

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

R. KEVIN CLINTON, COMMISSIONER  
OF THE OFFICE OF FINANCIAL AND  
INSURANCE REGULATION,

Petitioner,

Case No. 12-1173-CR

HON. WILLIAM E. COLLETTE

v

AMERICAN FELLOWSHIP MUTUAL  
INSURANCE COMPANY,

Respondent.

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Christopher L. Kerr (P57131)  
Jason R. Evans (P61567)  
Assistant Attorneys General  
Attorneys for Petitioner  
Corporate Oversight Division  
P. O. Box 30755  
Lansing, MI 48909  
(517) 373-1160

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**EX PARTE PETITION FOR APPROVAL TO SETTLE PENDING  
NO-FAULT PERSONAL INJURY PROTECTION BENEFITS LAWSUIT  
AGAINST AMERICAN FELLOWSHIP MUTUAL INSURANCE COMPANY**

R. Kevin Clinton, Commissioner of the Michigan Office of Financial and Insurance Regulation, as Rehabilitator of American Fellowship 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 no-fault personal injury protection ("PIP") benefits

lawsuit currently pending against American Fellowship Mutual Insurance Company (“American Fellowship”). In support of this *Ex Parte* Petition, the Rehabilitator states as follows:

1. On October 29, 2012, this Court entered an Order placing American Fellowship into Rehabilitation and appointing the OFIR Commissioner as the Rehabilitator of American Fellowship.

2. MCL 500.8115(1) governs legal actions or proceedings involving American Fellowship 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. With respect to claims against American Fellowship arising after entry of the Rehabilitation Order, MCL 500.8114(2) and the Rehabilitation Order authorize the Rehabilitator to “take such action as he considers necessary or appropriate to reform or revitalize American Fellowship.” Rehabilitation Order, p 6, ¶ 11. In addition, this statute, as incorporated by the Rehabilitation Order, grants the Rehabilitator “full power and authority to direct and manage American Fellowship . . . and to deal in totality with the property and business of” the company. Rehabilitation Order, p 5, ¶ 8.

4. The Rehabilitator seeks the Court’s approval to settle the following lawsuit that is currently pending against American Fellowship:

a. ***Cynthia Paterson v American Fellowship***. This no-fault PIP benefits lawsuit filed by an American Fellowship insured is pending in the

Wayne County Circuit Court in Detroit, Michigan, assigned Case No. 11-003087-NF. Plaintiff's Complaint was filed pursuant to the Michigan No-Fault Insurance Act, MCL 500.3101 – 500.3179, and asserts claims for the payment of PIP benefits for injuries allegedly sustained by Plaintiff in connection with an automobile accident that occurred on or around November 18, 2003 in Macomb County, Michigan. American Fellowship denied Plaintiff's claims because it disputed the nature and/or extent of her injuries and the corresponding existence and/or amount of applicable coverage under her insurance policy. The matter was first arbitrated in 2008, resulting in American Fellowship's payment of \$32,500.00 for PIP benefits until that time and Plaintiff's agreement not to sue for 3 years. Plaintiff subsequently re-filed the pending lawsuit in 2011, claiming additional PIP benefits in the amount of \$160,000.00, plus interest, costs, and attorney fees. The matter was arbitrated a second time, resulting in an award in Plaintiff's favor for all past, present, and future no-fault benefits in the amount of \$46,960. As a result of the arbitration, Plaintiff has agreed to dismiss her lawsuit with prejudice and to release American Fellowship from any and all liability in exchange for American Fellowship's payment of the \$46,960 arbitration award.

5. With limited exceptions not applicable here, Paragraph 15 of the Rehabilitation Order prohibits the payment of any Creditor claims for goods or services provided prior to the date that the Order was entered until further order of the Court. The no-fault PIP benefits claimed in this case arise in whole or in part from events that occurred prior to the date of the Rehabilitation Order. More importantly, the exception in Paragraph 15 authorizing the payment of pre-rehabilitation claims "arising from covered losses under American Fellowship insurance policies" does not apply because American Fellowship disputes the existence and/or amount of insurance coverage for Plaintiff's claims. Accordingly, an order approving this proposed settlement is needed from the Court.

6. The Rehabilitator believes that the settlement of this lawsuit in the amount indicated above and on the terms contained in the respective 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 Fellowship's creditors, policyholders, and the public. A comparison of the settlement amount to the amount of the Plaintiff'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.

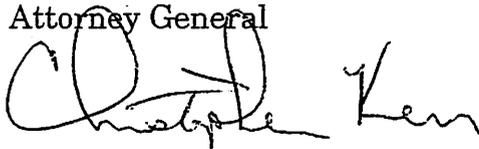
7. Providing personalized notice of this *Ex Parte* Petition and any resulting Order to all parties that may have an interest in this matter is impossible at this time because there has been no claims submission or other process to identify such parties. Moreover, attempting to identify and personally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

Respectfully submitted,

Bill Schuette  
Attorney General

A handwritten signature in black ink, appearing to read "Christopher Kerr", is written over the typed name below.

Christopher L. Kerr (P57131)  
Jason R. Evans (P61567)  
Assistant Attorneys General  
Attorneys for Petitioner  
Corporate Oversight Division  
P. O. Box 30755  
Lansing, MI 48909  
(517) 373-1160

Dated: February 6, 2013