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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 STATE OF ARIZONA, *ex rel.* LESLIE R. HESS, )  
Interim Director of Insurance, )  
11 )  
Plaintiff, )  
12 )  
vs. )  
13 )  
COMPASS COOPERATIVE MUTUAL )  
14 HEALTH NETWORK, INC. dba MERITUS )  
MUTUAL HEALTH PARTNERS, an Arizona )  
15 Corporation; and )  
COMPASS COOPERATIVE HEALTH )  
16 PLAN, INC., dba MERITUS HEALTH )  
PARTNERS, an Arizona Corporation )  
17 )  
Defendants. )  
18 )

Cause No.: CV 2016-011872

**VERIFIED COMPLAINT FOR  
APPOINTMENT OF RECEIVER  
AND INJUNCTION**

(Commercial Court Assignment Requested)

19 Plaintiff alleges:

20 1. This action has been filed under A.R.S. §§ 20-612, 20-613, 20-614, 20-615(1) and (10)  
21 and 20-616 and seeks appointment of Plaintiff as receiver for Defendants, entries of orders of liquidation  
22 with findings of insolvency and permanent injunctive relief.



1           8.       Defendants are under common control. Defendants have the same officers and directors,  
2 share the same home office, and share services for the adjudication and payment of claims. There are no  
3 other companies affiliated with Defendants.

4           9.       For reasons of administrative efficiency and judicial economy, Plaintiff seeks an order  
5 granting the Director's request to place each Defendant in liquidation and to administer the two separate  
6 but related liquidations in a single receivership proceeding. While the Director is seeking to create one  
7 receivership for administrative efficiencies, all references to Defendant and/or Defendants are references  
8 to Defendant Meritus Mutual and/or Defendant MHP individually and the Director reserves the right to  
9 take action collectively or individually under the circumstances.

10                   **FACTUAL BACKGROUND AND GROUNDS FOR DELINQUENCY PROCEEDINGS**

11           10.       Pursuant to A.R.S. § 20-612, grounds to appoint a receiver and enter an order of  
12 liquidation with a finding of insolvency include:

13                   1. That the insurer is impaired or insolvent.

14                   \*\*\*

15                   10. That an authorized control level event or mandatory control level event has occurred  
16 with respect to the insurer as prescribed in chapter 2, article 12 of this title.

17           11.       The certificates of authority of Meritus Mutual and of MHP were each suspended and  
18 each Company was placed under the supervision of the Arizona Department of Insurance  
19 (“Department”) on October 30, 2015 in Order Summarily Suspending Certificate of Authority and Order  
20 for Supervision, Docket Nos. 15A-168-INS and 15A-169-INS (“Suspension and Supervision Orders”).

21           12.       In the Suspension and Supervision Orders, the Department determined that the  
22 continuation of the business of each Defendant was hazardous to the public or to holders of its policies  
23 pursuant to A.R.S. § 20-220.01, and ordered that each Defendant suspend the issuance of new or  
24

1 renewed business including discontinuing all policies on or before midnight on December 31, 2015. In  
2 addition, each Defendant was placed under the Department's supervision pursuant to A.R.S. § 20-169.

3 13. Since December 31, 2015, each Defendant has ceased writing all new and renewal  
4 business, discontinued all policies, and has continued to pay claims and wind down the operations of the  
5 business in accordance with the Supervision Order.

6 14. The risk-based capital level for each Defendant is at or below the authorized control level  
7 according to each Defendant's publicly filed annual financial statement for the year ended December 31,  
8 2015. A.R.S. §§ 20-488(3) and 20-488.04. Each Defendant's risk-based capital level is grounds for  
9 commencement of delinquency proceedings and entry of an order of liquidation.<sup>1</sup> A.R.S. §§ 20-616,  
10 20-615(10) and 20-488.04.

11 15. Each Defendant is also impaired and insolvent. Under A.R.S. § 20-611(8) impairment or  
12 insolvency means that the surplus of a mutual insurer shall be deemed to be impaired and the insurer  
13 shall be deemed to be insolvent when such insurer is not possessed of assets at least equal to all  
14 liabilities and required reserves together with minimum surplus.

15 a. Defendant Meritus Mutual reported Total Capital and Surplus as of  
16 December 31, 2015 in the amount of \$1,455,471. Defendant Meritus Mutual recently advised the  
17 Department in writing of an additional Risk Adjustment Payable in the amount of \$2,254,478. As a  
18 result, the current adjusted Capital and Surplus for Meritus Mutual as of December 31, 2015 is  
19 \$(799,007) and as of March 31, 2016 is \$(1,350,718).

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21 <sup>1</sup> Risk-based capital plans and reports are treated as confidential under A.R.S. § 20-488.07. Accordingly, Plaintiff has limited  
22 all assertions to the existence of statutory grounds for delinquency proceedings. Upon information and belief, Plaintiff  
23 understands that the risk-based capital levels are not disputed. If risk-based capital levels are disputed, Plaintiff reserves the  
24 right to make additional assertions and submissions regarding risk-based capital information.

1           b.       Defendant MHP reported Total Capital and Surplus as of December 31,  
2 2015 in the amount of \$(26,475,907). Defendant MHP recently advised the Department in writing of an  
3 additional Risk Adjustment Payable in the amount of \$16,863,226. As a result, the current adjusted  
4 Capital and Surplus for MHP as of December 31, 2015 is \$(43,339,133) and as of March 31, 2016 is  
5 \$(45,537,854).

6           c.       The Director recognizes that there may be further adjustments particularly  
7 related to payments, receivables and offsets related to the Affordable Care Act however at this time,  
8 many of the receivables are not allowed as admitted assets. The Director recognizes that many of those  
9 payments remain in dispute and the Director does not waive and expressly reserves any and all rights,  
10 remedies, offsets and the like.

11       16.       Defendants' financial conditions have worsened since December 31, 2015.

12           a.       On June 15, 2016, Defendant Meritus Mutual filed unaudited financial  
13 statements with the Department for the interim period ending March 31, 2016. Defendant Meritus  
14 Mutual reported inadequate cash flow to continue to meet its obligations and pay claims. Defendant  
15 Meritus Mutual reported unpaid claims and other current liabilities in the amount of \$4,255,977 (not  
16 including amounts that may be owed for ongoing operating expenses or the additional Risk Adjustment  
17 Payable). Defendant Meritus Mutual reported cash and cash equivalents of \$2,156,851, a shortfall of  
18 more than \$2 million.

19           b.       In Defendant MHP's unaudited financial statements for the interim period  
20 ending March 31, 2016, filed with the Department on June 15, 2016, Defendant MHP reported that its  
21 negative Total Capital and Surplus position had worsened by at least \$2 million (not including amounts  
22 that may be owed for the additional Risk Adjustment Payable).

23 //

1                                   **LIQUIDATION ORDERS REQUIRED FOR CLAIMS PAYMENTS**

2           17.     There are no inforce insurance policies because coverage was terminated effective on or  
3 before December 31, 2015. However, each Defendant lacks sufficient liquid assets to pay the remaining  
4 provider claims. Entry of a liquidation order with a finding of insolvency represents the best available  
5 means to seek payment of provider claims and to protect enrollees by, among other things, continuing  
6 payments for medical services already delivered to enrollees under the insurance coverage and  
7 protecting enrollees from collection activities that may be associated with unpaid provider bills.

8           18.     Defendant Meritus Mutual is a licensed disability insurer and is a member insurer of the  
9 Arizona Life and Disability Insurance Guaranty Association (“Association”). A.R.S. § 20-681(9).  
10 Upon entry of an order of liquidation with a finding of insolvency, the Association would become  
11 legally authorized to pay provider claims of Defendant Meritus Mutual subject to and in accordance  
12 with the Arizona Life and Disability Insurance Guaranty Association Act, A.R.S. §§ 20-681 to 20-695.

13           19.     Defendant MHP is a health care services organization. Under Arizona law, claims  
14 against insolvent health care services organizations are **not** covered by a guaranty fund. Thus, enrollees  
15 who received medical services under MHP’s qualified health plan either from providers that had a  
16 contract with MHP (“in-network providers”) or from providers that did not have a contract with MHP  
17 (“out-of-network providers”) can only be paid from the assets of MHP. Since Arizona law does not  
18 provide for guaranty fund coverage for these entities, Arizona statutes require health care services  
19 organizations to file with the Department a plan for the continuation of enrollee benefits in the event of  
20 an insolvency. Pursuant to Defendant MHP’s plan for continuation of benefits, the Department  
21 currently holds a deposit pursuant to A.R.S. § 20-1069 in the amount of approximately \$3.4 million.  
22 The Security Deposit Agreement between the Department and the Defendant requires a finding of  
23 insolvency by a court of competent jurisdiction in order for the Department to release of the deposit.



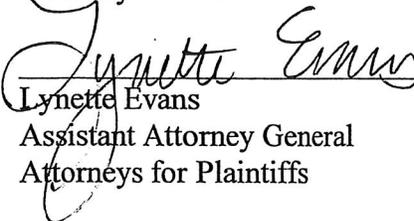
1 B. The Court issue a temporary restraining order, preliminary and permanent injunction, as  
2 may be appropriate, restraining each Defendant, and each Defendant's officers, directors, stockholders,  
3 members, subscribers, agents, creditors, lenders, financial institutions and all other persons from the  
4 transaction of its business or the waste or disposition of its assets, or the obtaining of preferences,  
5 judgments, attachments, or other liens, or the making of any levy against Defendants.

6 C. The Director be given such power and authority as the Court may direct and as may be  
7 necessary to effect the objects and purposes of Article 4, Chapter 3, and Article 1, Chapter 4 of Title 20,  
8 Arizona Revised Statutes.

9 D. The Court grants such other and further relief as it deems just and proper.

10  
11 Dated this 7<sup>th</sup> day of August, 2016.

12  
13 MARK BRNOVICH  
14 Attorney General

15   
16 Lynette Evans  
17 Assistant Attorney General  
18 Attorneys for Plaintiffs

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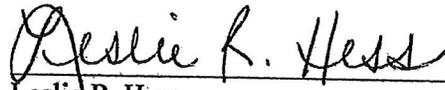
**VERIFICATION**

State of Arizona     )  
                              ) ss.  
County of Maricopa    )

Leslie R. Hess, being first duly sworn upon oath deposes and says:

That she is the Interim Director of the Arizona Department of Insurance; that she has read the foregoing Complaint For Appointment Of Receiver And Injunction; that the matters stated in the Complaint are true, except as to those matters stated on information and belief, and as to them, she believes them to be true.

I declare under penalty of perjury that the foregoing is true and correct.



\_\_\_\_\_  
Leslie R. Hess  
Interim Director of Insurance