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7
8 SUPERIOR COURT OF ARIZONA
9 COUNTY OF MARICOPA

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

12 Plaintiff,

13 vs.

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

17 Defendants.
18

No. CV2016-011872

PETITION NO. 26

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

(Assigned to The Honorable
Daniel Martin)

19 Keith Schraad, Interim Director of Insurance, as Receiver (hereinafter “Receiver”)
20 of Compass Cooperative Mutual Health Network, Inc. doing business as Meritus Mutual
21 Health Partners (“Meritus Mutual”) and Compass Cooperative Health Plan, Inc. dba
22 Meritus Health Partners (“MHP”) (collectively referred to as the “Meritus Companies”),
23 appointed pursuant to A.R.S. § 20-611, *et seq.*, hereby files this Submission of Proposed
24 Order Granting Claim Determination and Setoff Related to Claims of the United States
25 (“Submission of Proposed Order”).

26 1. On December 11, 2018, the Receiver filed Petition No. 26, Request for
27 Hearing, Claim Determination and Setoff Related to Claims of the United States (the
28 “Setoff Petition”).

1 2. On December 18, 2018, the Court entered the Amended Order Re Petition
2 No. 26 Scheduling Hearing Regarding Requested Claim Determination and Setoff Related
3 to Claims of the United States. That Order scheduled the hearing regarding Petition
4 No. 26 for March 8, 2019 at 10:30 a.m. Also, according to that Order, responses and/or
5 objections were required to be filed at least fifteen days before the scheduled hearing, that
6 is on or before February 21, 2018. As of the date of this submission, no objections and/or
7 responses have been filed.

8 3. Accordingly, the Receiver submits the attached Proposed Order Granting
9 Claim Determination and Setoff Related to Claims of the United States.

10 Dated this 1st day of March, 2019.

11 FAEGRE BAKER DANIELS LLP

12 By: /s/ Joel Glover (#034018)
13 Joel A. Glover

14 Attorneys for Receiver

15
16
17 COPY of the foregoing mailed this
18 1st day of March, 2019 to the
19 attached Master Service List

20 /s/ Brenda McHenry
21 Brenda McHenry

1 SUPERIOR COURT OF ARIZONA

2 COUNTY OF MARICOPA

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

5 **MASTER SERVICE LIST**

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9 SUPERIOR COURT OF ARIZONA
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11 STATE OF ARIZONA, *ex rel.*
12 KEITH SCHRAAD, Interim Director
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15 COMPASS COOPERATIVE MUTUAL
16 HEALTH NETWORK, INC., dba MERITUS
MUTUAL HEALTH PARTNERS, an
17 Arizona corporation; and
18 COMPASS COOPERATIVE HEALTH
PLAN, INC., dba MERITUS HEALTH
PARTNERS, an Arizona corporation,

19 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)

20
21 Keith Schraad, Interim Director of the Arizona Department of Insurance, as
22 Receiver of Compass Cooperative Mutual Health Network, Inc. doing business as Meritus
23 Mutual Health Partners (“Meritus Mutual”) and Compass Cooperative Health Plan, Inc.,
24 dba Meritus Health Partners (“MHP”), having filed Petition No. 26 – Request for Hearing,
25 Claim Determination and Setoff Related to Claims of the United States and after a hearing
26 duly noticed held on March 8, 2019, being fully advised in the premises and good cause
27 appearing therefor, the Court enters the following FINDINGS OF FACT AND
28 CONCLUSIONS OF LAW AND ORDERS:

1
2 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERS:**

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

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

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

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

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

25 b. With respect to the CMS-Meritus Mutual Claims, the asserted claim amounts
26 were attributable to loan and note claims and to ACA Risk-Sharing Programs as follows:
27
28

1 **Loan/Note Claims:**

2 Start-Up Loan: \$ 20,890,333.00

3 Solvency Note: \$ 72,935,928.25

4 Total: \$ 93,826,261.25

5 **ACA Related Claims:**

6 CSR: \$ 115,649.36

7 PPACA Reinsurance: \$ 46,091.54

8 Risk Adjustment: \$ 594,168.87

9 Exchange User-Fee: \$ 7.76

10 Total: \$ 755,917.53

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

13 4. This Court is vested with exclusive original jurisdiction of insurer
14 receiverships and is authorized to make all necessary and proper orders to carry out the
15 purposes of A.R.S. § 20-601, *et seq.* (the “Arizona Receivership Act”). A.R.S. § 20-
16 612(A). Among other things, one of the purposes of the Arizona Receivership Act is to
17 provide an exclusive forum to hear and determine claims against MHP and Meritus
18 Mutual. *See* A.R.S. § 20-628. In response to the claim procedures ordered by this Court,
19 CMS and DOJ have filed proofs of claim against MHP and Meritus Mutual in these
20 receivership proceedings asserting claims for amounts due under the ACA. As a result,
21 this Court has jurisdiction with respect to the determination and adjudication of those
22 claims under the Arizona Receivership Act.

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

1 a. The following amounts are owed by CMS to MHP:

2 Risk Corridor Claims: \$ 55,513,299.00

3 Reinsurance: \$ 7,171,320.00

4 Total: \$ 62,684,619.00

5 b. The following amounts are owed by CMS to Meritus Mutual:

6 Risk Corridor Claims: \$ 12,938,057.00

7 Reinsurance: \$ 3,283,275.00

8 Total: \$ 16,221,332.00

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

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

19 a. The Setoff Petition seeks an Order establishing that the CMS claims against
20 Meritus Mutual under the Start-Up Note and the Solvency Note, which combined total
21 \$93,826,261.26 (collectively, the "CMS Surplus Notes"), are classified as Class 10 priority
22 level claims under A.R.S. § 20-629(A)(10). Under the relief requested in the Setoff
23 Petition, determination of the Class 10 claim amount would be deferred unless and until it
24 appears to the Receiver that a distribution may be made at the Class 10 level and, by their
25 contractual terms, the CMS Surplus Notes would not be subject to setoff.

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

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

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

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

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

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

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

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

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

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

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

26 (EQUALS)
27 Net Risk Corridor Claims due
28 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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ENTERED this ____ day of _____, 2019.

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The Honorable Daniel Martin
Maricopa County Superior Court Judge