

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.

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Jason R. Evans (P61567)
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**RESPONSE TO DORIS BONNER'S MOTION FOR RECONSIDERATION OF
ORDER APPROVING SETTLEMENT RESOLVING
PRE-REHABILITATION CLAIM FOR SUPPLEMENTAL RETIREMENT BENEFIT**

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, in response to the Motion filed by Doris Bonner seeking reconsideration of the Court's March 21, 2012 Order approving the settlement resolving the pre-Rehabilitation claim of former American Community executive Donald Bonner related to his Supplemental Retirement Agreement, states as follows¹:

1. On March 9, 2012, the Rehabilitator filed a Petition for Approval of Settlement Resolving Pre-Rehabilitation Claim for Supplemental Retirement Benefit (the "Petition"). The Petition sought this Court's approval of the Settlement Agreement and Release entered into between American Community and its former executive, Donald Bonner, resolving Mr. Bonner's pre-Rehabilitation claim for benefits payable under a Supplemental Retirement Agreement.

2. Mr. Bonner executed his Supplemental Retirement Agreement on May 22, 1986, and at the time the Rehabilitation Order was entered he was receiving \$4,278.18 monthly under that agreement. The Rehabilitator suspended the periodic payments under Mr. Bonner's Supplemental Retirement Agreement in May 2010, following entry of the Rehabilitation Order. A copy of Mr. Bonner's Supplemental Retirement Agreement is attached as Exhibit A.

3. Pursuant to the Settlement Agreement and Release between American Community and Mr. Bonner, American Community agreed to pay Mr. Bonner the lump-sum amount of \$285,853.02 (the "Settlement Payment"), in exchange for which Mr. Bonner agreed to release any claims he may have against American Community relating to his Supplemental Retirement Agreement and his employment generally. The settlement therefore liquidated and fully resolved Mr. Bonner's pre-Rehabilitation claim for any additional benefits payable under his Supplemental Retirement Agreement.

¹ Under MCR 2.119(F), a response to a motion for reconsideration is generally not permitted "unless the court otherwise directs." The Court has requested the Rehabilitator to explore a resolution of Doris Bonner's Motion for Reconsideration and has granted the Rehabilitator permission to file this written response.

4. The Rehabilitator served the Petition, attached Exhibits (which included the proposed Order approving the settlement), and a Notice of Hearing via regular mail on American Community's two surplus note holders and their trustee, and on Mr. Bonner at his home address. To the Rehabilitator's knowledge, these were the parties having the strongest potential interest in the Petition. The Rehabilitator also provided notice to other potentially interested parties by posting electronic copies on the "American Community" section of OFIR's website.

5. The Court held a hearing on the Petition on Wednesday, March 21, 2012. No party filed a response or objection to the Petition, nor did any party other than the Rehabilitator's counsel appear at the hearing. Consequently, the Court entered the Rehabilitator's Order Approving Settlement Resolving Pre-Rehabilitation Claim for Supplemental Retirement Benefit (the "Order") following the hearing on March 21, 2012.

6. Following entry of the Order, counsel for Donald Bonner's ex-wife, Doris Bonner, contacted the Rehabilitator's counsel to discuss Doris Bonner's entitlement to a portion of Mr. Bonner's retirement benefits. Prior to that time, the Rehabilitator had no knowledge of Doris Bonner's claimed interest in Donald Bonner's Supplemental Retirement Agreement.

7. After being contacted by Doris Bonner's counsel, Special Deputy Rehabilitator James Gerber and his counsel reviewed American Community's records relating to Donald Bonner's retirement benefits. Based on that review, it was determined that there were two "pensions" to which Donald Bonner was entitled. The first was the "base" pension called the American Community Mutual Insurance Company Pension Plan, which was a group annuity policy through Lincoln National Life Insurance Company, [REDACTED]. This pension is addressed in the Qualified Domestic Relations Order ("QDRO") resulting from Donald and Doris Bonner's divorce. As the QDRO explains, Mr. Bonner's total monthly benefit

under this annuity was \$ [REDACTED], half of which (\$ [REDACTED]) was awarded to Doris Bonner as an alternate payee. American Community's records reflect that upon receiving notice of the QDRO in March 1991, American Community forwarded the QDRO to Lincoln National for processing. Once processed, it was American Community's further understanding that Doris Bonner was receiving payments of \$ [REDACTED] a month from Lincoln National, the insurance company providing Donald Bonner's annuity benefit. These payments from Lincoln Mutual were not made or administered by American Community, nor were any actions taken by the Rehabilitator with respect to these payments upon American Community entering rehabilitation.

8. In addition, Donald Bonner was entitled to a supplemental pension under his Supplemental Retirement Agreement. This supplemental pension was administered by American Community and paid from company funds. As indicated, the Rehabilitator suspended the monthly payments (\$4,278.18 a month) to Mr. Bonner under his Supplemental Retirement Agreement in May 2010, following entry of the Rehabilitation Order.

9. With respect to the Supplemental Retirement Agreement, American Community's records contain correspondence from 1991 between American Community, the Bonners, and Doris Bonner's then-counsel discussing whether the QDRO applied to Donald Bonner's Supplemental Retirement Agreement and/or whether Doris Bonner was entitled to a *direct payment* from American Community of one-half of Donald Bonner's monthly supplemental pension amount. American Community concluded at that time that Doris Bonner was not entitled to such a direct payment from American Community. Rather, American Community was obligated to pay Donald Bonner, who in turn was obligated to pay his ex-wife Doris Bonner. Accordingly, American Community declined to pay Doris Bonner directly, and continued to pay Donald Bonner the entire amount due under his Supplemental Retirement Agreement. Whether

Donald Bonner in turn paid Doris Bonner any amounts to which she was entitled was a contractual matter between them, which did not involve American Community.

10. American Community's conclusion that Doris Bonner was not entitled to a direct payment of amounts due to Donald Bonner under his Supplemental Retirement Agreement was (and continues to be) supported by the plain language of the QDRO, which applies only to Donald Bonner's "base" pension or Group Annuity Contract [REDACTED], and neither references nor applies to his supplemental pension.

11. American Community's decision not to pay Doris Bonner directly is also supported by, and in fact compelled by, the plain language of Donald Bonner's Supplemental Retirement Agreement, which provides:

V. INALIENABILITY

No benefit payable under this Agreement shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge prior to actual receipt thereof by [Donald Bonner], and any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber or charge prior to such receipt shall be void; nor shall [American Community] be in any manner liable for or subject to the debts, contracts, liabilities, engagements or torts of any person entitled to any benefits.

Exhibit A, Supplemental Retirement Agreement. Accordingly, Donald Bonner is prohibited from alienating, transferring, or assigning the benefits payable under his Supplemental Retirement Agreement prior to his actual receipt of payment, any attempt by Mr. Bonner to alienate, transfer, or assign his benefits pre-payment is void, and American Community is not liable for or subject to the debts, contracts, or liabilities of any person claiming an entitlement to the benefits payable under Mr. Bonner's Supplemental Retirement Agreement.

12. The inalienability of the benefits payable to Mr. Bonner under his Supplemental Retirement Agreement, which precludes American Community from paying Doris Bonner directly, is further recognized in the Property Settlement Agreement resulting from Donald and

Doris Bonner's divorce. A copy of this Property Settlement Agreement was not in American Community's records, but was provided to the Rehabilitator's counsel by Doris Bonner's counsel on March 27, 2012. Relevant portions of the Property Settlement Agreement are attached as Exhibit B. Specifically, Paragraph 5(A) provides:

DON [Donald Bonner] shall directly pay to DORIS [Doris Bonner] each month, an amount equal to fifty (50%) per cent of the gross benefits paid to and received by DON from American Community Mutual Insurance Company, Inc., pursuant to his American Community Mutual Insurance Company's [sic] Supplemental Retirement Agreement dated May 22, 1986, a copy of which is attached to and made a part of this Agreement by reference. Such payments shall be made within five (5) days of DON'S receipt of such payments under that agreement.

Exhibit B, Property Settlement Agreement (emphasis added). Thus, the Property Settlement Agreement expressly obligates Donald Bonner to directly pay Doris Bonner 50% of the benefits he receives under his Supplemental Retirement Agreement within 5 days after receiving such payment from American Community. Again, the Property Settlement Agreement imposes no obligation on American Community to pay these benefits directly to Doris Bonner, nor could it given the inalienability provisions contained in the Supplemental Retirement Agreement.

13. For these reasons, American Community justifiably and continuously declined to make payments under the Supplemental Retirement Agreement directly to Doris Bonner, because it had no legal obligation to do so and was in fact prohibited from doing so under the terms of the Supplemental Retirement Agreement. Similarly, the Rehabilitator, Special Deputy Rehabilitator, and their counsel had no legal obligation to include Doris Bonner in negotiating and executing the Settlement Agreement and Release resolving Donald Bonner's Supplemental Retirement Agreement, nor are they obligated to directly pay Doris Bonner one-half of the lump-sum settlement amount of \$285,853.02 that the Court has approved for payment.

14. Although the Rehabilitator properly resolved and liquidated Donald Bonner's pre-Rehabilitation claim for benefits payable under his Supplemental Retirement Agreement, and although the Rehabilitator's only legal obligation is to make the Settlement Payment directly to Donald Bonner, the Rehabilitator has no strong preference regarding how or to whom the Settlement Payment is made. Provided, however, that the amount payable (and the rehabilitation estate's total liability) is limited to the \$285,853.02 agreed to, and that any Order directing payment in a manner other than 100% to Donald Bonner releases American Community, the Rehabilitator, and their representatives from any further liability to the payees of the Settlement Payment (i.e., Donald and Doris Bonner).

15. Consistent with the Rehabilitator's above-stated conditions, as well as the Court's request that the Rehabilitator consider ways to resolve Doris Bonner's Motion for Reconsideration, the Rehabilitator has prepared a proposed Order authorizing and directing the Rehabilitator to divide and pay equally between Donald and Doris Bonner (\$142,926.51 each) the \$285,853.02 Settlement Payment resolving Mr. Bonner's Supplemental Retirement Agreement. A copy of the proposed Order is attached as Exhibit C, and has been reviewed and approved by Doris Bonner's counsel. *See* E-mail Approving Proposed Order, Exhibit D.

16. As the Proof of Service reflects, copies of this Response and the attached Exhibits (including the proposed Order attached as Exhibit C) have been served via regular mail: (a) on Donald Bonner personally at his home address; and (b) on Doris Bonner c/o her attorney John Shureb. The Rehabilitator has identified Donald and Doris Bonner as the parties with the only real interest in how the Rehabilitator pays out the already-approved settlement payment.

17. Beyond Donald and Doris Bonner, providing personalized notice of this Response and any resulting Order to all other parties that have a general interest in American Community's

rehabilitation is impractical at this time because there has been no claims submission or other process to identify such interested parties. Moreover, attempting to identify and personally notify every party having a general interest would be time-intensive and costly to American Community's rehabilitation estate. For these reasons, the Rehabilitator requests that the Court authorize and ratify service of this Response and any resulting Order on any potentially interested parties (other than Donald and Doris Bonner) 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 these other potentially 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 enter the proposed Order attached as Exhibit C authorizing and directing the Rehabilitator to divide and pay equally between Donald and Doris Bonner (\$142,926.51 each) the \$285,853.02 Settlement Payment resolving Mr. Bonner's Supplemental Retirement Agreement. Further, the Rehabilitator requests this Court to authorize and ratify service of this Response, together with the attached Exhibits and any resulting Order: (a) via regular mail on Donald Bonner at his home address; (b) via regular mail on Doris Bonner c/o her attorney John Shureb; and (c) on other potentially interested parties 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 "Christopher Kerr", written over a horizontal line.

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Jason R. Evans (P61567)
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Michigan Department of Attorney General
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(517) 373-1160

Dated: April 9, 2012

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AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY
SUPPLEMENTAL RETIREMENT AGREEMENT

American Community Mutual Insurance Company (the "Company") and Donald C. Bonner (the "Executive") hereby enter into this Supplemental Retirement Agreement (the "Agreement"). The Company, in recognition of the Executive's long and valuable service, and distinct and unique contribution to the Company's present financial condition and as an inducement to the Executive to effect an unconstrained transfer of administrative authority prior to his intended retirement, agrees to provide certain supplemental retirement benefits to the Executive as set forth below:

I. RETIREMENT BENEFIT

The Executive shall retire on or after May 1, 1987 and shall, on the date of retirement, commence receiving a monthly benefit under this Agreement equal to 1/12 of his then current base annual salary less the amount of the Executive's monthly early retirement benefit under the Company's pension plan using the normal annuity form. The Executive will continue to receive this amount on the first day of each calendar month through the payment due on the first of the month in which he attains age 65. Effective with the payment due on the first of the month following the month in which he attains age 65, the monthly benefit amount payable under this Agreement will be reduced to \$10,000 less the monthly retirement benefit under the Company pension plan.

The monthly benefits described in this Paragraph I. will be paid to Executive for the remainder of the Executive's lifetime. The last payment will be the one due on the first day of the calendar month coincident with or immediately preceding the Executive's date of death.

II. DEATH BENEFIT - PRIOR TO RETIREMENT

In the event the Executive dies prior to retirement, no benefits will be paid under this Agreement.

III. DEATH BENEFIT - AFTER RETIREMENT

In the event the Executive dies on or after retirement, no additional benefits will be paid under this Agreement.

IV. EXPENSES

Cost of administering this Agreement will be paid by the Company.

V. INALIENABILITY

No benefit payable under this Agreement shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge prior to actual receipt thereof by the Executive, and any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber or charge prior to such receipt shall be void; nor shall the Company be in any manner liable for or subject to the debts, contracts, liabilities, engagements or torts of any person entitled to any benefits.

VI. EXECUTIVE'S RIGHTS

All benefits under this Agreement shall be paid from the general assets of the Company. The right of the Executive to receive distribution hereunder shall be an unsecured claim against the general assets of the Company, and the Executive shall not have any rights in or claim to any specific asset of the Company.

Nothing contained in this Agreement shall be construed as a contract of employment between the Company and the Executive or as a right of the Executive to be continued in the employment of the Company or as a limitation of the rights of the Company to discharge the Executive, with or without cause.

VII. APPLICABLE LAW; SEVERABILITY

Provisions of this Agreement shall be construed and applied in accordance with ERISA and the laws of the State of Michigan. The invalidity or unenforceability of any provision of this Agreement, whether in whole or in part, shall not in any way affect the validity or enforceability of any other part of such provision or of any other provision herein contained, and any invalid or unenforceable provision or part thereof shall be deemed severable to the extent of any such invalidity or unenforceability.

The effective date of this Agreement is May 22, 1986.

WITNESS:

Nori L. Kiser

AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY

By: [Signature] Date: 6-11-86

Title: Executive Vice President & Actuary

WITNESS:

Nori L. Kiser

By: [Signature] Date: 6-11-86

Title: Treasurer & Chief Financial Officer

WITNESS:

[Signature]

DONALD C. BONNER

[Signature] Date: 6/11/86

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

DONALD C. BONNER,

Plaintiff,

-vs-

File No. 90-7568-DO

DORIS D. BONNER,

Defendant.

George F. Bearup, Esq. (P24647)
Attorney for Plaintiff

Daryle Salisbury, Esq. (P19852)
Attorney for Defendant

PROPERTY SETTLEMENT AGREEMENT
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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

DONALD C. BONNER,

Plaintiff,

-vs-

File No. 90-7568-DO

DORIS D. BONNER,

Defendant.

George F. Bearup, Esq. (P24647)
Attorney for Plaintiff

Daryle Salisbury, Esq. (P19852)
Attorney for Defendant

PROPERTY SETTLEMENT AGREEMENT

THIS AGREEMENT made between Plaintiff, DONALD C. BONNER (herein "DON") and DORIS D. BONNER (herein "DORIS"), is as follows:

RECITALS

A. Unhappy differences have arisen between DON and DORIS and there has been a breakdown in their marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that their marriage can be preserved;

B. As a result of such difficulties, DON filed a Complaint for Divorce in the Grand Traverse County Circuit Court;

C. DORIS now assents to DON'S divorce Complaint;

D. It is in the best interest of both DON and DORIS, and for their present and future peace of mind and to prevent

M. DON shall directly transfer to an IRA to be established by DORIS, the entire balance of DON'S IRA account held by McDonald and Company, account [REDACTED] with the approximate current balance of \$ [REDACTED]. This transfer directly to an IRA account to be established by DORIS shall be handled in such a way that it will be tax-free to DON.

N. DON shall pay to DORIS the amount of [REDACTED] (\$ [REDACTED]) Dollars within SIX months after the entry of the parties Consent Judgment of Divorce, [REDACTED]

4. Defendant's Debts. DORIS shall assume all of the liens, obligations and encumbrances on all of the real and personal property that she receives under this Agreement, together with any personal debts or obligations that she incurred after the parties' separation on or about January 1, 1990, and she shall indemnify and hold DON harmless from such debts, joint or otherwise.

5. Tax Deductible Payments. DON shall make the following non-modifiable, tax deductible payments to DORIS, which payments shall qualify for and shall be treated in accordance with §§71(b) and 215 of the Internal Revenue Code of 1986, as amended:

(A) DON shall directly pay to DORIS each month, an amount equal to fifty (50%) per cent of the gross benefits paid to and received by DON from American Community Mutual Insurance Company, Inc., pursuant to his American Community Mutual Insurance Company's Supplemental Retirement Agreement dated May 22, 1986, a copy of which is attached to and made a part of this Agreement by reference. Such payments shall be made within five (5) days of DON'S receipt of such payments under that agreement.

(B) Such tax deductible payments made to DORIS by DON shall terminate upon the earlier of: the death of DON; the death of DORIS; or at such time as DON is no longer entitled to receive

any benefits from American Community Mutual Insurance Company, Inc. under the Supplemental Retirement Agreement dated May 22, 1986.

(C) This financial obligation imposed upon DON and made for DORIS' benefit, is made in light of existing federal and state income tax laws which make such payments tax deductible by DON and taxable to DORIS. If such tax laws change so that this obligation, or any part of it, will be taxable to DON and not taxable to DORIS, then the parties shall confer with each other with a view toward arriving at an equitable adjustment in keeping with this original intention. If they cannot agree on such an equitable adjustment, this amount shall be determined and adjusted by the Grand Traverse County Circuit Court so as to reflect the change in tax deductibility treatment of this tax deductible obligation imposed on DON. Such judicial adjustment shall be retroactive and prospective so as to off-set the additional financial tax benefit received by DORIS by reason of DON'S obligation to pay additional income taxes.

(D) This taxable award for DORIS shall constitute "taxable payments" as defined under IRC §71. DON shall possess the right, in connection with his 1991 income tax returns, and each year thereafter, to take the full and complete deduction of DORIS' taxable award on DON'S income tax returns pursuant to IRC §215, as amended. Moreover, DORIS shall be determined to have a resulting income advantage from such payments pursuant to IRC §71(b), as amended.

(E) To enforce the income tax consequences of this award, DORIS shall execute and deliver to DON a sworn statement no later than June 1st of the following year, which statement shall

indicate her recognition of the prior year's tax deductible award under this provision as taxable income to her.

(F) The purpose of this provision is to equally divide (50%/50%) the Supplemental Retirement Agreement benefits, before income taxation, between DON and DORIS, with each to bear the income tax burden on his or her share. Furthermore, the parties recognized that DON'S Supplemental Retirement Agreement benefits, which are non-assignable, will be reduced when he attains age 65 years and consequently, DON and DORIS' equal share of these benefits will be less at that time.

(G) DON shall use due diligence to attempt to induce American Community Mutual Insurance Company, Inc. to make direct payment to DORIS of fifty (50%) per cent of DON'S benefits under the Supplemental Retirement Agreement, notwithstanding the requirements of paragraph 5(A) to the contrary.

6. Mediator's Fees. DON and DORIS each agree to immediately pay to Thomas Alward, Esq., the Court appointed mediator in their divorce action, fifty (50%) per cent of his mediation fee, and both commit that such mediation fee shall be paid in full prior to the entry of their Consent Judgment of Divorce in the above-captioned matter.

7. Representations. DON represents and warrants to DORIS that he has neither incurred any debt nor made any commitment, that has not been disclosed, for which DORIS or her estate may be liable. DORIS makes the same representation and warranty to DON.

charged by the educational institution, required books, course materials and supplies, reasonable transportation costs for the child to go to and from college at times of school, ~~expenses~~ and those incidental expenses to which the parents may hereafter agree.

If a child attends college outside of the State of Michigan, or in the State of Michigan at a private college or institution of higher education, the parents shall pay and contribute toward that education by paying the amount equal to such transportation, tuition, costs and expenses as would have been incurred had the child attended Michigan State University, East Lansing, Michigan. Furthermore, in no event shall the parents' financial obligations exceed a maximum period of seven (7) calendar years from the time such child graduates from high school. For purposes of this paragraph, the parties' children, [redacted] and [redacted], shall be treated as the third party beneficiaries of this contractual commitment who may also legally enforce their parents' obligation.

IN WITNESS WHEREOF the parties have set their hands the day and year first below written.

Witnesses:

George Beauf

Donald C. Bonner

[Signature]

Dated: March _____, 1991

Subscribed and sworn to before me this 7th day of March, 1991.

[Signature]
Notary Public
Grand Traverse County, Michigan
My commission expires: 11-15-94

[Handwritten Signature]

[Handwritten Signature]
Doris D. Bonner

[Handwritten Signature]

Dated: March 1, 1991

Subscribed and sworn to before me
this 1 day of March, 1991.

[Handwritten Signature]

Notary Public
[Handwritten Signature] County, Michigan
My commission expires: 7/1/92

Prepared by:
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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.

**ORDER REGARDING PAYMENT OF SETTLEMENT AMOUNT RESOLVING
PRE-REHABILITATION CLAIM FOR SUPPLEMENTAL RETIREMENT BENEFIT**

At a session of said Court held in the
Circuit Courtrooms for the
County of Ingham, State of Michigan
on the ____ day of April, 2012.

PRESENT: HONORABLE WILLIAM E. COLLETTE, CIRCUIT COURT JUDGE

WHEREAS, on March 9, 2012, R. Kevin Clinton, the Commissioner of the Michigan Office of Financial and Insurance Regulation and duly appointed Rehabilitator of American Community Mutual Insurance Company (the "Rehabilitator"), filed a Petition for Approval of Settlement Resolving Pre-Rehabilitation Claim for Supplemental Retirement Benefit (the "Petition"). The Petition sought this Court's approval of the Settlement Agreement and Release entered into between American Community and its former executive, Donald Bonner, resolving Mr. Bonner's pre-Rehabilitation claim for benefits payable under a Supplemental Retirement Agreement; and

WHEREAS, pursuant to the Settlement Agreement and Release between American Community and Donald Bonner, American Community agreed to pay Mr. Bonner the lump-sum amount of \$285,853.02 (the “Settlement Payment”), in exchange for which Mr. Bonner agreed to release any claims he may have against American Community relating to his Supplemental Retirement Agreement and his employment generally; and

WHEREAS, the Rehabilitator served the Petition, attached Exhibits (which included the proposed Order approving the settlement), and a Notice of Hearing via regular mail on American Community's two surplus note holders and their trustee, and on Mr. Bonner at his home address. To the Rehabilitator's knowledge, these were the parties having the strongest potential interest in the Petition. The Rehabilitator also provided notice to other potentially interested parties by posting electronic copies on the “American Community” section of OFIR's website; and

WHEREAS, the Court held a hearing on the Petition on Wednesday, March 21, 2012. No party filed a response or objection to the Petition, nor did any party other than the Rehabilitator's counsel appear at the hearing. Consequently, the Court entered the Rehabilitator's Order Approving Settlement Resolving Pre-Rehabilitation Claim for Supplemental Retirement Benefit following the hearing on March 21, 2012; and

WHEREAS, after entry of the Order on March 21, 2012, counsel for Donald Bonner's ex-wife, Doris Bonner, contacted the Rehabilitator's counsel to discuss Doris Bonner's entitlement to a portion of Mr. Bonner's retirement benefits. Prior to that time, the Rehabilitator had no knowledge of Doris Bonner's claimed interest in Donald Bonner's Supplemental Retirement Agreement; and

WHEREAS, following discussions and an exchange of information between Doris Bonner's counsel and the Rehabilitator's counsel, on March 30, 2012, Doris Bonner filed a

Motion for Reconsideration of the Court's March 21, 2012 Order approving the settlement resolving the pre-Rehabilitation claim of Donald Bonner related to his Supplemental Retirement Agreement; and

WHEREAS, Doris Bonner's Motion for Reconsideration requests the Court to condition its approval of the Settlement Agreement and Release between American Community and Donald Bonner on the Settlement Payment being divided and paid equally between Donald and Doris Bonner, with each party receiving a direct payment of fifty percent (50%) of the \$285,853.02 lump-sum settlement amount; and

WHEREAS, as explained in the Rehabilitator's Response to the Motion for Reconsideration, under the terms of Donald Bonner's Supplemental Retirement Agreement, Donald Bonner is prohibited from alienating, transferring, or assigning the benefits payable under this Agreement prior to his actual receipt of payment, while any attempt by Mr. Bonner to alienate, transfer, or assign his benefits pre-payment is void. Moreover, American Community is not liable for or subject to the debts, contracts, or liabilities of any person claiming an entitlement to the benefits payable under Mr. Bonner's Supplemental Retirement Agreement; and

WHEREAS, in recognition of the inalienability of the benefits payable to Mr. Bonner under his Supplemental Retirement Agreement, the Property Settlement Agreement resulting from Donald and Doris Bonner's divorce obligates Donald Bonner to directly pay Doris Bonner 50% of the benefits he receives under his Supplemental Retirement Agreement within 5 days of receiving such payment from American Community. The Property Settlement Agreement imposes no obligation on American Community to pay these benefits directly to Doris Bonner, nor could it given the inalienability provisions contained in the Supplemental Retirement

Agreement. Rather, American Community is obligated to pay Donald Bonner, who in turn is obligated to pay his ex-wife Doris Bonner; and

WHEREAS, although the Rehabilitator properly resolved and liquidated Donald Bonner's pre-Rehabilitation claim for benefits payable under his Supplemental Retirement Agreement without the involvement of Doris Bonner, and although the Rehabilitator's only legal obligation is to make the Settlement Payment directly to Donald Bonner, the Rehabilitator recognizes that resolving this matter without further Court involvement while ensuring Doris Bonner's actual receipt of the 50% payment to which she is entitled promotes the interests of expedience, justice, and fairness. Moreover, although American Community has no legal obligations to Doris Bonner, dividing the Settlement Payment equally between Donald and Doris Bonner avoids the potential risk to the rehabilitation estate, albeit remote, of multiple liability arising from the same Settlement Payment; and

WHEREAS, for these reasons, the Rehabilitator recommends that the Court authorize and direct the Rehabilitator to divide and pay equally between Donald and Doris Bonner the \$285,853.02 Settlement Payment resolving Mr. Bonner's Supplemental Retirement Agreement. Provided, however, that the amount payable (and the rehabilitation estate's total liability) is limited to the \$285,853.02 agreed to, and that upon payment, American Community, the Rehabilitator, and their representatives are released from any further liability to Donald and Doris Bonner;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Rehabilitator is authorized and directed to divide and pay equally between Donald Bonner and Doris Bonner the \$285,853.02 Settlement Payment resolving Mr. Bonner's Supplemental Retirement Agreement. Accordingly, the Rehabilitator shall make a direct payment to Donald Bonner, sent to his home

address, in the amount of fifty percent (50%) of the \$285,853.02 Settlement Payment, or \$142,926.51. Similarly, the Rehabilitator shall make a direct payment to Doris Bonner, sent to her attorney John Shureb, in the amount of fifty percent (50%) of the \$285,853.02 Settlement Payment, or \$142,926.51;

IT IS FURTHER ORDERED that upon receipt of the Rehabilitator's payment to Donald Bonner and Doris Bonner as set forth above, Donald Bonner, Doris Bonner, and all other persons acting on their behalf release and forever discharge American Community, its directors, officers, shareholders, representatives, employees, attorneys, agents, predecessors, successors, heirs, and assigns, together with the Rehabilitator, the Special Deputy Rehabilitators, the State of Michigan, Office of Financial and Insurance Regulation and their representatives, agents, attorneys, employees, predecessors, successors, heirs, and assigns, from all causes of action, debts, choses in action, claims, damages, and demands, in law or in equity, whether known or unknown, that Donald Bonner and Doris Bonner have or have ever had relating to or arising out of the Settlement Payment, Donald Bonner's employment with American Community, or Donald Bonner's resignation/termination from employment with American Community;

IT IS FURTHER ORDERED that upon receipt of the Rehabilitator's payment to Donald Bonner and Doris Bonner as set forth above, American Community, the Rehabilitator, and their representatives, employees, attorneys, agents, predecessors, successors, heirs, and assigns shall have no further liability to any other person or entity relating to or arising out of the Settlement Payment, Donald Bonner's employment with American Community, or Donald Bonner's resignation/termination from employment with American Community, and that any such claims are hereby discharged;

IT IS FURTHER ORDERED that, upon entry, the Court authorizes, approves, and/or ratifies the Rehabilitator's service of this Order via regular mail on Donald Bonner at his home address, and on Doris Bonner c/o her attorney, John Shureb;

IT IS FURTHER ORDERED that due to the difficulty and prohibitive cost associated with providing personalized notice to all other parties having an interest in the American Community rehabilitation, upon entry, the Court authorizes, approves, and/or ratifies the Rehabilitator's service of this Order on other potentially interested parties by posting electronic copies on the OFIR website, www.michigan.gov/ofir, under the section "Who We Regulate", and the subsection "American Community." The Court finds that service in this manner is reasonably calculated to give these other potentially interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

IT IS SO ORDERED.

Honorable William E. Collette
Circuit Court Judge

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Kerr, Christopher (AG)

From: John M. Shureb <jms@jmshureb.com>
Sent: Friday, April 06, 2012 6:29 PM
To: Kerr, Christopher (AG)
Subject: Re: American Community - Proposed Order Regarding Payment of Settlement Amount

Mr. Kerr,

I have reviewed the proposed Order re Payment of Settlement Amount received this date and approve it on behalf of my client, Doris Bonner.

John M. Shureb - Attorney at Law

44670 Ann Arbor Rd., Suite 140
Plymouth, Michigan 48170

V - 734 453-7101
F - 734 453-7040

On 4/6/2012 12:03 PM, Kerr, Christopher (AG) wrote:

> Mr. Shureb:

>

> Attached is the Order that I propose presenting to the Judge on Monday, after filing our response to your reconsideration motion. Please review the Order and if you approve, send me an e-mail confirming your approval.

>

> As a courtesy, I have also attached our draft response to your reconsideration motion. At page 7, para. 15, I indicate that you have reviewed and approved the proposed order, as evidenced by a confirming e-mail.

>

> I plan to file these and other items in this case on Monday, so your earliest attention to this is appreciated. As always, please contact me if you have questions or concerns. 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

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