

COPY

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.

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Christopher L. Kerr (P57131)  
David W. Silver (P24781)  
Assistant Attorneys General  
Attorneys for Petitioner  
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Lansing, MI 48909  
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**EX PARTE PETITION FOR APPROVAL TO  
SETTLE THREE 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 three 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 three lawsuits that are currently pending against American Community:

- a. *Macomb Orthopedic Surgeons & Mendelson Orthopedics, P.C. (Michael Caplan) v. American Community*. This lawsuit is pending in the State of Michigan, 37<sup>th</sup> District Court. The case involves claims for breach of contract and breach of fiduciary duties against American Community arising from its rescission of Michael Caplan's health insurance policy. American Community rescinded the policy based upon material misrepresentations made in Mr. Caplan's policy application. Plaintiffs sought to recover \$20,650 for the payment of medical bills that were not covered due to the rescission, plus attorney fees and costs. Through negotiations, the Plaintiffs have agreed to dismiss the lawsuit in exchange for American Community's payment of \$2,000.
- b. *Wolff v. American Community*. This lawsuit is pending in the United States District Court, Southern District of Illinois. The case involves claims for breach of contract and vexatious refusal to pay against American Community arising from its rescission of the Plaintiff's health insurance policy. American Community rescinded the policy based upon Plaintiff's failure to disclose that he was involved in organized ATV racing in his policy application. The unpaid medical bills that were not covered due to the rescission total \$134,653.75. Prior to the Rehabilitation Order, the parties executed a settlement agreement resolving the matter in exchange for American Community's payment of \$10,000; however, the dismissal order was not entered prior to the Rehabilitation Order, so the settlement has been on hold and no payment has been made to the Plaintiff. The Special Deputy Rehabilitator has reviewed and ratified the pre-Order settlement agreement because he believes that it is in the best interests of the Rehabilitation estate.
- c. *Desjarlais v. American Community*. This lawsuit is pending in the State of Michigan, 16<sup>th</sup> District Court. The case involves claims for breach of contract

based upon American Community wrongfully refusing to refund \$272.13 in premiums paid by the Plaintiff following the cancellation of his health insurance policy. Plaintiff's Complaint demanded \$3,000 in damages, but the parties have agreed to settle the matter for \$348.13, representing the \$272.13 in refunded premiums together with reimbursement for Plaintiff's filing fee and other legal costs.

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 (Plaintiffs Caplan and Wolff) or because the claims are not based upon the provision of health care services (Plaintiff Desjarlais). 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 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](http://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,

Michael A. Cox  
Attorney General



Christopher L. Kerr (P57131)  
Assistant Attorney General  
Michigan Department of Attorney General  
Corporate Oversight Division  
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Dated: August 3, 2010

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**EX PARTE ORDER APPROVING SETTLEMENT OF  
THREE PENDING LAWSUITS AGAINST AMERICAN COMMUNITY**

At a session of said Court  
held in the Circuit Courtrooms  
for the County of Ingham,  
State of Michigan, on the  
*3rd* day of *Aug*, 2010.

PRESENT: HONORABLE WILLIAM E. COLLETTE, CIRCUIT COURT JUDGE

**WHEREAS**, Ken Ross, the Commissioner of the Michigan Office of Financial and Insurance Regulation and duly appointed Rehabilitator of American Community Mutual Insurance Company (the "Rehabilitator") has filed an Ex Parte Petition for Approval to Settle

Three Pending Lawsuits against American Community (the "Ex Parte Petition"), specifically, the cases entitled *Macomb Orthopedic Surgeons & Mendelson Orthopedics, P.C. (Michael Caplan) v. American Community*, *Wolff v. American Community*, and *Desjarlais v. American Community*; and

**WHEREAS**, MCL 500.8115(1) governs legal actions or proceedings involving American Community that were pending when the Rehabilitation Order was entered and 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"; and

**WHEREAS**, the Rehabilitator has determined that the settlement of these lawsuits in the amounts summarized in the Ex Parte Petition and on the terms contained in their respective settlement agreements is necessary and appropriate, is in the interests of justice, and will promote the protection of American Community's creditors, policyholders, and the public;

**NOW, THEREFORE, IT IS HEREBY ORDERED** that the Court APPROVES the proposed settlements reached in the three lawsuits described above and in the Ex Parte Petition, authorizes payment of the respective settlement amounts from the funds of American Community, and authorizes the Rehabilitator and/or Special Deputy Rehabilitators to execute any necessary documentation and take such other action required to finalize these settlements.

**IT IS FURTHER ORDERED** that due to the difficulty and prohibitive cost associated with providing personalized notice of the Ex Parte Petition and this Order to all parties with an interest in this matter, the Court authorizes, approves, and/or ratifies the Rehabilitator's service of the Ex Parte Petition and this Order by posting electronic copies on the OFIR website, [www.michigan.gov/ofir](http://www.michigan.gov/ofir), under the section "Who We Regulate" and the subsection "American

Community." 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.

**IT IS SO ORDERED.**

**WILLIAM E. COLLETTE**

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Honorable William E. Collette  
Circuit Court Judge