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**SR**  
MARK E. FERRARIO, ESQ.  
Nevada Bar No. 01625  
DONALD L. PRUNTY, ESQ.  
Nevada Bar No. 08230  
GREENBERG TRAUERIG, LLP  
10845 Griffith Peak Drive  
Suite 600  
Las Vegas, Nevada 89135  
Telephone: (702) 792-3773  
Facsimile: (702) 792-9002  
Emails: ferrariom@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. )  
COMMISSIONER OF INSURANCE, IN HER )  
OFFICIAL CAPACITY AS STATUTORY )  
RECEIVER FOR DELINQUENT DOMESTIC )  
INSURER, )  
  
Plaintiff, )  
  
vs. )  
  
NEVADA HEALTH CO-OP, )  
  
Defendant. )

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

**TWENTY-SIXTH 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

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

1 to collectively herein as “Receiver”) and file this Twenty-Sixth 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.

26 Via a Notice of Substitution of Receiver dated April 6, 2016, the Deputy Attorney  
27 General informed interested parties of the substitution of Commissioner Barbara D. Richardson,  
28 in place and stead of former Acting Commissioner Amy L. Parks, as the Receiver of NHC. This

1 substitution of Receiver was subsequent to Commissioner Richardson’s appointment as  
2 Commissioner of Insurance for the State of Nevada.

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

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

## 10 II. RECEIVERSHIP ADMINISTRATION

### 11 Receivership Administrative Services and Oversight

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

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

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

23 In this regard, courts have held that the bills of legal counsel and experts may be withheld from  
24 legal discovery and are not subject to legal disclosure, as this information may provide indications or  
25 context concerning potential litigation strategy and the nature of the expert services being provided. *See*,  
26 *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).

27 The *in-camera* review should apply not only to documentation concerning attorneys’ fees, but it  
28 also extends to “details of work revealed in [an] expert’s work description [which] would relate to tasks  
for which she [or he] was compensated[.]” a situation which is “analogous to protecting attorney-client  
privileged information contained in counsel’s bills describing work performed.” *See DaVita Healthcare*

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> To the extent that funds are not used for  
12 these Provider Claims, they retain their classification as general assets of the Receivership  
13 available to pay other expenses.

14 As previously reported, the SDR must collect certain necessary documentation from the  
15 providers in advance of making any claim payments. Five hundred and eighteen (518) providers  
16 have submitted the necessary documentation and have received a distribution  
17 payment. However, the remaining one thousand two hundred and sixty-five (1,265) providers  
18 either did not respond or sent back defective paperwork. The Receiver in her discretion has not  
19 paid these claims for lack of the proper documentation. The Receiver is seeking further litigation  
20 recoveries to enable additional provider claim distributions and anticipates further payment for  
21 these provider claims subject to receiving proper documentation.

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

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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 twenty-eight (28)  
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 working on a resolution of the outstanding appeals.

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

### 11 ***CMS Receivables***

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

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25 <sup>3</sup> Members received a copy of the claim determinations that were sent to their providers, so that  
26 the members could see any denied claims, and the deductible, co-pay, and coinsurance that was applied  
27 to each of the allowed provider claims (*i.e.*, the amount of the member's responsibility on each claim)  
28 and have an opportunity to appeal.

<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 payments (*i.e.*, not just the prorated amount<sup>5</sup>) are included in the total, NHC is owed over \$55  
2 million for CMS Receivables.<sup>6</sup>

3 On November 30, 2021, the U.S. Court of Federal Claims granted the Receiver’s Motion  
4 for Summary Judgment and found in favor of the Receiver on questions of debt, rights to offset,  
5 and claim and issue preclusion matters. The parties were ordered to, and did, file a joint  
6 stipulation on an agreed-upon sum for the damages. The U.S. Court of Federal Claims entered  
7 judgment in favor of the Receiver on January 4, 2022. The United States filed a Notice of Appeal  
8 of the court’s judgment on March 4, 2022. The court’s opinion and orders<sup>7</sup> are detailed further  
9 below.

### 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 that  
14 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-party  
19 vendors, and professional service firms which are alleged to have contributed to NHC’s losses  
20 by, among other things, failing to adhere to applicable standards of professional care and

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

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

<sup>7</sup> Richardson v. United States, No. 18-1731C, 2021 WL 5625391 (Fed. Cl. Nov. 30, 2021).

1 requirements imposed by law, misrepresentation concerning quality and standard of care for  
2 services performed, and breaches of contract, duty, and implied covenants of good faith and fair  
3 dealing (the “Asset Recovery Case”). The complaint names, among others, NHC’s former  
4 actuaries, accountants, auditors, and providers of certain business operations and utilization  
5 review services, as well as those individuals who specifically performed, or who were in the role  
6 of supervising the performance of, those services. The complaint also names several NHC  
7 former directors and 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 to  
12 the existing proceedings. This Motion to Amend Complaint was filed in Judicial Department  
13 Sixteen, in line with the terms of the 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 granted  
16 Milliman’s motion to compel arbitration. On December 19, 2019, the Nevada Supreme Court  
17 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 has filed her Second Amended Complaint in the litigation as of November 9, 2021,  
28 with the relevant Answers being filed by the InsureMonkey defendants on November 22, 2021,

1 and the former directors and officers, Unite Here Health, and Nevada Health Solutions on  
2 November 23, 2021. This litigation, as discussed below, has been stayed by court orders.

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

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

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1 attempted interpleader were on balance more significant than the issues of judicial economy and  
2 the risk of injection of “tangential issues such as potential conflicts” favored by Defendants.

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

14 On February 8, 2021, Defendants Unite Here Health and Nevada Health Solutions filed  
15 their Notice of Appeal (Case No. 82467), seeking review of the Order Denying the Motion to  
16 Disqualify Greenberg Traurig, LLP and to Disgorge Attorneys’ Fees. Plaintiff/Appellee  
17 submitted her answer to this appeal via the filing of relevant briefing on July 28, 2021. A Petition  
18 for Extraordinary Writ Relief was also filed with the Nevada Supreme Court on February 25,  
19 2021. On March 12, 2021, Greenberg Traurig, as counsel to the Receiver and representing  
20 itself in response to the Defendants’ motion, and Jenner & Block LLP, counsel to Greenberg  
21 Traurig, filed an opposition to the Motion to Consolidate with the writ petition proceedings in  
22 Case No. 82552, as filed by Appellants/Petitioners Unite Here Health and Nevada Health  
23 Solutions, LLC, and Countermotion to Dismiss Appeal. The Motion to Consolidate was  
24 granted by the Nevada Supreme Court through an order entered on April 12, 2021. On June 16,  
25 2021, Petitioners filed their opening brief and appendix of documents. On July 1, 2021,  
26 Defendants Unite Here Health and Nevada Health Solutions filed another Petition for  
27 Extraordinary Writ Relief with the Nevada Supreme Court, Case No. 83135, seeking to overturn  
28 the lower court’s May 26, 2021, order denying Unite Here Health’s Motion to Consolidate the

1 NHC v. Milliman asset recovery litigation with that litigation filed against the Silver State Health  
2 Insurance Exchange. That same day, petitioners/appellants filed Motions to Consolidate the  
3 pending cases seeking extraordinary writs in this and related cases (Case Nos. 82552, 83135,  
4 and 82467) into a single proceeding. Plaintiff/Appellee filed her opposition to the various  
5 motions to consolidate in all three pending cases on July 8, 2021, followed by  
6 petitioner/appellants' replies on July 15, 2021. The Nevada Supreme Court denied the motions  
7 to consolidate on the writ and appeal cases via an order entered on July 30, 2021. On  
8 February 16, 2022, the Receiver filed her Answer to Writ Petition. On March 16, 2022, United  
9 Here Health ("UHH") and Nevada Health Solutions filed their Reply in Support of Petition for  
10 Extraordinary Writ Relief. These appeals and petitions each remain pending in various  
11 capacities.

12 On October 7, 2021, UHH and Nevada Heath Solutions filed their Motion for Stay  
13 Pending Resolution of Nevada Supreme Court Appeal and Writ Petition, on Application for  
14 Order Shortening Time, before the district court alleging that a stay of the instant asset recovery  
15 litigation proceedings was merited and necessary to secure UHH's interests in advance of the  
16 determination of certain remaining legal and procedural issues by the Nevada Supreme Court.  
17 This Motion for Stay was joined by the former CO-OP director and officer defendants via a filing  
18 made October 12, 2021. Plaintiff's Opposition to the Motion to Stay was filed on October 19,  
19 2021, which contested all of the stated grounds and justifications for a stay raised by Defendants.  
20 Subsequent to the hearing and oral arguments conducted on such pleadings on October 20, 2021,  
21 the court entered its Order Denying Unite Here Health and Nevada Health Solutions' Motion for  
22 Stay on November 16, 2021. On December 28, 2021, the Supreme Court for the State of Nevada  
23 issued its Orders Granting Motion to Stay in Case Nos. 82467 and 82552, concluding that "the  
24 NRAP 8(c) factors militate in favor of a stay [. . .] district court proceedings shall be stayed  
25 pending further order of this court."

26 Defendants Unite Here Health and Nevada Health Solutions filed on July 14, 2021, their  
27 Motion to Compel. Plaintiff filed her opposition to the motion on July 28, 2021. Following the  
28 August 11, 2021, filing of Defendants' reply in support, the Motion to Compel was denied by

1 the court via a minute order following the hearing conducted on August 18, 2021. Subsequently,  
2 those defendants filed, as of September 7, 2021, a Motion for Sanctions, which was joined by  
3 the defendant former directors and officers on September 10, 2021. Plaintiff's Opposition to the  
4 Motion was filed on October 18, 2021, and challenged the Defendants' grounds for again  
5 alleging insufficiencies within the litigation and related discovery process. On September 28,  
6 2021, Unite Here Health and Nevada Health Solutions filed a Motion to Amend Order Denying  
7 Unite Here Health's Motion to Compel. Plaintiff responded by filing her Opposition to the  
8 Motion to Amend Order Denying Motion to Compel as of October 19, 2021. As well, on  
9 September 28, 2021, Plaintiff filed her Motion to Compel Defendant Milliman, Inc. to Produce  
10 Documents in Response to Subpoena Duces Tecum, but then subsequently withdrew that Motion  
11 as unnecessary via a filing dated November 1, 2021.

12 Under the terms of the most recent Stipulation and Order controlling discovery and  
13 litigation deadlines, which were filed on October 14, 2021, designations of rebuttal experts were  
14 due on April 16, 2021, with a final Discovery Cut Off of February 18, 2022. Dispositive Motions  
15 are due by March 21, 2022, and Motions in Limine are due by March 28, 2022. The Trial was  
16 scheduled to run on a five-week stack starting May 23, 2022, subsequent to a May 12, 2022, Pre-  
17 Trial Conference and Calendar Call. Relevant Pre-Trial Memoranda were to be filed by no later  
18 than May 19, 2022, per the court's Amended Order Rescheduling Dates for Trial, and Pre-  
19 Trial/Calendar Call. Discovery has continued in the litigation until recently, to include the taking  
20 of depositions and the making of supplemental document disclosures and requests as necessary  
21 to proceed with the action. Throughout the process, any party may seek protective orders against  
22 unnecessary or unreasonably extensive discovery practices, such as the matter at issue in the  
23 Motion for Protective Order Limiting Deposition on Order Shortening Time filed by Plaintiff on  
24 December 8, 2021, which was unsuccessfully opposed by the InsureMonkey defendants via their  
25 December 10, 2021, opposition filing, and by the former director and officer defendants via their  
26 December 13, 2021, opposition filing. Plaintiff made her Thirty-Sixth Supplemental NRC 16.1  
27 Disclosures in this case on December 21, 2021. As discussed above, the litigation now is stayed,  
28 per orders of the Nevada Supreme Court, until the underlying legal questions are decided.

1 On January 5, 2022, as part of the district court’s semi-annual status check on the  
2 litigation, the court acknowledged the application of the Supreme Court stay to the instant  
3 proceedings and postponed the trial proceedings and discovery in this case. The district court is  
4 currently scheduled to hear the status of this matter on January 5, 2022.

5 **Settlement with Certain Defendants in the Asset Recovery Case**

6 On April 4, 2022, the Plaintiff entered into a settlement agreement with defendants Unite  
7 Here Health, Nevada Health Solutions, Pamela Egan, Basil C. Dibsie, Linda Mattoon, Tom  
8 Zumtobel, Bobbette Bond, and Kathleen Silver (collectively the “Settling Defendants”). As  
9 more fully detailed in the Settlement Agreement attached as **Exhibit 3**, the Plaintiff and the  
10 Settling Defendants resolved their disputes among one another and agreed to the dismissal of the  
11 Settling Defendants with prejudice in exchange for a sum of \$500,000.00. Pending motions at  
12 the Nevada Supreme Court and other motions and oppositions between the Plaintiff and the  
13 Settling Defendants shall be withdrawn or dismissed by stipulation. Once these motions have  
14 been addressed, it is anticipated stays will be lifted and litigation will resume between the  
15 Plaintiff and the remaining defendants.

16 **Opinion and Order in the Action Against the United States in the Court of Federal Claims**

17 On November 8, 2018, the Receiver filed a Complaint in the United States Court of  
18 Federal Claims (“CFC Complaint”) against the United States for monetary amounts owed to  
19 NHC under the Consumer Operated and Oriented Plan program organized pursuant to the ACA.  
20 The Receiver determined that such litigation was necessary in order to advance the interests of  
21 the receivership estate’s various creditors, and to protect and conserve assets that rightfully  
22 belong to the estate (*i.e.*, over \$55M, as mentioned in the “CMS Receivables” section, *supra*).

23 In Counts I through IV, the CFC Complaint prays for relief in the form of an award of  
24 damages and monetary relief equal to the difference between the amount NHC actually received  
25 in payments under Sections 1342, 1341, 1343, and 1401 of the ACA – the statutes which describe  
26 and enact the Risk Corridors, transitional reinsurance, risk adjustment, and cost sharing reduction  
27 programs respectively – and the amount NHC should have received under those laws. Count V  
28 (breach of contract by offset) and Count VI (illegal exaction) plead alternate theories for

1 recovery of money damages resulting from the United States, through its agents at HHS and  
2 CMS, offsetting payments that CMS owed to NHC against funds NHC allegedly owed to the  
3 government pursuant to the terms of the CO-OP start-up loan (the “Loan Agreement”).

4 As of the Receiver’s last status report to the Receivership Court, the motion to dismiss of  
5 the United States and the Receiver’s cross-motion for partial summary judgment were pending  
6 before the U.S. Court of Federal Claims.<sup>8</sup> Oral argument on the pending motions was held on  
7 May 24, 2021, and supplemental legal authority was noticed to the court.<sup>9</sup>

8 On November 30, 2021, the U.S. Court of Federal Claims issued its Opinion and Order,  
9 denying the government’s motion to dismiss and concluding *inter alia* that the Government’s  
10 offsets were improper, and that the Receiver was entitled to summary judgment on Counts I  
11 through V<sup>10</sup> of her CFC Complaint. *Richardson v. United States*, No. 18-1731C, 2021 WL  
12 5625391, at \*7 (Fed. Cl. Nov. 30, 2021). The United States Court of Federal Claims ordered  
13 that the Receiver is entitled to judgment as a matter of law on her claims and that on or before  
14 December 30, 2021, the parties should file a joint stipulation or joint status report, indicating an  
15 agreed-upon sum for the purpose of entry of final judgment. The Receiver worked with counsel  
16 for the Government to prepare a Joint Status Report, filed on December 30, 2021, wherein the  
17 parties agreed that the amount of the judgment should be \$55,504,468.39 and that there were no  
18 remaining unresolved issues that would prevent entry of final judgment. Accordingly, on  
19 December 31, 2021, the U.S. Court of Federal Claims directed judgment in favor of the Receiver  
20 in the amount of \$55,504,468.39. On January 4, 2022, U.S. Court of Federal Claims entered

21 <sup>8</sup> A detailed procedural summary of the various motions filed in this matter, and the United  
22 States Supreme Court’s rulings in related cases, can be found in the previous 24th Status Report to this  
Court.

23 <sup>9</sup> On May 17, 2021, the Federal Circuit upheld on appeal the Court of Federal Claims decision  
24 in favor of the Liquidator of Colorado Health (a CO-OP program insurer), and held that (1) the Colorado  
25 set off statute did not afford a right to the United States to offset the risk adjustment debt of the insolvent  
26 Colorado insurer against HHS reinsurance debt, (2) the United States did not have an equitable right to  
27 offset risk adjustment debt, (3) the ACA and HHS regulations implementing the ACA did not preempt  
Colorado law fixing creditors’ rights during insolvency, (4) a significant conflict did not exist between  
an identifiable federal policy or interest and the operation of state law, (5) the Court of Federal Claims  
fulfilled its obligations under the Tucker Act; and (6) the Court of Federal Claims could enter judgment  
against the United States. *Conway v. United States*, 997 F.3d 1198 (Fed. Cir. 2021).

28 <sup>10</sup> As Counts V and VI presented alternate legal theories for the recovery of the same amounts  
sought in Counts II–IV, it was not necessary for the U.S. Court of Federal Claims to address Count VI.

1 judgment for the Receiver for \$55,504,468.39. The Government filed a Notice of Appeal of this  
2 judgment on March 4, 2022. The Receiver will keep this Court apprised as to any appeal or the  
3 collection of this judgment.

4 **Prior Civil Action Against the Silver State Health Insurance Exchange**

5 Through the filing of a Complaint dated June 5, 2020, in Case Number A-20-816161-C,  
6 in Department Number 8 of the Eighth Judicial District Court, the Receiver brought an action  
7 against the Exchange for, *inter alia*, damages of approximately one-half million dollars in  
8 premiums received from on-exchange insureds on behalf of NHC, but never remitted to the CO-  
9 OP. The Complaint alleged that the retention of these funds by the Exchange, without  
10 explanation or justification, constitutes a violation of the existing agreement between the parties,  
11 unjust enrichment of the Exchange at the expense of receivership claimants, and an appropriate  
12 basis for the imposition of a constructive trust over the assets at issue. The Exchange filed its  
13 Answer on August 24, 2020, denying the relevant allegations and asserting conventional  
14 affirmative defenses such as the doctrine of assumption of risk, sovereign immunity,  
15 contributory negligence, offset, and unclean hands. Following the October 8, 2020, Joint Case  
16 Conference Report, and the November 19, 2020, Mandatory Rule 16 Conference, the  
17 proceedings were scheduled along the dates set out in the relevant November 24, 2020,  
18 Scheduling Order and Order Setting Civil Bench Trial. However, these deadlines were vacated  
19 by subsequent Stipulations and Orders, including the one dated September 2, 2021. Via the entry  
20 of a joint Stipulation and Order to Dismiss without Prejudice filed on September 21, 2021, the  
21 proceedings in this matter have been closed, with all pending deadlines vacated.

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

23 Through the filing of a Complaint dated December 14, 2021, in Case Number A-21-  
24 845440-C, in Department Number 5 of the Eighth Judicial District Court, the Receiver has  
25 brought an action against WellHealth Medical Associates, PLLC, Medsource Management  
26 Group, LLC, and certain individual persons or estates of persons formerly or currently in  
27 positions of authority and responsibility within these organizations, for the recovery of amounts  
28 owed in connection with certain illegal, negligent, and intentionally fraudulent transactions

1 which took place with NHC in health plan years 2014 and 2015, as well as certain related  
2 business transactions which involved the transfer of CO-OP funds to persons, and through  
3 mechanisms, which are not permissible under the relevant laws and regulations.

4 The allegations include WellHealth's entry into an illegal and unapproved services  
5 contract with NHC, which, as per the Receiver's allegations, constituted a material shifting of  
6 insurance risk from a licensed carrier (here, NHC) to an unlicensed entity acting as a *de facto*  
7 insurer (WellHealth). The Defendants in this action have allegedly received millions of dollars  
8 from NHC under their illegal business arrangement, and in the provision of services which were  
9 not performed to the standard required, or which were performed without necessary licenses or  
10 legal authority. As of the date of filing of this Status Report, summons for the Defendants has  
11 been electronically issued, but service remains pending.

#### 12 **Current Receivership Assets**

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

17 1. The unrestricted cash assets of the CO-OP have fluctuated with post-receivership  
18 expenses and claim payments, as well as with the Receiver's receipt of member premiums. The  
19 currently available, unrestricted cash assets of the CO-OP as of February 28, 2021, were  
20 approximately \$2,341,729. The majority of NHC's currently available and liquid assets are held  
21 in bank deposits.

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

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

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

5 DATED this **7th day of April 2022.**

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*

17 MARK E. FERRARIO, ESQ.  
18 Nevada Bar No. 01625  
19 DONALD L. PRUNTY, ESQ.  
20 Nevada Bar No. 08230  
21 10845 Griffith Peak Drive  
22 Suite 600  
23 Las Vegas, Nevada 89135  
24 Emails: ferrariom@gtlaw.com  
25 pruntyd@gtlaw.com

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



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on the **7th day of October 2021**, a true and correct copy of the foregoing **TWENTY SIXTH 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