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8 SUPERIOR COURT OF ARIZONA

9 COUNTY OF MARICOPA

10 STATE OF ARIZONA, *ex rel.*
11 LESLIE R. HESS, Interim Director
of Insurance,

12 Plaintiff,

13 vs.

14 COMPASS COOPERATIVE MUTUAL
HEALTH NETWORK, INC., dba
15 MERITUS MUTUAL HEALTH
PARTNERS, an Arizona corporation; and
16 COMPASS COOPERATIVE HEALTH
PLAN, INC., dba MERITUS HEALTH
17 PARTNERS, an Arizona corporation,

18 Defendants.

No. CV2016-011872

PETITION NO. 10

**REQUEST FOR APPROVAL OF
CONTINGENCY FEE
ARRANGEMENT FOR RISK
CORRIDOR SUIT**

(Assigned to The Honorable
Daniel Martin)

19
20 Leslie R. Hess, Interim Director of Insurance, as Receiver (hereinafter “Receiver”)
21 of Compass Cooperative Mutual Health Network, Inc. doing business as Meritus Mutual
22 Health Partners (“Meritus Mutual”) and Compass Cooperative Health Plan, Inc. dba
23 Meritus Health Partners (“MHP”), appointed pursuant to A.R.S. § 20-611, *et seq.*, hereby
24 petitions the Court for entry of the Order Approving Contingency Fee Arrangement for
25 Risk Corridor Suit for the reasons set forth herein.

26 . . .

1 1. In an Order dated August 10, 2016, this Court placed Meritus and MHP into
2 receivership under orders of liquidation.

3 2. Like many health insurers and health maintenance organizations around the
4 country, Meritus and MHP have claims against the Centers for Medicare and Medicaid
5 Services (“CMS”) under the Affordable Care Act (“ACA”). In addition, there are other
6 aspects of the ACA that may result in payables and receivables involving CMS, including
7 for example Reinsurance and Risk Adjustment. Risk Corridor, Risk Adjustment and
8 Reinsurance are frequently referred to as the “3Rs.”¹

9 3. At this time, more than twenty lawsuits seeking to recover Risk Corridor payments
10 have been filed against CMS in the United States Court of Federal Claims (“Claims
11 Court”) and, in some cases, suits have been brought against CMS in federal district courts
12 around the country. The vast majority of the suits are pending and some have been
13 stayed. However, orders have been entered in certain cases and it is anticipated that the
14 orders would be appealed. In some cases the orders favored CMS and in other cases the
15 orders favored insurers. For example,

16 a. In *Land of Lincoln Mutual Health Insurance Company v. United States*, No.
17 16-744C, dated November 10, 2016, Judge Lettow of the Claims Court entered an Order
18 granting CMS’s motion dismissing the complaint.

19 b. In *Health Republic Insurance Company v. United States* (“*Health*
20 *Republic*”), No. 16-259C, dated January 10, 2017, Judge Margaret M. Sweeney of the
21 Claims Court entered an Order concluding that plaintiffs’ claim for unpaid risk corridor
22 payments for 2014 and 2015 is ripe for adjudication. The plaintiffs in that case filed a
23 Motion for Summary Judgment on March 3, 2017.

24 _____
25 ¹ The amounts at issue are significant. As noted in the Defendants’ Brief for the August 10, 2016 Hearing on the
26 Court’s Order to Show Cause, before the Receivership, Meritus claimed to be owed \$73 million in Risk Corridor and
\$5.8 million in Reinsurance while also claiming to owe \$51.8 million in Risk Adjustment. While the Receiver repeats
the assertions to provide context, the Receiver does not adopt them as her own and reserves all rights, claims and
remedies associated therewith.

1 c. In *Moda Health Plan, Inc. v. United States*, No. 16-649C, dated February 9,
2 2017, Judge Thomas Wheeler of the Claims Court entered an Order concluding that the
3 Government is liable to Moda and granted partial summary judgment.

4 d. In *Maine Community Health Options v. United States*, No. 16-967C, dated
5 March 9, 2017, Judge Eric G. Bruggink of the Claims Court entered an Order denying
6 CMS's motion to dismiss and requesting additional briefing on certain issues.

7 4. The *Health Republic* action has been certified as an opt-in class action with the
8 opt-in deadline established as May 12, 2017. In that case, Class Counsel has requested to
9 limit the contingency fee to five percent (5%) or less of any recovery.

10 5. Pursuant to A.R.S. § 20-624 and Paragraph 10 of the August 10, 2016 Order for
11 Appointment of Receiver and Injunction ("Receivership Order"), the Receiver has
12 possession and control of the rights of action and has the right to recover those actions.
13 Moreover, as specifically provided in paragraph 8(e) of the Receivership Order, the
14 Receiver has been ordered to:

15 Institute, prosecute, defend, compromise, intervene in, seek stays in, or
16 become a party to, such suits, actions or proceedings at law or in equity as
17 may, in the Receiver's opinion, be necessary for the collection, recovery,
18 protection, maintenance, or preservation of the property or assets subject to
19 this receivership.

20 6. Pursuant to A.R.S. § 20-623.01(A) and paragraph 7 of the Receivership Order, the
21 Receiver may appoint one or more counsel as the receiver deems necessary and, subject
22 to the Court's approval, the Receiver shall use funds or assets of Meritus and MHP to pay
23 the compensation and expenses of such counsel. In its entirety, A.R.S. § 20-623.01(A)
24 provides as follows:

25 In any delinquency proceeding, the receiver may appoint one or more
26 special deputy receivers to act for the receiver and may employ, as the

1 receiver deems necessary, counsel, clerks and assistants. Subject to the
2 approval of the court, the receiver shall fix the compensation of the special
3 deputies, counsel, clerks or assistants and all expenses of taking possession
4 of the insurer and of conducting the proceeding and shall use the funds or
5 assets of the insurer to pay the compensation and expenses.

6 7. Subject to the express authority from Arizona statutes and this Court's previous
7 Order, the Receiver is evaluating available options under the specific circumstances with
8 respect to prosecuting one or more causes of action seeking to recover the Risk Corridor
9 payments due to Meritus and MHP and, among other things, the Receiver is considering:
10 (1) commencing an individual suit in Claims Court subject to a contingency fee
11 arrangement with a law firm that already has one or more similar action on file; (2)
12 opting-in to the *Health Republic* Class Action; and (3) waiting to commence a suit
13 pending the developments of the cases already on file.

14 8. While there is no immediate deadline to commence an individual suit, the May 12,
15 2017 deadline to opt-in to the Class Action is quickly approaching and the Receiver is
16 seeking this Court's approval of the potential contingency fee rates associated with such
17 actions.

18 9. Accordingly, with respect to the prosecution of a Risk Corridor suit and subject to
19 the Receiver's consideration of the various options specified above, Receiver requests
20 this Court's approval of a contingency fee rate at five percent (5%) or less as provided for
21 the Class Action or for a comparable rate in the range of five percent (5%) to ten percent
22 (10%) if an individual action is pursued.² The Receiver will submit a supplemental
23 notice to the Court confirming the final contingency fee rate within the proposed range.
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² To the extent an individual action requires a contingency fee of greater than ten percent (10%), Receiver would seek further review and approval of the Court.

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WHEREFORE, the Receiver requests that the Court enter an Order Approving Contingency Fee Arrangement for Risk Corridor Suit in the form lodged concurrently with this Petition after expiration of the objection period.

Dated this 19th day of April, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Justin J. Henderson (#026930)
Joel A. Glover
Justin J. Henderson
Attorneys for Receiver

COPY of the foregoing mailed this 19th day of April, 2017 to the attached Master Service List

/s/ C.J. Scruggs
C.J. Scruggs

1 SUPERIOR COURT OF ARIZONA

2 COUNTY OF MARICOPA

3 No. CV2016-011872 (Assigned to The Honorable Daniel Martin)

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10 STATE OF ARIZONA, *ex rel.*
11 LESLIE R. HESS, Interim Director
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12 Plaintiff,

13 vs.

14 COMPASS COOPERATIVE MUTUAL
HEALTH NETWORK, INC., dba
15 MERITUS MUTUAL HEALTH
PARTNERS, an Arizona corporation; and
16 COMPASS COOPERATIVE HEALTH
PLAN, INC., dba MERITUS HEALTH
17 PARTNERS, an Arizona corporation,

18 Defendants.

No. CV2016-011872

**ORDER RE PETITION NO. 10
APPROVING CONTINGENCY
FEE ARRANGEMENT FOR RISK
CORRIDOR SUIT**

(Assigned to The Honorable
Daniel Martin)

19
20 Leslie R. Hess, Interim Director of the Arizona Department of Insurance, as
21 Receiver of Compass Cooperative Mutual Health Network, Inc. doing business as
22 Meritus Mutual Health Partners (“Meritus Mutual”) and Compass Cooperative Health
23 Plan, Inc., dba Meritus Health Partners (“MHP”), having filed Petition No. 10 for entry of
24 an Order Approving Contingency Fee Arrangement for Risk Corridor Suit and good
25 cause appearing therefor,

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IT IS ORDERED:

1. Petition No. 10, Request for Approval of Contingency Fee Arrangement for Risk Corridor Suit is hereby granted.

2. Subject to and in accordance with the Receiver’s statutory authority and prior Order of this Court, the Receiver is considering various options related to prosecuting a Risk Corridor suit on behalf of Meritus Mutual and MHP, including: (1) commencing an individual suit in Claims Court subject to a contingency fee arrangement with a law firm that already has one or more similar action on file; (2) opting-in to the *Health Republic* Class Action; and (3) waiting to commence a suit pending the developments of the cases already on file. The options being considered by the Receiver include a contingency fee arrangement which rate is subject to approval by this Court.

3. Pursuant to A.R.S. § 10-623.01(A), the Court hereby approves a contingency fee rate associated with prosecution of claims for Risk Corridor payments on behalf of Meritus Mutual and MHP in the range of five percent (5%) to ten percent (10%) with respect to compensation for counsel as retained by the Receiver associated with the Risk Corridor claims, whether by prosecution of an individual lawsuit or opting-in to the Class Action.

4. The Receiver will submit a supplemental notice to the Court confirming the final contingency fee rate within the proposed range.

ENTERED this ___ day of _____, 2017.

The Honorable Daniel Martin
Maricopa County Superior Court Judge

Scruggs, Colleen

From: TurboCourt Customer Service <CustomerService@TurboCourt.com>
Sent: Wednesday, April 19, 2017 1:50 PM
To: Scruggs, Colleen; azturbocourt@lrrc.com
Subject: AZTurboCourt E-Filing Courtesy Notification

PLEASE DO NOT REPLY TO THIS EMAIL.

A party in this case requested that you receive an AZTurboCourt Courtesy Notification.

AZTurboCourt Form Set #2167168 has been DELIVERED to Maricopa County.

You will be notified when these documents have been processed by the court.

Here are the filing details:

Case Number: CV2016-011872 (Note: If this filing is for case initiation, you will receive a separate notification when the case # is assigned.)

Case Title: State Of Arizona, Et.Al. Vs. Compass Cooperative M

Filed By: Justin J Henderson

AZTurboCourt Form Set: #2167168

Keyword/Matter #: 302377-00001

Delivery Date and Time: Apr 19, 2017 1:49 PM MST

Forms:

Summary Sheet (This summary sheet will not be filed with the court. This sheet is for your personal records only.)

Attached Documents:

Petition: Petition No. 10 - Request for Approval of Contingency Fee Arrangement for Risk Corridor Suit

Proposed Order/Judgment (Supporting): Order re Petition No. 10 Approving Contingency Fee Arrangement for Risk Corridor Set