STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

R. KEVIN CLINTON, COMMISSIONER
OF THE OFFICE OF FINANCIAL AND
INSURANCE REGULATION,

Petitioner,

v

AMERICAN FELLOWSHIP MUTUAL
INSURANCE COMPANY,

Respondent.

Case No. 12-1173-CR

HON. WILLIAM E. COLLETTE

[IN REHABILITATION]

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**ORDER OF LIQUIDATION AND
DECLARATION OF INSOLVENCY OF
AMERICAN FELLOWSHIP MUTUAL INSURANCE COMPANY**

At a session of said Court
held in the Circuit Courtrooms
for the County of Ingham,
State of Michigan, on the
12th day of June, 2013.

PRESENT: HONORABLE WILLIAM E. COLLETTE, CIRCUIT COURT JUDGE

The Court has reviewed and considered the Petition for Order Converting Rehabilitation to Liquidation and for Judicial Declaration of Insolvency of American Fellowship Mutual Insurance Company (the "Liquidation Petition"), which was filed by R. Kevin Clinton, the Director of the Michigan Department of Insurance and Financial Services[1] and court-appointed Rehabilitator of American Fellowship Mutual Insurance Company (the "Rehabilitator"). The Court is also fully informed of the circumstances involving American Fellowship because the company has been subject to an ongoing rehabilitation proceeding assigned to and conducted under the supervision of this Court, pursuant to the Rehabilitation Order that the Court entered on October 29, 2012.

Based on the Court's review of the Liquidation Petition, any objections or responses filed thereto, and the terms of this Order, and following the hearing on the Liquidation Petition conducted on June 12, 2013 at 9:00 a.m., the Court finds as follows:

A. MCL 500.8102 provides that a proceeding under Chapter 81 of the Insurance Code, MCL 500.8101 – 500.8159, including a liquidation proceeding, may be applied to an insurer: (a) who is or has been transacting insurance business in this state and against whom claims arising from that business may exist now or in

[1] Pursuant to Executive Order No. 2013-1 effective March 18, 2013, the Michigan Office of Financial and Insurance Regulation ("OFIR") was renamed the Michigan Department of Insurance and Financial Services ("DIFS") and all the authority, powers, duties, functions, and responsibilities of the former Commissioner of OFIR were transferred to the newly-created position of the Director of DIFS.

the future; or (b) who has insureds resident in this state. American Fellowship satisfies both criteria and is therefore subject to liquidation.

B. MCL 500.8104(3) vests this Court with jurisdiction to consider the Liquidation Petition and to enter this Order.

C. MCL 500.8116(1) authorizes the Rehabilitator to petition this Court for an order to liquidate an insurer that is in rehabilitation if he "believes further attempts to rehabilitate [the] insurer would substantially increase the risk of loss to creditors, policyholders, or the public, or would be futile."

D. MCL 500.8117 further authorizes the Rehabilitator to petition this Court for an order to liquidate American Fellowship based on any of the following grounds:

> (a) Any ground for an order of rehabilitation as specified in section 8112, whether or not there has been a prior order directing the rehabilitation of the insurer.
>
> (b) That the insurer is insolvent.
>
> (c) That the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

E. Pursuant to MCL 500.8117(b), the liquidation of American Fellowship is authorized and appropriate because, as explained more fully in the Liquidation Petition, the company's admitted assets do not exceed its liabilities plus the capital and surplus required by law for its organization. American Fellowship is therefore by definition "insolvent" under MCL 500.8103(*i*)(ii), with an unimpaired capital and surplus/net worth of *negative* $2,279,561.57 as of April 30, 2013.

F. The liquidation of American Fellowship is further authorized and appropriate under MCL 500.8117(c) because, as explained more fully in the Liquidation Petition, American Fellowship's financial condition is such that its further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, and the public. The company's hazardous condition is evidenced by, *inter alia*, its steady financial decline despite the actions taken in rehabilitation, its current unimpaired surplus of over negative $2.2 million, and its diminishing revenues due to the inability to issue new policies or renew existing policies.

G. This Order to liquidate American Fellowship is also authorized and appropriate under MCL 500.8116(1) because, as explained more fully in the Liquidation Petition, the Court agrees with the Rehabilitator's conclusion that any further attempts at rehabilitation would be futile and would substantially increase the risk of loss to creditors, policyholders, and the public.

H. Because American Fellowship's liabilities exceed its assets by over $2.2 million and the company is by definition "insolvent," and proper notice and hearing having been provided, the Rehabilitator is entitled to the requested judicial declaration of insolvency under MCL 500.8118(4).

I. As defined by MCL 500.8103(b) and for purposes of this Order, a "Creditor" is a person having a claim against American Fellowship, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

J. Under MCL 500.8105(1), the Court is authorized to enter this Order including terms that the Court considers necessary and proper to prevent:

(a) Interference with the Liquidator or with the liquidation proceeding;

(b) The institution or further prosecution of any actions or proceedings against American Fellowship, its assets, or its policyholders;

(c) The obtaining of preferences, judgments, attachments, garnishments, or liens against American Fellowship, its assets, or its policyholders;

(d) The levying of execution against American Fellowship, its assets, or its policyholders; and

(e) Any other threatened or contemplated action that might lessen the value of American Fellowship's assets or prejudice the rights of its policyholders, creditors, or the administration of the liquidation proceeding.

K. Immediate action placing American Fellowship into liquidation is necessary to protect the interests of American Fellowship's policyholders, creditors, and the public.

THEREFORE, IT IS HEREBY ORDERED that:

1. Pursuant to MCL 500.8116 - 500.8118, the Liquidation Petition is GRANTED, and American Fellowship is placed into liquidation under Chapter 81 of the Insurance Code, MCL 500.8101 – 500.8159.

2. Pursuant to MCL 500.8118(1), the Commissioner/Director of DIFS and Rehabilitator of American Fellowship is appointed as Liquidator for the company. Hereafter, the Rehabilitator shall be referred to as the "Liquidator."

3. The Liquidator is directed to take immediate possession of American Fellowship's assets and to administer them under the Court's general supervision. MCL 500.8118(1). The Liquidator is vested by operation of law with the title to all

of American Fellowship's assets, including but not limited to the company's property, bank accounts, contracts, rights of action, and all books and records, wherever located, as of the date that this Liquidation Order is entered. *Id.* The filing or recording of this Liquidation Order with the Clerk of the Circuit Court and the Register of Deeds of the county in which American Fellowship's principal office or place of business is located or, in the case of real estate, with the Register of Deeds of the county where the property is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that Register of Deeds would have imparted. *Id.*

4. The Liquidator, without being specifically set forth in this Order, shall have: (a) all the powers contained in MCL 500.8121; (b) all other applicable powers set forth in Chapter 81 of the Insurance Code, MCL 500.8101 – 500.8159; and (c) such additional powers as the Court shall grant from time to time upon petition of the Liquidator.

5. Except as provided in MCL 500.8119, MCL 500.8137, and this Liquidation Order, the rights and liabilities of American Fellowship and of its creditors, policyholders, members, and all other persons interested in American Fellowship's estate shall become fixed as of the date that this Liquidation Order is entered. MCL 500.8118(2).

6. Not later than 120 days after entry of this Liquidation Order, the Liquidator shall prepare in duplicate a list of American Fellowship's assets, which list shall be amended or supplemented from time to time as the Liquidator deems

appropriate. MCL 500.8125. With respect to the asset list and any amendments or supplements thereto, the Liquidator shall file one copy with the Clerk of this Court and shall retain one copy for his files. *Id.* Thereafter, the Liquidator shall account to this Court no less than annually, pursuant to MCL 500.8118(5).

7. Pursuant to MCL 500.8119, all insurance policies issued by American Fellowship in effect at the time of entry of this Liquidation Order are terminated as of the earliest of the following dates:

a. Thirty (30) days after the date this Liquidation Order is entered;

b. The date the policy coverage expires pursuant to the policy's terms;

c. The date that the insured replaces the policy's insurance coverage with equivalent insurance in another insurer or otherwise terminates the policy; or

d. The date that the Liquidator effects a transfer of the policy obligation to a solvent assuming insurer pursuant to MCL 500.8121(1)(h).

8. Pursuant to MCL 500.8118(4), and the Court having found that proper notice and hearing have been provided, the Court declares that American Fellowship is <u>insolvent</u>.

9. Pursuant to MCL 500.8124(1), upon entry of this Liquidation Order, an action at law or equity shall not be brought against American Fellowship, the Liquidator, or the Special Deputy Liquidator(s), whether in this State or elsewhere, and any such existing action shall not be maintained or further presented after entry of this Liquidation Order. Furthermore, pursuant to MCL 500.8124(1) and MCL 500.8105(1)(f), and effective immediately, all persons and entities are expressly <u>enjoined</u> from filing an action at law or equity or maintaining or further

presenting any such existing action against American Fellowship, the Liquidator, or Special Deputy Liquidator(s), whether in this State or elsewhere.

10. Pursuant to MCL 500.8157, during the pendency of this Liquidation proceeding, an action or proceeding in the nature of an attachment, garnishment, or levy of execution shall not be commenced or maintained in this State against American Fellowship or its assets. Furthermore, pursuant to MCL 500.8157 and MCL 500.8105(1)(g) and (h), and effective immediately, all persons and entities are expressly enjoined from: (a) filing or maintaining an action or proceeding in this State in the nature of an attachment, garnishment, or levy of execution against American Fellowship or its assets; and (b) obtaining preferences, judgments, attachments, garnishments, liens, or levying execution against American Fellowship, its assets, or its policyholders, whether in this State or elsewhere.

11. With respect to any claim against American Fellowship (or which American Fellowship is obligated to defend or has assumed the defense of) that satisfies the requirements for a "covered claim" and is otherwise subject to payment under the statutes governing the Michigan Property and Casualty Guaranty Association ("MPCGA"), MCL 500.7901 – 500.7949, the claim must be properly filed in this liquidation proceeding and any legal action involving the claim that is currently pending in a Michigan court shall be stayed for six (6) months following entry of this Liquidation Order, plus any additional time determined necessary by the court in which the claim is pending to permit the MPCGA's proper defense. MCL 500.7945(1).

12. Pursuant to MCL 500.8106, all officers, managers, directors, trustees, owners, employees, or agents of American Fellowship, or any other persons or entities having authority over or in charge of any segment of the affairs of American Fellowship, shall fully cooperate with the Liquidator and Special Deputy Liquidator(s). Among other things, "full cooperation" requires a person or entity described in this paragraph to:

(a) Promptly reply to any inquiry by the Liquidator/Special Deputy Liquidator(s), including a written reply when requested;

(b) Provide the Liquidator/Special Deputy Liquidator(s) with immediate, full, and complete possession, control, access to, and use of all books, accounts, documents, and other records, information, or property of or pertaining to American Fellowship in his, her, or its possession, custody, or control;

(c) Provide the Liquidator/Special Deputy Liquidator(s) with full and complete access and control of all assets, documents, data, computer systems, security systems, buildings, leaseholds, and property of or pertaining to American Fellowship; and

(d) Provide the Liquidator/Special Deputy Liquidator(s) with full and complete access to all legal opinions, memoranda, letters, documents, information, correspondence, legal advice, and any other attorney-client privileged and/or attorney work product materials relating to American Fellowship or the operation of American Fellowship and its business, provided to or from American Fellowship's in-house or outside counsel by or to American Fellowship, its officers, managers, directors, trustees, owners, employees, or agents.

In addition, no person shall obstruct or interfere with the Liquidator or Special Deputy Liquidator(s) in the conduct of this liquidation proceeding.

13. Any person or entity with possession, custody, or control of assets, documents, data, accounts, moneys, books, records, information, or property of or pertaining to American Fellowship, shall immediately:

(a) Provide the Liquidator/Special Deputy Liquidator(s) with notice that such assets, documents, data, accounts, moneys, books, records, information, or property are in his, her, or its possession, custody or control, together with a description of the assets, documents, data, accounts, books, records, information, or property in his, her, or its possession, custody or control.

(b) Tender possession, custody, and control of such assets, documents, data, accounts, moneys, books, records, information, or property to the Liquidator/Special Deputy Liquidator(s).

(c) Take all necessary steps to safeguard, preserve, and retain the assets, documents, data, accounts, moneys, books, records, information, or property.

14. As provided by MCL 500.8106(4), any failure to cooperate with the Liquidator/Special Deputy Liquidator(s), any obstruction or interference with the Liquidator/Special Deputy Liquidator(s) in the conduct of this liquidation proceeding, or any violation of an order of the Commissioner/Director validly entered under Chapter 81 of the Insurance Code, may result in:

(a) A sentence requiring the payment of a fine not exceeding $10,000.00, or imprisonment for a term of not more than one year, or both; and

(b) After a hearing, the imposition by the Commissioner/Director of a civil penalty not to exceed $10,000.00, or the revocation or suspension of any insurance licenses issued by the Commissioner/Director, or both.

15. Any person who violates an injunction contained in this Liquidation Order shall be liable to the Liquidator/Special Deputy Liquidator(s), the policyholder, or both, for the reasonable costs and attorney fees incurred in enforcing the injunction or any court orders related thereto and any reasonably foreseeable damages.

16. Pursuant to MCL 500.8136(4), any judgment or order against American Fellowship or an American Fellowship insured entered after the date the

Liquidation Petition was filed, and any judgment or order against American Fellowship or an American Fellowship insured entered at any time by default or by collusion, need not be considered as evidence of liability or of quantum of damages. Similarly, any judgment or order against American Fellowship or an American Fellowship insured entered within four (4) months before the filing of the Liquidation Petition need not be considered as evidence of liability or of the quantum of damages. *Id.*

17. All claims by Creditors against the assets of American Fellowship must be made by filing claims in this liquidation proceeding. All Creditor claims against American Fellowship are within the exclusive jurisdiction of this Court and will be determined, resolved, paid, and/or discharged, in whole or in part, according to the terms and conditions approved by the Court.

18. The deadline for filing a claim against the American Fellowship liquidation estate shall be six (6) months after the date that this Liquidation Order is entered, unless the Liquidator specifies a different claims-filing deadline in the notice provided pursuant to MCL 500.8122(2). Notwithstanding the claims-filing deadline provided in this Order or the Liquidator's notice, for any claim to be approved, it must be filed not later than any applicable deadline imposed by contract between the Creditor and American Fellowship; the claims-filing deadline provided in this Order or the Liquidator's notice does not extend any applicable contractual limitation upon the period within which claims must be filed.

19. Any claim for no-fault automobile personal injury protection ("PIP") benefits that was properly preserved by filing a lawsuit within the appropriate time frame under MCL 500.3145, but that was subsequently dismissed without prejudice due to the injunction against ongoing litigation contained in the October 29, 2012 Rehabilitation Order entered in this case, shall not be subject to the defense of the "one year back rule" during the liquidation claims process. However, all other defenses to such PIP benefit claims are expressly preserved.

20. As authorized by MCL 500.8121(1)(a), the Liquidator appoints James Gerber, the DIFS Director of Receiverships, as Special Deputy Liquidator for American Fellowship. Mr. Gerber shall serve as Special Deputy Liquidator at the pleasure of the Liquidator, who reserves the right to appoint other Special Deputy Liquidator(s) to replace and/or serve with Mr. Gerber in the future as the need arises. *Id.* The Special Deputy Liquidator shall have all the powers of the Liquidator granted under Chapter 81 of the Insurance Code, subject to the supervision and direction of the Liquidator and this Court. *Id.*

21. Pursuant to MCL 500.8121(1)(a) and (d), the Liquidator has determined the reasonable compensation to be paid to Mr. Gerber as Special Deputy Liquidator as follows: Mr. Gerber shall be compensated as a salaried employee of DIFS and shall not receive any additional salary in his capacity as Special Deputy Liquidator for American Fellowship. However, Mr. Gerber's expenses for travel, lodging, meals, and other expenses incurred in connection with his appointment as Special Deputy Liquidator shall be paid out of the funds or assets of American

Fellowship pursuant to MCL 500.8121(1)(d). Mr. Gerber will separately invoice and submit these expenses, which shall be reimbursed subject to State of Michigan reimbursement rates. If the Liquidator so elects in the future, he may allocate to American Fellowship the pro rata portion of Mr. Gerber's salary, at the rate of $86.45 an hour, attributable to the performance of his duties as Special Deputy Liquidator, which compensation shall be paid out of the funds or assets of American Fellowship pursuant to MCL 500.8121(1)(d). In the event that American Fellowship does not possess sufficient cash or liquid assets to pay Mr. Gerber's expenses, or his salary if the Liquidator makes the allocation election permitted by this paragraph, the Liquidator may advance the necessary funds out of an appropriation for the maintenance of DIFS, which shall be repaid out of the first available money of American Fellowship pursuant to MCL 500.8121(1)(d).

22. Pursuant to MCL 500.8121(1)(d), the Liquidator and Special Deputy Liquidator are authorized to pay from the funds or assets of American Fellowship all expenses associated with taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the company's business and property.

23. Assistant Attorneys General Christopher L. Kerr and Jason R. Evans, as counsel for the Liquidator, are substituted in the place of American Fellowship's former in-house counsel Patricia Battersby as legal counsel for American Fellowship in all pending litigation involving the company. The mailing address and telephone number for Mr. Kerr and Mr. Evans are: Michigan Department of Attorney

General, Corporate Oversight Division, P.O. Box 30755, Lansing, Michigan 48909; telephone (517) 373-1160.

24. The Liquidator and Special Deputy Liquidator shall provide notice of this Liquidation Order in accordance with MCL 500.8122.

25. The Court authorizes, approves, and/or ratifies the Liquidator's service of the Liquidation Petition (together with the attached Exhibits), the Notice of Hearing, and this Order via regular mail on counsel for the MPCGA only. Due to the difficulty and prohibitive cost associated with providing personalized notice of the Petition, Notice of Hearing, and this Order to all other parties having a general interest in American Fellowship's rehabilitation/liquidation, the Court authorizes, approves, and/or ratifies the Liquidator's service of these papers on other potentially interested parties (beyond the MPCGA) by posting electronic copies on the DIFS website, www.michigan.gov/difs, under the section "Who We Regulate," and the subsection "American Fellowship Mutual." The Court finds that service in this manner is reasonably calculated to give the MPCGA and any other potentially interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

26. The Court reserves the ability to amend this Liquidation Order and to issue such further orders as it deems just, necessary, and appropriate.

IT IS SO ORDERED.

CERTIFIED COPY
30TH CIRCUIT COURT

JUN 1 2 2013

I hereby certify that this document is a true and correct copy of the original on file with this court.

Barkley Deputy Clerk

Honorable William E. Collette
Circuit Court Judge