

1 Vernon E. Leverty, Esq., NV Bar No. 1266  
Patrick R. Leverty, Esq., NV Bar No. 8840  
2 William R. Ginn, Esq., NV Bar No. 6989  
LEVERTY & ASSOCIATES LAW CHTD.  
3 832 Willow Street  
Reno, NV 89502  
4 Telephone: (775) 322-6636  
*Attorneys for Defendant Physicians*  
5 *Indemnity Risk Retention Group*

6  
7 **IN THE SECOND JUDICIAL DISTRICT COURT OF**  
8 **THE STATE OF NEVADA IN AND FOR**  
9 **THE COUNTY OF WASHOE**

10 STATE OF NEVADA, EX REL.  
11 COMMISSIONER OF INSURANCE, IN  
HER OFFICIAL CAPACITY AS  
12 STATUTORY RECEIVER FOR  
DELINQUENT DOMESTIC INSURER,

CASE NO.: CV20-00496

DEPT. NO.: 1

13  
14 Plaintiffs,

15 vs.

16 PHYSICIANS INDEMNITY RISK  
RETENTION GROUP, INC., a Nevada  
Domiciled Association Captive - RRG  
17 Insurance Company,

18 \_\_\_\_\_  
Defendants. /

19 **OPPOSITION TO TEMPORARY RECEIVER'S MOTION FOR ORDER OF**  
20 **LIQUIDATION AND OTHER PERMANENT RELIEF.**

21 Defendant Physicians Indemnity Risk Retention Group, Inc., by and through its undersigned  
22 counsel of record, Leverty & Associates Law, Chtd., hereby brings this opposition to the "Temporary  
23 Receiver's Motion for Order of Liquidation and Other Permanent Relief." This opposition is based  
24 upon the attached memorandum of points and authorities, the attached exhibits, the documents on  
25 file, the arguments of counsel, and any other matters the Court wishes to consider.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

After months of promising documents pursuant to the subpoena and improperly retaining those documents which even the Division of Insurance’s counsel agrees should be produced, instead of producing the documents, the temporary receiver filed a Motion for Order of Liquidation. Further, the Temporary Receiver claims the liquidation order is now necessary because of ongoing contract expenses that allegedly can not be terminated while only a temporary receivership. But neither the Temporary Receiver nor the Deputy Temporary Receiver (“RCS”) has even attempted to terminate such alleged contractual obligations. The documents provided by the Temporary Receiver show that since September 30, 2020, a period where the Temporary Receiver has had full control over PIRRG’s assets, over \$850,000 of PIRRG’s money has gone missing, and over \$1.9 million has gone missing since the Temporary Receiver took over PIRRG’s books and bank accounts. The Temporary Receiver has repeatedly delayed the hearing process based on the promise of providing documents which were subpoenaed. Now, the Temporary Receiver is seeking to move forward without providing the long ago promised documents that it has improperly retained. In short, the Temporary Receiver is again attempting to avoid due process by hiding documents and also misleading the Court by its assertions in its Motion for Order of Liquidation.

The Temporary Receiver provides no accounting for the over \$850,000 that has gone missing since September 30, 2020, and the more than \$1.9 million that has gone missing since the Temporary Receiver took over PIRRG’s finances in March 2020.

Despite losing over \$850,000 in four months, and failing to account for it, the Temporary Receiver now comes before this Court and seeks to further line the pockets of the Deputy Temporary Receiver by claiming PIRRG is insolvent, while its own reports show that PIRRG is not insolvent even with the \$805,000 that the Temporary Receiver has somehow misplaced or removed from PIRRG’s assets. What is clear is that over \$850,000 went missing under the watch of the Temporary Receiver and Deputy Temporary Receiver’s watch since September 30, 2020. The Temporary Receiver has had the ability to act and try to prevent PIRRG’s condition from getting worse for 11

1 months, but have done nothing to cure the problems, and, indeed, have made PIRRG's condition  
2 worse by at least \$850,000, and probably by at least \$1.9 million.

3 The Temporary Receiver claims that PIRRG's monthly burn rate is too great, yet in nearly  
4 a year of receivership, despite having complete control over PIRRG's books and bank accounts, it  
5 is the Temporary Receiver who has misplaced over \$850,000 in the past four months, and the  
6 Temporary Receiver has never come before this Court to seek to terminate the contracts to improve  
7 PIRRG's financial situation. The Temporary Receiver, more than 9 months after being ordered to  
8 comply to subpoenas, has still not provided all of the documents under the subpoenas. The  
9 Temporary Receiver still has not filed two of the three quarterly reports mandated under statute.  
10 Even the report provided by the Temporary Receiver only after PIRRG made a Motion to Compel  
11 compliance is grossly inadequate demonstrating the incompetency of the Temporary Receiver and  
12 appointed Deputy Temporary Receiver. Indeed, it is blatantly obvious that the Temporary Receiver,  
13 in the nearly one year that it has been in place, has pretty much failed in all aspects regarding the  
14 receivership of PIRRG. If it has done anything, they have kept whatever they have done a secret and  
15 have failed to disclose vital activists that should have been conducted, such as seeking reinsurance  
16 recoverable.

17 Despite this failure to comply with this Court's orders, its counsel's promises to provide  
18 documents that were sought pursuant to a subpoena affirmed by this Court, by having privileges for  
19 documents be determined by non-attorneys who are not even a part of the Division of Insurance's  
20 legal team, after extensive meet and confers regarding the refusal to produce tens of thousands of  
21 pages of documents that ended on October 7, 2020, failing to comply with its statutory duties, and  
22 "misplacing" of over \$850,000 in the past four months, and "misplacing" over \$1.9 since the  
23 Temporary Receiver took over control of PIRRG, the Temporary Receiver now takes the position  
24 that it should be permanently given the permanent fiduciary responsibility for resolving - and  
25 winding up - PIRRG's corporate existence. Its clear from the sole status report filed in this case  
26 (which had to be compelled), that the Temporary Receiver is not keeping or complying with its  
27 duties. The Temporary Receiver's failure to comply with its statutory duties, plus the fact that

1 according to the Temporary Receiver's own accountings PIRRG is solvent, means that PIRRG  
2 should not be subjected to having a Permanent Receivership in place to wind down its business.  
3 Instead, a supervised, self liquidation is the appropriate means of winding up PIRRG and its  
4 business.

5 **II. ACCORDING TO THE TEMPORARY RECEIVER'S SOLE REPORT, PIRRG IS**  
6 **SOLVENT, AND THEREFORE NO RECEIVERSHIP IS APPROPRIATE.**

6 According to the documents filed by the Temporary Receiver, PIRRG is solvent.

7 The Status Report provides the following assets as of September 30, 2020:<sup>1</sup>

Description	Amount
Cash/Cash Equivalents (Report at 7:5)	\$214,998
Treasury Investments (Report at 7:7)	\$1,389,650
Subtotal	\$1,604,648
Reinsurance Assets (Report at 7:9-10)	\$3,416,000
Total	\$5,029,648

14 The Status Report identifies the following liabilities as of September 30, 2020:

Description	Amount
Estimated Policy Liability (Report at 5:14)	\$2,354,543

17 It does not take an accountant to see that as of September 30, 2020, according to the  
18 Temporary Receiver's own filings with this Court, PIRRG's assets exceed its liabilities by  
19 \$2,675,105. Therefore, according to the Temporary Receiver own reports to this Court, PIRRG is  
20 solvent. As a solvent insurer, there is no need for a Temporary Receiver.

21 As of month end February 2020, PIRRG had approximately \$2.1 million in its investment  
22 account, and another approximately \$170,000 in its checking account. Therefore, PIRRG had assets  
23 of approximately \$2.27 million when the Temporary Receiver took over. In a little less than a year,  
24 the Temporary Receiver reduced these assets by approximately \$900,000, and increased PIRRG's

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26 <sup>1</sup> The Temporary Receiver provides no value for PIRRG's litigation against AON, but  
27 this should be included in PIRRG's assets.

1 liabilities by over \$600,000. This \$1.5 million swing more than accounts for the \$980,806 deficit that  
2 the Temporary Receiver claims existed as of September 30, 2020.

3 Even assuming that the Temporary Receiver's numbers are correct, they simply don't add  
4 up. Indeed, it appears that the Temporary Receiver has lost \$805,000 in just four months, and well  
5 over \$1.5 million in a year.

6 **A. The Temporary Receiver Has Lost Over \$850,000 Since September 30, 2020**

7 According to the Temporary Receiver's report, as of September 30, 2020, PIRRG's "hard"  
8 assets (not including the reinsurance assets), were \$1,604,648. (See Report at 7:5-7). The Temporary  
9 Receiver now claims that PIRRG's current "hard" assets are \$1.3 million. (Mtn. at 7:25). There is  
10 no accounting or explanation for where these assets went.

11 As of September 30, 2020, PIRRG's liabilities were \$2,354,543. (Report at 5:14). The  
12 Temporary Receiver now claims that PIRRG's liabilities are \$2.9 million. (Mtn. at 7:27). There is  
13 no accounting or explanation for how these liabilities increased by over \$545,000 in the last four  
14 months.

15 Therefore, since September 30, 2020, PIRRG has, somehow simultaneously lost  
16 approximately \$304,684 in assets while accruing approximately \$545,457 in additional liabilities.  
17 The Temporary Receiver has failed to account for this approximately \$850,105 difference in  
18 PIRRG's books. This leaves but one question the Court should be asking:

19 **WHERE IS THE REMAINING MONEY THAT THE**  
20 **TEMPORARY RECEIVER LOST WHILE THE**  
21 **TEMPORARY RECEIVER HAD COMPLETE**  
22 **CONTROL OVER PIRRG'S BANK ACCOUNTS**  
23 **DURING THIS TIME PERIOD????????????????**

24 Despite "losing" over \$850,000 in four months, when it was not making any claims  
25 payments, or payments to counsel, the Temporary Receiver wants this Court to give it full control  
26 over what is left of PIRRG.

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1                   **B.     PIRRG’s Monthly Expenses Are Overstated.**

2                   The Temporary Receiver overstates PIRRG’s monthly expenses. PIRRG’s monthly expenses  
3 are approximately \$47,540/month, NOT the \$52,000/month that the Temporary Receiver states in  
4 his motion. These are calculated as:

5

Expense	Amount/Month
6 Payroll	\$34,082.00
7 Rent	\$1653.50
8 Telephone	\$45.21
9 Office Cleaning	\$80.25
10 Computer backup and maintenance	\$398.65
11 Security/Alarm System	\$36.33
12 Internet Connection	\$100.00
13 Bank Service Charges (Average)	\$650.00
14 Utilities (Average)	\$75.00
15 Engard (email service)	\$20.00
16 SRS Captive Management Fees (\$31,200/quarter)	\$10,400
TOTAL	\$47,540.94

17                   There is no accounting provided for the approximately \$4,500/month as set forth in the  
18 liquidation motion that is not set forth above. However, even assuming that the Temporary  
19 Receiver’s \$52,000/month is proper and fully accounted for, this only totals \$208,000 since  
20 September 30, 2020. This is only approximately 1/4 of PIRRG’s alleged loss during a four month  
21 period under the control of the Temporary Receiver.

22                   During the past eleven months, the Temporary Receiver has not come before this Court  
23 seeking to modify any of these expenses. The Temporary Receiver could seek to reduce payroll or  
24 rent. Clearly, the contract with SRS terminated and yet the Temporary Receiver kept the service and  
25 the cost incurred. The Temporary Receiver should be handling all of the captive manager functions,  
26 but instead has chosen to outsource the functions. Despite this, the Temporary Receiver is artificially  
27 keeping these expenses high, presumably so that its bill for \$250/hr for clerical tasks looks more  
28

1 reasonable. This craven manipulation of the books so that it can line the Deputy Temporary  
2 Receiver's own pockets should not be countenanced by this Court.

3 However, despite overstating PIRRG's expenses, presumably to make up for some of the  
4 \$805,000 that it has lost during the last four months, and because the Temporary Receiver has  
5 undertaken no actions in 11 months to reduce PIRRG's monthly expenses, the Temporary Receiver  
6 still seeks to have this Court give it a fiduciary responsibility over PIRRG and its assets.

7 **C. The Temporary Receiver's Motion Is Long On Rhetoric, But Short On**  
8 **Specifics.**

9 The liquidation motion is long on rhetoric about how allegedly bad PIRRG's finances are,  
10 but provides no details as to these issues.

11 For example, PIRRG claims that PIRRG cannot meet its obligations as they "mature or come  
12 due." The Temporary Receiver has failed to identify what these obligations may be.

13 The motion also alleges that "the financial condition of PIRRG is dire and rapidly declining."  
14 However, this is due to the fact that the Temporary Receiver lost \$805,000 since September 30,  
15 2020, has taken no steps to recover over \$3 million in insurance receivables, has taken no steps to  
16 pursue the AON litigation, has taken no steps to reduce PIRRG's ongoing expenses. Instead, the  
17 Temporary Receiver has been charging PIRRG \$250/hr for clerical work. In short, the Temporary  
18 Receiver is the cause of PIRRG's "dire and rapidly declining" financial condition. Indeed, as of  
19 September 30, 2020, according to the Receiver's own report, PIRRG had \$1,604,648 in assets, and  
20 \$2,354,543 in liabilities. As of February 3, 2021, PIRRG's assets were \$1.3 million and its liabilities  
21 were \$2.9 million.

22 At no time has the Temporary Receiver provided a balance sheet showing where it is  
23 spending the money. At no time as the Temporary Receiver provided any accounting at all.  
24 Presumably, this is because it cannot account for the \$805,000 that has been inexplicably lost by the  
25 Temporary Receiver since September 30, 2020, and the over \$1.9 million since the Temporary  
26 Receiver took control in March, 2020.

27 Furthermore, it is undisputed that the Temporary Receiver acquired all operational costs,  
28

1 including the bank accounts and check writing authority in March 2020. Despite this, the Temporary  
2 Receiver admits - indeed bases its arguments for why PIRRG must be liquidated - on deteriorating  
3 financial condition that has worsened since the Temporary Receiver took over.

4 It is against public policy to allow one to profit from their own misconduct. See *Dynamic*  
5 *Transit Co. v. Trans Pac. Ventures*, 128 Nev. 755, 760, 291 P.3d 114, 117 (2012). Yet this is exactly  
6 what RCS - and the Division of Insurance - are seeking to do. RCS, acting under auspices of the  
7 Temporary Receiver as Deputy Temporary Receiver has lost \$805,000 to create a “deteriorating  
8 financial condition” while under the operational control of RCS. The Division of Insurance created  
9 the problem in the first place by approving PIRRG’s accounting methods in 2015 (for the period of  
10 2012-2014), while rejecting those same accounting methods in 2018 (for the period of 2015-2017).  
11 Indeed, this abrupt reversal in accounting methodology for reinsurance recoverables is what led to  
12 these problems in the first place. This disallowal of accounting methodologies, coupled with the lack  
13 of assistance provided by the Division of Insurance in trying to straighten out the accounting issues,  
14 added to the unexplained \$1.5 million swing in PIRRG’s capital position, shows that it is PIRRG,  
15 not the Temporary Receiver, who was attempting to protect the public, PIRRG’s policyholders, the  
16 claimants against PIRRG’s policyholders, and PIRRG’s creditors. The Temporary Receiver is doing  
17 nothing for any of these entities, despite having a statutory duty to all of them.

18 **IV. THE TEMPORARY RECEIVER IS DOING NOTHING TO ASSIST IN THE**  
19 **FINANCIAL HEALTH OF PIRRG**

20 Despite charging \$250/hr for clerical duties, and losing \$805,000 of PIRRG’s money, the  
21 Temporary Receiver is doing nothing to assist in PIRRG’s financial health. The Temporary Receiver  
22 has done nothing to pursue the reinsurance recoverables. The Temporary Receiver has done nothing  
23 to pursue the AON litigation. The Temporary Receiver has not sought to terminate or modify  
24 contracts with producers or providers. The Temporary Receiver has not participated in the settlement  
25 of outstanding claims. However, because the Temporary Receiver informed the insureds that it  
26 would not be paying any claims, several of PIRRG’s insureds have been required to use their own  
27 funds to defend and settle the claims made against them. These actions undertaken by PIRRG’s



1 insureds have substantially reduced the claims liability that PIRRG faces. Yet, the Temporary  
2 Receiver fails to provide an up to date report on the outstanding claims, and instead somehow  
3 increased the amount PIRRG owes by over \$545,000.

4           Instead, what the Temporary Receiver has done is to lose over \$850,000 of PIRRG's money,  
5 make excuses and make false statements blaming others for its failures to perform its duties. Plus  
6 it has hidden and refused to produce documents that it promised to produce. Indeed, if the Temporary  
7 Receiver has engaged in any actions to improve PIRRG's financial condition, it has hidden those  
8 actions. Because it is hiding any actions it has taken, one has to ask why the Temporary Receiver  
9 is afraid to identify what actions they are engaged in or undertaken to improve PIRRG's condition,  
10 if any have actually been engaged in or undertaken.

11           The Temporary Receiver, especially the appointment of a Deputy Temporary Receiver  
12 located in San Francisco who accepted its position knowing that PIRRG's main business was located  
13 and operated out of Florida, complains that it has not been able to obtain hard copies of files (despite  
14 having electronic access to files), because they are located across the country. (Report at 9:2-11).

15           Finally, the Temporary Receiver falsely claims that it cannot evaluate the AON claims or the  
16 reinsurance arbitrations because Leverty & Associates has failed to provide the documentation  
17 despite "repeated formal requests" to do so. (Report at 6:11-15). This statement is (1) false and (2)  
18 defamatory. The Temporary Receiver has never formally asked for Leverty & Associates files on the  
19 AON litigation or the reinsurance litigation.(Decl. V. Leverty). Furthermore, not only was the  
20 Division of Insurance (i.e. the organization that the Temporary Receiver is the head of) involved in  
21 the reinsurance negotiations, but the pleadings for the AON lawsuit are publically available. (Decl.  
22 V. Leverty) In addition, Leverty & Associates provided its analysis of the lawsuit to the Division  
23 of Insurance long ago and provided the Division of Insurance with a copy of the AON complaint,  
24 plus copies of the depositions taken at the order of the Division of Insurance that are applicable to  
25 the AON lawsuit. (Decl. V. Leverty) Further, Leverty & Associates prepared a detailed report  
26 concerning the lawsuit at the request of the Deputy Temporary Receiver to companies provided by  
27 them. The report was provided to the Deputy Temporary Receiver and the Deputy Temporary

1 Receiver were directly contacted by at least one of those companies. Candidly, the Division and  
2 Deputy Temporary Receiver have received far more than is required and for which there was never  
3 a request made than they were entitled to because of the attorney's lien against the case.

4 Thus, despite being retained for the purpose of conservation/rehabilitation of PIRRG (See  
5 Order appointing Insurance Commissioner as Temporary Receiver, dated March 19, 2020, at 2:4-5),  
6 the Temporary Receiver has done nothing to rehabilitate PIRRG. Instead, the Temporary Receiver  
7 hired RSG, at the exorbitant rate of \$250/hr for performing clerks duties, lost over \$850,000 of  
8 PIRRG's money in four months, lost over \$1.9 million of PIRRG's money since it has taken over,  
9 refused to contribute to settling/resolving cases against PIRRG's insureds, forcing them to expend  
10 their own money to settle the claims, and RSG has done essentially nothing except to place PIRRG  
11 in a worse position to negotiate a settlement of the AON litigation or to resolve the reinsurance  
12 recoverable arbitrations.

13 **V. THE TEMPORARY RECEIVER IS IN VIOLATION OF STATUTES AND COURT**  
14 **ORDERS.**

15 The Temporary Receiver is in violation of both orders of this Court and of Nevada's statutes  
16 regarding the actions of the Temporary Receiver.

17 **A. The Temporary Receiver Is In Violation of Court Orders**

18 Despite being ordered to respond to subpoenas more than 8 months ago, the Division of  
19 Insurance, which includes the Temporary Receiver, has not fully complied with this Court's order  
20 of May 22, 2020 ordering the Division of Insurance to respond to PIRRG's subpoenas.

21 Candidly, at this juncture, it appears that the Division's motion for liquidation is not based  
22 upon its merits, but rather to avoid complying with the subpoenas issued to the Division of Insurance  
23 and to sweep the inactions of the Division of Insurance toward PIRRG's repeated Requests for  
24 assistance under the rug.

25 The Temporary Receiver has failed to comply with this order. As of the date of the filing of  
26 his opposition, almost nine months have passed, and, as the Temporary Receiver admits, not all of  
27 the documents requested have been produced. Mtn. at fn. 6.

1 To begin with, the Division withheld tens of thousands of pages of documents based upon  
2 spurious privileges, such as claiming attorney-client privilege for summaries of communications with  
3 PIRRG's counsel; claiming that documents that had nothing to do with the filing of annual  
4 statements were privileged under NRS 679B.285(2); claiming that the "Agency Deliberative Process  
5 Privilege" applied to inquiries from PIRRG about how PIRRG should calculate recoverables (i.e.  
6 one of the absolute key issues in this matter - as PIRRG was originally told that its means of  
7 calculation was approved, and then was told that the same means of calculation was incorrect). For  
8 other documents, the Division documents were privileged under NRS 679B.190(5)(b) without a  
9 finding by the Commissioner of Insurance that documents were classified as confidential. Documents  
10 included in this improper assertion of privilege include documents between Division counsel and  
11 the attorneys representing the reinsurers who owe PIRRG approximately \$3.4 million (and whom  
12 the Temporary Receiver apparently still has not communicated with about recovering any part of  
13 these reinsurance recoverables).

14 During the meet and confer process, the counsel for the Division of Insurance admitted that,  
15 prior to the document by document walk through of the privilege log, he had not reviewed the  
16 documents, and the assertion of privileges did not come from him.(Decl. Ginn) Instead, he had the  
17 fox guard the henhouse, and had the non-attorney employees of the Division of Insurance to whom  
18 the subpoenas were issued make their own determination as to what was, and was not,  
19 privileged.(Decl. Ginn) Obviously, covering up their own culpability, they were far more likely to  
20 improperly assert spurious privileges. As a result, counsel for the Division and PIRRG had to spend  
21 many hours going through the documents that were allegedly privileged one by one so that the  
22 Division Counsel could individually evaluate the assertion of privilege as to each one. (Decl. Ginn)  
23 For some reason unknown to the undersigned, there is no reason that Division Counsel could not do  
24 so in a timely manner without having to force PIRRG to incur the additional costs of having to sit  
25 on a zoom call while Division Counsel made his first review of the allegedly privileged documents.

26 But it is far worse than this. There are over 450 discrete documents, which likely cover many  
27 thousands of individual pages that have not been produced. See Exh. 1. On October 8, 2020, counsel

1 for the Division of Insurance stated that one of the individuals to whom the subpoenas was directed -  
2 Peter Rao - allegedly had documents he had yet to produce.

3 Additionally, on October 8, 2020, counsel for the Division stated that we would have ALL  
4 of the remaining documents “within the week.” As of the date of this opposition, 18 weeks have  
5 passed. PIRRG’s counsel has written to the Division of Insurance’s seeking the documents (See  
6 Exh. 2) and been promised the documents “as soon as possible.” Given that the last promise of “as  
7 soon as possible” was more than two months ago, (Exh. 2) it appears that there is a significant  
8 difference in PIRRG’s understanding of the term “as soon as possible” and the Division’s definition  
9 of the term “as soon as possible.”

10 Thus, the Temporary Receiver - a/k/a the Commissioner of Insurance - is in violation of this  
11 Court’s order.

12 **B. The Temporary Receiver Is In Violation of Statutory Requirements**

13 As set forth in the motion for mandate/motion to compel (which resulted in the Temporary  
14 Receiver filing a three month old report), the Temporary Receiver is to provide reports to the Court,  
15 no less than quarterly, about the financial condition of PIRRG, and what it has done in  
16 accomplishing the objectives of the receiver ship:

17 During such receivership the Commissioner shall file in the court, at regular intervals  
18 not less frequently than quarterly, the Commissioner’s true reports in summary form  
19 of the insurer’s affairs under the receivership, and of progress being made in  
20 accomplishing the objectives of the receivership. All such reports, together with such  
21 additional or special reports as the court may reasonably require, shall be subject to  
22 review by the court; and all actions of the receiver therein reported shall be subject  
23 to the court’s approval, but the court shall not withhold approval or disapprove any  
24 such action unless found by the court after a hearing thereon in open court to be  
25 unlawful, arbitrary or capricious.

26 NRS 696B.270(7)

27 This is an affirmative duty that the receiver **must** perform, not something that should need  
28 to be asked for. RCS became the deputy temporary receiver in March 2020. See Mtn. Exh. 1.  
Therefore, the Temporary Receiver has been required to provide quarterly reports as to what it has  
been doing to further the purpose of the receivership. This means that a report should have been  
released for the March-June period, the July-September period, and the October-December period.

1 Only one of these has been filed, and it was more than three months late and required PIRRG to file  
2 a motion to compel. This report does not state what the Temporary Receiver has done in  
3 accomplishing the objectives of the receivership, other than taking control over PIRRG's finances.<sup>2</sup>  
4 The Report does not account for any expenses, any increase in liabilities, or show where any assets  
5 were expended. As to the reason for why those reports are necessary, the Temporary Receiver does  
6 not provide any information.

7 The purpose of these reports is because the Temporary Receiver is a fiduciary of the insurer.  
8 Under other fiduciary statutes, such as a guardianship, the failure to file reporting is a basis for  
9 terminating the fiduciary. See NRS 159.185(e) and (f). Mismanagement of the estate is also a basis  
10 for terminating a court imposed fiduciary's responsibility (NRS 159.185(d))

11 According to the Report, the Temporary Receiver has (1) mailed notices to PIRRG's  
12 principals (Report at 3:26-4:5); (2) taken control of PIRRG's bank accounts and investment accounts  
13 (Report at 4:6-10); and (3) "received access to various records and documents associated with  
14 PIRRG" (Report at 4:14-19).

15 The Temporary Receiver has not settled a single claim against any of PIRRG's insured.  
16 Indeed, the Temporary Receiver is not paying the attorneys who are defending these claims that are  
17 actively in litigation, nor has it contributed to the resolution of any claim, forcing PIRRG's insureds  
18 to pay to settle the claims out of their own pockets, because the Temporary Receiver has informed  
19 the insureds, and their attorneys, that it will not be paying anything for 3-5 years.

20 The Temporary Receiver has not pursued the reinsurance recoverables. (Report at 7:8-15).  
21 Indeed, on March 13, 2020 - the date of the temporary receivership filing - PIRRG won the dispute  
22 over whom the 3<sup>rd</sup> arbitrator would be. As a practical matter, this means that it was more likely than  
23 not that PIRRG would be successful at the arbitration. The Temporary Receiver informed the  
24 reinsurance market about the receivership to cancel the arbitrations *before* informing PIRRG of the

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25 <sup>2</sup> Of all of the actions the receiver should have been engaging in - including pursuing the  
26 reinsurance recoverables, the AON lawsuit, and negotiating the resolution of lawsuits against the  
27 insureds - this is probably both the easiest and least important task, as there is no allegation of  
28 any principal of PIRRG using PIRRG's finances for their own purpose.

1 existence of the receivership. In the intervening 11 months, the Temporary Receiver has apparently  
2 not even assessed or validated the likely recoveries under these approximately \$3.4 million of  
3 recoverables. (Report at 7:9-15). Nor does the temporary receiver apparently have any current plans  
4 to address these recoverables. (Report at 7:22-25), presumably because PIRRG likely would become  
5 solvent if they were fairly pursued. Instead, PIRRG is concerned that the Temporary Receiver would  
6 settle these claims for pennies, or even fractions of pennies on the dollar, instead of investing the  
7 time and effort to receive a fair valuation of the recoverables.

8 All of this shows that the Temporary Receiver has done nothing to attempt to cure PIRRG's  
9 issues. Instead, the Temporary Receiver has made the issue worse.

## 10 **VI. CONCLUSION**

11 The Temporary Receiver has utterly failed in her duties, and the liquidation should not be  
12 ordered.

13 First, according to the Temporary Receiver's own calculations, as of September 30, 2020,  
14 PIRRG had assets of more than \$2 million more than its liabilities. Second, not only has the  
15 Temporary Receiver failed to pursue assets, the Temporary Receiver has *lost* over \$1.9 million of  
16 PIRRG's money since it has taken over PIRRG, over \$850,000 of which occurred in just the last four  
17 months, despite there being virtually no claims exposure, as PIRRG's insureds are being forced to  
18 pay to resolve the medical malpractice claims against them out of their own pockets. The Temporary  
19 Receiver is also in violation of both this Court's orders and its statutory duties.

20 When someone seeks to become a fiduciary, they should be acting in a manner that is entirely  
21 forthright. The Temporary Receiver has not. Therefore, the Liquidation Motion should be denied in  
22 its entirety and the Temporary Receivership dismissed with prejudice. At a minimum, before the  
23 Court entertains the Temporary Receiver's request for a hearing; PIRRG should be provided with  
24 all of the documents subpoenaed; a full accounting of how the Temporary Receiver has worsened  
25 PIRRG's financial condition by over \$1.9 million in just 11 months (to date) and lost over \$850,000  
26 of that since September 30, 2020; a full description of every action taken by the Temporary Receiver  
27 on behalf of PIRRG; the Temporary Receiver's evaluations of both the AON lawsuit and the

1 reinsurance arbitrations, and what should be recovered under each; and there must be enough time  
2 for PIRRG and its counsel to evaluate all of this material before the hearing occurs so that PIRRG's  
3 counsel can mount a defense to the liquidation motion.

4 **AFFIRMATION**  
5 **(NRS 239B.030)**

6 The undersigned does hereby affirm that the preceding document filed in the Second Judicial  
7 District Court, does not contain any personal information.

8 Dated this 16<sup>th</sup> day of February, 2021

9 **LEVERTY & ASSOCIATES LAW CHTD.**

10 /s/ William R. Ginn

11 Vernon E. Leverty, Esq., NV Bar No. 1266

12 Patrick R. Leverty, Esq., NV Bar No. 8840

13 William R. Ginn, Esq., NV Bar No. 6989

14 832 Willow Street

15 Reno, Nevada 89502

16 *Attorneys for Physicians Indemnity Risk Retention Group*

**DECLARATION OF VERNON E. LEVERTY**

I, Vernon E. Leverty, do hereby declare that the following assertions are true to the best of my knowledge and belief:

1. I am an attorney licensed to practice in the States of Nevada and California, and I am one of the attorneys who represent Physician’s Indemnity Risk Retention Group, Inc., in the above entitled action.

2. I make this Declaration based upon personal knowledge, and in lieu of Affidavit pursuant to NRS 53.045 in support of Defendant Physician’s Indemnity Risk Retention Group, Inc.’s opposition to Temporary Receiver’s Motion for Order of Liquidation and Other Permanent Relief.

3. The Temporary Receiver has never asked for Leverty & Associates files on the AON litigation or the reinsurance litigation.

4. The Division of Insurance was heavily involved in the reinsurance recoverable negotiations, particularly Gennady Stolyrov, who attempted to negotiate on behalf of the reinsurers and strongly advocated for PIRRG to accept a settlement that was far below the amount deemed payable and that was being sought in binding arbitration.

5. The pleadings for the AON lawsuit are publically available. To the best of the undersigned’s knowledge, the Deputy Temporary Receiver has had extensive discussions with AON’s counsel regarding this litigation, but the undersigned does not know the substance of those communications. We requested in writing from Joe Holloway, the contact at RCS who was acting as the Deputy Temporary Receiver, to find out what was communicated with AON’s counsel, but we never received the courtesy of a reply.

6. In late February or early March 2020, Leverty & Associates provided its analysis of the AON lawsuit to the Division of Insurance, including providing a copy of the AON complaint and certain copies of depositions relating to the AON lawsuit.

7. In PIRRG’s regulatory matter before the Division of Insurance (where the Division’s counsel was the same individual who is now Division of Insurance’s counsel) concerning the issues of the reinsurance recoverables, PIRRG was able to take depositions of several of AON’s employees



1 concerning the reinsurance recoverables, which .

2 8. At the request of the Deputy Temporary Receiver, I provided a thorough, in depth, analysis  
3 of the AON litigation to multiple entities who “purchase” lawsuits who were recommended by the  
4 Deputy Temporary Receiver. I provided this analysis to the Deputy Temporary Receiver in late  
5 September or early October 2020. Upon information and belief, at least one of these entities  
6 contacted Mr. Holloway, and he advised them not to speak with me about the litigation. If the Court  
7 requests it, PIRRG will be happy to provide a copy of these analyses for *in camera* review so that  
8 the information contained therein remains confidential and so that AON’s counsel does not obtain  
9 a copy.

10 DATED this 16<sup>th</sup> day of February, 2021.

11 /s/ Vernon E. Leverty  
12 Vernon E. Leverty, Esq.

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**DECLARATION OF WILLIAM R. GINN**

I, William R. Ginn, do hereby declare that the following assertions are true to the best of my knowledge and belief:

1. I am an attorney licensed to practice in the States of Nevada and California, and I am one of the attorneys who represent Physician’s Indemnity Risk Retention Group, Inc., in the above entitled action.

2. I make this Declaration based upon personal knowledge, and in lieu of Affidavit pursuant to NRS 53.045 in support of Defendant Physician’s Indemnity Risk Retention Group, Inc.’s opposition to Temporary Receiver’s Motion for Order of Liquidation and Other Permanent Relief.

3. I participated in 11.8 hours of meet and confer with the counsel for the Division of Insurance, Mr. Hall. These meetings took place over a period of a month. Specifically these meetings were as follows:

- September 3, 2020 - Discussion regarding documents withheld from Gennady Stolyarov disclosure. (3 hrs.)
- September 15, 2020 (scheduled, but did not occur due to DOI calendar conflicts)
- September 16, 2020 (shortened due to technical issues regarding the DOI’s VPN, rescheduled to September 17, 2020)(.5 hrs)
- September 17, 2020 (did not occur due to technical issues regarding the DOI’s VPN.)
- September 21, 2020 - Discussion regarding documents withheld from Peter Rao disclosures. (2.6 hrs)
- September 22, 2020 - Discussion regarding documents withheld from Peter Rao disclosures.(did not occur due to technical issues regarding the DOI’s VPN)
- September 28, 2020 (did not occur because Division Counsel forgot to calendar)
- September 29, 2020 - Discussion regarding documents withheld from Peter Rao disclosures.(2.4 hrs)
- October 5, 2020 - Discussion regarding documents withheld from Peter Rao

disclosures. (1.5 hrs)

- October 8, 2020 - Discussion regarding documents withheld from Peter Rao disclosures. (1.8 hrs)

4. During these discussions, Mr. Hall informed me that he did not identify the documents which were being withheld or the basis by which they were being withheld. Instead, he stated that the non-lawyers who were employees of the Nevada Division of Insurance (Mr. Rao and Mr. Stolyrov) had decided on their own, what was, and what was not privileged. Indeed, Mr. Hall indicated several times during the month-long meet and confer process that “he couldn’t understand why this document was being withheld.”

5. To Mr. Hall’s credit, once he reviewed the documents - which occurred on a series of zoom calls - a significant portion of documents were to be disclosed, either without redactions, or with limited redactions, such as redacting account numbers.

6. Once the final privilege log is produced, it is likely that there will be motions to compel as to some of the documents.

7. On October 8, 2020, Mr. Hall informed us that Mr. Rao had not completed his review of documents to determine if he had any documents responsive to any subpoena.

8. On October 7, 2020, at the completion of the meet and confer Mr. Hall stated that the remaining documents that he had and agreed to produce (that were not included in a single disclosure that occurred on September 28, 2020), would be produced by the end of the week.

9. The sole and last production of documents by the Division of Insurance pursuant to the meet and confer process, occurred on September 28, 2020.

DATED this 16<sup>th</sup> day of February, 2021.

/s/William R. Ginn  
William R. Ginn, Esq.

**CERTIFICATE OF SERVICE**

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I hereby certify under penalty of perjury that I am an employee of Leverty & Associates Law, Chtd., and that service of the foregoing was made on the following by the Court’s electronic filing system to:

Joanna Grigoriev  
Deputy Attorney General  
Office of The Attorney General  
555 E. Washington Ave #3900  
Las Vegas, NV 89101

David R. Hall  
State of Nevada,  
Department of Business and Industry  
Division of Insurance  
1818 E. College Parkway  
Carson City, NV 89706

Dated this 16<sup>th</sup> day of February, 2021

/s/ William R. Ginn  
An Employee of Leverty & Associates Law Chtd.

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**INDEX OF EXHIBITS**

Exh. No.	Description	# of pages*
1	Status Report, filed December 2020	5
2	Email exchange between William Ginn and David Hall, dated December 8, 2020-December 11, 2020	2

\* Does not include the exhibit divider page

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2021-02-16 05:22:01 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 8097499 : yilori

# Exhibit 1

# Exhibit 1

1 Vernon E. Leverty, Esq., NV Bar No. 1266  
Patrick R. Leverty, Esq., NV Bar No. 8840  
2 William R. Ginn, Esq., NV Bar No. 6989  
LEVERTY & ASSOCIATES LAW CHTD.  
3 832 Willow Street  
Reno, NV 89502  
4 Telephone: (775) 322-6636  
*Attorneys for Defendant Physicians*  
5 *Indemnity Risk Retention Group*

6  
7 **IN THE SECOND JUDICIAL DISTRICT COURT OF**  
8 **THE STATE OF NEVADA IN AND FOR**  
9 **THE COUNTY OF WASHOE**

10 STATE OF NEVADA, EX REL.  
11 COMMISSIONER OF INSURANCE, IN  
HER OFFICIAL CAPACITY AS  
12 STATUTORY RECEIVER FOR  
DELINQUENT DOMESTIC INSURER,

CASE NO.: CV20-00496

DEPT. NO.: 1

13  
14 Plaintiffs,

15 vs.

16 PHYSICIANS INDEMNITY RISK  
RETENTION GROUP, INC., a Nevada  
Domiciled Association Captive - RRG  
17 Insurance Company,

18 \_\_\_\_\_ Defendants. \_\_\_\_\_ /

19 **STATUS REPORT**

20 Defendant Physician's Indemnity Risk Retention Group, Inc. ("PIRRG"), by and through its  
21 undersigned counsel, and the State of Nevada, by and through its undersigned counsel, hereby  
22 submits this third status report as ordered by the Court.

23 As the Court is aware, the hearing on this matter was to commence on May 27, 2020. The  
24 production of most of the documents from the Division of Insurance, and the meet and confer  
25 process was set forth in the Status Report as of October 23, 2020. The parties see no need to reiterate  
26 the facts set forth in the August 24, 2020 joint status report or the October 23, 2020 status report.

27 During the last of the meet and confer calls on October 8, 2020, counsel for the Division

1 stated that he would be providing the remainder of the documents, whether in their entirety or with  
2 the agreed upon redactions, by “the end of next week.” The multiple meet and confer meetings, over  
3 a period of approximately six weeks were productive and both sides were professional and acting  
4 in good faith during these discussions.

5 The Division has not produced a single document since September 28, 2020 when the  
6 Division produced approximately 1000 pages of documents. Based on a rough estimate from  
7 PIRRG’s counsel’s notes, there are approximately 450 discrete documents, with an uncalculated  
8 number of pages yet to be produced.

9 Furthermore, not all of the documents from one of the subpoenaed parties have been  
10 produced. Also during the October 8, 2020 meet and confer call, counsel for the Division stated that  
11 Mr. Rao was not finished with reviewing documentation to that was responsive to the subpoenas.

12 As a result of the incomplete discovery responses and incomplete responses to the subpoenas,  
13 on December 8, 2020, PIRRG’s counsel wrote to the Division’s counsel stating:

14 While we appreciate the considerable time you have spent in our multitude of meet  
15 and confers, we have to admit frustration with the Division’s improper asserted  
16 privileges and withholding of documents. The Division’s improper withholding of  
17 documents has required you and us to spend a great deal of time in a multitude of  
18 meet and confers. Then despite being promised the documents, it is frustrating and  
19 very aggravating for the documents to not be provided.

20 Our initial meet and confers resulted in the Division providing over 1000 documents  
21 to us on September 28, 2020, but our subsequent multitude of meet and confers  
22 where documents were promised to be provided have yet to be produced. Our last  
23 meet and confer was on October 8, 2020 where we were advised we would receive  
24 the remainder of the voluminous documents the Division had agreed to provide by  
25 the end of the next week. We were also informed that the process of disclosing  
26 documents was not complete because Peter Rao had additional documents to be  
27 produced or for which a privilege log would be provided so additional meet and  
28 confers would be required.

29 Since September 28, 2020, we have received nothing else from the Division in  
30 response to the subpoenas issued back in May, 2020.

31 The subpoenas were served on the Division of Insurance on May 11, 2020. Because  
32 not all of the documents have been produced, as a significant number of documents  
33 still need to be produced, by the Division more than six months after subpoenas were  
34 served. While we understand the current circumstances in the world in general, and  
35 the staffing issues at the Nevada Division of Insurance in particular, are slowing up  
36 the process, the fact is we have not even been provided an explanation of why the  
37 promised documents have not been provided or even an estimate as to when we will



1 receive the remaining documents is troublesome

2 Once we get the documents, we will have many dozens, if not hundreds, of hours of  
3 work in reviewing those documents coming up, coupled with the holidays and Covid  
4 19 issues. We do not want to be accused somehow of delaying this process when we  
5 have endeavored to work expeditiously with you as well as the temporary deputy  
6 receiver. If you need more time, we understand but need to be informed. Currently,  
7 however, as we are operating in a vacuum of information from the Division and from  
8 the temporary deputy receiver.

9 Please provide us the status of when we might expect to receive the documents  
10 promised in our multitude of meet and confers as well as Mr. Rao's additional  
11 documents and additional privilege log.

12 Division Counsel wrote back on December 11, 2020 stating:

13 Sort [SIC] for the late reply. I've been without email for a few days. I appreciate your  
14 frustration. I will get a hold of Peter [Rao] regarding remaining documents and get  
15 back to you as soon as possible

16 No response has been received since then.

17 As noted in the October 23, 2020 status report, the Deputy Temporary Receiver,  
18 Joe Holloway of Regulatory Service Group requested PIRRG seek to sell part or all of PIRRG's  
19 claims, both against AON as well as against the reinsurers, to investors. Mr. Holloway suggested  
20 several. PIRRG sent the letters, and, with one exception, there has been no interest. After seeking  
21 information from PIRRG, the sole exception had discussions with Mr. Holloway, and PIRRG has  
22 heard nothing on this issue since late October. No offers to purchase or finance PIRRG have been  
23 made.

24 In addition, when the receivership action was filed, there were 18 active defense cases that  
25 PIRRG was involved in and defending one or more physicians. This number is now 13. In these  
26 cases, because the receiver informed the claimants that the receiver was not going to be paying any  
27 claims for 3-5 years, several of the individual physicians dipped into their own pockets and paid the  
28 injured individuals themselves. These physicians will be eligible to seek reimbursement from PIRRG  
in the future.

As PIRRG is still waiting for basic information to be provided by the Division of Insurance  
and for the more than six month old subpoenas to be complied with, the parties request an additional  
60 days to address the outstanding discovery, and will provide the Court with an updated status

1 report and/or will set the hearing before that date.

2 Dated this 23<sup>th</sup> day of December, 2020

Dated this 23<sup>th</sup> day of December, 2020

3 /s/ William R. Ginn  
4 William R. Ginn, Esq.  
5 Leverty & Associates Law, Chtd.  
6 832 Willow Street  
7 Reno, NV 89502  
8 (775)322-6636  
9 [bill@levertylaw.com](mailto:bill@levertylaw.com)  
10 *Attorneys for Respondent*  
11 *Physicians' Indemnity Risk Retention*  
12 *Group, Inc.*

/s/ David R. Hall  
David R. Hall, Esq.  
Insurance Counsel  
Nevada Division of Insurance  
1818 E. College Parkway, Suite 103  
Carson City, NV 89706  
(775)687-0708  
[dhall@doi.nv.gov](mailto:dhall@doi.nv.gov)  
*Attorney for Petitioner State*  
*of Nevada, Ex. Rel. Commissioner of*  
*Insurance*

10 **AFFIRMATION**  
11 **(NRS 239B.030)**

12 The undersigned does hereby affirm that the preceding document filed in the Second Judicial  
13 District Court, does not contain any personal information.

14 Dated this 23<sup>th</sup> day of December, 2020

15 **LEVERTY & ASSOCIATES LAW CHTD.**

16 /s/ William R. Ginn  
17 Vernon E. Leverty, Esq., NV Bar No. 1266  
18 Patrick R. Leverty, Esq., NV Bar No. 8840  
19 William R. Ginn, Esq., NV Bar No. 6989  
20 832 Willow Street  
21 Reno, Nevada 89502  
22 *Attorneys for Physicians Indemnity Risk Retention Group*

**CERTIFICATE OF SERVICE**

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I hereby certify under penalty of perjury that I am an employee of Leverty & Associates Law, Chtd., and that service of the foregoing was made on the following by the Court’s electronic filing system to:

Richard Yien  
Deputy Attorney General  
Office of The Attorney General  
100 N. Carson Street  
Carson City, NV 89701

David R. Hall  
State of Nevada,  
Department of Business and Industry  
Division of Insurance  
1818 E. College Parkway  
Carson City, NV 89706

Dated this 23<sup>th</sup> day of December, 2020

/s/ William R. Ginn  
An Employee of Leverty & Associates Law Chtd.

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# Exhibit 2

# Exhibit 2

## Bill Ginn

---

**From:** David Hall <dhall@doi.nv.gov>  
**Sent:** Friday, December 11, 2020 1:31 PM  
**To:** Bill Ginn  
**Cc:** Gene Leverty  
**Subject:** Re: PIRRG

Bill;  
Sort for the late reply. I've been without email for a few days. I appreciate your frustration. I will get a hold of Peter regarding remaining documents and get back to you as soon as possible

DAVID R. HALL, ESQ.  
Insurance Counsel  
1818 College Pkwy., Suite 103  
Carson City, NV 89706

---

**From:** Bill Ginn <bill@levertylaw.com>  
**Sent:** Tuesday, December 8, 2020 12:39 PM  
**To:** David Hall <dhall@doi.nv.gov>  
**Cc:** Gene Leverty <gene@levertylaw.com>  
**Subject:** PIRRG

Dear David:

While we appreciate the considerable time you have spent in our multitude of meet and confers, we have to admit frustration with the Division's improper asserted privileges and withholding of documents. The Division's improper withholding of documents has required you and us to spend a great deal of time in a multitude of meet and confers. Then despite being promised the documents, it is frustrating and very aggravating for the documents to not be provided.

Our initial meet and confers resulted in the Division providing over 1000 documents to us on September 28, 2020, but our subsequent multitude of meet and confers where documents were promised to be provided have yet to be produced. Our last meet and confer was on October 8, 2020 where we were advised we would receive the remainder of the voluminous documents the Division had agreed to provide by the end of the next week. We were also informed that the process of disclosing documents was not complete because Peter Rao had additional documents to be produced or for which a privilege log would be provided so additional meet and confers would be required.

Since September 28, 2020, we have received nothing else from the Division in response to the subpoenas issued back in May, 2020.

The subpoenas were served on the Division of Insurance on May 11, 2020. Because not all of the documents have been produced, as a significant number of documents still need to be produced, by the Division more than six months after subpoenas were served. While we understand the current circumstances in the world in general, and the staffing issues at the Nevada Division of Insurance in particular, are slowing up the process,

the fact is we have not even been provided an explanation of why the promised documents have not been provided or even an estimate as to when we will receive the remaining documents is troublesome

Once we get the documents, we will have many dozens, if not hundreds, of hours of work in reviewing those documents coming up, coupled with the holidays and Covid 19 issues. We do not want to be accused somehow of delaying this process when we have endeavored to work expeditiously with you as well as the temporary deputy receiver. If you need more time, we understand but need to be informed. Currently, however, as we are operating in a vacuum of information from the Division and from the temporary deputy receiver.

Please provide us the status of when we might expect to receive the documents promised in our multitude of meet and confers as well as Mr. Rao's additional documents and additional privilege log.

Sincerely,

Bill

William R. Ginn, Esq.



LEVERTY & ASSOCIATES LAW CHTD.

"Reno Gould House"

832 Willow Street

Reno, Nevada 89502

Dir.: (775)538-6631

Main Office.: (775) 322-6636

Fax: (775) 322-3953

[www.levertylaw.com](http://www.levertylaw.com)

[bill@levertylaw.com](mailto:bill@levertylaw.com)

Licensed in Nevada and California

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