposed Motion to Set Briefing Schedule, which  
4 was approved and ordered the same day. Per this Motion, August 24, 2020, was proposed as the  
5 deadline for NHC’s Updated Opposition to the Motion to Dismiss and Cross Motion for  
6 Summary Judgment, with the government’s reply due October 9, 2020, and NHC’s reply due  
7 October 26, 2020. A subsequent Unopposed Motion for Extension of Time, filed on August 19,  
8 2020, and approved on August 20, 2020, established September 9, 2020, as the deadline for  
9 NHC’s Updated Opposition, with the United States’ reply due October 26, 2020, and NHC’s  
10 own reply due November 13, 2020. As of the date of filing this Status Report, these are the most  
11 current deadlines for briefing the remaining matters at issue in the case.

12 On September 9, 2020, Plaintiff filed her Response and Reply to the United States’  
13 Motion to Dismiss and Cross-Motion for Summary Judgment. A central theme of NHC’s  
14 opposition to the Motion to Dismiss is that the Nevada Division of Insurance reviews, evaluates,  
15 and approves applications of both domestic and foreign insurers for licenses to issue and manage  
16 insurance policies in the state of Nevada. As part of this power to review and issue Certificates  
17 of Authority, to which NHC is subject notwithstanding federal law and regulations, the  
18 Commissioner of Insurance may approve or disapprove of lending or funding agreements which  
19 capitalize an insurer, and may place conditions on them. Under Nevada law, specifically NRS  
20 693A.180, such loans used to capitalize an insurer may not be the basis of any setoff of mutual  
21 obligations without obtaining prior approval from the Commissioner of Insurance. Such a setoff  
22 was never approved by the Commissioner, nor was it sought by the United States.

23 The argument made in NHC’s Opposition applies both to the start-up and solvency  
24 portions of the CO-OP loan funds, as both loans serve to establish and support NHC’s insurance  
25 operations, both loans were necessary in properly capitalizing the CO-OP, and both loans were  
26 subject to review by the Nevada Division of Insurance as part of NHC’s application for a  
27 Certificate of Authority. NHC’s Opposition also makes other arguments and claims against the  
28 government’s attempt to apply an offset of amounts owed, including opposition to the

1 government's debt claim, rights to offset on various grounds, and re-litigation of issues already  
2 decided between the parties (*i.e.*, claim and issue preclusion regarding the government's claims).

3 In regard to the Receiver's grounds for summary judgment on claim and issue preclusion,  
4 the Receiver has already adjudicated the United States' claims for compensation under the loan  
5 agreements, which were filed with the estate as part of the government's POC, and the Receiver  
6 has determined that such claims were not entitled to offset or priority. The Receiver's claim  
7 determination was not appealed by the government, as required by state law, and is now final,  
8 and litigation in order to receive such amounts is not appropriate, as these claims have already  
9 been precluded by prior actions. As has been established by the Supreme Court, NHC has an  
10 affirmative right to recover those amounts (in federal receivables, and specifically in Risk  
11 Corridors) routinely promised to it by the federal government. In contrast, the Commissioner of  
12 Insurance has consistently asserted that repayment of the CO-OP loans may only occur out of  
13 the excess surplus of funds of NHC after satisfying all policyholder, claimant, and creditor  
14 obligations.

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. Discovery will commence in that case upon  
27 the establishment of the appropriate discovery and trial schedule with the Court.

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

2 Through the filing of a Complaint dated July 16, 2020, in case Number A-20-818118-C,  
3 in Department Number Nineteen of the Eighth Judicial District Court, the Receiver has brought  
4 an action against WellHealth Medical Associates, PLLC, Medsource Management Group, LLC,  
5 and certain individual persons in positions of responsibility within those organizations, for the  
6 recovery of amounts owed in connection with certain illegal, unethical, negligent, and  
7 intentionally fraudulent transactions which took place with NHC in health plan years 2014 and  
8 2015. The primary allegations involve WellHealth’s entry into an illegal and unapproved  
9 services contract with NHC, which in the determination of the Nevada Division of Insurance  
10 constituted a material shifting of insurance risk from a licensed carrier (NHC) to a non-licensed  
11 Delivery Service Intermediary. Defendants in this action received millions of dollars from NHC  
12 in exchange for their services, which are alleged in the Complaint to not have been performed at  
13 the standard required, or with necessary licenses and legal authority, to justify such inordinate  
14 compensation. The Receiver has not yet received an Answer from defendants in this matter but  
15 shall proceed to discovery and further litigation when appropriate.

16 **Current Receivership Assets**

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

21 1. The unrestricted cash assets of the CO-OP have fluctuated with post-receivership  
22 expenses and claim payments, as well as with the Receiver’s receipt of member premiums. The  
23 currently available, unrestricted cash assets of the CO-OP as of August 31, 2020, were  
24 approximately \$5,519,869 The majority of NHC’s currently available and liquid assets are held  
25 in bank deposits.

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1 2. The financial information of NHC in this Twentieth Status Report provides  
2 estimates. NHC’s financials may materially vary depending upon the estate’s receipt of the  
3 promised federal receivables payments under the various ACA programs described in this report,  
4 and future litigation recoverables.

5 3. The Receiver is including, as Exhibit 3 attached hereto, a cash flow report for NHC  
6 for the period covering the inception of the receivership through August 31, 2020. This report  
7 reflects a summary of disbursements and collections made by NHC during this period.

8 **CONCLUSION**

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

12 DATED this 16th day of October 2020.

13 Respectfully submitted:

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

17 By: */s/ Cantilo & Bennett, LLP*  
18 Special Deputy Receiver  
19 By Its Authorized Representative  
Patrick H. Cantilo

20 Respectfully submitted by:  
21 GREENBERG TRAURIG, LLP

22 */s/ Donald L. Prunty*

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Las Vegas, Nevada 89135  
26 ***Counsel for Barbara D. Richardson,***  
27 ***Commissioner of Insurance, as the***  
***Permanent Receiver for Nevada Health***  
28 ***CO-OP***