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J. Eaton Deputy

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Attorneys for Receiver

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

ORDER RE PETITION NO. 26

**GRANTING CLAIM
DETERMINATION AND SETOFF
RELATED TO CLAIMS OF THE
UNITED STATES**

(Assigned to The Honorable
Daniel Martin)

Keith Schraad, Interim Director of the Arizona Department of Insurance, as 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”), having filed Petition No. 26 – Request for Hearing, Claim Determination and Setoff Related to Claims of the United States and after a hearing duly noticed held on March 8, 2019, being fully advised in the premises and good cause appearing therefor, the Court enters the following FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDERS:

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERS:

1. On August 10, 2016, this Court entered the Order for Receivership and Injunction with respect to Compass Cooperative Mutual Health Network, Inc. dba Meritus Mutual Health Partners (“Meritus Mutual”) and Compass Cooperative Health Plan, Inc. dba Meritus Health Partners (“MHP”), declaring Meritus Mutual and MHP insolvent and placing each under an order of liquidation.

2. On March 8, 2017, the Order Approving Liquidation Plan was entered which, among other things, approved and established a proof of claim procedure and a claims bar deadline.

3. The United States submitted three proofs of claim in accordance with the Order Approving Liquidation Plan, including claims by the Department of Health and Human Services, Centers for Medicare & Medicaid Services (“CMS”) against MHP in the combined total amount of \$50,650,123.02 (the “CMS-MHP Claims”); claims by CMS against Meritus Mutual in the combined total amount of \$94,581,998.78 (the “CMS-Meritus Mutual Claims”), and claims by the United States Department of Justice against Meritus Mutual and MHP in an undetermined amount (the “DOJ Claims”).

a. With respect to the CMS-MHP Claims, the asserted claim amounts were attributable to the Affordable Care Act (“ACA”) Risk-Sharing Programs as follows:

CSR:	\$ 3,899,178.47
PPACA Reinsurance:	\$ 510,975.30
Risk Adjustment:	\$ 46,195,827.78
PPACA Fee:	\$ 44,141.47
Total:	\$ 50,650,123.02

b. With respect to the CMS-Meritus Mutual Claims, the asserted claim amounts were attributable to loan and note claims and to ACA Risk-Sharing Programs as follows:

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Loan/Note Claims:

Start-Up Loan:	\$ 20,890,333.00
Solvency Note:	\$ 72,935,928.25
Total:	\$ 93,826,261.25

ACA Related Claims:

CSR:	\$ 115,649.36
PPACA Reinsurance:	\$ 46,091.54
Risk Adjustment:	\$ 594,168.87
Exchange User-Fee:	\$ 7.76
Total:	\$ 755,917.53

c. With respect to the DOJ Claims, no amount was specified and instead there was a general assertion of rights as a creditor against MHP and Meritus Mutual.

4. This Court is vested with exclusive original jurisdiction of insurer receiverships and is authorized to make all necessary and proper orders to carry out the purposes of A.R.S. § 20-601, *et seq.* (the “Arizona Receivership Act”). A.R.S. § 20-612(A). Among other things, one of the purposes of the Arizona Receivership Act is to provide an exclusive forum to hear and determine claims against MHP and Meritus Mutual. *See* A.R.S. § 20-628. In response to the claim procedures ordered by this Court, CMS and DOJ have filed proofs of claim against MHP and Meritus Mutual in these receivership proceedings asserting claims for amounts due under the ACA. As a result, this Court has jurisdiction with respect to the determination and adjudication of those claims under the Arizona Receivership Act.

5. While claims have been asserted against MHP and Meritus Mutual under the ACA Risk Programs, MHP and Meritus Mutual also have specific claims against CMS under the ACA Risk-Sharing Programs.

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- a. The following amounts are owed by CMS to MHP:
 - Risk Corridor Claims: \$ 55,513,299.00
 - Reinsurance: \$ 7,171,320.00
 - Total: \$ 62,684,619.00
- b. The following amounts are owed by CMS to Meritus Mutual:
 - Risk Corridor Claims: \$ 12,938,057.00
 - Reinsurance: \$ 3,283,275.00
 - Total: \$ 16,221,332.00

6. Dated November 16, 2017, the Receiver’s Counsel sent separate letters providing notice of the amounts due and of the setoff and claim determination with respect to the CMS-MHP Claims, the CMS-Meritus Claims, and the DOJ Claims. The letter requested that CMS and/or DOJ notify the Receiver of any response and/or objection to the determination. CMS and DOJ made no objection to the notice of setoff and claim determination.

7. On December 11, 2018, the Receiver filed Petition No. 26, the Request for Hearing and Setoff Related to Claims of the United States (“Setoff Petition”). Among other things, the Setoff Petition seeks relief in response to the CMS-MHP Claims, the CMS-Meritus Mutual Claims, and the DOJ Claims.

a. The Setoff Petition seeks an Order establishing that the CMS claims against Meritus Mutual under the Start-Up Note and the Solvency Note, which combined total \$93,826,261.26 (collectively, the “CMS Surplus Notes”), are classified as Class 10 priority level claims under A.R.S. § 20-629(A)(10). Under the relief requested in the Setoff Petition, determination of the Class 10 claim amount would be deferred unless and until it appears to the Receiver that a distribution may be made at the Class 10 level and, by their contractual terms, the CMS Surplus Notes would not be subject to setoff.

b. The Setoff Petition seeks an Order establishing a Setoff in accordance with A.R.S. § 20-638 as between the mutual debts or credits as between CMS and MHP as follows:

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Risk Corridor Claims due from
CMS to MHP: \$55,513,299.00

(MINUS)
Total Due from MHP to CMS: \$50,650,123.00

(EQUALS)
Net Risk Corridor Claims due from
CMS to MHP: \$4,863,176.00

The total amount of the Risk Corridor Claims exceeds the amount due to CMS under the
ACA Risk-Sharing Programs. As a result, there is no setoff applicable to reduce the
amount of the Reinsurance Claims.

Reinsurance Claims due from
CMS to MHP: \$ 7,171,320.00

(MINUS)
Balance Due from MHP to CMS: \$ 0.00

(EQUALS)
Net Reinsurance Claims due from
CMS to MHP: \$ 7,171,320.00

c. The Setoff Petition seeks an Order establishing a Setoff in accordance with
A.R.S. § 20-638 as between the mutual debts or credits as between CMS and Meritus
Mutual as follows:

Risk Corridor Claims due from
CMS to Meritus Mutual: \$12,938,057.00

(MINUS)
Total Due from Meritus Mutual
to CMS: \$ 755,917.00

(EQUALS)
Net Risk Corridor Claims due
from CMS to Meritus Mutual: \$12,182,140.00

1 The total amount of the Risk Corridor Claims exceeds the amount due to CMS under the
2 ACA Risk-Sharing Programs. As a result, there is no setoff applicable to reduce the
3 amount of the Reinsurance Claims.

4 Reinsurance Claims due from
5 CMS to Meritus Mutual: \$ 3,283,275.00

6 (MINUS)
7 Balance Due from Meritus
8 Mutual to CMS: \$ 0.00

9 (EQUALS)
10 Net Reinsurance Claims due
11 from CMS to Meritus Mutual: \$ 3,283,275.00

12 8. In the Amended Order Re Petition No. 26 Scheduling Hearing Regarding
13 Requested Claim Determination and Setoff Related to Claims of the United States, this
14 Court scheduled the hearing for this matter on March 8, 2019 and established February 21,
15 2019, the date that is fifteen days before the hearing, as the date Order for filing a response
16 or objection. Pursuant to A.R.S. § 20-628, notice of the Setoff Petition, the response
17 deadline and the scheduled hearings was provided to designated representatives of CMS
18 and DOJ on December 13, 2018, December 14, 2018 and December 21, 2018. No
19 response or opposition to the requested relief has been filed.

20 **ACCORDINGLY, IT IS FURTHER FOUND, DETERMINED AND ORDERED**
21 **THAT:**

22 9. The Receiver's Request for Claim Determination and Setoff Related to
23 Claims of the United States is granted in all respects and the Receiver is authorized and
24 directed to take such steps as are reasonable and appropriate under the circumstances to
25 implement this Order. All claims of the United States related to the Affordable Care Act
26 as asserted in the CMS-MHP Claims, the CMS-Meritus Mutual Claims and to the extent
27 encompassed or otherwise addressed in the DOJ Claims are fully and finally resolved
28 subject to and in accordance with this Order.

1 10. CMS's claims for payment from Meritus Mutual under the converted start-up
2 note and the solvency note, referred to as the CMS Surplus Notes, are Class 10 priority
3 level claims under A.R.S. § 20-629 and are not subject to setoff.

4 11. Any determination as to the amount of CMS's claims for payment from
5 Meritus Mutual under the converted start-up note and the solvency note shall be deferred
6 unless and until such time as the Receiver reasonably anticipates that there may be a
7 distribution for Class 10 level claimants.

8 12. In accordance with A.R.S. § 20-638, the setoff of all claims as between MHP
9 and CMS under the ACA Risk-Sharing Programs, including, but not limited to CSR,
10 Reinsurance, Risk Adjustment, and Risk Corridor, is approved so that the net effect is that
11 the remaining amount that CMS owes MHP under the ACA Risk-Sharing Programs (with
12 all related mutual debts and credits setoff and otherwise deemed satisfied) is as follows:

13 Net Risk Corridor Claims due and owing from CMS to MHP: \$ 4,863,176.00

14 Net Reinsurance Claims due and owing from CMS to MHP: \$ 7,171,320.00


15 13. In accordance with A.R.S. § 20-638, the setoff of all claims as between
16 Meritus Mutual and CMS under the ACA Risk-Sharing Programs, including, but not
17 limited to CSR, Reinsurance, Risk Adjustment, and Risk Corridor, is approved so that the
18 net effect is that the remaining amount that CMS owes Meritus Mutual under the ACA
19 Risk-Sharing Programs (with all related mutual debts and credits setoff and otherwise
20 deemed satisfied) is as follows:

21 Net Risk Corridor Claims due and owing from CMS to Meritus Mutual: \$12,182,140.00

22 Net Reinsurance Claims due and owing from CMS to Meritus Mutual: \$ 3,283,275.00

23 14. Pursuant to A.R.S. § 20-628(D), this Order shall be deemed to be an appealable
24 order.
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1 ENTERED this 8th day of March, 2019.

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4 The Honorable Daniel Martin
5 Maricopa County Superior Court Judge
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