

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

PATRICK M. MCPHARLIN, DIRECTOR
OF THE DEPARTMENT OF INSURANCE
AND FINANCIAL SERVICES,

Petitioner,

v

AFFIRMATIVE INSURANCE COMPANY
OF MICHIGAN,

Respondent.

Case No. 15-898-CR

HON. CLINTON CANADY III

[IN REHABILITATION]

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EX PARTE ORDER
APPROVING SETTLEMENT OF PENDING HEALTH CARE PROVIDER
LAWSUIT AND CLAIM AGAINST AFFIRMATIVE INSURANCE COMPANY
OF MICHIGAN

At a session of said Court
held in the Circuit Courtrooms
for the County of Ingham,
State of Michigan, on the
19 day of February 2016.

PRESENT: HONORABLE CLINTON CANADY III
CIRCUIT COURT JUDGE

WHEREAS, Patrick M. McPharlin, Director of the Michigan Department of Insurance and Financial Services (“DIFS”) and duly appointed Rehabilitator of Affirmative Insurance Company of Michigan (the “Rehabilitator”) has filed an *Ex Parte* Petition for Approval to Settle Pending Health Care Provider Lawsuit and Claim against Affirmative Insurance Company of Michigan (the “*Ex Parte* Petition”), specifically, the lawsuit and claim entitled: (1) *Mendelson Orthopedics, PC and St. John Macomb-Oakland Hospital v Affirmative Insurance Company*, Wayne County Circuit Court Case No. 15-004837-NF; and (2) *In re: Total Toxicology v Affirmative Insurance Company of Michigan* (no lawsuit filed); and

WHEREAS, MCL 500.8115(1) governs legal actions or proceedings involving Affirmative Insurance Company of Michigan (“AIM”) that were pending when the Rehabilitation Order was entered and provides, *inter alia*, that “[t]he rehabilitator shall take action respecting the pending litigation as he or she considers necessary in the interests of justice and for the protection of creditors, policyholders, and the public”; and

WHEREAS, with respect to claims against AIM arising after entry of the Rehabilitation Order, MCL 500.8114(2) and the Rehabilitation Order authorize the Rehabilitator to “take such action as he considers necessary or appropriate to reform or revitalize AIM.” In addition, this statute, as incorporated by the Rehabilitation Order, grants the Rehabilitator “full power and authority to direct

and manage AIM . . . and to deal in totality with the property and business of” the company; and

WHEREAS, the Rehabilitator has determined that the settlement of this lawsuit and claim in the amounts summarized in the *Ex Parte* Petition and on the terms contained in their respective settlement agreements is necessary and appropriate, is in the interests of justice, and will promote the protection of AIM’s creditors, policyholders, and the public;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Court APPROVES the proposed settlements of the lawsuit and claim described above and in the *Ex Parte* Petition, authorizes payment of the settlement amounts from the funds of AIM, and authorizes the Rehabilitator and/or Special Deputy Rehabilitators to execute any necessary documentation and take such other action required to finalize these settlements.

IT IS FURTHER ORDERED that due to the difficulty and prohibitive cost associated with personally serving the *Ex Parte* Petition and this Order on all parties that may have a general interest in AIM’s rehabilitation, the Court authorizes, approves, and/or ratifies the Rehabilitator’s service of the *Ex Parte* Petition and this Order by posting electronic copies on the DIFS website, www.michigan.gov/difs, under the section “Who We Regulate,” the subsection “Receiverships,” and the sub-subsection “Affirmative Insurance Company of Michigan.” The Court finds that service in this manner is reasonably calculated to

give interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

IT IS SO ORDERED.

CLINTON CANADY III

Honorable Clinton Canady III
Circuit Court Judge