

1 **FAEGRE DRINKER BIDDLE & REATH LLP**  
1144 15<sup>th</sup> Street, Suite 3400  
2 Denver, Colorado 80202

3 **Joel A. Glover** (State Bar No. 034018)  
Direct Dial: 303.607.3648  
4 Direct Fax: 303.607.3600  
Email: [Joel.Glover@Faegredrinker.com](mailto:Joel.Glover@Faegredrinker.com)  
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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. 49**

**PETITION TO ACCEPT TWENTY-  
FIRST STATUS REPORT FOR THE  
PERIOD ENDING DECEMBER 31,  
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. 49 to Accept Twenty-First Status Report for the Period Ending December 31,  
25 2022 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 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. An order regarding the pending motion to dismiss has not yet been entered.

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

19           iii. Recent Decisions from the Federal Circuit. Recently, the United  
20 States Court of Appeals for the Federal Circuit issued two opinions relating to ACA  
21 disputes between co-ops like Meritus and the United States. In *Conway v. United States*,  
22 No. 2020-1292, the Federal Circuit found that “neither the ACA nor HHS’ regulations  
23 implementing the ACA evidence” a “clear and manifest intent to preempt Colorado law  
24 that fixes creditors’ rights during insolvency.” Accordingly, the court held that “the  
25 federal scheme does not preempt Colorado’s creditor priority framework.” Subsequently,  
26 the issue of setoffs was considered in the context of the ACA and insurance liquidations in  
27 *Richardson v. United States*, No. 18-1731C. In *Richardson*, the Court relied on *Conway*,  
28 concluding that the case “greatly illuminates the way forward.” *Richardson*, No. 18-



1 reporting period but not paid until after December 31, 2021. Because of the timing, those  
2 payments will be referenced in the next status report.

3 7. Regulatory Services Group. During the reporting period, no payments were  
4 made to the Regulatory Services Group. Work may have been performed and invoices  
5 submitted for additional services and amounts during the reporting period but not paid  
6 until after December 31, 2021. Because of the timing, those payments, if any, would be  
7 referenced in the next status report.

8 WHEREFORE, the Receiver requests that the Court enter the Order re Petition  
9 No. 49 Accepting Twenty-First Status Report for the Period Ending December 31, 2021 in  
10 the form lodged concurrently with this Petition after expiration of the objection period.

11 Dated this 14th day of February, 2022.

12 **FAEGRE DRINKER BIDDLE & REATH LLP**

13 By: /s/ Joel Glover (#034018)  
14 Joel A. Glover  
15 *Attorneys for Receiver*

16  
17 COPY of the foregoing mailed this  
18 14<sup>th</sup> day of February, 2022 to the  
19 attached Master Service List

20 /s/ Michelle Cline  
21 Michelle Cline

1 SUPERIOR COURT OF ARIZONA

2 COUNTY OF MARICOPA

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

5 **MASTER SERVICE LIST**

6 Director Evan G. Daniels, Receiver  
7 The Arizona Department of Insurance  
8 and Financial Institutions  
9 100 North 15th Avenue, #102  
Phoenix, Arizona 85007  
(Per request, distribution by email only to [Liane.Kido@difi.az.gov](mailto:Liane.Kido@difi.az.gov).)

10 Liane Kido, Deputy Receiver  
11 Arizona Department of Insurance  
12 100 North 15th Avenue, #102  
Phoenix, Arizona 85007  
(Per request, distribution by email only to [Liane.Kido@difi.az.gov](mailto:Liane.Kido@difi.az.gov).)

13 Lynette Evans  
14 Public Law Section  
15 Office of the Attorney General  
2005 N. Central Avenue  
16 Phoenix, AZ 85004  
*Attorneys for Arizona Department of Insurance*

17 Richard G. Erickson  
18 Robert F. Kethcart  
19 Snell & Wilmer L.L.P.  
20 One Arizona Center  
400 East Van Buren  
Phoenix, Arizona 85004  
*Attorneys for Defendants*

22 Larry Aldrich, Executive Chairman  
23 Employers Health Alliance of Arizona  
24 7520 East McLellan Lane  
Scottsdale, Arizona 85250

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28

Christophe Burusco  
Sidley Austin LLP  
555 West 5th Street, 40th Floor  
Los Angeles, California 90013  
*Attorneys for Care1st Health Plan Administrative Services, Inc.*

Matthew A. Clemente  
Sidley Austin LLP  
One South Dearborn  
Chicago, Illinois 60603  
*Attorneys for Care1st Health Plan Administrative Services, Inc.*

Lori Nestor, Executive Director  
Arizona Life & Disability  
Insurance Guaranty Fund  
100 N. 15th Avenue, Suite 261  
Phoenix, AZ 85007

Darren Ellingson  
Special Deputy Receiver  
Raintree Corporate Center I  
15333 North Pima Road, Suite 305  
Scottsdale, Arizona 85260

Banner Health  
Patient Financial Services  
Attn: Anna Rosalez, Manager  
525 West Brown Road, Third Floor  
Mesa, Arizona 85201

S. David Childers  
Kutak Rock LLP  
8601 North Scottsdale Road, Suite 300  
Scottsdale, Arizona 85253

Debbie Bailey  
Cactus Children's Clinic, PC  
5940 West Union Hills Drive  
Suite D100  
Glendale, Arizona 85308

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27  
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Monica Gaspari  
Billing Office Supervisor  
Pima Heart Physicians  
3709 North Campbell Avenue  
Suite 201  
Tucson, Arizona 85719

United States Department of Justice  
40 North Central Avenue, #1800  
Phoenix, Arizona 85004

U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

United States Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Sinead Baldwin  
1200 Brickell Avenue  
PH 2000  
Miami, Florida 33131  
*Attorneys for HealthSouth Rehabilitation Hospital*

Jill Wright  
Parallon  
1100 Charlotte Avenue  
Suite 1600  
Nashville, Tennessee 37203

Susan Sweat  
Ambulance Billing Office Supervisor  
Bullhead City Fire Department  
1260 Hancock Road  
Bullhead City, Arizona 86442