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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 KEITH SCHRAAD, 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. 33

**PETITION FOR APPROVAL OF
CONTINGENCY FEE
ARRANGEMENT**

(Assigned to The Honorable
Daniel Martin)

19 Keith Schraad, Director of Insurance, as Receiver (hereinafter “Receiver”) of
20 Compass Cooperative Mutual Health Network, Inc. doing business as Meritus Mutual
21 Health Partners (“Meritus Mutual”) and Compass Cooperative Health Plan, Inc. dba
22 Meritus Health Partners (“MHP”) (collectively referred to as the “Meritus Companies”),
23 appointed pursuant to A.R.S. § 20-611, *et seq.*, hereby petitions the Court for entry of the
24 Order re Petition No. 33 Approving of Contingency Fee Arrangement for the reasons set
25 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 2. Like many health insurers and health maintenance organizations around the
2 country, Meritus and MHP have claims against the Centers for Medicare and Medicaid
3 Services (“CMS”) under the Affordable Care Act (“ACA”).

4 3. With respect to Meritus Mutual and MHP Risk Corridor Claims against
5 CMS, this Court entered its Order Re Petition No. 10 Approving Contingency Fee
6 Arrangement for Risk Corridor Suit dated May 4, 2017. Consistent with that Order
7 Meritus Mutual and MHP are members in a pending class action suit against CMS related
8 to the Risk Corridor Claims.

9 4. In addition, dated March 8, 2019, this Court entered its Order Re Petition
10 No. 26 Granting Claim Determination and Setoff Related to Claims of the United States
11 (the “Setoff Order”) which, among other things, implemented a Setoff under A.R.S. § 20-
12 612(A) and addressed remaining Reinsurance claims by Meritus Mutual and MHP against
13 CMS after the Setoff.

14 5. Pursuant to A.R.S. § 20-624 and Paragraph 10 of the August 10, 2016 Order
15 for Appointment of Receiver and Injunction (“Receivership Order”), the Receiver has
16 possession and control of the rights of action and has the right to recover those actions,
17 including, but not limited to, Reinsurance claims under the ACA. Moreover, as
18 specifically provided in paragraph 8(c) of the Receivership Order, the Receiver has been
19 ordered to:

20 Institute, prosecute, defend, compromise, intervene in, seek stays in, or
21 become a party to, such suits, actions or proceedings at law or in equity as
22 may, in the Receiver’s opinion, be necessary for the collection, recovery,
23 protection, maintenance, or preservation of the property or assets subject to
24 this receivership.

25 6. Pursuant to A.R.S. § 20-623.01(A) and paragraph 7 of the Receivership
26 Order, the Receiver may appoint one or more counsel as the receiver deems necessary and,
27 subject to the Court’s approval, the Receiver shall use funds or assets of Meritus Mutual
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1 and MHP to pay the compensation and expenses of such counsel. In its entirety, A.R.S.
2 § 20-623.01(A) provides as follows:

3 In any delinquency proceeding, the receiver may appoint one or more special
4 deputy receivers to act for the receiver and may employ, as the receiver
5 deems necessary, counsel, clerks and assistants. Subject to the approval of
6 the court, the receiver shall fix the compensation of the special deputies,
7 counsel, clerks or assistants and all expenses of taking possession of the
8 insurer and of conducting the proceeding and shall use the funds or assets of
9 the insurer to pay the compensation and expenses.

10 7. Subject to the express authority from Arizona statutes and this Court's
11 previous Order, the Receiver is evaluating options under the specific circumstances with
12 respect to prosecuting one or more causes of action, seeking to recover the Reinsurance
13 payments due to Meritus Mutual and MHP including, among other things, commencing a
14 suit against CMS subject to a contingency fee arrangement. Attached as Exhibit A is an
15 engagement agreement with Crowell & Moring which provides for a ten percent (10%)
16 contingency fee arrangement. Crowell & Moring has specific experience prosecuting
17 similar Reinsurance claims against CMS on behalf of entities similar to Meritus Mutual
18 and MHP.

19 8. Pursuant to A.R.S. § 20-623.01(A), the Receiver requests that the Court
20 approve of the compensation fixed by the Receiver as a contingency fee arrangement as set
21 forth in Exhibit A.

22 WHEREFORE, the Receiver requests that the Court enter the Order re Petition
23 No. 33 Approving Contingency Fee Arrangement in the form lodged concurrently with
24 this Petition after expiration of the objection period.

25 Dated this 7th day of May, 2019.

26 FAEGRE BAKER DANIELS LLP

27 By: /s/ Joel Glover (#034018)
28 Joel A. Glover
Attorneys for Receiver

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COPY of the foregoing mailed this
7th day of May, 2019 to the
attached Master Service List

/s/ Brenda McHenry
Brenda McHenry

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 Keith Schraad, Receiver
7 Director, Arizona Department of Insurance
8 100 North 15th Avenue, #102
9 Phoenix, Arizona 85007

10 Liane Kido, Deputy Receiver
11 Arizona Department of Insurance
12 100 North 15th Avenue, #102
13 Phoenix, Arizona 85007

14 Lynette Evans, Assistant Attorney General
15 Office of the Attorney General
16 1275 West Washington Street
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26 Larry Aldrich, Executive Chairman
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7 Executive Director
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9 Arizona Life and Disability Insurance Guaranty Fund
10 100 N. 15th Avenue, Suite 102
11 Phoenix, AZ 85007

12 Darren Ellingson
13 Special Deputy Receiver
14 Raintree Corporate Center I
15 15333 North Pima Road, Suite 305
16 Scottsdale, Arizona 85260

17 Banner Health
18 Patient Financial Services
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21 Mesa, Arizona 85201

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

U.S. Department of Justice
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Washington, DC 20530

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EXHIBIT A TO
PETITION 33



James J. Regan
(202) 624-2930
jregan@crowell.com

April 23, 2019

Via email (dellingson@ellingsonassociates.com)
Darren Ellingson, Special Deputy Receiver
Meritus Mutual Health Partners, in Liquidation
Meritus Health Partners, in Liquidation
Raintree Corporate Center 1
1533d North Pima Road, Suite 305
Scottsdale, AZ 85260

Re: Retention of Crowell & Moring LLP

Dear Mr. Ellingson:

This letter will memorialize our agreement concerning the representation of Compass Cooperative Mutual Health Network, Inc., dba Meritus Mutual Health Partners, in Liquidation (“Meritus Mutual”), and Compass Cooperative Health Plan, Inc., dba Meritus Health Partners, in Liquidation (“MHP”) by Crowell & Moring LLP (“Crowell”) in litigation to pursue Affordable Care Act Reinsurance payments owed by the federal government at the U.S. Court of Federal Claims (and any subsequent appeals). Crowell’s current assignment for Meritus Mutual/MHP is limited to the matter described herein, and does not include litigation to pursue Affordable Care Act “risk corridors” payments owed by the federal government (which Meritus Mutual/MHP is pursuing as part of a class action lawsuit, through their administrative appeal with CMS), and does not include any actions in state court pursued or defended by the Liquidator. As is discussed in more detail below, we are acting as counsel for Reinsurance recovery for other health plans as well.

Reinsurance is defined as insurance for qualified health plans that seek to protect themselves against large medical losses incurred by their members through the Affordable Care Act as set forth in Section 1341 of the Affordable Care Act. The Reinsurance claims have been the subject of a Setoff Petition filed in the Receivership Action, pending in the Superior Court of Arizona, Maricopa County, Case No. CV 2016-011872, styled as *Schraad v. Compass Cooperative Mutual Health Network, Inc., et al.* and are more specifically addressed in the March 8, 2019 Order Re Petition No. 26 Granting Claim Determination and Setoff Related to Claims of the United States.

I will be the responsible partner on this matter. Other Crowell lawyers, law clerks, or legal assistants may also work on this matter from time to time under our supervision as the need arises. During the course of the representation, you should feel comfortable to call us at any time.

Crowell's efforts in connection with the Reinsurance recovery matter include litigation and potential settlement negotiations on behalf of Meritus Mutual/MHP. As we have discussed, Meritus Mutual/MHP will remain in full control of its litigation, settlement and recovery options in connection with the Reinsurance matter. In particular, Meritus Mutual/MHP will retain full autonomy regarding whether, when, and where to file any sort of litigation, and likewise will retain full autonomy over decisions regarding resolution of its claims in litigation or otherwise.

Meritus Mutual/MHP will incur no hourly charges for Crowell's legal services, nor any litigation expenses, in connection with this matter. Instead, Meritus Mutual/MHP agrees to pay, as a fee for Crowell's services, the following percentage of any cash value that is recovered by Meritus Mutual/MHP as a settlement or judgment, (collectively referred to herein as a "recovery") resulting in payment to Meritus Mutual/MHP in connection with the Affordable Care Act Reinsurance payments owed by the Federal Government (the "Contingent Fee"). The Contingent Fee will be ten percent (10%) on the full cash value of such recovery realized by Meritus Mutual/MHP. Cash value does not include any benefit accruing to Meritus Mutual/MHP where the Meritus Mutual/MHP does not receive a cash payment, including but not limited to set offs by the federal government or others. The foregoing percentage shall be calculated based on the gross amount of the cash recovery, without deduction for costs and disbursements.

Crowell has already expended significant resources in developing this potential recovery opportunity. In addition, as the matter progresses and Crowell continues to pursue litigation, Crowell expects to expend substantially more of its own resources.

If Meritus Mutual/MHP prevails in the litigation and is awarded attorneys' fees and/or litigation costs, then such attorneys' fee award and/or costs shall be considered part of the gross amount of the cash recovery, and Crowell shall be entitled to 10% of such amounts, as with the rest of the gross amount of the cash recovery.

During the course of Crowell's representation of Meritus Mutual/MHP, the parties will evaluate the progress of their efforts. Crowell may withdraw from representation of Meritus Mutual/MHP consistent with its professional responsibilities. Such withdrawal would occur in rare circumstances such as irreconcilable differences between Meritus Mutual/MHP and Crowell, and be on reasonable notice to Meritus Mutual/MHP, and subject to Meritus Mutual/MHP's approval, which shall not unreasonably be withheld. Under such circumstances, Meritus Mutual/MHP would not owe any fees or costs to Crowell.

Likewise, Meritus Mutual/MHP may withdraw from this Agreement at any time, provided that if it subsequently obtains a recovery in connection with Reinsurance payments owed by the federal government, Meritus Mutual/MHP shall, upon receipt of such recovery, promptly notify Crowell of such recovery and shall remit to Crowell amounts that otherwise would be owed to Crowell under this Agreement if Meritus Mutual/MHP had not withdrawn, unless the withdrawal is for cause. Crowell may continue to represent other health plans regardless of whether Meritus Mutual/MHP or Crowell choose to withdraw from this Agreement. If the Meritus Mutual/MHP terminates the agreement for cause, the Meritus Mutual/MHP would not owe any fees or costs to Crowell.

Crowell's client for purposes of this engagement is Meritus Mutual/MHP only. Crowell is not undertaking the representation of any person or entity related to or affiliated with Meritus Mutual/MHP, including, but not limited to, the State of Arizona, any parent entity, subsidiary, officer, director, or employee (hereinafter collectively referred to as "Related Entities"). Crowell will not be precluded by reason of undertaking this or any future engagement of Meritus Mutual/MHP from representing existing or future clients in legal matters relating to or adverse to any Related Entities.

As we have discussed, Crowell represents a large number of diverse clients, which may include clients involved in activities affecting Meritus Mutual/MHP. From time to time, we may be asked by such clients to undertake a matter in which Meritus Mutual/MHP is an adverse party. In that event, Crowell will consult Meritus Mutual/MHP about whether it will grant a waiver of the conflict of interest presented. Where the proposed representation is unrelated to work we are doing for Meritus Mutual/MHP, Meritus Mutual/MHP agrees to consider our request for a conflicts waiver and to not unreasonably withhold consent to it. The parties are aware of no conflicts at the time of this engagement. Crowell further represents that no lawyer from Crowell who will work on this matter has been subject to any public disciplinary proceedings by the Arizona Bar.

As indicated, Crowell is representing other health plans in connection with the Reinsurance matter. At this time, we do not perceive that any conflict exists between or among any of these entities in this matter and, accordingly, we believe we can represent each of them. As noted above, each health plan retains complete autonomy to make decisions about whether and how to resolve its claim in its own interests. The decisions of other health plans regarding their own best interests may indirectly impact other health plans. In the event that disagreements or disputes arise among health plans with respect to any aspect of this matter, Crowell will not, and cannot, take positions on behalf of one health plan that would be adverse to the interests of another client. Crowell also will not counsel or advise one health plan regarding disputes with or claims against another health plan related to this matter. In the unlikely event that a conflict develops between Meritus Mutual/MHP and any other clients in this matter that Crowell would have a conflict of interest in continuing to represent these clients, Crowell will consult with the affected clients to seek a resolution of the conflict. If a resolution is not possible, Crowell may have to withdraw from representing one or more clients in this matter, including Meritus

Darren Ellingson, Special Deputy Receiver
April 23, 2019
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Mutual/MHP. If your interests become irreconcilable with those of any other of the plans we are representing, you agree that we can withdraw as counsel for Meritus Mutual/MHP and cease representing Meritus Mutual/MHP with respect to this matter. In such an event, we would assist Meritus Mutual/MHP in obtaining substitute counsel, if necessary.

If we do withdraw from representing Meritus Mutual/MHP in this matter, Meritus Mutual/MHP agrees that we may continue to represent other health plans. This letter will confirm Meritus Mutual/MHP's understanding and agreement that, in the event we withdraw as counsel for Meritus Mutual/MHP, Meritus Mutual/MHP hereby waives any rights it might otherwise have to require Crowell to withdraw as counsel for any other health plan. Under such circumstances, Meritus Mutual/MHP would not owe any fees or cost to Crowell.

Finally, unless we receive different instructions from you, we will retain files from this matter for seven years after its completion. At that time, documents other than those with intrinsic value (such as a deed or contract) may be destroyed.

We understand that this agreement will be submitted to the Receivership Court for approval before it become effective and would only be signed by Mr. Ellingson after such approval.

We believe this represents an important recovery opportunity for Meritus Mutual/MHP, and we appreciate the opportunity to partner with you in maximizing the recovery of Reinsurance payments owed to you by the federal government. If these terms and conditions are acceptable, please sign the enclosed copy of this letter in the space below and return it to me.

We appreciate this opportunity to work with you

Sincerely,



James J. Regan

AGREED:

Meritus Mutual/MHP, in Liquidation

By: _____

Darren Ellingson
Special Deputy Receiver of Compass Cooperative Mutual Health Network, Inc., dba
Meritus Mutual Health Partners, in Liquidation, and Compass Cooperative Health Plan,
Inc., dba Meritus Health Partners, in Liquidation