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.
_____/

Case No. 10-397 -CR

Hon. WILLIAM E. COLLETTE

STIPULATED PETITION OF THE COMMISSIONER OF THE OFFICE OF FINANCIAL AND INSURANCE REGULATION FOR AN ORDER PLACING AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY INTO REHABILITATION, APPROVING APPOINTMENT AND COMPENSATION OF SPECIAL DEPUTY REHABILITATORS, AND PROVIDING INJUNCTIVE RELIEF

Ken Ross, Commissioner of the Office of Financial and Insurance Regulation ("Commissioner"), by and through his attorneys, Michael A. Cox, Attorney General, and David W. Silver and Christopher L. Kerr, Assistant Attorneys General, petitions the Court for an order authorizing the Commissioner to rehabilitate American Community Mutual Insurance Company, approving the appointment and compensation of Special Deputy Rehabilitators, and providing certain injunctive relief. In support of this Petition, the Commissioner states as follows:

THE PARTIES

1. American Community Mutual Insurance Company ("American Community") is a life, accident, and health insurance company authorized to transact insurance in Michigan.

2. Ken Ross is the duly appointed Commissioner of the Office of Financial and Insurance Regulation ("OFIR").

JURISDICTION

3. MCL 500.8102 provides that a proceeding under Chapter 81 of the Michigan Insurance Code of 1956, MCL 500.8101 – 500.8159 ("Chapter 81"), including a rehabilitation proceeding, may be applied to an insurer who: (a) 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 Community satisfies both criteria and is therefore subject to rehabilitation or any other proceeding authorized by Chapter 81.

4. Pursuant to MCL 500.8112, the Ingham County Circuit Court is the proper court to petition for an order of rehabilitation.

REHABILITATION IS APPROPRIATE BASED ON AMERICAN COMMUNITY'S BOARD OF DIRECTORS CONSENTING TO REHABILITATION AND BASED ON THE COMPANY'S IMPAIRED FINANCIAL CONDITION

5. MCL 500.8112 authorizes the Commissioner to petition this Court for an Order authorizing the Commissioner to rehabilitate American Community based on one or more of thirteen (13) listed grounds. These grounds include:

> (a) The insurer is in such condition that the further transaction of business would be hazardous financially to its policyholders, creditors, or the public.
>
> * * *
>
> (*l*) The board of directors . . . request[s] or consent[s] to rehabilitation under this chapter.

6. Pursuant to MCL 500.8112(*l*), entry of an Order authorizing the Commissioner to rehabilitate American Community is proper because American Community's Board of Directors has consented to rehabilitation under Chapter 81.[1] Toward this end, American Community, by

[1] Exhibit A, Certificate of Resolution of American Community Board of Directors dated March 31, 2010.

and through its legal counsel, has stipulated to the relief sought in this Rehabilitation Petition and to the entry of the Order attached hereto as Exhibit B.

7. Pursuant to MCL 500.8112(a), entry of an Order authorizing the Commissioner to rehabilitate American Community is also proper because American Community's financial condition is such that further transaction of business would be hazardous financially to its policyholders, creditors, or the public.

8. Specifically, American Community reported a 2009 net loss of $49,135,134. This 2009 net loss resulted in a $53,404,628 decrease in American Community's capital and surplus, or a 72% decrease, from the prior year-end. The company's year-end 2009 capital and surplus stood at $21,101,431, down from $74,506,058 as of year-end 2008. American Community also has surplus note obligations of $30,000,000; however, these surplus notes are repayable only out of the surplus earnings of American Community and only with the prior written approval of OFIR.

9. As of December 31, 2009, American Community's Risk-Based Capital level was 155.5%, which represented a significant decline from its 564% Risk-Based Capital level one year earlier on December 31, 2008. Pursuant to OFIR Bulletin No. 98-02, American Community's 155.5% Risk-Based Capital level is a "Company Action Level Event" that requires the submission of an RBC Plan.[2]

10. American Community has reported negative cash flow from operations the last five years. The company's 2009 negative cash flow from operations was equal to 85% of its total capital and surplus.

[2] Exhibit C, OFIR Bulletin No. 98-02.

11. Further, on March 8, 2010, A.M. Best Co. downgraded its financial strength rating of American Community to "D" (poor) from "C+" (marginal), and downgraded its issuer credit rating to "C" from "B-." According to A.M. Best Co., the outlook for both ratings is negative.

12. Immediate action placing American Community into rehabilitation is necessary to protect the interest of American Community's policyholders, creditors, and the public.

13. Based upon the existence of the above-described statutory grounds for rehabilitation, and based upon American Community's stipulation to the relief sought by this Petition, the Court should enter the Rehabilitation Order attached as Exhibit B.

APPOINTMENT OF SPECIAL DEPUTY REHABILITATORS

14. The Commissioner, as Rehabilitator, is authorized to appoint Special Deputy Rehabilitators, who shall have all the powers and responsibilities of the Rehabilitator granted under Section 8114 of the Insurance Code and shall serve at the pleasure of the Commissioner.[3]

15. Pursuant to MCL 500.8114(1), the compensation of Special Deputy Rehabilitators and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the Commissioner, with the approval of the Court, and shall be paid out of the funds or assets of the insurer.

16. The Commissioner, as Rehabilitator, seeks approval of the appointment of James Gerber, the Director of Receiverships at OFIR, as a Special Deputy Rehabilitator for American Community. The Commissioner, as Rehabilitator, also seeks approval of the appointment of Michael Hogan, the Auditor-In-Charge at OFIR, as a Special Deputy Rehabilitator for American Community, who will work under Mr. Gerber's direction and supervision. The Commissioner

[3] MCL 500.8114(1).

further reserves the right to appoint other Special Deputy Rehabilitator(s) to replace and/or serve with Mr. Gerber and Mr. Hogan in the future as the need arises.

17. The Commissioner, as Rehabilitator, has fixed the compensation of Special Deputy Rehabilitators Gerber and Hogan pursuant to the terms set forth in the Order attached as Exhibit B. The Commissioner requests that the Court approve this compensation arrangement.

18. The Commissioner, as Rehabilitator, has determined that it is appropriate and necessary for the success of the rehabilitation that the services and compensation of James Gerber and Michael Hogan be approved so that this Rehabilitation may proceed effectively, efficiently, and provide the maximum protection of creditors, policyholders, and the public.

RELIEF REQUESTED

Based upon the foregoing, the Commissioner requests that the Court issue an Order, in the form attached as Exhibit B, that grants the Commissioner the following, nonexclusive relief:

1. Places American Community into rehabilitation pursuant to Chapter 81;

2. Grants the Commissioner, as Rehabilitator, possession, title, and control of American Community, its assets, resources, and business to the fullest extent allowed by law.

3. Approves the appointment and compensation of James Gerber and Michael Hogan as Special Deputy Rehabilitators.

4. Grants the injunctive relief necessary to protect American Community's business, assets, policyholders, creditors, the public, and the rehabilitation process

5. Grants the Commissioner such other and further relief that is necessary and appropriate for the rehabilitation of American Community.

Respectfully submitted,

Michael A. Cox
Attorney General

Christopher L. Kerr (P57131)
David W. Silver (P24781)
Assistant Attorneys General
Attorneys for Petitioner
Ken Ross, OFIR Commissioner
Corporate Oversight Division
P.O. Box 30755
Lansing, MI 48909
(517) 373-1160

Dated: April 8, 2010

American Community Mutual Insurance Company stipulates to the facts and law recited above, to the relief sought by this Petition, and to the existence of the statutory bases for the entry of an Order placing American Community into rehabilitation. Further, American Community waives any right to a hearing on this Petition:

John D. Pirich (P23204)
Attorney for Respondent American
Community Mutual Insurance Company

4.6.10
Date

Exhibit A

CERTIFICATION OF RESOLUTION

I, Michael E. Tobin, President and CEO of AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY, a corporation organized and existing under the laws of the State of Michigan, certify that the following is a true and correct copy of the resolution duly made and adopted at a meeting of the Board of Directors of the corporation held on March 25, 2010:

> **A motion was made and duly seconded authorizing the Company to consent to any relief sought by the Michigan Office of Financial and Insurance Regulation or ordered by a court of competent jurisdiction with regard to seeking rehabilitation, supervision and/or receivership of the Company. The motion passed unanimously.**

IN WITNESS WHEREOF, I have set my hand and seal of the corporation this 31st day of March, 2010.

Michael E. Tobin
President & CEO

Dorothy M. Petro

March 31, 2010

DOROTHY M. PETRO
NOTARY PUBLIC WAYNE CO., MI
MY COMMISSION EXPIRES NOV. 25, 2012

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,

Case No. _____-CR

v

Hon. _____

AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY,

Respondent.
_____/

STIPULATED ORDER
PLACING AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY INTO REHABILITATION, APPROVING APPOINTMENT AND COMPENSATION OF SPECIAL DEPUTY REHABILITATORS, AND PROVIDING INJUNCTIVE RELIEF

At a session of said Court
held in the Circuit Courtrooms
in the City of Lansing, Michigan on the
____ day of _____, 2010

PRESENT: HONORABLE _____
Circuit Court Judge

WHEREAS, Petitioner Ken Ross, Commissioner of the Office of Financial and Insurance Regulation (the "Commissioner"), has filed a Petition seeking an Order Placing American Community Mutual Insurance Company into Rehabilitation, Approving the Appointment and Compensation of Special Deputy Rehabilitators, and Providing Injunctive Relief (the "Rehabilitation Petition"); and

WHEREAS, Respondent American Community Mutual Insurance Company ("American Community"), by and through its Board of Directors, has consented to being placed into

Rehabilitation under Chapter 81 of the Michigan Insurance Code of 1956, MCL 500.8101 – 500.8159 ("Chapter 81"), under the terms and conditions determined by the Commissioner to be appropriate; and

WHEREAS, American Community, by and through its legal counsel, has stipulated to the relief sought in the Rehabilitation Petition and to the entry of this Order; and

WHEREAS, the Court has reviewed the Rehabilitation Petition and the terms of this Order, and being otherwise fully advised, finds as follows:

1. MCL 500.8102 provides that a proceeding under Chapter 81, including a rehabilitation proceeding, may be applied to an insurer who: (a) 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 Community satisfies both criteria and is therefore subject to rehabilitation or any other proceeding authorized by Chapter 81.

2. MCL 500.8112 vests this Court with jurisdiction to consider the Commissioner's Rehabilitation Petition and to enter this Order.

3. MCL 500.8112 authorizes the Commissioner to petition this Court for an Order authorizing the Commissioner to rehabilitate American Community based on one or more of thirteen (13) listed grounds. These grounds include:

> (a) The insurer is in such condition that the further transaction of business would be hazardous financially to its policyholders, creditors, or the public.
>
> * * *
>
> (*l*) The board of directors . . . request[s] or consent[s] to rehabilitation under this chapter.

4. Pursuant to MCL 500.8112(a), this Order authorizing the Commissioner to rehabilitate American Community is proper and should be entered because the Court finds that American Community's financial condition is such that further transaction of business would be hazardous financially to its policyholders, creditors, or the public.

5. Pursuant to MCL 500.8112(*l*), this Order authorizing the Commissioner to rehabilitate American Community is also proper and should be entered because American Community's Board of Directors has consented to rehabilitation under Chapter 81.

6. American Community, by and through its legal counsel, has stipulated to the relief sought in the Rehabilitation Petition and to the entry of this Order.

7. As defined by MCL 500.8103(b), a "Creditor" is a person having a claim against American Community, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

8. Based upon 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 Rehabilitator or with the Rehabilitation proceedings;

(b) The institution or further prosecution of any actions or proceedings against American Community, its assets, or its policyholders;

(c) The obtaining of preferences, judgments, attachments, garnishments, or liens against American Community, its assets, or its policyholders;

(d) The levying of execution against American Community, its assets, or its policyholders; and

(e) Any other threatened or contemplated action that might lessen the value of American Community's assets or prejudice the rights of its policyholders, creditors, or the administration of this rehabilitation proceeding.

9. All Creditor claims against American Community are within the 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.

10. MCL 500.8114(2), in conjunction with MCL 500.8121(1)(m), authorizes the Rehabilitator "[t]o prosecute an action that may exist on behalf of the creditors, members, policyholders, or shareholders of the insurer against an officer of the insurer or another person."

11. Immediate action placing American Community into rehabilitation is necessary to protect the interest of American Community's policyholders, creditors, and the public.

THEREFORE, IT IS HEREBY ORDERED that:

1. Pursuant to MCL 500.8112 and MCL 500.8113, the Commissioner's Rehabilitation Petition is GRANTED, and American Community is placed into Rehabilitation pursuant to Chapter 81.

2. Pursuant to MCL 500.8113(1), the Commissioner is appointed Rehabilitator of American Community, and is further authorized to appoint one or more Special Deputy Rehabilitator(s) pursuant to MCL 500.8114(1). Hereafter, the Commissioner shall be referred to as the "Rehabilitator."

3. Pursuant to MCL 500.8113(1), the Rehabilitator shall take immediate possession of all the assets of American Community and administer those assets under the Court's general supervision.

4. Pursuant to MCL 500.8113(1), this Order shall by operation of law vest legal title to all assets, accounts, and moneys of American Community in the Rehabilitator. The filing or recording of this Order with the Clerk of the Circuit Court or the Register of Deeds for the county in which the principal office or place of business of American Community 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.

5. Pursuant to MCL 500.8115(1) and paragraph 22(a) of this Order, all actions or proceedings in which American Community is a plaintiff that are pending as of the date this Order is entered are STAYED for ninety (90) days and such additional time as is necessary for the Rehabilitator to obtain proper representation and prepare for further proceedings. Pursuant to paragraph 22(a) of this Order, the institution or continuation of any actions or proceedings in which American Community is a defendant, or is obligated to defend another party, is prohibited and enjoined.

6. The Rehabilitator, without being specifically set forth in this Order, shall have: (a) all the powers contained in MCL 500.8114 and 500.8115; (b) all applicable powers set forth in Chapter 81; and (c) such additional powers as the Court shall grant from time to time upon petition of the Rehabilitator.

7. Pursuant to MCL 500.8114(2), upon entry of this Order, all powers of the current directors, officers, and managers of American Community are suspended in their entirety, and the Rehabilitator shall have and exercise the full and complete power of such directors, officers, and managers. In his sole discretion, the Rehabilitator may redelegate, in writing, some or all of his authority to a former director, officer, or manager of American Community.

8. Among his plenary powers provided by law, the Rehabilitator shall have full power and authority to direct and manage American Community, to hire and discharge American Community's officers, managers, and employees subject to any contract rights that they may have, and to deal in totality with the property and business of American Community. Subject to any contractual rights and applicable law, upon entry of this Order all employment contracts of

American Community's officers, managers, and employees are terminated. Notwithstanding the termination of their employment contracts, the officers, managers, and employees of American Community shall remain employed as at-will employees until such time as they are notified by the Rehabilitator or Special Deputy Rehabilitators that they have been discharged. Within their sole discretion, the Rehabilitator and Special Deputy Rehabilitators may re-contract with any officers, managers, or employees of American Community whose employment contracts are terminated pursuant to this paragraph 8 upon terms agreeable to the parties.

9. Any director, manager, officer, employee, or agent of American Community and any other person shall, at the Rehabilitator's direction, vacate any building, office, or other premise of American Community.

10. Pursuant to MCL 500.8114(2) and (4), the Rehabilitator may take such action as he considers necessary or appropriate to reform or revitalize American Community, and is empowered to pursue all avenues of reorganization, consolidation, conversion, reinsurance, merger, or other transformation of American Community to effectuate rehabilitation and maintain, to the greatest extent possible, a continuity of health care services.

11. Pursuant to MCL 500.8114(4), if the Rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of American Community is appropriate, he shall prepare a plan to effect those changes and shall apply to the Court for approval of such plan.

12. Pursuant to MCL 500.8116(1), if the Rehabilitator believes that further attempts to rehabilitate American Community would be futile or would substantially increase the risk of loss to creditors, policyholders, or the public, he may petition the Court for an order of liquidation.

13. Pursuant to MCL 500.8116(2), the Rehabilitator may petition the Court at any time for an order terminating the rehabilitation of American Community.

14. Except as provided in this paragraph 14, the Rehabilitator shall not pay any Creditor claims for goods or services provided prior to the date of this Order until further order of the Court. In order to ensure the continuity of health care services to American Community's policyholders, and to minimize disruptions to American Community's business operations, the Rehabilitator shall pay: (a) all Creditor claims for health care services provided to American Community's policyholders prior to the date of this Order according to normal claims processing procedures; and (b) all Creditor claims for wages of American Community's officers, managers, and employees that were earned but unpaid as of the date of this Order. This provision requiring payment of pre-Rehabilitation employee wages does not apply to, and the Rehabilitator shall not pay, any severance or other non-wage payments otherwise due to an American Community officer, manager, or employee upon the termination of his or her employment contract entered into prior to the date of this Order.

15. The Rehabilitator shall pay all Creditor claims for goods or services provided on or after the date of this Order as they become due in the ordinary course of business.

16. The Rehabilitator shall pay any other normal administrative expenses incurred on or after the date of this Order that are necessary for the continued operation and/or rehabilitation of American Community as they become due in the ordinary course of business.

17. Pursuant to MCL 500.8113(3), entry of this Order shall not constitute an anticipatory breach of any contracts or relationships between American Community and any other persons or entities. Except for employment contracts terminated under paragraph 8 of this Order, and pursuant to MCL 500.8105(1)(k), during the pendency of this rehabilitation, all

persons or entities that are not American Community policyholders and that have contractual or other relationships with American Community as of the date of this Order are hereby enjoined and restrained from terminating or attempting to terminate such contracts or relationships on the basis of the entry of this Order or American Community's financial condition. This injunction against terminating existing contracts or relationships applies, without limitation, to any contracts or relationships between American Community and health care providers or provider networks. Notwithstanding the foregoing, the Rehabilitator shall review the necessity of any contracts subject to this Paragraph 17 during the pendency of this rehabilitation and, upon determining that any such contract is unnecessary to American Community's rehabilitation, shall petition the Court to withdraw the injunctive relief provided herein and/or for termination of the contract.

18. Pursuant to MCL 500.8106, all officers, managers, directors, trustees, owners, employees, or agents of American Community, or any other persons or entities having authority over or in charge of any segment of the affairs of American Community, shall fully cooperate with the Rehabilitator and any Special Deputy Rehabilitators that he appoints. Among other things, "full cooperation" requires a person or entity described in this paragraph to:

(a) Promptly reply to any inquiry by the Rehabilitator, including a written reply when requested;

(b) Provide the Rehabilitator 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 Community in his, her, or its possession, custody, or control as may be necessary to enable the Rehabilitator and Special Deputy Rehabilitator to operate the business and to maintain the continuity of health care services being provided to all subscribers;

(c) Provide the Rehabilitator 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 Community; and

(d) Provide the Rehabilitator 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 Community or the operation of American Community and its business, provided to or from American Community's in-house or outside counsel by or to American Community, its officers, managers, directors, trustees, owners, employees, or agents.

In addition, no person shall obstruct or interfere with the Rehabilitator or Special Deputy Rehabilitators in the conduct of this rehabilitation proceeding.

19. As provided by MCL 500.8106(4), any failure to cooperate with the Rehabilitator or Special Deputy Rehabilitators, any obstruction or interference with the Rehabilitator or Special Deputy Rehabilitators in the conduct of this rehabilitation proceeding, or any violation of an order of the Commissioner validly entered under Chapter 81, 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 of a civil penalty not to exceed $10,000.00, or the revocation or suspension of any insurance licenses issued by the Commissioner, or both.

20. 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 Community, shall immediately:

(a) Provide the Rehabilitator 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 Rehabilitator.

(c) Take all necessary steps to safeguard, preserve, and retain the assets, documents, data, accounts, moneys, books, records, information, or property.

21. Pursuant to MCL 500.8105(1)(g) and (k), all non-contracted and contracted health care providers are hereby enjoined and restrained from pursuing collection against, obtaining

judgments against, and/or balance billing of American Community's policyholders, enrollees, or members for health care goods provided or services rendered prior to the date of this Order. All non-contracted and contracted health care providers that provided such goods or rendered such services prior to the date of this Order shall seek payment solely from American Community as an American Community Creditor, as defined in this Order and MCL 500.8103(b). The foregoing prohibition does not apply to any applicable co-payments, deductibles, cost sharing, or fees for medical goods or services that are not covered by and remain the policyholder's, enrollee's, or member's responsibility under his or her American Community insurance policy.

22. Pursuant to MCL 500.8105(1) and MCL 500.8114(2), and except as provided in paragraphs 21, 24, 25, and 26 of this Order, all Creditors of American Community are enjoined from:

(a) Instituting or continuing to prosecute any actions or proceedings to determine, enforce, collect, or assert any claims against American Community, its assets, policyholders, enrollees, members, officers, directors, or employees;

(b) Instituting or continuing to prosecute any actions or proceedings to determine, enforce, collect, or assert any claims against the Rehabilitator or Special Deputy Rehabilitators, their agents, attorneys, employees, or representatives, or the State of Michigan and its officers, agencies, or departments for claims or causes of action arising out of or relating to American Community or any proceedings under Chapter 81;

(c) Obtaining preferences, judgments, attachments, garnishments, or liens against American Community, its assets, policyholders, enrollees, members, officers, directors, or employees;

(d) Levying of execution against American Community, its assets, policyholders, enrollees, members, officers, directors, or employees; and

(e) Threatening or taking any other action that may lessen the value of American Community's assets or prejudice the rights of American Community's creditors as a whole, its policyholders, enrollees, or members, or the administration of this rehabilitation proceeding.

23. Any person who violates an injunction issued in this matter shall be liable to the Rehabilitator, 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.

24. All 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.

25. Any and all claims by Creditors against American Community must be raised or asserted within the rehabilitation proceeding before this Court and are subject to this Court's orders regarding the submission and determination of claims.

26. At the appropriate time, the Rehabilitator shall develop a method for the submission, evaluation, and resolution of any unpaid Creditor claims for goods and services provided to American Community and its policyholders, enrollees, or members prior to the date of this Order.

27. Pursuant to MCL 500.8114(1), the Court approves the Rehabilitator's appointment of James Gerber, the Director of Receiverships at OFIR, as a Special Deputy Rehabilitator for American Community. The Court also approves the Rehabilitator's appointment of Michael Hogan, the Auditor-In-Charge at OFIR, as a Special Deputy Rehabilitator for American Community, who will work under Mr. Gerber's direction and supervision. Mr. Gerber and Mr. Hogan shall serve at the pleasure of the Rehabilitator, who reserves the right to appoint other Special Deputy Rehabilitator(s) to replace and/or serve with Mr. Gerber and Mr. Hogan in the future as the need arises. Subject to the supervision and direction of the Rehabilitator and this

Court, Mr. Gerber and Mr. Hogan shall have all the powers and responsibilities of the Rehabilitator granted under MCL 500.8114.

28. Pursuant to MCL 500.8114(1), the Rehabilitator has fixed the compensation of Mr. Gerber and Mr. Hogan as follows, which this Court approves: Mr. Gerber and Mr. Hogan shall be compensated as salaried employees of OFIR and shall not receive any additional salary in their capacity as Special Deputy Rehabilitators for American Community. However, Mr. Gerber's and Mr. Hogan's expenses for travel, lodging, meals, and other expenses incurred in connection with their appointment as Special Deputy Rehabilitators shall be paid out of the funds or assets of American Community as normal administrative expenses pursuant to paragraph 16 of this Order. Mr. Gerber and Mr. Hogan will separately invoice and submit these expenses, which shall be reimbursed subject to State of Michigan reimbursement rates. If the Rehabilitator so elects in the future, he may allocate to American Community the pro rata portion of Mr. Gerber's and Mr. Hogan's salaries, at the rates of $62.09 an hour and $52.14 an hour, respectively, attributable to the performance of their duties as Special Deputy Rehabilitators, which compensation shall be paid out of the funds or assets of American Community pursuant to MCL 500.8114(1). In the event that American Community does not possess sufficient cash or liquid assets to pay Mr. Gerber's and Mr. Hogan's expenses, or their salaries if the Commissioner makes the allocation election permitted by this paragraph, the Rehabilitator may advance the necessary funds, which shall be repaid out of the first available money of American Community pursuant to MCL 500.8114(1).

29. If American Community remains in rehabilitation, the Rehabilitator and Special Deputy Rehabilitators shall make an accounting to the Court of American Community's financial condition and progress towards rehabilitation on or before October 15, 2010. Thereafter, the

Rehabilitator and Special Deputy Rehabilitators shall make a similar accounting to the Court each succeeding six-month period during which American Community remains in rehabilitation.

30. The Court reserves jurisdiction to amend this Order of Rehabilitation or issue such further orders as it deems just, necessary, and appropriate.

_____
Circuit Court Judge

Stipulated and Agreed:

_____ _____
Christopher L. Kerr (P57131) Date
David W. Silver (P24781)
Attorneys for Petitioner

_____ _____
John D. Pirich (P23204) Date
Attorney for Respondent

Exhibit C

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(To Print: use your browser's print function)

Release Date: April 23, 2002
Last Update: May 22, 2002

Bulletin No. 98-02

In the matter of risk-based capital (RBC) levels for insurers

Issued and entered June 15, 1998 by E.L. Cox, Commissioner of Insurance

Definitions

For purposes of this bulletin, the following definitions shall apply:

(1) "Adjusted RBC Report" means an RBC report which has been adjusted by the commissioner in accordance with these guidelines.

(2) "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required.

(3) "NAIC" means the National Association of Insurance Commissioners.

(4) "Life and/or health insurer" means any insurance company licensed under Chapter 4 of the Insurance Code of 1956, as amended (Code) and as defined in Chapter 6 of the Code, except that "health insurance" is defined as "disability insurance" in the Code, or a licensed property and casualty insurer writing only accident and health (disability) insurance.

(5) "Property and casualty insurer" means any insurance company licensed under Chapter 4 of the Code and as defined in Chapter 6 of the Code but shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

(6) "Negative trend" means, with respect to a life and/or health insurer, negative trend over a period of time, as determined in accordance with the "Trend Test Calculation" included in the RBC Instructions.

(7) "RBC instructions" means the RBC Report including risk-based capital instructions adopted by the NAIC and the commissioner, as such RBC Instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(8) "RBC Level" means an insurer's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC where:

(a) "Company Action Level RBC" means, with respect to any insurer, the product of 2.0 and its Authorized Control Level RBC;

(b) "Regulatory Action Level RBC" means the product of 1.5 and its Authorized Control Level RBC;

(c) "Authorized Control Level RBC" means the number determined under the risk-based capital formula in accordance with the RBC Instructions;

(d) "Mandatory Control Level RBC" means the product of .70 and the Authorized Control Level RBC.

(9) "RBC Plan" means a comprehensive financial plan containing the elements specified below. If the commissioner rejects the RBC Plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "Revised RBC Plan." An RBC Plan shall:

(a) Identify the conditions which contribute to the Company Action Level Event;

(b) Contain proposals of corrective actions which the insurer intends to take and would be expected to result in the elimination of the Company Action Level Event;

(c) Provide projections of the insurer's financial results in the current year and at least the four (4) succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital and surplus. (The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense and benefit component);

(d) Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of, and problems associated with, the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

(10) "RBC Report" means the report of an insurer's RBC levels as required by the annual statement instructions. If the commissioner adjusts an RBC Report, the report shall be referred to as an "Adjusted RBC Report."

(11) "Total adjusted capital" means the sum of:

(a) An insurer's statutory capital and surplus as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under Section 500.438 of the Code; and

(b) Such other items, if any, as the RBC instructions may provide.

RBC Reports

If a domestic insurer files an RBC Report which in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC Report to correct the inaccuracy and may notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment.

Company Action Level Event

(1) "Company Action Level Event" means any of the following:

(a) The filing of an RBC Report by an insurer, or the notification by the commissioner to the insurer of an Adjusted RBC Report which indicates that:

(i) The insurer's total adjusted capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC; or

(ii) If a life and/or health insurer, the insurer has total adjusted capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 2.5 and has a negative trend.

(b) Notification to the insurer after a hearing that the commissioner has rejected the insurer's

challenge to an Adjusted RBC Report that indicates an event in subsection (a).

(2) In the event of a Company Action Level Event, the commissioner shall require an insurer to prepare and submit an RBC Plan.

(3) If required by the commissioner, the RBC Plan shall be submitted:

(a) Within forty-five (45) days of the Company Action Level Event; or

(b) Within forty-five (45) days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge to an Adjusted RBC Report.

(4) Within sixty (60) days after the submission of an RBC Plan to the commissioner, the commissioner shall notify the insurer whether the RBC Plan is satisfactory. If, in the judgment of the commissioner, the RBC Plan is unsatisfactory, the commissioner shall provide the insurer with the reasons for the determination, and may set forth proposed revisions which will render the RBC Plan satisfactory. Within forty-five (45) days of notification from the commissioner or within forty-five (45) days after notification that the commissioner has rejected the insurer's challenge, the insurer shall prepare and submit a Revised RBC Plan, which may incorporate by reference any revisions proposed by the commissioner.

Regulatory Action Level Event

(1) "Regulatory Action Level Event" means, with respect to any insurer, any of the following events:

(a) The filing of an RBC Report by the insurer, or the notification by the commissioner to an insurer of an Adjusted RBC Report which indicates that the insurer's total adjusted capital is greater than or equal to its Authorized Control Level RBC but less than its Regulatory Action Level RBC;

(b) The notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge to an Adjusted RBC Report.

(c) The failure of the insurer to file an RBC Report by the filing date, unless the insurer has provided an explanation for such failure which is satisfactory to the commissioner and has cured the failure within ten (10) days after the filing date;

(d) The failure of the insurer to submit an RBC Plan to the commissioner within the time period set forth in these guidelines;

(e) Notification to the insurer that the commissioner has determined that the RBC Plan or revised RBC Plan submitted by the insurer is unsatisfactory and such notification constitutes a Regulatory Action Level Event with respect to the insurer.

(f) The notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge to a determination by the commissioner under subsection (e);

(g) Notification by the commissioner to the insurer that the insurer has failed to adhere to its RBC Plan or Revised RBC Plan, and that such failure has a substantial adverse effect on the ability of the insurer to eliminate the Company Action Level Event in accordance with its RBC Plan or Revised RBC Plan, provided the insurer has not challenged the determination by the commissioner under subsection (e); or

(h) The notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the the insurer's challenge to a determination by the commissioner under subsection (g).

(2) In the event of a Regulatory Action Level Event the commissioner shall:

(a) Require the insurer to prepare and submit an RBC Plan or, if applicable, a Revised RBC Plan;

(b) Subsequent to an investigation or analysis, issue a Corrective Order.

(3) In determining corrective actions, the commissioner may take into account such factors as are deemed relevant with respect to the insurer based upon the commissioner's examination or analysis of the assets, liabilities and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC instructions.

(4) An RBC Plan or Revised RBC Plan required by the commissioner shall be submitted:

(a) Within forty-five (45) days after the occurrence of the Regulatory Action Level Event;

(b) Within forty-five (45) days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge to an Adjusted RBC Report or Revised RBC Plan.

Authorized Control Level Event

(1) "Authorized Control Level Event" means any of the following events:

(a) The filing of an RBC Report or notification by the commissioner to the insurer of an Adjusted RBC Report, provided the insurer does not challenge the Adjusted RBC Report, which indicates that the insurer's total adjusted capital is greater than or equal to its Mandatory Control Level RBC but less than its Authorized Control Level RBC; or

(b) Notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge to an Adjusted RBC Report that indicates the event in subsection (a)

(c) The failure of the insurer to respond, in a manner satisfactory to the commissioner, to a Corrective Order, provided the insurer has not challenged the Corrective Order; or

(d) If the insurer has challenged a Corrective Order, and the commissioner has, after a hearing, rejected the challenge or modified the Corrective Order, the failure of the insurer to respond, in a manner satisfactory to the commissioner, to the Corrective Order subsequent to rejection or modification by the commissioner.

(2) In the event of an Authorized Control Level Event with respect to an insurer, the commissioner shall:

(a) Take such actions as are appropriate under the "Regulatory Action Level Event" section of these guidelines regarding an insurer with respect to which an Regulatory Action Level Event has occurred; or

(b) If the commissioner deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take such actions as are necessary to cause the insurer to be placed under regulatory control under Chapter 81 of the Code. In the event the commissioner takes such actions, the Authorized Control Level Event shall be deemed sufficient grounds for the commissioner to take action under Chapter 81, and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth Chapter 81. In the event the commissioner takes actions under this paragraph pursuant to an Adjusted RBC Report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions of Section 437 of the Code pertaining to summary proceedings.

Mandatory Control Level Event

(1) "Mandatory Control Level Event" means any of the following events:

(a) The filing of an RBC Report or notification by the commissioner to the insurer of an Adjusted RBC Report, provided the insurer does not challenge the Adjusted RBC Report, which indicates that the insurer's total adjusted capital is less than its Mandatory Control Level RBC; or

(b) Notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge to an Adjusted RBC Report.

(2) In the event of a Mandatory Control Level Event:

(a) The commissioner shall take such actions as are necessary to place the insurer under regulatory control under Chapter 81 of the Code. In that event, the Mandatory Control Level Event shall be deemed sufficient grounds for the commissioner to take action under Chapter 81, and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in Chapter 81. If the commissioner takes actions pursuant to an Adjusted RBC Report, the insurer shall be entitled to the protections of Section 437 of the Code pertaining to summary proceedings.

(b) Notwithstanding (a), the commissioner may forego action for up to ninety (90) days after the Mandatory Control Level Event if the commissioner finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the ninety (90) day period.

Challenges to Determination or Action by the Commissioner

The request for the submission of an Adjusted RBC Report, RBC Plan, or Revised RBC Plan shall be considered an investigation under Section 222 of the Code. Pursuant to such an investigation, an insurer may challenge a determination or action made by the commissioner. Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing, which date shall be no less than ten (10) nor more than thirty (30) days after the date of the insurer's request. The hearing shall be closed to the public and is not subject to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

Confidentiality; Prohibition on Announcements, Prohibition on Use in Ratemaking

(1) All RBC Reports (to the extent the information therein is not required to be set forth in a publicly available annual statement schedule) and RBC Plans (including the results or report of any examination or analysis of an insurer performed pursuant hereto and any Corrective Order issued by the commissioner pursuant to examination or analysis) with respect to any domestic insurer or foreign insurer which are filed with the commissioner constitute an investigation made under Section 222 of the Code and therefore are afforded the confidentiality provisions of Section 222.

(2) The comparison of an insurer's total adjusted capital to any of its RBC Levels is a regulatory tool which may indicate the need for possible corrective action with respect to the insurer, and is not intended as a means to rank insurers generally. Therefore, except as otherwise required under the provisions of these guidelines, the making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement with

regard to the RBC Levels of any insurer, or of any component derived in the calculation, by any insurer, agent, broker or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its RBC Levels (or any of them) or an inappropriate comparison of any other amount to the insurers' RBC Levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(3) The RBC instructions, RBC Reports, Adjusted RBC Reports, RBC Plans and Revised RBC Plans shall be used solely by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and will not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write.

Exemption

(1) The commissioner may exempt from the application of these guidelines any domestic property and casualty insurer which;

(a) Writes direct business only in this state;

(b) Writes direct annual premiums of $2,000,000 or less; and

(c) Assumes no reinsurance in excess of five percent (5%) of direct premium written.

Foreign Insurers

(1) The commissioner may request of any foreign insurer the submittal of an RBC Report as of the end of the calendar year just ended the later of:

(a) The date an RBC Report would have been filed by a domestic insurer under these guidelines; or

(b) Fifteen (15) days after the request is received by the foreign insurer.

The commissioner may request of any foreign insurer the prompt submittal of a copy of any RBC Plan that is filed with the insurance commissioner of any other state.

(2) In the event of a Company Action Level Event, Regulatory Action Level Event or Authorized Control Level Event with respect to any foreign insurer as determined under the RBC statute applicable in the state of domicile of the insurer (or, if no RBC statute is in force in that state, under the provisions of these guidelines), if the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file an RBC Plan in the manner specified under that state's RBC statute, the commissioner may require the foreign insurer to file an RBC Plan with the commissioner. In such event, the failure of the foreign insurer to file an RBC Plan with the commissioner will be considered grounds to conclude that the insurer is no longer safe, reliable, and entitled to public confidence.

(3) In the event of a Mandatory Control Level Event with respect to any foreign insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the commissioner may

make application to the circuit court permitted under the provisions of Chapter 81 of the Code with respect to the liquidation of property of foreign insurers found in this state, and the occurrence of the Mandatory Control Level Event may be considered adequate grounds for the application.

Notices

All notices by the commissioner to an insurer which may result in regulatory action hereunder shall be effective upon the date of the notice.

Effective Date

These guidelines become effective immediately.

Any questions regarding this bulletin should be referred to:

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Michigan Insurance Bureau
P.O. Box 30220
Lansing, MI 48909-7720
(517) 373-0246

In accordance with Section 3(6) of the Administrative Procedures Act of 1969, as amended, MCLA 24.203(6); MSA 3.560(103)(6), this guideline is a statement of policy or declaration which the agency intends to follow, which does not have the force or effect of law, and which binds the agency but does not bind any other person.

E.L. Cox

Commissioner of Insurance

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