

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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PETITION FOR ORDER
CONVERTING REHABILITATION TO LIQUIDATION
AND FOR JUDICIAL DECLARATION OF INSOLVENCY OF
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: (a) for an order converting the current rehabilitation of American Fellowship to a liquidation proceeding, pursuant to MCL 500.8116(1) and MCL 500.8117; and (b) for a judicial declaration of American Fellowship's insolvency, pursuant to MCL 500.8118(4). In support of this Petition, the Rehabilitator states as follows:

INTRODUCTION

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. The Court entered the Rehabilitation Order requested by the Commissioner/Director because American Fellowship's financial condition was such that its further transaction of business would have been hazardous financially to its policyholders, creditors, and the public. Rehabilitation Order, p 3, ¶ D; MCL 500.8112(a). The Court further ordered that American Fellowship be placed into rehabilitation because the company's Board of Directors consented to rehabilitation under Chapter 81 of the Insurance Code, MCL 500.8101 – 500.8159. Rehabilitation Order, p 3, ¶ E; MCL 500.8112(l).

2. As explained further below, despite the best efforts of the Rehabilitator and Special Deputy Rehabilitator to restore American Fellowship to financial stability, the company is insolvent (with an unimpaired surplus/net worth of *negative* \$2,279,561.57 as of April 30, 2013) and its financial condition continues to deteriorate. Accordingly, an order to liquidate American Fellowship is necessary

and appropriate because: (a) further attempts to rehabilitate the company would be futile and would substantially increase the risk of loss to the company's creditors, policyholders, and the public; (b) the company is insolvent; and (c) the company'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. MCL 500.8116(1), MCL 500.8117.

THE PARTIES / JURISDICTION

3. R. Kevin Clinton is the duly appointed Director of DIFS (formerly Commissioner of OFIR) and court-appointed Rehabilitator of American Fellowship.

4. American Fellowship is a Michigan domestic property and casualty insurance company authorized to transact insurance in Michigan. American Fellowship's business address is 25925 Telegraph Road, Suite 200, Southfield, MI 48033-2527.

5. MCL 500.8102 provides that a proceeding under Chapter 81 of the Insurance Code, 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 the future; or (b) who has insureds resident in this state. American Fellowship satisfies both criteria and is therefore subject to liquidation.

6. Pursuant to MCL 500.8104(1), only the Commissioner/Director may commence a liquidation proceeding against an insurer under Chapter 81.

7. MCL 500.8104(3) vests the Ingham County Circuit Court with sole jurisdiction over a liquidation proceeding commenced under Chapter 81.

PROCEDURAL BACKGROUND / EFFORTS TO REHABILITATE

8. Among other things, and as required by law, the Rehabilitation Order entered by this Court on October 29, 2012: (a) appointed the Commissioner/Director as Rehabilitator and James Gerber, the OFIR/DIFS Director of Receiverships, as Special Deputy Rehabilitator for American Fellowship; (b) directed the Rehabilitator to take immediate possession of the company's assets and to administer those assets under the Court's general supervision; (c) granted the Rehabilitator and Special Deputy Rehabilitator full power and authority to direct and manage American Fellowship and to deal in totality with the property and business of the company; and (d) authorized the Rehabilitator and Special Deputy Rehabilitator to take such action as they considered necessary or appropriate to reform or revitalize American Fellowship. Rehabilitation Order, ¶¶ 2, 3, 8, 11, and 28.

9. Following entry of the Rehabilitation Order, the Rehabilitator and Special Deputy Rehabilitator took possession of American Fellowship's assets, evaluated the company's books, records, and business operations, and assumed management of the company with the goal of rehabilitating its financial condition.

10. Specifically, the Rehabilitator and Special Deputy Rehabilitator have taken the following actions during the rehabilitation to reduce American

Fellowship's business expenses, enhance revenues, improve cash flow, and otherwise restore the company to profitability:

- Negotiated a rent reduction for American Fellowship's business office in the amount of \$2,821 a month effective December 1, 2012, which saved the company \$11,284 through March 2013.
- Laid off 7 employees effective November 1, 2012, resulting in monthly savings of \$13,370 and total savings of \$53,466 through March 2013.
- Adjusted the company's health insurance plan for employees effective December 1, 2012, resulting in monthly savings of \$5,550 and total savings of \$22,407 through March 2013.
- Reassigned all legal matters using outside counsel to American Fellowship's internal legal counsel effective November 1, 2012, resulting in monthly average savings of \$45,000 and total savings of \$239,030 through March 2013.
- Filed rate increases for American Fellowship's homeowners and personal automobile policies in October 2012 because the company's existing rates were not actuarially sound. Based on the rate filings, OFIR/DIFS approved a 17% rate increase effective November 30, 2012 for the company's homeowners and dwelling fire policies and overall rate increases of 42.2% for comprehensive, 16.9% for collision, and 14.9% for no-fault PIP effective November 15, 2012 for the company's personal automobile policies. Due to these rate increases, however, the company lost 15% of its business as of February 28, 2013, offsetting any anticipated benefit from increased premium revenues.
- Discussed and negotiated the company's monthly deposit premiums paid to the Michigan Catastrophic Claims Association, resulting in those premiums being reduced by \$16,000 a month.
- Discussed and negotiated American Fellowship's quarterly deposit premium calculation with the company's reinsurance broker and reinsurers, resulting in a \$45,000 reduction to the quarterly deposit premium and a monthly increase in cash flow of \$15,000.
- Negotiated and finalized settlements (with the Court's approval) of 27 claims or lawsuits pending against the company, eliminating potential liability exposure on these claims totaling in excess of \$1,239,000 for settlement payments totaling roughly \$430,000.

- Filed a petition requesting the Court to approve the termination of American Fellowship's Employees' Pension Plan effective February 28, 2013 under the voluntary distress termination provisions of ERISA. American Fellowship's Pension Plan participants were notified of this termination on December 18, 2012. Subsequently, the petition was withdrawn because the Pension Benefit Guaranty Corporation ("PBGC") notified the Special Deputy Rehabilitator that it would initiate termination of the plan due to American Fellowship's financial condition. As of April 30, 2013, the Pension Plan represents a \$354,293 unfunded liability on the company's books, which would be eliminated upon the PBGC's assumption of the plan. (Exhibit A, April 30, 2013 Balance Sheet.)

11. In addition to these measures, the Rehabilitator and Special Deputy Rehabilitator have explored the possibility of an outside investor acquiring and/or infusing capital into American Fellowship. Discussions to this effect took place between the Special Deputy Rehabilitator and three different potential investors, each of whom signed non-disclosure agreements permitting their review of American Fellowship's business records. After the records were provided, one of the potential investors terminated his interest in October 2012 and the other two potential investors terminated their interest in January 2013 based on preliminary estimates of the company's 2012 loss reserves.

12. The Rehabilitator and Special Deputy Rehabilitator have also diligently attempted to transfer some or all of American Fellowship's business to other insurers. The Special Deputy Rehabilitator contacted six mutual insurers and one stock insurer domiciled in Michigan to discuss potential assumption reinsurance transactions involving American Fellowship's homeowners and/or automobile insurance policies. Only two of the mutual insurance companies expressed any interest, signing non-disclosure agreements. After reviewing

American Fellowship's business records, however, both mutual insurance companies terminated their interest.

CURRENT FINANCIAL CONDITION AND POLICY COUNTS

13. Despite the numerous steps outlined above to rehabilitate American Fellowship, the company's financial condition has continuously eroded during the course of this rehabilitation. As of August 31, 2012 (two months prior to the rehabilitation), American Fellowship's internal monthly financial statement reflected unimpaired capital and surplus (i.e., net worth) totaling \$72,528. As of April 30, 2013, the company's unimpaired capital and surplus has fallen to *negative* \$2,279,561.57 and the company is now insolvent.² (Exhibit A.)

14. The number of insurance policies issued by American Fellowship is also dwindling, where the premiums for these policies represent the predominant source of the company's revenues. As of September 30, 2012 (one month prior to rehabilitation), American Fellowship had 4,890 automobile policies and 2,086 homeowners policies issued and in force. Shortly before rehabilitation (and in consultation with OFIR/DIFS), American Fellowship suspended issuing policies to any new customers in an effort to mitigate financial losses. In the three months following the rate increases in November 2012, roughly 15% of American Fellowship's policyholders cancelled or did not renew their policies. Based on this decline in business and the company's deteriorating financial condition, the

² American Fellowship's current unimpaired surplus of over negative \$2.2 million is due in part to an additional \$1,338,000 adjustment to correct the company's historically deficient loss and loss adjustment expense reserves, which occurred following the completion of an independent actuarial review in late March 2013.

Rehabilitator and Special Deputy Rehabilitator further decided (and notified customers) in February 2013 that effective April 1, 2013, the company would no longer renew existing customers' policies upon their expiration. As a combined result of these actions, American Fellowship's policy counts have decreased significantly, to only 1,631 homeowner policies and 1,254 automobile policies issued and in force as of April 30, 2013.

AUTHORITY FOR ORDER OF LIQUIDATION AND JUDICIAL DECLARATION OF INSOLVENCY

15. 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."

16. 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.

17. Under MCL 500.8103(i)(ii), an insurer such as American Fellowship is defined as "insolvent" when its "admitted assets do not exceed liabilities plus . . . [a]ny capital and surplus required by law for its organization." This subsection

further defines “liabilities” to “include, but not be limited to, reserves required by statute or by rule or specific requirements imposed by the commissioner upon an insurer at the time of admission or subsequent to admission.”

18. Pursuant to MCL 500.8117(b), this Court should grant the Rehabilitator’s petition to liquidate American Fellowship because, by definition, the company is insolvent. American Fellowship’s admitted assets totaling \$4,543,342.67 are far exceeded by the company’s liabilities totaling \$6,822,904.24, resulting in unimpaired capital and surplus in the amount of *negative* \$2,279,561.57 as of April 30, 2013. (Exhibit A.) This is before taking into account (by adding to the company’s liabilities) the \$1.5 million in positive, minimum capital and surplus required by law for American Fellowship’s organization. MCL 500.410.

19. The Court should also grant the Rehabilitator’s petition under MCL 500.8117(c) because 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, as evidenced by the company’s steady financial decline, current unimpaired surplus of over negative \$2.2 million, and diminishing revenues as policies expire.

20. In addition to these bases for liquidation under MCL 500.8117, the Court should enter an order to liquidate American Fellowship under MCL 500.8116(1) because the Rehabilitator reasonably believes—again, based on the company’s steady financial decline, current unimpaired surplus of over negative \$2.2 million, and diminishing revenues as policies expire—that any further

attempts at rehabilitation would be futile and would substantially increase the risk of loss to creditors, policyholders, and the public.

21. The Rehabilitator further requests a judicial declaration of American Fellowship's insolvency pursuant to MCL 500.8118(4), which provides:

At the time of petitioning for an order of liquidation, or at any time thereafter, the commissioner, after making appropriate findings of an insurer's insolvency, may petition the court for a judicial declaration of insolvency. After providing notice and hearing as it considers proper, the court may make the declaration.

22. As explained above, American Fellowship satisfies the definition of "insolvency" because its liabilities exceed its assets by over \$2.2 million, even before taking into account (by adding to the company's liabilities) the \$1.5 million in positive, minimum capital and surplus required for its organization. Consequently, the Court should grant the Rehabilitator's request under MCL 500.8118(4) and declare that American Fellowship is insolvent.

23. The Rehabilitator and Special Deputy Rehabilitator have exhausted all avenues for American Fellowship's rehabilitation. The company cannot be successfully rehabilitated, it is insolvent, and it must now be liquidated. The Rehabilitator therefore requests the Court to enter the Order of Liquidation and Declaration of Insolvency of American Fellowship ("Liquidation Order") in the form attached as Exhibit B.

APPOINTMENT AND COMPENSATION OF SPECIAL DEPUTY LIQUIDATOR

24. MCL 500.8121(1)(a) authorizes the Rehabilitator, upon entry of the Liquidation Order appointing him as Liquidator, to appoint a Special Deputy

Liquidator(s), who shall have all the powers of the Liquidator granted under Chapter 81 of the Insurance Code and who shall serve at the pleasure of the Liquidator.

25. Pursuant to MCL 500.8121(1)(a), the Liquidator may determine the reasonable compensation of any Special Deputy Liquidator(s) that he appoints. The Liquidator is further authorized to pay that reasonable compensation to his appointed Special Deputy Liquidator(s) and to defray from the funds or assets of American Fellowship all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with, American Fellowship's business and property. MCL 500.8121(d). If American Fellowship's property does not contain sufficient cash or liquid assets to defray the costs incurred, the Liquidator may advance the incurred costs out of an appropriation for the maintenance of DIFS. *Id.* Amounts advanced for expenses of administration shall be repaid to the Liquidator for the use of DIFS out of the first available money of American Fellowship. *Id.*

26. Upon his appointment as Liquidator, the Rehabilitator appoints James Gerber, the DIFS Director of Receiverships, as Special Deputy Liquidator for American Fellowship. Pursuant to the October 29, 2012 Rehabilitation Order, the Rehabilitator previously appointed Mr. Gerber as Special Deputy Rehabilitator for American Fellowship and the Court approved Mr. Gerber's compensation in that capacity. Having served as Special Deputy Rehabilitator since that time, Mr. Gerber is intimately familiar with American Fellowship's business operations. The

Liquidator 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.

27. Upon his appointment as Liquidator, the Rehabilitator has determined the compensation to be paid to Mr. Gerber as Special Deputy Liquidator pursuant to the terms set forth in the Liquidation Order attached as Exhibit B.

28. The Rehabilitator has determined that upon his appointment as Liquidator, the appointment of James Gerber as Special Deputy Liquidator is both necessary and appropriate for the effective and efficient administration of the liquidation proceeding and will assist in providing the maximum protection to creditors, policyholders, and the public. The Rehabilitator has further determined that the compensation to be paid to Mr. Gerber as Special Deputy Liquidator is reasonable.

ADDITIONAL PROVISIONS CONTAINED IN THE REQUESTED LIQUIDATION ORDER

29. Without detracting from the importance of and legal authority for each provision contained in the Rehabilitator's requested Liquidation Order attached as Exhibit B, the Rehabilitator highlights the following provisions not previously discussed for the benefit of the Court and any interested parties.

30. Pursuant to MCL 500.8105(f) and 500.8124(1), the Liquidation Order provides that upon its entry, all actions at law or equity against American Fellowship, the Liquidator, or the Special Deputy Liquidator are immediately prohibited and enjoined, and any such actions may not be commenced, maintained, or further presented in Michigan or any other State. Likewise, the Liquidation

Order provides consistent with MCL 500.8105(1)(g) and (h) and MCL 500.8157 that all actions or proceedings in the nature of an attachment, garnishment, or levy of execution against American Fellowship, its assets, or its policyholders are immediately prohibited, enjoined, and may not be commenced or maintained. All claims by creditors against the assets of American Fellowship must be made by filing claims in the liquidation proceeding, consistent with the terms more specifically set forth in the attached Liquidation Order.

31. The Liquidation Order further provides that 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 the liquidation proceeding and any legal action involving the claim that is currently pending in a Michigan court shall be stayed for 6 months following entry of the 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).

32. During the course of American Fellowship’s rehabilitation, several lawsuits against the company involving claims for no-fault automobile personal injury protection (“PIP”) benefits that were pending in various Michigan courts were either voluntarily or involuntarily dismissed, without prejudice, due to the Rehabilitation Order’s injunction against ongoing litigation. *See Rehabilitation*

Order, ¶¶ 5 and 23. The Plaintiffs' counsel in these dismissed cases were concerned that some or all of the claimed PIP benefits would become time-barred under the "one year back rule" provided in MCL 500.3145. The Special Deputy Rehabilitator recognized that the dismissal of these cases due to the rehabilitation and corresponding injunction against ongoing litigation should not serve as a basis for compromising any properly filed, pending PIP benefit claims. Accordingly, the Special Deputy Rehabilitator agreed, and the attached Liquidation Order provides, that any claim for 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 Rehabilitation Order, will not be subject to the defense of the "one year back rule" during the liquidation claims process. However, all other defenses to these PIP benefit claims are expressly preserved.

33. Following entry of the Rehabilitation Order, the Special Deputy Rehabilitator retained American Fellowship's existing in-house counsel Patricia Battersby and reassigned all ongoing litigation involving the company to her for further representation. Although Ms. Battersby notified the court in each pending case of the Rehabilitation Order's injunction against ongoing litigation (which for the most part, the courts have recognized), Ms. Battersby also personally appeared in each case and her name still appears as American Fellowship's counsel of record. In anticipation of liquidation, Ms. Battersby has recently left the company. Accordingly, the attached Liquidation Order provides that the undersigned attorneys from the Department of Attorney General, as counsel for the Liquidator,

are substituted in the place of Ms. Battersby as American Fellowship's legal counsel in all pending litigation involving the company.

NOTICE / SERVICE

34. The Rehabilitator has identified the MPCGA—which upon entry of the Liquidation Order will become responsible for the payment of claims against American Fellowship that are “covered claims” and that otherwise satisfy the requirements of Chapter 79 of the Insurance Code—as the party with the strongest potential interest in this Petition. Accordingly, this Petition and the proposed Liquidation Order attached as Exhibit B were provided to and discussed with the MPCGA and its legal counsel prior to being filed with the Court. In addition, as the attached Proof of Service reflects, a copy of this Petition, the proposed Liquidation Order (attached as Exhibit B), and a Notice of Hearing on this Petition have been served via regular mail on counsel for the MPCGA.

35. Beyond the MPCGA, providing personalized notice of this Petition and any resulting Order to all other parties that may have a general interest in American Fellowship's rehabilitation/liquidation is impractical at this time because there has been no claims submission or other process to identify such interested parties. Moreover, attempting to identify and personally notify every party having a general interest would be time-intensive and costly to American Fellowship's rehabilitation/liquidation estate. For these reasons, the Rehabilitator requests that the Court authorize, approve, and/or ratify service of this Petition, the Notice of Hearing, and any resulting Order on any potentially interested parties (other than

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."

36. Notice and service in the foregoing 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. The Rehabilitator additionally requests the Court to determine, as provided in the attached Liquidation Order, that this notice is proper to make a judicial declaration of American Fellowship's insolvency under MCL 500.8118(4).

RELIEF REQUESTED

Based on the foregoing, the Rehabilitator respectfully requests this Court to enter the Order of Liquidation and Declaration of Insolvency of American Fellowship Mutual Insurance Company in the form attached as Exhibit B.

Respectfully submitted,

Bill Schuette
Attorney General



Christopher L. Kerr (P57131)
Jason R. Evans (P61567)
Assistant Attorneys General
Attorneys for Petitioner
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P. O. Box 30755
Lansing, MI 48909
(517) 373-1160

Dated: June 4, 2013

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AMERICAN FELLOWSHIP MUTUAL INSURANCE COMPANY
BALANCE SHEET

PAGE 1

ASSETS	AS OF APRIL 30, 2013		
	ASSETS	NON ADMITTED	NET ASSETS
BONDS - AMORTIZED VALUE	3,784,966.23		3,784,966.23
COMMON STOCK - MARKET VALUE	38,077.39		38,077.39
NET CASH - COMERICA	350,746.26		350,746.26
NET CASH - PAYPAL	976.50		976.50
MONEY MARKET ACCOUNTS	0.47		0.47
CASH RECIEVABLE FROM TRANSFIRST	59,988.74		59,988.74
FURNITURE & EQUIPMENT	7,652.92	(7,652.90)	0.02
IMPROVEMENTS & BETTERMENTS	29,784.79	(29,784.79)	0.00
EDP EQUIPMENT	16,502.15	(16,502.15)	0.00
NEW & RENEWALS - AUTO	0.00		0.00
NEW & RENEWALS - PROPERTY	0.00		0.00
INVOICES - AUTO	(481.97)	(1,527.41)	(2,009.38)
INVOICES - PROPERTY	(26,479.45)	381.83	(26,097.62)
REINSURACNE RECOVERABLE - XOL	21,090.67		21,090.67
REINSURACNE RECOVERABLE - QS	259,210.72		259,210.72
INTEREST DUE AND ACCRUED	30,509.64		30,509.64
PREPAID RENTAL EXPENSE	25,883.03	0.00	25,883.03
FEDERAL TAX RECOVERABLE	333,677.00	(333,677.00)	0.00
TOTAL ASSETS	4,932,105.09	(388,762.42)	4,543,342.67
LIABILITIES & SURPLUS			AS OF
			APRIL 30, 2013
LOSS RESERVES			4,425,814.13
EXPENSE RESERVES			1,081,212.37
OTHER EXPENSES			219,037.42
UNEARNED PREMIUM RESERVE			767,100.00
QS CEDED UNEARNED PREMIUM RESERVE			(169,209.37)
ADVANCED PREMIUM RESERVE			0.00
COMMISSIONS			78.56
SUSPENDED COMMISSIONS			58,972.06
MCCA REINSURANCE PREMIUM PAYABLE			(160,584.94)
XOL REINSURANCE PREMIUM PAYABLE			(28,264.36)
QS REINSURANCE PREMIUM PAYABLE			202,107.62
ERC RETROSPECTIVE PREMIUM			0.00
AMOUNTS WITHHELD FROM OTHERS			0.00
ESCHEATS PAYABLE			67,495.62
PREPAID RENTAL INCOME			4,852.13
PENSION LIABILITY			354,293.00
FEDERAL INCOME TAX			0.00
STATE INCOME TAX			0.00
TOTAL LIABILITIES			6,822,904.24
SURPLUS - UNASSIGNED:			(2,279,561.57)
TOTAL LIABILITIES AND SURPLUS			4,543,342.67

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

R. KEVIN CLINTON, COMMISSIONER
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Petitioner,

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AMERICAN FELLOWSHIP MUTUAL
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HON. WILLIAM E. COLLETTE

[IN REHABILITATION]

Christopher L. Kerr (P57131)
Jason R. Evans (P61567)
Assistant Attorneys General
Attorneys for Petitioner
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P. O. Box 30755
Lansing, MI 48909
(517) 373-1160

**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
____ day of _____, 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 Services¹ 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 insolvent.

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 enjoined 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.

Honorable William E. Collette
Circuit Court Judge