ERIK B. THUESON
58 South View Road
Clancy, MT 59634
Telephone: (406) 459-1792
ethueson@gmail.com

JOHN MORRISON
SCOTT PETERSON
P. O. Box 557
Helena, MT 59624
Telephone: (406) 442-3261
john@mswdlaw.com
speterson@mswdlaw.com
Attorneys for Plaintiffs

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS & CLARK COUNTY

DANA ROLAN, on her own behalf and on behalf of the class she represents, Plaintiffs, vs. NEW WEST HEALTH SERVICES, DARWIN SELECT INSURANCE COMPANY and ALLIED WORLD ASSURANCE COMPANY and DARWIN NATIONAL ASSURANCE COMPANY, Defendants.	Cause No. DDV 2010-91 Honorable Christopher D. Abbott **PLAINTIFFS' BRIEF RE: REVOCATION OF PRELIMINARY SETTLEMENT**

The plaintiff class provides the following memorandum in support of its motion.

I. OVERVIEW

In this 14-year-old class action, defendant New West has been held liable for paying restitution to class members because it violated their "made-whole" rights. A preliminary settlement was approved by this Court in 2020 whereby New West was able to limit its liability to $250,000 based on representations that it was financially unable to contribute more.

New evidence obtained over the past year indicates New West may have avoided its obligation to the class by misrepresenting its financial status. Specifically, in 2018, it represented to the Court and counsel it was unable to administer and pay the class due to a lack of funds. Then, in 2020, it procured a preliminary settlement limiting its obligation to $250,000 by representing to the Court and counsel this was all it had available to pay and if the class waited, there would be even less available.

The new evidence, however, indicates New West actually had millions of dollars to comply with its obligation to pay the class in full. Once it successfully avoided its obligation by representing otherwise, New West dissolved, distributing several millions of dollars in assets to its owners. Those assets rightfully should have gone to the class.

The class requests an evidentiary hearing. If the facts show New West and its representatives have made material misrepresentations, then the

following remedies are requested:

(1) The preliminary settlement, which was procured through misrepresentations, should be revoked.

(2) The Certification Order, based on the misrepresentations, should be altered so that New West is ordered to pay the class and pay for the costs of administration.

(3) Those responsible should be ordered to pay the class all excess litigation costs resulting from the unnecessary multiplication of proceedings and violations of M. R. Civ. P. 11.

The class's position is set forth in detail below.

II. PROCEDURAL AND FACTUAL BACKGROUND

The details have been described in numerous pleadings. A summary of pertinent events follows, supplemented by evidence recently uncovered.

In 2009, Dana Rolan filed suit against her health insurer, New West Health Services. She alleged New West had violated her made-whole rights under Montana law by refusing to pay over $100,000 in medical benefits for medical bills incurred as a result of an automobile crash. She also filed a class action on behalf of other insureds who New West had similarly refused to pay benefits in violation of their made-whole rights. DN 1.

In 2012, this Court certified the class; determined New West had violated its policyholders' made-whole rights; and ordered New West to pay restitution. DN

50. In 2013, the Montana Supreme Court affirmed. Thus, the case should have been resolved ten years ago. *Rolan v. New West Health Services*, 2013 MT 220.

The case was then sidetracked by a meritless ERISA defense raised by New West. It did not get back on track until 2017 when the Montana Supreme Court held the "District Court exceeded the bounds of reason resulting in substantial injustice to Rolan by allowing the ERISA defense." *Rolan v. New West*, 2017 MT 270, ¶¶23-24 (*Rolan II*). In the interim, New West announced it was going out of business and its E & O insurance carrier, Allied World Assurance Company, decided to deny all coverages for the class's claims. The class's motion for the Court to require New West to identify its financial resources for compensating the class was denied. DN 151.

When the Montana Supreme Court reversed on ERISA in 2017, New West hired American Legal Claims Services, LLC to administer the class remedy. It informed plaintiffs it was processing Ms. Rolan's claims and those of class members. Then, abruptly, it stopped and took a different tact.

On July 25, 2018, New West represented to this Court in a status report:

> NW is no longer operational and ***it has extremely limited funds*** remaining to wind down its business," complicating resolution, "including payment of Dana Rolan's individual claims. ... NW originally was willing to comply with judgment, but after preparing documents, "this plan was frustrated by a ***lack of funds to pay claims*** and other complications."

DN 198. New West signed the report under M. R. Civ. P. 11(b), which certifies the content is true after conducting a reasonable investigation. As shown below, however, it now appears these representations were inaccurate.

New West's counsel made similar representations to class counsel in written communications: We need to settle this soon while NW "still has ... $250,000." You can "grab[] the funds while they are still available." Attachment 1.

In late 2018, the District Court held New West's E & O insurer, Allied World, was estopped from denying coverage under its $3,000,000 aggregate limit of coverage. DN 230. New West continued to represent it had no money, urging the class representative to take $250,000 "while [New West is] still operational and has the money." Attachment 2. In another communication, New West set forth the consequences:

> Regardless of whether there is coverage from Allied World for nothing, $1 million or $3 million, there is no more money forthcoming from New West. We urge you to reconsider this point. Accept the $250,000 that remains available, obtain the assignment of all claims from New West, and release it from further liability.

Attachment 3.

In September 2019, class counsel agreed to settle for $250,000 because New West apparently lacked funds to pay more. Under M. R. Civ. P. 23(3), governing class actions, however, the settlement is only "preliminary." It does not become

binding unless and until the Court holds a Fairness Hearing where class members can object followed by a Court finding the settlement is fair, reasonable and adequate, which events have not yet occurred.

The joint motion and brief for Court approval of the preliminary settlement included language which New West would have to certify under Rule 11. It repeated New West's statements the settlement "include[d] virtually all funds available through New West which went out of business" and that "ongoing litigation carries the risk New West will not have the financial ability to pay $250,000, and the insurance proceeds will decrease because defense costs are being subtracted from the coverages." DN 232.

On January 27, 2020, this Court approved the preliminary settlement, but this would never have happened had the Court and class counsel known the true facts (i.e., New West was far from broke). *See,* DN 284.

From 2020 through early 2022, little occurred in Court because the case was on interlocutory review to the Montana Supreme Court on the insurance issue.

In early 2022, the Supreme Court reversed the summary judgment granted to Rolan and New West which had estopped Allied from denying coverage. Class counsel then obtained thousands of internal documents from New West to prepare a case against Allied which had denied coverage. In the process, evidence was uncovered that indicated New West had made material misrepresentations about its

financial condition to avoid its legal obligations to the class and to gain approval to dissolve the company.

Documents recently obtained through subpoena duces tecum show that in 2020, when the case was on interlocutory appeal, New West sought approval to dissolve from the Commissioner of Insurance (New West provided no notice to Rolan it had taken this action). Contrary to what it told the Court and counsel in this case, New West represented to the Commissioner it remained financially sound with over $4 million dollars in capital and surplus notes. It intended to distribute these assets, presumably to its owners, Billings Clinic and Pacific Source. Attachment 4.

Documents related to the dissolution also show New West represented to the Commissioner "it had resolved ***any and all*** pending litigation as of November 4, 2020 ... and has no pending insurance business or claims with Montana consumers." Attachment 4 (emphasis added). Obviously, this is contrary to the true facts: To this day, New West is a named party in this case for good reason: No settlement is final or binding unless and until the Court holds a "Fairness Hearing" after notice to all class members and determines whether or not the settlement is "fair, reasonable, and adequate." M. R. Civ. P. 23(e)(2). Neither of these events has yet taken place.

The evidence reveals New West knew full well it was still a party to this litigation when it represented otherwise to the Commissioner.

Specifically, in July 2019, New West's house counsel, Kristie Kernutt, wrote New West's litigation attorney, Robert Lukes, that:

> My biggest concern is New West's two members and keeping them out of this case, as I won't get anything approved that leaves them with risk. If New West pays the $250,000, Allied wins the appeal, and Thueson goes after New West, which has dissolved and distributed any remaining money, then he'll go after the members – PacificSource and Billings Clinic.

Mr. Lukes informed Ms. Kernutt nothing could be done about her concerns: Under the law, the settlement was "preliminary" and could only become final if and when the class members approved it after a Fairness Hearing, which would not occur for years into the future. Attachment 5, pp. 1-2. Thus, New West clearly understood its litigation with the Rolan class was not over, but still represented otherwise to the Commissioner to gain approval for dissolution.

Still other evidence indicates that at various times, New West had millions of dollars in "surplus notes" which should have been available to compensate the class. Surplus notes are required by state regulations so insurance companies retain adequate funds to pay all policyholders in the event they lack adequate capital. By definition, the claims of the company's owners to this money are subordinate to the claims of the policyholders, such as those in the Rolan class. Indeed, in 2016, the two owners, Billings Clinic and Pacific Source, had written New West $40 million in "surplus notes." Attachment 6. When the preliminary settlement was under

discussion, New West still had millions of dollars of surplus notes on the books. This indicates New West's representations to the Court and counsel that it lacked resources to pay the class were inaccurate.

In summary, the present state of the evidence indicates that all along New West has had adequate capital and surplus notes to pay all of the class's claims in full, contrary to representations it was making to this Court to gain a preliminary settlement. As a result of these misrepresentations, money which rightfully should be paid to the class, has probably been paid to the owners.

III. LEGAL POSITION

If an evidentiary hearing confirms New West and its representatives did make material misrepresentations, then the Court should grant the following relief.

A. REVOKE APPROVAL OF THE PRELIMINARY SETTLEMENT AND MODIFY THE CERTIFICATION ORDER

Montana Rule of Civil Procedure 23 governs class action suits: "In [g]eneral," the Court is granted broad powers to "issue orders that … determine the course of the proceedings," including altering or amending orders and dealing "with similar procedural matters." Rule 23(d). "The following procedures apply to a proposed settlement[:] Claims may be settled … or compromised only with [the] court's approval. … If the propos[ed class settlement] would bind class members, *the court may approve it only after a hearing on finding that it is fair, reasonable,*

and adequate." Rule 23(e) (emphasis added).

Applied here, this Court's Order Approving the Preliminary Settlement shows it was obtained due to the false pretenses New West only had up to $250,000 to pay class claims. DN 284. This Court based its determination on New West's representations it was "essentially judgment proof," and therefore, only capable of "contribut[ing] $250,000." *Id*. at 5. "The settlement includes virtually all funds available through New West which went out of business during this lawsuit." *Id.* New West's misrepresentations caused this Court to conclude:

> [O]ngoing litigation carries the risk New West will not have the financial ability to pay $250,000 and insurance proceeds will decrease because defense costs are being subtracted from the coverages. Therefore, the settlement is designed to provide the class with the best opportunity to obtain recoveries under the circumstances.

DN 284, p. 7.

Unless New West has valid and reasonable evidence to conclude otherwise, the above evidence shows New West misstated its financial situation to the Court and counsel to procure this preliminary settlement. Its representations to the Insurance Commissioner some months later show it still had millions of dollars on hand. Other evidence indicates it carried millions of dollars in surplus notes presumably designed to compensate policyholders, like those in the Rolan class.

As stated in the preliminary approval Order, at "this preliminary stage in the approval process, the Court determine[d] whether the proposed settlement is in the

range of judicial approval." *Id.* at 4. The settlement would not have been in this range had this Court and counsel known New West actually had millions available to compensate the class, rather than the $250,000 it misrepresented. Therefore, this Court should revoke it pursuant to its Rule 23 powers designed to protect the class.

Furthermore, given New West's misrepresentations, the preliminary settlement could never meet the legal criteria for final approval. As stated above, final settlement cannot be approved until "after a hearing [in which class members participate] and on finding that [final settlement] is fair, reasonable, and adequate." Rule 23(e). "The law neither does nor requires idle acts." §1-3-223, MCA. The facts showing this settlement is unfair, unreasonable and inadequate are available now. It would be an idle act to wait months or years to make that conclusion after an expensive Fairness Hearing. Under Rule 23, the Court is charged with protecting the class and that protection is needed currently.

Once this Court revokes the ill-gotten preliminary settlement, the Certification Order will need revision so New West is charged with administering and paying class members.

B. IMPOSE REMEDIAL SANCTIONS FOR MULTIPLYING PROCEEDINGS

Under §37-61-421, MCA, "An attorney or party to any court proceeding who, in the determination of the Court, multiplies the proceedings in any case unreasonably and vexatiously may be required by the Court to satisfy personally the excess costs, expenses, and attorney fees reasonably incurred because of such conduct." *In Re Estate of Bayers*, 21 P.3d 3, 2001 MT 49.

The misrepresentations made to the Court and counsel that New West had no money to compensate the class, which resulted in settlement for $250,000, is on its face "unreasonable and vexatious." For the class, the multiplied proceedings include virtually everything which has occurred since the misrepresentations were made. New West—not the class—should be pursuing Allied for denying coverage. If New West had stayed honest rather than misrepresenting in its 2017 status report that it had no money to pay either Rolan and the class, this lawsuit would have been over for the class: New West would have administered and paid the class. Instead, six years later, the case goes on at considerable risk and cost for the class.

Therefore, the class requests a hearing and then an order directing New West to pay all of the unnecessary costs due to its multiplying proceedings.

C. IMPOSE SUPPLEMENTAL RULE 11 SANCTIONS

As required by M. R. Civ. P. 11(c)(2), the Motion for Rule 11 Sanctions has been filed separately from the Motion to Revoke the Preliminary Settlement. It is, however, addressed in the brief in support of all motions.

Montana Rule of Civil Procedure 11 requires imposition of fees, costs and sanctions when a party has submitted pleadings which are not well founded and cause unnecessary costs and delay. The test is whether or not the offending party acted reasonably. The following is taken from *D'Agostino v. Swanson*, 784 P.2d 919, 240 Mont. 435, (1990):

- Rule 11 is part of the "District Court's power to supervise litigation."
- They are imposed when pleadings "are not well grounded in fact or warranted by existing law or are brought for improper purposes, such as harassment or delay."
- The test to determine whether or not Rule 11 has been violated is whether or not the party acted "reasonably."
- If the pleadings representations are unreasonable, then attorney fees and costs are mandatory. If they were motivated by an improper purpose, such as delay, then sanctions, too, should be awarded.

Id. at 924-926.

Under *Swanson, supra*, the sanctions should fit the wrong:

> Sanctions have not been limited to the payment of attorney's fees and costs, but have included fines to the court, ...or a combination of attorney's fees and fines. ... Sanctions have also been somewhat creative, including ordering the offending attorneys to appear at a hearing to show cause why they should not be suspended from practice,... ordering payment of interest on a judgment

> delayed by frivolous filings, ...directing the distribution of a copy of the opinion ordering sanctions to every member of the offending attorneys' firm, ... and directing the distribution of a copy of the order to all U.S. District Court judges, magistrates and bankruptcy judges in the district in which the offending conduct occurred. ....

Swanson, supra at 919 (citations omitted).

Applied here, if New West's misconduct is proved after an evidentiary hearing, all appropriate sanctions should be imposed against those responsible. New West's misrepresentations appear to be by design: It wanted to deprive the class of compensation so its owners could take the money when the company dissolved. This extreme and regrettable misconduct justifies multiple sanctions.

IV. CONCLUSION

If an evidentiary hearing verifies that New West and its representatives have made material misrepresentations, the Court should carry out the remedies set forth above and grant whatever additional relief is just under these unique circumstances.

DATED this 21st day of April, 2023.

THUESON LAW OFFICE

ERIK B. THUESON
58 South View Road
Clancy, MT 59634

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served true and accurate copies of the foregoing document upon counsel of record by the following means:

Robert Lukes 350 Ryman St, PO Box 7909 Missoula MT 59807-7909 *Attorneys for New West Health*	□ U.S. Mail □ Federal Express □ Hand-Delivery ☒ E-mail rclukes@garlington.com
Randall Nelson 2619 St. Johns Ave, Ste E Billings MT 59102 *Attorneys for Allied World*	□ U.S. Mail □ Federal Express □ Hand-Delivery ☒ E-mail rgnelson@nelsonlawmontana.com
Gary Zadick PO Box 1746 Great Falls, MT 59403 *Attorneys for New West Health*	□ U.S. Mail □ Federal Express □ Hand-Delivery ☒ E-mail gmz@uazh.com
Martha Sheehy PO Box 584 Billings MT 59103-0584 *Attorneys for Allied World*	□ U.S. Mail □ Federal Express □ Hand-Delivery ☒ E-mail msheehy@sheehylawfirm.com
John Morrison and Scott Peterson P. O. Box 557 Helena, MT 59624 *Co-Counsel for Plaintiffs*	□ U.S. Mail □ Federal Express □ Hand-Delivery ☒ E-mail john@mswdlaw.com speterson@mswdlaw.com

DATED this 21st day of April, 2023.

Elayne M. Simmons
elayne@thuesonlawoffice.com

Gmail

Erik Thueson <ethueson@gmail.com>

rolan
1 message

Robert C. Lukes <rclukes@garlington.com> Fri, Jul 27, 2018 at 12:46 PM
To: Erik Thueson <ethueson@gmail.com>
Cc: Elayne Simmons <elayne@thuesonlawoffice.com>

Erik,

A few comments on your thoughts.

1. if we are to do this, we should get a firm agreement soon, while New West still has the $250,000.

2. I don't know of any sound means to estimate the value of the restitution. The only thing I can think of is comparisons to Roose, Diaz and Gendron. See notes, below.

	No. of Plan Members	Approximate Payout
Roose	17,000	$180,000
Gendron	45,000	$ 800,000
Diaz	79,000	$1,500,000
Rolan	100,000	X (maybe $2,000,000 ?)

Attachment 1

3. I think we can easily avoid any concern that this is cooperation or some capitulation. You are grabbing the funds while they are available and it will ultimately be approved by the Court.

Attachment 1-1

Do you want me to start drafting an agreement?

Bob

7-27-18

Robert C. Lukes

garlington|lohn|robinson

A Professional Limited Liability Partnership

Attorneys at Law Since 1870

PO Box 7909 (350 Ryman Street)

Missoula, MT 59807-7909

Phone: (406) 523-2500, Fax: (406) 523-2595

www.garlington.com

From: Erik Thueson <ethueson@gmail.com>
Sent: Friday, July 27, 2018 11:50 AM
To: Robert C. Lukes <rclukes@GARLINGTON.COM>
Subject:

Gary just through argument with district court. If we need him later, I'll pay but if we win, allied pays the cost of the entire dec action.

Attachment 1-2

Otherwise, looks good. However, I need a reasonable estimate of the gross value of restitution assuming 100% of all eligible make claims. As you know, from experience we are lucky to get 20%.

There may be devil in the details, but I think the big points are hit. I need to know settlement cannot be construed as a lack of cooperation. I don't think it could but Gary knows this stuff better than I do. So call this a tentative deal so long as we don't come to loggerheads on the details.

Erik

Attachment 1-3

Gmail

Erik Thueson <ethueson@gmail.com>

Rolan case

1 message

Robert C. Lukes <rclukes@garlington.com> Thu, Apr 4, 2019 at 10:42 AM
To: "Erik Thueson (Google Drive)" <ethueson@gmail.com>
Cc: "elayne@thuesonlawoffice.com" <elayne@thuesonlawoffice.com>, Gary Zadick <gmz@uazh.com>

Erik,

New West is in the process of winding down and wants to pay the $250,000 settlement while it is still operational and has the money. Can we pay it to the Court to hold ? Let me know if this is acceptable and if so, I will put together some kind of unopposed motion.

Thanks,

Bob

Robert C. Lukes

garlington|lohn|robinson

A Professional Limited Liability Partnership

Attorneys at Law Since 1870

PO Box 7909 (350 Ryman Street)

Missoula, MT 59807-7909

Phone: (406) 523-2500, Fax: (406) 523-2595

www.garlington.com

Attachment 2

* *

Attachment 2-1

Gmail

Erik Thueson <ethueson@gmail.com>

RE: Rolan moving forward

1 message

Robert C. Lukes <rclukes@garlington.com> Mon, May 13, 2019 at 9:10 AM
To: Erik Thueson <ethueson@gmail.com>
Cc: Gary Zadick <gmz@uazh.com>

Erik,

I've conferred with Gary Zadick and our representative at New West. Without a settlement in place, we believe it makes no sense to send notices to the class. I assume the notices would alert class members of this certified class action and ask them to send in claim forms? We seriously question the wisdom of commencing this process before a final determination is made regarding coverage. You would raise the class' expectation as to the processing of claims for payment. Yet, with this case just starting on an appeal, there would be no payment forthcoming for at least 1 ½ years. Even if you persuaded the Court to require New West to pay for the expense of sending the notices to the class members, this would only serve to eat away at the slim amount in their reserves, which are declining as we speak.

Regardless of whether there is coverage from Allied World for nothing, $1 million or $3 million, there is no more money forth coming from New West. We urge you to reconsider this point. Accept the $250,000 that remains available, obtain the assignment of all claims from New West, and release it from further liability. As discussed previously, New West would also arrange for the transfer of all data on the class claims files and other relevant information it has for this class, for your use in this case.

Please let me know your thoughts on the foregoing.

Attachment 3

Thanks,

Bob Lukes

Attachment 3-1

5-13-19

ROBERT C. LUKES

Garlington, Lohn & Robinson, PLLP

(406) 523-2500

rclukes@garlington.com

P.O. Box 7909 Missoula, MT 59807

Proud Member of:

International Trademark Association

* *

* *

From: Erik Thueson <ethueson@gmail.com>
Sent: Sunday, May 12, 2019 8:51 AM
To: Robert C. Lukes <rclukes@GARLINGTON.COM>
Cc: Elayne Simmons <elayne@thuesonlawoffice.com>; Gary Zadick <gmz@uazh.com>
Subject: Re: Rolan moving forward

I believe my hands are tied. I have an obligation to the class. I will move the court to have the notice sent out at New West's expense telling her you object. Perhaps I have to just ask for a final judgment against new West so we can proceed from there with the hearing and discovery on whether or not Pacific source is accountable or other sources of recovery are available.

If I knew with certainty that there was no other source of recovery for the class, I might be able to consider your position, but I don't know that.

Attachment 3-2

It seems to me the best chance for new West to rid itself of this class action and avoid liability would be to allow me to continue to represent its interest in the dec action against Allied world. It would also be the cheapest for them because it would minimize Gary Zadick's involvement.

The court has already ruled there's a mutual mistake of fact so we probably don't have a current agreement anyway. We could negotiate a new one with some kind of some kind of condition subsequent attached regarding what happens if there is a ruling taking away the coverage (a prospect which I believe to be unlikely, but nothing is 100%.).

Allie position Has really screwed up this class action but I don't know how else to proceed. Allied takes a big risk because there is going to be quite a bad faith suit.

I assume you will still agree to an interlocutory appeal and a revised certification order that avoids coverage claims by Allied. This will entail a joint motion to carry out the b3 certification.

I know you're on vacation next week, but I need to move forward. So let me know if I can put in motions next week and which ones New West will oppose.

Thank you.

Erik

On Fri, May 10, 2019 at 11:43 AM Robert C. Lukes <rclukes@garlington.com> wrote:

> Erik,
>
> This email is in response to your new proposal on how to move forward in Rolan v. New West.
>
> On November 6, 2018, the Class and New West signed the Joint Motion and together reported to the Court that they "have reached a settlement in the above-entitled case." Since that time, Allied World filed a new motion for summary judgment and the Court has denied that motion. This issue now appears to be headed for an appeal, pursuant to Rule 54(b) certification.

Attachment 3-3

In your latest proposal, you request for New West to pay the costs to notify potential class members of the case and this would be subtracted from the $250,000 New West committed towards the resolution of this matter. You also recite that New West continues to assign its interest to class counsel "to prosecute the insurance issues." We have some concerns in this regard. These concerns are based in part on informal discussions with you of the present situation. In those discussions, you have set forth your belief that at the time of the settlement, the parties were operating on a mutual mistake of fact and therefore, the settlement is void. You have also stated that if there is no insurance money forthcoming from Allied World, you would be seeking other avenues for recovery, such as going after PacificSource. Yet, the present proposal from you seeks to move forward as if the settlement was still in place. It strikes me that we either have a settlement or we do not, and there is no middle ground. If you are not willing to confirm the substance of our prior settlement, then there is no $250,000 that New West has agreed to pay and there is no assignment of the first party rights to the Class. Although we understand your position and the situation is unusual, you cannot have it both ways.

It would seems as though we have two options in this circumstance. The first option is to confirm the substance of the settlement with a new document that spells out the terms of the settlement. New West is not willing to agree to have an agreement that is contingent upon the approval of coverage from Allied West. If it is settling, it wants to be done with the case – that was the purpose of offering the $250,000. The second option is to agree that there is no settlement and in that event, there is no assignment to the Class of the first party rights and there is no pool of $250,000 from which to pay funds for expenses in the case.

Although we want to work with you towards the resolution of this matter, we need to figure out exactly where we are at this point in time before marching forward with the present uncertainty. Please let me know your thoughts on the foregoing.

Thanks,

Attachment 3-4

Bob Lukes

5-10-19

ROBERT C. LUKES

Garlington, Lohn & Robinson, PLLP

(406) 523-2500

rclukes@garlington.com

P.O. Box 7909 Missoula, MT 59807

Proud Member of:

International Trademark Association

From: Erik Thueson <ethueson@gmail.com>
Sent: Thursday, May 9, 2019 4:41 PM
To: Robert C. Lukes <rclukes@GARLINGTON.COM>
Subject: Rolan moving forward

To comply with the Court's April 19, 2019 order, I sent you a proposed revision of the joint stipulation for settlement. However, on further reflection I think it will be a waste of time until we get the Supreme Court ruling on insurance.

Attachment 3-5

I have, however, developed a stipulated interim plan for your approval. It will:

1. Accomplish an interlocutory appeal on the insurance issues;

2.Provide for fee approval on the insurance dec action if it must be submitted and approved before interlocutory appeal

3.Determine who are potential class members and

4. Gives the court a proposed revised certification order based on the interim plan.

The documents are attached. I am still awaiting Martha's input on the motion for interlocutory appeal. I will be finishing the motion for attorney fess related to the insurance dec action tomorrow and will need your input and Gary's.

I'd like to get things moving again. Towards that end, can you review this proposal and supporting documents with New West and then we can talk about it. I am willing to travel to Missoula next week for detailed discussions if it will move things forward. The second best choice is a phone call. Other than providing my proposed pleadings to you, i don't think email communications will be productive. I'll continue to represent New West's interests, which coincide with the class's in the insurance coverage dispute. Otherwise, we'll need to agree on this.

Erik

Attachment 3-6

PLAN OF DISSOLUTION

NEW WEST HEALTH SERVICES

On October 23, 2020, the Board of Directors of New West Health Services hereby adopts the following Plan of Dissolution of New West Health Services (the "Corporation"):

WHEREAS, the Corporation ceased selling or maintaining active Medicare Advantage policies as of December 31, 2016, and has processed all run-out claims and wrapped up all operations;

WHEREAS, the assets of the Corporation are cash and securities; and

WHEREAS, the Board of Directors have determined that it would be in the best interests of the Corporation to dissolve.

NOW, THEREFORE, the Board of Directors resolve as follows:

1. Having ceased the active conduct of its business, the Corporation shall proceed to dissolve the Corporation, wind up its affairs, distribute its assets, and terminate the Corporation.

2. The attached Articles of Dissolution are hereby adopted in its current form and the Board of Directors hereby authorizes Peter Davidson, or his designee, to file this Plan of Dissolution with the Office of the Commissioner of Securities and Insurance ("CSI"), to coordinate with the CSI on any required audit or other process required by law, to present this Plan of Dissolution to the Corporation's members, and, upon inserting the requisite dates, file the Articles of Dissolution with the CSI and/or the Montana Secretary of State or take such other action as required to facilitate the dissolution of the Corporation.

3. As soon as practicable thereafter, the Corporation shall distribute the assets owned by it in accordance with the Corporation's Fourth Amended and Restated Articles of Incorporation and the Member Substitution Agreement between the two members. More specifically, the Corporation shall distribute the assets as follows: (1) to retire the Corporation's liabilities and obligations, including the payment of any surplus notes the Corporation owes; and (2) to the Corporation's two members in accordance their relative membership interest percentages.

4. As soon as practicable after all expenses are paid, the Corporation shall distribute all remaining assets as provided in Section 3 above.

5. The Board of Directors do not believe there are any outstanding claims upon the Corporation.

6. Peter Davidson or Priscilla Needham, or his/her designee, is hereby authorized to prepare, sign, and file any and all reports, returns, or forms required by federal, state, local, or municipal government by reason of this dissolution.

Priscilla Needham, Secretary

Attachment 4

ARTICLES OF DISSOLUTION

NEW WEST HEALTH SERVICES

1. The current name of this Corporation is: New West Health Services, which is a non-profit corporation.

2. The date dissolution was authorized by a sufficient vote of the Board of Directors: October 31, 2020.

3. The date a Plan of Dissolution was filed with the Commissioner of Securities and Insurance: November 2, 2020.

4. The date dissolution was approved by a unanimous vote of the two members: December 30, 2020.

Signature of Officer or Chair of the Board

CEO Billings Clinic

Title

10/30/2020

Date

Attachment 4-2

RICHARD E. WOOTTON
Legal Counsel
Commissioner of Securities and Insurance,
Office of the Montana State Auditor
840 Helena Avenue
Helena, MT 59601
Phone: (406) 444-5234
Fax: (406) 444-3499
Email: Richard.Wootton@mt.gov

Attorney for the Commissioner of Securities & Insurance

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE,
OFFICE OF THE MONTANA STATE AUDITOR**

IN THE MATTER OF THE VOLUNTARY DISSOLUTION OF NEW WEST HEALTH SERVICES	Case No. INS-2020-212 **NOTICE OF PROPOSED AGENCY ACTION AND OPPORTUNITY FOR HEARING**

TO: New West Health Services
c/o Kristi Kernutt, Esq.
Vice President of Legal Affairs & General Counsel
PacificSource (the family of companies)
110 International Way
Springfield, OR 97477
(via First Class U.S. Mail)

ALL INTERESTED PARTIES
(via publication on csimt.gov website)

The Commissioner of Securities and Insurance, Office of the Montana State Auditor (Commissioner) has received a plan for the dissolution of New West Health Services (New West). The Commissioner proposes to approve the voluntary dissolution of New West. The Commissioner has the authority to undertake this action pursuant to the Montana Insurance Code, including §§ 33-1-311, 33-3-601, and 33-4-101, MCA.

If any Interested Party objects to approval of New West's voluntary dissolution, such Interested Party may demand an administrative hearing regarding the planned voluntary dissolution, after which the Commissioner will issue a Notice of Hearing as provided in § 2-4-612, MCA. Such a demand must be in writing and must be received by the Commissioner within 24 days of the date of this Notice, as described in the Statement of Rights below.

If no demand for an administrative hearing is timely received by the Commissioner, New West's voluntary dissolution will be approved, and a Final Order will be issued based on the facts and applicable law set out below.

FACTUAL BACKGROUND

1. On or about December 31, 2016, New West ceased writing new policies and entered run-off the next day.

2. On or about December 27, 2018, New West surrendered its Montana Certificate of Authority.

3. On or about October 31, 2020, New West's Board of Directors approved Articles of Dissolution and a Plan of Dissolution in accordance with § 33-3-601, MCA.

4. On or about November 2, 2020, New West submitted its Plan of Dissolution to the Commissioner in accordance with § 33-3-601, MCA.

5. On or about June 30, 2020, New West filed a quarterly statement with the Commissioner, showing a total capital and surplus of $4,551,784. New West's plan for dissolution includes a request that, after its final expenses are paid, the remaining assets be distributed to its members in accordance with § 33-3-604, MCA.

6. On or about May 10, 2021, the Commissioner's Examinations Bureau completed a report of examination of New West, in which it found no evidence that New West is insolvent or

may become insolvent in the process of dissolution, that New West had resolved any and all pending litigation as of November 4, 2020, and that New West has no current Montana policyholders and no pending insurance business or claims with Montana consumers.

7. The examination report concluded that New West is not insolvent and is eligible for voluntary dissolution.

APPLICABLE LAW

8. The Commissioner has jurisdiction over New West and and its proposed voluntary dissolution pursuant to Mont. Code Ann. § 33-1-101 *et seq.*

9. The Commissioner administers the Montana Insurance Code to protect insurance consumers pursuant to Mont. Code Ann. § 33-1-311.

10. In accordance with Mont. Code Ann. § 33-3-601, at least 60 days before a domestic stock insurer or a for-profit domestic mutual insurer submits a proposed voluntary dissolution to shareholders or policyholders under § 35-14-1402 or voluntarily dissolves under § 35-14-1401, the insurer must file the plan for dissolution with the Commissioner. The Commissioner may require the submission of additional information to establish the financial condition of the insurer or other facts relevant to the proposed dissolution. If the shareholders or policyholders adopt the resolution to dissolve, the Commissioner shall, within 30 days after the adoption of the resolution, begin to examine the insurer. The Commissioner shall approve the dissolution unless, after a hearing, the Commissioner finds the insurer is insolvent or may become insolvent in the process of dissolution. If the Commissioner approves the voluntary dissolution, the insurer may dissolve under Title 35, chapter 14, part 14, except that § 35-14-1430 through § 35-14-1438 does not apply. The papers required by § 35-14-1401 through § 35-14-1403 to be filed with the secretary of state must instead be filed with the commissioner. The duties required by § 35-14-120 through § 35-14-

127 to be performed by the secretary of state must instead be performed by the Commissioner. If the Commissioner does not approve the voluntary dissolution, the Commissioner shall petition the court for liquidation or rehabilitation under Title 33, chapter 2, part 13.

PROPOSED AGENCY ACTION

WHEREFORE, based on the examination report of New West, the Commissioner proposes to approve New West's voluntary dissolution.

STATEMENT OF RIGHTS

Any Interested Party is entitled to contest the Commissioner's proposed action by requesting an administrative hearing. To do so, within 24 days of the date of this Notice of Proposed Agency Action and Opportunity for Hearing, a request for a hearing must be submitted in writing to Richard E. Wootton, 840 Helena Avenue, Helena, MT 59601 or via email to Richard.Wootton@mt.gov. Any request for a hearing must specify the Interested Party's objection to the Commissioner's proposed action and the Interested Party's relief sought in the hearing. A request for a hearing may also include the Interested Party's response(s) to the factual background set forth above. If a hearing is requested, the requestor(s) will be given notice of the time, place, and nature of the hearing. The requestor(s) will be entitled to attend this hearing and respond and present evidence and arguments on all issues involved in this action.

Administrative hearings are conducted by an impartial hearing examiner appointed by the Commissioner under the provisions of the Montana Administrative Procedures Act. Formal proceedings may be waived pursuant to Mont. Code Ann. § 2-4-603.

CONTACT WITH COMMISSIONER'S OFFICE

Please contact Richard E. Wootton, Legal Counsel for the Commissioner of Securities and Insurance, at 406-444-5234 or at Richard.Wootton@mt.gov with any questions regarding this action.

POSSIBILITY OF DEFAULT

In the event that no Interested Party timely provides a written hearing request, the Commissioner will issue a Final Order approving New West's voluntary dissolution, without additional notice to any Interested Parties.

DATED this 10th day of May 2021.

Richard E. Wootton
Attorney for the Commissioner of Securities & Insurance

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 10th day of May, 2021, a true and correct copy of the foregoing Notice of Proposed Agency Action and Opportunity for Hearing was published on the csimt.gov website and served upon the following by First Class U. S. mail, postage prepaid:

New West Health Services
c/o Kristi Kernutt, Esq.
Vice President of Legal Affairs & General Counsel
PacificSource (the family of companies)
110 International Way
Springfield, OR 97477

Brandy Morrison
Paralegal

From: Robert C. Lukes
Sent: Tuesday, July 16, 2019 9:31 AM MDT
To: Kristi Kernutt
CC: Gary Zadick
Subject: RE: Rolan v. New West

Kristi,

Perhaps there was a misunderstanding about the process for this approval. Even if we were assured that Allied World would be paying for the claims, we would not have final approval for the class settlement until after the notices had gone out, claims had been submitted and most likely, paid. At the quickest, that would still probably be a year before we had final approval from the court.

Now in that scenario, there is only a small chance the 'preapproval' would somehow be vacated, because we would know that Allied World's money was available.

Given that Allied World will be appealing the court's ruling, I cannot see a way to move forward with this process to provide complete security to New West' stakeholders other than waiting until after the appeal is done. If we take that route, I don't know if Thueson will accept it.

By 'staging the funds,' I assume you mean a partial payment from New West. This is an idea that could have some traction. For example, we could pay $100,000 to the fund to start the process. The remaining $150,000 could be contingent upon the Class winning the appeal against Allied World. This would enable Thueson to at least send out the notices and start the process to delve into the New West data. The upside for New West would be that if the settlement was somehow vacated, it would have only lost $100,000 as opposed to $250,000.

Attachment 5

What do you think ?

Bob

Robert C. Lukes
Garlington, Lohn & Robinson, PLLP
PO Box 7909 (350 Ryman Street)
Missoula, MT 59807-7909
Phone: (406) 523-2500

www.garlington.com

From: Kristi Kernutt <Kristi.Kernutt@pacificsource.com>
Sent: Tuesday, July 16, 2019 9:04 AM
To: Robert C. Lukes <rclukes@GARLINGTON.COM>
Cc: Gary Zadick <gmz@uazh.com>
Subject: RE: Rolan v. New West

I thought some of this is why there was language about going to the court within 30 days. My biggest concern is New West's two members and keeping them out of this case, as I won't get anything approved that leaves them with risk. If New West pays the $250,000, Allied wins the appeal, and Thueson goes after New West, which has dissolved and distributed any remaining money, then he'll go after the members – PacificSource and Billings Clinic.

I'm struggling with the change from going pretty quickly to seeking final approval to having this thing hang on another few years.

That said, I also don't want to blow the settlement concept. Do we stage the $250,000, so that the notices can go out? That won't take $250,000. Or do we risk losing this settlement entirely?

Kristi Kernutt
PacificSource
kkernutt@pacificsource.com

From: Robert C. Lukes <rclukes@GARLINGTON.COM>
Sent: Tuesday, July 16, 2019 7:57 AM
To: Kristi Kernutt <Kristi.Kernutt@pacificsource.com>

Cc: Gary Zadick <gmz@uazh.com>
Subject: RE: Rolan v. New West

** Caution: External email **

Kristi,

If we get an initial approval from the court and then Thueson losses the appeal, he could go back to the court and argue that the settlement was based on a mistake of fact or something to that effect. Although I don't think it is a great argument, it might have equitable appeal to the court because the entire class recovery would be based on the $250K paid by New West – which would not go far. He would be arguing to void the settlement so that he could try to get the class more money, which might have some appeal to the judge.

But with that said, I don't know if this settlement could be structured otherwise. The only foolproof structure would have the funds paid only after final approval of the class. But that can only come after (A) notice was provided to the class; (B) all claims were processed and if not paid, at least a fixed sum was determined; and (C) a hearing was held by the court to hear objections from any class members. But the Catch-22 here is that the notices cannot go out and none of the claims administration can even begin until there is some money to pay for these items.

I know New West wants to wrap this up so it can close down, etc. Perhaps one thought is to get this settlement with the preapproval and if it goes awry 2 years down the road, the company by then will be nonexistent with no funds left, etc. ?

Thoughts ?

Bob

Robert C. Lukes
Garlington, Lohn & Robinson, PLLP
PO Box 7909 (350 Ryman Street)
Missoula, MT 59807-7909
Phone: (406) 523-2500

www.garlington.com

From: Kristi Kernutt <Kristi.Kernutt@pacificsource.com>
Sent: Tuesday, July 16, 2019 8:46 AM
To: Robert C. Lukes <rclukes@GARLINGTON.COM>
Subject: RE: Rolan v. New West

The piece I'm concerned about is that he now wants to wait until the Allied appeal is concluded. What happens if acts true to form and blows up the settlement if he doesn't win the appeal? I'm concerned about New West losing $250,000 and then being right back on the hook for the full amount. Am I paranoid; does the initial approval give us enough to hold him to the settlement?

Kristi Kernutt
PacificSource
kkernutt@pacificsource.com

From: Robert C. Lukes <rclukes@GARLINGTON.COM>
Sent: Tuesday, July 16, 2019 7:44 AM
To: Kristi Kernutt <Kristi.Kernutt@pacificsource.com>
Subject: RE: Rolan v. New West

Kristi,

I think what we need here is an initial preapproval by the court of the settlement. Once that is in place, can we pay the funds to the court for the benefit of the class ?

Bob

Robert C. Lukes
Garlington, Lohn & Robinson, PLLP
PO Box 7909 (350 Ryman Street)
Missoula, MT 59807-7909
Phone: (406) 523-2500

www.garlington.com

From: Kristi Kernutt <Kristi.Kernutt@pacificsource.com>
Sent: Tuesday, July 16, 2019 8:41 AM
To: Robert C. Lukes <rclukes@GARLINGTON.COM>
Subject: RE: Rolan v. New West

Good morning,

It looks like he has backed away from seeking final approval of the settlement in a timely fashion. I'm just not interested in having New West pay $250,000 into the court, have that money spent, and then have him blow up the settlement if he doesn't win the Allied piece. I don't see the upside for New West.

Technical, but New West ceased having Medicare Advantage policies as of December 31, 2016; it continued conducting its business in order to pay claims for services received prior to that date.

Regards,
Kristi

Kristi Kernutt
PacificSource
kkernutt@pacificsource.com

From: Robert C. Lukes <rclukes@GARLINGTON.COM>
Sent: Tuesday, July 16, 2019 7:24 AM

To: Kristi Kernutt <Kristi.Kernutt@pacificsource.com>; Gary Zadick <gmz@uazh.com>
Subject: Rolan v. New West

** Caution: External email **

Kristi and Gary,

I'm meeting with Erik Thueson this morning, starting at around 10 AM. Late yesterday, he sent these redline versions of the documents we have been working on and the joint motion I recently prepared.

Can you please review and provide your comments. If there is any way you can do so this morning, that will expedite my discussion with Thueson on these matters.

Thanks,
Bob

Robert C. Lukes
Garlington, Lohn & Robinson, PLLP
PO Box 7909 (350 Ryman Street)
Missoula, MT 59807-7909
Phone: (406) 523-2500

www.garlington.com

RESTATED SURPLUS NOTE AND CAPITAL CONTRIBUTION AGREEMENT

$40,000,000.00 April 1, 2016

This Restated Surplus Note and Capital Contribution Agreement (the "**Note**") is dated April 1, 2016, and is made by and between **New West Health Services,** a Montana nonprofit corporation (the "**Company**") and **Billings Clinic,** a Montana nonprofit corporation ("**Billings Clinic**").

1. **Consolidation of Prior Notes.** The parties enter this Note in accordance with Section 21.3 of the Member Substitution Agreement by and among Billings Clinic, PacificSource and the Company, as the same may be amended from time to time (the "**MSA**"). Prior to the date hereof, the Company previously issued surplus notes to Billings Clinic including but not limited to the notes described on Exhibit A (collectively all such notes, whether listed on Exhibit A or otherwise, are referred to herein as the "**Prior Notes**"). As opposed to modifying each of the Prior Notes, the parties instead hereby amend, restate and consolidate all of the Prior Notes into this Note.

2. **Capital Contribution Agreement.** The parties acknowledge that the principal balance of the Prior Notes and accrued interest thereon exceed the principal balance of this Note. Billings Clinic hereby contributes to the capital of the Company the difference between the outstanding obligations under the Prior Notes and the stated principal amount of this Note. The parties do not intend that this Note represent a debt instrument subject to the provisions of Section 1274 of the Internal Revenue Code of 1986 ("**IRC**"); however, to the extent that Section 1274 of the IRC is applicable to this Note, Billings Clinic also contributes to the capital of the Company the difference between the stated principal amount of this Note and its imputed principal amount determined under Section 1274 of the IRC.

3. **Payment.** For value received, the Company hereby promises to pay to Billings Clinic the sum of Forty Million ($40,000,000.00) Dollars (the "**Principal**"), with no interest to accrue on the unpaid Principal balance. This Note does not have a stated maturity or repayment date. The Company shall pay the Principal in accordance with the terms of Section 23 of the MSA.

4. **Commissioner Authorization.** The Company issues this Note under Montana Code Annotated § 33-3-431 (together with the corresponding provisions of any successor statutes, the "**Borrowed Surplus Statute**") and with the approval of Montana's Office of

Attachment 6

the Commissioner of Securities and Insurance (the "**Commissioner**"). As required under the Borrowed Surplus Statute, the Company shall first obtain authorization from the Commissioner prior to making any Principal payments and shall obtain that authorization whether or not the Company is then above the Required RBC Ratio. As used herein, the term "**Required RBC Ratio**" refers to the minimum risk-based capital ratio which the Company is required to maintain pursuant to the Montana's Risk-Based Capital for Insurers Act codified at Montana Code Annotated § 33-3-1901, *et seq.* and the corresponding provisions of any successor statutes. If the Commissioner does not authorize the Company to make a payment, the absence of that authorization will not: (1) act as a discharge, forbearance or forgiveness of that payment or any other payment; and (2) relieve the Company from its obligation to pay all of those amounts.

5. **Priority.** The Company may issue other surplus notes on and after the date hereof to Billings Clinic and PacificSource pursuant to the MSA. Such subsequently issued surplus notes are referred to herein as "**Obligated Surplus Notes.**" This Note and the Obligated Surplus Notes shall, regardless of the date of issue, rank equally, and payment of Principal shall be made on a ratable basis without priority over one another. The Company shall not issue any other surplus notes (other than surplus notes contemplated under the MSA) without first obtaining the consent of Billings Clinic. If the Commissioner authorizes the Company to make a payment under this Note, no individual, entity or government body will have any right to recoup, offset or challenge that payment as a preference in bankruptcy, fraudulent conveyance or as otherwise being in violation of the Borrowed Surplus Statute, Statement of Standard Accounting Principles No. 41 or other applicable laws or regulations.

6. **No Re-Advances.** This Note is not a line of credit and as the Company makes payments hereunder, it has no right to re-borrow funds nor is Billings Clinic obligated to re-advance any funds.

7. **Default.** The Company will be in default under this Note if: (1) it violates any provision of this Note; (2) fails to make a timely payment under this Note; or (3) it violates any other agreement between the Company and Billings Clinic. In that event, Billings Clinic may pursue any rights and remedies available at law or equity. The Company waives any right to demand, presentment for payment, protest, notice of protest and notice of dishonor. Notwithstanding the forgoing, if the Company defaults under this Note or Billings Clinic obtains a judgment or other relief against the Company due to that default, Billings Clinic may not execute on that judgment against the Company's assets or otherwise seize any of the Company's assets unless the Commissioner authorizes Billings Clinic to do so. This Note does not provide a right of

recovery against any person or entity holding a membership interest in Company, or against any director or officer.

8. **Notices.** For a notice or other communication under this Note to be valid, it must be in writing and delivered: (1) by hand; (2) by a national transportation company, with all fees prepaid; or (3) by registered or certified mail, return receipt requested and postage prepaid. For a notice or other communication to a party under this Note to be valid, it must be addressed using the information specified below for that party. A party wishing to change that party's address designated below shall do so by providing notice as provided in this Section and upon providing valid notification of that change, subsequent notices or other communications to that party must reflect the changed address to be valid.

To Billings Clinic:	Attn: Chief Financial Officer P.O. Box 37000 Billings, Montana, 59107
To Company:	Attn: Chief Executive Officer 130 Neill Avenue Helena, Montana 59601

Additionally, a copy of any notice sent pursuant to the terms of this Note must be provided to PacificSource at the following address:

Attn: Chief Executive Officer
110 International Way
Springfield, OR 97477

9. **Attorney Fees.** If the Company defaults hereunder and Billings Clinic employs an attorney because of that default, the Company will pay, on demand, all costs, charges and expenses, including reasonable attorney and paralegal fees, incurred at any time by Billings Clinic because of the default.

10. **Modification; Waiver.** No amendment of this Note will be effective unless it is in writing, signed by the parties and approved by the Commissioner if necessary under the Borrowed Surplus Statute. No waiver of satisfaction by Billings Clinic of a condition or failure to comply with an obligation under this Note will be effective unless it is in writing and signed by Billings Clinic, and that waiver will not constitute a waiver of satisfaction of any other condition or failure to comply with any other

obligation.

11. **Severability.** The parties intend as follows: (1) that if any provision of this Note is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded; (2) that if an unenforceable provision is modified or disregarded in accordance with this Section, then the rest of the Note will remain in effect as written; and (3) that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable. The parties enter this Note in reliance upon the Commissioner's approval of the form and substance of this Note and may rely upon that approval in any applicable context or setting even though the Commissioner is not a party to this Note, even if the Note is later determined to be wholly or partially invalid, improperly issued or otherwise defective in any fashion.

12. **Entire Agreement.** Excepting only the relevant provisions of the MSA, this Note constitutes the entire understanding between the parties with respect to the subject matter of this Note and supersedes all other agreements, whether written or oral (and including without limitation the Prior Notes), between the parties relating to the subject matter of this Note.

13. **Sale, Liquidation or Reorganization of Company.** In the event of a sale, liquidation or reorganization of the Company, this Note shall be paid in accordance with Section 23.3 of the MSA.

14. **Governing Law.** Montana law governs this Note.

15. **Counterparts.** The parties may execute this Note in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one instrument.

The parties are signing this Note on the date first stated above.

NEW WEST HEALTH SERVICES

By: Angela E Huschka
Print Name: ANGELA E. HUSCHKA
Its: Interim CEO

BILLINGS CLINIC

By: Connie Prewitt

Print Name: Connie Prewitt

Its: CFO

EXHIBIT A
LISTING OF PRIOR NOTES

Deposit Date	Date on Note	Description	Principal Amount	File Name
11/21/1997	10/1/1997	Subordinated Note	208,000.00	1997 Billings Clinic Notes
12/30/1997	12/29/1997	Subordinated Note	208,000.00	1997 Billings Clinic Notes
2/10/1998	2/10/1998	Subordinated Note	260,000.00	1998 Billings Clinic Notes
3/31/1998		Subordinated Note	78,000.00	Missing note - just have resolutions
4/30/1998	4/30/1998	Subordinated Note	208,000.00	1998 Billings Clinic Notes
6/30/1998	11/30/1998	Subordinated Note	182,000.00	1998 Billings Clinic Notes
8/31/1998	8/31/1998	Subordinated Note	234,000.00	1998 Billings Clinic Notes
9/30/1998	9/30/1998	Subordinated Note	78,000.00	1998 Billings Clinic Notes
11/30/1998	11/30/1998	Subordinated Note	182,000.00	1998 Billings Clinic Notes
12/31/1998		Subordinated Note	117,000.00	Missing note
12/31/1998	6/30/1999	Sub Note - to fund deficit	244,772.00	1999 Billings Clinic Notes
3/31/1999	3/31/1999	Subordinated Note	172,000.00	1999 Billings Clinic Notes
4/30/1999	4/30/1999	Subordinated Note	118,250.00	1999 Billings Clinic Notes
5/27/1999	5/28/1999	Subordinated Note	139,750.00	1999 Billings Clinic Notes
6/30/1999	6/30/1999	Subordinated Note	279,500.00	1999 Billings Clinic Notes
7/31/1999	7/30/1999	Subordinated Note	322,500.00	1999 Billings Clinic Notes
8/31/1999	8/31/1999	Subordinated Note	840,110.00	1999 Billings Clinic Notes
9/30/1999	9/30/1999	Subordinated Note	473,000.00	1999 Billings Clinic Notes
10/31/1999	10/29/1999	Subordinated Note	645,000.00	1999 Billings Clinic Notes
11/30/1999	11/30/1999	Subordinated Note	752,500.00	1999 Billings Clinic Notes
12/31/1999	12/30/1999	Subordinated Note	709,500.00	1999 Billings Clinic Notes
1/31/2000	1/31/2000	Subordinated Note	397,750.00	2000 Billings Clinic Notes
3/31/2000	3/31/2000	Subordinated Note	150,500.00	2000 Billings Clinic Notes
4/30/2000	4/28/2000	Subordinated Note	182,750.00	2000 Billings Clinic Notes
5/31/2000	5/24/2000	Subordinated Note	290,250.00	2000 Billings Clinic Notes
6/30/2000	6/28/2000	Subordinated Note	354,750.00	2000 Billings Clinic Notes
7/31/2000	7/31/2000	Subordinated Note	236,500.00	2000 Billings Clinic Notes
8/31/2000	8/23/2000	Subordinated Note	107,500.00	2000 Billings Clinic Notes
9/30/2000	9/22/2000	Subordinated Note	354,750.00	2000 Billings Clinic Notes
10/31/2000	10/24/2000	Subordinated Note	182,750.00	2000 Billings Clinic Notes
11/30/2000	11/22/2000	Subordinated Note	204,250.00	2000 Billings Clinic Notes
12/31/2000	12/29/2000	Subordinated Note	451,500.00	2000 Billings Clinic Notes
12/31/2000	12/29/2000	Subordinated Note	64,500.00	2000 Billings Clinic Notes
1/31/2001	1/31/2001	Subordinated Note	200,000.00	2001 Billings Clinic Notes
4/30/2001	4/30/2001	Subordinated Note	225,000.00	2001 Billings Clinic Notes
9/21/2005	8/31/2005	Subordinated Note	511,788.00	2005 Billings Clinic Notes
10/12/2005	9/30/2005	Subordinated Note	279,157.00	2005 Billings Clinic Notes
10/24/2005	10/28/2005	Subordinated Note	186,105.00	2005 Billings Clinic Notes
12/1/2005	11/30/2005	Subordinated Note	372,210.00	2005 Billings Clinic Notes
3/28/2006	3/31/2006	Subordinated Note	149,850.00	2006 Billings Clinic Notes
3/28/2013	12/31/2012	Subordinated Note	5,300,000.00	2012 Billings Clinic Notes
7/1/2013	7/1/2013	Subordinated Note	746,081.75	2013 Billings Clinic Notes
4/22/2014	4/30/2014	Subordinated Note	16,382,976.00	2014 Billings Clinic Notes
11/25/2014	7/1/2014	Subordinated Note	1,347,776.03	2014 Billings Clinic Notes
3/25/2015	3/16/2015	Subordinated Note	23,419,950.00	2015 Billings Clinic Notes
6/30/2015	6/16/2015	Subordinated Note	8,975,902.00	2015 Billings Clinic Notes
7/1/2015	7/1/2015	Subordinated Note	1,303,724.53	2015 Billings Clinic Notes
	3/1/2016	Subordinated Note	19,350,000.00	2016 Billings Clinic Notes
		Total	88,180,152.31	