

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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Rehabilitator of American Community  
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**STIPULATION AND ORDER  
REGARDING COURT'S DETERMINATION OF  
FORMER OFFICERS' CLAIMS**

**BACKGROUND RECITALS**

**WHEREAS**, there is a pending dispute between the Commissioner of the Michigan Office of Financial and Insurance Regulation, as Rehabilitator of American Community Mutual Insurance Company (the "Rehabilitator"), and six former officers of American Community—Michael E. Tobin, Ellen M. Downey, Francis P. Dempsey, Michael A. McCollom, Beth L.

McCrohan, and Leslie J. Gola (collectively, the “Former Officers”)—regarding whether certain claims made by the Former Officers should be allowed and paid; and

**WHEREAS**, by letters dated January 18, January 25, and January 26, four of the Former Officers, through their counsel, submitted claims to the Special Deputy Rehabilitator of American Community seeking payment of benefits under their respective Executive Employment Agreements entered into prior to the April 8, 2010 Rehabilitation Order; and

**WHEREAS**, by letter dated February 7, 2012, the Rehabilitator and Special Deputy Rehabilitator of American Community, through their counsel, advised the four Former Officers of the Rehabilitator’s position that MCL 500.8137(4) prohibits the payment of claims under pre-Rehabilitation employment contracts of the type sought by them, and denied their claims accordingly; and

**WHEREAS**, by letter dated February 17, 2012, counsel for the Former Officers advised that Beth L. McCrohan was also submitting a claim, and further objected to the Rehabilitator’s denial of the Former Officers’ claims for benefits; and

**WHEREAS**, on April 10, 2012, the Former Officers filed a Petition to Allow Claims (“Petition”) requesting the Court to lift the stay against litigation in this rehabilitation proceeding, thereby allowing all six of the Former Officers to file and litigate their claims for benefits with the Court; and

**WHEREAS**, the Petition was served on counsel for the Rehabilitator by regular mail on April 10, 2012, and received on April 11, 2012; and

**WHEREAS**, on April 11, 2012, the Court entered the Former Officers’ proposed Order to Allow Claims lifting the stay and permitting the Former Officers to litigate their claims attached as Exhibits 8 through 13 to the Petition.

## STIPULATION

The Rehabilitator and the Former Officers, by and through their respective counsel, have discussed procedures to ensure the Court's orderly, thorough, and fair determination of the Former Officers' claims, and stipulate and agree as follows:

- 1) The claims attached as Exhibits 8 through 13 to the Petition are considered filed with and submitted to the Court for its determination as to whether these claims should be allowed or denied, in part or in full.
- 2) Two of American Community's remaining creditors—surplus note holder HoldCo Advisors, LP and surplus note holder Trapeza CDO IX, Ltd./Trapeza CDO X, Ltd. (collectively, the "Surplus Note Holders")—are expressly permitted to participate in this claims dispute. Prior to the Rehabilitation, American Community issued two surplus notes to the Surplus Note Holders totaling \$30 million, which remain outstanding. Whether or not the Former Officers' claims are allowed and paid ahead of the claims of the Surplus Note Holders will impact the amount that the Surplus Note Holders recover from the American Community rehabilitation estate.
- 3) The Rehabilitator, Former Officers, and Surplus Note Holders will submit briefs to the Court regarding whether the Former Officers' claims should be allowed or denied according to the following briefing schedule:
  - Briefs of the Rehabilitator and Surplus Note Holders: Due 42 days after entry of the attached Order;
  - Brief of the Former Officers: Due 35 days after service of the Rehabilitator's or Surplus Note Holders' Briefs, whichever is later;
  - Reply Briefs of the Rehabilitator and Surplus Note Holders, if necessary: Due 7 days after service of the Former Officers' Brief and limited to 5 pages.
- 4) Following the submission of briefs, the Court will set a hearing on this claims dispute at an available date and time not sooner than 7 days after the last brief is filed.

Dated: \_\_\_\_\_

5/8/12



Christopher L. Kerr (P57131)  
Jason R. Evans (P61567)  
Attorneys for the Rehabilitator

Dated: \_\_\_\_\_

5/8/12



Phillip L. Sternberg (P28435)  
Attorney for the Former Officers

(by consent via  
e-mail 5/3/12)

**ORDER**

At a session of said Court  
held in the Circuit Courtrooms  
for the County of Ingham,  
State of Michigan, on the  
21<sup>st</sup> day of May, 2012.

PRESENT: HONORABLE WILLIAM E. COLLETTE, CIRCUIT COURT JUDGE

Based upon the foregoing Stipulation, IT IS ORDERED that:

- 1) The claims attached as Exhibits 8 through 13 to the Petition are considered filed with and submitted to the Court for its determination as to whether these claims should be allowed or denied, in part or in full.
- 2) The Surplus Note Holders may fully participate in this dispute involving the Former Officers' claims.
- 3) The Rehabilitator, Former Officers, and Surplus Note Holders will submit briefs to the Court regarding whether the Former Officers' claims should be allowed or denied according to the following briefing schedule:
  - Briefs of the Rehabilitator and Surplus Note Holders: Due 42 days after entry of this Order;
  - Brief of the Former Officers: Due 35 days after service of the Rehabilitator's or Surplus Note Holders' Briefs, whichever is later;
  - Reply Briefs of the Rehabilitator and Surplus Note Holders, if necessary: Due 7 days after service of the Former Officers' Brief and limited to 5 pages.
- 4) Following the submission of briefs, the Court will set a hearing on this claims dispute at an available date and time not sooner than 7 days after the last brief is filed.

**IT IS SO ORDERED.**



Honorable William E. Collette  
Circuit Court Judge