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7
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. 53

**PETITION TO ACCEPT TWENTY-
THIRD STATUS REPORT FOR THE
PERIOD ENDING JUNE 30, 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. 53 to Accept Twenty-Third Status Report for the Period Ending June 30, 2022
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 ii. After the Meritus ACA Suits were filed, the United States Supreme
2 Court entered its decision in *Maine Cmty. Health Options v. United States*, (2019) (No. 18-
3 1028) on April 27, 2020, ruling that: the insurance carriers have a right to payment under
4 the “Risk Corridors” program of the Affordable Care Act; Congress did not repeal the
5 obligation of the federal government to pay the carriers; and the carriers can sue for
6 payment under the Tucker Act in the Court of Federal Claims.

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

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

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

26 iv. The Receiver has negotiated and entered into a settlement agreement
27 with the United States Department of Justice resolving the Meritus ACA Suits, as
28 approved by this Court in its Order approving Petition 50 dated March 18, 2022 and
subject to approval of the United States Court of Federal Claims (the petition for approval
is filed and pending). As provided for in this Court’s Order approving Petition 50, it is

1 anticipated the settlement will result in payment to MHP in the amount of \$16,186,807
2 (comprised of \$9,474,723 allocated to the Risk Corridor Action and \$6,712,084 allocated
3 to the Reinsurance Action) and will result in payment to Meritus Mutual of \$6,000,000
4 (comprised of \$4,240,000 allocated to the Risk Corridor Action and \$1,760,000 allocated
5 to the Reinsurance Action. The combined payment amount is anticipated to total
6 \$22,186,807. Consistent with the Court's March 18, 2022 Order approving Petition 50,
7 immediately upon collection and receipt, the settlement proceeds will be used to pay
8 contingency fees to Risk Corridor Counsel totaling \$685,736 and to Reinsurance Counsel
9 totaling \$847,208, resulting in anticipated net collection of \$20,653,863 for Meritus.

10 b. Proof of Claim ("POC") Process and Provider Payment Process. The
11 Receiver continued to implement the POC process, including considering claim amounts,
12 provider payments, priority levels and potential offsets, and related matters and issues
13 depending on the circumstances.

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

16 d. Accounting Services and General Accounting and Administrative.
17 The Receiver continued additional work on the accounting for the Meritus Companies in
18 liquidation, including identifying assets, claims and liabilities on a liquidation basis. As
19 part of the accounting work, the Receiver continued to implement and account for the
20 Receivership Liquidation, the Setoff involving CMS, and the Return of Excess Premiums,
21 among other things.

22 **Summary of Payments**

23 5. Legal Counsel. During the reporting period, the total amounts (fees and
24 expenses) that have been paid to Faegre Drinker Biddle & Reath LLP as legal counsel are
25 \$6,505.70 for Meritus Mutual and \$6,505.70 for MHP for a combined amount of
26 \$13,011.40. Work was performed and invoices were submitted for additional services and
27 amounts during the reporting period but not paid until after June 30, 2022. Because of the
28 timing, those 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)

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