

COPY

1 ADAM PAUL LAXALT
2 Attorney General
3 RICHARD PAILI YIEN
4 Deputy Attorney General
5 Nevada Bar #13035
6 100 North Carson Street
7 Carson City, Nevada 89701-4717
8 (775) 684-1129
9 (775) 684-1156 (fax)
10 Email: ryien@ag.nv.gov
11 Attorney for the Division of Insurance

REC'D & FILED

2015 FEB 17 PM 4:01

SUSAN MERRIWETHER
V. Alegria CLERK
BY DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

10 STATE OF NEVADA, ex rel. COMMISSIONER) Case No. 14 OC 00114 1B
11 OF INSURANCE, in his Official Capacity as)
12 Statutory Receiver for Delinquent Domestic) Dept. No. 2
13 Insurer,)
14 Plaintiff,)
15 vs.)
16 PHYSICIANS BENEFIT RESOURCES RISK)
17 RETENTION GROUP, INC., a Nevada)
18 Domiciled Association Captive Insurance)
19 Company,)
20 Defendant.)

MOTION FOR ORDER APPROVING DISTRIBUTION OF REINSURANCE PROCEEDS PURSUANT TO NRS 696B.420(1)

22 Plaintiff State of Nevada ex rel. Commissioner of Insurance, Scott J. Kipper
23 ("Commissioner"), by and through his attorneys of record, Attorney General Adam Paul Laxalt
24 and Deputy Attorney General Richard Paili Yien, hereby requests an Order Approving
25 Distribution of Reinsurance Proceeds Pursuant to NRS 696B.420(1). The Physicians Benefit
26 Resources RRG ("PBR") Receivership recently has recovered \$950,000 in reinsurance
27 proceeds.¹ These reinsurance proceeds were distributed to PBR as a result of a settlement

28 ¹ PBR recovered \$700,000 from Catlin Underwriting Agencies Limited, for and on behalf of a reinsurance policy from Lloyd's Syndicate 2003. PBR also recovered \$250,000 from a reinsurance policy with Aequus

1 agreement in a lawsuit between Derrick Cho, MD (a PBR-insured doctor at the Colorado Brain
2 & Spine Institute), and a third party beneficiary, Mr. Michael Johnson (an injured patient).²
3 The Receiver wishes to immediately distribute these reinsurance proceeds to its intended
4 beneficiary, Mr. Michael Johnson. NRS 696B.420(1) allows for early distribution of assets to a
5 subsequent class of claimants so long as adequate money is retained for the payment of a
6 class with higher priority.³ Here, we are asking the Court's permission to distribute a class (b)
7 claim from the Colorado Brain & Spine Institute, prior to full payment of class (a)
8 administrative costs and expenses.

9 BACKGROUND

10 Physicians Benefit Resources RRG ("PBR") was a captive insurance company
11 operating as a risk retention group and was incorporated under the Nevada Insurance laws
12
13 Insurance Company.

14 ² The Defendant in the settlement agreement, Dr. Derrick Cho, was a covered doctor providing
15 neurosurgical treatments to the Plaintiff at the Colorado Brain & Spine Institute. The Colorado Brain & Spine
16 Institute Insurance Policy issued by Physicians Benefit Resources Risk Retention Group, Inc. is provided as
17 Exhibit 1. Dr. Cho is listed as a covered doctor under the medical professional liability policy on page 3 of Exhibit
18 1.

19 ³ NRS 696B.420 Order of distribution of claims from estate of insurer on liquidation.

20 1. The order of distribution of claims from the estate of the insurer on liquidation of the insurer must
21 be as set forth in this section. **Each claim in each class must be paid in full or adequate money**
22 **retained for the payment before the members of the next class receive any payment.** No
23 subclasses may be established within any class. Except as otherwise provided in subsection 2, the order
24 of distribution and of priority must be as follows:

25 (a) Administration costs and expenses, including, but not limited to, the following:
26 (1) The actual and necessary costs of preserving or recovering the assets of the insurer;
27 (2) Compensation for any services rendered in the liquidation;
28 (3) Any necessary filing fees;
29 (4) The fees and mileage payable to witnesses; and
30 (5) Reasonable attorney's fees.

31 (b) All claims under policies, any claims against an insured for liability for bodily injury or for injury to
32 or destruction of tangible property which are covered claims under policies, including any such claims of
33 the Federal Government or any state or local government, and any claims of the Nevada Insurance
34 Guaranty Association, the Nevada Life and Health Insurance Guaranty Association and other similar
35 statutory organizations in other jurisdictions. Any claims under life insurance and annuity policies,
36 whether for death proceeds, annuity proceeds or investment values, must be treated as loss claims. That
37 portion of any loss for which indemnification is provided by other benefits or advantages recovered or
38 recoverable by the claimant may not be included in this class, other than benefits or advantages
39 recovered or recoverable in discharge of familial obligations of support or because of succession at
40 death or as proceeds of life insurance, or as gratuities. No payment made by an employer to an
41 employee of the employer may be treated as a gratuity.

1 and the Liability Risk Retention Act of 1986. PBR was domiciled in the state of Nevada and
2 received its Certificate of Authority on July 20, 2010, and thereafter operated under the
3 authority of Nevada Revised Statutes ("NRS") Chapter 694C and some portions of Chapter
4 695E. PBR wrote professional liability insurance for physicians and their medical groups
5 under claims-made indemnity policies. Ultimately, PBR was unable to collect sufficient
6 premiums to cover both its fixed costs and operate as a viable insurer. PBR only was able to
7 attract one doctor group. The company issued a medical liability indemnity insurance policy
8 (Policy No. CO-TI-001-G-101-L1-12) to the Colorado Brain & Spine Institute ("CBSI"). Derrick
9 Cho, MD ("Dr. Cho") was employed by CBSI in 2012 and was entitled to indemnity coverage
10 as afforded by the policy. (See Exhibit 1, PBR/Colorado Brain & Spine Institute Insurance
11 Policy).

12 Due to the deteriorating financial condition of PBR, on June 12, 2014, the Nevada
13 Insurance Commissioner was appointed as Permanent Receiver of PBR by the First Judicial
14 District Court of the State of Nevada ("Court"). On June 17, 2014, an Amended Order
15 Appointing Commissioner as Permanent Receiver for Physicians Benefit Resources Risk
16 Retention Group, Inc., Order of Liquidation and Other Permanent Relief ("Permanent
17 Receivership and Liquidation Order") was entered by the Court.

18 On June 12, 2014, Nevada Insurance Commissioner Scott J. Kipper, in his capacity
19 as Permanent Receiver of PBR, retained David E. Wilson as his Receivership Manager. The
20 Receivership Manager was authorized to retain the services of Regulatory Services Group
21 ("RSG") to assist in the management of the PBR receivership and liquidation. As provided
22 for by the Permanent Receivership and Liquidation Order, the Receiver and Receivership
23 Manager are authorized to conduct the remaining business of PBR and to administer
24 the resolution of its affairs for the protection of all creditors, insureds, policyholders, and
25 general creditors.

26 On July 28, 2012, a medical malpractice lawsuit was filed against Dr. Cho, of CBSI, in
27 the Douglas County District Court in Colorado, Case Number 12 CV 1466 ("Lawsuit"). As a
28 result of the Lawsuit, Dr. Cho asserted a claim against the CBSI indemnity policy. To the

1 Liquidator's informed knowledge and belief, the medical malpractice lawsuit filed against Dr.
2 Cho is the only open policy claim against PBR. (See Exhibit 2, Affidavit of John Battle).

3 On October 8, 2014, formal mediation commenced in conjunction with the Lawsuit
4 where both counsel for the insured/defendant Dr. Cho and Counsel for Plaintiff Michael
5 Johnson participated together with the assistance of a mediating Judge in an effort to
6 compromise and/or settle the litigated dispute. Subsequently, after weeks of continued
7 negotiations, the insured/defendant Dr. Cho and Plaintiff Michael Johnson entered into a
8 formal settlement agreement on December 10, 2014. (See Exhibit 3, Settlement Agreement).

9 As part of the settlement terms, the insured/defendant Dr. Cho stipulated to the entry of
10 judgment in favor of the plaintiff in the principal amount of \$1,000,000 with the proviso that the
11 Plaintiff not execute against the insured/defendant Dr. Cho, but execute only against the
12 proceeds assigned to the liquidation claim of the insured/defendant Dr. Cho, an approved
13 claim of \$1,000,000 (the "CBSI Class (b) Claim").⁴ As part of the Receivership Manager's
14 charge, RSG assumed the administration of PBR's reinsurance program comprised of two
15 contracts liable for up to \$950,000 in reinsurance coverage⁵ in excess of PBR's \$50,000 of
16 loss retention. As a result of the settlement and stipulation of judgment associated with the
17 Lawsuit, the Receivership Manager, through RSG, prepared and sent demands to both
18 reinsurers seeking recovery of the full \$950,000 in reinsurance proceeds. The Receivership
19 Manager confirmed receipt of the \$950,000 in reinsurance proceeds on December 29, 2014.

20 PROPOSED DISTRIBUTION

21 PBR had approximately \$1,132,000 in cash as of December 31, 2014, including the
22 reinsurance proceeds collected. After deducting incurred but unpaid administration expenses
23 (approximately \$18,000) and an estimated closing reserve to complete the wind-up of the
24 liquidation, including the completion of a proof of claims process (\$98,000), PBR had
25 approximately \$1,016,000 in funds available to distribute to creditors at year end 2014.

26
27 ⁴ Plaintiff Michael Johnson was assigned Dr. Derrick Cho's "rights, title, and interest he has to seek
28 amounts owed under the indemnification provisions of any of the insurance policies . . . and to seek recovery
from the liquidation estate of Physicians Benefit Resources Risk Retention Group. See Exhibit 3, Settlement
Agreement, page 2, clause 2.

⁵ See footnote 1.

1 In light of the settlement (and in order to maintain its integrity) of the Lawsuit together
2 with the collection of the reinsurance proceeds, the Receivership Manager desires to seek
3 Court approval to distribute certain funds for the CBSI Class (b) Claim in the form of an early
4 access type of distribution. The Receivership Manager, therefore, proposes to distribute up to
5 \$950,000 to the category (b) creditor class. The Receivership Manager believes that the one
6 claim (the CBSI Class (b) Claim) tendered in conjunction with the Lawsuit will be the entirety
7 of PBR claims that fall under the NRS 696B.420(1)(b) order of distribution hierarchy. The only
8 higher priority claims under that code section are class (a) administrative expenses of
9 liquidation. All other potential approved claims will fall into a lower payment hierarchy
10 classification under the cited code section.

11 The Receivership Manager has estimated a necessary reserve of approximately
12 \$98,000 to fund the balance of administrative activities to complete the liquidation and seek
13 closure of the PBR estate. The closing reserve envisions RSG administering a proof of claim
14 process for the balance of PBR creditors below the policyholder class (b) level. It further is
15 estimated that the PBR estate will require an eight to ten month timeframe to conduct this
16 proof of claims process and to complete the balance of administrative activities to position the
17 PBR estate for closure.

18 The Receivership Manager seeks approval to distribute immediately \$950,000 to the
19 solitary, approvable claim in the category (b) creditor class, which is the CBSI Class (b) Claim.
20 Further, and out of an abundance of caution, the Receivership Manager intends to retain
21 \$50,000 of the approved \$1,000,000 policy liability CBSI Class (b) Claim to ensure that the
22 estate has sufficient assets to complete all necessary administrative requirements to wind up
23 and close the PBR estate. Assuming sufficient funds remain when the Receivership is ready
24 to conclude, the remaining \$50,000 of the unpaid CBSI Class (b) Claim's policy liability will be
25 distributed before distributing to the balance of approved claims falling below class (b).

26 //

27 //

28 //

1 **ADEQUATE MONEY HAS BEEN RETAINED BY THE RECEIVER TO PAY CLAIMS**
2 **UNDER NRS 696B.420(1)(a)**

3 NRS 696B.420(1) requires that adequate money be retained to pay class (a) claims
4 prior to payment of class (b) claims. Here, the Receiver has estimated a necessary reserve of
5 \$98,000 to fund the balance of administrative activities to complete the liquidation and seek
6 closure of the PBR estate. After this reserve has been subtracted from net assets, there
7 remains approximately \$1,016,000 in funds available to distribute to creditors (\$950,000 of
8 which we are requesting immediate distribution in this Motion). Should the Court approve
9 distribution of \$950,000 to Mr. Johnson, there remains approximately \$66,000 in excess that
10 the Receiver can use to fund any unanticipated administrative expenses. In other words, after
11 the \$950,000 distribution has been made, and after \$98,000 has been set aside to fund the
12 remainder of the receivership estate, there is still an additional \$66,000 that the Receiver has
13 access to. As such, the Receiver believes he has retained adequate money, pursuant to NRS
14 696B.420(1), to pay class (a) claims and requests permission to pay \$950,000 of the sole
15 Class (b) Claim in advance. The Receiver respectfully seeks an Order from the Court to
16 distribute immediately \$950,000 to Mr. Johnson. The Receiver intends to disburse the
17 remaining \$50,000, or any remaining portion of it, upon final closing of the receivership estate
18 or when it is clear that those funds are unnecessary to pay class (a) administrative expenses.

19 **MR.JOHNSON WAIVES RIGHT TO OBJECT PURSUANT TO NRS 696B.330(7)**
20 **IN ORDER TO FACILITATE EXPEDITED DISTRIBUTION**

21 NRS 696B.330(7) codifies statutory procedures to object to the Receiver's claim
22 determination. The injured claimant, Mr. Michael Johnson, has requested early distribution,
23 and the Receivership Manager had pledged, during settlement negotiations, a good faith effort
24 to expedite this payment with the permission of the Receivership Court. To accommodate his
25 request, Mr. Johnson voluntarily has waived his rights to object to the Receiver's
26 determination of claim, pursuant to NRS 696B.330(7). (See Exhibit 4, Affidavit of Michael
27 Johnson). There are no other known class (b) claimants.⁶

28
6 See Exhibit 2, Affidavit of John Battle, page 3, line 9.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned hereby affirms that the preceding document, *MOTION FOR ORDER APPROVING DISTRIBUTION OF REINSURANCE PROCEEDS PURSUANT TO NRS 696B.420(1)*, filed in this case 14 OC 00114 1B, does not contain the social security number of any person.

Dated this 13 day of February 2015.

COMMISSIONER OF INSURANCE OF THE STATE OF
NEVADA, IN HIS OFFICIAL CAPACITY AS STATUTORY
RECEIVER FOR DELINQUENT DOMESTIC INSURERS

By:

SCOTT PEARCE
Receivership Supervisor
Regulatory Services Group

Respectfully Submitted:

ADAM PAUL LAXALT
Attorney General

By: Richie Miller for #12578
RICHARD PAILI YIEN
Deputy Attorney General
Nevada State Bar #13035
100 N. Carson Street
Carson City, Nevada 89701
(775) 684-1129
Attorney for *Division of Insurance*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 17th day of February 2015, I filed a copy of the foregoing **MOTION FOR ORDER APPROVING DISTRIBUTION OF REINSURANCE PROCEEDS PURSUANT TO NRS 696B.420(1)** and served a copy of same by mailing, at Carson City, Nevada, a true and correct copy, in first class mail, postage prepaid, fully addressed to:

David E. Wilson
CEO, SDIC
Conservation and Liquidation Office
100 Pine Street, 26th Floor
San Francisco, CA 94111

and via interoffice mail to:

Scott Kipper, Commissioner of Insurance
Attn: Terri Verbrugghen
1818 E. College Parkway, Ste. 103
Carson, City, NV 89706

Anne Gold
An Employee of the
Office of the Attorney General

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LIST OF EXHIBITS

to

MOTION FOR ORDER APPROVING DISTRIBUTION OF REINSURANCE PROCEEDS PURSUANT TO NRS 696B.420(1)

Exhibit Number	Exhibit Description	Number of Pages (Does NOT include Exhibit Cover Page)
1	PBR/Colorado Brain & Spine Institute Insurance Policy	23
2	Affidavit of John Battle	4
3	Settlement Agreement Between Plaintiff Michael Johnson and Defendant Derrick Cho	6
4	Affidavit of Michael Johnson	4

EXHIBIT 1

to

**MOTION FOR ORDER APPROVING DISTRIBUTION OF REINSURANCE PROCEEDS
PURSUANT TO NRS 696B.420(1)**

EXHIBIT 1

to

**MOTION FOR ORDER APPROVING DISTRIBUTION OF REINSURANCE PROCEEDS
PURSUANT TO NRS 696B.420(1)**

PHYSICIANS & SURGEONS PROFESSIONAL LIABILITY CLAIMS-MADE DECLARATIONS

NOTICE: THIS IS A CLAIMS-MADE POLICY. PLEASE READ THE POLICY CAREFULLY.



"The Physician's Safe Harbor"

OFFERED THROUGH:
PHYSICIANS BENEFIT RESOURCES
Risk Retention Group, Inc.
3477 Orchard Lake Road
Keego Harbor, MI 48320
Phone: 248-681-0912; FAX Toll Free: 866-230-9600
Web: www.pbrmg.com Email: info@pbrmg.com

CERTIFICATE NO:
CO-PI-001-G-101-L1-12
 New Renewal

ITEM:

1. NAMED INSURED: Colorado Brain & Spine Institute LLC, PC

2. BUSINESS ADDRESS OF THE NAMED INSURED:

449 E. Hampden Ave., Suite 220
Englewood, CO 80113

3. POLICY PERIOD: From: 05/01/2012 To: 05/01/2013
12:01 A.M. Standard Time at Named Insured's Address Indicated Above

4. Prior Acts Date: 06/16/2006

5. LIMITS OF LIABILITY: \$ 1,000,000 each Claim
\$ 3,000,000 Aggregate

6. LIMITS OF DEFENSE: \$ 0 each Claim
\$ 0 aggregate

7. PREMIUM FOR POLICY PERIOD: \$ 354,108

8. This policy is made and accepted subject to the printed conditions of this policy together with the provisions, stipulations and agreements contained in attached form(s) or endorsement(s) scheduled as follows:

PBR-2000 (01/2010) PBR RRG Professional Liability Claims-Made Coverage

PBR-2601 (01/2010) Colorado Amendatory Endorsement

PBR-2101 (01/2010) Schedule of Insured - Physicians and Surgeons

PBR-2102 (01/2010) Schedule of Insured - Ancillary Personnel

PBR-2406 (01/2010) Authors Liability Exclusion

Date Issued: 05/01/2012

Authorized Representative:



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
6/6/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERs NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER		CONTACT NAME: Mark Sims PHONE: (812) 327-3341 E-MAIL: msims@captivetransactions.com ADDRESS: msims@captivetransactions.com PRODUCER CUSTOMER ID#:	
Mark Sims Captive Transactions, LLC PO Box 8366 Bloomington IN 47407 INSURED		INSURER(S) AFFORDING COVERAGE INSURER A: Physicians Benefit Resources RRG INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	
Colorado Brain & Spine Institute LLC, PC 499 East Hampden Ave., Suite 220 Englewood CO 80113		NAIC # 13810	

COVERAGES		CERTIFICATE NUMBER: CL116600680		REVISION NUMBER:			
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
INSURER	TYPE OF INSURANCE	ADOL (SUBR) INSR WVD	POLICY NUMBER	POLICY EFF. (MM/DD/YYYY)	POLICY EXP. (MM/DD/YYYY)	LIMITS	
GENERAL LIABILITY	COMMERCIAL GENERAL LIABILITY					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ex. Residential) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPOD AGG \$ \$	
	CLAIMS-MADE	<input type="checkbox"/> OCCUR					
	GENL AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PRO- JECT <input type="checkbox"/> LOC						
AUTOMOBILE LIABILITY	ANY AUTO					COMBINED SINGLE LIMIT (Ex accident) \$	
	ALL OWNED AUTOS					BODILY INJURY (Per person) \$	
	SCHEDULED AUTOS					BODILY INJURY (Per accident) \$	
	Hired AUTOS					PROPERTY DAMAGE (Per accident) \$	
	NON-OWNED AUTOS					\$	
UMBRELLA LIAB	EXCESS LIAB	<input type="checkbox"/> OCCUR CLAIMS-MADE				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$	
	DEDUCTIBLE						
	RETENTION \$						
WORKERS COMPENSATION AND EMPLOYER'S LIABILITY	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?	<input type="checkbox"/> N/A				WC STATU- TORY UNITS E.L. EACH ACCIDENT \$ E.L. DISEASE EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$	
	If yes, describe under DESCRIPTION OF OPERATIONS below						
	A Medical Professional Liability					CO-PI-0001-G-101-L1-11 5/1/2011 5/1/2012	Each Claim \$1,000,000 Aggregate \$3,000,000
	DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required) Coverage is included for all physicians, physician assistants and nurse practitioners shown on the schedule attached.						

CERTIFICATE HOLDER		CANCELLATION	
(303) 783-2002 kpenner@cbsi.md		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.	
Colorado Brain & Spine Institute LLC PC Kate Penner-Simonson 499 E. Hampden Ave., Ste 220 Englewood, CO 80113		AUTHORIZED REPRESENTATIVE <i>Mark A. Sims</i>	

ACORD 25 (2009/09)
INS025 (2009/09)

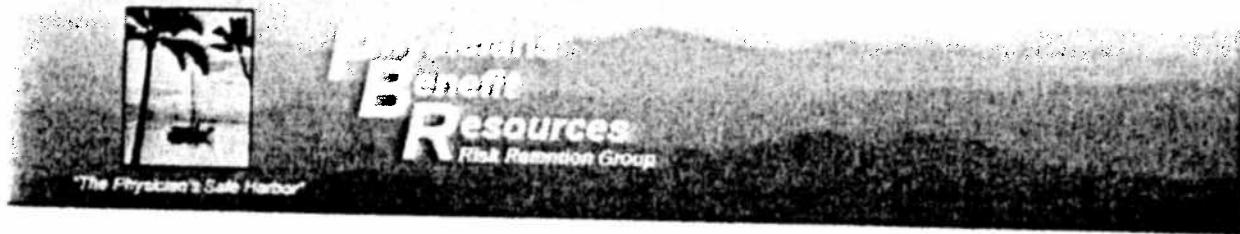
The ACORD name and logo are registered marks of ACORD.

© 1988-2009 ACORD CORPORATION. All rights reserved.

Colorado Brain Spine Institute LLC, PC
Covered Providers

PHYSICIAN	RETRO DATE	SPECIALTY
John Paul Elliott, MD	2/15/2003	Neurosurgery
Dennis George Vollmer, MD	10/15/2008	Neurosurgery
George Alexander West, MD	9/1/2006	Neurosurgery
Derrick Hyoung-Jin Cho, MD	8/1/2009	Neurosurgery

CURRENT MOVING PROVIDERS		
Huong T. Hoang, PA-C	Tara Mendoza, PA-C	Raguel M. Fierentino, PA-C
Patricia N. Staples, FNP-C		



PHYSICIANS AND SURGEONS

PROFESSIONAL LIABILITY POLICY

CLAIMS-MADE COVERAGE

PHYSICIANS BENEFIT RESOURCES RISK RETENTION GROUP

Executive Offices:

3477 Orchard Lake Road
Keego Harbor, MI 48320

Phone: 248-681-0912; FAX Toll Free: 866-230-9600

Web: www.pbrrg.com Email: info@pbrrg.com

NOTICE: This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guarantee funds are not available for your risk retention group.

**MEDICAL GROUP PROFESSIONAL LIABILITY
CLAIMS MADE COVERAGE PART**

**NOTICE: THIS COVERAGE PART PROVIDES CLAIMS MADE COVERAGE ONLY.
COVERAGE IS LIMITED TO LIABILITY FOR CLAIMS FIRST MADE AGAINST AN INSURED
DURING THE POLICY PERIOD OR AN EXTENDED REPORTING PERIOD, IF APPLICABLE.
PLEASE REVIEW THE POLICY CAREFULLY AND DISCUSS THE POLICY WITH YOUR
INSURANCE REPRESENTATIVE.**

I. INSURING AGREEMENT

Medical Group Professional Liability

The Company will pay on behalf of an **Insured** all sums which the **Insured** becomes legally obligated to pay others as **Damages** for **Claims** first made against the **Insured** and reported to the Company during the **Policy Period**, or **Extended Reporting Period**, as applicable, arising out of **Bodily Injury, Property Damage, Personal Injury or Advertising Injury** as a result of a **Medical Incident** resulting from the rendering of or failure to render **Professional Services** by an **Insured**, or by any person for whose acts the **Insured** is legally responsible, provided always that such **Medical Incident** happens:

- A. on or after the effective date shown on the Declarations; or
- B. at any time prior to the policy effective date shown on the Declarations, if;
 1. such **Medical Incident** happens on or subsequent to the prior acts date on the Declarations and;
 2. there is no prior policy or policies which provide insurance (including any Automatic or Optional **Extended Reporting Period** or similar provision of such policies) for such **Claim**, unless the available limits of liability of such prior policy or policies are insufficient to pay any **Claim**, in which event this policy will be specific excess over any such prior coverage, subject to this policy's terms, limits of liability, exclusions and conditions.

The amount the Company will pay for damages is limited as described in Section III.
LIMITS OF LIABILITY.

The Company shall have the right and duty to defend any **Suit** against any **Insured** seeking **Damages** to which this insurance applies even if any of the allegations of the **Suit** are groundless, false or fraudulent. The Company will pay on behalf of an **Insured** reasonable **Defense Costs** in excess of the Limits of Liability as described in Section III.
LIMITS OF LIABILITY.

The Company, at its option, shall select and assign defense counsel; however, an **Insured** may engage additional counsel, solely at the **Insured's** expense, to associate in their defense of any **Claim** covered hereunder.

Defense Costs incurred by the Company shall be paid in addition to the LIMITS OF LIABILITY as set forth in Section III. However, the amount the Company will pay for **Defense Costs** is limited as described in section IV. LIMITS OF DEFENSE.

The Company shall also have the right to investigate any **Claim** and/or negotiate the settlement thereof, as it deems expedient, but the Company shall not commit an **Insured** to any settlement without the **Insured's** consent.

Furthermore, no **Insured** shall admit liability, assume any obligations, incur any costs, charges or expenses or enter into any settlement without the Company's consent.

In no event shall the Company be obligated to pay any **Damages** for any **Suit** after the applicable limits of the Company's liability has been exhausted by payment of judgments or settlements.

In no event shall the Company be obligated to pay any **Defense Costs** or to defend, or continue to defend, any **Suit** after the Company's LIMITS OF DEFENSE have been exhausted.

II. WHO IS AN INSURED

Each of the following is an **Insured** under this policy to the extent set forth below: THIS SECTION IS FINE; NICE JOB

- A. Any person(s) or entity(s) named in Item 1 **Named Insured** of the Declarations or in an Endorsement or Schedule attached to this policy.
- B. Any **Insured Physicians**, *for whom an application has been submitted and coverage has been approved by the company*, but only while acting within the scope of his or her duties as such on behalf of and at the direction of the **Named Insured**;
- C. Any other employed or contracted healthcare providers utilized by the **Named Insured** but only while acting within the scope of his or her duties as such on behalf of and at the direction of the **Named Insured**;
- D. Any authorized **volunteer worker** other than a health care provider, but only while acting within the scope of his or her duties as such on behalf of and at the direction of the **Named Insured**;
- E. Any **employees** of the **Named Insured** other than a physician or surgeon, but only while acting within the scope of his or her duties as such.
- F. Any **Insured Physician** or any of **your** other employed or contracted healthcare providers for the providing of **professional services** as a Good Samaritan away from **your** premises in sudden and unforeseen emergencies outside the scope of his or her patient care duties for **you**, provided that, no remuneration is demanded, expected or received.

- G. Any student enrolled in a training program in connection with **your professional services**, but only when acting within the scope of his or her duties and at **your** direction.
- H. Any **Locum Tenens** utilized by the **Named Insured** while acting within the scope of his or her duties as such on behalf of and at the direction of the **Named Insured**;
- I. Any **Insured Physician** while acting as a member of any committee of any licensed hospital or other healthcare facility, professional medical association or society or of a legally constituted professional standards review organization at **your** request.
- J. Members of **your** boards and committees, but only for conduct arising out of their duties as board or committee members.
- K. **Your** superintendents, administrators, directors, department heads, medical directors and heads of the medical staff, but only in their capacity as such.
- L. **Your** trustees or governors, but only for the conduct of **your** business within the course and scope of their employment or their duties as trustees or governors.

III. LIMITS OF LIABILITY

The Limits of Insurance shown in Item 5 of the Declarations apply as follows:

Regardless of the number of **Insureds** under this insurance or the number of **Claims** made, the Company's liability is limited as follows:

A. Limit of Liability - Each **Claim**

The limit of liability stated in the Declarations for each **Claim** is the total amount the Company will pay for any and all **Damages** arising out of any **Medical Incident** regardless of the number of **Claims** made or **Suits** brought; or persons or organizations making **claims** or bringing **suits**. All **Claims** arising from the same or **Related Medical Incident(s)** shall be considered a single **Claim** for the purpose of this insurance.

This limit applies regardless of the number of **Insureds** who are covered under this policy.

B. Limit of Liability - Aggregate

The limit of liability stated in the Declarations as "aggregate" is, subject to the each **Claim** provision, the total amount the Company will pay in a policy period for all **Claims for Damages** arising out of all **Medical Incidents** and **Related Medical Incident(s)**.

IV. LIMITS OF DEFENSE

The Limits of Insurance shown in Item 6 of the Declarations apply as follows:

Regardless of the number of **Insureds** under this insurance or the number of **Claims** made, the Company's responsibility to pay **Defense Costs** is limited as follows:

A. Limit of Defense - Each Claim

The limit of defense stated in the Declarations for each **Claim** is the total amount the Company will pay for any and all **Defense Costs** arising out of any **Medical Incident**. All **Claims** arising from the same or **Related Medical Incident(s)** shall be considered a single **Claim** for the purpose of this insurance.

This limit applies regardless of the number of **Insureds** who are covered under this policy.

B. Limit of Defense - Aggregate

The limit of defense stated in the Declarations as "aggregate" is, subject to the each **Claim** provision, the total amount the Company will pay in a policy period for all **Defense Expenses** arising out of all **Medical Incidents** and **Related Medical Incident(s)**.

V. POLICY TERRITORY

The insurance afforded by this policy applies to **Medical Incidents** taking place anywhere in the world, provided however, the **Claim** must be made or **Suit** brought within the United States of America, its territories or possessions, including Puerto Rico.

VI. WHEN A CLAIM IS DEEMED FIRST MADE

A **Claim** shall be deemed as being first made at the earlier of the following:

- A. when the Company first receives notice from the **Insured** or his or her representative that a **Claim** has been made; or
- B. when the Company first receives notice from the **Insured** or his or her representative of specific circumstances involving a particular **Medical Incident** which may result in a **Claim**.

All **Claims** arising out of the same or **Related Medical Incidents** shall be considered as having been made at the time the first such **Claim** is made, and shall be subject to the same limit of liability.

VII. SUPPLEMENTARY PAYMENTS

The Company will pay, in addition to the applicable limit of liability:

- A. up to \$500 for loss of earnings and necessary expenses to each **Insured** for each day or part of a day of such **Insured's** attendance, at the Company's request, at a trial, hearing or arbitration proceeding involving a civil **Suit** against such **Insured** for covered **Damages**, but the amount so payable for any one or series of trials, hearings, pre-litigation panels, mediation or arbitration proceedings arising out of the same or **Related Medical Incident** covered by this policy shall in no event exceed \$12,500; and
- B. For each **Named Insured**, attorney fees and other costs, expenses or fees, subject to the **Limit of Defense** as set forth in item 6 of the declarations, resulting from the investigation or defense of a proceeding before a state licensing board, governmental regulatory body, peer review committee, standards review or similar professional board or committee incurred as the result of a notice of a proceeding first received by the **Named Insured** and reported to the Company during the **Policy Period**, arising out of any **Medical Incident** covered under this policy. All such proceedings arising out of the same or related **Medical Incident** shall be considered as having been first made at the time the notice of proceeding is first received by the **Insured**.
- C. up to \$25,000 per person for:
 1. medical, surgical, x-ray and dental services, drugs, medical and surgical supplies, including prosthetic devices; and
 2. ambulance, hospital, professional nursing and funeral services for which the **Insured** has voluntarily made payment or incurred cost, for first aid rendered to others at the time of **Bodily Injury**, as a result of any **Bodily Injury** covered by this policy which happens during the **Policy Period**, and if incurred within 12 months of the **Bodily Injury**.

The Company will not pay for first aid expenses:

- a. for any person defined as an **Insured** in this policy;
- b. for any spouse, child, parent or other relative of any person defined as an **Insured** in this policy;
- c. for services provided by the **Insured** or any entity under contract to the **Insured** to provide such services; or
- d. for **Bodily Injury** caused by the failure to render **Professional Services**.

VIII. EXCLUSIONS

This insurance shall not apply:

- A. to **Bodily Injury, Property Damage, Personal Injury or Advertising Injury** to any employee of any **Insured** arising out of and in the course of his or her employment by the **Insured** or to any obligation of the **Insured** to indemnify another because of the **Damages** arising out of such injury;
- B. to any obligation for which any **Insured** or any carrier as his or her insurer may be held liable under any workers' compensation, unemployment compensation or disability benefits law or under any similar law;
- C. to any **Claim** brought against any **Insured** under any contract or agreement, except to the extent the **Insured** would be liable in the absence of such contract or agreement. This exclusion does not apply to:
 1. liability of the **Insured** assumed in a contract with a Health Maintenance Organization; Preferred Provider Organization; Independent Practice Association; or any other similar organization, but only as respects the liability arising from the rendering of or failure to render **Professional Services** by the **Insured**;
 2. a warranty of fitness or quality of any therapeutic agents or supplies furnished or supplied by the **Insured** in connection with treatment performed by the **Insured**;
- D. to any **Claim** brought against any **Insured** as a proprietor, owner, partner, manager, superintendent, director or officer of any hospital, sanitarium, medical clinic, health maintenance organization, managed care facility or any other facility not specified in the Declarations or any endorsement thereto.

This exclusion does not apply to:

1. a **Medical Incident** or the rendering of or failure to render **Professional Services** as defined and covered in this policy, or;
2. **Claims** arising out of any facility maintained by the **Insured** for the sole use of his or her own patients necessary to the practice of the **Insured**'s own specialty.

E. to any **Claim** arising out of any dishonest, fraudulent, criminal or malicious act, omission or deliberate misrepresentation committed by, at the direction of or with the knowledge of any **Insured**;

However, the **Insured** shall be reimbursed for **Defense Costs** which would have been collectible under this policy if it is determined by judgment that the **Insured** did not commit a fraudulent or dishonest act or omission;

Any intentional actions described in this paragraph shall not be imputed to the **Named Insured** or any other **insured** but shall only apply to the person alleged to have committed the intentional act.

- F. to any **Claim** arising out of the rendering of or failure to render **Professional Services** while the **Insured's** license to practice medicine is not in effect;
- G. to any **Claim** arising out of **Bodily Injury or Property Damage** which was expected or intended by any **Insured** regardless of whether or not such act or omission was intended to cause the specific **Bodily Injury or Property Damage** sustained. This exclusion shall not apply to any intentional act by or at the direction of any **Insured** which results in **Bodily Injury**, if such injury arises solely from the use of reasonable force for the purpose of protecting persons or property;
- H. to any **Claim** arising out of actual or alleged involvement in **Anti-Trust Law** violation or agreement or conspiracy to restrain trade. This exclusion does not apply to **Claims** arising from the **Insured's** activity as a member of any committee, panel or board which provides underwriting or claims advice or recommendations, provided the **Insured's** activity is within the scope of the committee's, panel's or board's established guidelines;
- I. to any **Claim**, action, judgment, liability, settlement, loss, defense cost or expense in any way arising out of actual, alleged or threatened pollution, contamination or any environmental impairment resulting from seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous or radioactive matter including, but not limited to smoke, vapors, soot, fumes, acids, alkalis, chemicals or toxic matter; or waste material (including materials to be recycled, reconditioned or reclaimed); or oil or other petroleum substances or derivatives (including any oil refuse or oil mixed with waste), or thermal or vibratory effect including, but not limited to, or heat or cold, into or upon land, the atmosphere, or any water course or body of water, underground water or water table supplies, whether such results directly, indirectly, or in concurrence or in any sequence from the **Insured's** activities or the activities of others and whether or not such is sudden, gradual, accidental, intended, foreseeable, expected, fortuitous or inevitable and wherever or however such occurs.
- J. to any **Claim** brought by or on behalf of any person employed by any **Insured**, any person who had been employed by any **Insured** or any person seeking employment by any **Insured** alleging any act or omission by any **Insured** with respect to the hiring, termination, compensation, or the tenure, term, condition, benefits or privilege of employment of any such person;
- K. to any **Claim** made or **Suit** brought against any **Insured** alleging in whole or part:
 - 1. physical assault, abuse, molestation, intentional neglect, or licentious, immoral, amoral or other behavior that was committed or alleged to have been committed, by any **Insured** or by any person for whom the **Insured** is legally responsible; and/or

2. sexual assault, abuse, molestation or licentious, immoral, amoral or other behavior which was threatened, intended to, led to or culminated in any sexual act whether committed intentionally, negligently, inadvertently or with the belief, erroneous or otherwise, that the other party was consenting and had the legal and mental capacity to consent thereto, that was committed, or alleged to have been committed by any **Insured** or by any person for whom the **Insured** is legally responsible.

This exclusion applies regardless of the legal theory or basis upon which the **Insured** is alleged to be legally liable or responsible in whole or in part, for any **Damages** arising out of sexual and/or physical abuse, including but not limited to assertions of improper or negligent hiring, employment or supervision, failure to protect or warn the other party, failure to prevent the sexual abuse and/or physical abuse, failure to prevent assault and battery or failure to discharge the employee. However, notwithstanding the foregoing exclusion, the **Insured** shall be entitled to a defense as provided under the terms of the policy as to any **Claim** upon which **Suit** is brought for any such alleged behavior, unless a judgment or final adjudication adverse to any **Insured** or an admission by any **Insured** shall establish that such behavior caused, in whole or part, the injury claimed in such **Suit**. The Company shall not be required to appeal a judgment or final adjudication adverse to the **Insured**;

- L. as respects **Personal Injury** and **Advertising Injury** liability coverages, to any **Claim** arising out of:
 1. the willful violation of a statute or ordinance committed by or with the knowledge or consent of the **Insured**;
 2. a publication or utterance of a libel or slander, or a publication or utterance in violation of an individual's right of privacy if the first injurious publication or utterance of the same or similar material by or on behalf of the **Insured** was made prior to the prior acts date of this policy;
 3. libel or slander or the publication or utterance of defamatory or disparaging material concerning any person or organization or goods, products or services, or in violation of an individual's right of privacy, made by or at the direction of the **Insured** with knowledge of the falsity thereof.

IX. DEFINITIONS

When used in this policy (including endorsement(s) forming a part hereto):

- A. **Advertising Injury** means injury arising out of an offense committed during the **Policy Period** occurring in the course of the **Named Insured's** advertising activities, if such injury arises out of libel, slander, defamation, violation or right of privacy, piracy, unfair competition or infringement of copyright, title or slogan;
- B. **Anti-Trust Law** means those laws listed in Title 15, Section 12 of the United States Code, the Federal Trade Commission Act and any similar state law;

C. **Bodily Injury** means bodily injury, sickness or disease, mental anguish, psychological injury or emotional distress sustained by any person including death at any time resulting there from;

D. **Claim** means a demand for money, or the service of **Suit** naming the **Insured** and alleging **Bodily Injury, Property Damage, Personal Injury or Advertising Injury** as a result of a **Medical Incident**;

E. **Damages** means compensatory judgments, settlements or awards, but does not include fines or penalties, the return of fees or other consideration paid to the **Insured**, or the portion of any award or judgment caused by the multiplication of actual **Damages** under federal or state law.

F. **Defense Costs**

1. fees charged by an attorney(s) and/or an independent adjustor(s) designated by the Company and all other fees, costs and expense resulting from the investigation, adjustment, defense and appeal of a **Claim, Suit** or proceedings, arising in connection therewith, incurred by the Company or by the **Insured** with written consent of the Company but does not include salary charges or expenses of regular employees or officials of the Company;
2. all costs taxed against the **Insured** in such **Suits** and all interest on the covered portion of any judgment which does not exceed the limit of the Company's liability therewith which accrues after entry of the judgment and before the Company has paid, tendered or deposited, whether in court or otherwise;
3. premiums on appeal bonds and premiums on bonds to release attachments in such **Suits**, but not for bond amounts in excess of the applicable limit of liability of this policy, but the Company shall have no obligation to apply for or furnish any such bond;

G. **Employee** means a person paid by you in connection with your business. It includes a leased worker or temporary worker.

H. **Extended Reporting Period** means the time after the **Policy Period** for reporting **Claims** due to a **Medical Incident**. The **Medical Incident** must happen on or after the prior acts date and before the end of the **Policy Period**;

I. **Insured** means any person qualifying as an **Insured** in the PERSONS INSURED section of the policy;

J. **Insured Physicians** means any physician, *for whom an application has been submitted and coverage has been approved by the company*, whom has been listed as a **Insured** by an endorsement or schedule attached to this policy; but only while acting within the scope of his or her duties as such on behalf of and at the direction of the **Named Insured**;

K. Leased Worker means a person leased to **you** by a labor leasing firm, under an agreement between **you** and the labor leasing firm, to perform duties related to the operations as described in the Declarations and which are at **your** direction. **Leased worker** does not include a **temporary worker**.

L. Limit of Defense means the maximum amount of money the company will pay for **Defense Costs** under this policy as outlined in section IV. LIMITS OF DEFENSE and as shown on item 6 in the Declarations.

M. Locum Tenens means a physician or surgeon:

1. who is temporarily serving as a relief or substitute physician or surgeon for the **Named Insured**; and
2. who was covered as a locum tenens under the provisions of a prior claims-made policy maintained by the **Insured** subsequent to the prior acts date stated in this policy, but only if there is no other valid and collectible insurance;

N. Medical Incident means any act, error or omission in the rendering of or failure to render **Professional Services** by the **Insured** or by any person for whose acts the **Insured** is legally responsible;

O. Named Insured means the person or entity named in Item 1. of the Declarations of this policy or an endorsement attached to this policy;

P. Personal Injury means:

1. false arrest, detention or imprisonment, wrongful entry or eviction, other invasion of private occupancy, or malicious prosecution;
2. the publication or utterance of libel, slander or other defamatory or disparaging material, or a publication or an utterance in violation of an individual's right of privacy; or
3. injury arising out of an offense occurring in the course of the **Named Insured's** advertising activities, including but not limited to infringement of copyright, title, slogan, patent trademark, trade dress, trade names, service mark or service number;

M. Policy Period means the period beginning at 12:01 A.M. standard time on the inception date of coverage specified in the Declarations issued to the **Named Insured** to 12:01 A.M. standard time on the expiration date as set forth in the Declarations or its earlier termination date, if any;

N. Professional Services means:

1. the furnishing of professional healthcare services including the furnishing of food, beverages, medications or appliances in connection with such services, and the postmortem handling of human bodies; and

2. services as a member of a formal accreditation, standards review or similar professional board or committee, including executing the directives of such board or committee;

O. Property Damage means:

1. physical injury to or destruction of tangible property including the loss of use thereof at any time resulting there from; or
2. loss of use of tangible property which has not been physically injured or destroyed;

P. Related Medical Incident(s) means 2 or more logically or causally connected **Medical Incidents**;

Q. Retire means the complete and permanent withdraw from the practice of medicine;

R. Suit means law suits and arbitration proceedings to which the **Insured** is required to submit or to which the **Insured** has submitted with the Company's consent;

S. Temporary Worker means a person who is furnished to **you** to substitute for a permanent **employee** on leave or to meet seasonal or short-term work load requirements.

T. Totally and Permanently Disabled means that the **Insured** is disabled as a result of injury or disease to the extent as to be wholly prevented from performing work or engaging in clinical medicine in his or her medical specialty for remuneration or profit. Such condition must have existed continuously for not less than six months and must be expected to be continuous and permanent.

U. You and your refers to any person(s) or entity(s) named in Item 1. **Named Insured** of the Declarations or in an Endorsement or Schedule attached to this policy.

X. CONDITIONS

A. ASSIGNMENT: Assignment of interest under this policy shall not bind the Company unless its consent is endorsed herein. If, however, the **Named Insured** shall die, such insurance as afforded by this policy shall apply (1) to the **Named Insured's** legal representative as the **Named Insured**, but only while acting within the scope of his or her duties as such, and (2) with respect to the property of the **Named Insured**, to the person having proper temporary custody thereof, as **Insured**, but only until the appointment and qualification of the legal representative.

B. ASSISTANCE AND COOPERATION OF INSURED: The **Insured** shall give written notice to the Company as soon as practicable of any **Claim** made against the **Insured** or of any specific circumstances involving a particular person likely to result in a **Claim**. The notice shall identify the **Insured** and contain reasonably obtainable information with respect to the time, place and circumstances of the injury, including the names and addresses of the injured and of available witnesses and the extent and type of **Claim** anticipated. If a **Claim** is made or **Suit** is brought against the **Insured**, the **Insured** shall immediately forward to the Company every demand, notice, summons or other process received by the **Insured** or the **Insured's** representative.

The **Insured** and each of his or her employees shall cooperate with the Company and, upon the Company's request, assist in making statements, in the conduct of **Suits** and enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured** because of injury or **Damage** with respect to which insurance is afforded under this policy; and the **Insured** and any of its members, partners, officers, directors, stockholders and employees that the Company deems necessary shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **Insured** shall not, except at the **Insured's** own cost, voluntarily make any payments, assume any obligations or incur any expense.

C. BANKRUPTCY OR INSOLVENCY OF INSURED: Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the Company of any of its obligations hereunder.

D. CANCELLATION, NON-RENEWAL, RENEWAL RATE INCREASE

1. CANCELLATION: This insurance may be canceled:

a. by the Named Insured at any time by written notice or by surrender of this insurance to the Company or its authorized representative prior to the effective date of cancellation. The Company shall refund the paid premium less the earned portion thereof within thirty (30) days of the latter of the effective date of cancellation or the date of delivery of the Named Insured's notice of intent to cancel, subject always to the retention by the Company of any minimum premium stipulated herein (or proportion thereof previously agreed upon).

The earned portion of the premium shall be computed on the customary prorated basis unless any state law or regulation of the state shown in the mailing address of the Named Insured on the Declarations requires that return premium be computed on a pro-rata basis, even in the event of cancellation by the Named Insured.

b. by the Company or by its authorized representative on its behalf, with or without the return or tender of the unearned premium, by sending to the Named Insured, at the Named Insured's address last known to the Company or its authorized agent, not less than ninety (90) days written notice stating when the cancellation shall be effective. In case of cancellation due to non-payment of premium,

thirty (30) days written notice of cancellation must be given by the Company. The earned portion of the premium shall be computed on a pro-rata basis. Minimum premium shall not apply to the return of unearned premium if cancellation is by the Company.

Cancellation by the Company shall only be effective if based on one or more of the following reasons:

- i. nonpayment of premium;
- ii. the policy was obtained through a material misrepresentation that was relied on by the Company, and such policy would not have been issued by the Company under the same terms and conditions if correct information had been disclosed;
- iii. material failure to comply with policy terms, conditions or contractual duties;
- iv. the risk originally accepted has measurably increased; or
- v. loss by the Company of reinsurance which provided coverage for all or a substantial part of the risk Insured.

2. NONRENEWAL: The Company will renew this policy unless written notice of the Company's intent not to renew is mailed to the Named Insured not less than sixty (60) days before the policy expires. Non-renewal shall include the failure of the Company to offer a renewal policy which provides types and limits of coverage substantially equivalent to those contained in the expiring policy.
3. RENEWAL RATE INCREASE OR CHANGE IN POLICY TERMS: If the Company increases your rate, changes the deductible, reduces the limit or reduces coverage at renewal, the Company will mail to the Named Insured at least sixty (60) days prior to the effective date of that increase or change:
 - a. written notice of any change in coverage; and/or
 - b. the amount of our rate increase.

A rate increase is defined as any increase in premium except increase due to change in exposure, (including claims made step factors), and/or rating plans based solely on the **Insured's** developed experience.

4. **SENDING OF NOTICES:** Any notice of cancellation, nonrenewal or renewal premium increase or change in policy terms will be mailed by first class registered or certified mail to the Named Insured at the last mailing address known to the Company. Proof of mailing will be sufficient proof of notice.
- E. **CHANGES:** The terms of this policy shall not be waived or changed except by endorsement issued to form a part of this policy.
- F. **DECLARATIONS AND APPLICATIONS:** By acceptance of this policy, the **Named Insured** agrees that the statements in the Declarations and Applications are his or her agreements and representations and that this policy is issued in reliance upon the truth of such representations, that they shall be deemed material and that this policy embodies all agreements existing between himself or herself and the Company or any of its agents relating to this insurance.
- G. **DUTIES AS THE NAMED INSURED:** When there is more than one **Insured** named in this policy, the Named Insured on the declarations shall be:
 1. authorized to make changes in the terms of this policy with the consent of the Company;
 2. the payee of any premiums refunded by the Company;
 3. responsible for the payment of all premiums due, keeping records of the information needed by the Company for premium computation, providing copies to the Company upon request and notifying the Company should cancellation of coverage be desired.
- H. **EXTENDED REPORTING PERIOD:**
 1. If this policy is terminated for any reason, an automatic sixty (60) day **Extended Reporting Period**, effective at the termination of the **Policy Period**, will be provided by the Company at no additional cost unless this insurance is replaced with the same or similar insurance issued by the Company, whether or not the limits or deductibles are identical to those provided under this policy. This **Extended Reporting Period** shall only apply to **Claims** made during the **Policy Period** and reported to the Company within sixty (60) days of the policy termination. The limits available under this extension shall be part of, and not in addition to, the limits available under the expiring **Policy Period**. Coverage provided by this automatic **Extended Reporting Period** shall be specific excess over any replacement policy not issued by the Company, or self insurance providing the same or similar coverage. This **Extended Reporting Period** shall not be available if the policy is canceled for non-payment of premium effective at policy inception.
 2. In the case of cancellation or non-renewal of this policy by the **Named Insured** or the Company for any reason other than flat cancellation by the Company effective at policy inception for non-payment of premium, each **Named Insured** shall have the right, subject to the terms and conditions of

this policy or an endorsement attached thereto, to extend the time during which **Claims** arising from a **Medical Incident** which happened prior to the termination of the final **Policy Period**, can be reported. This further extension will be available only if:

- a. the **Named Insured** requests the extension in writing to the Company within sixty (60) days of this policy's termination; and
- b. pays the premium to the Company promptly when due, together with any earned but unpaid premium which may be due under the terminated policy.

At the commencement of the **Extended Reporting Period** option, the entire premium therefore shall be deemed earned and the Company shall not be liable to return to the **Named Insured** any portion of the premium for the **Extended Reporting Period**. The cost of any **Extended Reporting Period** option is based on the rates and rules in effect at the time the policy was issued or last renewed.

The limits of liability applicable to the **Extended Reporting Period** option 2 above will be reinstated once, to the same limits as those applicable to the terminating policy at the time of termination. Further, once such option is exercised as stated above, it may not be canceled and will be valid for an unlimited duration of time.

In no event does the **Extended Reporting Period** extend the **Policy Period**, change the scope of coverage provided or increase the limits of liability or defense limits. Neither shall such extension for the reporting of **Medical Incidents** apply to:

- a. any pending **Claim** or proceedings;
- b. any paid **Claim**;
- c. any **Professional Services** rendered after the termination of this policy;
- d. **Medical Incidents** that are covered under any subsequent insurance purchased by the **Named Insured** or that would be covered but for exhaustion of the limit of liability applicable to such **Medical Incidents**.

I. DEPARTED PROVIDERS EXTENSION OF COVERAGE:

1. The **Named Insured** agrees that if an **Insured Retires**, dies or becomes **Totally and Permanently Disabled** during the **Policy Period**, coverage will continue to be granted to the **Departed Provider** as an **Insured**:
 - a. the **Named Insured** must requests the extension in writing to the Company including written proof of the date of death of the **Departed Provider**; or

- b. the **Named Insured** must requests the extension in writing to the Company including written proof of the **Insured's Total and Permanent Disability**, date of the actual disability and certification by the **Departing Providers** attending physician; or
- c. the **Named Insured** must requests the extension in writing to the Company including a written statement from the **departing provider** stating that he or she has retired from the practice of medicine; and
- d. the **Named Insured** must pays the premium to the Company promptly when due, together with any earned but unpaid premium which may be due for the **Departed Provider**.

NOTE. The cost for this extension shall be one year's premium rate for the **Departed Provider** paid in equal 20% amounts over the period of five (5) years following the effective date of the retirement, death or disability.

- 2. In the case of cancellation or non-renewal of coverage under this policy by an **Insured**, each **Insured** shall have the right, subject to the terms and conditions of this policy or an endorsement attached thereto, to extend the time during which **Claims** arising from a **Medical Incident** which happened prior to the termination of the final **Policy Period**, can be reported. This further extension will be available only if:
 - a. the **Insured** requests the extension in writing to the Company within sixty (60) days of this policy's termination; and
 - b. pays the premium to the Company promptly when due.

At the commencement of the **Extended Reporting Period** option, the entire premium therefore shall be deemed earned and the Company shall not be liable to return to the **Insured** any portion of the premium for the **Extended Reporting Period**. The cost of any **Extended Reporting Period** option is based on the rates and rules in effect at the time the policy was issued or last renewed.

The limits of liability applicable to the **Extended Reporting Period** option 2 above will be reinstated once, to the same limits as those applicable to the terminating policy at the time of termination. Further, once such option is exercised as stated above, it may not be canceled and will be valid for an unlimited duration of time.

In no event does the **Extended Reporting Period** extend the **Policy Period**, change the scope of coverage provided or increase the limits of liability or defense limits. Neither shall such extension for the reporting of **Medical Incidents** apply to:

- e. any pending **Claim** or proceedings;
- f. any paid **Claim**;

- g. any **Professional Services** rendered after the termination of this policy;
- h. **Medical Incidents** that are covered under any subsequent insurance purchased by the **Named Insured** or that would be covered but for exhaustion of the limit of liability applicable to such **Medical Incidents**.

I. **INSPECTION AND AUDIT:** The Company shall be permitted but not obligated to inspect the **Named Insured's** property and operations at any time. Neither the Company's rights to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the **Named Insured** or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

The Company may examine and audit the **Named Insured's** books and records at any time during the **Policy Period** and extensions thereof and within three years after the final termination of this policy as far as they relate to the subject matter of this insurance.

J. **LEGAL ACTION AGAINST THE COMPANY:** A person or organization may bring a suit against the Company to recover on an agreed settlement or on a final judgment against an **Insured** after actual and contested trial on the merits; but the Company will not be liable for **Damages** that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by the Company, the **Insured** and the claimant or the claimant's legal representative.

However, no action by an **Insured** shall lie against the Company unless there has been full compliance with all of the terms of this policy.

K. **OTHER INSURANCE:** If there is other valid insurance (whether primary, excess, contingent or self-insurance), against a **Claim** covered by this policy, the insurance provided hereunder shall be deemed excess insurance over and above the applicable limit of all other insurance or self-insurance. This policy is written as specific excess of coverage available under any **Extended Reporting Period**, **Optional Extended Reporting Period** and **Automatic Extended Reporting Period** or similar period in any prior policy or policies. When this insurance is excess, the Company shall have no duty under this policy to defend any **Claim** or **Suit** that any other insurer or self-insurer has a duty to defend. If such other insurer or self-insurer refuses to defend such **Claim** or **Suit**, the Company shall be entitled to the **Insured's** rights against all such other insurers or self-insurers for any **Defense Costs** incurred by the Company.

When both this insurance and other insurance or self-insurance apply to the **Claim** on the same basis, whether primary, excess or contingent, the Company shall not be liable under this policy for a greater proportion of the **Damages** or **Claim Expenses** than the applicable limit of liability under this policy for such

Claim bears to the total applicable limit of liability of all valid and collectible insurance against such **Claim**. Subject to the foregoing, if a loss occurs involving two or more policies, each of which provides that its insurance shall be excess, each will contribute pro rata.

- L. PREMIUM: All premiums for this policy shall be computed in accordance with the Company's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein. The **Named Insured** shall maintain records of the information necessary for premium computation and shall send copies of such records to the Company at such times as the Company may direct.
- M. REIMBURSEMENT: While the Company has no duty to do so, if the Company pays **Damages** or **Defense Costs** in excess of the applicable limit of liability or limit of defense all Insureds shall be jointly and severally liable to the Company for such amounts. Upon written demand, the **Insured** shall repay such amounts to the Company within thirty (30) days thereof. Failure to pay any amount indicated may lead to policy cancellation.
- N. SEPARATION OF INSUREDS: Except with respect to the Limits of Liability, Limits of Defense and any rights or duties assigned in this insurance to the Named Insured, this insurance applies:
 - 1. as if each **Named Insured** were the only **Named Insured**; and
 - 2. separately to each **Insured** against whom a **Claim** is made or a **Suit** is brought.
- O. SUBROGATION: To the extent of any payment under this policy, the Company shall be subrogated to all the **Insured's** rights of recovery therefore against any person, organization, or entity, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing to prejudice such rights.
- P. CONFORMITY TO STATUTE: Notwithstanding anything contained herein to the contrary, in the event that any terms or conditions of this contract conflict with any law applicable to the coverage afforded hereunder, the terms of this contract shall by this statement be amended to conform to such law or laws.
- Q. LIBERALIZATION CLAUSE: If the Company adopts any revision that would broaden the coverage under the policy without additional premium at any time during the **Policy Period**, the broadened coverage will immediately apply to this policy.

The policy provisions included herein along with the Declarations Page and any endorsements issued complete this evidence of insurance.

IN WITNESS WHEREOF,

the Company indicated on the Declarations Page of the policy has caused the policy to be signed by its president and secretary.



Laurence F. Mohn, President



J. Paul Elliott, MD, Secretary

EXHIBIT 2
to
**MOTION FOR ORDER APPROVING DISTRIBUTION OF REINSURANCE PROCEEDS
PURSUANT TO NRS 696B.420(1)**

EXHIBIT 2
to
**MOTION FOR ORDER APPROVING DISTRIBUTION OF REINSURANCE PROCEEDS
PURSUANT TO NRS 696B.420(1)**

1 ADAM PAUL LAXALT
2 Attorney General
3 RICHARD PAILI YIEN
4 Deputy Attorney General
5 Nevada Bar No 13035
6 100 North Carson Street
7 Carson City, Nevada 89701-4717
8 (775) 684-1129
9 (775) 684-1156 (fax)
10 Email: ryien@ag.nv.gov
11 Attorney for the Division of Insurance

12
13 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
14 **IN AND FOR CARSON CITY**

15 STATE OF NEVADA, *ex rel.*) Case No. 14 OC 00114 1B
16 COMMISSIONER OF INSURANCE, in his)
17 Official Capacity as Statutory) Dept. No. 2
18 Receiver for Delinquent Domestic Insurer,)
19 Plaintiff,)
20 vs.)
21 PHYSICIANS BENEFIT RESOURCES RISK)
22 RETENTION GROUP, INC., a Nevada)
23 Domiciled Association Captive Insurance)
24 Company,)
25 Defendant.)

26 **AFFIDAVIT OF JOHN BATTLE IN SUPPORT OF MOTION FOR ORDER APPROVING**
27 **DISTRIBUTION OF REINSURANCE PROCEEDS**
28 **PURSUANT TO NRS 696B.420(1)**

29 STATE OF CALIFORNIA)
30) ss
31 COUNTY OF SAN FRANCISCO)

32 I, John Battle, being duly sworn, on oath, depose and say that:

33 1. I am employed by the Regulatory Services Group (RSG) as its Chief Claims Officer. I
34 have personal knowledge of the facts set forth herein and if called upon as a witness, I would
35 testify as set forth below.

1 2. As the Chief Claims Officer, I oversee the administration of all claims submitted by
2 policyholders and creditors where RSG is designated as the Receivership Manager for
3 insolvent or troubled companies.

4 3. I have 46 years of claims' handling experience, the last 15 having been directly related
5 to insolvency matters. Since 1975, I have been employed in managerial- or officer-level
6 positions except for a three-year period of self-employment in the 1990s.

7 4. On June 17, 2014, the First District Court of the State of Nevada in and for Carson City
8 issued an Order appointing Nevada Insurance Commissioner Scott J. Kipper as the
9 permanent receiver of Physicians Benefit Resources Risk Retention Group (PBR) and entered
10 an Order of Liquidation. RSG was appointed as the Receivership Manager for PBR on June
11 12, 2014.

12 5. Subsequent to the appointment of RSG as Receivership Manager, I have become
13 conversant with the operations of PBR, specifically policy and claims operations, but with a
14 basic familiarity of its financial status.

15 6. The company only had one open claim and only one policyholder. The policy was a
16 medical malpractice "Claims Made" indemnity policy with a limit of \$1,000,000. There was no
17 defense obligation under the policy. The open claim related to a failed back surgery performed
18 by the physician covered under the PBR policy, and who was the target medical defendant of
19 the malpractice action. The medical and economic damages to the Plaintiff were quite
20 extensive. The temporal relationship of the surgery to an intractable pain following the surgery
21 was most problematic from a defense standpoint. In the best judgment of the Receivership
22 Manager, the claim was clearly a policy limits claim matter.

23 7. As the PBR estate neither had sufficient cash to satisfy a settlement or judgment of
24 \$1,000,000 nor the ability to directly pay a claim other than through the Proof of Claim process
25 payment hierarchy defined in NRS 696B.420, the Receivership Manager participated in
26 various informal settlement discussions as well as a more formal court-sanctioned mediation
27 process. The Receivership Manager agreed to a claim resolution whereby the PBR policy
28 defendant confessed to a judgment of \$1,000,000 with an agreement that the Plaintiff would

1 not execute directly against the Defendant, but the Receivership Manager would approve a
2 Proof of Claim in the amount of \$1,000,000 against the PBR estate, and the Plaintiff would
3 take the proceeds from the Proof of Claim obligations from the estate to the policyholder
4 defendant. This resolution and its structure satisfied the requirements of the reinsurers and
5 resulted in the recovery of \$950,000 of reinsurance proceeds for the PBR estate.

6 8. As part of the settlement process the Receivership Manager advised the Plaintiff and
7 Defendants that they would do their utmost to try to free some, or the entirety, of the approved
8 claim to the Plaintiff at an early juncture.

9 9. Given that the only policy issued by PBR is a "Claims Made" policy which expired on
10 May 1, 2013, the Liquidator believes that the one claim will be the entirety of claims that fall
11 under the NRS 696B.420 (1)(b) order of distribution hierarchy. The only higher priority claims
12 under that code section are the administrative expenses of the liquidation. All other claims will
13 fall into a lower payment hierarchy classification.

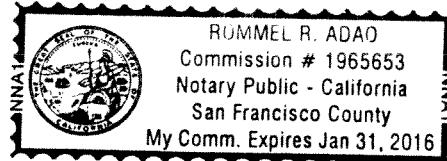
14 10. Given tax filing requirements and regulatory filings and other general administrative
15 expenses, the Liquidator believes that the \$1,000,000 claim approval constitutes the
16 approximate balance of the estate that can be distributed through the Proof of Claim process.

17 *John Battle*
18

John Battle
19 Chief Claims Officer

20 SUBSCRIBED and SWORN to before me
21 this 11 day of February 2015.

22 *Rommel R. Adam*
23
24 NOTARY PUBLIC



25 111

26 111

27 111

28 111

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document, *AFFIDAVIT OF JOHN BATTLE IN SUPPORT OF MOTION FOR ORDER APPROVING DISTRIBUTION OF REINSURANCE PROCEEDS PURSUANT TO NRS 696B.420(1)*, filed in this case 14 OC 00114 1B, does not contain the social security number of any person.

Dated: February ___, 2015

ADAM PAUL LAXALT
Attorney General

By:

Richard Yien for
RICHARD PAI LI YIEN #12578
Deputy Attorney General
Nevada Bar No 13035
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1129
(775) 684-1156 (fax)
Email: ryien@ag.nv.gov
Attorney for the Division of Insurance

EXHIBIT 3

to

**MOTION FOR ORDER APPROVING DISTRIBUTION OF REINSURANCE PROCEEDS
PURSUANT TO NRS 696B.420(1)**

STATE OF NEVADA, ex rel. COMMISSIONER) Case No. 14 OC 00114 1B
OF INSURANCE, in his Official Capacity as)
Statutory Receiver for Delinquent Domestic)
Insurer,) Dept. No. 2
Plaintiff,)
vs.)
PHYSICIANS BENEFIT RESOURCES RISK)
RETENTION GROUP, INC., a Nevada)
Domiciled Association Captive Insurance)
Company,)
Defendant.)

As per the Court Clerk's instructions, Exhibit 3 is enclosed herein
in attached envelope for *in camera* review by the Judge.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 4

John
to

**MOTION FOR ORDER APPROVING DISTRIBUTION OF REINSURANCE PROCEEDS
PURSUANT TO NRS 696B.420(1)**

Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

EXHIBIT 4

to

**MOTION FOR ORDER APPROVING DISTRIBUTION OF REINSURANCE PROCEEDS
PURSUANT TO NRS 696B.420(1)**

ADAM PAUL LAXALT
Attorney General
RICHARD PAILI YIEN
Deputy Attorney General
Nevada Bar No 13035
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1129
(775) 684-1156 (fax)
Email: ryien@aq.nv.gov
Attorney for the Division of Insurance

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

STATE OF NEVADA, *ex rel.*) Case No. 14 OC 00114 1B
COMMISSIONER OF INSURANCE, in his)
Official Capacity as Statutory) Dept. No. 2
Receiver for Delinquent Domestic Insurer,)
Plaintiff,)
vs.)
PHYSICIANS BENEFIT RESOURCES RISK)
RETENTION GROUP, INC., a Nevada)
Domiciled Association Captive Insurance)
Company,)
Defendant.)

AFFIDAVIT OF MICHAEL JOHNSON IN SUPPORT OF MOTION FOR ORDER
APPROVING DISTRIBUTION OF REINSURANCE PROCEEDS
PURSUANT TO NRS 696B.420(1)

STATE OF COLORADO)
) ss
COUNTY OF DENVER)

I, Michael Johnson, being duly sworn, on oath, depose and say that:

1. I am the Plaintiff, Michael Johnson, in the law suit filed in Douglas County District Court against Defendant Derrick Cho, MD, et al. (Case Number 2012CV1466).

1 2. I agreed to settle the law suit against Defendant Cho on December 10, 2014.
2 Defendant Cho signed a confession of judgment in the amount of \$1,000,000.

3 3. In the Settlement Agreement, Defendant Cho assigned to Plaintiff (me) "all rights, title,
4 and interest he has to seek amounts owed under the indemnification provisions of any of the
5 insurance policies identified above and to seek recovery from the liquidation estate of
6 Physicians Benefit Resources Risk Retention Group, Inc."

7 4. I have requested the Receivership staff of Physicians Benefit Resources Risk
8 Retention Group, Inc. to expedite distribution of settlement funds.

9 5. I understand that I have been assigned the Defendant's rights, including the
10 Defendant's rights to object to the Receiver's determination of claim under NRS 696B.330(7).
11 I knowingly waive this right to object in order to facilitate expedited payment.

12 6. The Receivership Manager of Physicians Benefit Resources Risk Retention Group, Inc.
13 has determined and approved the \$1,000,000 claim from the Colorado Brain & Spine Institute,
14 to which Defendant Cho has transferred to me, the rights to collect.

15 7. I understand that the Receiver is proposing to the Receivership Court, per my request,
16 an expedition of payment of the approved \$1,000,000 Physicians Benefit Resources Risk
17 Retention Group, Inc. funds.

18 8. I understand that in order to accommodate my request for expedited payment, the
19 Receivership Manager is proposing to the Receivership Court to distribute immediately the
20 entirety of \$950,000 collected from reinsurance proceeds.

21 9. I understand that the Receivership Manager is proposing to the Receivership Court to
22 retain \$50,000 from the approved \$1,000,000 policy liability out of an abundance of caution to
23 ensure that the Physicians Benefit Resources Estate has sufficient assets to complete
24 necessary administrative requirements of the Receivership estate, pursuant to NRS 696B420.

25 10. I understand that pursuant to NRS 696B420, the Receivership Manager has the burden
26 of proof to convince the Receivership Court that adequate funds are retained for the payment
27 of the administration of the Receivership in order to accommodate an expedited distribution.

11. I understand that the costs and expenses associated with the administration of the
1 Receivership estate have statutory priority over the rights of my claim.

10. I understand that although currently unanticipated, the Receivership Manager may use
4 some or all of the retained \$50,000 to complete necessary administrative requirements of the
5 Receivership estate, and I am waiving my right to object.

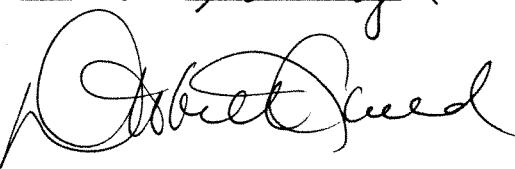
11. I understand that the Receivership Court must approve this distribution plan prior to
7 actual distribution.

12. I declare under penalty of perjury that the foregoing is true and correct based on my
9 personal knowledge.

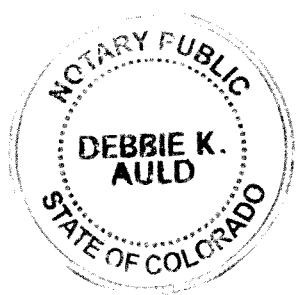
11 
12 Michael Johnson

13 **Assignee to Rights of Dr. Cho and the Colorado Brain & Spine Institute Claim to
14 Insurance Payments from Physicians Benefit Resources Risk Retention Group, Inc.**

16 **SUBSCRIBED and SWORN to before me**
17 this 10th day of January, 2015.

18 

19 Exp. 8.27.2018



24 / / /

25 / / /

26 / / /

27 / / /

28 / / /

AFFIRMATION

2 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding
3 document, *AFFIDAVIT OF MICHAEL JOHNSON IN SUPPORT OF MOTION FOR ORDER*
4 *APPROVING DISTRIBUTION OF REINSURANCE PROCEEDS PURSUANT TO NRS*
5 696B.420(1), filed in this case 14 OC 00114 1B, does not contain the social security number
6 of any person.

Dated: February 10, 2015

ADAM PAUL LAXALT
Attorney General

By: Richard Paili Yien for #12578
RICHARD PAILI YIEN
Deputy Attorney General
Nevada Bar No 13035
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1129
(775) 684-1156 (fax)
Email: ryien@ag.nv.gov
Attorney for the Division of Insurance