

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

KEN ROSS, COMMISSIONER OF THE
OFFICE OF FINANCIAL AND INSURANCE
REGULATION,

Petitioner,

No. 10-397-CR

v

HON. WILLIAM E. COLLETTE

AMERICAN COMMUNITY MUTUAL
INSURANCE COMPANY,

Respondent.

Christopher L. Kerr (P57131)
Assistant Attorney General
Attorney for Petitioner
Corporate Oversight Division
P. O. Box 30755
Lansing, MI 48909
(517) 373-1160

**EX PARTE PETITION FOR APPROVAL OF DOUGLAS HERTLEIN'S
COMPENSATION AS LIQUIDATING TRUST LEGAL COUNSEL**

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,
Attorney General, and Christopher L. Kerr, Assistant Attorney General, petitions

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.

this Court pursuant to MCL 500.8114(1) to approve the compensation to be paid to Douglas Hertlein and his law firm, Allen Kuehnle Stovall & Neuman LLP, in connection with their employment as outside legal counsel who will assist with the creation and administration of a liquidating trust for American Community Mutual Insurance Company ("American Community"). In support of this Ex Parte Petition, the Rehabilitator states as follows:

1. On April 8, 2010, this Court entered an Order placing American Community into Rehabilitation and appointing the Commissioner/Director as the Rehabilitator of American Community.

2. MCL 500.8114(1) authorizes the Rehabilitator to employ such counsel, clerks, and assistants as he considers necessary to carry out his functions as Rehabilitator.

3. MCL 500.8114(1) further authorizes the Rehabilitator to fix, with the Court's approval, the compensation of any counsel, clerks, or assistants that he employs.

4. Pursuant to MCL 500.8114(1), any person appointed by the Rehabilitator shall serve at his pleasure.

5. The Rehabilitator and Special Deputy Rehabilitator have determined that the creation of a liquidating trust for the remaining assets and liabilities of American Community will be the most effective and efficient way to terminate the company as an ongoing business and bring closure to this rehabilitation proceeding. See generally Exhibit A, KPMG What's New in Tax, *A Solid Overview of*

Liquidating Trusts, Sept. 22, 2012. Among other things, the liquidating trust would: (1) retain sufficient assets to pay the expenses of closing the rehabilitation and any outstanding or contingent liabilities of the company; (2) facilitate the sale of any remaining company assets; (3) enable the timely and appropriate distribution of assets to the Surplus Noteholder creditors; and (4) accomplish an earlier closure of this rehabilitation proceeding.

6. To assist with the relatively complex process of creating and administering a liquidating trust, the Rehabilitator and Special Deputy Rehabilitator have decided to retain Douglas Hertlein and his law firm, Allen Kuehnle Stovall & Neuman LLP, to act as their outside liquidating trust legal counsel.

7. Mr. Hertlein and his firm are well-qualified to provide these liquidating trust legal services. As reflected in his curriculum vitae attached as Exhibit B, Mr. Hertlein specializes in insurance company insolvency and receivership matters and has practiced law for nearly 25 years. From 1999 through 2007, he was the Chief Deputy Liquidator for the Ohio Department of Insurance, managing all aspects of the 19 receiverships involving Ohio domestic insurance companies that arose during his tenure. Mr. Hertlein has specific experience in negotiating the sale of "shell" insurance companies following their liquidation, as well as with the development and formation of liquidating trusts. Mr. Hertlein was recommended to the Special Deputy Rehabilitator by another noted, national expert in the area of insolvent insurance company liquidating trusts.

8. Although Mr. Hertlein's normal hourly billing rate is \$310 an hour, he has agreed to bill his time at the reduced, "blended" rate of \$280 an hour that will apply to both the legal services he provides and any services provided by other attorneys in his firm whom he involves with this engagement. See Exhibit C, Engagement Letter. In addition, Mr. Hertlein and his firm will be reimbursed for any expenses actually incurred, including but not limited to postage, messenger and delivery charges, copy costs, filing fees, computerized research, and travel-related expenses. *Id.* As reflected by the attached, signed Engagement Letter, the Rehabilitator and Special Deputy Rehabilitator have agreed to fix the compensation of Mr. Hertlein and his firm consistent with these parameters, and request the Court to approve this compensation under MCL 500.8114(1).

9. Pursuant to MCL 500.8114(1) and Paragraph 16 of the Rehabilitation Order, and upon the Court's approval, the compensation of Mr. Hertlein and his firm shall be paid as it becomes due in the ordinary course of business from the available funds and assets of American Community. Although it is not expected to occur, in the event that American Community does not possess sufficient cash or liquid assets to pay this compensation, the Rehabilitator may advance (but is not required to advance) the necessary amounts out of DIFS funds, and such amounts shall be repaid out of the first available money of American Community.

10. The Rehabilitator and Special Deputy Rehabilitator have determined that the employment of Mr. Hertlein and his firm, together with the compensation to be paid to them in exchange for their services, are necessary and appropriate for

the effective and efficient administration of this rehabilitation proceeding and will assist in providing the maximum protection to creditors, policyholders, and the public.

11. 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 Community's Rehabilitation Estate. For this reason, the Rehabilitator requests that this 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 Community 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 compensation to be paid to Douglas Hertlein and his law firm, Allen Kuehnle Stovall & Neuman LLP, as fixed by the Rehabilitator in the attached Engagement Letter, in connection with their employment as outside liquidating trust legal counsel. In addition, the Rehabilitator requests the Court to authorize and ratify service of this Ex Parte Petition and any resulting Order by posting electronic copies on the "American Community Mutual" section of the DIFS website.

Respectfully submitted,

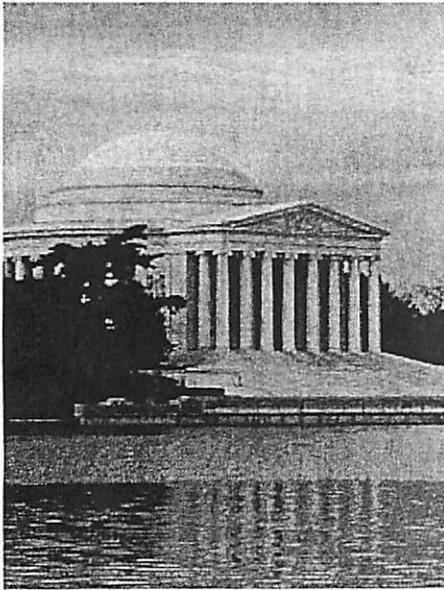
Bill Schuette
Attorney General

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

Christopher L. Kerr (P57131)
Assistant Attorney General
Attorneys for Petitioner
Corporate Oversight Division
P. O. Box 30755
Lansing, MI 48909
(517) 373-1160

Dated: August 8, 2013

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Monday, September 24, 2012

by **Paul Kugler, Rich Manfreda, and Norlyn Miller, Jr., Washington National Tax**

Paul Kugler is a director in the WNT Passthroughs group and a former IRS Associate Chief Counsel (Passthroughs and Special Industries). Rich Manfreda is a senior manager in the WNT Passthroughs group and a former IRS Deputy Associate Chief Counsel (Passthroughs and Special Industries). Norlyn Miller, Jr., is a director in the WNT Practice, Procedure, and Administration group and was a senior technical reviewer in the IRS Office of Assistant Chief Counsel (Income Tax and Accounting).

A Solid Overview of Liquidating Trusts

During the liquidation of a business, impediments may develop that extend the time it takes to liquidate a business entity. A liquidating trust can be used to accelerate the termination of the operating entity and facilitate distributions to its beneficiaries. This article describes the operating rules of a liquidating trust and identifies the conditions necessary to qualify as a liquidating trust as well as a Chapter 11 liquidating trust.

When Is a Liquidating Trust Needed?

A property's value may be difficult to determine or there may be a contingent liability that will delay the liquidation of a business. When this occurs, a liquidating trust may be created to hold assets of the business that may be difficult to value and additional assets to cover any contingent liabilities as they mature. This will allow the complete dissolution of the business entity, because the liquidating trust assets are deemed to have been distributed to the trust's equity owners, and then transferred to the liquidating trust. The objective of creating this liquidating trust is to expedite the liquidation of the entity, thereby allowing the equity owners to recognize any gain or loss resulting from the liquidation, and to receive the proceeds from the termination of the business in an organized fashion.

Liquidating Trust

Liquidating trusts are considered grantor trusts for federal income tax purposes. A trust will be considered a liquidating trust if it is organized for the primary purpose of liquidating its assets. It cannot be an organization having as its purpose the carrying on of a profit-making business that normally is conducted through a corporation or a partnership. The trustee's principal purpose is to protect and preserve the trust property for the beneficiaries.¹ If the liquidation is unreasonably prolonged, or if the liquidating purpose becomes so obscured by business activities that the declared purpose of liquidation can be said to be lost or abandoned, the status of the organization will no longer be that of a liquidating trust.

¹ See section 301.7701-4(d).

Business Trust

There are other trust arrangements that are created for the purpose of carrying on a trade or business. These trusts are referred to as “business trusts” because they are not simply arrangements to protect and conserve the property for the beneficiaries, but are instead created to continue the business operation. Business trusts are treated as either corporations or partnerships for federal income tax purposes.²

The governing document of a liquidating trust must include a statement that the trust is organized primarily for the purpose of liquidating the assets transferred to it, with no objective to continue or engage in the conduct of a trade or business. This functional provision distinguishes a liquidating trust from a business trust.

Obtaining a Liquidating Trust Classification Private Letter Ruling

In the case of a trust created outside of Chapter 11 of the Bankruptcy Code, a private letter ruling request may be filed seeking a liquidating trust classification for the trust, if the conditions of Revenue Procedure 82-58 are met.³ The criteria described in the revenue procedure are useful guidelines, whether or not a private letter ruling is actually requested.

Conditions Needed to Obtain a Private Letter Ruling

Generally, under Revenue Procedure 82-58, the IRS will issue a private letter ruling for a trust, created outside Chapter 11 of the Bankruptcy Code, to be classified as a liquidating trust. The revenue procedure lists eight conditions that must be met for the ruling:

.01 The trust is organized for the primary purpose of liquidating the assets transferred to it with no objective to continue or engage in the conduct of a trade or business and its governing instrument so provides.

.02 The trust instrument contains a fixed or determinable termination date that is generally not more than three years from

² See section 301.7701-4(d), P.L.R. 200517020.

³ 1982-2 C.B. 847. Also see Revenue Procedure 91-15, 1991-1 C.B. 484, which provides the checklist to be used.

the date of creation of the trust and that is reasonable based on all the facts and circumstances.

If the trust contains installment obligations, such as those described in section 453(h) of the Code, that are payable over a period that ends more than three years after the date of creation of the trust, the trust term, with respect to those obligations only, may extend for a period that is reasonably necessary to collect and distribute installments on the obligations

.03 In the case of a trust created incident to a corporate liquidation, (1) the trustee is selected by the shareholders of record or a court of competent jurisdiction, and (2) if the trust is to hold assets for unlocated shareholders, due notice has been given to such shareholders in accordance with local law

.04 The investment powers of the trustee are limited to powers to invest in demand and time deposits in banks or savings institutions, or temporary investments such as short-term certificates of deposit or Treasury bills.

.05 The trust does not receive transfers of any listed stocks or securities, any readily-marketable assets or any operating assets of a going business. The trust does not receive or retain cash in excess of a reasonable amount to meet claims and contingent liabilities.

.06 The trust does not receive transfers of any unlisted stock of a single issuer that represents 80 percent or more of the stock of such issuer and does not receive transfers of any general or limited partnership interests.

.07 The trust is required to distribute at least annually to known shareholders any proceeds from the sale of assets or income from investments. The trust may retain a reasonable amount of proceeds or income to meet claims and contingent liabilities.

.08 The ruling request contains representations that the trustee will make continuing efforts to dispose of the trust assets, make timely distributions, and not unduly prolong the duration of the trust.

Unless otherwise indicated, references to "section" or "sections" in this article are to the Internal Revenue Code of 1986 (the "Code"), as most recently amended, or to the U.S. Treasury Department regulations, as most recently adopted or amended.

The use of a liquidating trust is an efficient way to terminate a business when there may be difficulty in determining the value of property in the business or the business has contingent liabilities. Because the business assets are deemed to have been distributed to the equity owners and then transferred to the liquidating trust, there will be immediate recognition of a gain or loss from the liquidation of the former business entity by its owners. At the same time, the trust will retain assets (1) for the benefit of creditors to be used to satisfy business liabilities, (2) to facilitate the sale of hard to divide business assets, and (3) to enable early and proper distributions to the equity owners.

Entities Created Pursuant to Bankruptcy Plans under Chapter 11 of the Bankruptcy Code

When an entity (debtor) files for bankruptcy under Chapter 11 of the Bankruptcy Code, a trustee is appointed to handle the bankruptcy. The goal is to reorganize the debtor's business assets and return the debtor to normal operation in a better financial position. In certain situations, such as one in which a portion of the business operation is to be terminated or sold, a liquidating trust may be created. Generally by creating this trust, the debtor is treated as having transferred the assets to the creditors, and the creditors then as transferring the assets to the liquidating trust, with the creditors being treated as the grantors and beneficiaries of the liquidating trust. The beneficiaries must report each item of income, gain, deduction, loss, and credit of the liquidating trust.

The deemed transfer of the assets to the creditors is likely treated as a satisfaction of the debtor's obligation to those creditors for the fair market value of the assets transferred. The debtor may recognize cancellation of debt income as a result, as well as gain or loss from the deemed sale or exchange of the property transferred.

Under certain circumstances, the trustee of the liquidating trust may establish an escrow account or fund to hold assets that are subject to disputed claims and elect to treat this account or fund as a "disputed ownership fund." See section 1.468B-9(c)(2)(ii). If this election is made, the assets in the disputed ownership fund are not treated as transferred to the creditors and the trustee must prepare a separate income tax return for the fund.

Obtaining a Liquidating Trust Classification Private Letter Ruling

The IRS in Revenue Procedure 94-45⁴ provides the procedures for requesting a private letter ruling classifying an entity, created pursuant to bankruptcy plans under Chapter 11 of the Bankruptcy Code, as a liquidating trust, if certain conditions are met. The revenue procedure cautions that it is not to be viewed as defining as a matter of law the circumstances under which an organization will be classified as a liquidating trust. This determination is made only after an examination of all the facts in connection with the operation and activities of the trust. In certain situations, the taxpayer may be required to enter into a "Closing Agreement" as a condition to the issuance of the letter ruling.

Conditions Needed to Obtain a Ruling

Generally, the IRS will issue a private letter ruling that a trust, created pursuant to a bankruptcy plan under Chapter 11 of the Bankruptcy Code, is a liquidating trust if the following conditions, listed in Revenue Procedure 94-45, are met:

.01 the trust is or will be created pursuant to a confirmed plan under Chapter 11 of the Bankruptcy Code for the primary purpose . . . of liquidating the assets transferred to it with no objective to continue or engage in the conduct of a trade or business

.02 The plan and disclosure statement must explain how the bankruptcy estate will treat the transfer of its assets to the trust for federal income tax purposes

.03 The plan, disclosure statement, and any separate trust instrument must provide that the beneficiaries of the trust will be treated as the grantors and deemed owners of the trust

.04 The plan, disclosure statement, and any separate trust instrument must provide for consistent valuations of the transferred property by the trustee and the creditors (or equity interest holders), and those valuations must be used for all federal income tax purposes.

⁴ 1994-2 C.B. 684. This revenue procedure contains similar requirements to those in Revenue Procedure 82-58

.05 Whether or not a reserve is established for disputed claims, all of the trust's income must be treated as subject to tax on a current basis, and the ruling request must explain, in accordance with the plan, how the trust's taxable income will be allocated, and who will be responsible for payment of any tax due.

.06 The trust instrument must contain a fixed or determinable termination date that is generally not more than 5 years from the date of creation of the trust and that is reasonable based on all the facts and circumstances

.07 If the trust is to hold any operating assets of a going business, a partnership interest in a partnership that holds operating assets, or 50% or more of the stock of a corporation with operating assets, the ruling request must explain why it is necessary to retain these assets.

.08 If the trust is to receive transfers of listed stocks or securities or other readily marketable assets, the ruling request must explain the necessity for doing so. The trust is not permitted to receive or retain cash or cash equivalents in excess of a reasonable amount to meet claims and contingent liabilities (including disputed claims) or to maintain the value of the assets during liquidation.

.09 The investment powers of the trustee, other than those reasonably necessary to maintain the value of the assets and to further the liquidating purpose of the trust, must be limited to powers to invest in demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills.

.10 The trust must be required to distribute at least annually to the beneficiaries its net income plus all net proceeds from the sale of assets, except that the trust may retain an amount of net proceeds or net income reasonably necessary to maintain the value of its assets or to meet claims and contingent liabilities (including disputed claims).

.11 The ruling request must contain representations that the trustee will make continuing efforts to dispose of the trust assets,

make timely distributions, and not unduly prolong the duration of the trust.

.12 A trust that is a designated settlement fund under §468B(d) of the Code or a qualified settlement fund under §1.468B-1 of the regulations is governed by § 468B and the regulations thereunder, rather than by this revenue procedure.⁵

The revenue procedure also provides a checklist in Appendix A to be used in assisting taxpayers requesting classification of an entity as a liquidating trust.

As noted above, the trust instrument is required to contain a fixed termination date that is generally not more than five years from the date of creation of the trust. However, in Private Letter Ruling 200938017, the trust was allowed to have a term of up to 11 years. According to the facts of this letter ruling, the original term of the trust was five years, the bankruptcy court subsequently extended the term of the trust by three years, and a later request was made for an additional three-year extension of the trust's term. The ruling held that an extension of the trust's term to the extended date would not adversely affect the determination that the trust is a liquidating trust under section 301.7701-4(d).⁶

It should be noted that the requirement of a fixed termination date of not more than five years from the date of creation of the trust in this revenue procedure differs from the requirement of Revenue Procedure 82-58, which requires a fixed termination date of not more than three years from the date of creation of the trust.

Generally, a liquidating trust will be created in a Chapter 11 Bankruptcy proceeding when the parties have agreed that some of the business operation needs to be disposed of and the remaining portion of the operation will exit bankruptcy in a better financial position. It is not clear whether the IRS would grant an extension of the three-year term under Revenue Procedure 82-58.

⁵ See section 3 of Rev. Proc. 94-45.

⁶ See also P.L.R. 201230014. The facts of this private letter ruling indicated that the Bankruptcy Court extended the term of the liquidating trust. The ruling held that an extension of the trust's term to the extended date will not adversely affect the determination that the trust is a liquidating trust under section 301.7701-4(d).

Conclusion

As noted above, the use of a liquidating trust may be an efficient way to either terminate a business or, in the case of a Chapter 11 bankruptcy, dispose of a portion of the business or some of the business assets. In both situations, the liquidating trust is treated as a grantor trust and either the entity's owners or creditors are the beneficiaries. Additionally, the principal purpose in both situations is to protect and preserve the trust's property for the beneficiaries during the winding-up period.



KPMG's *What's News in Tax* is a publication from Washington National Tax that contains thoughtful analysis of new developments and practical, relevant discussions of existing rules and recurring tax issues.

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

This article represents the views of the author or authors only, and does not necessarily represent the views or professional advice of KPMG LLP.

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CURRICULUM VITAE

Douglas L. Hertlein

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17 S. High Street, Suite 1220
Columbus, Ohio 43215

hertlein@aksnlaw.com

Phone: 614-221-8500

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Professional Experience

Allen Kuehnle Stovall & Neuman LLP, Columbus, OH

Private Practice Attorney

January 2008 to Present

- **Insurance Company Insolvency and Receivership Matters**, representing insurance company receivers, warranty company receivers, affiliates of insolvent insurance companies, and creditors of insolvent insurance companies, providing advise and consulting services for state insurance departments on insurance company insolvency and pre-receivership matters, rendering expert opinions and testimony for insurance company receivers, and defending policyholders, directors, officers and affiliates in litigation initiated by insurance company receivers and claims disputes
- **Business Litigation Matters**, representing both plaintiffs and defendants in variety of commercial disputes and collection matters
- **General Debtor/Creditor Matters**, representing both creditors and debtors in various insolvency and debt related matters
- **Bankruptcy and Insolvency Matters**, representing creditors and debtors on secured and unsecured debt workouts; representing debtors and creditors in chapter 7, 11, and 13 bankruptcies and non-bankruptcy court receiverships
- **Commercial Law Matters**, representing clients on business acquisitions, operating issues, debt management, contract negotiations, real estate issues, and contract and loan documentation

Office of the Ohio Insurance Liquidator, Columbus, OH

Chief Deputy Liquidator

July 1999 to September 2007

- This was an Assistant Director level position where I reported directly to the Superintendent of the Ohio Department of Insurance. I managed all aspects of the Ohio Insurance Liquidation Office, an office established to administer the liquidation and rehabilitation of Ohio domestic insurance companies placed in receivership – 19 different companies during my tenure, with 7 being placed in liquidation in an 18-month period
- Lines of insurance business liquidated or runoff included: workers compensation, environmental liability, professional liability, medical malpractice liability, general liability, general property and casualty, auto, HMO, Multiple Employer Welfare Associations, Medicare supplement, long term care, and assumed reinsurance
- Directed both in house and outside attorneys for the initiation and all subsequent phases of receivership litigation, including being the primary client decision maker at all settlement negotiations and mediations
- Managed policyholder and other creditor claim determinations, directed strategy and settlement negotiations for claim disputes, and oversaw distributions to policyholders and creditors in excess of \$545 million

- Negotiated and resolved disputes with guaranty funds on variety of issues such as early access, claims handling and allowance, allocation of recoveries, and reporting problems
- Determined and managed the strategy and staffing for pursuit of all assets of the insurance companies in receivership, collecting over \$520 million, including:
 - Investment management and liquidation;
 - Reinsurance billing and commutations, including several commutations totaling in excess of \$130 million;
 - Sale and management of physical assets;
 - Sale of real estate, including a partnership interest in an undeveloped downtown Chicago lot for \$17.5 million;
 - Collection of salvage and subrogation relating to insurance claim payments;
 - Collection of deposits held by state regulators;
 - Insurance premium collections;
 - Collection of balances due from agents;
 - Collection of deductibles due from insureds;
 - Managed attorneys for pursuit of substantial and varied litigation (legal, accounting and actuarial malpractice claims with recoveries in excess of \$23 million; director and officer liability with recoveries in excess of \$16 million; and preferences with recoveries in excess of \$13 million)
- Directed the takeover of insolvent companies once placed in liquidation and the transition of insolvent company operations to the liquidation office - 11 companies were placed in rehabilitation or liquidation during my tenure
- Managed all employee and staffing needs at insolvent companies and at the liquidation office, including determination of personnel policies and benefits. The Liquidation Office had approximately 70 full time employees and 20 full or part time consultants
- Oversaw and directed office and warehouse lease negotiations
- Conducted final review of all income tax filings and determined tax strategies - in one estate, several years' tax returns were amended a refund of \$5.5 million was obtained
- Oversaw and conducted final review of financial reporting to Department of Insurance and receivership courts
- Coordinated with and advised Insurance Department regulators in dealing with financially troubled companies and pre-receivership planning and preparations, including the development and implementation of rehabilitation plans for two companies
- Represented liquidation office and Ohio Department of Insurance on state legislative matters, including reviewing and drafting proposed legislation and testifying before legislative committees
- Represented liquidation office and Ohio Department of Insurance on national meetings and seminars regarding insurance liquidation and rehabilitation matters – National Association of Insurance Commissioners: Insolvency Task Force, Model Act Working Group, Receivership Law and Intergovernmental Working Group (chair), Receivership Technology and Administration Working Group, Receivers' Handbook Working Group

Thompson Hine, Columbus, OH

Private Practice Attorney, Litigation and Commercial/Bankruptcy Departments, national law firm
September 1988 to July 1999

- **Business Litigation Matters**, represented clients in variety of commercial disputes, collection matters, employee non-compete litigation and defense of tort claims
- **Bankruptcy and Creditor's Rights Matters**, represented creditors and debtors on secured and unsecured debt workouts; represented debtors, trustees and creditors in chapter 7, 11, 12 and 13 bankruptcies, including disputes regarding relief from stay, confirmation of plans, objections to discharge of debts, preference and fraudulent transfer claims, and claims disputes

- **Commercial Law Matters**, represented clients on business formation, operating issues, asset purchases and sales, debt management, contract negotiations, real estate issues, contract and loan documentation

Education

Juris Doctor -*The University of Cincinnati College of Law*, Cincinnati, Ohio
Bachelor of Science, Agricultural Economics, - *The Ohio State University*, Columbus, Ohio

Current Professional Associations

International Association of Insurance Receivers (Board of Directors 2005 - 2007, Board Secretary 2007, Co-Chairman Guaranty Fund/Receiver Liaison Committee (2006 - 2007), Co-Chairman External Relations Committee 2010 - current), Accreditation and Ethics Committee (2009 - current); Ohio State Bar Association (1988 - current); Columbus Bar Association (1988 - current); Christian Legal Society (1994 - present, Central Ohio Chapter Board of Directors 2011 - current); Village Mountain Mission (Board of Directors 2011 - current)

Presentations

“The Other Insolvency Regime – Bankruptcy and Chapter 15” International Association of Insurance Receivers 2011 International Association of Insurance Receivers Technical Development Series III, (June 2012)

“The Changing Regulatory Framework – IRMA and Other US Insolvency Laws” International Association of Insurance Receivers 2011 Insolvency Workshop, Peering into IAIR’s Crystal Ball (Jan. 2011)

“Rehabilitation Proceedings” Texas Department of Insurance Receivership Conference (Sept. 2010)

“Bankruptcy & Insolvency Issues for Self-Insurers and Captives” Self Insurance Institute of America, Annual National Conference and Expo (Sept. 2009)

“Issues Arising in Connection with a Distressed Title Insurance Provider – Bankruptcy, Rehabilitation, Receivership and Liquidation,” American Bar Association & ABA Center for Continuing Legal Education, Section on Real Property, Trust and Estate Law (Telephone Conference and Audio Webcast, Feb. 2009)

“E-Discovery,” International Association of Insurance Receivers Roundtable (September 2007)

“NAIC Global Receivership Information Database: GRID,” National Conference of Insurance Guaranty Funds (June 2007)

“The Insurance Company Liquidation Process,” Central Ohio Claims Managers Council (April 2007)

“Dealing with Sunset of IRS 501(c)(15) Exemption for Liquidators,” International Association of Insurance Receivers Roundtable (December 2006)

“National Uniformity and Accreditation,” International Association of Insurance Receivers Roundtable (December 2005)

“Assessing the Impact of Legislative Efforts to Change the Insolvency Process - How IRMA Impacts Receivers,” American Conference Institute Insurance Insolvency (November 2005);

“SMART Act – Fix It or Kill It,” International Association of Insurance Receivers Roundtable
(June 2005)

Authorship

“IRMA Accreditation Standards,” The Insurance Receiver, Winter 2006

Expert Witness

Ario v Reliance Insurance Company, Commonwealth Court of Pennsylvania, Case No. 269 MD 2001, In re Objections of Mizuho Corporate Bank Limited to Notice of Determination for Proof of Claim No. 1911788

Koken v Reliance Insurance Company, Commonwealth Court of Pennsylvania, Case No. 269 MD 2001, In re Objections of Warrantech Automotive, Inc., *et al.* to Notices of Determination for Proofs of Claim

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**Allen Kuehnle
Stovall & Neuman LLP**
Attorneys-At-Law

Douglas L. Hertlein
hertlein@aksnlaw.com

August 7, 2013

VIA FIRST CLASS MAIL & EMAIL at gerberj@michigan.gov

James Gerber
Director of Receiverships
Department of Insurance and Financial Services
PO Box 30220
Lansing, MI 48909-7720

Re: Engagement of Allen Kuehnle Stovall & Neuman LLP for Legal Services

Dear Mr. Gerber:

I am writing to confirm the engagement of Allen Kuehnle Stovall & Neuman LLP ("AKSN"), to represent the R. Kevin Clinton, Director of the Department of Insurance and Financial Services, as Rehabilitator for American Community Mutual Insurance Company (the "Rehabilitator"). I understand that you have submitted an order to the Rehabilitation Court approving my engagement for this matter and this letter clarifies the terms for that engagement and serves as our agreement for AKSN to provide legal counseling and advice to the Rehabilitator.

Our fees for the services we will undertake will be based in substantial part on time spent on the Rehabilitator's behalf. Time is accrued on a tenth of an hour basis for all work. We will charge a blended rate of \$280 for all time billed by AKSN's attorneys on this matter.

As part of our representation, we may be advancing costs and incurring expenses on an on-going basis. These items are separate and apart from attorneys' fees and as they are out-of-pocket expenses, we will invoice the Rehabilitator for them on a current basis. Examples of these expenses are postage, messenger and delivery charges, copying charges, filing fees, computerized research, conference call expenses, travel (including mileage, parking, air fare, lodging, meals and ground transportation), court costs and any other advanced costs and expenses.

We will periodically (usually monthly) provide you with an invoice for our fees and expenses. Our fees are not contingent upon any aspect of the matter and will be due upon receipt of each invoice.

AKSN has not provided any assurance of any particular outcome in this engagement, nor have we been asked to do so. You acknowledge that legal matters frequently involve the rights and actions of persons beyond our control. For example, in litigation matters we may be required to respond to actions initiated by adversaries. For this reason, while we always provide services in a professional and cost efficient manner, we cannot and have not predicted the ultimate cost of our services in this

Allen Kuehnle
Stovall & Neuman LLP
Attorneys-At-Law

James Gerber
Director of Receiverships
Department of Insurance and Financial Services
August 7, 2013
Page 2

matter. You will be informed through our detailed invoices of the services AKSN has provided, and I encourage a continuing dialogue with you about our fees as this matter progresses.

You, of course, have the right to terminate our services at any time. We also have the right to terminate our services upon written notice, if our monthly invoices as submitted are not timely paid, or in the event we determine in our reasonable discretion that to continue services would be unethical, unpractical, or improper.

We believe in staying in contact with our clients to insure that the legal work we do proceeds as smoothly as possible and that our invoices are accurate and understandable. Any questions you may have about our work or invoices should be directed to me.

If this letter meets with your approval, please indicate your acceptance by dating and signing a copy and returning it to me by mail, facsimile or email.

If you have any questions, please call. As this matter progresses, always feel free to call to discuss the status or any questions you may have. I look forward to working with you on this matter.

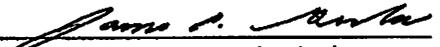
Very truly yours


Douglas L. Hertlein

AGREED AND ACCEPTED:

Rehabilitator for American Community Mutual
Insurance Company

Date: 8/7/2013

By: 
Its: Deputy Rehabilitator