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

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

Petitioner,

v

AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY,

Respondent.

No. 10-397-CR

HON. WILLIAM E. COLLETTE

[IN REHABILITATION]

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

/

PETITION FOR APPROVAL TO PAY FIRST INTERIM DISTRIBUTION TO SURPLUS NOTEHOLDER CREDITORS

Annette E. Flood, Director of the Michigan Department of Insurance and Financial Services,[1] as Rehabilitator of American Community Mutual Insurance Company (the "Rehabilitator"), by and through her attorneys, Bill Schuette,

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[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. Governor Snyder duly appointed Annette E. Flood as the Director of DIFS effective November 1, 2013, making her the Rehabilitator of American Community as of that date.

Attorney General, and Christopher L. Kerr, Assistant Attorney General, petitions this Court for approval to pay a first interim distribution of rehabilitation estate assets to the Surplus Noteholder creditors of American Community. In support of this Petition, the Rehabilitator states as follows:

1. On April 8, 2010, this Court entered a Stipulated Order Placing American Community into Rehabilitation, Approving Appointment and Compensation of Special Deputy Rehabilitators, and Providing Injunctive Relief (the "Rehabilitation Order"). The Rehabilitation Order appointed the Commissioner/Director as the Rehabilitator of American Community as required by MCL 500.8113(1), and further appointed James E. Gerber as the Special Deputy Rehabilitator under MCL 500.8114(1).

2. As required by MCL 500.8113(1), the Rehabilitation Order directed the Rehabilitator to "take immediate possession of all the assets of American Community and administer those assets under the Court's general supervision." Rehabilitation Order, p 4, ¶ 3.

3. Consistent with MCL 500.8114(2), the Rehabilitation Order provided that "[a]mong his plenary powers provided by law, the Rehabilitator shall have full power and authority to direct and manage American Community . . . and to deal in totality with the property and business of" the company. Rehabilitation Order, p 5, ¶ 8.

4. Pursuant to the Rehabilitation Order, "[a]ll Creditor claims against American Community 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." Rehabilitation Order, p 11, ¶ 24.

5. With limited exceptions for earned but unpaid employee wages and health care provider claims, the Rehabilitation Order prohibited the Rehabilitator from paying pre-Rehabilitation Creditor claims until further order of this Court. Rehabilitation Order, p 7, ¶ 14.

6. On April 19, 2005, American Community issued ALESCO Preferred Funding VII, Ltd. ("ALESCO") a surplus note in the amount of $20,000,000 in exchange for cash. Financials Restructuring Partners, Ltd. is the successor in interest to ALESCO's surplus note via purchase and assignment, and is represented by its authorized agent, HoldCo Advisors, L.P. (the "FRP Note").

7. On December 1, 2005, American Community issued Credit Suisse a surplus note in the amount of $10,000,000 in exchange for cash. Trapeza CDO IX, Ltd. and Trapeza CDO X, Ltd. are the successors in interest to the Credit Suisse surplus note via purchase and assignment, and are represented by their authorized agent Trapeza Capital Management, LLC (the "Trapeza Note").

8. Throughout this Petition, the FRP Note and Trapeza Note are collectively referred to as the "Surplus Notes," and the current holders of the Surplus Notes are collectively referred to as the "Surplus Noteholders."

9. The entire $30 million (combined) that was loaned to American Community under the Surplus Notes remains outstanding, and the resulting claims of the Surplus Noteholders constitute valid, allowed Creditor claims against

American Community's rehabilitation estate. Pursuant to Section 8142 of the Michigan Insurance Code, MCL 500.8142, the Surplus Noteholders' claims are granted Class 8 payment priority from the rehabilitation estate's assets.

10. The Rehabilitator and Special Deputy Rehabilitator have marshaled all significant assets of American Community, and have paid in full all known, allowed, and undisputed claims against American Community's rehabilitation estate having higher payment priority than the Surplus Notes.

11. The Rehabilitator and Special Deputy Rehabilitator have determined that the rehabilitation estate possesses sufficient assets to pay a first interim distribution of estate funds to the Surplus Noteholders, while reserving amounts sufficient to pay: (a) all ongoing and future administrative expenses of the American Community rehabilitation estate (the "Estate Administrative Expenses"); (b) a Class 6 fine owed to the Illinois Department of Insurance that is subject to a delayed payment agreement (the "Illinois Fine"); and (c) all known claims against the American Community rehabilitation estate that are disputed, remain outstanding, and may have higher payment priority than the Surplus Notes if they are ultimately allowed and determined to be payable by the rehabilitation estate (the "Disputed Outstanding Claims").

12. As of October 31, 2013, the American Community rehabilitation estate possessed assets totaling $21,092,111. (Exhibit A.) The Rehabilitator and Special Deputy Rehabilitator have determined that it is appropriate (and seek this Court's approval) to pay a first interim distribution to the Surplus Noteholders representing

a 45% pro-rata portion of the outstanding principal balances on their respective Surplus Notes. Accordingly, $9 million will be distributed on the FRP Note and $4.5 million will be distributed on the Trapeza Note, for a total first interim distribution in the amount of $13.5 million.

13. After paying the first interim distribution to the Surplus Noteholders, American Community's rehabilitation estate will still possess assets totaling $7,592,111. (Exhibit A.) Based on conservative estimates, the Rehabilitator and Special Deputy Rehabilitator have determined that this remaining $7.5+ million is more than adequate to pay all Estate Administrative Expenses, as well as to pay in full the Illinois Fine and the Disputed Outstanding Claims if they are ultimately determined to be payable by the rehabilitation estate.

14. The above-cited provisions of the Rehabilitation Order and Chapter 81 of the Insurance Code authorize the proposed first interim distribution to the Surplus Noteholders, subject to this Court's approval. The Rehabilitator and Special Deputy Rehabilitator have further determined that the first interim distribution is 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/or the public.

15. Although applicable by its terms to a liquidation proceeding, MCL 500.8144 additionally provides the following guidance on distributions from the assets of an insurer's receivership estate:

> Under the court's direction, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims.

Consistent with these requirements, the proposed interim distribution to the Surplus Noteholders strikes a reasonable balance between: (a) making a timely, partial payment from excess estate funds on the Surplus Noteholders' allowed, outstanding claims; (b) properly recognizing/protecting claims that have (the Estate Administrative Expenses and Illinois Fine) or may have (the Disputed Outstanding Claims, if determined to be payable) higher priority than the Surplus Noteholders' claims, reserving over $7.5 million for their payment; and (c) facilitating the completion and closure of this rehabilitation proceeding.

16. Prior to filing, counsel for the Rehabilitator provided a copy of this Petition, together with the proposed Order attached as Exhibit B, to counsel and a company representative for each Surplus Noteholder's authorized agent. As a consequence, the content of this Petition and the attached proposed Order has been discussed and agreed to by these parties.

17. As the attached Proof of Service reflects, a copy of this Petition (including the proposed Order attached as Exhibit B) and the Notice of Hearing on the Petition have been personally served via U.S. First Class Mail on the following interested parties:

(a) Counsel for the Surplus Noteholders' authorized agents—Lori McAllister and Daniel Brown;

(b) The Indenture Trustee for the Surplus Notes—Valerie Nuhfer at The Bank of New York Mellon Trust Company, N.A.;

(c) Counsel for the respective claimants asserting the Disputed Outstanding Claims—Phillip Sternberg, Ronald Ryan, Mollie Dajani Perez, and Christopher Rohrer;

(d) The Illinois Department of Insurance, Market Conduct Examination Section; and

(e) The U.S. Internal Revenue Service.

The Rehabilitator has identified these parties as having the strongest potential interest in the proposed first interim distribution, justifying their receipt of personal service. The Rehabilitator intends to serve any Order resulting from this Petition on these parties in the same manner.

18. Personally serving this Petition, the Notice of Hearing, and any resulting Order on other parties that may have a general interest in American Community's rehabilitation is impractical at this time because there has been no claims submission or other process to identify such interested parties, while attempting to identify and personally notify every party having such a general interest would be time-intensive and costly to American Community's rehabilitation estate. For these reasons, the Rehabilitator requests that the Court authorize and ratify service of this Petition, the Notice of Hearing, and any resulting Order on any other potentially interested parties (i.e., parties not identified as receiving personal service in Paragraph 17) by posting electronic copies on the DIFS website, www.michigan.gov/difs, under the section "Who We Regulate" and the subsection "American Community Mutual."

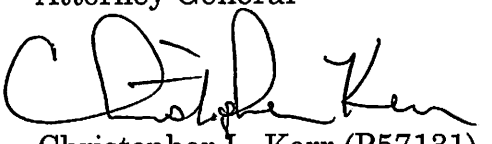
19. In an effort to provide other potentially interested parties notice of this Petition and an opportunity to be heard, the Rehabilitator further intends to publish a Notice, in the form attached as Exhibit C, in the Legal Notices section of the USA Today for one day at least five days prior to the date the Petition is set for hearing (December 18, 2013).

20. The Rehabilitator requests the Court to authorize and ratify service of this Petition, the Notice of Hearing, and any resulting Order in the manner outlined in Paragraphs 17-19 above, because 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 payment of a first interim distribution to the Surplus Noteholders in the total amount of $13.5 million from the assets of American Community's rehabilitation estate. In addition, the Rehabilitator requests the Court to authorize and ratify service of this Petition, together with the attached Exhibits (including the proposed Order), Notice of Hearing, and any resulting Order, in the manner outlined in Paragraphs 17-19 above.

Respectfully submitted,

Bill Schuette
Attorney General



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Dated: December 6, 2013

EXHIBIT A

American Community Mutual Insurance Company
Summary of Assets

As of October 31, 2013

Assets held by Company **Before Payments**		
Cash and Investments	$	21,026,200
Total Assets		21,092,111
Total Proposed Payments	$	13,500,000
Assets held by Company **After Payments**		
Cash and Investments	$	7,526,200
Total Assets		7,592,111

EXHIBIT B

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

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

Petitioner,

v

AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY,

Respondent.

No. 10-397-CR

HON. WILLIAM E. COLLETTE

[IN REHABILITATION]

ORDER APPROVING PAYMENT OF FIRST INTERIM DISTRIBUTION TO SURPLUS NOTEHOLDER CREDITORS

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

PRESENT: HONORABLE WILLIAM E. COLLETTE, CIRCUIT COURT JUDGE

WHEREAS, Annette E. Flood, Director of the Michigan Department of Insurance and Financial Services and duly appointed Rehabilitator of American Community Mutual Insurance Company (the "Rehabilitator")[1] has filed a Petition

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[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. Governor Snyder duly appointed Annette E. Flood as the Director of DIFS effective November 1, 2013, making her the Rehabilitator of American Community as of that date.

for Approval to Pay First Interim Distribution to Surplus Noteholder Creditors (the "Petition"); and

WHEREAS, on April 8, 2010, this Court entered a Stipulated Order Placing American Community into Rehabilitation, Approving Appointment and Compensation of Special Deputy Rehabilitators, and Providing Injunctive Relief (the "Rehabilitation Order"). The Rehabilitation Order appointed the Commissioner/Director as the Rehabilitator of American Community and appointed James E. Gerber as the Special Deputy Rehabilitator; and

WHEREAS, as required by MCL 500.8113(1), the Rehabilitation Order directed the Rehabilitator to "take immediate possession of all the assets of American Community and administer those assets under the Court's general supervision"; and

WHEREAS, consistent with MCL 500.8114(2), the Rehabilitation Order provided that "[a]mong his plenary powers provided by law, the Rehabilitator shall have full power and authority to direct and manage American Community . . . and to deal in totality with the property and business of" the company; and

WHEREAS, pursuant to the Rehabilitation Order, "[a]ll Creditor claims against American Community 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"; and

WHEREAS, on April 19, 2005, American Community issued ALESCO Preferred Funding VII, Ltd. ("ALESCO") a surplus note in the amount of

$20,000,000 in exchange for cash. Financials Restructuring Partners, Ltd. is the successor in interest to ALESCO's surplus note via purchase and assignment, and is represented by its authorized agent, HoldCo Advisors, L.P. (the "FRP Note"); and

WHEREAS, on December 1, 2005, American Community issued Credit Suisse a surplus note in the amount of $10,000,000 in exchange for cash. Trapeza CDO IX, Ltd. and Trapeza CDO X, Ltd. are the successors in interest to the Credit Suisse surplus note via purchase and assignment, and are represented by their authorized agent Trapeza Capital Management, LLC (the "Trapeza Note"); and

WHEREAS, throughout this Order, the FRP Note and Trapeza Note are collectively referred to as the "Surplus Notes," and the current holders of the Surplus Notes are collectively referred to as the "Surplus Noteholders"; and

WHEREAS, the entire $30 million (combined) that was loaned to American Community under the Surplus Notes remains outstanding, and the resulting claims of the Surplus Noteholders constitute valid, allowed Creditor claims against American Community's rehabilitation estate. Pursuant to Section 8142 of the Michigan Insurance Code, MCL 500.8142, the Surplus Noteholders' claims are granted Class 8 payment priority from the rehabilitation estate's assets.

WHEREAS, the Rehabilitator and Special Deputy Rehabilitator have marshaled all significant assets of American Community, and have paid in full all known, allowed, and undisputed claims against American Community's rehabilitation estate having higher payment priority than the Surplus Notes; and

WHEREAS, the Rehabilitator and Special Deputy Rehabilitator have determined that the rehabilitation estate possesses sufficient assets to pay a first interim distribution of estate funds to the Surplus Noteholders, while reserving amounts sufficient to pay: (a) all ongoing and future administrative expenses of the American Community rehabilitation estate (the "Estate Administrative Expenses"); (b) a Class 6 fine owed to the Illinois Department of Insurance that is subject to a delayed payment agreement (the "Illinois Fine"); and (c) all known claims against the American Community rehabilitation estate that are disputed, remain outstanding, and may have higher payment priority than the Surplus Notes if they are ultimately allowed and determined to be payable by the rehabilitation estate (the "Disputed Outstanding Claims"); and

WHEREAS, as of October 31, 2013, the American Community rehabilitation estate possessed assets totaling $21,092,111. The Rehabilitator and Special Deputy Rehabilitator have determined that it is appropriate to pay a first interim distribution to the Surplus Noteholders representing a 45% pro-rata portion of the outstanding principal balances on their respective Surplus Notes (the "First Interim Distribution"); and

WHEREAS, after paying the First Interim Distribution to the Surplus Noteholders, American Community's rehabilitation estate will still possess assets totaling $7,592,111. Based on conservative estimates, the Rehabilitator and Special Deputy Rehabilitator have determined that this remaining $7.5+ million is more than adequate to pay all Estate Administrative Expenses, as well as to pay <u>in full</u>

the Illinois Fine and the Disputed Outstanding Claims if they are ultimately determined to be payable by the rehabilitation estate; and

WHEREAS, this Court agrees that the above-cited provisions of the Rehabilitation Order and Chapter 81 of the Insurance Code authorize the First Interim Distribution to the Surplus Noteholders. The Court further agrees with the Rehabilitator's and Special Deputy Rehabilitator's determination that the First Interim Distribution is 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/or the public; and

WHEREAS, the Rehabilitator has served the Petition, together with the attached Exhibits (which included a copy of this Order) and Notice of Hearing:

(1) Via U.S. First Class Mail on the following interested parties:

(a) Counsel for the Surplus Noteholders' authorized agents—Lori McAllister and Daniel Brown;

(b) The Indenture Trustee for the Surplus Notes—Valerie Nuhfer at The Bank of New York Mellon Trust Company, N.A.;

(c) Counsel for the respective claimants asserting the Disputed Outstanding Claims—Phillip Sternberg, Ronald Ryan, Mollie Dajani Perez, and Christopher Rohrer;

(d) The Illinois Department of Insurance, Market Conduct Examination Section;

(e) The U.S. Internal Revenue Service (collectively, the "Personal Service Parties"); and

(2) On other potentially interested parties (the "Potentially Interested Parties") by posting electronic copies on the DIFS website, www.michigan.gov/difs, under the section "Who We Regulate" and the subsection "American Community Mutual"; and

WHEREAS, in an effort to provide other Potentially Interested Parties notice of the Petition and an opportunity to be heard, the Rehabilitator additionally published a Notice, in the form attached as Exhibit C to the Petition, in the Legal Notices section of the USA Today for one day at least five days prior to the date the Petition was set for hearing; and

WHEREAS, the Rehabilitator intends to serve this Order in the same manner outlined above, i.e., via U.S. First Class Mail with respect to the Personal Service Parties and via posting on the DIFS website with respect to other Potentially Interested Parties; and

WHEREAS, the Court having reviewed the Petition and any objections or responses filed thereto, having heard oral arguments on December 18, 2013 at 11:00 a.m., and being otherwise fully advised;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court APPROVES and GRANTS the Petition, authorizes payment of the First Interim Distribution from the assets of American Community's rehabilitation estate, and authorizes the Rehabilitator and/or Special Deputy Rehabilitator to execute any necessary documentation and take such other action required to finalize the First Interim Distribution.

2. The First Interim Distribution shall be paid in an amount representing a 45% pro-rata portion of the outstanding principal balances on the Surplus Noteholders' respective Surplus Notes. Accordingly, $9 million will be distributed on the FRP Note and $4.5 million will be distributed on the Trapeza Note, for a total First Interim Distribution in the amount of $13.5 million.

3. The First Interim Distribution shall be free and clear of any liens, claims, encumbrances, or other interests.

4. Any objections to the Petition that have not been stricken, withdrawn, waived, or settled, and all reservations of rights pertaining to the Petition included therein or otherwise made in any pleading, correspondence, written or oral statement, or other communication to: (a) the Court; (b) American Community, the Rehabilitator/Special Deputy Rehabilitator, or their counsel; (c) the Surplus Noteholders or their counsel; or (d) other parties in interest, are OVERRULED.

5. American Community, the Rehabilitator/Special Deputy Rehabilitator, and the Surplus Noteholders, together with their respective directors, officers, employees, shareholders, members, partners, agents, representatives, third-party professionals, parent companies, subsidiaries, predecessors, successors, heirs, and assigns, shall not have or incur any liability to any person or entity (including each other) for any act or omission made in good faith in connection with or related to the First Interim Distribution.

6. The Surplus Noteholders shall accept and be solely responsible for any federal, state, or local tax consequences to the Surplus Noteholders arising out of or relating to the First Interim Distribution.

7. The Court authorizes, approves, and/or ratifies the Rehabilitator's service of the Petition, together with the attached Exhibits (which included a copy of this Order), the Notice of Hearing, and this Order, in the manner described above and in Paragraphs 17-19 of the Petition. The Court finds that service in this manner is reasonably calculated to give interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

8. This Order shall bind all parties that may have an interest in American Community, whether presently known or unknown, and all parties that received actual or constructive notice of the Petition, including without limitation the following: (1) American Community; (2) the Rehabilitator/Special Deputy Rehabilitator; (3) the Surplus Noteholders; (4) the U.S. Internal Revenue Service; (5) any holders of claims against American Community of any kind, whether known or unknown, asserted or unasserted, disputed or undisputed, matured or unmatured, liquidated or unliquidated, fixed or contingent, arising in law or equity; (6) all parties in interest; and (7) all federal, state, and local governmental entities and fiscal intermediaries thereof. This Order shall bind each and every one of the foregoing persons or entities, without limitation, regardless of whether or not: (a) any claims such party may have are impaired pursuant to this Order; (b) such person or entity has responded to the Petition or participated in the hearing

thereon; and/or (c) such person or entity has filed or is deemed to have filed a proof of claim, made a demand for payment of any claim, or has made an appearance in the American Community rehabilitation proceeding.

IT IS SO ORDERED.

_____

Honorable William E. Collette
Circuit Court Judge

EXHIBIT C

LEGAL NOTICE

IN THE MATTER OF THE REHABILITATION OF AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY (ACMIC)

STATE OF MICHIGAN CIRCUIT COURT FOR THE 30TH JUDICAL CIRCUIT (INGHAM COUNTY)

CASE NO. 10-397-CR

NOTICE OF PROPOSED FIRST INTERIM DISTRIBUTION TO HOLDERS OF SURPLUS NOTES

NOTICE IS HEREBY GIVEN THAT ON DECEMBER 6, 2013, THE REHABILITATOR FILED A PETITION IN THE ABOVE MATTER WITH THE INGHAM COUNTY (MICHIGAN) CIRCUIT COURT PROPOSING A FIRST INTERIM DISTRIBUTION OF REHABILITATION ESTATE ASSETS IN THE TOTAL AMOUNT OF $13.5 MILLION TO THE HOLDERS OF ACMIC SURPLUS NOTES. **THE PETITION IS SCHEDULED TO BE HEARD BY THE COURT ON DECEMBER 18, 2013 AT 11:00 A.M. EST**. ALL PAPERS SUBMITTED FOR THE PURPOSE OF OBJECTING TO THE PROPOSED FIRST INTERIM DISTRIBUTION MUST BE WITH FILED WITH THE COURT, WITH A COPY PROVIDED TO THE HONORABLE WILLIAM E. COLLETTE AND A COPY SERVED ON COUNSEL FOR THE REHABILITATOR AT THE ADDRESS LISTED BELOW, PRIOR TO THE DATE AND TIME SET FOR HEARING. ANY PERSON WISHING TO OBTAIN A COPY OF THE PETITION, HEARING NOTICE, OR PROPOSED ORDER MAY ACCESS THESE DOCUMENTS ON THE MICHIGAN DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES WEBSITE, www.michigan.gov/difs, UNDER THE SECTION "WHO WE REGULATE" AND THE SUBSECTION "AMERICAN COMMUNITY MUTUAL," OR MAY CONTACT COUNSEL FOR THE REHABILITATOR.

COUNSEL FOR THE REHABILITATOR:

CHRISTOPHER KERR
ASSISTANT ATTORNEY GENERAL
CORPORATE OVERSIGHT DIVISION
PO BOX 30755
LANSING, MI 48909
(517) 373-1160

COURT INFORMATION:

CLERK OF THE COURT
INGHAM COUNTY CIRCUIT COURT
MASON COURTHOUSE
341 S. JEFFERSON
MASON, MI 48854
(517) 483-6500 Ext.7223