

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

KEN ROSS, COMMISSIONER OF THE OFFICE
OF FINANCIAL AND INSURANCE
REGULATION,

Petitioner,

No. 10-397-CR

v

HON. WILLIAM E. COLLETTE

AMERICAN COMMUNITY MUTUAL
INSURANCE COMPANY,

Respondent.

Christopher L. Kerr (P57131)
Allison M. Dietz (P73612)
Assistant Attorneys General
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**EX PARTE PETITION FOR APPROVAL TO
SETTLE TWO PENDING LAWSUITS AGAINST AMERICAN COMMUNITY**

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, Assistant Attorney General, petitions this Court pursuant to MCL 500.8115(1) to approve the settlements reached in two (2) lawsuits currently pending against American

¹ Governor Snyder duly appointed 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 two lawsuits that are currently pending against American Community:

a. *Burch v. American Community, et al.* This lawsuit is pending in the Montgomery County Court of Common Pleas in Ohio. The Complaint alleges claims against American Community for breach of the duty of good faith and fair dealing and breach of contract. The Complaint also alleges a claim of professional negligence against the insurance agent involved. The lawsuit arises from American Community's rescission of Plaintiff's policy of insurance and corresponding refusal to pay medical bills resulting from Plaintiff's treatment. American Community rescinded the policy based upon material misrepresentations made in Plaintiff's policy application. Plaintiff made an initial demand in the total amount of \$25,000 for emotional distress damages plus the payment of \$13,124.16 in medical bills. Through negotiations, Plaintiff has agreed to settle the lawsuit in exchange for American Community's payment of \$4,725.60.

b. *Kettering Medical v. Ponchot v. American Community, et al.* This lawsuit is pending in the Warren County Court of Common Pleas in Ohio. Kettering filed the initial Complaint against the Ponchots for breach of contract because the Ponchots failed to pay medical bills related to Mrs. Ponchot's treatment for certain medical conditions. The Ponchots then filed a Third-Party Complaint against American Community alleging claims for breach of the duty of good faith and fair dealing, breach of contract, and requesting punitive damages based on American Community's denial of payment for Mrs. Ponchot's claims. American Community denied coverage for Mrs. Ponchot's claims because they arose from pre-existing conditions as defined by her insurance policy. The Ponchots made an initial demand in the total amount of \$150,000 for emotional distress

damages, payment of medical bills, and attorney fees and costs. Mrs. Ponchot's medical bills, including but not limited to the Kettering bills, totaled \$120,765.75. Through negotiations, the Ponchots have agreed to settle the lawsuit in exchange for American Community's payment of \$83,568.38. The settlement agreement reached by the parties also resolves Kettering's claim against the Ponchots and releases American Community from any and all claims, past, present, and future.

4. With limited exceptions not applicable here, Paragraph 14 of the Rehabilitation Order prohibits the payment of any Creditor claims for goods or services provided prior to the date that the Order was entered until further order of the Court. The claims of the Plaintiffs in these lawsuits arise from services provided or actions taken prior to the date of the Rehabilitation Order. Moreover, the exceptions in Paragraph 14 do not apply because Mr. Burch is not a "policyholder" if his policy was properly rescinded, while the Ponchots are not "Creditors" if the treatment at issue was not covered by their American Community policy. Accordingly, an order approving these proposed settlements is needed from the Court.

5. The Rehabilitator believes that the settlement of these lawsuits in the amounts indicated above and on the terms contained in their respective settlement agreements (which are not attached due to confidentiality provisions and/or concerns) is necessary and appropriate, is in the interests of justice, and will promote the protection of American Community's creditors, policyholders, and the public. In each case, a comparison of the settlement amount to the amount of the Plaintiff's original claim evidences that these settlements are reasonable and will limit potential liability to the Rehabilitation Estate. Specifically, the settlement of *Burch v. American Community* is relatively modest in amount and would likely be exceeded by legal and other costs if the case was adjudicated to judgment in this Rehabilitation or otherwise. Although the settlement amount in the case of *Ponchot v. American Community* is more substantial, it is reasonable because it represents a significant reduction from Plaintiffs' initial demand and is justified in light of the adverse procedural posture of the lawsuit.

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 settlements reached in the above-referenced lawsuits, in the amounts and on the terms more fully set forth in their respective settlement agreements. The Rehabilitator further requests the Court to authorize and ratify service of this Ex Parte Petition and any resulting Order by posting electronic copies on the "American Community" section of OFIR's website.

Respectfully submitted

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