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6 Attorneys for Receiver

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8 SUPERIOR COURT OF ARIZONA
9 COUNTY OF MARICOPA

10 STATE OF ARIZONA, *ex rel.*
11 EVAN G. DANIELS, 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. 46

**PETITION TO ACCEPT
NINETEENTH STATUS REPORT
FOR THE PERIOD ENDING JUNE
30, 2021**

(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. 46 to Accept Nineteenth Status Report for the Period Ending June 30, 2021
25 for the reasons set forth herein.

26 1. In an Order dated August 10, 2016, this Court placed Meritus Mutual and
27 MHP into receivership under orders of liquidation.
28

1 2. On August 24, 2016, this Court entered Order Re Petition No. 1 – Petition
2 for Entry of Order Approving Compensation for Special Deputy Receiver and for Legal
3 Counsel.

4 a. Pursuant to Paragraph 3(c) of that Order, the Receiver is required to
5 make periodic filings, initially quarterly, of a Petition to Accept Status Report, which filing
6 is required to include amounts paid to the Special Deputy Receiver and to legal counsel
7 during the period along with a brief summary of services and/or tasks performed during the
8 period and other matters as requested by the Court.

9 b. In order to provide such report for the prior period, consistent with
10 Paragraph 3(c), the Special Deputy Receiver is submitting this Petition to Accept
11 Nineteenth Status Report for the Period Ending June 30, 2021 (“Petition”) after the quarter
12 end of the prior period ending June 30, 2021. Unless the Court otherwise orders, the
13 Special Deputy Receiver anticipates filing these reports effective each calendar quarter
14 end.

15 3. This Petition along with the Status Report included herein is submitted in
16 accordance with those requirements.

Summary of Services/Tasks

17 4. The services and tasks performed during the reporting period (First Quarter
18 of 2021) include the following:
19

20 a. Litigation.

21 i. Risk Corridor Class Action. The Supreme Court’s decision in *Maine*
22 *Cnty. Health Options v. United States*, (2019) (No. 18-1028) entered on April 27, 2020,
23 ruled that the insurance carriers have a right to payment under the “Risk Corridors”
24 program of the Affordable Care Act, Congress did not repeal the obligation of the federal
25 government to pay the carriers, and the carriers can sue for payment under the Tucker Act
26 in the Court of Federal Claims, Case No. 1:16-cv-00259-MMS. After that Order, Meritus
27 was placed in a “Dispute Subclass” comprised of four class members who dispute the
28 amounts due and, in particular, the government’s right to offset. On October 30, 2020, the

1 government filed its amended answer, asserting a counterclaim against Colorado HealthOp
2 and Meritus for breach of statutory and regulatory obligations to make payments under the
3 Affordable Care Act. Meritus filed a motion to dismiss the government’s counterclaims on
4 November 20, 2020. The government filed its Opposition to the Motion to Dismiss the
5 United States’ Counterclaim on January 22, 2021. The Dispute Subclass, including
6 Meritus, filed its Reply in Further Support of its Motion to Dismiss the United States’
7 Counterclaim. In June, a Notice of Supplemental Authority was filed to provide notice of
8 a recent decision by the United States Court of Appeals for the Federal Circuit in *Conway*
9 *v. United States*, No. 2020-1292 regarding a Colorado Co-Op. In the *Conway* decision, the
10 Federal Circuit found that “neither the ACA nor HHS’ regulations implementing the ACA
11 evidence” a “clear and manifest intent to preempt Colorado law that fixes creditors’ rights
12 during insolvency.” Accordingly, the court held that “the federal scheme does not preempt
13 Colorado’s creditor priority framework.” An order regarding the pending motion to
14 dismiss has not yet been entered.

15 ii. Reinsurance Claim. As detailed in Petition No. 26 Request for
16 Hearing, Claim Determination and Setoff Related to Claims of the United States, after
17 implementation of the setoff, there is a net amount under the ACA Reinsurance program
18 due to Meritus Mutual and MHP from the Center for Medicare and Medicaid Services
19 (“CMS”). Consistent with the Order Approving Petition No. 26, the Receiver caused to be
20 prepared and filed on September 27, 2019 a Complaint for amounts due related to the
21 Reinsurance. The action was pending in the United States Court of Federal Claims, Case
22 No. 1:19-cv-01499-MCW. On December 2, 2020, the case was reassigned as Case No.
23 1:19-cv-01499-MMS and stayed pending a ruling on the Motion to Dismiss in the Risk
24 Corridor Class Action. There has been no change to the status of the Reinsurance Claim
25 since it was stayed.

26 b. Liquidation Balance Sheet. The Receiver and Counsel prepared the
27 liquidation balance sheet for year-end 2020 along with related notes and pleadings.
28

1 c. Proof of Claim (“POC”) Process and Provider Payment Process. The
2 Receiver continued to implement the POC process, including considering claim amounts,
3 provider payments, priority levels and potential offsets, depending on the circumstances.

4 d. Accounting Services and General Accounting and Administrative.
5 The Receiver continued additional work on the accounting for the Meritus Companies in
6 liquidation, including identifying assets, claims and liabilities on a liquidation basis. As
7 part of the accounting work, the Receiver continued to implement and account for the
8 Receivership Liquidation, the Setoff involving CMS, the Return of Excess Premiums,
9 among other things.

10 Summary of Payments

11 5. Legal Counsel. During the reporting period, the total amounts (fees and
12 expenses) that have been paid to Faegre Drinker Biddle & Reath LLP as legal counsel are
13 \$9,591.90 for Meritus Mutual and \$9,591.90 for MHP for a combined amount of
14 \$19,183.80. Work was performed and invoices were submitted for additional services and
15 amounts during the reporting period but not paid until after June 30, 2021. Because of the
16 timing, those payments will be referenced in the next status report.

17 6. Special Deputy Receiver. During the reporting period, the total amounts
18 (fees and expenses) that have been paid to the Special Deputy Receiver are \$3,625 for
19 Meritus Mutual and \$3,625 for MHP for a combined amount of \$7,250. Work was
20 performed and invoices were submitted for additional services and amounts during the
21 reporting period but not paid until after June 30, 2021. Because of the timing, those
22 payments will be referenced in the next status report.

23 7. Regulatory Services Group. During the reporting period, no payments were
24 made to the Regulatory Services Group. Work may have been performed and invoices
25 submitted for additional services and amounts during the reporting period but not paid
26 until after June 30, 2021. Because of the timing, those payments, if any, would be
27 referenced in the next status report.

1 WHEREFORE, the Receiver requests that the Court enter the Order re Petition
2 No. 46 Accepting Nineteenth Status Report for the Period Ending June 30, 2021 in the
3 form lodged concurrently with this Petition after expiration of the objection period.

4 Dated this 6th day of August, 2021.

5 **FAEGRE DRINKER BIDDLE & REATH LLP**

6 By: /s/ Joel Glover (#034018)
7 Joel A. Glover
8 *Attorneys for Receiver*

9
10 COPY of the foregoing mailed this
11 6th day of August, 2021 to the
12 attached Master Service List

13 /s/ Tari Rader
14 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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