

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,

[IN REHABILITATION]

Respondent.

Christopher L. Kerr (P57131)
Mark A. Gabrielse (P75163)
Assistant Attorneys General
Attorney for Rehabilitator
Michigan Department of Attorney General
Corporate Oversight Division
P.O. Box 30755
Lansing, Michigan 48909
(517) 373-1160

**REHABILITATOR'S VERIFIED MOTION TO TERMINATE
REHABILITATION, APPROVE THE ACTIONS OF THE REHABILITATOR,
DISCHARGE THE REHABILITATOR, CLOSE THE CASE, AND FOR
RELATED RELIEF**

Patrick M. McPharlin, Director of the Michigan Department of Insurance and
Financial Services and Court-appointed and statutory Rehabilitator (the
"Rehabilitator") of American Community Mutual Insurance Company ("American

Community”),¹ by and through his attorneys, Bill Schuette, Attorney General of the State of Michigan, and Christopher L. Kerr and Mark A. Gabrielse, Assistant Attorneys General, in support of his Verified Motion to terminate this Rehabilitation, approve the actions of the Rehabilitator, discharge the Rehabilitator, close the case, and for related relief (the “Verified Motion”), states as follows:

HEARING

1. This Verified Motion is scheduled for hearing on **Wednesday, April 27, 2016, at 10:00 a.m.**

BACKGROUND

2. 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 DIFS Director as the Rehabilitator of American Community as required by MCL 500.8113(1), and further approved the Rehabilitator’s appointment and compensation of James E. Gerber as Special Deputy Rehabilitator under MCL 500.8114(1) (the “Deputy Rehabilitator”).

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 Patrick M. McPharlin as the Director of DIFS effective May 18, 2015, making him the Rehabilitator of American Community as of that date.

3. As related more fully in the Annual Reports filed with this Court, the Rehabilitator has taken these and other actions during this rehabilitation:

- a. Marshaled all available assets of American Community and converted them to cash;
- b. Diligent tax planning and preparation;
- c. Settled or litigated to final judgment all outstanding, disputed creditor claims made against the American Community rehabilitation estate.
- d. Paid in full all accrued Class 1 administrative expenses and allowed Class 2 through Class 7 creditor claims from assets of the estate;
- e. Made two interim distributions to the Surplus Noteholders in the total amount of \$19.5 million, which represents a 65% payment on the Surplus Notes' original \$30 million principal balance.

4. On December 6, 2013, the Rehabilitator filed a Petition with this Court to establish a Claims Bar Date. On December 18, 2013, this Court granted the Rehabilitator's Petition and entered an Order establishing a Claims Bar Date of March 18, 2014. Pursuant to that Order, any creditor claims first asserted against American Community after March 18, 2014 are forever barred. In any event, no new creditor claims were asserted against American Community following establishment of the Claims Bar Date.

5. The only remaining creditors of American Community are the current holders of two surplus notes, which are accorded Class 8 payment priority under MCL 500.8142(1). 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. Riva Ridge Master Fund is the successor-in-interest and current holder of the ALESCO surplus note, which it acquired via

purchase and assignment, and is represented by its investment manager Riva Ridge Capital Management LP (the “Riva Ridge Note”). 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 and current holders of the Credit Suisse surplus note, which they acquired via purchase and assignment, and are represented by their authorized agent Trapeza Capital Management, LLC (the “Trapeza Note”). Throughout this Verified Motion, the Riva Ridge 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.”

6. By Order dated December 18, 2013, this Court granted the Rehabilitator’s petition for approval to pay a first interim distribution to the Surplus Noteholders in the total amount of \$13.5 million, to be divided pro-rata based on the principal balances then outstanding on their respective Surplus Notes (the “First Interim Distribution”). As a result, the Deputy Rehabilitator made a \$9 million distribution on the Riva Ridge Note (then held by another company) and a \$4.5 million distribution on the Trapeza Note.

7. By Order dated December 3, 2014, this Court granted the Rehabilitator’s petition for approval to pay a second interim distribution to the Surplus Noteholders in the total amount of \$6 million, again, to be divided pro-rata based on the principal balances then outstanding on their respective Surplus Notes (the “Second Interim Distribution”). As a result, the Deputy Rehabilitator made a

\$4 million distribution on the Riva Ridge Note (then held by another company) and a \$2 million distribution on the Trapeza Note.

8. Based on the Deputy Rehabilitator's payment of the First Interim Distribution and Second Interim Distribution, the unpaid principal balance on the Riva Ridge Note is now \$7 million and the unpaid principal balance on the Trapeza Note is now \$3.5 million.

9. Since the Deputy Rehabilitator's filing of his last Annual Report to the Court on April 7, 2015, the Deputy Rehabilitator and his staff have paid all Class 1 accrued unpaid administrative expenses and a deferred Class 6 fine owed to the Illinois Department of Insurance, the latter of which represented the final outstanding creditor claim (except for the Surplus Noteholders' claims) against the rehabilitation estate. Therefore, the only remaining claims against the estate are: (a) Class 1 claims for unaccrued, future administrative expenses necessary to close the estate; and (b) the Surplus Noteholders' Class 8 claims.

10. The estate's Balance Sheet as of April 27, 2016, together with a Cashflow Statement itemizing all receipts and disbursements from February 1, 2015 through April 27, 2016 (the last Annual Report reported through January 31, 2015), are attached as Exhibits A and B, respectively. The Rehabilitator requests the Court to accept and approve these financial Exhibits and this Verified Motion as the Rehabilitator's Sixth and final Annual Report to the Court concerning the rehabilitation of American Community.

11. As Exhibit B reflects, the Deputy Rehabilitator and his staff have paid several significant claims/expenses since the last Annual Report in an effort to

terminate this rehabilitation, including:

- The \$100,000 Illinois fine.
- The \$309,656.25 balance owed on the Mindshift data retention and hosting contract, which was pre-paid through the contract's end date of August 31, 2019 and involves services necessary for American Community to comply with state and federal laws requiring electronic record retention and production.
- The \$19,662.76 owed to Graphic Sciences to complete the required conversion of paper records to an electronic/digital format.
- Salaries of \$26,146.53 and consultant fees to Precedent Strategies (\$19,520) and John Moeder (\$18,275), representing payment for completed services and pre-payment for future services in necessary areas such as information technology support, document retrieval/production support, and financial and other administrative support.
- The \$12,740 owed to Baker Tilley for tax preparation and accounting services.

12. By Order dated February 23, 2016, this Court granted the Rehabilitator's petition for approval of an agreement with the New Mexico Superintendent of Insurance to secure the release of American Community's \$100,000 New Mexico special deposit. The balance of the New Mexico special deposit in the amount of \$93,728.71, net of New Mexico's attorney and other disposition fees totaling \$6,271.29, has since been paid to American Community. (See Exhibits A and B.) As explained further below, the New Mexico special deposit represented the last readily-recoverable, outstanding asset of American Community justifying the expense of collection and distribution, thereby compelling the termination of this rehabilitation and discharge of the Rehabilitator. See MCL 500.8146(1).

13. Throughout this rehabilitation, American Community has possessed sufficient assets to pay all allowed creditor claims except for the Surplus Noteholders' Class 8 claims. Consequently, the Rehabilitator timely paid those claims, there was no need for a formal claim submission process, and the Rehabilitator elected not to petition the Court to convert this rehabilitation to a liquidation proceeding that would have involved additional administrative and other avoidable expenses. During the course of the rehabilitation, however, American Community's last outstanding insurance policies expired on July 15, 2012, while the majority of its policies expired or were transferred to other insurance companies before that date. Thus, American Community is no longer a going business concern and cannot be successfully rehabilitated. Under these circumstances, the Rehabilitator (in conjunction and active discussion with the Surplus Noteholders) has determined that terminating this rehabilitation, distributing the estate's remaining assets, and dissolving the corporate existence of American Community is now appropriate.

14. Given the unique circumstances of this rehabilitation, the Rehabilitator has relied whenever necessary on provisions of Chapter 81 of the Michigan Insurance Code, MCL 500.8101 – 500.8159 ("Chapter 81"), that by their terms apply to a liquidation proceeding, and continues to do so for purposes of this Verified Motion.

15. By this Verified Motion, the Rehabilitator seeks generally to terminate the rehabilitation, discharge the Rehabilitator, dissolve American Community, and close the case. This and the other related relief that the Rehabilitator specifically

seeks from the Court, through entry of an Order in the form attached as Exhibit C, is described more fully below and summarized in the closing section entitled "Relief Requested."

**REQUEST FOR COURT APPROVAL OF ALL ACTIONS
TAKEN OR NOT TAKEN BY THE DIFS DIRECTOR AS
THE REHABILITATOR OF AMERICAN COMMUNITY**

16. As stated, from the inception of this rehabilitation the Rehabilitator and Deputy Rehabilitator have taken possession of American Community's assets, marshaled assets, compromised or litigated claims, mitigated liabilities, sought and received recovery from various individuals and entities, made distributions of available assets, and administered the rehabilitation and business of American Community in accordance with Chapter 81. The Rehabilitator and Deputy Rehabilitator have taken all of these actions under this Court's general supervision.

17. Further, the Rehabilitator has complied with this Court's directives in this matter.

18. In addition, throughout the course of this rehabilitation, the Rehabilitator sought express Court approval of all material transactions.

19. Consequently, the Rehabilitator seeks an Order approving all actions taken or not taken by the Rehabilitator and his Special Deputy Rehabilitators, representatives, agents, accountants, attorneys, successors, predecessors, officers, directors, and assigns throughout the rehabilitation, and providing that such actions taken or not taken have been properly executed and have met the requirements of Chapter 81 and the laws of the state of Michigan in general, as ascertained by and reviewed by this Court through the date of the Order.

**DESCRIPTION AND DISPOSITION OF REMAINING ESTATE
ASSETS, INCLUDING ANY FUTURE PAYMENTS MADE TO
AMERICAN COMMUNITY AFTER ITS DISSOLUTION**

20. The American Community Rehabilitation Estate currently possesses assets (in the form of cash and short-term investments) in the total amount of \$909,785.48. (Exhibit A.)

21. MCL 500.8146(1) provides that “[i]f all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge.”

22. As previously stated, the Rehabilitator has marshaled all significant assets of American Community, with the New Mexico special deposit recovered in March 2016 representing the last readily-collectible, significant asset that was still outstanding.

23. The only other outstanding assets of American Community are two pending class action claims that are contingent in value, have an unknown date of payment, and are likely to result in only a minimal recovery.² One class action

² In his last Annual Report to the Court, the Deputy Rehabilitator discussed two bond issues owned by American Community. The first was a \$500,000 Lehman Brothers Holdings debenture (the “Lehman Bond”). However, Lehman Brothers Holdings filed Chapter 11 proceedings on September 15, 2008 and no post-bankruptcy distributions were ever made on the Lehman Bond. American Community therefore wrote the bond off as “junk”/no value in 2012 and disposed of the Lehman Bond in February 2014. The second bond issue that American Community owned was a CBO Holdings VII Ltd. bond (the “CBO Bond”). American Community received a distribution of \$62,613.13 on the CBO Bond in February 2015, and was subsequently advised by the transfer agent (US Bank Corporate Trust Services) that this was the final distribution and bondholders should write off their remaining position. Accordingly, American Community’s assets no longer include any bonds.

claim in the amount of \$10,636.34 was filed by the Rehabilitator on behalf of American Community in *In Re: Dynamic Random Access Memory (DRAM) Antitrust Litigation*, MDL No. 1486, Case No. 02-1486, which remains pending in the U.S. District Court for the Northern District of California (the “DRAM Claim”). The other class action claim in the amount of \$130,930,244.06 was filed by the Rehabilitator on behalf of American Community in *Shane Group, et al. v. Blue Cross Blue Shield of Michigan*, Case No. 10-cv-14360, which was pending in the U.S. District Court for the Eastern District of Michigan and is now on appeal to the Sixth Circuit Court of Appeals (the “BCBSM Claim,” and together with the DRAM Claim, the “Class Action Claims”).

24. The Rehabilitator retained the Sommers Schwartz law firm to assist with preparing and filing the BCBSM Claim in exchange for expense reimbursement and a contingency payment from any recovery. Similarly, the Rehabilitator retained Financial Recovery Strategies to assist with preparing and filing the DRAM Claim in exchange for a contingency payment from any recovery. Sommers Schwartz and Financial Recovery Strategies are referred to collectively in this capacity as the “Claim Representatives.”

25. The litigation in which the Class Action Claims are filed have both a substantial number of claimants and total value of claims that far exceed the limited settlement funds available. The Claim Representatives have therefore advised the Rehabilitator that they anticipate American Community will receive only a *de minimis*, pro rata payment of its total claim amount.

26. The Rehabilitator has discussed with the Surplus Noteholders whether to keep the estate open and incur additional administrative expenses while waiting for recovery on the Class Action Claims. The Rehabilitator and Surplus Noteholders have determined and agree that doing so is not cost-justified given the small anticipated payments and unknown payment timeframe. In other words, recovery of the Class Action Claims does not “justify[] the expense of [their] collection and distribution” under MCL 500.8146(1).

27. The Rehabilitator must dispose of the Class Action Claims to avoid future income distributions to American Community after it has dissolved and filed final tax returns. Moreover, the Rehabilitator would like to avoid abandoning or withdrawing these claims due to the Claim Representatives’ contingency payment agreements and the services they have already provided.

28. The Rehabilitator initially offered to assign the Class Action Claims to the Surplus Noteholders, which they declined for various reasons. The Rehabilitator also explored selling the Class Action Claims for a nominal amount but understandably found no buyer. However, the Claim Representatives will accept an assignment of the Class Action Claims to either their company or the company’s designee, which will protect their contingency agreements and should provide some payment for their services, even if minor. The Deputy Rehabilitator has already executed an assignment of the BCBSM Claim to Sommers Schwartz’s designee, and an employee contact at Financial Recovery Strategies expects that his company will accept an assignment of the DRAM Claim.

29. Accordingly, the Rehabilitator seeks an Order approving the assignment of American Community's DRAM Claim and BCBSM Claim to the retained Claim Representative for each claim or that company's designee, or alternatively, approving the abandonment and withdrawal of the DRAM Claim if it cannot be successfully assigned.

30. The assets and liabilities of the American Community rehabilitation estate are known and fixed. (See Exhibit A.) As explained above: (a) the Rehabilitator has paid all accrued administrative expenses and allowed creditor claims except for the Surplus Noteholders' Class 8 claims; (b) the Claims Bar Date of March 18, 2014 has long passed resulting in no further creditor claims (which would be barred in any event); and (c) "all assets [of American Community] justifying the expense of collection and distribution have been collected."

31. As Exhibit A reflects, the estate's current assets total \$909,785.48 (which includes estimated April earned interest of \$309). From those assets, the Rehabilitator is reserving \$3,785.48 for payment of final closing costs that the Rehabilitator reasonably anticipates the estate may incur to terminate the rehabilitation (the "Closing Reserve"). (*Id.*) After subtracting the Closing Reserve, there is a balance of \$906,000 available for a final distribution to the Surplus Noteholders. (*Id.*) Accordingly, the Rehabilitator requests that the Court authorize the Rehabilitator (or DIFS Director as the former Rehabilitator, as applicable) to promptly and irrevocably pay a final distribution in the total amount of \$906,000 to the Surplus Noteholders, to be divided pro-rata based on the principal balances outstanding on their respective Surplus Notes, or a \$604,000 distribution on the

Riva Ridge Note and a \$302,000 distribution on the Trapeza Note (the “Final Distribution”).

32. MCL 500.8146(1) further provides that in connection with a request for discharge following the collection and distribution of all cost-justified assets, “[t]he court may grant the discharge and make any other orders, including an order to transfer any remaining funds that are uneconomic to distribute, as may be considered appropriate.”

33. DIFS has incurred expenses in connection with this rehabilitation that the estate has not reimbursed, including services performed by the Deputy Rehabilitator since January 1, 2016 and services performed by DIFS’ legal counsel since the rehabilitation’s inception.

34. Upon entry of the Rehabilitator’s requested Order, the Deputy Rehabilitator and his contracted support staff will pay the Final Distribution to the Surplus Noteholders and conduct all other closing activities necessary to wind up American Community’s business affairs. Any expenses associated with these closing activities will be paid from the Closing Reserve. In the event that the Closing Reserve is not fully expended after completing these activities, the amount of any remaining balance will be minimal and could not be distributed without expending time and resources to re-open this case, prepare and file the approval petition, process and pay the distribution, etc. Therefore, any remaining balance of the Closing Reserve would be “uneconomic to distribute.”

35. Upon entry of the Rehabilitator’s requested Order, the Deputy Rehabilitator will cancel certain American Community insurance coverage that is

still in place, effective at the end of the month on April 30, 2015. Cancellation of this insurance coverage is expected to generate a premium refund in the amount of approximately \$5,200. However, the premium refund will not be issued until 30 to 60 days after the cancellation date, which will be after the Final Distribution has been paid and most if not all closing activities have been completed including the filing of final tax returns. Similar to any remaining balance of the Closing Reserve, this premium refund, together with any other unknown, future payments that may be made to American Community after its dissolution, would be “uneconomic to distribute” because of the amounts involved and the time and effort required to undertake yet another distribution. Moreover, adverse tax consequences could result if these funds are received and retained in the name of American Community after the company has been dissolved and filed its final tax returns.

36. For these reasons, the Rehabilitator seeks an Order authorizing the Rehabilitator (or DIFS Director as the former Rehabilitator, as applicable) to promptly and irrevocably transfer to DIFS any remaining American Community assets after payment of the Final Distribution and all estate closing expenses, including any premium refunds or other future payments that may be made to American Community after its dissolution, as compensation to DIFS for its unreimbursed expenses of administering the American Community rehabilitation estate.

**REQUEST FOR DISCHARGE OF REHABILITATOR AND
RELEASE OF ALL CLAIMS AGAINST THE DIFS DIRECTOR
AS THE REHABILITATOR OF AMERICAN COMMUNITY**

37. Again, MCL 500.8146(1) provides that once all assets justifying the expense of collection and distribution have been actually collected and distributed, “the liquidator shall apply to the court for discharge.”

38. As explained above, the Rehabilitator has marshaled all readily-collectible assets of American Community and proposes to distribute those assets to the extent economically justified.

39. The DIFS Director, as Rehabilitator of American Community, therefore seeks an Order that the Rehabilitator and his Special Deputy Rehabilitators, representatives, agents, accountants, attorneys, successors, predecessors, officers, directors, and assigns are fully, finally, and unconditionally discharged and released from any duties, obligations, claims, and liabilities relating to or arising out of the rehabilitation of American Community.

**REQUEST FOR BAR ORDER FOR ALL CLAIMS
AGAINST THE REHABILITATOR**

40. The Rehabilitator also requests an Order that all claims and causes of action against the Rehabilitator and his Special Deputy Rehabilitators, representatives, agents, accountants, attorneys, successors, predecessors, officers, directors, and assigns for any and all actions taken or not taken throughout the rehabilitation of American Community are completely and forever barred, and that from and after entry of the Order terminating the rehabilitation, these parties shall have no further responsibility, obligations, or liability under Chapter 81 or the laws

of the State of Michigan with respect to any matter relating to or arising out of the American Community rehabilitation.

REQUEST FOR APPROVAL OF RECORD DESTRUCTION

41. The Rehabilitator recommends and seeks authority to destroy American Community company and rehabilitation estate documents on a rolling, yearly basis, such that every year all documents more than seven (7) years old will be destroyed unless their retention is otherwise required by law, without further request to the Court by the Rehabilitator (or DIFS Director as the former Rehabilitator, as applicable) and without further review or order of this Court.

REQUEST FOR FINAL ORDER TERMINATING REHABILITATION, CLOSING CASE, DISCHARGING ALL REPORTING OBLIGATIONS, AND DISSOLVING AMERICAN COMMUNITY'S CORPORATE EXISTENCE

42. The Rehabilitator seeks a final Order terminating the rehabilitation of American Community and closing this case.

43. The Rehabilitator also requests that no further reports be required of the Rehabilitator to any person or entity, including but not limited to reports to this Court and reports to DIFS.

44. Furthermore, the Rehabilitator requests that the corporate existence of American Community be dissolved effective on the date of the Order discharging the Rehabilitator and terminating this rehabilitation. MCL 500.8120. The Order sought by the Rehabilitator expressly so provides.

AUTHORIZATION OF SERVICE

45. As explained, the Surplus Noteholders are the only remaining creditors of American Community that have any tenable interest in the Verified

Motion or the proposed Order attached as Exhibit C. Prior to filing, counsel for the Rehabilitator provided a copy of both documents to a company representative of each Surplus Noteholder's investment manager or authorized agent. The Surplus Noteholders have therefore reviewed the content of this Verified Motion and the proposed Order and either approved or have no objections.

46. As the attached Proof of Service reflects, a copy of the filed Verified Motion, together with Exhibits A - C and the Notice of Hearing, were personally served via U.S. First Class Mail on the following parties:

- (a) Carolyn Thagard at Trapeza Capital Management, LLC, the authorized agent for the Trapeza Note;
- (b) Dennis Parks at Riva Ridge Capital Management LP, the investment manager for the Riva Ridge Note; and
- (c) Dennis J. Roemlein at The Bank of New York Mellon Trust Company, N.A., the Indenture Trustee for the Surplus Notes.

The Rehabilitator has identified these parties as having the strongest potential interest in this matter, justifying their receipt of personal service. The Rehabilitator will serve any Order entered as a result of the Verified Motion on these parties in the same manner.

47. Beyond the Surplus Noteholders and Surplus Note Trustee, personally serving this Verified Motion, the Notice of Hearing, and any resulting Order on other parties that may have a general interest in American Community's rehabilitation would be impractical at this time because there has been no process to formally identify these parties (and for creditors other than the Surplus Noteholders, their claims have been paid or are now time-barred). Moreover,

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 Verified Motion, the Notice of Hearing, and any resulting Order on any potentially interested parties (i.e., parties not identified as receiving personal service in Paragraph 46 above) by posting electronic copies on the DIFS website, www.michigan.gov/difs, under the section "Who We Regulate," the subsection "Receiverships," and the sub-subsection "American Community Mutual."

Service in this manner is reasonably calculated to give any potentially interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

VERIFICATION

48. This Motion is verified below by James E. Gerber, the Special Deputy Rehabilitator of American Community.

RELIEF REQUESTED

WHEREFORE, the Director of DIFS, acting solely in his capacity as the Court-appointed and statutory Rehabilitator of American Community, respectfully requests entry of a final Order in the form attached as Exhibit C:

- a. Granting the Rehabilitator's Verified Motion;
- b. Approving all actions taken or not taken by the Rehabilitator;
- c. Accepting and approving this Verified Motion and the Exhibits attached hereto as the Rehabilitator's Sixth and final Annual Report to the Court concerning the rehabilitation of American Community;

- d. Authorizing the Rehabilitator (or DIFS Director as the former Rehabilitator, as applicable) to promptly and irrevocably pay a Final Distribution in the total amount of \$906,000 to the Surplus Noteholders, to be divided pro-rata based on the principal balances outstanding on their respective Surplus Notes, or a \$604,000 distribution on the Riva Ridge Note and a \$302,000 distribution on the Trapeza Note;
- e. Approving the assignment of American Community's outstanding DRAM and BCBSM class action claims to the retained Claim Representative for each claim or that company's designee, or alternatively, approving the abandonment and withdrawal of the DRAM Claim if it cannot be successfully assigned;
- f. After making the Final Distribution and paying all estate closing expenses, authorizing the Rehabilitator (or DIFS Director as the former Rehabilitator, as applicable) to promptly and irrevocably transfer to DIFS any remaining American Community assets, including any premium refunds or other future payments that may be made to American Community after its dissolution, as compensation to DIFS for its unreimbursed expenses of administering the American Community rehabilitation estate;
- g. Discharging the Rehabilitator and the Rehabilitator's agents;
- h. Unconditionally releasing the Rehabilitator and the Rehabilitator's past and present agents;
- i. Forever barring all claims against the Rehabilitator and the Rehabilitator's past and present agents;
- j. Authorizing record destruction;
- k. Terminating the rehabilitation, closing the case, discharging all reporting obligations, and dissolving American Community's corporate existence;
- l. Authorizing and ratifying the Rehabilitator's service of this Verified Motion, the Notice of Hearing, and any resulting Order by personal service on the Surplus Noteholders and Surplus Note Trustee only and by posting electronic copies on the DIFS website; and

- m. Granting such other and further relief as the law or equity require.

Respectfully submitted,

Bill Schuette
Attorney General

A handwritten signature in black ink, appearing to read "Chris Kerr", written over a horizontal line.

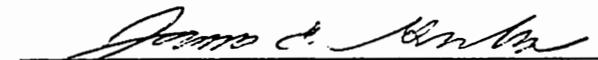
Christopher L. Kerr (P57131)
Mark A. Gabrielse (P75163)
Assistant Attorneys General
Attorneys for Petitioner
Corporate Oversight Division
P.O. Box 30755
Lansing, Michigan 48909
(517) 373-1160

Dated: April 20, 2016

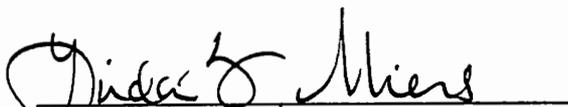
VERIFICATION

STATE OF MICHIGAN)
)ss.
COUNTY OF INGHAM)

James Gerber, appointed as Special Deputy Rehabilitator by the Court-
appointed and statutory Rehabilitator of American Community and approved by the
Court, being first duly sworn, deposes and says that he makes this Verification on
the Rehabilitator's behalf; that he has read the foregoing Verified Motion to
Terminate Rehabilitation, Approve the Actions of the Rehabilitator, Discharge the
Rehabilitator, Close the Case, and for Related Relief; that he executes this Verified
Motion for and on behalf of the Rehabilitator, and that he is duly authorized to do
so; and that the matters contained in the Verified Motion are true to his personal
knowledge and/or are true to the best of his information and belief.


James E. Gerber
Special Deputy Rehabilitator

Subscribed and sworn to before me,
a Notary Public in and for said county,
this 20th day of April, 2016


Notary Public, Ingham County, Michigan
Jackson
acting in Ingham Co.
My commission expires: 12-28-2016

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American Community Mutual Insurance Company
Estimated Balance Sheet as of April 27

Exhibit A

Assets

Cash	61,894.75
Short Term Investments	754,162.02
Recovered Balance of NM Deposit	93,728.71
Total Assets	<u>909,785.48</u>

Liabilities

Accrued Unpaid expenses	-
Total Unpaid expenses	<u>-</u>
Reserve for Final Closing Costs	
Reserve	3,785.48
(ADP, Bank Fees and misc)	
Final Surplus Distribution to Note Holders	906,000.00
Total Liabilities	909,785.48

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American Community Mutual Insurance Company
Cashflow Feb 1, 2015 to April 27, 2016

Exhibit B

Ending Balance 1-31-2015	1,314,443.00
Estimated Ending Balance 4-27-2016	<u>909,785.48</u>
	(404,657.52)

Cash Receipts

Class Action Refunds	52,590.36
Medical and Drug Refunds	1,306.47
ATT Refund	476.53
Escheats Refunds	3,662.50
Emdeon	62,572.58
US Treasury Interest	4,065.82
Arizona Refund	100.00
Interest	5,507.42
CBO Holdings VII Bond Payment	62,613.13
Beaumont Hospital Refund	<u>1,132.00</u>
	194,026.81

Estimated Interest 309.00

Cash Disbursements

ADP fees	1,638.59
Baker Tilley	12,740.00
Bank Charges	909.01
Comcast	1,432.52
Consumers Mutual	400.00
Illinois Penalty	100,000.00
Graphic Sciences	19,662.76
Hylant	14,828.00
Integrity Business Solutions	186.55
Janice Sylvertooth	7,197.53
John Moeder	18,275.00
Michigan Community Insurance Agency	27,725.00
Mindshift	309,656.25
Salaries	26,146.53
DIFS	29,466.05
Precedent Strategies	19,520.00
Tricia Spurgeon (Postage, Vonage...)	1,622.58
US Postal	155.00
Wisconsin Insurance Security	1,130.00
American Fellowship	29.94
NM Bond Settlement Fees	6,271.29
Misc	0.73
	<u>598,993.33</u>

Net Cash (404,657.52)

Difference in Cash Flow -

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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,

[IN REHABILITATION]

Respondent.

**ORDER GRANTING REHABILITATOR'S VERIFIED MOTION TO
TERMINATE REHABILITATION, APPROVE THE ACTIONS OF THE
REHABILITATOR, DISCHARGE THE REHABILITATOR,
CLOSE THE CASE, AND FOR RELATED RELIEF**

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

PRESENT: HONORABLE WILLIAM E. COLLETTE, CIRCUIT COURT JUDGE

WHEREAS, Petitioner Patrick M. McPharlin, Director of the Michigan
Department of Insurance and Financial Services and Court-appointed and statutory
Rehabilitator (the "Rehabilitator") of American Community Mutual Insurance

Company (“American Community”),¹ has filed a Verified Motion to Terminate Rehabilitation, Approve the Actions of the Rehabilitator, Discharge the Rehabilitator, Close the Case, and for Related Relief (the “Verified Motion”); and

WHEREAS, the Court has reviewed the Verified Motion and any objections or responses filed thereto, together with the terms of this Order that was attached to the Verified Motion as Exhibit C; and

WHEREAS, the Court finding that pursuant to MCL 500.8146(1), it is appropriate for this Court to grant the discharge of the Rehabilitator and to make other appropriate orders; and

WHEREAS, the Court having heard oral argument on the Verified Motion on Wednesday, April 27, 2016, at 10:00 a.m., and being otherwise fully advised;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court GRANTS the Verified Motion, the rehabilitation of American Community is terminated, the Rehabilitator is discharged, and this case and the American Community rehabilitation estate are closed.
2. All actions taken or not taken by the Rehabilitator and his Special Deputy Rehabilitators, representatives, agents, accountants, attorneys, successors, predecessors, officers, directors, and assigns, both past and present, throughout the

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 Patrick M. McPharlin as the Director of DIFS effective May 18, 2015, making him the Rehabilitator of American Community Mutual Insurance Company as of that date.

rehabilitation of American Community are approved, and such actions taken or not taken have been properly executed and have met the requirements of Chapter 81 of the Michigan Insurance Code, MCL 500.8101 – 500.8159 (“Chapter 81”), and the laws of the State of Michigan in general, as ascertained by and reviewed by this Court through the date of this Order.

3. The Court accepts and approves the Verified Motion and Exhibits attached thereto as the Rehabilitator’s Sixth and final Annual Report to the Court concerning the rehabilitation of American Community.

4. No further reports regarding American Community are required of the Rehabilitator to any person or entity, including but not limited to reports to this Court and reports to DIFS.

5. The Court approves and authorizes the Rehabilitator (or DIFS Director as the former Rehabilitator, as applicable) to promptly and irrevocably pay a final distribution in the total amount of \$906,000 to the Surplus Noteholders from the assets of American Community (the “Final Distribution”), which includes the authority to execute any necessary documentation and take such other action as may be required to complete the Final Distribution. The Final Distribution shall be divided pro-rata based on the principal balances outstanding on the Surplus Noteholders’ respective Surplus Notes, or a \$604,000 distribution on the Riva Ridge Note and a \$302,000 distribution on the Trapeza Note. For purposes of this Order, the terms “Surplus Noteholders,” “Surplus Notes,” “Riva Ridge Note,” and “Trapeza Note” shall have the same definitions as provided in the Verified Motion.

6. The following terms additionally apply to the Final Distribution:
- The Final Distribution is irrevocable and shall be free and clear of any liens, claims, encumbrances, or other interests.
 - American Community, the Rehabilitator and his Special Deputy Rehabilitators, 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 Final Distribution. Provided, however, that the Surplus Noteholders shall accept and be solely responsible for any federal, state, or local tax consequences arising out of or relating to the Final Distribution.
 - The Final Distribution and foregoing terms thereof are binding on all parties that may have an interest in American Community and all parties that received actual or constructive notice of the Verified Motion, including without limitation the following: (1) American Community; (2) the Rehabilitator and his Special Deputy Rehabilitators; (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. The Final Distribution and foregoing terms thereof shall bind each and every one of the foregoing persons or entities, without limitation, regardless of whether or not: (a) the Final Distribution impairs any rights or claims of such party; (b) such party has responded to the Verified Motion or participated in the hearing thereon; and/or (c) such party makes a later demand for payment of any claim or has made an appearance in the American Community rehabilitation proceeding at any time.

7. Because their collection and distribution is not cost-justified, the Court approves the Rehabilitator's assignment of American Community's outstanding DRAM and BCBSM class action claims to the retained Claim Representative for each claim (as defined in the Verified Motion) or that company's designee.

Alternatively, the Court approves the Rehabilitator's abandonment and withdrawal of American Community's DRAM class action claim if it cannot be successfully assigned.

8. Because any later distribution would be uneconomic, the Court approves and authorizes the Rehabilitator (or DIFS Director as the former Rehabilitator, as applicable) to promptly and irrevocably transfer to DIFS any remaining American Community assets after payment of the Final Distribution and all estate closing expenses, including any premium refunds or other future payments that may be made to American Community after its dissolution, as compensation to DIFS for its unreimbursed expenses of administering the American Community rehabilitation estate.

9. The Rehabilitator and his Special Deputy Rehabilitators, representatives, agents, accountants, attorneys, successors, predecessors, officers, directors, and assigns, both past and present, are fully, finally, and unconditionally discharged and released from any duties, obligations, claims, and liabilities relating to or arising out of the rehabilitation of American Community.

10. All claims and causes of action against the Rehabilitator and his Special Deputy Rehabilitators, representatives, agents, accountants, attorneys, successors, predecessors, officers, directors, and assigns, both past and present, for any and all actions taken or not taken throughout the rehabilitation of American Community are completely and forever barred, and from and after entry of this Order terminating the rehabilitation, these parties shall have no further responsibility, obligations, or liability under Chapter 81 or the laws of the State of

Michigan with respect to any matter relating to or arising out of the rehabilitation of American Community.

11. The Court authorizes the Rehabilitator to destroy American Community company and rehabilitation estate documents on a rolling, yearly basis, such that every year all documents more than seven (7) years old will be destroyed unless their retention is otherwise required by law, without further request to this Court by the Rehabilitator (or DIFS Director as the former Rehabilitator, as applicable) and without further review or order of this Court.

12. Pursuant to MCL 500.8120 and the Rehabilitator's request, the corporate existence of American Community is dissolved effective on the date of this Order.

13. The Court authorizes, approves, and/or ratifies the Rehabilitator's service of the Verified Motion and attached Exhibits (which included a copy of this Order), the Notice of Hearing, and this Order:

- (a) Via U.S. First Class Mail on the representative of each Surplus Noteholder's investment manager or authorized agent and the Surplus Note Trustee only, specifically: Carolyn Thagard at Trapeza Capital Management, LLC, the authorized agent for the Trapeza Note; Dennis Parks at Riva Ridge Capital Management LP, the investment manager for the Riva Ridge Note; and Dennis J. Roemlein at The Bank of New York Mellon Trust Company, N.A., the Indenture Trustee for the Surplus Notes; and
- (b) On any other potentially interested parties by posting electronic copies on the DIFS website, www.michigan.gov/difs, under the section "Who We Regulate," the subsection "Receiverships," and the sub-subsection "American Community Mutual."

The Court finds that service in this manner is reasonably calculated to give any potentially interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

IT IS SO ORDERED.

This Order resolves the last pending claim and closes the case.

Honorable William E. Collette
30th Circuit Court Judge