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.

No. 10-397-CR

HON. WILLIAM E. COLLETTE

Christopher L. Kerr (P57131)
Jason R. Evans (P61567)
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EX PARTE PETITION FOR APPROVAL TO
SETTLE PENDING LAWSUIT AGAINST AMERICAN COMMUNITY

R. Kevin Clinton,[1] Commissioner of the Michigan Office of Financial and Insurance Regulation, as Rehabilitator of American Community Mutual Insurance Company (the "Rehabilitator"), by and through his attorneys, Bill Schuette, Attorney General, and Christopher L. Kerr and Jason R. Evans, Assistant Attorneys General, petitions this Court pursuant to MCL 500.8115(1) to approve the settlement reached in a lawsuit currently pending against American

[1] Governor Snyder duly appointed R. Kevin Clinton to succeed Ken Ross as the Commissioner of OFIR effective April 18, 2011. Consequently, Commissioner Clinton became the Rehabilitator of American Community on that date.

Community Mutual Insurance Company ("American Community"). In support of this Ex Parte Petition, the Rehabilitator states as follows:

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

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

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

a. *Russ Martyn v American Community, et al.* This lawsuit is pending in the Vanderburgh County Superior Court in the State of Indiana, and is captioned *Russ Martyn v. American Community Mutual Insurance Company, et al.*, Case No.: 82D03-0602-PL-513. Plaintiff's Complaint alleges that American Community wrongfully denied his claims for the payment of certain medical bills. The Complaint also alleges a claim of professional negligence against the insurance agency involved. American Community denied Plaintiff's claims because the medical treatment at issue was provided in between the expiration and effective date of two short-term insurance policies issued to Plaintiff. Plaintiff sought the payment of his medical bills totaling $25,387.95, plus interest, costs, and attorney fees. Through negotiations, Plaintiff has agreed to dismiss his lawsuit with prejudice and release American Community from any and all liability in exchange for American Community's payment of $2,000.

4. With limited exceptions not applicable here, Paragraph 14 of the Rehabilitation Order prohibits the payment of any Creditor claims for goods or services provided prior to the date that the Order was entered until further order of the Court. Mr. Martyn's claim arises from services provided or actions taken prior to the date of the Rehabilitation Order. More importantly, the exceptions in Paragraph 14 do not apply because Mr. Martyn is not a

"policyholder" with respect to the medical treatment at issue if there was no insurance policy in force when that treatment was provided. Accordingly, an order approving this proposed settlement is needed from the Court.

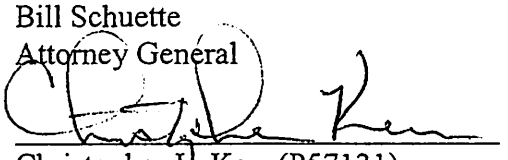
5. The Rehabilitator believes that the settlement of this lawsuit in the amount indicated above and on the terms contained in the corresponding settlement agreement (which is not attached due to confidentiality provisions and/or concerns) is necessary and appropriate, is in the interests of justice, and will promote the protection of American Community's creditors, policyholders, and the public. A comparison of the settlement amount to the amount of Mr. Martyn's original claim evidences that this settlement is reasonable and will limit potential liability to the Rehabilitation Estate. Moreover, the settlement is relatively modest in amount and would likely be exceeded by legal and other costs if this case were adjudicated to judgment in this Rehabilitation or otherwise.

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

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

Respectfully submitted

Bill Schuette
Attorney General



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Dated: May 8, 2012