

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)
Jason R. Evans (P61567)
Assistant Attorneys General
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**EX PARTE PETITION FOR APPROVAL TO PAY
SETTLEMENT AMOUNTS RESOLVING AGENT COMMISSIONS
UNDER CRITICAL ILLNESS INSURANCE POLICIES**

R. Kevin Clinton, 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 for approval to pay the settlement amounts resolving unpaid agent commissions arising under American Community's critical illness insurance policies. In support of this Petition, the Rehabilitator states as follows:

1. On April 8, 2010, this Court entered a Stipulated Order Placing American Community into Rehabilitation, Approving Appointment and Compensation of Special Deputy Rehabilitators, and Providing Injunctive Relief (the “Rehabilitation Order”). Pursuant to MCL 500.8113(1), the Rehabilitation Order appointed the Commissioner as the Rehabilitator of American Community.

2. As required by MCL 500.8113(1), the Rehabilitation Order directed the Rehabilitator to “take immediate possession of all the assets of American Community and administer those assets under the Court's general supervision.” Rehabilitation Order, p 4, ¶ 3.

3. The Rehabilitation Order provided that “[a]mong his plenary powers provided by law, the Rehabilitator shall have full power ... to deal in totality with the property and business of American Community.” Rehabilitation Order, p 5, ¶ 8.

4. Additionally, the Rehabilitation Order provided that “[p]ursuant 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....” Rehabilitation Order, p 6, ¶ 10.

5. Pursuant to the Rehabilitation Order, “[a]ll 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.” Rehabilitation Order, p 6, ¶ 11.

6. With limited exceptions for employee wages and health care provider claims, the Rehabilitation Order prohibits the Rehabilitator from paying pre-Rehabilitation Creditor claims until further order of the Court. Rehabilitation Order, p. 7, ¶ 14.

7. After marshaling all the assets of American Community and reviewing the company’s books and records, the Rehabilitator has determined that there are sufficient assets available to

pay the settlement amounts resolving earned and future agent commissions arising under American Community's critical illness insurance policies.

8. Specifically, there are 22 American Community insurance agents who are owed past and/or future commissions for critical illness insurance policies that they placed, together with any renewals of those policies. Pursuant to the Assumption Reinsurance Agreement approved by this Court on January 30, 2012, Central United Life Insurance Company assumed those critical illness policies but did not assume liability for any agent commissions owed thereunder. Consequently, these agent commissions remain potential claims against the American Community rehabilitation estate.

9. To resolve these potential claims, the Deputy Rehabilitator has entered into settlement agreements with 19 of the 22 agents pursuant to which the agents will be paid a sum certain in exchange for releasing their claims against American Community relating to any critical illness commissions they may be owed currently or in the future.

10. Two of the 22 agents—Hoosier Insurance Services of Indianapolis, Indiana and Fermon Owens of Indianapolis, Indiana—failed to respond to the Rehabilitator's settlement offer, while the third non-settling agent—Brooke Life & Health Insurance of Overland Park, Kansas—does not have a current, valid address on file with American Community. The Rehabilitator therefore proposes, and requests this Court to approve, that the Rehabilitator escheat the settlement amounts resolving the critical illness commissions of these three agents to the respective unclaimed property divisions in the States where the agents are located, together with notifying Hoosier Insurance Services and Fermon Owens when this has occurred.

11. The total amount payable for the settlement amounts resolving the critical illness agent commissions is \$4,292. Payment of this modest amount will not significantly impact the

rehabilitation, and with the exception of the \$30 million in claims owed to American Community's surplus note holders, will leave adequate reserve funds to pay all other currently-accrued policyholder and Creditor claims and all anticipated future policyholder and Creditor claims.

12. The Rehabilitator has determined that payment of the settlement amounts resolving the critical illness agent commissions is an appropriate and necessary step in the ongoing process to reform and revitalize American Community.

13. 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, the Commissioner, as Rehabilitator of American Community, respectfully requests this Court to approve payment of the settlement amounts resolving all unpaid agent commissions arising under American Community's critical illness insurance policies, including by escheating the settlement amounts resolving the critical illness commissions of the three (3) non-settling agents to the respective unclaimed property divisions in the States where those agents are located. Further, the Rehabilitator requests the Court to

waive any hearing on this petition and to approve it on an ex parte basis. Finally, the Rehabilitator requests this 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

A handwritten signature in black ink, appearing to read "Chris Kerr", written over a faint circular stamp.

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Dated: September 10, 2012