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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. 54**

**PETITION TO ACCEPT TWENTY-  
FOURTH STATUS REPORT FOR  
THE PERIOD ENDING SEPTEMBER  
30, 2022**

(Assigned to The Honorable  
Dewain Fox)

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. 54 to Accept Twenty-Fourth Status Report for the Period Ending September  
25 30, 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 brought directly by the Receiver based on the ACA Reinsurance Program, Case No. 1:19-  
2 cv-01499-MMS (the “Reinsurance Action”) (collectively the “Meritus ACA Suits”).

3 ii. After the Meritus ACA Suits were filed, the United States Supreme  
4 Court entered its decision in *Maine Cmty. Health Options v. United States*, (2019) (No. 18-  
5 1028) on April 27, 2020, ruling that: the insurance carriers have a right to payment under  
6 the “Risk Corridors” program of the Affordable Care Act; Congress did not repeal the  
7 obligation of the federal government to pay the carriers; and the carriers can sue for  
8 payment under the Tucker Act in the Court of Federal Claims.

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

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

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

28 iv. The Receiver has negotiated and entered into a settlement agreement  
with the United States Department of Justice resolving the Meritus ACA Suits, as  
approved by this Court in its Order approving Petition 50 dated March 18, 2022 and

1 subject to approval of the United States Court of Federal Claims (the petition for approval  
2 is filed and pending). The settlement proceeds have been collected and allocated as  
3 previously reported to the Court.

4 b. Proof of Claim (“POC”) Process and Provider Payment Process. The  
5 Receiver continued to implement the POC process, including considering claim amounts,  
6 provider payments, priority levels and potential offsets, and related matters and issues  
7 depending on the circumstances.

8 c. Liquidation Balance Sheet. The Receiver prepared and submitted the  
9 Liquidation Balance Sheet as of December 31, 2021.

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

### 16 **Summary of Payments**

17 5. Legal Counsel. During the reporting period, the total amounts (fees and  
18 expenses) that have been paid to Faegre Drinker Biddle & Reath LLP as legal counsel are  
19 \$38,141.95 for Meritus Mutual and \$38,141.95 for MHP for a combined amount of  
20 \$76,283.90. Work was performed and invoices were submitted for additional services and  
21 amounts during the reporting period but not paid until after September 30, 2022. Because  
22 of the timing, those payments will be referenced in the next status report.

23 6. Special Deputy Receiver. During the reporting period, the total amounts  
24 (fees and expenses) that have been paid to the Special Deputy Receiver are \$7,000.00 for  
25 Meritus Mutual and \$7,000.00 for MHP for a combined amount of \$14,000. Work was  
26 performed and invoices were submitted for additional services and amounts during the  
27 reporting period but not paid until after September 30, 2022. Because of the timing, those  
28 payments will be referenced in the next status report.



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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