

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

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

Petitioner,

No. 10-397-CR

v

HON. WILLIAM E. COLLETTE

AMERICAN COMMUNITY MUTUAL
INSURANCE COMPANY,

Respondent.

Christopher L. Kerr (P57131)
David W. Silver (P24781)
Assistant Attorneys General
Attorneys for Petitioner
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**EX PARTE PETITION FOR APPROVAL TO
SETTLE TWO PENDING LAWSUITS AGAINST AMERICAN COMMUNITY**

Ken Ross, Commissioner of the Michigan Office of Financial and Insurance Regulation, as Rehabilitator of American Community Mutual Insurance Company (the "Rehabilitator"), by and through his attorneys, Michael A. Cox, Attorney General, and Christopher L. Kerr, Assistant Attorney General, petitions this Court pursuant to MCL 500.8115(1) to approve the settlements reached in two (2) lawsuits currently pending against American Community Mutual Insurance Company ("American Community"). In support of this Ex Parte Petition, the Rehabilitator states as follows:

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

2. MCL 500.8115(1) governs legal actions or proceedings involving American Community that were pending when the Rehabilitation Order was entered. The statute provides, *inter alia*, that "[t]he rehabilitator shall take action respecting the pending litigation as he or she considers necessary in the interests of justice and for the protection of creditors, policyholders, and the public."

3. The Rehabilitator seeks the Court's approval to settle the following two lawsuits that are currently pending against American Community:

- a. *Charles & Diane Bellman v. American Community, et al.* This lawsuit is pending in Auglaize County, Ohio. The Complaint alleges claims for breach of contract, bad faith, and breach of fiduciary duty against American Community arising from its rescission of Plaintiff Diane Bellman's health insurance policy. In addition, Plaintiffs have requested a declaratory judgment declaring the rights and obligations of the parties and reinstatement of the policy. American Community rescinded the policy based upon material misrepresentations made in Plaintiff Diane Bellman's policy application. Plaintiffs sought to recover \$44,518 for the payment of medical bills that were not covered due to the rescission, additional damages for bad faith including emotional distress, plus attorney fees and costs. Through negotiations, Plaintiffs have agreed to dismiss this lawsuit in exchange for American Community's payment of \$7,000, together with the payment by the co-defendants of an additional \$45,000.
- b. *Dunn v. American Community, et al.* This lawsuit is pending in the Maricopa County Superior Court in Arizona. The Complaint alleges claims against American Community for breach of the duty of good faith and fair dealing and breach of contract. The Complaint also alleges a claim of professional negligence against the insurance agent involved and his wife. The lawsuit arises from American Community's rescission of Plaintiff's short-term medical expense policy and corresponding refusal to pay medical bills resulting from Plaintiff's heart attack and related treatment. American Community rescinded the policy based upon material misrepresentations made in Plaintiff's policy application. Plaintiff made an initial demand in the total amount of \$163,438.09 for the payment of over \$90,000 in medical bills that were not covered due to the rescission, emotional distress damages, and attorney fees and costs. Through negotiations, Plaintiff has agreed to dismiss the lawsuit in exchange for American Community's payment of \$45,000.

4. With limited exceptions not applicable here, Paragraph 14 of the Rehabilitation Order prohibits the payment of any Creditor claims for goods or services provided prior to the date that the Order was entered until further order of the Court. The claims of the Plaintiffs in these lawsuits arise from services provided or actions taken prior to the date of the Rehabilitation Order. Moreover, the exceptions in Paragraph 14 do not apply because the Plaintiffs are not "policyholders" if their policies were properly rescinded. Accordingly, an order approving these proposed settlements is needed from the Court.

5. The Rehabilitator believes that the settlement of these lawsuits in the amounts indicated above and on the terms contained in their respective settlement agreements (which are not attached due to confidentiality provisions and/or concerns) is necessary and appropriate, is in the interests of justice, and will promote the protection of American Community's creditors, policyholders, and the public. In each case, a comparison of the settlement amount to the amount of the Plaintiff's original claim evidences that these settlements are reasonable and will limit potential liability to the Rehabilitation Estate. Moreover, each of the settlements is relatively modest in amount and would likely be exceeded by legal and other costs if these cases were adjudicated to judgment in this Rehabilitation or otherwise.

6. Providing personalized notice of this Ex Parte Petition and any resulting Order to all parties that may have an interest in this matter is impossible at this time because there has been no claims submission or other process to identify such parties. Moreover, attempting to identify and personally notify parties in interest would be time-intensive and costly to American Community's Rehabilitation Estate. For this reason, the Rehabilitator requests that the Court authorize and ratify service of this Ex Parte Petition and any resulting Order by posting electronic copies on the OFIR website, www.michigan.gov/ofir, under the section "Who We

Regulate" and the subsection "American Community." Service in this manner is reasonably calculated to give interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

WHEREFORE, for the reasons stated above, the Rehabilitator respectfully requests this Court to approve the settlements reached in the above-referenced lawsuits, in the amounts and on the terms more fully set forth in their respective settlement agreements. The Rehabilitator further requests the Court to authorize and ratify service of this Ex Parte Petition and any resulting Order by posting electronic copies on the "American Community" section of OFIR's website.

Respectfully submitted

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Dated: October 29, 2010