

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,

Case No. 12-1173-CR

HON. WILLIAM E. COLLETTE

v

AMERICAN FELLOWSHIP MUTUAL
INSURANCE COMPANY,

Respondent.

Christopher L. Kerr (P57131)
Jason R. Evans (P61567)
Assistant Attorneys General
Attorneys for Petitioner
Corporate Oversight Division
P. O. Box 30755
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**EX PARTE PETITION FOR APPROVAL TO SETTLE PENDING
HOMEOWNER PROPERTY DAMAGE LAWSUIT AGAINST
AMERICAN FELLOWSHIP MUTUAL INSURANCE COMPANY**

R. Kevin Clinton, Director of the Michigan Department of Insurance and
Financial Services,¹ as Rehabilitator of American Fellowship Mutual Insurance
Company (the "Rehabilitator"), by and through his attorneys, Bill Schuette,

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.

Attorney General, and Christopher L. Kerr and Jason R. Evans, Assistant Attorneys General, petitions this Court pursuant to MCL 500.8115(1) to approve the settlement reached in a homeowner property damage lawsuit currently pending against American Fellowship Mutual Insurance Company (“American Fellowship”). In support of this *Ex Parte* Petition, the Rehabilitator states as follows:

1. On October 29, 2012, this Court entered an Order placing American Fellowship into Rehabilitation and appointing the Commissioner/Director as the Rehabilitator of American Fellowship.

2. MCL 500.8115(1) governs legal actions or proceedings involving American Fellowship that were pending when the Rehabilitation Order was entered. The statute 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.”

3. With respect to claims against American Fellowship 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 American Fellowship.” Rehabilitation Order, p 6, ¶ 11. In addition, this statute, as incorporated by the Rehabilitation Order, grants the Rehabilitator “full power and authority to direct and manage American Fellowship . . . and to deal in totality with the property and business of” the company. Rehabilitation Order, p 5, ¶ 8.

4. The Rehabilitator seeks the Court's approval to settle the following lawsuit that is currently pending against American Fellowship:

a. ***Patricia Beaudette v American Fellowship***. This homeowner property damage lawsuit is pending in the Oakland County Circuit Court in Pontiac, Michigan, assigned Case No. 12-129761-CK. Plaintiff's Complaint asserts claims against American Fellowship under her homeowner insurance policy for alleged damages to her home. American Fellowship denied Plaintiff's claims because it disputed the existence and/or amount of applicable coverage under Plaintiff's insurance policy (specifically, the damage occurred over time as determined by a public adjuster and there was no "occurrence" as required by the policy). Plaintiff sought the payment of \$39,000.00 in damages, plus interest, costs, and attorney fees. Through negotiations, Plaintiff has agreed to dismiss her lawsuit with prejudice and to release American Fellowship from any and all liability in exchange for American Fellowship's payment of \$4,500.00.

5. With limited exceptions not applicable here, Paragraph 15 of the Rehabilitation Order prohibits the payment of any Creditor claims for goods or services provided prior to the date that the Order was entered until further order of the Court. The homeowner property damage claim asserted in this case arises in whole or in part from events that occurred prior to the date of the Rehabilitation Order. More importantly, the exception in Paragraph 15 authorizing the payment of pre-rehabilitation claims "arising from covered losses under American Fellowship insurance policies" does not apply because American Fellowship disputes the existence and/or amount of insurance coverage for Plaintiff's claims. Accordingly, an order approving this proposed settlement is needed from the Court.

6. The Rehabilitator believes that the settlement of this lawsuit in the amount indicated above and on the terms contained in the corresponding settlement agreement (which is not attached due to confidentiality provisions and/or concerns)

is necessary and appropriate, is in the interests of justice, and will promote the protection of American Fellowship's creditors, policyholders, and the public. A comparison of the settlement amount to the amount of Plaintiff's original claim evidences that this settlement is reasonable and will limit potential liability to the Rehabilitation Estate. Moreover, the settlement is relatively modest in amount and would likely be exceeded by legal and other costs if this case were adjudicated to judgment in this Rehabilitation or otherwise.

7. Providing personalized notice of this *Ex Parte* Petition and any resulting Order to all parties that may have an interest in this matter is impossible at this time because there has been no claims submission or other process to identify such parties. Moreover, attempting to identify and personally notify parties in interest would be time-intensive and costly to American Fellowship's Rehabilitation Estate. For this reason, the Rehabilitator requests that the Court authorize and ratify service of this *Ex Parte* Petition and any resulting Order by posting electronic copies on the DIFS website, www.michigan.gov/difs, under the section "Who We Regulate" and the subsection "American Fellowship Mutual." Service in this manner is reasonably calculated to give interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

WHEREFORE, for the reasons stated above, the Rehabilitator respectfully requests this Court to approve the settlement reached in the above-referenced lawsuit, in the amount and on the terms more fully set forth in the corresponding settlement agreement. The Rehabilitator further requests the Court to authorize

and ratify service of this *Ex Parte* Petition and any resulting Order by posting electronic copies on the "American Fellowship Mutual" section of the DIFS website.

Respectfully submitted,

Bill Schuette
Attorney General

A handwritten signature in black ink, appearing to read "Christopher L. Kerr". The signature is fluid and cursive, with a large initial "C" and "K".

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Dated: May 23, 2013