



1 **SR**  
2 MARK E. FERRARIO, ESQ.  
3 Nevada Bar No. 1625  
4 DONALD L. PRUNTY, ESQ.  
5 Nevada Bar No. 008230  
6 GREENBERG TRAURIG, LLP  
7 10845 Griffith Peak Drive  
8 Suite 600  
9 Las Vegas, Nevada 89135  
10 Telephone: (702) 792-3773  
11 Facsimile: (702) 792-9002  
12 Emails: [ferrariom@gtlaw.com](mailto:ferrariom@gtlaw.com)  
13 [pruntyd@gtlaw.com](mailto:pruntyd@gtlaw.com)

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

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

18 STATE OF NEVADA, EX REL. ) Case No. A-15-725244-C  
19 COMMISSIONER OF INSURANCE, IN HER ) Dept. No. 21  
20 OFFICIAL CAPACITY AS STATUTORY )  
21 RECEIVER FOR DELINQUENT DOMESTIC )  
22 INSURER, )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )  
29 )  
30 )  
31 )  
32 )  
33 )  
34 )  
35 )  
36 )  
37 )  
38 )  
39 )  
40 )  
41 )  
42 )  
43 )  
44 )  
45 )  
46 )  
47 )  
48 )  
49 )  
50 )  
51 )  
52 )  
53 )  
54 )  
55 )  
56 )  
57 )  
58 )  
59 )  
60 )  
61 )  
62 )  
63 )  
64 )  
65 )  
66 )  
67 )  
68 )  
69 )  
70 )  
71 )  
72 )  
73 )  
74 )  
75 )  
76 )  
77 )  
78 )  
79 )  
80 )  
81 )  
82 )  
83 )  
84 )  
85 )  
86 )  
87 )  
88 )  
89 )  
90 )  
91 )  
92 )  
93 )  
94 )  
95 )  
96 )  
97 )  
98 )  
99 )  
100 )  
101 )  
102 )  
103 )  
104 )  
105 )  
106 )  
107 )  
108 )  
109 )  
110 )  
111 )  
112 )  
113 )  
114 )  
115 )  
116 )  
117 )  
118 )  
119 )  
120 )  
121 )  
122 )  
123 )  
124 )  
125 )  
126 )  
127 )  
128 )  
129 )  
130 )  
131 )  
132 )  
133 )  
134 )  
135 )  
136 )  
137 )  
138 )  
139 )  
140 )  
141 )  
142 )  
143 )  
144 )  
145 )  
146 )  
147 )  
148 )  
149 )  
150 )  
151 )  
152 )  
153 )  
154 )  
155 )  
156 )  
157 )  
158 )  
159 )  
160 )  
161 )  
162 )  
163 )  
164 )  
165 )  
166 )  
167 )  
168 )  
169 )  
170 )  
171 )  
172 )  
173 )  
174 )  
175 )  
176 )  
177 )  
178 )  
179 )  
180 )  
181 )  
182 )  
183 )  
184 )  
185 )  
186 )  
187 )  
188 )  
189 )  
190 )  
191 )  
192 )  
193 )  
194 )  
195 )  
196 )  
197 )  
198 )  
199 )  
200 )  
201 )  
202 )  
203 )  
204 )  
205 )  
206 )  
207 )  
208 )  
209 )  
210 )  
211 )  
212 )  
213 )  
214 )  
215 )  
216 )  
217 )  
218 )  
219 )  
220 )  
221 )  
222 )  
223 )  
224 )  
225 )  
226 )  
227 )  
228 )  
229 )  
230 )  
231 )  
232 )  
233 )  
234 )  
235 )  
236 )  
237 )  
238 )  
239 )  
240 )  
241 )  
242 )  
243 )  
244 )  
245 )  
246 )  
247 )  
248 )  
249 )  
250 )  
251 )  
252 )  
253 )  
254 )  
255 )  
256 )  
257 )  
258 )  
259 )  
260 )  
261 )  
262 )  
263 )  
264 )  
265 )  
266 )  
267 )  
268 )  
269 )  
270 )  
271 )  
272 )  
273 )  
274 )  
275 )  
276 )  
277 )  
278 )  
279 )  
280 )  
281 )  
282 )  
283 )  
284 )  
285 )  
286 )  
287 )  
288 )  
289 )  
290 )  
291 )  
292 )  
293 )  
294 )  
295 )  
296 )  
297 )  
298 )  
299 )  
300 )  
301 )  
302 )  
303 )  
304 )  
305 )  
306 )  
307 )  
308 )  
309 )  
310 )  
311 )  
312 )  
313 )  
314 )  
315 )  
316 )  
317 )  
318 )  
319 )  
320 )  
321 )  
322 )  
323 )  
324 )  
325 )  
326 )  
327 )  
328 )  
329 )  
330 )  
331 )  
332 )  
333 )  
334 )  
335 )  
336 )  
337 )  
338 )  
339 )  
340 )  
341 )  
342 )  
343 )  
344 )  
345 )  
346 )  
347 )  
348 )  
349 )  
350 )  
351 )  
352 )  
353 )  
354 )  
355 )  
356 )  
357 )  
358 )  
359 )  
360 )  
361 )  
362 )  
363 )  
364 )  
365 )  
366 )  
367 )  
368 )  
369 )  
370 )  
371 )  
372 )  
373 )  
374 )  
375 )  
376 )  
377 )  
378 )  
379 )  
380 )  
381 )  
382 )  
383 )  
384 )  
385 )  
386 )  
387 )  
388 )  
389 )  
390 )  
391 )  
392 )  
393 )  
394 )  
395 )  
396 )  
397 )  
398 )  
399 )  
400 )  
401 )  
402 )  
403 )  
404 )  
405 )  
406 )  
407 )  
408 )  
409 )  
410 )  
411 )  
412 )  
413 )  
414 )  
415 )  
416 )  
417 )  
418 )  
419 )  
420 )  
421 )  
422 )  
423 )  
424 )  
425 )  
426 )  
427 )  
428 )  
429 )  
430 )  
431 )  
432 )  
433 )  
434 )  
435 )  
436 )  
437 )  
438 )  
439 )  
440 )  
441 )  
442 )  
443 )  
444 )  
445 )  
446 )  
447 )  
448 )  
449 )  
450 )  
451 )  
452 )  
453 )  
454 )  
455 )  
456 )  
457 )  
458 )  
459 )  
460 )  
461 )  
462 )  
463 )  
464 )  
465 )  
466 )  
467 )  
468 )  
469 )  
470 )  
471 )  
472 )  
473 )  
474 )  
475 )  
476 )  
477 )  
478 )  
479 )  
480 )  
481 )  
482 )  
483 )  
484 )  
485 )  
486 )  
487 )  
488 )  
489 )  
490 )  
491 )  
492 )  
493 )  
494 )  
495 )  
496 )  
497 )  
498 )  
499 )  
500 )  
501 )  
502 )  
503 )  
504 )  
505 )  
506 )  
507 )  
508 )  
509 )  
510 )  
511 )  
512 )  
513 )  
514 )  
515 )  
516 )  
517 )  
518 )  
519 )  
520 )  
521 )  
522 )  
523 )  
524 )  
525 )  
526 )  
527 )  
528 )  
529 )  
530 )  
531 )  
532 )  
533 )  
534 )  
535 )  
536 )  
537 )  
538 )  
539 )  
540 )  
541 )  
542 )  
543 )  
544 )  
545 )  
546 )  
547 )  
548 )  
549 )  
550 )  
551 )  
552 )  
553 )  
554 )  
555 )  
556 )  
557 )  
558 )  
559 )  
560 )  
561 )  
562 )  
563 )  
564 )  
565 )  
566 )  
567 )  
568 )  
569 )  
570 )  
571 )  
572 )  
573 )  
574 )  
575 )  
576 )  
577 )  
578 )  
579 )  
580 )  
581 )  
582 )  
583 )  
584 )  
585 )  
586 )  
587 )  
588 )  
589 )  
590 )  
591 )  
592 )  
593 )  
594 )  
595 )  
596 )  
597 )  
598 )  
599 )  
600 )  
601 )  
602 )  
603 )  
604 )  
605 )  
606 )  
607 )  
608 )  
609 )  
610 )  
611 )  
612 )  
613 )  
614 )  
615 )  
616 )  
617 )  
618 )  
619 )  
620 )  
621 )  
622 )  
623 )  
624 )  
625 )  
626 )  
627 )  
628 )  
629 )  
630 )  
631 )  
632 )  
633 )  
634 )  
635 )  
636 )  
637 )  
638 )  
639 )  
640 )  
641 )  
642 )  
643 )  
644 )  
645 )  
646 )  
647 )  
648 )  
649 )  
650 )  
651 )  
652 )  
653 )  
654 )  
655 )  
656 )  
657 )  
658 )  
659 )  
660 )  
661 )  
662 )  
663 )  
664 )  
665 )  
666 )  
667 )  
668 )  
669 )  
670 )  
671 )  
672 )  
673 )  
674 )  
675 )  
676 )  
677 )  
678 )  
679 )  
680 )  
681 )  
682 )  
683 )  
684 )  
685 )  
686 )  
687 )  
688 )  
689 )  
690 )  
691 )  
692 )  
693 )  
694 )  
695 )  
696 )  
697 )  
698 )  
699 )  
700 )  
701 )  
702 )  
703 )  
704 )  
705 )  
706 )  
707 )  
708 )  
709 )  
710 )  
711 )  
712 )  
713 )  
714 )  
715 )  
716 )  
717 )  
718 )  
719 )  
720 )  
721 )  
722 )  
723 )  
724 )  
725 )  
726 )  
727 )  
728 )  
729 )  
730 )  
731 )  
732 )  
733 )  
734 )  
735 )  
736 )  
737 )  
738 )  
739 )  
740 )  
741 )  
742 )  
743 )  
744 )  
745 )  
746 )  
747 )  
748 )  
749 )  
750 )  
751 )  
752 )  
753 )  
754 )  
755 )  
756 )  
757 )  
758 )  
759 )  
760 )  
761 )  
762 )  
763 )  
764 )  
765 )  
766 )  
767 )  
768 )  
769 )  
770 )  
771 )  
772 )  
773 )  
774 )  
775 )  
776 )  
777 )  
778 )  
779 )  
780 )  
781 )  
782 )  
783 )  
784 )  
785 )  
786 )  
787 )  
788 )  
789 )  
790 )  
791 )  
792 )  
793 )  
794 )  
795 )  
796 )  
797 )  
798 )  
799 )  
800 )  
801 )  
802 )  
803 )  
804 )  
805 )  
806 )  
807 )  
808 )  
809 )  
810 )  
811 )  
812 )  
813 )  
814 )  
815 )  
816 )  
817 )  
818 )  
819 )  
820 )  
821 )  
822 )  
823 )  
824 )  
825 )  
826 )  
827 )  
828 )  
829 )  
830 )  
831 )  
832 )  
833 )  
834 )  
835 )  
836 )  
837 )  
838 )  
839 )  
840 )  
841 )  
842 )  
843 )  
844 )  
845 )  
846 )  
847 )  
848 )  
849 )  
850 )  
851 )  
852 )  
853 )  
854 )  
855 )  
856 )  
857 )  
858 )  
859 )  
860 )  
861 )  
862 )  
863 )  
864 )  
865 )  
866 )  
867 )  
868 )  
869 )  
870 )  
871 )  
872 )  
873 )  
874 )  
875 )  
876 )  
877 )  
878 )  
879 )  
880 )  
881 )  
882 )  
883 )  
884 )  
885 )  
886 )  
887 )  
888 )  
889 )  
890 )  
891 )  
892 )  
893 )  
894 )  
895 )  
896 )  
897 )  
898 )  
899 )  
900 )  
901 )  
902 )  
903 )  
904 )  
905 )  
906 )  
907 )  
908 )  
909 )  
910 )  
911 )  
912 )  
913 )  
914 )  
915 )  
916 )  
917 )  
918 )  
919 )  
920 )  
921 )  
922 )  
923 )  
924 )  
925 )  
926 )  
927 )  
928 )  
929 )  
930 )  
931 )  
932 )  
933 )  
934 )  
935 )  
936 )  
937 )  
938 )  
939 )  
940 )  
941 )  
942 )  
943 )  
944 )  
945 )  
946 )  
947 )  
948 )  
949 )  
950 )  
951 )  
952 )  
953 )  
954 )  
955 )  
956 )  
957 )  
958 )  
959 )  
960 )  
961 )  
962 )  
963 )  
964 )  
965 )  
966 )  
967 )  
968 )  
969 )  
970 )  
971 )  
972 )  
973 )  
974 )  
975 )  
976 )  
977 )  
978 )  
979 )  
980 )  
981 )  
982 )  
983 )  
984 )  
985 )  
986 )  
987 )  
988 )  
989 )  
990 )  
991 )  
992 )  
993 )  
994 )  
995 )  
996 )  
997 )  
998 )  
999 )  
1000 )

**TWENTY-SECOND 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 Twenty-Second Status Report in the above-captioned receivership.



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 Twenty-Second Status Report, of the invoices approved or paid to the SDR and other  
15 receivership consultants since the last status report to this Court.<sup>1</sup>

---

16  
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  
19 made part of a public filing). More particularly, and as discussed in further detail below, certain  
20 consultants in this matter are providing expert witness related services. As such, the billing entries  
21 relating thereto should be considered 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  
23 legal discovery and are not subject to legal disclosure, as this information may provide indications or  
24 context concerning potential litigation strategy and the nature of the expert services being provided. *See,*  
25 *e.g., Avnet, Inc. v. Avana Technologies Inc.*, No. 2:13-cv-00929-GMN-PAL, 2014 WL 6882345, at \*1  
26 (D. Nev. Dec. 4, 2014) (finding that billing entries were privileged because they reveal a party’s strategy  
27 and the nature of services provided); *Fed. Sav. & Loan Ins. Corp. v. Ferm*, 909 F.2d 372, 374-75 (9th  
28 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).

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

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 ninety-five (495) providers have submitted the necessary documentation, and have  
16 received a distribution payment. However, the remaining 1,288 providers either did not respond  
17 or sent back defective paperwork. The SDR will continue to follow-up with these providers to  
18 collect the necessary paperwork so that distributions can be made.

19 The SDR also mailed NCDs for those Proofs of Claim submitted to the SDR relating to  
20 Policy Claims (*i.e.*, Class B claims pursuant to NRS 696B.420(1)(b)). The total allowed amount  
21  
22

---

23 privileged information contained in counsel’s bills describing work performed.” *See, DaVita Healthcare*  
24 *Partners, Inc. v. United States*, 128 Fed. Cl. 584, 592-93 (2016); *see also, Chaudhry v. Gallerizzo*, 174  
25 F.3d 394, 402 (4th Cir. 1999) (recognizing that “correspondence, bills, ledgers, statements, and time  
26 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 for the members' claims, \$5,102.64, is subject to a potential small increase as two NCD appeals  
2 have been filed and remain pending.

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

12 There are fifty-one proofs of claim ("POC") assigned to a priority Class "C" (*i.e.*,  
13 NRS 696B.420(1)(c)) or lower.<sup>4</sup> The SDR has now issued NCDs to nearly all of these claimants  
14 (*i.e.*, forty-three (43) out of fifty-one (51) NCDs have been sent). It appears unlikely at this time  
15 that the estate will have sufficient assets to make distributions to claims assigned priority below  
16 Class B.

17 ***CMS Receivables***

18 As explained in prior status reports, and throughout the pendency of the receivership, the  
19 Receiver is working to resolve certain outstanding matters relating to the collection of amounts  
20 due under the various federal receivables programs, of which the CO-OP was a participant, and  
21 which are administered primarily by CMS. The recovery of these assets will allow the SDR to  
22 make further claim payments to estate creditors. It is also necessary to resolve the receivership's  
23

---

24 <sup>3</sup> Members received a copy of the claim determinations that were sent to their providers, so that  
25 the members could see any denied claims, and the deductible, co-pay, and coinsurance that was applied  
26 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.

27 <sup>4</sup> This does not include a claim by the U.S. Department of Health and Human Services, which  
28 the SDR has previously reported to this Court. The government did not file an appeal of the SDR's  
determination of its claim.

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

8 In light of the United States Supreme Court’s decision in *Maine Community Health*  
9 *Options v. United States, No. 18-1023* (described further below), the Receiver has tried, and will  
10 continue to try, to resolve some or all of the claims with CMS.<sup>7</sup> The asset recovery litigation  
11 against CMS has since continued without resolution on the questions of debt, rights to offset,  
12 and claim and issue preclusion matters. CMS has filed a motion to dismiss the Receiver’s claims,  
13 while the Receiver has filed a motion for summary judgment on NHC’s claims—and both  
14 motions remain pending before the United States Court of Federal Claims.

---

18 <sup>5</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  
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>).

25 <sup>6</sup> NHC sold a significant portion, but not all, of its interest in the Risk Corridors receivables, as  
26 detailed in the Receiver’s Seventeenth Status Report to this Court. NHC will still participate in actions  
to recover CMS receivables.

27 <sup>7</sup> See Amy Howe, OPINION ANALYSIS: DECISIVE WIN FOR HEALTH INSURERS SEEKING  
28 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 **Engagement of Additional Legal Counsel**

7 As the Court is aware, the Receiver has engaged the law firm of Greenberg Traurig LLP  
8 (“Greenberg Traurig”), as outside counsel in various litigation matters. On February 18, 2021,  
9 the Receiver filed with the Receivership Court her Motion to Approve Professional Fee Rates  
10 on Order Shortening Time, seeking authorization to retain the Lewis Roca firm as conflicts  
11 counsel and to address other matters that may arise in which Greenberg Traurig is not  
12 representing the receivership estate. On February 22, 2021, Unite Here Health and Nevada  
13 Health Solutions filed their Opposition to the Motion. Plaintiff’s Reply in Support of the Motion  
14 to Approve Professional Fee Rates was filed on February 22, 2021. The Receivership Court  
15 granted the Motion in all respects via an Order entered on March 22, 2021.

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

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

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 to  
5 the existing proceedings. This Motion to Amend Complaint was filed in Judicial Department  
6 Sixteen, 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. Subsequently, the Court ordered that the  
9 case against Milliman must be arbitrated. On December 19, 2019, the Nevada Supreme Court  
10 denied the Receiver's Writ of Mandamus seeking extraordinary relief against the order  
11 compelling arbitration, noting the availability of subsequent appellate relief, as well as  
12 disagreeing that clear legal error had occurred in the underlying proceedings. On October 16,  
13 2020, Plaintiff filed a Motion for Leave to File Second Amended Complaint, which contains  
14 additional factual allegations, theories of injury, and other context concerning NHC's resulting  
15 insolvency. Hearing on this Motion was scheduled for November 18, 2020, but was vacated  
16 later, as explained below.

17 On October 8, 2020, Unite Here Health and Nevada Health Solutions, each Defendants  
18 in the instant asset recovery litigation, filed their Motion with the Receivership Court to:  
19 (1) Disqualify Greenberg Traurig, LLP as Counsel for the Statutory Receiver of Nevada Health  
20 CO-OP, and (2) Disgorge Attorney's Fees Paid by Nevada Health CO-OP to Greenberg Traurig,  
21 LLP. Greenberg Traurig, LLP, filed its Opposition to the Motion to Disqualify on November 16,  
22 2020. Plaintiff filed her Joinder to Greenberg Traurig's Opposition on November 16, 2020, and  
23 Defendants Unite Here Health and Nevada Health Solutions filed their Reply in Support of the  
24 Motion on December 8, 2020. Following a series of stipulated continuances, Judge Cory heard  
25 the arguments and evidence for and against the Motion to Disqualify on December 15, 2020.  
26 The Court issued a Minute Order on December 16, 2020, denying the Motion to Disqualify,  
27 which was later formalized in a written Order on the same subject matter entered on January 15,  
28 2021.



1           On February 8, 2021, Defendants Unite Here Health and Nevada Health Solutions filed  
2 their Notice of Appeal, seeking review of the Order Denying the Motion to Disqualify Greenberg  
3 Traurig, LLP and to Disgorge Attorneys’ Fees. A Petition for Extraordinary Writ Relief was  
4 filed with the Nevada Supreme Court on February 25, 2021. On March 12, 2021, Greenberg  
5 Traurig, as counsel to the Receiver and representing itself in response to the Defendants’  
6 motion, and Jenner & Block LLP, counsel to Greenberg Traurig, filed an opposition to the  
7 Motion to Consolidate with the writ petition proceedings in Case No. 82552 (the “Writ”), as  
8 filed by Appellants/Petitioners United Here Health and Nevada Health Solutions, LLC, and  
9 Countermotion to Dismiss Appeal.

10           Pursuing the same theories as underlined in their Motion to Disqualify, Unite Here Health  
11 and Nevada Health Solutions filed on October 15, 2020, their Motion for Leave to File Third-  
12 Party Complaint, seeking permission from the Court to file a complaint for contribution alleging  
13 that the Silver State Health Insurance Exchange and Xerox State Healthcare, LLC, are  
14 responsible for a significant number of NHC’s injuries, such that concerns for judicial economy  
15 and the consolidation of related proceedings should merit the cross-complaint and addition of  
16 these parties to the instant asset recovery litigation. This Motion was joined by Defendant former  
17 directors and officers on October 16, 2020, and by InsureMonkey on October 22, 2020. These  
18 actions were quickly followed by the filing on October 19, 2020, of a Motion to Consolidate  
19 seeking to consolidate A-20-816161-C, the asset recovery suit against the Silver State Health  
20 Insurance Exchange, with the instant asset recovery proceedings. As with the Motion seeking  
21 the filing of the Third-Party Complaint, the Motion to Consolidate asserts that the alleged  
22 similarities between the factual circumstances of the cases merit this outcome.

23           On October 20, 2020, Defendants Unite Here Health and Nevada Health Solutions filed  
24 their Motion to Strike Jury Demand, alongside a request for redaction and submission of exhibits  
25 under seal. On February 12, 2021, Plaintiff filed her Opposition to the Motion to Strike Jury  
26 Demand. Defendants Unite Here Health and Nevada Health Solutions filed their Reply

27 ///

28 ///

1 Memorandum in Support of the Motion on February 26, 2021. Defendant InsureMonkey also  
2 filed a Third-Party Brief on this issue as of March 9, 2021. The motion was granted by the Court  
3 from the bench on March 10, 2021.

4 On October 21, 2020, Defendant former directors and officers filed their Motion for  
5 Partial Summary Judgment on the pleadings pursuant to NRCP (12)(c), primarily on the grounds  
6 that many of the causes of action asserted in the First Amended Complaint (*i.e.*, negligent  
7 misrepresentation, constructive fraud, negligent performance of an undertaking) are acts that  
8 directors and officers of non-profit organizations (such as NHC) cannot be liable for under  
9 Nevada law and statutes regulating the governance of non-profit organizations. Plaintiff filed  
10 her Opposition to Defendants' Motion on February 12, 2021, setting forth the basis for the  
11 liability of the Defendant directors and officers. Defendants' Reply in Support of the Motion  
12 was filed on March 12, 2021.

13 In light of the pending Motion to Disqualify before the Receivership Court, Plaintiff's  
14 counsel filed, on November 2, 2020, a Motion for Entry of Stay on Order Shortening Time. By  
15 an Order Staying the Litigation dated November 10, 2020, the court in A-17-760558-B stayed  
16 all schedules or actions involving the motions for the filing of a Third-Party Complaint,  
17 consolidation, partial summary judgment, the filing of a Second Amended Complaint, and the  
18 request to strike the Jury Demand. A Stipulation and Order Lifting the Stay of Litigation, Setting  
19 Briefing Schedule on Pending Motions, and Resetting Discovery and Other Associated  
20 Deadlines was entered on January 14, 2021, which returned the pending Motions to active  
21 litigation. On January 21, 2021, a Stipulation and Order was entered by the Court, setting  
22 hearing on various motions relating to the filing of Third-Party Complaints, consolidation of  
23 cases, and related joinders to April 14, 2021, instead of the April 7, 2021, initial deadline for  
24 hearing such motions.

25 Under the terms of the Fifth Amended Order Setting Civil Jury Trial, Pre-Trial, Calendar  
26 Call, and Deadlines for Motions; Amended Discovery Scheduling Order, both Plaintiff and  
27 Defendants' designation of rebuttal experts are due on April 16, 2021, with a Discovery Cut Off  
28 of December 31, 2021. Dispositive Motions are due by February 18, 2022, and Motions in

1 Limine are due by March 4, 2022. The Trial is scheduled to run on a five-week stack starting  
2 May 16, 2022, subsequent to an April 28, 2022, Pre-Trial Conference and Calendar Call.  
3 Relevant Pre-Trial Memoranda must be filed by no later than May 12, 2022. Discovery  
4 continues in the litigation as before the recent stay of litigation.

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

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

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

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

26 ///

27 ///

28 ///

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

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

23           The United States Supreme Court, through its April 27, 2020, decision, found in favor of  
24 the CO-OPs, and held that the Risk Corridors statutes did indeed create a government obligation  
25 to pay insurers the full amount set out in Section 1342’s formula. Despite the decision of  
26 Congress to disallow by specific legislative rider the making of Risk Corridors payments from  
27 funding sources which would have otherwise been available under the annual appropriations  
28 omnibus, the plain text of the legislative rider at issue in the litigation did not indicate an intention

1 to impliedly, retroactively repeal Risk Corridors obligations, and that therefore the CO-OPs  
2 properly relied upon the Tucker Act to bring suits for damages against the United States in the  
3 Court of Federal Claims.

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

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

25 ///

26 ///

27 ///

28 ///

1           The United States filed its Reply in Support of its Motion to Dismiss and Opposition to  
2 Cross-Motion for Summary Judgment on October 26, 2020, reiterating its prior arguments that  
3 offsets are proper in amounts alleged to be owed between the two creditors at issue here. The  
4 motion to dismiss of the United States and the Receiver’s motion for summary judgment remain  
5 pending before the U.S. Court of Federal Claims.

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

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

21           Defendant has now filed, as of January 8, 2021, their Motion for Leave to File Third-  
22 Party Complaint, seeking to bring into the proceedings its contractor Xerox State Healthcare,  
23 LLC. Through a series of Stipulations and Orders to Extend Time for Plaintiff to File Response  
24 entered over the ensuing months, most recently the one entered on March 16, 2021, Plaintiff has  
25 until April 9, 2021, to file its Opposition to the Defendant’s Motion, with Defendant’s Reply in  
26 Support being due on April 23, 2021, and the matter has been set for hearing on May 6, 2021.

27 ///

28 ///

1 Under the terms of the March 22, 2021, Stipulation and Order to Extend Discovery  
2 Deadlines and Reset Trial Date, the initial deadlines for trial, pre-trial, Calendar Call, and  
3 necessary conferences were vacated. That same Order provides that discovery is to be completed  
4 by July 16, 2021, initial expert disclosures are to be submitted by May 10, 2021, rebuttal  
5 disclosures are due on June 11, 2021, and the deadline for the filing of dispositive motions is  
6 currently August 16, 2021. On the same date as the aforementioned Stipulation and Order,  
7 March 22, 2021, the Court issued its Order Setting Civil Bench Trial, Pretrial, and Calendar Call,  
8 which provides that trial shall commence on a five-week stack on November 15, 2021, with Pre-  
9 Trial Conference to occur on October 12, 2021, a Calendar Call on November 8, 2021, and with  
10 the Joint Pre-Trial Memorandum being due by November 5, 2021. Due to the sensitive nature  
11 of the documents likely to be disclosed in the litigation, the parties are operating under the terms  
12 of a Stipulated Protective Order and Confidentiality Agreement, filed with the Court on March 9,  
13 2021.

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

15 Through the filing of a Complaint dated July 16, 2020, in case Number A-20-818118-C,  
16 in Department Number Nineteen of the Eighth Judicial District Court, the Receiver has brought  
17 an action against WellHealth Medical Associates, PLLC, Medsource Management Group, LLC,  
18 and certain individual persons in positions of responsibility within those organizations, for the  
19 recovery of amounts owed in connection with certain illegal, unethical, negligent, and  
20 intentionally fraudulent transactions which took place with NHC in health plan years 2014 and  
21 2015. The primary allegations involve WellHealth’s entry into an illegal and unapproved  
22 services contract with NHC, which, as per the Receiver’s allegations, constitute a material  
23 shifting of insurance risk from a licensed carrier (NHC) to an unlicensed insurer (WellHealth)—  
24 and WellHealth was also expressly disapproved by the Nevada Division of Insurance as a  
25 Delivery Service Intermediary. Defendants in this action received millions of dollars from NHC  
26 in exchange for their services, which are alleged in the Complaint to not have been performed

27 ///

28 ///

1 at the standard required, or with necessary licenses and legal authority. The Receiver has not  
2 yet received an Answer from defendants in this matter but will proceed to discovery and further  
3 litigation on the merits when appropriate.

4 Subsequent to service having been provided to Defendants and certified via a series of  
5 Affidavits filed with the Court between March 8 and March 11, 2021, Defendants WellHealth,  
6 as well as Messrs. Keltie and Volker, filed their Motion to Dismiss Pursuant to NRCPC 4(e),  
7 seeking dismissal without prejudice on the grounds that, under the relevant rules, service must  
8 be completed no more than 120 days subsequent to the filing of the complaint, unless judicial  
9 approval for late service was sought and obtained. Hearing on the matter has been scheduled for  
10 April 29, 2021.

#### 11 **Current Receivership Assets**

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

16 1. The unrestricted cash assets of the CO-OP have fluctuated with post-receivership  
17 expenses and claim payments, as well as with the Receiver's receipt of member premiums. The  
18 currently available, unrestricted cash assets of the CO-OP as of February 28, 2021, were  
19 approximately \$4,457,059.00. The majority of NHC's currently available and liquid assets are  
20 held in bank deposits.

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

25 3. The Receiver is including, as **Exhibit 2** attached hereto, a cash flow report for  
26 NHC for the period covering the inception of the receivership through February 28, 2021. This  
27 report reflects a summary of disbursements and collections made by NHC during this period.

28 ///



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-Second Status Report and the actions taken by the Receiver.

5 DATED this 5<sup>th</sup> day of April 2021.

6 Respectfully submitted:

7 Barbara D. Richardson, Commissioner of  
8 Insurance of the State of Nevada, in her  
9 Official 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 */s/ Donald L. Prunty*

15 MARK E. FERRARIO, ESQ.

Nevada Bar No. 1625

16 DONALD L. PRUNTY, ESQ.

Nevada Bar No. 008230

17 10845 Griffith Peak Drive

Suite 600

18 Las Vegas, Nevada 89135

19 Telephone: (702) 792-3773

Facsimile: (702) 792-9002

20 Emails: ferrariom@gtlaw.com

pruntyd@gtlaw.com

21  
22 *Counsel for Barbara D. Richardson,*  
23 *Commissioner of Insurance, as the*  
24 *Permanent Receiver for Nevada Health*  
25 *CO-OP*