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*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 ) CASE NO. A-15-725244-C  
OF INSURANCE, IN HER OFFICIAL CAPACITY )  
AS STATUTORY ) DEPARTMENT 21  
RECEIVER FOR DELINQUENT DOMESTIC )  
INSURER, )  
)  
Plaintiff, )  
)  
vs. )  
)  
NEVADA HEALTH CO-OP, )  
)  
Defendant. )

**TWENTY-EIGHTH 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-Eighth Status Report in the above-captioned receivership.

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**Greenberg Traurig, LLP**  
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Las Vegas, Nevada 89135

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

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

22 Via a Notice of Substitution of Receiver dated April 6, 2016, the Deputy Attorney General  
23 informed interested parties of the substitution of Commissioner Barbara D. Richardson, in place and  
24 stead of former Acting Commissioner Amy L. Parks, as the Receiver of NHC. This substitution of  
25 Receiver was subsequent to Commissioner Richardson’s appointment as Commissioner of Insurance for  
26 the State of Nevada.

27 This Court, through its Final Order Finding and Declaring Nevada Health CO-OP to be Insolvent  
28 and Placing Nevada Health CO-OP into Liquidation (the “Final Order”) dated September 20, 2016,

1 adjudged NHC to be insolvent on grounds that it was unable to meet obligations as they mature. The  
2 Final Order also authorized the Receiver to liquidate the business of NHC and wind up its ceased  
3 operations pursuant to applicable Nevada law. The Receiver has since transitioned the receivership  
4 estate from rehabilitation to liquidation.

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

## 6 **II. RECEIVERSHIP ADMINISTRATION**

### 7 **Receivership Administrative Services and Oversight**

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

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14  
15  
16 <sup>1</sup> 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 made  
18 part of a public filing). More particularly, and as discussed in further detail below, certain 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.

19 In this regard, courts have held that the bills of legal counsel and experts may be withheld from legal  
20 discovery and are not subject to legal disclosure, as this information may provide indications or context concerning  
21 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  
22 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  
23 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  
24 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).

25 The *in-camera* review should apply not only to documentation concerning attorneys’ fees, but it also  
26 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  
27 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 F.3d 394, 402 (4th Cir. 1999) (recognizing  
28 that “correspondence, bills, ledgers, statements, and time 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)).

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”). The  
5 total allowed amount of these approved Provider Claims is approximately \$33.7 million. The NHC  
6 members also received NCDs that showed them the amount that the SDR has approved to be paid to  
7 their providers, and the amount of member responsibility (*i.e.*, the co-pays, deductibles, and  
8 coinsurance), if any, that they may owe on their providers’ outstanding claims. The SDR received  
9 approval from the Court to make a distribution of certain estate assets for the partial payment of these  
10 Provider Claims, which have been classified by the SDR as claims made under NHC policies pursuant  
11 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 and eighteen (518) providers have  
14 submitted the necessary documentation and have received a distribution payment. However, the  
15 remaining 1,265 providers either did not respond or sent back defective paperwork. The SDR will  
16 continue to follow-up with these providers to collect the necessary paperwork so that distributions can  
17 be made.

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

22 In addition to the two member appeals described above, there are twenty-eight (28) outstanding  
23 appeals sent by NHC members of the NCDs that were mailed for outstanding healthcare claims  
24 submitted by providers to NHC’s Javelina Claims Processing Database.<sup>3</sup> The Receiver will request by  
25 separate motion that the Court set a hearing for the remaining appeals, pursuant to NRS 696B.330.

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26 <sup>2</sup> As detailed in the Receiver’s Seventeenth Status Report, within the section of the report titled “Sale of  
27 Risk Corridors Receivable,” the Court entered an order permitting the distribution of certain funds on October 16,  
2019.

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

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

5           ***CMS Receivables***

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

17           On November 30, 2021, the U.S. Court of Federal Claims granted the Receiver’s Motion for  
18 Summary Judgment and found in favor of the Receiver on questions of debt, rights to offset, and claim

19 \_\_\_\_\_  
20 allowed provider claims (*i.e.*, the amount of the member’s responsibility on each claim) and have an opportunity  
21 to appeal.

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

25           <sup>5</sup> Due to a shortfall in risk corridor collections, CMS asserted it could only pay a prorated percentage of  
26 issuers’ 2014 Risk Corridors payments and that it would use all collections in subsequent years towards the 2014  
27 payments (*i.e.*, they are unable to make payments for the subsequent years at all). DEP’T OF HEALTH &  
28 HUMAN SERVICES & CENTERS FOR MEDICARE & MEDICAID SERVICES (“CMS”), CCIIO  
MEMORANDUM, RISK CORRIDORS PAYMENT AND CHARGE 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 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 and issue preclusion matters.<sup>7</sup> The parties were ordered to, and did, file a joint stipulation on an agreed-  
2 upon sum for the damages. The U.S. Court of Federal Claims entered judgment in favor of the Receiver  
3 on January 4, 2022. The United States filed a Notice of Appeal of the court’s judgment on March 4,  
4 2022, and its opening brief was filed on July 8, 2022. The court’s opinion and additional developments  
5 in this matter are detailed further below.

6 **Engagement of Additional Legal Counsel**

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

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

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

23 Via Plaintiff’s Motion to Amend Complaint, filed on July 17, 2018, the Receiver sought an order  
24 granting leave to amend the August 25, 2017, complaint against certain of NHC’s various directors,  
25 officers, and third-party contractors, citing the discovery of additional facts in support of assertions made  
26 in the first complaint, as well as the need to add a new defendant to the existing proceedings. This  
27 Motion to Amend Complaint was filed in Judicial Department Sixteen, in line with the terms of the

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



1 contemporaneous Notice of Department Reassignment assigning the proceedings to Judge Timothy C.  
2 Williams. The Motion to Amend Complaint was approved via an order entered on September 18, 2018.  
3 Subsequently, the court granted Milliman’s motion to compel arbitration. On December 19, 2019, the  
4 Nevada Supreme Court denied the Receiver's Writ of Mandamus seeking extraordinary relief against the  
5 order compelling arbitration, noting the availability of subsequent appellate relief, as well as disagreeing  
6 that clear legal error had occurred in the underlying proceedings. On October 16, 2020, Plaintiff filed a  
7 Motion for Leave to File Second Amended Complaint, which contains additional factual allegations,  
8 theories of injury, and other context concerning NHC’s resulting insolvency. Hearing on this Motion  
9 was scheduled for November 18, 2020, but was vacated later, as explained below, as part of the general  
10 stay of proceedings until the resolution of the issues arising from Defendants’ Motion to Disqualify. The  
11 Motion for Leave to File Second Amended Complaint was heard in the April 14, 2021, proceedings  
12 concerning all pending motions, and was subsequently granted through an order entered on May 4, 2021.  
13 The Plaintiff has filed her Second Amended Complaint in the litigation as of November 9, 2021, with  
14 the relevant Answers being filed by the InsureMonkey defendants on November 22, 2021, and the former  
15 directors and officers, Unite Here Health (“UHH”), and Nevada Health Solutions on November 23, 2021.

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

27 Unite Here Health and Nevada Health Solutions filed on October 15, 2020, their Motion for  
28 Leave to File Third-Party Complaint, seeking permission from the court to file a complaint for

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

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

24 On February 8, 2021, Defendants Unite Here Health and Nevada Health Solutions filed their  
25 Notice of Appeal (Case No. 82467), seeking review of the Order Denying the Motion to Disqualify  
26 Greenberg Traurig, LLP and to Disgorge Attorneys’ Fees. Plaintiff/Appellee submitted her answer to  
27 this appeal via the filing of relevant briefing on July 28, 2021. A Petition for Extraordinary Writ Relief  
28 was also filed with the Nevada Supreme Court on February 25, 2021. On March 12, 2021, Greenberg



1 Traurig, as counsel to the Receiver and representing itself in response to the Defendants’ motion, and  
2 Jenner & Block LLP, counsel to Greenberg Traurig, filed an opposition to the Motion to Consolidate  
3 with the writ petition proceedings in Case No. 82552, as filed by Appellants/Petitioners Unite Here  
4 Health and Nevada Health Solutions, LLC, and Countermotion to Dismiss Appeal. The Motion to  
5 Consolidate was granted by the Nevada Supreme Court through an order entered on April 12, 2021.  
6 On June 16, 2021, Petitioners filed their opening brief and appendix of documents. On July 1, 2021,  
7 Defendants Unite Here Health and Nevada Health Solutions filed another Petition for Extraordinary Writ  
8 Relief with the Nevada Supreme Court, Case No. 83135, seeking to overturn the lower court’s May 26,  
9 2021, order denying Unite Here Health’s Motion to Consolidate the *NHC v. Milliman* asset recovery  
10 litigation with that litigation filed against the Silver State Health Insurance Exchange. That same day,  
11 petitioners/appellants filed Motions to Consolidate the pending cases seeking extraordinary writs in this  
12 and related cases (Case Nos. 82552, 83135, and 82467) into a single proceeding. Plaintiff/Appellee filed  
13 her opposition to the various motions to consolidate in all three pending cases on July 8, 2021, followed  
14 by petitioner/appellants’ replies on July 15, 2021. On February 16, 2022, the Receiver filed her Answer  
15 to Writ Petition. On March 16, 2022, UHH and Nevada Health Solutions filed their Reply in Support of  
16 Petition for Extraordinary Writ Relief. On April 6, 2022, the appeal in Case No. 83135 was dismissed  
17 by stipulation and order between the parties, and on April 8, 2022, the appeals in Case Nos. 82552  
18 and 82467 were dismissed, similarly by stipulation and order of the parties. These stipulations were the  
19 result of a negotiated settlement of the parties.

20 On April 13, 2022, UHH, NHS, and the defendant former NHC directors and officers filed jointly  
21 their Motion for Good Faith Settlement on Order Shortening Time, seeking a hearing and subsequent  
22 judicial approval of the negotiated settlement reached by Plaintiff and those aforementioned defendants.  
23 Around the time of that filing, those defendants filed motions concomitantly seeking dismissal of those  
24 joiners, oppositions, and other pleadings on file which would present procedural or other obstacles from  
25 the speedy resolution of the remaining issues. On April 19, 2022, InsureMonkey and personal defendant  
26 Alex Rivlin filed their Opposition to the Motion for Determination of Good Faith Settlement.  
27 Subsequent to a hearing conducted on April 20, 2022, the court in *NHC v. Milliman* issued an order  
28 dated April 28, 2022, approving the Motion in all substantive respects, and affirming the settlement and

1 release of UHH, NHS, and the former NHC directors and officers. A Stipulation and Order for Dismissal  
2 with Prejudice was filed on May 2, 2022, effectuating the release and disposing of the parties.

3 Under the terms of the most recent Stipulation and Order controlling discovery and litigation  
4 deadlines, which were filed on June 27, 2022, a final Discovery Cut Off has been set for October 31,  
5 2022. Dispositive Motions are due by November 30, 2022, and Motions in Limine are due by April 6,  
6 2023. The Trial is scheduled to run on a five-week stack starting May 22, 2023, subsequent to a May 11,  
7 2023, Pre-Trial Conference and Calendar Call. Relevant Pre-Trial Memoranda are to be filed by no later  
8 than May 5, 2023. Discovery has continued in the litigation until recently, to include the taking of  
9 depositions and the making of supplemental document disclosures and requests as necessary to proceed  
10 with the action. Throughout the process, any party may seek protective orders against unnecessary or  
11 unreasonably extensive discovery practices, such as the matter at issue in the Motion for Protective Order  
12 Limiting Deposition on Order Shortening Time filed by Plaintiff on December 8, 2021, which was  
13 unsuccessfully opposed by the InsureMonkey defendants via their December 10, 2021, opposition filing,  
14 and by the former director and officer defendants via their December 13, 2021, opposition filing.  
15 Plaintiff made her Thirty-Sixth Supplemental NRC 16.1 Disclosures in this case on December 21,  
16 2021. As discussed above, the litigation had been stayed subject to the resolution of certain pending  
17 legal questions but has since resumed.

18 On May 18, 2022, as part of the district court's periodic status check on the litigation, the  
19 remaining parties in the litigation discussed the framework to continue the litigation, including applicable  
20 deadlines related to the completion of discovery and motion practice.

21 In August 2022, pursuant to a mediation, the Larson defendants and the Receiver accepted a  
22 mediator's proposal to settle the Asset Recovery Case as to the Larson defendants. The Larson  
23 defendants and the Receiver have entered into an agreement, subject to the Asset Recovery court's  
24 approval of a motion for good faith settlement. A date has not yet been set to hear the motion for good  
25 faith settlement.

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

27 On November 8, 2018, the Receiver filed a Complaint in the United States Court of Federal  
28 Claims ("CFC Complaint") against the United States for monetary amounts owed to NHC under the

1 Consumer Operated and Oriented Plan program organized pursuant to the ACA. The Receiver  
2 determined that such litigation was necessary in order to advance the interests of the receivership estate’s  
3 creditors and to protect and conserve assets that rightfully belong to the estate (*i.e.*, over \$55 million, as  
4 mentioned in the “CMS Receivables” section, *supra*).

5 In Counts I through IV, the CFC Complaint prays for relief in the form of an award of damages  
6 and monetary relief equal to the difference between the amount NHC actually received in payments  
7 under Sections 1342, 1341, 1343, and 1401 of the ACA – the statutes which describe and enact the Risk  
8 Corridors, transitional reinsurance, risk adjustment, and cost sharing reduction programs respectively –  
9 and the amount NHC should have received under those laws. Count V (breach of contract by offset) and  
10 Count VI (illegal exaction) plead alternate theories for recovery of money damages resulting from the  
11 United States, through its agents at HHS and CMS, offsetting payments that CMS owed to NHC against  
12 funds NHC allegedly owed to the government under the CO-OP start-up loan (the “Loan Agreement”).

13 The United States filed a motion to dismiss and the Receiver filed a cross-motion for partial  
14 summary judgment in the U.S. Court of Federal Claims.<sup>8</sup> Oral argument on the motions was held on  
15 May 24, 2021, and supplemental legal authority was noticed to the court.<sup>9</sup>

16 On November 30, 2021, the U.S. Court of Federal Claims issued its Opinion and Order, denying  
17 the government’s motion to dismiss and concluding *inter alia* that the Government’s offsets were  
18 improper, and that the Receiver was entitled to summary judgment on Counts I through V<sup>10</sup> of her CFC  
19 Complaint. *Richardson v. United States*, No. 18-1731C, 2021 WL 5625391, at \*7 (Fed. Cl. Nov. 30,  
20 2021). The U.S. Court of Federal Claims ordered that the Receiver is entitled to judgment as a matter

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21 \_\_\_\_\_  
22 <sup>8</sup> A detailed procedural summary of the various motions filed in this matter, and the United 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 in favor  
24 of the Liquidator of Colorado Health (a CO-OP program insurer), and held that (1) the Colorado set off statute  
25 did not afford a right to the United States to offset the risk adjustment debt of the insolvent Colorado insurer  
26 against HHS reinsurance debt, (2) the United States did not have an equitable right to offset risk adjustment debt,  
27 (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 of law on her claims and that on or before December 30, 2021, the parties should file a joint stipulation  
2 or joint status report, indicating an agreed-upon sum for the purpose of entry of final judgment. The  
3 Receiver worked with counsel for the Government to prepare a Joint Status Report, filed on  
4 December 30, 2021, wherein the parties agreed that the amount of the judgment should be  
5 \$55,504,468.39 and that there were no remaining unresolved issues that would prevent entry of final  
6 judgment. Accordingly, on December 31, 2021, the U.S. Court of Federal Claims directed judgment in  
7 favor of the Receiver in the amount of \$55,504,468.39. On January 4, 2022, U.S. Court of Federal  
8 Claims entered judgment for the Receiver for \$55,504,468.39. The Government filed a Notice of Appeal  
9 of this judgment on March 4, 2022.

10 On July 8, 2022, the United States filed its Opening Brief for the United States in the above-  
11 described action, setting forth its legal arguments in support, *inter alia*, of maintaining an offset of  
12 amounts owed under the Risk Corridors program against those amounts ostensibly owed to it under the  
13 CO-OP loan program. Subsequent to a Notice of Non-Compliance, the government again filed its  
14 Opening Brief for the United States on July 18, 2022, and then again on July 19, 2022, such re-filing  
15 containing non-substantive corrections per the United States. A Corrected Opening Brief for the United  
16 States was filed as of July 22, 2022. The Receiver filed the Unopposed Motion for 40-Day Extension of  
17 Time in which to File its Brief on August 5, 2022, and a subsequent Motion for 20-Day Further Extension  
18 of Time in which to File its Brief was filed on September 16, 2022, and the responsive brief will be filed  
19 before the deadline.

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

21 Through the filing of a Complaint dated December 14, 2021, in Case No. A-21-845440-B, in  
22 Department V of the Eighth Judicial District Court, the Receiver has brought an action against  
23 WellHealth Medical Associates, PLLC, Medsource Management Group, LLC, and certain individual  
24 persons or estates of persons formerly or currently in positions of authority and responsibility within  
25 these organizations, for the recovery of amounts owed in connection with certain illegal, negligent, and  
26 intentionally fraudulent transactions which took place with NHC in health plan years 2014 and 2015, as  
27 well as certain related business transactions which involved the transfer of CO-OP funds to persons, and  
28 through mechanisms, which are not permissible under the relevant laws and regulations.

1           The allegations include, among other things, WellHealth’s entry into an illegal and unapproved  
2 services contract with NHC, which, as per the Receiver’s allegations, constituted a material shifting of  
3 insurance risk from a licensed carrier (here, NHC) to an unlicensed entity acting as a *de facto* insurer  
4 (WellHealth). The Defendants in this action have allegedly received millions of dollars from NHC under  
5 their illegal business arrangement, and in the provision of services which were not performed to the  
6 standard required, or which were performed without necessary licenses or legal authority. The case was  
7 reassigned to Department XXII by notice dated January 6, 2022. Subsequent to the conducting and  
8 certification of service for defendants on or about April 13, 2022, the WellHealth defendants WellHealth  
9 Medical Associates, Medsource Management Group, and Robert Baratta filed, as of May 3, 2022, their  
10 Motion to Dismiss for Failure to Comply with Statute of Limitations or, in the Alternative, Motion to  
11 Dismiss for Failure to State a Claim. Pursuant to a Stipulation and Order to Extend Due Date for  
12 Opposition to Motion to Dismiss, the Plaintiff has until July 18, 2022, to file her opposition, with the  
13 hearing to take place subsequent to that filing. On June 17, 2022, Plaintiff filed her Motion to Amend  
14 Complaint. Through a minute order dated July 12, 2022, the court approved the Motion to Amend  
15 Complaint. On July 19, 2022, Plaintiff filed her Notice of Withdrawal of Motion to Amend Complaint,  
16 stating that she no longer intends to file, and instead seeks to withdraw, her proposed Amended  
17 Complaint. The court then rescinded its order via a filing on July 15, 2022. As well, on July 19, 2022,  
18 Plaintiff made a Peremptory Challenge as to the judicial officer overseeing the case, with a resulting  
19 Notice of Department Reassignment entered on July 20, 2022. On August 8, 2022, Plaintiff filed her  
20 Stipulation and Order to Amend Complaint, providing additional arguments and causes of action, after  
21 consultation with opposing parties; alongside this, Plaintiff filed her First Amended Complaint in this  
22 action.

23           In respect of the First Amended Complaint, Plaintiff also filed a Stipulation and Order to Vacate  
24 Hearing on Motion to Dismiss for Failure to Comply with Statute of Limitations or, in the Alternative,  
25 Motion to Dismiss for Failure to State a Claim, seeking to avoid such action. On August 23, 2022,  
26 opposing counsel filed its Motion to Dismiss First Amended Complaint for Failure to Comply with  
27 Statute of Limitations or, in the Alternative, Motion to Dismiss for Failure to State a Claim, requesting  
28 a hearing in connection with that pleading. On September 19, 2022, individual defendant Nino Pedrini

1 filed his Motion to Dismiss First Amended Complaint for Failure to Serve and Violation of the Statute  
2 of Limitations and Joinder in Defendants WellHealth Medical Associates (Volker) PLLC dba  
3 WellHealth Quality Care, Medsource Management Group, LLC, and Robert Baratta’s Motion to Dismiss  
4 First Amended Complaint, asserting essentially the same grounds for dismissal of the complaint as other  
5 defendants. On September 27, 2022, Plaintiff filed her Opposition to Defendants’ Motion to Dismiss  
6 First Amended Complaint for Failure to Comply with Statute of Limitations or, in the Alternative,  
7 Motion to Dismiss for Failure to State a Claim, with a hearing on these matters scheduled for October 18,  
8 2022. Mr. Pedrini’s Motion is scheduled for hearing as of October 25, 2022.

9 **Current Receivership Assets**

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

13 1. The unrestricted cash assets of the CO-OP have fluctuated with post-  
14 receivership expenses and claim payments, as well as with the Receiver’s receipt of  
15 member premiums. The currently available, unrestricted cash assets of the CO-OP as of  
16 August 31, 2022, were approximately \$2,232,064. The majority of NHC’s currently  
17 available and liquid assets are held in bank deposits.

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

22 3. The Receiver is including, as Exhibit 2 attached hereto, a cash flow report  
23 for NHC for the period covering the inception of the receivership through August 31, 2022.  
24 This report reflects a summary of disbursements and collections made by NHC during this  
25 period.

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28 ///



1 **CONCLUSION**

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

5 DATED this **7th day of October 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

13 Respectfully submitted by:  
14 GREENBERG TRAUIG, LLP

15 */s/ Donald L. Prunty*

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

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on the **7th day of October 2022**, a true and correct copy of the foregoing **TWENTY-EIGHTH 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