



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
Donald L. Prunty, Esq.
Nevada Bar No. 8230
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
swanise@gtlaw.com
pruntyd@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. 21
RECEIVER FOR DELINQUENT DOMESTIC)	
INSURER,)	
)	
Plaintiff,)	
)	
vs.)	
)	
NEVADA HEALTH CO-OP,)	
)	
Defendant.)	

TWENTY-THIRD 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-Third Status Report in the above-captioned receivership.

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 (the “Exchange”) on January 1,
16 2014. Its products included individual, small group, and large group health 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, the Deputy Attorney General
25 informed interested parties of the substitution of Commissioner Barbara D. Richardson, in place
26 and stead of former Acting Commissioner Amy L. Parks, as the Receiver of NHC. This
27 substitution of Receiver was subsequent to Commissioner Richardson’s appointment as
28 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 Twenty-Third Status Report, of the invoices approved or paid to the SDR and other receivership
15 consultants since the last status report to this Court.¹

16 ¹ The *in camera* materials are being submitted in a separate envelope that reflect paid invoices.

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

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

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

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).²

12 As previously reported, the SDR must collect certain necessary documentation from the
13 providers in advance of making any claim payments. Four hundred ninety-five (495) providers
14 have submitted the necessary documentation, and have received a distribution payment.
15 However, the remaining 1,288 providers either did not respond or sent back defective
16 paperwork. The SDR will continue to follow-up with these providers to collect the necessary
17 paperwork so that distributions can be made.

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

22
23
24

F.3d 394, 402 (4th Cir. 1999) (recognizing that “correspondence, bills, ledgers, statements, and time
25 records which also reveal the motive of the client in seeking representation, litigation strategy, or the
26 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 ² 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 In addition to the two member appeals described above, there are forty-two (42)
2 outstanding appeals sent by NHC members of the NCDs that were mailed for outstanding
3 healthcare claims submitted by providers to NHC’s Javelina Claims Processing Database.³
4 The SDR is working on a resolution of the outstanding appeals.

5 There are fifty-one proofs of claim (“POC”) assigned to a priority Class “C” (*i.e.*,
6 NRS 696B.420(1)(c)) or lower.⁴ The SDR has now issued NCDs to nearly all of these
7 claimants. It appears unlikely at this time that the estate will have sufficient assets to make
8 distributions to claims assigned priority below Class B.

9 ***CMS Receivables***

10 As explained in prior status reports, and throughout the pendency of the receivership,
11 the Receiver is working to resolve certain outstanding matters relating to the collection of
12 amounts due under the various federal receivables programs, of which the CO-OP was a
13 participant, and which are administered primarily by CMS. The recovery of these assets will
14 allow the SDR to make further claim payments to estate creditors. It is also necessary to
15 resolve the receivership’s dispute of the government’s asserted right to be paid ahead of all
16 other creditors in the estate (including providers and members). CMS has maintained the
17 position that any monies deemed owed to NHC (and thus the receivership estate) are to be
18 offset against the amounts CMS asserts it is owed under the start-up loan awarded to NHC.
19 To date, CMS has offset approximately \$12.9 million against the start-up loan that, the Receiver
20 maintains, should have instead been paid to NHC. When the full amount of 2014 - 2015 Risk
21
22
23

24 ³ 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
26 applied 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 ⁴ 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 Corridors payments (*i.e.*, not just the prorated amount⁵) are included in the total, NHC is owed
2 over \$55 million.⁶

3 In the U.S. Court of Federal Claims, the Receiver’s asset recovery litigation against CMS
4 has continued without resolution, as yet, on the questions of debt, rights to offset, and claim
5 and issue preclusion matters. CMS filed a motion to dismiss the Receiver’s claims, while the
6 Receiver filed a motion for summary judgment on NHC’s claims—and both motions are pending
7 before the U.S. Court of Federal Claims. Oral Arguments were held on the pending motions
8 before the U.S. Court of Federal Claims on May 24, 2021, and the Receiver now awaits a court
9 decision.

10 **Engagement of Additional Legal Counsel**

11 The Receiver has engaged the law firm of Greenberg Traurig LLP (“Greenberg Traurig”),
12 as outside counsel in various litigation matters. As reported in the prior status report, the
13 Receiver has retained the Lewis Roca firm as conflicts counsel and to address other matters
14 that may arise in which Greenberg Traurig is not representing the receivership estate.

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

22 ⁵ Due to a shortfall in risk corridor collections, CMS asserted it could only pay a prorated
23 percentage of issuers’ 2014 Risk Corridors payments and that it would use all collections in subsequent
24 years towards the 2014 payments (*i.e.*, they are unable to make payments for the subsequent years at
25 all). Dep’t of Health & Human Services & Centers for MediCare & Medicaid Services (“CMS”), CCIIO
26 Memorandum, Risk Corridors Payment and Charge Amounts for the 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>).

⁶ NHC sold a portion, but not all, of its interest in the Risk Corridors receivables, as detailed in the Receiver’s Seventeenth Status Report to this Court.

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

8 Via Plaintiff's Motion to Amend Complaint, filed on July 17, 2018, the Receiver sought
9 an order granting leave to amend the August 25, 2017, complaint against certain of NHC's
10 various directors, officers, and third-party contractors, citing the discovery of additional facts in
11 support of assertions made in the first complaint, as well as the need to add a new defendant
12 to the existing proceedings. This Motion to Amend Complaint was filed in Judicial Department
13 Sixteen, in line with the terms of contemporaneous Notice of Department Reassignment
14 assigning the proceedings to Judge Timothy C. Williams. The Motion to Amend Complaint was
15 approved via an order entered on September 18, 2018. Subsequently, the court ordered that
16 the case against Milliman must be arbitrated. On December 19, 2019, the Nevada Supreme
17 Court denied the Receiver's Writ of Mandamus seeking extraordinary relief against the order
18 compelling arbitration, noting the availability of subsequent appellate relief, as well as
19 disagreeing that clear legal error had occurred in the underlying proceedings. On October 16,
20 2020, Plaintiff filed a Motion for Leave to File Second Amended Complaint, which contains
21 additional factual allegations, theories of injury, and other context concerning NHC's resulting
22 insolvency. Hearing on this Motion was scheduled for November 18, 2020, but was vacated
23 later, as explained below, as part of the general stay of proceedings until the resolution of the
24 issues arising from Defendants' Motion to Disqualify. The Motion for Leave to File Second
25 Amended Complaint was heard in the April 14, 2021, proceedings concerning all pending
26 motions, and was subsequently granted by the court through an order entered on May 4, 2021.
27 The Plaintiff will proceed to file her Second Amended Complaint in the due course of the
28 litigation.

1 On October 8, 2020, Unite Here Health and Nevada Health Solutions, each Defendants
2 in the instant asset recovery litigation, filed their Motion with the Receivership Court to:
3 (1) Disqualify Greenberg Traurig, LLP as Counsel for the Statutory Receiver of Nevada Health
4 CO-OP, and (2) Disgorge Attorney’s Fees Paid by Nevada Health CO-OP to Greenberg
5 Traurig, LLP. Greenberg Traurig, LLP, filed its Opposition to the Motion to Disqualify on
6 November 16, 2020. Plaintiff filed her Joinder to Greenberg Traurig’s Opposition on
7 November 16, 2020, and Defendants Unite Here Health and Nevada Health Solutions filed their
8 Reply in Support of the Motion on December 8, 2020. Following a series of stipulated
9 continuances, Judge Cory heard the arguments and evidence for and against the Motion to
10 Disqualify on December 15, 2020. The court issued a Minute Order on December 16, 2020,
11 denying the Motion to Disqualify, which was later formalized in a written Order on the same
12 subject matter entered on January 15, 2021.

13 On February 8, 2021, Defendants Unite Here Health and Nevada Health Solutions filed
14 their Notice of Appeal, seeking review of the Order Denying the Motion to Disqualify Greenberg
15 Traurig, LLP and to Disgorge Attorneys’ Fees. A Petition for Extraordinary Writ Relief was filed
16 with the Nevada Supreme Court on February 25, 2021. On March 12, 2021, Greenberg
17 Traurig, as counsel to the Receiver and representing itself in response to the Defendants’
18 motion, and Jenner & Block LLP, counsel to Greenberg Traurig, filed an opposition to the
19 Motion to Consolidate with the writ petition proceedings in Case No. 82552 (the “Writ”), as
20 filed by Appellants/Petitioners Unite Here Health and Nevada Health Solutions, LLC, and
21 Countermotion to Dismiss Appeal. The Motion to Consolidate was granted by the Nevada
22 Supreme Court through an order entered on April 12, 2021. On June 16, 2021, Petitioners
23 filed their opening brief and appendix of documents, with the Respondents having thirty (30)
24 days from the date of service of this opening brief to submit their own opening brief and
25 appendix. These proceedings remain ongoing.

26 Pursuing the same theories as underlined in their Motion to Disqualify, Unite Here
27 Health and Nevada Health Solutions filed on October 15, 2020, their Motion for Leave to File
28 Third-Party Complaint, seeking permission from the court to file a complaint for contribution

1 alleging that the Silver State Health Insurance Exchange and Xerox State Healthcare, LLC, are
2 responsible for a significant number of NHC’s injuries, such that concerns for judicial economy
3 and the consolidation of related proceedings should merit the cross-complaint and addition of
4 these parties to the instant asset recovery litigation. This Motion was joined by Defendant
5 former directors and officers on October 16, 2020, and by InsureMonkey on October 22, 2020.
6 These actions were quickly followed by the filing on October 19, 2020, of a Motion to
7 Consolidate seeking to consolidate A-20-816161-C, the asset recovery suit against the Silver
8 State Health Insurance Exchange, with the instant asset recovery proceedings. As with the
9 Motion seeking the filing of the Third-Party Complaint, the Motion to Consolidate asserted that
10 the alleged similarities between the factual circumstances of the cases merit this outcome.
11 Through the issuance of a minute order dated May 3, 2021, subsequently followed by a formal
12 written order dated May 26, 2021, the court denied both the Motion for Leave to File Third-
13 Party Complaint and the Motion to Consolidate on the grounds, *inter alia*, that the risk of
14 potential prejudice to the parties and the increase in case complexity contemplated by the
15 attempted interpleader were on balance more significant than the issues of judicial economy
16 and the risk of injection of “tangential issues such as potential conflicts” favored by Defendants.

17 On October 21, 2020, Defendant former directors and officers filed their Motion for
18 Partial Summary Judgment on the pleadings pursuant to NRCP (12)(c), primarily on the
19 grounds that many of the causes of action asserted in the First Amended Complaint (*i.e.*,
20 negligent misrepresentation, constructive fraud, negligent performance of an undertaking) are
21 acts that directors and officers of non-profit organizations (such as NHC) cannot be liable for
22 under Nevada law and statutes regulating the governance of non-profit organizations. Plaintiff
23 filed her Opposition to Defendants’ Motion on February 12, 2021, setting forth the basis for the
24 liability of the Defendant directors and officers. Defendants’ Reply in Support of the Motion
25 was filed on March 12, 2021. The Motion for Partial Summary Judgment was withdrawn, and
26 the relevant hearing date vacated, pursuant to the terms of a Stipulation and Order agreed to
27 between the parties and filed with the court on April 12, 2021.

28 ///

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

13 Under the terms of the most recent (the 5th) Amended Order Setting Civil Jury Trial, Pre-
14 Trial, Calendar Call, and Deadlines for Motions; Amended Discovery Scheduling Order, both
15 Plaintiff and Defendants' designation of rebuttal experts were due on April 16, 2021, with a
16 Discovery Cut Off of December 31, 2021. Dispositive Motions are due by February 18, 2022,
17 and Motions in Limine are due by March 4, 2022. The Trial is scheduled to run on a five-week
18 stack starting May 16, 2022, subsequent to an April 28, 2022, Pre-Trial Conference and
19 Calendar Call. Relevant Pre-Trial Memoranda must be filed by no later than May 12, 2022.
20 Discovery continues in the litigation as before the recent stay of litigation.

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

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

28 ///

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
3 received in payments under Sections 1342, 1341, 1343, and 1401 of the ACA – the statutes
4 which describe and enact the Risk Corridors, transitional reinsurance, risk adjustment, and cost
5 sharing reduction programs respectively – and the amount NHC should have received under
6 those laws.

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

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

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

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

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

1 Motion for Summary Judgment, with the United States' reply in support of the Motion being due
2 on September 18, 2020, and NHC's own reply due on 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
5 the 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. On September 9, 2020, Plaintiff filed her Response and
11 Reply to the United States' Motion to Dismiss and Cross-Motion for Summary Judgment.

12 The United States filed its Reply in Support of its Motion to Dismiss and Opposition to
13 Cross-Motion for Summary Judgment on October 26, 2020, reiterating its prior arguments that
14 offsets are proper. The motion to dismiss of the United States and the Receiver's cross-motion
15 for partial summary judgment remain pending before the U.S. Court of Federal Claims.
16 Through an Order dated April 7, 2011, Judge Solomson directed the parties to provide a joint
17 status report by April 14, 2021, concerning the status of the state-level matters which
18 necessitated the stay of the federal proceedings. This joint status report was also requested
19 to provide dates in May for the hearing of oral argument in connection with motions which
20 remain pending, and which have at this time been fully briefed. Subsequent to the parties' joint
21 proposal of dates for oral argument, Judge Solomson ordered that such a hearing would be
22 conducted on May 24, 2021. Oral argument on the pending motions was held on May 24,
23 2021, but an order has not been issued.

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

25 Through the filing of a Complaint dated June 5, 2020, in Case Number A-20-816161-C,
26 in Department Number Eight of the Eighth Judicial District Court, the Receiver has brought an
27 action against the Exchange for, *inter alia*, damages of approximately one-half million dollars
28 in premiums received from on-exchange insureds on behalf of NHC, but never remitted to the

1 CO-OP. The Complaint alleges that the retention of these funds by the Exchange, without
2 explanation or justification, constitutes a violation of the existing agreement between the
3 parties, unjust enrichment of the Exchange at the expense of receivership claimants, and an
4 appropriate basis for the imposition of a constructive trust over the assets at issue. The
5 Exchange filed its Answer on August 24, 2020, denying the relevant allegations and asserting
6 conventional affirmative defenses such as the doctrine of assumption of risk, sovereign
7 immunity, contributory negligence, offset, and unclean hands. Following the October 8, 2020,
8 Joint Case Conference Report, and the November 19, 2020, Mandatory Rule 16 Conference,
9 the proceedings were scheduled along the dates set out in the relevant November 24, 2020,
10 Scheduling Order and Order Setting Civil Bench Trial. However, these deadlines were vacated
11 by subsequent Stipulations and Orders, most recently the one which was filed on May 20, 2021,
12 and are expected to be re-set upon the mutual agreement of the parties.

13 Defendant has filed, as of January 8, 2021, their Motion for Leave to File Third-Party
14 Complaint, seeking to bring into the proceedings its contractor Xerox State Healthcare, LLC.
15 Following a series of Stipulations and Orders to Extend Time for Plaintiff to File Response
16 entered over the ensuing months, most recently the one entered on May 6, 2021, the hearing
17 on this and related pleadings has been scheduled for July 8, 2021. Plaintiff filed the Opposition
18 to the Defendant's Motion on April 12, 2021, with Defendant's Reply in Support being filed on
19 April 26, 2021. The July 8, 2021, hearing on the Motion was not vacated by the May 20, 2021,
20 Stipulation and Order which has vacated the other deadlines, for civil trial and otherwise.

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

22 Through the filing of a Complaint dated July 16, 2020, in case Number A-20-818118-C,
23 in Department Number Nineteen of the Eighth Judicial District Court, the Receiver has brought
24 an action against WellHealth Medical Associates, PLLC, Medsource Management Group, LLC,
25 and certain individual persons in positions of responsibility within those organizations, for the
26 recovery of amounts owed in connection with certain illegal, unethical, negligent, and
27 intentionally fraudulent transactions which took place with NHC in health plan years 2014 and
28 2015. The primary allegations involve WellHealth's entry into an illegal and unapproved

1 services contract with NHC, which, as per the Receiver’s allegations, constitute a material
2 shifting of insurance risk from a licensed carrier (NHC) to an unlicensed insurer (WellHealth)—
3 and WellHealth was also expressly disapproved by the Nevada Division of Insurance as a
4 Delivery Service Intermediary. Defendants in this action received millions of dollars from NHC
5 in exchange for their services, which are alleged in the Complaint to not have been performed
6 at the standard required, or with necessary licenses and legal authority. The Receiver has not
7 yet received an Answer from defendants in this matter but will proceed to discovery and further
8 litigation on the merits when appropriate.

9 Subsequent to service having been provided to Defendants and certified via a series of
10 Affidavits filed with the court between March 8 and March 11, 2021, Defendants WellHealth, as
11 well as Messrs. Keltie and Volker, filed their Motion to Dismiss Pursuant to NRCP 4(e), seeking
12 dismissal without prejudice on the grounds that, under the relevant rules, service must be
13 completed no more than 120 days subsequent to the filing of the complaint, unless judicial
14 approval for late service was sought and obtained. On April 7, 2021, Plaintiff filed an
15 Opposition to Defendants’ Motion to Dismiss Pursuant to NRCP 4(e) and Countermotion to
16 Enlarge Time for Service of Process, to which Defendant filed a reply on April 22, 2021. Plaintiff
17 filed a reply in support of the Opposition on April 28, 2021. Oral argument on the Motion to
18 Dismiss was heard on April 29, 2021. Subsequent to the hearing, Judge Yeager granted the
19 Motion to Dismiss without prejudice. The parties are now working on a potential resolution of
20 this case without the need for further litigation.

21 **Current Receivership Assets**

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

26 1. The unrestricted cash assets of the CO-OP have fluctuated with post-
27 receivership expenses and claim payments, as well as with the Receiver’s receipt of member
28 premiums. The currently available, unrestricted cash assets of the CO-OP as of May 31, 2021,

1 were approximately \$4,381,237.00. The majority of NHC's currently available and liquid assets
2 are held in bank deposits.

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

7 3. The Receiver is including, as **Exhibit 2** attached hereto, a cash flow report for
8 NHC for the period covering the inception of the receivership through May 31, 2021. This report
9 reflects a summary of disbursements and collections made by NHC during this period.

10 CONCLUSION

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

14 DATED this 28th day of June 2021.

15 Respectfully submitted:

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

20 By: 18/ CANTILO & BENNETT, L.L.P.
21 Special Deputy Receiver
22 By Its Authorized Representative
23 Mark F. Bennett

24 Respectfully submitted by:

25 18/ Donald L. Prunty

26 MARK E. FERRARIO, ESQ.

27 ERIC W. SWANIS, ESQ.

28 Donald L. Prunty, Esq.

10845 Griffith Peak Drive

Suite 600

Las Vegas, Nevada 89135

Counsel for Barbara D. Richardson,

Commissioner of Insurance,

as the Permanent Receiver for Nevada Health CO-OP