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Attorneys for Receiver

SUPERIOR COURT OF ARIZONA
COUNTY OF MARICOPA

STATE OF ARIZONA, *ex rel.*
EVAN G. DANIELS, 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

PETITION NO. 50

**UNOPPOSED PETITION TO
APPROVE SETTLEMENT WITH
UNITED STATES RELATED TO
CLAIMS UNDER AFFORDABLE
CARE ACT**

(Assigned to The Honorable
Daniel Martin)

Darren Ellingson, in his capacity as the Special Deputy 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”) (collectively referred to as “Meritus”), appointed pursuant to A.R.S. § 20-611, *et seq.*, hereby petitions the Court for entry of an Order Approving Settlement with United States Related to Claims under Affordable Care Act for the reasons set forth herein.

1. **Liquidation Order.** In an Order dated August 10, 2016, this Court placed Meritus into receivership under orders of liquidation.

1 2. **Liquidation Plan.** Dated March 8, 2017, this Court entered its Order
2 Approving Liquidation Plan which, among other things, established May 15, 2017 as the
3 claims deadline by which all Proofs of Claim against Meritus must be filed or forever
4 barred.¹

5 3. **United States POCs.** The United States submitted three proofs of claim in
6 accordance with the Order Approving Liquidation Plan, including claims by the
7 Department of Health and Human Services, Centers for Medicare & Medicaid Services
8 (“CMS”) against MHP in the combined total amount of \$50,650,123.02 (the “CMS-MHP
9 Claims”); claims by CMS against Meritus Mutual in the combined total amount of
10 \$94,581,998.78 (the “CMS-Meritus Mutual Claims”); and claims by the United States
11 Department of Justice against Meritus Mutual and MHP in an undetermined amount (the
12 “DOJ Claims”) (*See Ex. A Ellingson Declaration*, ¶ 2).

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

15 CSR:	\$ 3,899,178.74
16 PPACA Reinsurance:	\$ 510,975.30
17 Risk Adjustment:	\$46,195,827.78
18 PPACA Fee:	\$50,650,123.02

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

21 Loan/Note Claims:

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

25 ACA Related Claims:

26 CSR:	\$ 115,649.36
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27
28 ¹ This Petition No. 50 makes numerous references (by date and title) to pleadings and orders on file in these proceedings. To avoid duplication, copies of those same pleadings and orders are not attached hereto and can be provided upon request.

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. **Meritus ACA Claims against CMS.** While claims were asserted by CMS against MHP and Meritus Mutual under the ACA, MHP and Meritus Mutual also have specific claims against CMS under the ACA. (*See Ex. A, Ellingson Declaration*, ¶ 3.)

a. According to Meritus' records, 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. According to Meritus' records, 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

5. **POC Determination and Offset by Receivership Court.** Dated December 18, 2018, the Receiver filed Petition No. 26, Request for Hearing, Claim Determination and Setoff Related to the Claims of the United States. After notice and a hearing, dated March 8, 2019, the Court entered its Order Re Petition No. 26 Granting Claim Determination and Setoff Related to Claims of the United States which Order applied an offset in accordance with A.R.S. § 20-638 so that Meritus' debt to the United States was paid in full and the net remaining amounts that the United States owes to MHP and Meritus Mutual under the ACA was as follows:

Company	Risk Corridor Claim (Net Due from CMS)	Reinsurance Claim (Net Due from CMS)	Total (Net Due from CMS)
MHP	\$4,863,176.00	\$7,171,320.00	\$12,034,496.00
Meritus Mutual	\$12,182,140.00	\$3,283,275.00	\$15,465,415.00
Meritus Total	\$17,045,316.00	\$10,454,595.00	\$27,499,911.00

6. **Risk Corridor Action and Contingency Fee.** Dated May 4, 2017, this Court entered its Order Re Petition No. 10 Approving Contingency Fee Arrangement for Risk Corridor Suit. Among other things, that Order approved a contingency fee rate associated with the prosecution of the Risk Corridor payments in the range of five percent (5%) to ten (10%) whether by prosecution of an individual lawsuit or opting-in to the Class Action. The Receiver opted-in to the Class Action and was subsequently placed in a “Dispute Subclass” in a class action proceeding before the Court of Federal Claims, Case No. 1:16-cv-00259-MMS (the “Risk Corridor Action”). Meritus has been represented in that action by the Quinn Emanuel law firm (the “Risk Corridor Counsel”) on a contingency fee basis. The parties have agreed that the contingency fee percentage will be 5%, subject to approval by the Court of Federal Claims with jurisdiction over the Risk Corridor Action. (*See Ellingson Declaration*, ¶ 4.)

7. **Reinsurance Action and Contingency Fee.** Dated June 14, 2019, this Court entered its Order Re Petition No. 33 Approving Contingency Fee Arrangement. Among other things, that Order approved a contingency fee rate associated with the prosecution of claims for Reinsurance under the ACA on behalf of Meritus Mutual and MHP in the amount of ten percent (10%). The Receiver retained the Crowell & Moring law firm (the “Reinsurance Counsel”) and commenced an individual suit before the Court of Federal Claims, Case No. 1:19-cv-01499-MMS (the “Reinsurance Action”). (*See Ellingson Declaration*, ¶ 5.)

1 **8. Disputed Claims – Meritus and United States.** The claims between
2 Meritus and the United States continue to be disputed and contested, with issues including
3 but not limited to the specific amounts due to and/or from CMS and Meritus, application of
4 the offset and the potential application of interest to the detriment of Meritus that the
5 United States is seeking to recover by Counterclaim in the Court of Federal Claims. A
6 Motion to Dismiss Counterclaims of the United States was filed by Meritus in the Risk
7 Corridor Action on various grounds, including but not limited to, reverse preemption
8 supporting Arizona insurance receivership law under these circumstances and that the
9 United States was in a net debtor position after offset so there could be no interest under
10 Arizona or federal law; no ruling has been entered. The Reinsurance Action was
11 reassigned to the same judge handling the Risk Corridor Action and then stayed pending
12 the resolution of common legal questions. (*See Ex. A Ellingson Declaration*, ¶ 6.)

13 **9. Judicial Decisions Related to Disputed Claims.** Judicial decisions have
14 been entered regarding the ACA and its application to CMS and insurance carriers. The
15 United States Supreme Court’s decision in *Maine Cmty. Health Options v. United States*,
16 (2019) (NO. 18-1028) entered on April 27, 2020, ruled that the insurance carriers have a
17 right to payment under the Risk Corridors program of the Affordable Care Act, Congress
18 did not repeal the obligation of the federal government to pay the carriers, and the carriers
19 can sue for payment under the Tucker Act in the Court of Federal Claims. In *Conway v.*
20 *United States*, No. 2020-1292, the Federal Circuit found that “neither the ACA nor HHS’
21 regulations implementing the ACA evidence” a “clear and manifest intent to preempt
22 Colorado law that fixes creditors’ rights during insolvency.” Accordingly, the court held
23 that “the federal scheme does not preempt Colorado’s creditor priority framework.”
24 Subsequently, the issue of setoffs was considered in the context of the ACA and insurance
25 liquidations in *Richardson v. United States*, No. 18-1731C. In *Richardson*, the Court
26 relied on *Conway*, concluding that the case “greatly illuminates the way forward.”
27 *Richardson*, No. 18-1731C, at 13. Among other things, the *Richardson* decision further
28 confirmed that the state liquidation proceedings govern:

1 These cases, along with Conway, all counsel in favor of this Court’s holding
2 that the government is bound by the Nevada state liquidation proceedings,
3 like any other creditor, and cannot collaterally attack the results of those
4 proceedings by asserting an administrative offset.

5 The Federal Circuit Court of Appeals confirmed that “the government cannot use an
6 administrative offset to make an end-run around the state liquidation process, particularly
7 not where the government elected to participate in that process and had its claim decided.”
8 *Richardson*, No. 18-1731C, at 40.

9 10. **Proposed Compromise, Settlement and Stipulation.** Subject to the prior
10 approval of this Court, Meritus and the United States (subject to final approval by the
11 Associate Attorney General) have agreed to resolve their disputes in the Risk Corridor
12 Action and in the Reinsurance Action by means of a compromise, settlement and
13 resolution of their claims including but not limited to joint stipulations of judgment. The
14 Stipulation for Entry of Partial Judgment Based on Compromise, Settlement and
15 Resolution as to Two Members of the Dispute Subclass is attached (*See Ex. A, Ellingson*
16 *Declaration*, ¶ 7 and *Exhibit A-1*) (the “Stipulation”). As provided for in the Stipulation,
17 the Reinsurance Action would be dismissed with prejudice (*See Ex. A, Ellingson*
18 *Declaration, Exhibit A-1*, ¶ 15) and the Risk Corridor Action would be resolved by
19 settlement and stipulation including the following language (*See Ex. A, Ellingson*
20 *Declaration, Exhibit A-1*, ¶¶ 13 and 14):

21
22 13. Meritus and the United States have now agreed to resolve their disputes
23 by means of this compromise, settlement, and resolution of their claims and, in
24 accordance with Rule 54(b) of the Rules of the Court of Federal Claims, agree there
25 is no just reason to delay judgment as to Meritus and the United States. For purposes
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27
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1 of such agreed compromise, settlement, and resolution, and to expedite payment of
2 the net amount due to Meritus, the Parties stipulate the following:

3 a. Prior approval of this stipulation has been granted to the liquidator of the
4 estates of Meritus by the Receivership Court.

5 b. Meritus is entitled to payment under section 1342 of the ACA, the risk
6 corridors program, for the 2014 and 2015 benefit years in the amount of
7 \$72,738,364.35.
8

9 c. The United States is entitled to payment from Meritus for principal under
10 section 1343, the risk adjustment program, in the amount of \$46,583,774.29;
11 the United States is entitled to payment from Meritus for principal of CSR
12 Reconciliation in the amount of \$3,920,461.72; and the United States is
13 entitled to payment from Meritus for principal for risk adjustment user fees in
14 the amount of \$47,320.83. Therefore, the United States is entitled to principal
15 payments under the ACA from Meritus for the ACA program debts identified
16 above in the aggregate amount of \$50,551,556.84.
17

18 d. Under this compromise, settlement, and resolution, the net amount payable
19 by the United States to Meritus is \$22,186,807.51, which is determined by
20 reducing the \$72,738,364.35 owed to Meritus for risk corridors by the total
21 amount of the principal payments owed to the United States identified above
22 totaling \$50,551,556.84.
23

24 e. Under this compromise, settlement, and resolution, the United States is
25 accepting the amount of \$50,551,556.84 from Meritus in full satisfaction of all
26 debt Meritus owes to the United States arising under the risk adjustment, CSR
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1 reconciliation, and risk adjustment user fees programs, including but not
2 limited to the Counterclaim asserted by the United States.

3
4 14. Accordingly, the Parties hereby stipulate that judgment shall be entered
5 against the United States in favor of Meritus in the amount of \$72,738,364.35, and
6 judgment shall be entered against Meritus in favor of the United States in the amount
7 of \$50,551,556.84, with the judgment amount owed from Meritus to the United
8 States (\$50,551,556.84) being paid through deduction from the amount owed by the
9 United States to Meritus (\$72,738,364.35). The net amount payable by the United
10 States to Meritus pursuant to this judgment is \$22,186,807.51.
11

12
13 11. **Allocation of Proceeds Subject to Receivership Court Approval.** In
14 agreeing to the Stipulation, the Receiver would allocate and apply the proceeds among the
15 two estates (MHP and Meritus) and among the two different ACA claims (Risk Corridor
16 and Reinsurance) in a manner intended to facilitate paying in full all approved claims in
17 Classes 1 through 9 (as determined subject to and in accordance with Arizona Law, the
18 approved Liquidation Plan and further order of this Court) with the remaining balance used
19 to pay the United States as a Class 10 claimant for surplus note claims. The Receiver's
20 intended allocation of proceeds also more closely aligns with the Court's March 18, 2019
21 Order Re Petition No. 26 and facilitates calculation and payment of contingency fees in
22 amounts previously approved by this Court. (*See Ex. A, Ellingson Declaration*, ¶ 8.)

23 12. **Petition 50 Unopposed by Interested Persons.** As set forth herein, this
24 Petition 50 is unopposed by the specified interested persons. Accordingly, if no objections
25 are timely filed with the Court, the Receiver requests entry of an order granting the
26 requested relief.

27 a. **United States No Objection to Allocation.** As part of the Stipulation (¶
28 15), the United States stipulates that "it will not dispute or object to Meritus' allocation of

1 payment of the judgment between Meritus (or their estates), this case, *Daniels v. United*
2 *States*, No. 19-1499C, or otherwise, so long as such allocation is approved by the
3 Receivership Court.” (See *Ellingson Declaration*, ¶ 9.)

4 **b. Contingency Fees – No Objection by Counsel.** The Receiver has also
5 conferred with Risk Corridor Counsel and Reinsurance Counsel and confirmed that such
6 counsel have no objection to allocation of proceeds as proposed by the Receiver and
7 calculation and payment of contingency fees, to the extent approved by the Receivership
8 Court. (See *Ellingson Declaration*, ¶ 9.)

9 **13. Proposed Allocation.** Accordingly, the Receiver proposes the following
10 allocation of the settlement proceeds and the corresponding contingency fees. The
11 allocation, if approved, would achieve at least two purposes for the benefit of the Meritus
12 estates, including: (1) aligning allocation of the settlement proceeds more closely with this
13 Court’s March 18, 2019 Order and result in a recovery for Meritus of approximately 80%
14 to 81% for each of the Risk Corridor Claims and Reinsurance Claims; (2) allocating the
15 settlement proceeds to more evenly match the anticipated claims in Classes 1 through 9 of
16 the Priority System based on the most current Liquidation Balance Sheet. (See *Ex. A*,
17 *Ellingson Declaration*, ¶ 10.) The Receiver’s proposed allocation submitted for approval
18 of this Court is as follows:

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	MHP Proposed Allocation	Meritus Mutual Proposed Allocation	Meritus Combined Proposed Allocation	Original Meritus Amount Per Offset Order
Risk Corridor Settlement Recovery	9,474,723	4,240,000	13,714,723	\$17,045,316
Less Risk Corridor Contingency (.05)	473,736	212,000	685,736	
Reinsurance Settlement Recovery	6,712,084	1,760,000	8,472,084	\$10,454,595
Less Reinsurance Contingency (.10)	671,208	176,000	847,208	
Total ACA Settlement Recovery	16,186,807	6,000,000	22,186,807	
Less Total Contingency Fees	1,144,944	388,000	1,532,944	
Net Settlement Proceeds After Allocation and Contingency Fees	15,041,863	5,612,000	20,653,863	

14. **Consistent Allocation for Non-Material Changes.** In the event that the total settlement recovery actually collected were to differ from \$22,186,807 in a non-material amount, the Receiver seeks authority to allocate the total amount consistent with the methodology proposed herein and report to the Court regarding such allocation and contingency fee payment.

15. **Future Reallocation Subject to Receivership Court Approval.** Based on the most recent Liquidation Balance Sheet filed with this Court, the Receiver anticipates that the remaining proceeds (the Net Settlement Proceeds After Allocation and Contingency Fees) would eventually be sufficient to pay non-United States claims in Classes 1-9 in full with a remaining balance to be paid to the United States for Class 10 claims under its surplus notes. There are many remaining steps to that process, including

1 but not limited to, further review and recommendations by the Receiver, submission to the
2 Court for consideration and approval after notice and opportunity for a hearing, and
3 possibly others. The Receiver seeks authority to petition this Court to make further
4 reallocation of settlement proceeds as between MHP and/or Meritus after payment of the
5 contingency fee as reasonably necessary or appropriate, subject to and in accordance with
6 Arizona law and orders of this Court.

7 WHEREFORE, the Receiver requests that the Court enter the Order Approving
8 Petition No. 50 – Unopposed Petition to Approve Settlement with United States Related to
9 Claims Under Affordable Care Act in the form lodged concurrently with this Petition after
10 expiration of the objection period and granting the following relief:

11 1. that the Stipulation for Entry of Partial Judgment Based on Compromise,
12 Settlement and Resolution as to Two Members of the Dispute Subclass in substantially the
13 same form as attached to Petition 50 as Exhibit A-1 to Exhibit A be approved;

14 2. that the Receiver be authorized to enter into, execute and implement, the
15 Stipulation for Entry of Partial Judgment Based on Compromise, Settlement and
16 Resolution as to Two Members of the Dispute Subclass in substantially the same form as
17 attached to Petition 50 as Exhibit A-1 to Exhibit A and any related document consistent
18 herewith, including taking all necessary and appropriate steps related thereto;

19 3. that the allocation of the \$22,186,807 in settlement proceeds as proposed by
20 the Receiver be approved consistent with the following:

- 21 a. MHP Risk Corridor Settlement Recovery equal to \$9,474,723;
22 b. MHP Reinsurance Settlement Recovery equal to \$6,712,084;
23 c. Meritus Mutual Risk Corridor Settlement Recovery equal to \$4,240,000; and
24 d. Meritus Mutual Reinsurance Settlement Recovery equal to \$1,760,000;

25 4. that the contingency fee payment to Risk Corridor Counsel associated with
26 the Meritus Risk Corridor Settlement Recovery totaling \$13,714,723 at a rate of 5% equal
27 to the amount of \$685,736 be approved and the Receiver be authorized to cause such
28

1 contingency fee payment to be paid to Risk Corridor Counsel from the applicable
2 settlement proceeds;

3 5. that the contingency fee payment to Reinsurance Counsel associated with the
4 Meritus Reinsurance Settlement Recovery totaling \$8,472,084 at a rate of 10% equal to the
5 amount of \$847,208 be approved and the Receiver be authorized to cause such
6 contingency fee payment to be paid to Reinsurance Counsel from the applicable settlement
7 proceeds;

8 6. that, to the extent the total settlement recovery actually collected differs from
9 \$22,186,807 in a non-material amount, the Receiver be authorized to allocate the total
10 amount consistent with the methodology proposed in Petition 50 and to report to the Court
11 regarding such allocation and contingency fee payment;

12 7. that, to the extent necessary or appropriate under the circumstances, the
13 Receiver be authorized to seek approval from this Court regarding reallocation of any
14 remaining proceeds; and

15 8. that such further relief and order be granted as necessary or appropriate
16 under the circumstances.

17 Dated this 11th day of March, 2022.

18 **FAEGRE DRINKER BIDDLE & REATH LLP**

19 By: /s/ Joel Glover (#034018)
20 Joel A. Glover
21 *Attorneys for Receiver*

22
23
24 COPY of the foregoing mailed this
25 11th day of March, 2022 to the
26 attached Master Service List

27 /s/ Michelle Cline
28 Michelle Cline

SUPERIOR COURT OF ARIZONA

COUNTY OF MARICOPA

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

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8 Attorneys for Receiver

9
10 SUPERIOR COURT OF ARIZONA

11 COUNTY OF MARICOPA

12 STATE OF ARIZONA, *ex rel.*
13 EVAN G. DANIELS, Director
14 of Insurance,

15 Plaintiff,

16 vs.

17 COMPASS COOPERATIVE MUTUAL
18 HEALTH NETWORK, INC., dba MERITUS
19 MUTUAL HEALTH PARTNERS, an
20 Arizona corporation; and
21 COMPASS COOPERATIVE HEALTH
22 PLAN, INC., dba MERITUS HEALTH
23 PARTNERS, an Arizona corporation,

24 Defendants.

No. CV2016-011872

PETITION 50

EXHIBIT A

**DECLARATION OF SPECIAL
DEPUTY RECEIVER REGARDING
THE UNOPPOSED PETITION TO
APPROVE SETTLEMENT WITH
UNITED STATES RELATED TO
CLAIMS UNDER AFFORDABLE
CARE ACT**

(Assigned to The Honorable
Daniel Martin)

25 By signing below, I, Darren Ellingson, state to the Court under penalty of law, that
26 the information stated on these pages is true and correct to the best of my knowledge and
27 belief.

28 1. I am over eighteen years of age, and I have personal knowledge of the facts
herein. I acquired my personal knowledge in my capacity as Special Deputy Receiver of
Meritus Mutual Health Partners, in liquidation ("Meritus Mutual") and of Meritus Health
Partners, in liquidation ("MHP") (collectively referred to as "Meritus"). I have served as
Special Deputy Receiver since the commencement of the Meritus Mutual and MHP

1 receiverships and, in that capacity, I am familiar with and have personal knowledge of the
2 books and records of Meritus Mutual and MHP. In acquiring my personal knowledge, I
3 relied upon work performed by one or more persons that worked under my direction and/or
4 under the direction of the Deputy Receiver.
5

6 2. Dated March 8, 2017, this Court entered its Order Approving Liquidation
7 Plan which, among other things, established May 15, 2017 as the claims deadline by which
8 all Proofs of Claim against Meritus must be filed or forever barred. The United States
9 submitted three proofs of claim in accordance with the Order Approving Liquidation Plan,
10 including claims by the Department of Health and Human Services, Centers for Medicare
11 & Medicaid Services ("CMS") against MHP in the combined total amount of
12 \$50,650,123.02 (the "CMS-MHP Claims"); claims by CMS against Meritus Mutual in the
13 combined total amount of \$94,581,998.78 (the "CMS-Meritus Mutual Claims"), and
14 claims by the United States Department of Justice against Meritus Mutual and MHP in an
15 undetermined amount (the "DOJ Claims").
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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

21	CSR:	\$ 3,899,178.74
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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:
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28 Loan/Note Claims:

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

2 Solvency Note: \$72,935,928.25

3 Total: \$93,826,261.25

4 ACA Related Claims:

5 CSR: \$ 115,649.36

6 PPACA Reinsurance: \$ 46,091.54

7 Risk Adjustment: \$ 594,168.87

8 Exchange User-Fee: \$ 7.76

9 Total: \$ 755,917.53

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

12 3. While claims were asserted by CMS against MHP and Meritus Mutual under
13 the ACA, MHP and Meritus Mutual also have specific claims against CMS under the
14 ACA.

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16 MHP:

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

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19 Total: \$62,684,619.00

20 b. According to Meritus' records, the following amounts are owed by CMS to
21 Meritus Mutual:

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

23 Reinsurance: \$ 3,283,275.00

1 Total: \$16,221,332.00

2 4. Dated May 4, 2017, this Court entered its Order Re Petition No. 10
3 Approving Contingency Fee Arrangement for Risk Corridor Suit. Among other things,
4 that Order approved a contingency fee rate associated with the prosecution of the Risk
5 Corridor payments in the range of five percent (5%) to ten (10%) whether by prosecution
6 of an individual lawsuit or opting-in to the Class Action. The Receiver opted-in to the
7 Class Action and was subsequently placed in a “Dispute Subclass” in a class action
8 proceeding before the Court of Federal Claims, Case No. 1:16-cv-00259-MMS (the “Risk
9 Corridor Action”). Meritus has been represented in that action by the Quinn Emanuel law
10 firm (the “Risk Corridor Counsel”) on a contingency fee basis. The parties have agreed
11 that the contingency fee percentage will be 5%, subject to approval by the Court of Federal
12 Claims with jurisdiction over the Risk Corridor Action.
13
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16 5. Dated June 14, 2019, this Court entered its Order Re Petition No. 33
17 Approving Contingency Fee Arrangement. Among other things, that Order approved a
18 contingency fee rate associated with the prosecution of claims for Reinsurance under the
19 ACA on behalf of Meritus Mutual and MHP in the amount of ten percent (10%). The
20 Receiver retained the Crowell & Moring law firm (the “Reinsurance Counsel”) and
21 commenced an individual suit before the Court of Federal Claims, Case No. 1:19-cv-
22 01499-MMS (the “Reinsurance Action”).
23
24

25 6. The claims between Meritus and the United States continue to be disputed
26 and contested, with issues including but not limited to the specific amounts due to and/or
27 from CMS and Meritus, application of the offset and the potential application of interest to
28 the detriment of Meritus that the United States is seeking to recover by Counterclaim in the

1 Court of Federal Claims. A Motion to Dismiss Counterclaims of the United States was
2 filed by Meritus in the Risk Corridor Action on various grounds, including but not limited
3 to, reverse preemption supporting Arizona insurance receivership law under these
4 circumstances and that the United States was in a net debtor position after offset so there
5 could be no interest under Arizona or federal law; no ruling has been entered. The
6 Reinsurance Action was reassigned to the same judge handling the Risk Corridor Action
7 and then stayed pending the resolution of common legal questions.
8
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10 7. Subject to the prior approval of this Court, Meritus and the United States
11 (subject to final approval by the Associate Attorney General) have agreed to resolve their
12 disputes in the Risk Corridor Action and in the Reinsurance Action by means of a
13 compromise, settlement and resolution of their claims including but not limited to joint
14 stipulations of judgment. The Stipulation for Entry of Partial Judgment Based on
15 Compromise, Settlement and Resolution as to Two Members of the Dispute Subclass is
16 attached (*See Ex. A, Ellingson Declaration, Exhibit A-1*) (the "Stipulation").
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19 8. In agreeing to the Stipulation, the Receiver would allocate and apply the
20 proceeds among the two estates (MHP and Meritus) and among the two different ACA
21 claims (Risk Corridor and Reinsurance) in a manner intended to facilitate paying in full all
22 approved claims in Classes 1 through 9 (as determined subject to and in accordance with
23 Arizona Law, the approved Liquidation Plan and further order of this Court) with the
24 remaining balance used to pay the United States as a Class 10 claimant for surplus note
25 claims.¹ The Receiver's intended allocation of proceeds also more closely aligns with the
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28 ¹ In the case of MHP, technically it is currently anticipated that remaining balance, if any, would be applied toward the
Class 8 claim affiliate loan currently in excess of \$52 million which Meritus Mutual would then apply to the
outstanding Class 10 surplus note claim currently in excess of \$97 million.

1 Court's March 18, 2019 Order Re Petition No. 26 and facilitates calculation and payment
2 of contingency fees in amounts previously approved by this Court.

3 9. As part of the Stipulation (§ 15), the United States stipulates that "it will not
4 dispute or object to Meritus' allocation of payment of the judgment between Meritus (or
5 their estates), this case, *Daniels v. United States*, No. 19-1499C, or otherwise, so long as
6 such allocation is approved by the Receivership Court." The Receiver has also conferred
7 with Risk Corridor Counsel and Reinsurance Counsel and confirmed that such counsel
8 have no objection to allocation of proceeds as proposed by the Receiver and calculation
9 and payment of contingency fees, to the extent approved by the Receivership Court.
10

11 10. The Receiver proposes the following allocation of the settlement proceeds
12 and the corresponding contingency fees. The allocation, if approved, would achieve at
13 least two purposes for the benefit of the Meritus estates, including: (1) aligning allocation
14 of the settlement proceeds more closely with this Court's March 18, 2019 Order and result
15 in a recovery for Meritus of approximately 80% to 81% for each of the Risk Corridor
16 Claims and Reinsurance Claims; and (2) allocating the settlement proceeds to more evenly
17 match the anticipated claims in Classes 1 through 9 of the Priority System based on the
18 most current Liquidation Balance Sheet. The Receiver's proposed allocation submitted for
19 approval of this Court is as follows:
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	MHP Proposed Allocation	Meritus Mutual Proposed Allocation	Meritus Combined Proposed Allocation	Original Meritus Amount Per Offset Order
Risk Corridor Settlement Recovery	9,474,723	4,240,000	13,714,723	\$17,045,316
Less Risk Corridor Contingency (.05)	473,736	212,000	685,736	
Reinsurance Settlement Recovery	6,712,084	1,760,000	8,472,084	\$10,454,595
Less Reinsurance Contingency (.10)	671,208	176,000	847,208	
Total ACA Settlement Recovery	16,186,807	6,000,000	22,186,807	
Less Total Contingency Fees	1,144,944	388,000	1,532,944	
Net Settlement Proceeds After Allocation and Contingency Fees	15,041,863	5,612,000	20,653,863	

11. By signing below, I state to the Court, under penalty of law, that the information stated on these pages is true and correct to the best of my knowledge and belief.

Meritus Mutual Health Partners, in Liquidation
Meritus Health Partners, in Liquidation


Darren Ellingson, Special Deputy Receiver

Date: 3/10/2022

Petition 50, Exhibit A, Ellingson Declaration, Exhibit A-1

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HEALTH REPUBLIC INSURANCE	:	
COMPANY,	:	No. 16-259C
	:	
Plaintiff,	:	Judge Davis
	:	
v.	:	
	:	
UNITED STATES OF AMERICA,	:	
	:	
Defendant.	:	

**STIPULATION FOR ENTRY OF PARTIAL JUDGMENT
BASED ON COMPROMISE, SETTLEMENT, AND RESOLUTION
AS TO TWO MEMBERS OF THE DISPUTE SUBCLASS**

To resolve the claims of Dispute Subclass Plaintiffs, Compass Cooperative Health Plan, Inc. dba Meritus Mutual Health Partners (“Meritus Mutual”) and Compass Cooperative Health Plan, Inc., dba Meritus Health Partners (“MHP”) (collectively, “Meritus”), and the defenses and counterclaims of Defendant the United States, and to permit the entry of final judgment on those claims, it is stipulated between the Parties:

STATUTORY BACKGROUND

1. The Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010), 124 Stat. 119, and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152 (2010), 124 Stat. 1029 (collectively, “ACA”) created several interrelated programs to expand access to affordable health insurance coverage.

2. Section 1341 of the ACA (42 U.S.C. § 18061) created the reinsurance program. Section 1342 of the ACA (42 U.S.C. § 18062) created the risk corridors program. Section 1343 of the ACA (42 U.S.C. § 18063) created the risk adjustment program. Section 1402 of the ACA (42 U.S.C. § 18071) authorized cost-sharing reductions (“CSRs”), and section 1412 of the ACA (42 U.S.C. § 18082) authorized advance payment of CSRs. Sections 1343 (42 U.S.C. § 18063),

1311 (42 U.S.C. § 18031), and 1321 (42 U.S.C. § 18041) of the ACA authorized the United States to collect user fees for its operation of the ACA’s risk adjustment program.

THE PARTIES’ CLAIMS

3. On February 24, 2016, Health Republic Insurance Company filed the Complaint on behalf of itself and others similarly situated, seeking risk corridors damages under section 1342 of the ACA for benefit years 2014 and 2015. The Complaint alleged a single count for violation of section 1342.

4. On January 3, 2017, the Court certified the following class (“Class”):

All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2014 and 2015 benefit years, and whose allowable costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare and Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act). Excluded from the Class are the Defendant and its members, agencies, divisions, departments, and employees.

Docket No. 30.

5. Ultimately, 153 issuers opted into the Class, including Meritus.

6. On April 27, 2020, the United States Supreme Court held that section 1342 of the ACA “created an obligation neither contingent on nor limited by the availability of appropriations or other funds,” that the obligation was not affected by subsequently enacted legislation, and that the “petitioners may seek to collect payment through a damages action in the Court of Federal Claims.” *Maine Community Health Options v. United States*, 140 S. Ct. 1308, 1323, 1331 (2020).

7. The Court subsequently divided the Class into four subclasses: (1) the Non-Dispute Subclass, for which the Court entered judgment on July 23, 2020; (2) the Dispute Subclass, which currently includes Meritus; (3) the Arches Subclass, for which the Court entered judgment on June

28, 2021; and (4) the Freelancers Subclass, for which the Court entered judgment on June 3, 2021. Docket Nos. 82, 124, 131.

8. The Court approved the Dispute Subclass with the following definition:

All approved class members offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2014 and 2015 benefit years, whose allowable costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act), and that dispute the amount due to the entity under Section 1342 of the Affordable Care Act, and/or dispute the government's right to offset debts against a judgment pursuant to Section 1342, and/or dispute the extent of any such offset.

Docket No. 82.

9. On October 30, 2020, the United States filed the Counterclaim, seeking risk adjustment damages under section 1343 of the ACA, CSR reconciliation damages, and risk adjustment user fee damages. Docket No. 101. The Counterclaim alleges a single count for violation of the ACA.

THE PARTIES' CLAIMS IN OTHER CASES

10. On August 10, 2016, the Superior Court of Arizona, County of Maricopa ("Receivership Court") entered an Order for Receivership and Injunction placing Meritus under an order of liquidation with a declaration of insolvency. The United States submitted three proofs of claim ("POC") which, among other things, asserted claims for amounts due under certain ACA programs and a right to offset involving claims of the United States. On March 8, 2019, the Receivership Court entered *Order Re Petition No. 26 Granting Claim Determination and Setoff Related to Claims of the United States* (the "Receivership Claims Order") which, among other things, accepted the claim amounts for the ACA programs as asserted by the United States in the POC and applied the offset as to amounts due between and among the United States and Meritus. Disputes exist between the United States and Meritus, including but not limited to

disputes regarding the amounts due under certain ACA programs and application of the offset regarding those amounts.

11. On September 27, 2019, Meritus also filed a complaint in the United States Court of Federal Claims seeking payment under section 1341 of the ACA, the reinsurance program. *See Daniels v. United States*, No. 19-1499C.

12. Meritus' claims in *Daniels* have been stayed pending a resolution of this case.

TERMS OF COMPROMISE, SETTLEMENT, AND RESOLUTION

13. Meritus and the United States have now agreed to resolve their disputes by means of this compromise, settlement, and resolution of their claims and, in accordance with Rule 54(b) of the Rules of the Court of Federal Claims, agree there is no just reason to delay judgment as to Meritus and the United States. For purposes of such agreed compromise, settlement, and resolution, and to expedite payment of the net amount due to Meritus, the Parties stipulate the following:

- a. Prior approval of this stipulation has been granted to the liquidator of the estates of Meritus by the Receivership Court.
- b. Meritus is entitled to payment under section 1342 of the ACA, the risk corridors program, for the 2014 and 2015 benefit years in the amount of \$72,738,364.35.
- c. The United States is entitled to payment from Meritus for principal under section 1343, the risk adjustment program, in the amount of \$46,583,774.29; the United States is entitled to payment from Meritus for principal of CSR Reconciliation in the amount of \$3,920,461.72; and the United States is entitled to payment from Meritus for principal for risk

adjustment user fees in the amount of \$47,320.83. Therefore, the United States is entitled to principal payments under the ACA from Meritus for the ACA program debts identified above in the aggregate amount of \$50,551,556.84.

- d. Under this compromise, settlement, and resolution, the net amount payable by the United States to Meritus is \$22,186,807.51, which is determined by reducing the \$72,738,364.35 owed to Meritus for risk corridors by the total amount of the principal payments owed to the United States identified above totaling \$50,551,556.84.
- e. Under this compromise, settlement, and resolution, the United States is accepting the amount of \$50,551,556.84 from Meritus in full satisfaction of all debt Meritus owes to the United States arising under the risk adjustment, CSR reconciliation, and risk adjustment user fees programs, including but not limited to the Counterclaim asserted by the United States.

14. Accordingly, the Parties hereby stipulate that judgment shall be entered against the United States in favor of Meritus in the amount of \$72,738,364.35, and judgment shall be entered against Meritus in favor of the United States in the amount of \$50,551,556.84, with the judgment amount owed from Meritus to the United States (\$50,551,556.84) being paid through deduction from the amount owed by the United States to Meritus (\$72,738,364.35). The net amount payable by the United States to Meritus pursuant to this judgment is \$22,186,807.51.

15. Upon entry of judgment and Meritus' receipt of payment, Meritus shall file a stipulation of dismissal with prejudice in *Daniels v. United States*, No. 19-1499C.

16. Upon entry of judgment and Meritus' receipt of payment, Compass Cooperative Health Plan, Inc. dba Meritus Mutual Health Partners (HIOS No. 92045) and Compass Cooperative Health Plan, Inc. dba Meritus Health Partners (HIOS No. 60761), and any and all of their affiliated entities, release the United States, its agencies, instrumentalities, officers, agents, employees, and servants, from all claims (including attorney fees, costs, and expenses of every kind and however denominated) that they, and any and all of their affiliated entities, have asserted, could have asserted, or may assert in the future against the United States, its agencies, instrumentalities, officers, agents, employees, and servants, arising under the ACA.

17. Upon entry of judgment and Meritus' receipt of payment, the United States releases, waives, and abandons all claims, counterclaims, and offsets against Meritus arising out of, related to, or otherwise that were asserted, could have been asserted, or may be asserted in the future in the POCs (including but not limited to, any related claims for costs, expenses for costs, expenses, interest, and damages of any sort), with the exception that the United States shall retain its claims asserted in the POCs for the Surplus Notes accorded as Class 10 priority level claims under A.R.S. § 20-629 as provided for in the Receivership Claims Order. The United States further stipulates that it will not dispute or object to Meritus' allocation of payment of the judgment between the Meritus entities (or their estates) in this case, *Daniels v. United States*, No. 19-1499C, or otherwise, so long as such allocation is approved by the Receivership Court.

Respectfully submitted,

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