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8 SUPERIOR COURT OF ARIZONA
9 COUNTY OF MARICOPA

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

12 Plaintiff,

13 vs.

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

17 Defendants.
18

No. CV2016-011872

PETITION NO. 40

**RECEIVER'S PETITION TO
ACCEPT LIQUIDATION BALANCE
SHEET AS OF DECEMBER 31, 2019**

(Assigned to The Honorable
Daniel Martin)

19 Darren Ellingson, in his capacity as the Special Deputy Receiver of Compass
20 Cooperative Mutual Health Network, Inc. doing business as Meritus Mutual Health
21 Partners ("Meritus Mutual") and Compass Cooperative Health Plan, Inc. dba Meritus
22 Health Partners ("MHP") (collectively referred to as the "Meritus Companies"), appointed
23 pursuant to A.R.S. § 20-611, *et seq.*, hereby petitions the Court for entry of the Order re
24 Petition No. 40 Accepting Liquidation Balance Sheet as of December 31, 2019.

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

27 2. Consistent with and subject to the Arizona Insurer Receivership Act, A.R.S.
28 § 20-611 *et seq.* and Orders entered by this Court, the Receiver for MHP and Meritus

1 Mutual continues to marshal and liquidate assets and to administer and adjudicate
2 liabilities and claims. While the marshalling, liquidating, administration, adjudication and
3 related analysis is continuing, at this time the Receiver is submitting this Liquidation
4 Balance Sheet as of December 31, 2019.

5 3. The information in this petition is based on the attached Declaration of
6 Special Deputy Receiver Regarding Liquidation Balance Sheet as of December 31, 2019,
7 including: Declaration Exhibit 1 comprised of the Liquidation Balance Sheet and the
8 accompanying Notes; and Declaration Exhibit 2 comprised of the Unaudited Statements of
9 Net Assets as of December 31, 2019, the Unaudited Statements of Change in Net Assets in
10 Liquidation as of December 31, 2019 and the accompanying Notes (collectively, the
11 “Declaration”). The Declaration is incorporated herein by reference.

12 4. The Liquidation Balance Sheet is prepared in reliance on, among other
13 things, this Court’s March 8, 2019 Order Re Petition No. 26 Granting Claim Determination
14 and Setoff Related to Claims of the United States (the “Setoff Order”). Paragraphs 10, 12
15 and 13 of the Setoff Order include the following findings:

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

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

26 Net Risk Corridor Claims due and owing from CMS to MHP: \$4,863,176

27 Net Reinsurance Claims due and owing from CMS to MHP: \$7,171,320

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

7 Net Risk Corridor Claims due and owing from CMS to Meritus Mutual:

8 \$12,182,140

9 Net Reinsurance Claims due and owing from CMS to Meritus Mutual:

10 \$3,283,275

11 5. The Receiver is continuing to seek recovery for amounts due under the Risk
12 Corridor Program and under the Reinsurance Program via actions pending in the Court of
13 Federal Claims. On April 27, 2020, the United States Supreme Court entered its Order in
14 *Maine Community Health Options v. U.S.*, Case Nos. 18-1023, 18-1028 and 18-1038) and
15 held, among other things: (1) the Affordable Care Act created a government obligation to
16 pay insurers the full amount set out in the Risk Corridors Program; and (2) under the
17 Tucker Act, the Court of Federal Claims is an appropriate forum for insurers to sue the
18 government for damages for failure to pay.

19 6. Estate Assets – Liquidation Basis. Cash and cash-equivalents for MHP total
20 \$3,258,804 and for Meritus Mutual total \$461,833.

21 a. The other non-cash assets primarily are comprised of receivables, claims,
22 causes of action and setoffs. Those assets are not readily liquidated or otherwise reduced
23 to cash and their liquidation remains subject to a number of factors beyond the Receiver's
24 control. While the Receiver reserves all rights to marshal and liquidate all assets of the
25 estates, the Receiver included a figure as a "reserve" in order to allow the amounts to net
26 out to zero for purposes of reporting the asset on a liquidation basis.

1 b. For example, negative balances and receivables related to providers total
2 \$444,071 for MHP and \$298,646 for Meritus Mutual. The Receiver reserves the right to
3 seek collection of such amounts by offset or otherwise depending on the circumstances.

4 c. Additionally, claims against the United States government are addressed in
5 the Setoff Order. As determined by the Setoff Order, the net claims due to MHP from
6 CMS total \$12,034,498, comprised of Risk Corridor claims totaling \$4,863,178 and
7 Reinsurance claims totaling \$7,171,320. Likewise, the net claims due to Meritus Mutual
8 from CMS total \$15,465,416, comprised of Risk Corridor claims totaling \$12,182,141 and
9 Reinsurance claims totaling \$3,283,275.¹

10 7. Liabilities – Statutory Priority System. Liabilities to be adjudicated for the
11 receivership estates are organized according to the statutory priority system (A.R.S. § 20-
12 629) based on claims made with the Receiver in accordance with the Liquidation Plan
13 previously approved by the Court. Claims in each class must be paid in full before estate
14 assets may be used to pay creditors at the next level. A.R.S. § 20-629(A). Among other
15 things, proofs of claim remain subject to an adjudication process which includes the
16 opportunity for notice, objection and Court determination. The figures are subject to
17 change and the Receiver may adopt a different recommendation from that provided herein
18 depending on the circumstances. However, initial figures at this time include the
19 following.

20 a. **Class 1** – Administrative expenses are incurred on an on-going basis subject
21 to and in accordance with the Arizona Insurer Receivership Act and Orders entered by this
22 Court. Payments to legal counsel, the Special Deputy Receiver and Regulatory Services
23 Group continue to be reported on a quarterly basis in the Status Reports. Details
24 associated with the administrative expenses are set forth in Declaration Exhibit 2 attached
25 to the Declaration of Special Deputy Receiver. As of December 31, 2019, the combined
26 amount of administrative expenses for 2019 total \$396,875. The administrative expenses

27 _____
28 ¹ This Petition and the related Notes rely on the specific figures provided for in the Setoff Order re Petition 26. The figures in the Liquidation Balance Sheet vary slightly (between \$1 and \$2) due to calculations and automatic rounding in the spreadsheet used to generate the balance sheet.

1 will continue in accordance with Arizona law depending on the circumstances and subject
2 to the Arizona Insurer Receivership Act and Orders entered by this Court.

3 b. **Class 2** – Guaranty Association claims for Meritus Mutual currently total
4 \$3,340,742, which number may be revised as the Guaranty Association continues to incur
5 expenses, pay claims and provide coverage in accordance with its enabling act, A.R.S.
6 § 20-681 *et seq.* Because the Guaranty Association was not legally authorized to provide
7 coverage for MHP as a health care services organization, there are no Guaranty
8 Association claims applicable to MHP.

9 c. **Class 3** – Policyholder, member and provider claims for MHP that are out of
10 network currently, also referred to as “non-contracted” provider claims, total \$5,691,491.
11 For Meritus Mutual, the Class 3 claims that are not covered by the Guaranty Association
12 currently total \$1,243.

13 d. **Class 4** – Claims of the United States Government that would constitute
14 Class 4 claims as submitted under the proof of claim process by the United States total
15 \$50,650,121 as against MHP and \$755,916 as against Meritus Mutual. Those claims are
16 subject to the Setoff Order and, as noted above and addressed in the Setoff Order, the net
17 amount of Class 4 claims is zero.

18 e. **Class 5** – There are no claims for compensation to employees.

19 f. **Class 6** – The amount of state taxes and fees that would be Class 6 claims
20 total \$730,505 for MHP and total \$11,848 for Meritus Mutual.

21 g. **Class 7** – The amount of claims against MHP for providers required by law
22 or agreement to hold enrollees harmless from liability for services (referred to as in-
23 network or contract providers) currently totals \$4,221,511. Because Meritus Mutual is not
24 a health care services organization, there are no Class 7 claims applicable to Meritus
25 Mutual.

26 h. **Class 8** – The amount of claims for other general creditors totals
27 \$52,225,015 for MHP and totals \$14,808 for Meritus Mutual. Among other things, this
28 figure includes intercompany payables as between MHP and Meritus Mutual totaling in

1 excess of \$52 million. The amount of intercompany payables may be subject to further
2 consideration depending on the circumstances.

3 i. **Class 9** – At this time, the Receiver has not identified untimely proofs of
4 claim but may do so in the future.

5 j. **Class 10** – The United States has submitted a claim against Meritus Mutual
6 associated with surplus notes totaling \$93,826,261. The claim is not subject to setoff per
7 the Setoff Order.

8 8. Magnitude of Insolvency – Comparing Assets to Liabilities on a Liquidation
9 Basis. The magnitude of the insolvency for MHP and Meritus Mutual remains substantial
10 when considered on a liquidation basis in accordance with the Arizona Insurer
11 Receivership Act.

12 a. With respect to MHP, as of year-end 2019, there are cash and/or cash
13 equivalents of approximately \$3,285,804, total assets of \$3,287,969 and total liabilities of
14 \$113,518,643.

15 b. With respect to Meritus Mutual, as of year-end 2019, there are cash and/or
16 cash equivalents of approximately \$461,833, total assets of the same amount, \$461,833,
17 and total liabilities of \$97,952,983.

18 WHEREFORE, the Receiver requests that the Court enter the Order re Petition
19 No. 40 Accepting Liquidation Balance Sheet as of December 31, 2019.

20 Dated this 12th day of May, 2020

21 **FAEGRE DRINKER BIDDLE & REATH LLP**

22
23 By: /s/ Joel Glover (#034018)
24 Joel A. Glover
Attorneys for Receiver

25 COPY of the foregoing mailed this
26 12th day of May, 2020 to the
attached Master Service List
27 /s/ Tari Rader
28 Tari Rader

1 SUPERIOR COURT OF ARIZONA

2 COUNTY OF MARICOPA

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

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