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## **EXECUTIVE EMPLOYMENT AGREEMENT**

THIS AGREEMENT ("Agreement") is effective **April 5, 2007**, between American Community Mutual Insurance Company, a Michigan corporation (the "Company"), and **Michael E. Tobin** (the "Employee").

WHEREAS, the Company desires to provide inducement to retain the Company's executive management, recognizing that retention of said executives provides greater stability and security to the Company and its members;

WHEREAS, the Company desires to assure fair treatment of its executives in the event of a Change in Control and to allow them to make critical career decisions without undue time pressure and financial uncertainty, thereby increasing their willingness to remain with the Company notwithstanding the outcome of a possible Change in Control;

WHEREAS, the Company recognizes that its executives may be involved in evaluating or negotiating any offers, proposals or other transactions which could result in Changes in Control of the Company and believes that it is in the best interest of the Company and its members for such executives to be in a position, free from personal, financial and employment considerations, to be able to assess objectively and pursue aggressively the interests of the Company's members; and

NOW THEREFORE, the parties, for good and valuable consideration and intending to be legally bound, agree as follows:

- 1. Operation and Term of Agreement.** The Agreement will be effective immediately upon its execution. The Agreement may be terminated by the Company upon two year's advance written notice to the Employee; provided however, that after a Change in Control of the Company during the term of this Agreement, this Agreement will remain in effect until all of the obligations of the parties hereunder are satisfied and the Protection Period has expired. Prior to a Change in Control, this Agreement will immediately terminate upon (i) termination of the Employee's employment, (ii) the Employee's death, (iii) the Employee's disability, or (iv) upon the Employee ceasing to be an elected officer of the Company, except in the case of such termination under circumstances set forth in 5(e)(i)(c).
- 2. Employment.** The Company employs Employee as **President & Chief Executive Officer** and Employee agrees to serve in that capacity and/or in such other capacity or capacities as the Board of Directors of the Company

deems advisable. Employee's employment is "at will", meaning that Employee or the Company can terminate the employment relationship at any time and for any reason not prohibited by law.

3. **Compensation.** Subject to the provisions of paragraph 5, all compensation and benefits are subject to change at the discretion of the Board of Directors.
4. **Duties.** Employee agrees, as long as employment by the Company continues, to devote Employee's entire time and best efforts to furthering the interests of the Company; to comply with all regulations and policies of the Company; and to perform the duties requested by any officers and executives of the Company to whom the Employee is directed to report.
5. **Termination.** Employee's employment under this Agreement shall terminate on the earliest to occur of the following: (1) immediately upon Employee's death, (2) at the Company's option, immediately when notice to Employee of such termination is given after Employee's permanent incapacity (established to the reasonable satisfaction of the Board of Directors of the Company), (3) at the Company's option, immediately when notice to Employee of such termination is given (for any reason or for no reason and regardless of whether there is good cause for such termination), and (4) 30 days after notice of such termination is given to the Board of Directors by Employee. In all cases, amounts which are vested benefits or which the Employee is otherwise entitled to receive under any plan, practice, policy or program of the Company at or subsequent to the date of termination will be paid in accordance with such plan, practice, policy or program. The following events shall have the following respective effects on the obligations of the Company and Employee pursuant hereto:
  - (a) **Death or Permanent Incapacity.** If employment is terminated due to the Employee's death or permanent incapacity, upon the execution by the Employee or their legal representative of an Employment Severance Agreement and Release of Liability ("Release") (substantially in the form and substance as set forth in Exhibit 1, attached hereto and the Release has become effective):
    - (i) If the Employee participates in an incentive compensation plan in which the benefits have not vested, the Company shall provide for the payment of incentive compensation in accordance with the terms of the plan, and paid on a pro rata basis. Payment is subject to applicable taxes and deductions; and
    - (ii) The Employee shall not be entitled to any severance compensation.

(b) **Cause.** The Company may terminate the Employee's employment for Cause. For purposes of this Agreement, "Cause" will mean (A) any act of dishonesty or knowing and willful breach of fiduciary duty on the Employee's part which is intended to result in their personal enrichment at the expense of the Company; (B) commission of a felony or unlawful, dishonest, or unethical conduct that a reasonable person would consider damaging to the reputation of the Company or improper and unacceptable conduct by an employee; (C) any material violation by the Employee of their responsibilities; (D) any material breach of any provision of this Agreement by the Employee; (E) material failure or inability to perform duties in a satisfactory and competent manner following written warning and a reasonable opportunity to cure; or (F) insubordination or refusal to perform assigned duties or comply with directions of the Board of Directors, as long as said request does not require the Employee to engage in illegal behavior. If the Employee's employment is terminated for Cause:

- (i) Employee shall forfeit and shall not be entitled to any compensation pursuant to any incentive compensation plan in which benefits have not vested; and
- (ii) The Employee shall not be entitled to any severance compensation.

(c) **Termination by the Company Other than for Cause.** In the event that this Agreement is terminated for any reason by the Company (except for a termination for "Cause", for death or permanent incapacity, or for a Change in Control), upon the execution of an Employment Severance Agreement and Release of Liability ("Release") (substantially in the form and substance as set forth in Exhibit 1, attached hereto and the Release has become effective):

- (i) Employee shall be entitled to receive an amount equal to a minimum of 26 weeks' pay plus 2 weeks' pay for each year of fully completed service (for purposes of calculation, service is defined as beginning on May 4, 2004, the date on which Employee was elected to serve on the Company's Board of Directors), not to exceed 52 weeks' pay. Payment is subject to applicable taxes and deductions, is paid in bi-weekly installments, in accordance with the Company's regular payroll procedures.
- (ii) The Company shall pay Employee's COBRA premiums for health insurance for the number of weeks of severance pay provided in (i) or until such time as Employee obtains other group health insurance, whichever comes first;

- (iii) The Company shall provide a basic outplacement package from a national outplacement firm of the Company's choice; and
  - (iv) If the Employee participates in an incentive compensation plan in which the benefits have not vested, the Company shall provide for the payment of incentive compensation in accordance with the terms of the plan, and paid on a pro rata basis. Payment is subject to applicable taxes and deductions.
- (d) **Voluntary Termination By the Employee.** At any time during the Employee's employment the employee may voluntarily terminate employment with the Company upon 30 days written notice. In the event of such termination, all rights, duties and obligations of both parties will cease to be effective upon the end of the 30-day notice period. The following also apply:
- (i) If the Employee participates in an incentive compensation plan in which the benefits have not vested, the Employee forfeits said compensation; and
  - (ii) The Employee shall not be entitled to any severance compensation.
- (e) **Change in Control.** If (1) a Change in Control occurs during the term of Employee's employment under this Agreement, and (2) either Employee terminates Employee's employment with the Company or its successor for any reason, or the Company or its successor terminates Employee's employment without Cause, both within two years after the Change in Control, Employee will receive benefits described in "Benefits Upon Termination within the Protection Period" upon the execution of an Employment Severance Agreement and Release of Liability ("Release") (substantially in the form and substance as set forth in Exhibit 1, and attached hereto and the Release has become effective). The Company may withhold from such payments all federal, state, city and other taxes to the extent such taxes are required to be withheld by applicable law.
- (i) **Definitions.** The following definitions apply to Section (e) with respect to a Change in Control:
- (a) "Cause" means (i) actual dishonesty intended to result in personal enrichment at the expense of the Company, (ii) conviction of a felony, or (iii) repeated willful and deliberate failure or refusal to perform the duties normally associated with the Employee's position, which is not remedied in a reasonable period of time after receipt of written notice from the Company.

(b) A "Change in Control" occurs on the first day any one or more of the following occurs:

✓(i) a demutualization, reorganization, consolidation, merger, combination, sale of all or substantially all of the assets of the Company, or similar transaction involving the Company, unless the members of the Company owning 50% or more of the combined voting power of the Company immediately prior to the commencement of such transaction remain the holders of 50% or more of the combined voting power in the acquiring or surviving entity; or

(ii) on or after the date of execution of this Agreement, any person (which, for all purposes hereof, will include, without limitation, an individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, a trustee, executor, administrator or other legal representative) (a "Person"), or any group of two or more Persons acting in concert, acquires the right to direct or control, including by proxy, 10% or more of the combined voting power of the members, unless the person or persons are an officer(s) or Board member(s) of American Community Mutual Insurance Company; or

(iii) the Board of Directors adopts a resolution to the effect that, for purposes of this Agreement, a Change in Control has occurred.

(c) "Change in Control Date" means the date during the term of this Agreement on which a Change in Control occurs. Anything in this Agreement to the contrary notwithstanding, if the Employee's employment or status as an elected officer with the Company is terminated within six months prior to the date on which a Change in Control occurs, then unless such employment or status as an elected officer with the Company is terminated (i) for Cause, or (ii) voluntarily by the Employee, for all purposes of this Agreement the "Change in Control Date" means the date immediately prior to the date of such termination.

- (d) "Protection Period" means the period commencing on the Change in Control Date and ending on the last day of the second full calendar year following the Change in Control Date.

✓(ii) **Benefits Upon Termination Within the Protection Period.**

If, during the Protection Period, (i) the Employee's employment is terminated by the Company, other than for Cause or Permanent Incapacity, or is terminated as a result of the Employee's death, or (ii) if the Employee terminates his or her employment for any reason, the Company will provide the following benefits:

- (a) The Company will pay to the Employee in a lump sum in cash, within five (5) business days after the date of termination, the Employee's full base salary accrued but unpaid through the date of termination at the rate in effect at the time of the termination, plus an amount equal to the product of (i) the "Current Year Bonus" for the Employee, which for purposes of this Agreement will equal the greater of (A) the amount of the Employee's bonus under the applicable bonus plan for the most recent fiscal year ending prior to the date of the Change in Control, or (B) the target bonus established for the Employee for the fiscal year in which the Change in Control occurs multiplied by (ii) a fraction, the numerator of which is the number of days in such fiscal year through the date of termination and the denominator of which is 365; and
- ✓(b) The Company will pay to the Employee in cash, in bi-weekly installments over the next thirty-six (36) months, commencing within 30 days after the date of termination, a severance payment in an amount equal to 300% of the Employee's "Annual Compensation." For purposes of this Agreement, "Annual Compensation" will equal the aggregate of the Employee's annual cash compensation (other than bonus) from the Company, whether paid currently or deferred in effect immediately prior to the date of termination or Change in Control (whichever is greater), plus the Current Year Bonus as of the year in which the Change in Control occurs; and
- (c) During the three year period following the date of termination, the Company will maintain in full force and effect for the continued benefit of the Employee, the Company's life and disability insurance programs and the Company's medical, dental and vision plans in which the

Employee was entitled to participate immediately prior to the date of the Change in Control. In the event the Employee's participation in any such program or plan is barred or otherwise prevented, the Company will provide the Employee with after-tax cash or benefits substantially similar to and not less favorable than the benefits which the Employee would otherwise be entitled to receive under such program or plan; and

- (d) All of the Employee's benefits accrued under any supplemental retirement plan, excess retirement plan, and deferred compensation plan maintained by the Company will become immediately vested in full.
- (iii) **Successors.** The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company or any successor, to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" means the Company as herein before defined and any successor to its business and/or assets as aforesaid (and any Parent of the successor), which is required by this clause to assume and agree to perform this Agreement or which otherwise assumes and agrees to perform this Agreement.
- (iv) **Non-exclusivity of Rights.** Nothing in this Agreement will prevent or limit the Employee's continuing or future participation in any benefit, bonus, incentive or other plans, practices, policies or programs provided by the Company and for which the Employee may qualify. Amounts which are vested benefits, or which the Employee is otherwise entitled to receive under any plan, practice, policy or program of the Company at or subsequent to the date of termination, will be paid in accordance with such plan, practice, policy or program.
- (v) **Full Settlement; Legal Expenses.** The Company's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder will not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which the Company may have against the Employee or others. In no event will the Employee be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Employee under any of the provisions of this Agreement. In any such action brought by the Employee for

damages, or to enforce any provisions of this Agreement, he or she will be entitled to seek both legal and equitable relief and remedies, including, without limitation, specific performance of the Company's obligations hereunder, in his or her sole discretion.

- (vi) **Notice of Termination.** Any termination of the Employee's employment by the Company for Cause or by the Employee must be communicated by Notice of Termination to the other party hereto given in accordance with Section 7(d) of this Agreement. For purposes of this Agreement, a "Notice of Termination" means a written notice which (i) indicates the specific termination provision in this Agreement relied upon, (ii) sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Employee's employment under the provision so indicated, and (iii) if the date of termination is other than the date of receipt of such notice, specifies the termination date (which date will be not more than 15 days after the giving of such notice).

**6. The Employee's Acknowledgment and Agreement.** The Employee acknowledges and agrees to abide by Section 6, and that said agreement is given in consideration for and in connection with this Agreement. The Employee acknowledges that the Employee will occupy a position of trust and confidence while employed with the Company and the Employee will become familiar with the Company's trade secrets and with other proprietary and confidential information concerning the Company. The Employee further acknowledges that the agreements and covenants contained in this Section 6 are essential to protect the Company and the goodwill of the business, and the Employee's employment with the Company has special, unique and extraordinary value to the Company and the Company would be irreparably damaged if the Employee were to provide services to any person or entity in violation of the provisions of this Agreement.

- (a) **Restriction on Solicitation and Inducement.** Employee agrees that, for a period of three years following the termination of Employee's employment with the Company, Employee shall not, directly or indirectly, on Employee's own behalf or on behalf of any person or business entity:

- (i) Call on or solicit any agent, broker or insured whose identity Employee learned because they were an agent, broker or insured of the Company, for the purpose of inducing such broker, agent or insured to transfer business from American Community to a competitor; and

- (ii) Induce or attempt to induce any employee of the Company to quit employment with the Company.

**(b) Confidentiality**

- (i) During the term of this Agreement and thereafter, the Employee will keep secret and retain in strictest confidence, and will not, without the prior written consent of the Company, furnish, make available or disclose to any third party or use for their benefit or any third party, any Confidential Information. As used in this Agreement, "Confidential Information" will mean any information relating to the business or affairs of the Company or the Company's affiliates, including but not limited to information relating to financial statements, customer identities, potential customers, employees, agents, clients, suppliers, vendors, servicing methods, equipment, program, strategies and information, databases and information systems, analyses, profit margins or other proprietary information used by the Company or the Company's affiliates; provided, however, that Confidential Information will not include any information which is in the public domain or becomes known in the industry through no wrongful act on the part of the Employee. The Employee acknowledges that the Confidential Information is vital, sensitive, confidential and proprietary to the Company or the Company's affiliates.
  - (ii) The Employee further agrees that the terms and conditions of this Agreement and any other agreement executed contemporaneously with the transactions contemplated by this Agreement (the "Subject Terms and Conditions"), are highly confidential and secret to the Company and covenants to forever keep secret the Subject Terms and Conditions from, and not to disclose the Subject Terms and Conditions to any non-party (including competitors and other managers and employees of the Company) without the express written permission of the Company.
- (c) **Return of Company Materials Upon Termination.** The Employee acknowledges that all sales manuals, catalogs, customer lists and other customer information, reports, supplier lists, financial information, and other records or documents containing Confidential Information prepared by the Employee or coming into the Employee's possession by virtue of the Employee's employment by the Company as well as company car, computer and other company equipment is and will remain the property of the Company, or the Company's affiliates as the case may be, and that upon termination of Employee's employment

hereunder, the Employee will return immediately to the Company all such items in his possession, together with all copies thereof.

- (d) **Remedies.** The Employee acknowledges and agrees that the terms of Section 6 are reasonable and necessary for the protection of the Company's business interests, that irreparable injury will result to the Company if the Employee breaches any of the terms, and that in the event of the Employee's actual or threatened breach of any such covenants, the Company will have no adequate remedy at law. The Employee accordingly agrees that in the event of any actual or threatened breach by him or her of any of the covenants, the Company will be entitled, as a matter of right, to immediate temporary injunctive and other equitable relief, without the necessity of showing actual monetary damages or irreparable injury or of posting bond. Nothing contained herein will be construed as prohibiting the Company from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of any damage which it is able to prove.

## 7. **Miscellaneous.**

- (a) **Entire Agreement.** This Agreement (including the documents referred to herein) constitutes the entire agreement between the parties and supersedes any prior understandings or agreements between the parties, written or oral, to the extent they related in any way to the subject matter hereof. Without limiting the foregoing, the Employee specifically acknowledges and agrees that all prior employment agreements, if any, between the Employee and the Company (all collectively the "Prior Agreements") are and have been terminated on or before the effective date of this Agreement, and that the Employee has no claims of any kind or nature whatsoever against the Company or any of its members, officers, employees or representatives on account of the Prior Agreements.
- (b) **No Assignment; Assumption.** This Agreement is personal to the Employee and will not be assignable by the Employee, other than by last will and testament or by the laws of descent and distribution with respect to any amounts due hereunder. This Agreement will inure to the benefit of and be binding upon any successor to the business or assets of the Company which assumes this Agreement, whether expressly or by operation of law.
- (c) **Headings.** The section headings contained in this Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.

- (d) **Notices.** All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder will be deemed duly given if (and then two business days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

If to Company:

Attn: Chairman of the Board  
39201 Seven Mile Road  
Livonia, MI 48152

With a copy to:

Attn: General Counsel  
39201 Seven Mile Road  
Livonia, MI 48152

If to Employee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Either party may send any notice, request, demand, claim or the other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication will be deemed to have been duly given unless and until it actually is received by the intended recipient. Either party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other party notice in the manner herein set forth.

- (e) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Michigan without giving effect to any choice or conflict of law provision or rule (whether the State of Michigan or any other jurisdiction) that would cause the application of the law of any jurisdiction other than the State of Michigan.

- (f) **Amendments.** No amendment of any provision of this Agreement will be valid unless the same will be in writing and signed by both the Company and the Employee.
- (g) **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction will not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

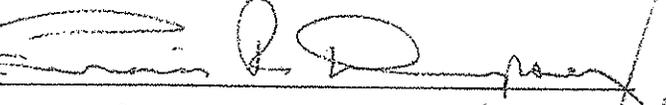


Michael E. Tobin

**AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY**

By: 

Title: SVP + Chief Act Officer

By: 

Title: SVP + General Counsel

# EMPLOYMENT SEVERANCE AGREEMENT AND RELEASE OF LIABILITY

## DEFINITIONS

- A. As used in this Agreement the term "Employee" shall mean **(senior officer name)**, and Employee's heirs, executors, administrators and assigns.
- B. As used in this Agreement the term "Company" shall mean American Community Mutual Insurance Company, a Michigan domiciled mutual insurance company, its successor(s) and assign(s), as well as all of the past and present director(s), officer(s), employee(s), agent(s), and attorney(s) (in their individual and representative capacities) of American Community.

WHEREAS Employee was employed by Company in the capacity of its **(job title)**;

WHEREAS Employee's employment officially ended effective with the end of the business day on **(day and date of termination)**.

THEREFORE, to facilitate Employee's transition to new employment, the parties agree as follows:

1. The Company will, following the effective date of this Agreement:
  - a) Pay to Employee an amount equal to a minimum of 26 weeks' pay plus 2 weeks' pay for each year of fully completed service, not to exceed 52 weeks' pay. In the case of Employee, the amount is **(\$ amount) (# of weeks)**, (less deductions for applicable taxes);
  - b) Employee's Pay shall be paid in bi-weekly installments, in accordance with the Company's regular payroll procedures, and shall be mailed to Employee's last address on file with the Company's Human Resources Department;
  - c) If the Employee elects continuation of coverage through COBRA, the Company shall pay Employee's COBRA premiums for health insurance for the number of weeks Employee receives severance pay under this Agreement, or until such time as Employee obtains other group health insurance, whichever comes first. In the case of Employee, the amount is **(\$ amount)**;
  - d) The Company shall pay to Employee the value of vested incentive units under the Company's Long Term Incentive Plan (LTIP). The LTIP amount is based on the Company's surplus (less surplus note) as of year-end **(YEAR)** and Employee's LTIP vesting schedule. In the case of Employee, **(# OF UNITS)** units granted **(DATE GRANTED)** are vested at **(% VESTED)** for an LTIP payment of **(AMOUNT)** (less deductions for applicable taxes). **(NOTE: MAY HAVE MORE THAN ONE YEAR AND ONE VESTED AMOUNT TO REPORT.)** The lump sum LTIP payment will be provided to Employee with the first regular payroll following the effective date of this Agreement and shall be mailed to Employee's last address on file with the Company's Human Resources Department;
  - e) The Company shall pay to Employee the amount, if any, awarded under the current Management Incentive Bonus (MIB) Program. Amount of payment to be based on the

Employee's level of attainment of corporate goals as determined by senior management and the Board of Directors. This lump sum payment will occur according to the normal bonus program payment cycle (typically in February, but no later than March 15, based on the preceding year's results), and will be paid in accordance with the Company's regular payroll procedures, and shall be mailed to Employee's last known address;

- f) The Company shall provide a basic outplacement package from a national outplacement firm of the Company's choice; provided, however, that the period of the outplacement package services will in no event extend beyond the last day of the second calendar year following the calendar year in which the Employee separates from service with the Company, and, provided, further, that any reimbursements for the expenses of the outplacement package will be paid no later than the last day of the third calendar year following the calendar year in which the Employee separates from service with the Company. If outplacement services are not requested by the Employee, the Company will pay to Employee a lump sum payment of **\$3,000.00** (less deductions for applicable taxes).

#### **RELEASE OF LIABILITY**

2. In exchange for the rights and benefits described in paragraph 1, above ("the Severance Benefits"), Employee releases any and all claims Employee may have against the Company, based upon facts existing as of the date of execution of this Agreement, whether known or unknown ("the Release"). *The release includes, but is not limited to, any claims Employee may have for discrimination, harassment, or retaliatory discharge, based upon Employee's age, sex, race, color, national origin, religion, height, weight, marital status, disability, or any other protected classification, which could have been alleged under the common law, or any ordinances or statutes and any amendments thereto, including the Michigan Elliott-Larsen Civil Rights Act, the Age Discrimination in Employment Act ("ADEA"), Title VII of the Civil Rights Act, the Americans With Disabilities Act ("ADA"), the Michigan Persons With Disabilities Act, and the Older Workers Benefit Protection Act ("OWBPA").* By way of further illustration, but not in limitation, the Release includes any claims Employee may have under federal and state statutes, and all amendments thereto, including the Fair Labor Standards Act ("FLSA"), the Employee Retirement Income Security Act ("ERISA"), the Family Medical Leave Act ("FMLA"), the Whistleblowers Protection Act, the Wage and Fringe Benefits Act, the Bullard-Plawecki Right to Know Act, the OWBPA, the Illinois Human Rights Act, the Illinois Right to Privacy in the Workplace Act, the Illinois Equal Pay Laws, the Indiana Civil Rights Law, the Indiana Minimum Discrimination Law, the Indiana Smokers' Rights Law, the Missouri Human Rights Act, the Missouri Handicap Discrimination Law, the Missouri Smokers' Rights Law, the Nebraska Fair Employment Practice Act, the Nebraska Equal Pay Act, the Nebraska Act Prohibiting Unjust Discrimination in Employment Because of Age Act, the Ohio Fair Employment Practices Act, the Ohio Equal Pay Act, the Pennsylvania Human Relations Act, the Pennsylvania Whistleblower Law, the Pennsylvania Minimum Wage Act of 1968, the Pennsylvania Equal Pay Law, the Pennsylvania Inspection of Employment Records Act, or violation of any penal statutes, together with claims under the common law for violation of public policy, compensation for services rendered, wrongful discharge, breach of contract, defamation, intentional infliction of emotional distress, and any other common law or statutory claim. Nothing in the Release shall be construed as a waiver of any future claim.

### EFFECTIVE DATE

3. This Agreement is effective and irrevocable seven (7) days after the date Employee signs this Agreement.

### OTHER PROVISIONS

4. This Agreement contains the entire understanding between Employee and the Company, and supersedes all prior or contemporaneous oral or written understandings, statements, representations or promises.
5. This Agreement cannot be changed or modified in any way, except in writing, signed by the President of the Company and the Employee.
6. Employee understands that the Company denies that it is in any way liable to Employee for any amount whatsoever, and that the promises contained in this Agreement are not an admission that the Company is in any way liable to Employee for any amount.
7. Employee understands and agrees that by signing this Agreement, Employee waives any claim to employment or reinstatement, and shall never again apply for employment with the Company.
8. Employee represents that Employee has not made any assignment or transfer of any right, claim, demand, cause of action or other matter covered by paragraph 2 above.
9. Employee agrees to reasonably cooperate with the company in any internal investigation, any administrative, regulatory or judicial proceeding or any dispute with a third party. Employee understands and agrees that Employee's cooperation may include, but is not limited to, making Employee available to the Company upon reasonable notice for interviews and factual investigations; appearing at the Company's request to give testimony without requiring service of a subpoena or other legal process; volunteering to the Company pertinent information and turning over to the Company all relevant documents which are or may come into Employee's possession all at times and schedules that are reasonably consistent with Employee's other permitted activities and commitments. Employee agrees that in the event the Company requests Employee's cooperation in accordance with this provision, the Company will reimburse the Employee for proven lost wages reasonable travel expenses (including lodging and meals) and other reasonable costs and expenses upon Employee's submission of receipts.
10. Employee acknowledges that Employee has received all compensation to which Employee is entitled for services rendered to the Company.
11. Company acknowledges that Employee may submit receipts for reimbursement consideration for expenses occurring prior to Employee's separation.
12. Employee acknowledges that throughout Employee's employment with the Company, Employee has never sought to avail himself of any right protected under the Family Medical Leave Act (FMLA).
13. Employee represents and warrants that as of this date Employee has returned to the Company any and all property, tangible or intangible, which Employee possessed or had control over at any time (including, but not limited to company-provided credit cards, building or office access cards, keys, computer equipment, manuals, files, documents, records and software) and that Employee shall not retain any copies, compilations, extracts, excerpts, summaries or other

notes of any such manuals, files, documents, records, software, customer data base or other data.

14. Employee agrees not to make any statement to any person that criticizes, defames or otherwise disparages the reputation of the Company, or any of its services, products, Board of Directors, officers, management, or employees.
15. Employee acknowledges and agrees that while employed by the Company, Employee received confidential information relating to the Company's business. Examples of such information include, but are not limited to, information about the Company's finances, business plans, employees, clients, and agents. Employee agrees, for all time, to maintain as strictly confidential, and not to use or disclose, directly or indirectly, any of the Company's confidential information.
16. Employee agrees that, for a period of two years following the effective date of this Agreement, Employee shall not, directly or indirectly, on Employee's own behalf or on behalf of any person or business entity:
  - a) Call on or solicit any agent, broker or insured whose identity Employee learned because they were an agent, broker or insured of the Company, for the purpose of inducing such broker, agent or insured to transfer business from American Community to a competitor; and
  - b) Induce or attempt to induce any employee of the Company to quit employment with the Company.
17. Employee agrees that if Employee breaches the covenants contained in paragraphs 14, 15 or 16 this Agreement, the Company shall suffer irreparable harm and measuring all of the Company's damages would be difficult or impossible, and that the Company shall, in addition to any other rights or remedies available at law, including money damages, be entitled to an injunction from a court or competent jurisdiction enjoining Employee from committing any violation of paragraphs 14, 15 or 16 of this Agreement.
18. Employee agrees to keep the terms of this Agreement, including the amount and type of Benefits provided, confidential, and shall not disclose them to any other person or entity, except their spouse, attorney, accountant or as necessary for tax reporting purposes, or otherwise required by law.
19. If any provision of this Agreement is determined to be invalid or illegal, all other provisions shall remain in full force and effect.

#### **ACKNOWLEDGMENTS**

20. Employee expressly acknowledges that:
  - a) Prior to signing this Agreement, Employee has been offered at least twenty-one (21) days to review and consider this Agreement;
  - b) If Employee signs this Agreement before twenty-one (21) days have elapsed, Employee has expressly waived the right to take the twenty-one (21) days to consider this Agreement;

- c) Employee understands that Employee may revoke this Agreement within seven (7) days after signing it by advising the President of the Company, in writing, that Employee has revoked this Agreement.
- d) At the time Employee was provided with a copy of this Agreement for Employee's consideration, Employee received information as to: (i) the group of employees offered the same Severance Benefits as Employee, and (ii) the job titles and ages of all individuals selected to be offered the same Severance Benefits and the ages of all individuals in the same job titles who were not selected for the same Severance Benefits, and that Employee understood the information provided.
- e) Employee has been advised to consult with an attorney of Employee's choice concerning the terms and conditions of this Agreement, and that prior to executing this Agreement, Employee has been provided ample opportunity to do so.
- f) Employee would not be entitled to these Benefits unless Employee signs this Agreement.
- g) Employee has read, understands, and agrees with all the provisions and terms stated in this Agreement, and has signed this Agreement voluntarily, without any duress or coercion.

Employee:

Witness:

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

American Community Mutual Insurance Co.

Witness:

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

American Community Mutual Insurance Co.

Witness:

\_\_\_\_\_  
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Date: \_\_\_\_\_

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STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30755  
LANSING, MICHIGAN 48909

BILL SCHUETTE  
ATTORNEY GENERAL

February 7, 2012

Phillip L. Sternberg, Esq.  
Couzens, Lansky, Fealk, Ellis  
Roeder & Lazar, P.C.  
39395 West Twelve Mile Road  
Suite 200  
Farmington Hills, MI 48331

**Re: *Commissioner of the Office of Financial and Insurance Regulation v  
American Community Mutual Insurance Company (in Rehabilitation)  
Ingham County Circuit Court Case No. 10-397-CR***

Dear Mr. Sternberg:

Special Deputy Rehabilitator James Gerber forwarded me your letters dated January 18, 2012 asserting claims for the payment of severance to Michael Tobin and Ellen Downey, American Community Mutual Insurance Company's (ACMIC) former President/CEO and Vice President, Corporate Communications, respectively, under their Executive Employment Agreements. By letters dated January 25 and January 26, 2012, you asserted similar claims as to Michael McCollum (former ACMIC Vice President, Underwriting) and Francis Dempsey (former ACMIC Senior Vice President, General Counsel, and Secretary). These individuals are collectively referred to hereinafter as the "Former ACMIC Officers."

Chapter 81 of the Michigan Insurance Code, MCL 500.8101 *et seq.*, governs receivership proceedings involving insurance companies transacting insurance business in the State of Michigan, including but not limited to the ongoing rehabilitation of ACMIC. Relative to your claims for the payment of severance to the Former ACMIC Officers, Section 8137(4) of Chapter 81, MCL 500.8137(4), prohibits such payments, providing:

Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of an order of rehabilitation or liquidation under section 8113 or 8118.

Accordingly, any claims made by the Former ACMIC Officers under their Executive Employment Agreements are limited to payment for services they rendered prior to entry of the April 8, 2010 Order placing ACMIC into Rehabilitation. The Former ACMIC Officers have been paid any and all amounts they earned for services rendered. The Former ACMIC Officers

Mr. Phillip L. Sternberg, Esq.  
Page 2  
February 7, 2012

are entitled to no further payments from ACMIC, including but not limited to severance payments under their Executive Employment Agreements. The Rehabilitator is therefore denying the severance and related claims of the Former ACMIC Officers.

Thank you for submitting these claims, and please direct any future communications to me as attorney for the ACMIC Rehabilitator and Special Deputy Rehabilitator.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher Kerr". The signature is fluid and cursive, with the first name "Christopher" written in a larger, more prominent script than the last name "Kerr".

Christopher L. Kerr  
Assistant Attorney General  
Corporate Oversight Division  
(517) 373-1160

cc: James Gerber, Special Deputy Rehabilitator (via ID mail)

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February 17, 2012

FOR SETTLEMENT PURPOSES ONLY

Christopher L. Kerr  
Assistant Attorney General  
Corporate Oversight Division  
P.O. Box 30755  
Lansing, MI 48909

Re: Commissioner of the Office of Financial and Insurance Regulation v  
American Community Mutual Insurance Company (in Rehabilitation)  
Ingham County Circuit Court Case No. 10-397-CR

Dear Mr. Kerr:

First, please be advised that I have now also been retained by Beth L. McCrohan. Ms. McCrohan was terminated without cause from her position as Senior Vice President and Chief Information Officer of American Community Mutual Insurance Company, subsequent to the Company's Change of Control which occurred on April 8, 2010. In light of the termination, pursuant to the Executive Employment Agreement of February 27, 2007, it appears that Ms. McCrohan is entitled to receive 300 percent of her annual salary, which was [REDACTED] for the preceding calendar year, together with various other benefits.

In regard to the matter itself, I have had the opportunity to review your correspondence of February 7, 2012, denying the claims of my clients. Respectfully, I must take exception with your denial and the reasoning behind it.

In making your determination, you rely exclusively on MCLA 500.8137(4), which provides:

"Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of an order of rehabilitation or liquidation under section 8113 or 8118."

Christopher L. Kerr  
Assistant Attorney General  
February 17, 2012  
Page Two

Contrary to your asserted position, I believe the section unambiguously supports my clients' claims. The payments being herein sought are specifically for services rendered prior to the issuance of the order of rehabilitation. All of my clients were offered these contracts by the company to induce them to remain in its employ at a time when a change of control was likely and such change would likely jeopardize their future employment. The language of the contract itself specifies that fact:

"WHEREAS, the Company desires to provide inducement to retain the Company's executive management, recognizing that retention of said executives provides greater stability and security to the Company and its members;

"WHEREAS, the Company desires to assure fair treatment of its executives in the event of a Change in Control and to allow them to make critical career decisions without undue time pressure and financial uncertainty, thereby increasing their willingness to remain with the Company notwithstanding the outcome of a possible Change in Control;

"WHEREAS, the Company recognizes that its executives may be involved in evaluating or negotiating any offers, proposals or other transactions which could result in Changes in Control of the Company and believes that it is in the best interest of the Company and its members for such executives to be in a position, free from personal, financial and employment considerations, to be able to assess objectively and pursue aggressively the interests of the Company's members."

Moreover, the contracts provide that the right to the compensation set forth within them vests: "If (1) a Change in Control occurs during the term of the Employee's employment under this Agreement, and (2) either Employee terminates Employee's employment with the Company or its successor for any reason, or the Company or its successor terminates Employee's employment without Cause, both within two years after the Change in Control, Employee will receive benefits described in 'Benefits Upon Termination within the Protection Period' upon the execution of an Employment Severance Agreement and Release of Liability ("Release") (substantially in form the substance as set forth in Exhibit 1, and attached hereto and the Release has become effective)."

Thus, the payments herein sought are specifically for services rendered prior to the issuance of the Order of Rehabilitation. Clearly, the payment would not be for services rendered after the Order of Rehabilitation, because the Employee has no obligation to remain nor did the Company have the obligation to retain the Employee after the Change in Control.

Christopher L. Kerr  
Assistant Attorney General  
February 17, 2012  
Page Three

The entire concept behind this type of contract is to provide assurances to the Employee that he/she will be properly compensated for continuing to provide services up until the Change of Control. Such an arrangement allows the Employee to act wholly in the Company's best interest, unfettered with concern for what the future holds for him/her in the event of a Change of Control.

Accord can also be found in the actual Rehabilitation Order which provided, "**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..." [emphasis supplied]. The contractual rights referred to would include those rights established in the Change of Control provision which vested upon the entry of the Order and commencement of control by the Rehabilitator. The language demonstrates that the Court and the Rehabilitator, specifically recognized those contractual rights in the Order, were clearly intending to induce my clients to remain on after their automatic termination and then rehired upon entry of the Order.

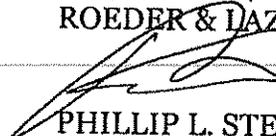
I recognize that my clients' claims are akin to the claims of executives similarly situated in the event of a bankruptcy. That is, they stand as unsecured creditors without priorities. However, it is my understanding that there will be sufficient assets over liabilities available to pay these claims in full. As mentioned in my previous correspondence, they are seeking compensation for services rendered prior to the Rehabilitation Order, similar to those voluntarily paid to two other former officers whose employment terminated prior to the Change of Control.

Finally, it is my understanding that no formal claims procedure has been initiated by the Rehabilitator. If I am mistaken, please advise and forward to me the necessary paperwork required to process these claims pursuant to liquidation.

Thank you for your continuing attention. I look forward to hearing from you in the near future and finally resolving this matter amicably and expeditiously.

Very truly yours,

COUZENS, LANSKY, FEALK, ELLIS,  
ROEDER & LAZAR, P.C.



PHILLIP L. STERNBERG

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1968

Wisconsin Laws of 1967, Chapter 8  
Senate Bill 303  
August 4, 1967

In 1967, Wisconsin substantially revised its insurance rehabilitation and liquidation provisions. Professor Spencer L. Kimball, currently Seymour Logan Professor of Law at the University of Chicago Law School prepared the extensive annotations to the Wisconsin law upon enactment to explain the history, content and operation of these provisions. Between December 1968 and December 1977, the National Association of Insurance Commissioners (NAIC) recommended adoption of the Wisconsin law as model legislation. The following was also used as one of the bases to develop the current NAIC Insurer Supervision, Rehabilitation and Liquidation Model Act. While the Wisconsin law is no longer recommended as NAIC model legislation, it is reprinted here as many of its provisions have been incorporated into the current NAIC Model Act and state laws.

Introductory Comment  
by  
Spencer L. Kimball

*Following a relatively uncommon though not entirely unprecedented procedure, the Wisconsin legislature enacted S. 303 of 1967 as chapter 89, Laws of 1967, including in the bill and in the session laws not only the statutory language but also the comments of the Insurance Laws Revision Committee. The committee had been appointed pursuant to statute for the purpose of revising the entire Wisconsin insurance code, of which the chapter was a part. The committee was responsible for the preparation of the bill. Prior to its introduction, however, the Committee product had been formally approved by the Legislative Council, to which the Committee was responsible. Presumably this quasi-enactment of the committee comments gave them a measure of dignity and permanence not ordinarily accorded the work of committees, though it is unclear just how much weight they have above that possessed by more conventional legislative history. It surely amounts to enough, however, to justify reprinting the statute and the comments together as a package that throws light on the problems addressed by the statute.*

*Though the statute and the comments bear the imprimatur of the Committee, they were adopted with little change after being prepared by Spencer L. Kimball, Executive Director of the insurance code revision project, who guided the product through advisory committee and Revision Committee hearings and discussions, and then testified before the legislative committees in joint session. Mr. Kimball, had valuable assistance in the task by Professor Herbert S. Denenberg, then of the Wharton School of the University of Pennsylvania, and Robert J. Bertrand, at the time a senior law student at the University of Wisconsin but later a deputy insurance superintendent of New York. The chapter, both in statutory provisions and in commentary, represents the fruit of many months of time investment.*

*There have been some amendments of the act since initial enactment, but basically it stands now much as it did then.*

- (5) *Residual classification. This includes ordinary commercial debts and debts owing to governments, such as taxes. It is likely to be small in amount relative to the total of all claims.*
- (6) *Claims based solely on judgments. Those judgments that cannot otherwise be avoided for constitutional reasons are postponed to this class to protect other claimants against inflated claims that are not properly defended because of the deterioration of the company in its last days. If the claim is meritorious, the judgment creditor can elevate his claim to the priority it would otherwise have by proving it in the liquidation on its merits and not on the basis of the judgment. The judgment may, of course, be a very persuasive fact.*
- (7) *Interest on claims paid in the classes of higher priority.*
- (8) *Miscellaneous subordinated claims. These are left to the last because of their minimal social importance or because of the necessities of administration. The category includes late claims and claims where the claimant is compensated in other ways, among others.*
- (9) *and (10) Proprietary claims. These claims will be paid in full only if the insurer in liquidation is actually solvent, or nearly so. This could happen if a mistake were made originally, in starting the liquidation, or if an insurer is liquidated for reasons other than insolvency because capital is impaired.*

*This section is designed to establish a complete system of priorities among unsecured creditors, based on the relative social and economic importance of the claims likely to be asserted against an insurer. The system is more intricate than any list of priorities provided elsewhere. It would be possible to simplify the system by having fewer categories. This is what the traditional priority system does, for it generally gives priority only to a few kinds of claims - indeed, the traditional pattern is no system at all. Its crude simplicity does crude injustice and fails to carry out sound public policy by minimizing the damage done to the insured community when an insurer fails. The insurance enterprise should be made to do its proper job in the social organism, so far as that is possible with the limited assets that remain in a liquidation.*

#### **§645.68 Order of Distribution.**

The order of distribution of claims from the insurer's estate shall be as stated in this section. The first \$50 of the amount allowed on each claim in the classes under subs. (2) to (6) shall be deducted from the claim and included in the class under sub. (8). Claims may not be cumulated by assignment to avoid application of the \$50 deductible provision. Subject to the \$50 deductible provision, every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. No subclasses shall be established within any class.

- (1) **Administration Costs.** The costs and expenses of administration, including but not limited to the following: the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney's fees.

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**Comment on sub. (1):** *This is freely adapted from the first priority provision in Federal Bankruptcy Act s. 64a. See also s. 645.06, on defense costs, for a special provision for payment of certain litigation expenses.*

(2) **Wages.**

- (a) Debts due to employees for services performed, not to exceed \$1,000 to each employee which have been earned within one year before the filing of the petition for liquidation. Officers shall not be entitled to the benefit of this priority.

*Comment on sub. (2). (a): The usual wage priority is \$600 (see e.g. Federal Bankruptcy Act s. 64a). It seems unrealistically low. The \$1,000 provided here may still be low but is more realistic and equitable. The period covered is extended from the 3 months of the traditional statute to one year. Obviously the \$1,000 limit would be reached much earlier than a year, if a full salary for even the lowliest employee were in question. The one year limit will be relevant only in unusual cases. Priority is denied to officers (which term includes directors), on the grounds that they are in a position to protect their own interests, and that those directly involved in what is likely to have been mismanagement leading to liquidation should not be accorded special privileges in a financial debacle of their own making.*

- (b) Such priority shall be in lieu of any other similar priority authorized by law as to wages or compensation of employees.

*Comment on sub. (2) (b): This is necessary to supersede such provisions as ss. 180.40 (6) and 268.17. For analogous legislation to this paragraph, see Arizona s. 20-637B; Hawaii s. 181-678 (b); Kentucky s. 304.978 (2); North Carolina s. 558-155.27 (b); Washington s. 48.31.280 (2).*

- (3) **Loss Claims.** All claims under policies for losses incurred including third party claims, and all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, except the first \$200 of losses otherwise payable to any claimant under this subsection. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds or investment values, shall be treated as loss claims. Claims may not be cumulated by assignment to avoid application of the \$200 deductible provision. That portion of any loss for which indemnification is provided by other benefits or advantages recovered or recoverable by the claimant shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge or familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment made by an employer to his employee shall be treated as a gratuity.

*Comment on sub. (3): This class contains the claims central to the social role of insurance. The typical policy is not an ordinary mercantile contract, but one of great public importance. In the usual case, if a policyholder loses a premium, he is not seriously harmed, but if a loss goes unpaid, or even unpaid in substantial measure, great harm is likely to be done. Large claims deserve a higher priority than unearned premiums, and this system has so provided.*

*Small loss claims are subordinated to large claims and put on a par with unearned premiums, in order to increase the likelihood of full payment of disaster-type claims. This is the point of the \$200 deduction. In the usual case, a small loss may be absorbed by the claimant without serious hardship, and therefore does not deserve or need priority above unearned premiums. The larger the claim the more likely it is that substantial payment to the claimant is urgently needed.*

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**Kerr, Christopher (AG)**

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**From:** Pirich, John D. <JPirich@honigman.com>  
**Sent:** Wednesday, April 07, 2010 5:15 PM  
**To:** Kerr, Christopher (AG)  
**Subject:** RE: Revised Rehabilitation Petition and Order

Christopher:

Frank Dempsey, General Counsel, and Mike Tobin have reviewed and agree to all of the changes you have made to the earlier drafts of the Petition and Order. Thank you for your consideration and agreement to the suggested changes. I will meet you at the clerk's office around 11 tomorrow morning. In the meantime call or email if there are any other issues.

Thanks....John

-----Original Message-----

**From:** Kerr, Christopher (AG) [<mailto:KerrC2@michigan.gov>]  
**Sent:** Wednesday, April 07, 2010 3:55 PM  
**To:** Pirich, John D.; [MTobin@American-Community.com](mailto:MTobin@American-Community.com)  
**Cc:** Weaver, Judy (DELEG); Gerber, Jim (DELEG); Evans, Jason (AG)  
**Subject:** Revised Rehabilitation Petition and Order

Gentlemen:

Attached are clean and compare versions of the American Community Rehabilitation Petition and Order. The compare versions are to the drafts that we sent you on Monday.

Please contact us to discuss any suggested revisions. Barring any changes, these are the documents that we will take to court tomorrow at 11:00 a.m.

Thank you.

Christopher L. Kerr  
Corporate Oversight Division  
Department of Attorney General  
P.O. Box 30755  
Lansing, MI 48909  
Telephone: 517-373-1160  
Facsimile: 517-335-6755  
E-mail: [kerrc2@michigan.gov](mailto:kerrc2@michigan.gov)

\*\*\*\*\*  
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