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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. )  
19 COMMISSIONER OF INSURANCE, IN HER )  
20 OFFICIAL CAPACITY AS STATUTORY )  
21 RECEIVER FOR DELINQUENT )  
22 DOMESTIC INSURER, )

CASE NO. A-15-725244-C

23 Plaintiff, )

DEPARTMENT 21

24 vs. )

25 NEVADA HEALTH CO-OP, )  
26 )  
27 Defendant. )  
28 )

**TWENTY-FOURTH STATUS REPORT**

29 COME NOW, Commissioner of Insurance Barbara D. Richardson in her capacity as  
30 Receiver of Nevada Health CO-OP (“NHC,” or the “CO-OP”), and CANTILO & BENNETT,  
31 L.L.P., Special Deputy Receiver (“SDR” - SDR and the Commissioner as Receiver are referred  
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1 to collectively herein as “Receiver”) and file this Twenty-Fourth Status Report in the above-  
2 captioned receivership.

3 **I. INTRODUCTION AND HISTORICAL BACKGROUND**

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

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

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1 Via a Notice of Substitution of Receiver dated April 6, 2016, the Deputy Attorney  
2 General informed interested parties of the substitution of Commissioner Barbara D. Richardson,  
3 in place and stead of former Acting Commissioner Amy L. Parks, as the Receiver of NHC. This  
4 substitution of Receiver was subsequent to Commissioner Richardson's appointment as  
5 Commissioner of Insurance for the State of Nevada.

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

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

## 13 **II. RECEIVERSHIP ADMINISTRATION**

### 14 **Receivership Administrative Services and Oversight**

15 CANTILO & BENNETT, L.L.P., as SDR of NHC, manages the receivership estate and  
16 conducts its affairs. PALOMAR FINANCIAL, LC ("Palomar"), an affiliate of the SDR, performs  
17 administration, information technology, and other related services for the Receiver under the  
18 supervision of the SDR. The Receiver has included an informational copy, as **Exhibit 1** to this  
19 Twenty-Fourth Status Report, of the invoices approved or paid to the SDR and other receivership  
20 consultants since the last status report to this Court.<sup>1</sup>

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

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

27 In this regard, courts have held that the bills of legal counsel and experts may be withheld from legal discovery and are  
28 not subject to legal disclosure, as this information may provide indications or 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, 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, 374-75 (9th Cir. 1990)  
(considering whether or not fee information revealed counsel's mental impressions concerning litigation strategy). Other courts  
that have addressed this issue have recognized that the "attorney-client privilege embraces attorney time, records and statements  
to the extent that they reveal litigation strategy and the nature of the services provided." *Real v. Cont'l Grp., Inc.*, 116 F.R.D.  
211, 213 (N.D. Cal. 1986).

1 **Resolution of Outstanding Receivership Matters**

2 ***Claims Adjudications & Distributions***

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

12 As previously reported, the SDR must collect certain necessary documentation from the  
13 providers in advance of making any claim payments. Five hundred (500) providers have  
14 submitted the necessary documentation and have received a distribution payment. However, the  
15 remaining 1,283 providers either did not respond or sent back defective paperwork. The SDR  
16 will continue to follow-up with these providers to collect the necessary paperwork so that  
17 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.

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24 The *in-camera* review should apply not only to documentation concerning attorneys’ fees, but it also extends to “details  
25 of work revealed in [an] expert’s work description [which] would relate to tasks for which she [or he] was compensated[.]” a  
26 situation which is “analogous to protecting attorney-client privileged information contained in counsel’s bills describing work  
27 performed.” See *DaVita Healthcare Partners, Inc. v. United States*, 128 Fed. Cl. 584, 592-93 (2016); see also *Chaudhry v. Gallerizzo*, 174 F.3d 394, 402 (4th Cir. 1999) (recognizing that “correspondence, bills, ledgers, statements, and time records  
28 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)).

<sup>2</sup> As detailed in the Receiver’s Seventeenth Status Report, within the section of the report titled “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 twenty-eight (28)  
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.<sup>3</sup> The  
4 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.<sup>4</sup> The SDR has now issued NCDs to nearly all of these claimants.  
7 It appears unlikely at this time that the estate will have sufficient assets to make distributions to  
8 claims assigned priority below Class B.

9 ***CMS Receivables***

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

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

28 <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. The government did not file an appeal of the SDR’s determination of its claim.

1 paid to NHC. When the full amount of 2014 - 2015 Risk Corridors payments (*i.e.*, not just the  
2 prorated amount<sup>5</sup>) are included in the total, NHC is owed over \$55 million.<sup>6</sup>

3 In the United States Court of Federal Claims, the Receiver’s asset recovery litigation  
4 against CMS has continued without resolution, as yet, on the questions of debt, rights to offset,  
5 and claim and issue preclusion matters. CMS filed a motion to dismiss the Receiver’s claims,  
6 while the Receiver filed a motion for summary judgment on NHC’s claims—and both motions  
7 are pending before the United States Court of Federal Claims. Oral Arguments were held on the  
8 pending motions before the United States Court of Federal Claims on May 24, 2021, and the  
9 Receiver now awaits a determination from that court concerning the relevant legal issues.  
10 Plaintiff, through the filing of an informational notice to the court on August 30, 2021, sought  
11 to bring attention to the recent decision by the United States Court of Appeals for the Federal  
12 Circuit in *Conway v. United States* not to schedule the case for rehearing by an appellate panel,  
13 instead issuing its prior mandate and returning jurisdiction to the lower court for additional  
14 proceedings.

15 **Engagement of Additional Legal Counsel**

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

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23 <sup>5</sup> Due to a shortfall in risk corridor collections, CMS asserted it could only pay a prorated percentage of issuers’ 2014  
24 Risk Corridors payments and that it would use all collections in subsequent years towards the 2014 payments (*i.e.*, they are  
25 unable to make payments for the subsequent years at all). DEP’T OF HEALTH & HUMAN SERVICES & CENTERS FOR MEDICARE  
26 & MEDICAID SERVICES (“CMS”), CCIIO MEMORANDUM, RISK CORRIDORS PAYMENT AND CHARGE AMOUNTS FOR THE  
27 2015 BENEFIT YEAR (November 18, 2016) (available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2015-RC-Issuer-level-Report-11-18-16-FINAL-v2.pdf>); CMS, CCIIO MEMORANDUM, RISK CORRIDORS  
28 PAYMENT AND CHARGE AMOUNTS FOR THE 2016 BENEFIT YEAR (November 15, 2017) (available at <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/Risk-Corridors-Amounts-2016.pdf>).

<sup>6</sup> 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 **Continuation of Action Against Various Professionals and Other Firms Who Performed**  
2 **Services for and on Behalf of NHC**

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

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



1 general stay of proceedings until the resolution of the issues arising from Defendants’ Motion to  
2 Disqualify. The Motion for Leave to File Second Amended Complaint was heard in the April 14,  
3 2021, proceedings concerning all pending motions, and was subsequently granted by the court  
4 through an order entered on May 4,2021. The Plaintiff will proceed to file her Second Amended  
5 Complaint in the due course of the litigation.

6 On October 8, 2020, Unite Here Health and Nevada Health Solutions, each Defendants  
7 in the instant asset recovery litigation, filed their Motion with the Receivership Court to:  
8 (1) Disqualify Greenberg Traurig, LLP as Counsel for the Statutory Receiver of Nevada Health  
9 CO-OP, and (2) Disgorge Attorneys’ Fees Paid by Nevada Health CO-OP to Greenberg Traurig,  
10 LLP. Greenberg Traurig, LLP, filed its Opposition to the Motion to Disqualify on November 16,  
11 2020. Plaintiff filed her Joinder to Greenberg Traurig’s Opposition on November 16, 2020, and  
12 Defendants Unite Here Health and Nevada Health Solutions filed their Reply in Support of the  
13 Motion on December 8, 2020. Following a series of stipulated continuances, Judge Cory heard  
14 the arguments and evidence for and against the Motion to Disqualify on December 15, 2020.  
15 The court issued a Minute Order on December 16, 2020, denying the Motion to Disqualify,  
16 which was later formalized in a written Order on the same subject matter entered on January 15,  
17 2021.

18 Unite Here Health and Nevada Health Solutions filed on October 15, 2020, their Motion  
19 for Leave to File Third-Party Complaint, seeking permission from the court to file a complaint  
20 for contribution alleging that the Silver State Health Insurance Exchange and Xerox State  
21 Healthcare, LLC, are responsible for a significant number of NHC’s injuries, such that the cross-  
22 complaint and addition of these parties should be allowed for the instant asset recovery litigation.  
23 This Motion was joined by Defendant former directors and officers on October 16, 2020, and by  
24 InsureMonkey on October 22, 2020. These actions were quickly followed by the filing on  
25 October 19, 2020, of a Motion to Consolidate seeking to consolidate A-20-816161-C, the asset  
26 recovery suit against the Silver State Health Insurance Exchange, with the instant asset recovery  
27 proceedings. Through the issuance of a minute order dated May 3, 2021, subsequently followed  
28 by a formal written order dated May 26, 2021, the court denied both the Motion for Leave to



1 File Third-Party Complaint and the Motion to Consolidate on the grounds, *inter alia*, that the  
2 risk of potential prejudice to the parties and the increase in case complexity contemplated by the  
3 attempted interpleader were on balance more significant than the issues of judicial economy and  
4 the risk of injection of “tangential issues such as potential conflicts” favored by Defendants.

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

16 On February 8, 2021, Defendants Unite Here Health and Nevada Health Solutions filed  
17 their Notice of Appeal (Case No. 82467), seeking review of the Order Denying the Motion to  
18 Disqualify Greenberg Traurig, LLP and to Disgorge Attorneys’ Fees. Plaintiff/Appellee  
19 submitted her answer to this appeal via the filing of relevant briefing on July 28, 2021. A Petition  
20 for Extraordinary Writ Relief was also filed with the Nevada Supreme Court on February 25,  
21 2021. On March 12, 2021, Greenberg Traurig, as counsel to the Receiver and representing  
22 itself in response to the Defendants’ Motion, and Jenner & Block LLP, counsel to Greenberg  
23 Traurig, filed an opposition to the Motion to Consolidate with the writ petition proceedings in  
24 Case No. 82552, as filed by Appellants/Petitioners Unite Here Health and Nevada Health  
25 Solutions, LLC, and Countermotion to Dismiss Appeal. The Motion to Consolidate was  
26 granted by the Nevada Supreme Court through an order entered on April 12, 2021. On June 16,  
27 2021, Petitioners filed their opening brief and appendix of documents, with the Respondents  
28 having thirty (30) days from the date of service of this opening brief to submit their own

1 opening brief and appendix. On July 1, 2021, Defendants Unite Here Health and Nevada Health  
2 Solutions filed another Petition for Extraordinary Writ Relief with the Nevada Supreme Court,  
3 Case No. 83135, seeking to overturn the lower court’s May 26, 2021, order denying Unite Here  
4 Health’s Motion to Consolidate the NHC v. Milliman asset recovery litigation with that litigation  
5 filed against the Silver State Health Insurance Exchange. That same day, petitioners/appellants  
6 filed Motions to Consolidate the pending cases seeking extraordinary writs in this and related  
7 cases (Case Nos. 82552, 83135, and 82467) into a single proceeding. Plaintiff/Appellee filed  
8 her opposition to the various motions to consolidate in all three pending cases on July 8, 2021,  
9 followed by petitioner/appellants’ replies on July 15, 2021. The Nevada Supreme Court denied  
10 the motions to consolidate on the writ and appeal cases via an order entered on July 30, 2021.  
11 These appeals and petitions each remain pending in various capacities.

12 Defendants Unite Here Health and Nevada Health Solutions filed on July 14, 2021, their  
13 Motion to Compel. Plaintiff filed her opposition to the motion on July 28, 2021. Following the  
14 August 11, 2021, filing of Defendants’ reply in support, the Motion to Compel was denied by  
15 the court via a minute order following the hearing conducted on August 18, 2021. Subsequently,  
16 those defendants have, as of September 7, 2021, filed a Motion for Sanctions, which is scheduled  
17 for court hearing on November 10, 2021.

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

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

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

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

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

22 Subsequent to a Motion for Enlargement of Time to Respond to Government’s Motion to  
23 Dismiss, filed on June 28, 2019, the Receiver filed her Opposition to Motion to Dismiss, and  
24 Cross-Motion for Final Partial Summary Judgment on July 31, 2019, which sought from the  
25 Court of Federal Claims, *inter alia*, an adjudication in favor of the Receiver regarding that  
26 Counts II through IV of the CFC Complaint, the counts not taken up by the United States  
27 Supreme Court for review. The Cross-Motion for Partial Summary Judgment predicated its  
28 arguments on the basis that the United States had already admitted prior liability and damages

1 concerning the amounts sought by the CFC Complaint under Counts II-IV (*i.e.*, the Federal  
2 Transitional Reinsurance program, the Risk Adjustment program, and the Cost-Sharing  
3 Reduction programs provided for explicitly by ACA statutes), save for their affirmative defense  
4 of offset, and that the affirmative defense of offset must fail as a matter of law as the  
5 circumstances provided for in applicable federal law and regulation permitting an offset of  
6 amounts owed under the ACA receivables programs were not satisfied in this case.

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

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

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

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

22 The United States filed its Reply in Support of its Motion to Dismiss and Opposition to  
23 Cross-Motion for Summary Judgment on October 26, 2020, reiterating its prior arguments that  
24 offsets are proper. The motion to dismiss of the United States and the Receiver's cross-motion  
25 for partial summary judgment remain pending before the United States Court of Federal Claims.  
26 Through an Order dated April 7, 2011, Judge Solomson directed the parties to provide a joint  
27 status report by April 14, 2021, concerning the status of the state-level matters which  
28 necessitated the stay of the federal proceedings. This joint status report was also requested to

1 provide dates in May for the hearing of oral argument in connection with motions which remain  
2 pending, and which have at this time been fully briefed. Subsequent to the parties' joint proposal  
3 of dates for oral argument, Judge Solomson ordered that such a hearing would be conducted on  
4 May 24, 2021. Oral argument on the pending motions was held on May 24, 2021, but an order  
5 has not been issued, though supplemental legal authority has been noticed to the court through  
6 the filing of an August 30, 2021, notice concerning the *Conway* decision.

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

8 Through the filing of a Complaint dated June 5, 2020, in Case No. A-20-816161-C, in  
9 Department 8 of the Eighth Judicial District Court, the Receiver has brought an action against  
10 the Exchange for, *inter alia*, damages of approximately one-half million dollars in premiums  
11 received from on-exchange insureds on behalf of NHC, but never remitted to the CO-OP. The  
12 Complaint alleges that the retention of these funds by the Exchange, without explanation or  
13 justification, constitutes a violation of the existing agreement between the parties, unjust  
14 enrichment of the Exchange at the expense of receivership claimants, and an appropriate basis  
15 for the imposition of a constructive trust over the assets at issue. The Exchange filed its Answer  
16 on August 24, 2020, denying the relevant allegations and asserting conventional affirmative  
17 defenses such as the doctrine of assumption of risk, sovereign immunity, contributory  
18 negligence, offset, and unclean hands. Following the October 8, 2020, Joint Case Conference  
19 Report, and the November 19, 2020, Mandatory Rule 16 Conference, the proceedings were  
20 scheduled along the dates set out in the relevant November 24, 2020, Scheduling Order and  
21 Order Setting Civil Bench Trial. However, these deadlines were vacated by subsequent  
22 Stipulations and Orders, most recently the one dated September 2, 2021. Via the entry of a joint  
23 Stipulation and Order to Dismiss without Prejudice filed on September 21, 2021, the proceedings  
24 in this matter have been closed, with all pending deadlines vacated.

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1 Prior to the aforementioned dismissal, Defendant had filed, as of January 8, 2021, their  
2 Motion for Leave to File Third-Party Complaint, seeking to bring into the proceedings its  
3 contractor Xerox State Healthcare, LLC. Following a series of Stipulations and Orders to Extend  
4 Time for Plaintiff to File Response entered over the ensuing months, most recently the one  
5 entered on September 2, 2021, the hearing on this and related pleadings had been scheduled for  
6 September 28, 2021. Plaintiff filed the Opposition to the Defendant’s Motion on April 12, 2021,  
7 with Defendant’s Reply in Support being filed on April 26, 2021.

8 **Civil Action Against WellHealth Medical Associates, MedSource, and Certain Persons**

9 Through the filing of a Complaint dated July 16, 2020, in Case No. A-20-818118-C, in  
10 Department 19 of the Eighth Judicial District Court, the Receiver has brought an action against  
11 WellHealth Medical Associates, PLLC, MedSource Management Group, LLC, and certain  
12 individual persons in positions of responsibility within those organizations, for the recovery of  
13 amounts owed in connection with certain illegal, unethical, negligent, and intentionally  
14 fraudulent transactions which took place with NHC in health plan years 2014 and 2015. The  
15 primary allegations involve WellHealth’s entry into an illegal and unapproved services contract  
16 with NHC, which, as per the Receiver’s allegations, constitute a material shifting of insurance  
17 risk from a licensed carrier (NHC) to an unlicensed insurer (WellHealth)—and WellHealth was  
18 also expressly disapproved by the Nevada Division of Insurance as a Delivery Service  
19 Intermediary. Defendants in this action received millions of dollars from NHC in exchange for  
20 their services, which are alleged in the Complaint to not have been performed at the standard  
21 required, or with necessary licenses and legal authority. The Receiver has not yet received an  
22 Answer from defendants in this matter but will proceed to discovery and further litigation on the  
23 merits when appropriate.

24 Subsequent to service having been provided to Defendants and certified via a series of  
25 Affidavits filed with the court between March 8 and March 11, 2021, Defendants WellHealth,  
26 as well as Messrs. Keltie and Volker, filed their Motion to Dismiss Pursuant to NRCP 4(e),  
27 seeking dismissal without prejudice on the grounds that, under the relevant rules, service must  
28 be completed no more than 120 days subsequent to the filing of the complaint, unless judicial



1 approval for late service was sought and obtained. On April 7, 2021, Plaintiff filed an Opposition  
2 to Defendants' Motion to Dismiss Pursuant to NRCP 4(e) and Countermotion to Enlarge Time  
3 for Service of Process, to which Defendant filed a Reply on April 22, 2021. Plaintiff filed a  
4 Reply in support of the Opposition on April 28, 2021. Oral argument on the Motion to Dismiss  
5 was heard on April 29, 2021. Subsequent to the hearing, Judge Yeager granted the Motion to  
6 Dismiss without prejudice. The parties are now working on a potential resolution of this case  
7 without the need for further litigation. A further stipulation and order was entered in this matter  
8 on July 23, 2021, dismissing it without prejudice to refile.

9 **Current Receivership Assets**

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

14 1. The unrestricted cash assets of the CO-OP have fluctuated with post-  
15 receivership expenses and claim payments, as well as with the Receiver's receipt of  
16 member premiums. The currently available, unrestricted cash assets of the CO-OP  
17 as of August 31, 2021, were approximately \$3,870,470.00. The majority of NHC's  
18 currently available and liquid assets are held in bank deposits.

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

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

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1 **CONCLUSION**

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

5 DATED this 5th day of October 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  
13 MARK F. BENNETT

14 Respectfully submitted by:  
15 GREENBERG TRAUIG, LLP

16 */s/ Donald L. Prunty*

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

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**CERTIFICATE OF SERVICE**

HEREBY CERTIFY that, on the **5th day of October 2021**, a true and correct copy of the foregoing **TWENTY-FOURTH STATUS REPORT** was submitted for service using the Odyssey eFileNV Electronic Service system and served on all parties with an email address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R. The date and time of the electronic proof of service is in place of the date and place of deposit in the United States mail.

*/s/ Evelyn Escobar-Gaddi*  
\_\_\_\_\_  
An employee of Greenberg Traurig, LLP