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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. 51

**PETITION TO ACCEPT TWENTY-
SECOND STATUS REPORT FOR
THE PERIOD ENDING MARCH 31,
2022**

(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. 51 to Accept Twenty-Second Status Report for the Period Ending March 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 1028) on April 27, 2020, ruling that: the insurance carriers have a right to payment under
2 the “Risk Corridors” program of the Affordable Care Act; Congress did not repeal the
3 obligation of the federal government to pay the carriers; and the carriers can sue for
4 payment under the Tucker Act in the Court of Federal Claims.

5 iii. More recently, the United States Court of Appeals for the Federal
6 Circuit issued two opinions relating to ACA disputes between co-ops like Meritus and the
7 United States. In *Conway v. United States*, No. 2020-1292, the Federal Circuit found that
8 “neither the ACA nor HHS’ regulations implementing the ACA evidence” a “clear and
9 manifest intent to preempt Colorado law that fixes creditors’ rights during insolvency.”
10 Accordingly, the court held that “the federal scheme does not preempt Colorado’s creditor
11 priority framework.” Subsequently, the issue of setoffs was considered in the context of
12 the ACA and insurance liquidations in *Richardson v. United States*, No. 18-1731C. In
13 *Richardson*, the Court relied on *Conway*, concluding that the case “greatly illuminates the
14 way forward.” *Richardson*, No. 18-1731C, at 13. Among other things, the *Richardson*
15 decision further confirmed that the state liquidation proceedings govern:

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

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

24 iv. The Receiver has negotiated and entered into a settlement agreement
25 with the United States Department of Justice resolving the Meritus ACA Suits, as
26 approved by this Court in its Order approving Petition 50 dated March 18, 2022 and
27 subject to approval of the United States Court of Federal Claims (the petition for approval
28 is filed and pending). As provided for in this Court’s Order approving Petition 50, it is
anticipated the settlement will result in payment to MHP in the amount of \$16,186,807
(comprised of \$9,474,723 allocated to the Risk Corridor Action and \$6,712,084 allocated

1 to the Reinsurance Action) and will result in payment to Meritus Mutual of \$6,000,000
2 (comprised of \$4,240,000 allocated to the Risk Corridor Action and \$1,760,000 allocated
3 to the Reinsurance Action. The combined payment amount is anticipated to total
4 \$22,186,807. Consistent with the Court’s March 18, 2022 Order approving Petition 50,
5 immediately upon collection and receipt, the settlement proceeds will be used to pay
6 contingency fees to Risk Corridor Counsel totaling \$685,736 and to Reinsurance Counsel
7 totaling \$847,208, resulting in anticipated net collection of \$20,653,863 for Meritus.

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

11 c. Accounting Services and General Accounting and Administrative.
12 The Receiver continued additional work on the accounting for the Meritus Companies in
13 liquidation, including identifying assets, claims and liabilities on a liquidation basis. As
14 part of the accounting work, the Receiver continued to implement and account for the
15 Receivership Liquidation, the Setoff involving CMS, and the Return of Excess Premiums,
16 among other things.

17 Summary of Payments

18 5. Legal Counsel. During the reporting period, the total amounts (fees and
19 expenses) that have been paid to Faegre Drinker Biddle & Reath LLP as legal counsel are
20 \$26,966.00 for Meritus Mutual and \$26,966.00 for MHP for a combined amount of
21 \$53,932.00. Work was performed and invoices were submitted for additional services and
22 amounts during the reporting period but not paid until after March 31, 2022. Because of
23 the timing, those payments will be referenced in the next status report.

24 6. Special Deputy Receiver. During the reporting period, the total amounts
25 (fees and expenses) that have been paid to the Special Deputy Receiver are \$9,975.00 for
26 Meritus Mutual and \$9,975.00 for MHP for a combined amount of \$19,950. Work was
27 performed and invoices were submitted for additional services and amounts during the
28

1 reporting period but not paid until after March 31, 2022. 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 March 31, 2022. 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. 51 Accepting Twenty-Second Status Report for the Period Ending March 31, 2022 in
10 the form lodged concurrently with this Petition after expiration of the objection period.

11 Dated this 17th day of May, 2022.

12 **FAEGRE DRINKER BIDDLE & REATH LLP**

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

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18 COPY of the foregoing mailed this
19 17th day of May, 2022 to the
20 attached Master Service List

21 /s/ Michelle Cline
22 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**

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