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SUPERIOR COURT OF ARIZONA
COUNTY OF MARICOPA

STATE OF ARIZONA, *ex rel.*
KEITH SCHRAAD, Interim Director
of Insurance,

Plaintiff,

vs.

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

Defendants.

No. CV2016-011872

PETITION NO. 28

**PETITION TO APPROVE LIMITED
RETURN OF EXCESS PREMIUMS**

(Assigned to The Honorable
Daniel Martin)

Keith Schraad, Interim Director of Insurance, as Receiver (hereinafter “Receiver”) of Compass Cooperative Mutual Health Network, Inc. doing business as Meritus Mutual Health Partners (“Meritus Mutual”) and Compass Cooperative Health Plan, Inc. dba Meritus Health Partners (“MHP”) (collectively referred to as the “Meritus Companies”), appointed pursuant to A.R.S. § 20-611, *et seq.*, hereby petitions the Court for entry of the Order re Petition No. 28 To Approve Limited Return of Excess Premiums for the reasons set forth herein.

1. In an Order dated August 10, 2016, this Court placed Meritus Mutual and MHP into receivership under orders of liquidation. Among other things, the Receiver was ordered to take possession of the property of Meritus Mutual and MHP and to administer

1 those assets under the orders of this Court. A.R.S. § 20-621. As part of that
2 administration, the property of Meritus Mutual and MHP is to be liquidated and the
3 general assets of Meritus Mutual and MHP are to be distributed to creditors in accordance
4 with a priority system. A.R.S. §§ 20-621 and 20-629.

5 2. During the course of the receivership, the Receiver identified a relatively
6 small amount of funds that were paid to Meritus Mutual or MHP in error and, accordingly,
7 do not appear to be general assets belonging to MHP or Meritus Mutual. Accordingly, the
8 Receiver proposes that the funds would not be subject to distribution pursuant to A.R.S.
9 § 20-629 and instead would be returned to the proper owner.

10 3. As identified in the Declaration of Special Deputy Receiver, attached as
11 Exhibit A, based on the current records of the Meritus Companies, the funds appear to be
12 payments made by members in excess of the amount of premiums that were due and owing
13 (referred to as “excess premiums”). With respect to MHP, there are 115 members who
14 paid excess premiums to MHP in error in the total amount of \$24,231.31. With respect to
15 Meritus Mutual, there are 15 members who paid excess premiums to Meritus Mutual in
16 error in the total amount of \$7,894.54.

17 4. Under these circumstances, the small amount of excess premiums should not
18 be treated as premiums (earned or unearned) that would be subject to distribution as
19 general assets under A.R.S. § 20-629.¹ An insured is not required to cancel, surrender, or
20 rescind a policy to recover excess premiums paid in error. Rather, an insured is entitled to
21 overpayments of premiums upon discovery of the error. *See Poindexter v. Equitable Life*
22 *Assur. Soc. of U.S.*, 34 S.E.2d 340, 345–47 (W. Va. 1945) (finding the estate of the insured
23 entitled to funds because the insurer received payments in excess of the agreed premium).
24 Under certain circumstances, an insured has an “absolute” right to recover excess
25 premiums, and an insurer has an “equally absolute” duty to repay them. *Id.* at 346.

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27
28 ¹ The Receiver has exercised discretion under these unique circumstances to determine that refunding the modest
amount of excess premiums is appropriate here, subject to Receivership Court approval. The Receiver does not
consider this decision precedent and reserves the right to adopt a different position depending on the circumstances.

1 5. In filing this petition, the Receiver is relying on the distinction between
2 excess premiums paid in error (which are subject to the refund proposed in this Petition)
3 and unearned premiums properly paid to MHP and/or Meritus Mutual (which would not be
4 subject to refund).

5 a. In contrast to excess premiums, unearned premiums are the portion of an
6 insurance premium an insured pays in advance for the protection an insurer has yet to
7 provide. *See United States v. Consumer Life Ins. Co.*, 430 U.S. 725, 729 (1977). An
8 insured typically pays premiums in advance, and an insurer typically earns premiums at an
9 even rate throughout the policy term. *Id.* at 729–30. Unearned premiums cover the cost of
10 carrying the insurance risk. *See Anderson v. Country Life Ins. Co.*, 886 P.2d 1381, 1383
11 (Ariz. Ct. App. 1994).

12 b. Unearned premiums would have to be refunded only if an insurance policy is
13 surrendered, rescinded, or cancelled prior to the expiration of the period for which
14 premiums have been paid. *See Consumer Life*, 430 U.S. at 729.

15 c. In the context of an insurer receivership, unearned premiums are specifically
16 addressed in A.R.S. § 20-629 as Class 3 claims and would be adjudicated accordingly as
17 part of the MHP and Meritus Mutual liquidations.

18 6. The Receiver requests entry of an order ruling that the excess premiums are
19 not general assets under these circumstances; authorizing the Receiver to refund the excess
20 premiums to the members; and authorizing the Receiver to make similar refunds of excess
21 premiums without further order of the Court if additional circumstances warrant so long as
22 the aggregate amount of additional refunds do not exceed \$5,000, combined.

23 WHEREFORE, the Receiver requests that the Court enter an Order Approving
24 Limited Return of Excess Premiums.

1 Dated this 28th day of January, 2019.

2 FAEGRE BAKER DANIELS LLP

3 By: /s/ Joel Glover (#034018)
4 Joel A. Glover

5 *Attorneys for Receiver*

6
7 COPY of the foregoing mailed this
8 28th day of January, 2019 to the
9 attached Master Service List

10 /s/ Brenda McHenry
11 Brenda McHenry

SUPERIOR COURT OF ARIZONA

COUNTY OF MARICOPA

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

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EXHIBIT A

**DECLARATION OF SPECIAL
DEPUTY RECEIVER**

(Assigned to The Honorable
Daniel Martin)

24 By signing below, I, Darren Ellingson, state to the Court under penalty of law, that
25 the information stated on these pages is true and correct to the best of my knowledge and
26 belief.

27 1. I am over eighteen years, and I have personal knowledge of the facts herein.
28 I acquired my personal knowledge in my capacity as Special Deputy Receiver of Meritus
Mutual Health Partners, in liquidation ("Meritus Mutual") and of Meritus Health Partners,
in liquidation ("MHP"). I have served as Special Deputy Receiver since the
commencement of the Meritus Mutual and MHP receiverships and, in that capacity, I am
familiar with and have personal knowledge of the books and records of Meritus Mutual
and MHP. In acquiring my personal knowledge, I relied upon work performed by one or

1 more persons that worked under my direction with respect to the Meritus Mutual and MHP
2 receiverships.

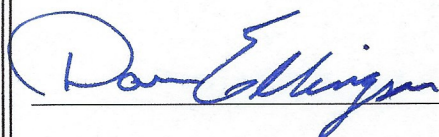
3 2. My understanding is that this Declaration is being submitted to the Court in
4 conjunction with Petition No. 28, Petition to Approve Limited Return of Excess Premiums.

5 3. Based on my review, with respect to the proposed return of excess
6 premiums, I have made the following determinations.

7 a. During the course of the receivership, a relatively small amount of funds
8 were discovered that were paid to Meritus Mutual or MHP in error and, accordingly, do
9 not appear to be general assets belonging to MHP or Meritus Mutual.

10 b. Based on the current records of the Meritus Companies, the funds appear to
11 be payments made by members in excess of the amount of premiums that was due and
12 owing (referred to as "excess premiums"). With respect to MHP, there are 115 members
13 who paid excess premiums to MHP in error in the total amount of \$24,231.31. With
14 respect to Meritus Mutual, there are 15 members who paid excess premiums to Meritus
15 Mutual in error in the total amount of \$7,894.54.

16
17 By signing below, I state to the Court, under penalty of law, that the information stated on
18 these pages is true and correct to the best of my knowledge and belief.
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22 Date: 1/25/2019

23 Darren Ellingson, Special Deputy Receiver
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