

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)
Assistant Attorney General
Attorney for Petitioner
Corporate Oversight Division
P. O. Box 30755
Lansing, MI 48909
(517) 373-1160

**EX PARTE PETITION FOR APPROVAL TO PAY CLAIM OF THE
NATIONAL ORGANIZATION OF LIFE AND HEALTH INSURANCE
GUARANTY ASSOCIATIONS**

R. Kevin Clinton, Director of the Michigan Department of Insurance and
Financial Services,¹ as Rehabilitator of American Community Mutual Insurance
Company (the "Rehabilitator"), by and through his attorneys, Bill Schuette,

¹ Pursuant to Executive Order No. 2013-1 effective March 18, 2013, the Michigan
Office of Financial and Insurance Regulation ("OFIR") was renamed the Michigan
Department of Insurance and Financial Services ("DIFS") and all the authority,
powers, duties, functions, and responsibilities of the former Commissioner of OFIR
were transferred to the newly-created position of the Director of DIFS.

Attorney General, and Christopher L. Kerr, Assistant Attorney General, petitions this Court for approval to pay the outstanding claim submitted by the National Organization of Life and Health Insurance Guaranty Associations (“NOLHGA”). 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/Director 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 provides that “[a]mong his plenary powers provided by law, the Rehabilitator shall have full power to direct and manage American Community . . . and to deal in totality with the property and business of the company. Rehabilitation Order, p 5, ¶ 8.

4. Additionally, the Rehabilitation Order provides 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 11, ¶ 24.

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. The Rehabilitation Order authorizes the Rehabilitator to pay post-Rehabilitation “Creditor claims for goods or services provided” and post-Rehabilitation “normal administrative expenses . . . that are necessary for the continued operation and/or rehabilitation of American Community” as they become due in the ordinary course of business. Rehabilitation Order, p 7, ¶¶ 15, 16.

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 claim submitted by NOLHGA arising from pre- and post-Rehabilitation work that NOLHGA and its hired consultants performed relative to the American Community rehabilitation. Payment of this claim requires Court approval under the above-cited provisions of the Rehabilitation Order.

8. Specifically, attached as Exhibit A are the NOLHGA invoices itemizing and supporting its claim for work performed and expenses incurred in connection with this rehabilitation proceeding, both internally and through its hired consultants Strohm Ballweg, LLP, Swanson & Associates, Inc., and Faegre Baker

Daniels LLP, covering the period from before entry of the April 8, 2010 Rehabilitation Order through the identified dates in 2012.

9. The total claim amount submitted by NOLHGA is \$206,156. Exhibit A. In addition, various individual State guaranty associations in States where American Community formerly did business submitted their own claims totaling approximately \$70,000. Through negotiations, however, the Special Deputy Rehabilitator and NOLHGA have agreed that NOLHGA will accept \$198,000 on its claim, while NOLHGA was able to convince the individual State guaranty associations to withdraw their claims. Accordingly, the total amount that the Rehabilitator seeks approval to pay pursuant to this petition is \$198,000, payable entirely to NOLHGA.

10. The NOLHGA claim is entitled to Class 2 payment priority under the receivership priority statute. MCL 500.8142(1)(b) classifies as Class 2 claims "all claims of a guaranty association or foreign guaranty association." This priority is undisputedly higher than the only other significant outstanding claims and/or potential claims against the Rehabilitation Estate, namely the claims of the Surplus Noteholders and the disputed claims of the company's former Officers.

11. Payment of the NOLHGA claim will not significantly impact the rehabilitation. With the exception of the \$30 million in claims owed to the Surplus Noteholders, paying NOLHGA \$198,000 to resolve its claim will still leave adequate reserve funds to pay all other currently-accrued policyholder and Creditor claims and all anticipated future policyholder and Creditor claims.

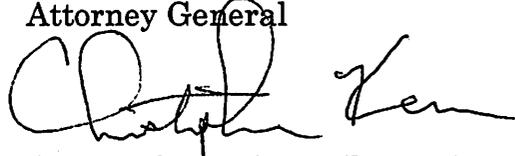
12. The Rehabilitator and Special Deputy Rehabilitator have determined that payment of \$198,000 to resolve and discharge the NOLHGA claim is necessary and appropriate for the effective and efficient administration of this rehabilitation proceeding and will assist in providing the maximum protection to creditors, policyholders, and the public.

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 DIFS website, www.michigan.gov/difs, under the section "Who We Regulate" and the subsection "American Community 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 Rehabilitator's payment of the NOLHGA claim in the total amount of \$198,000. In addition, the Rehabilitator 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 Mutual" section of the DIFS website.

Respectfully submitted

Bill Schuette
Attorney General

A handwritten signature in black ink, appearing to read "Christopher L. Kerr". The signature is fluid and cursive, with the first name "Christopher" written in a larger, more prominent script than the last name "Kerr".

Christopher L. Kerr (P57131)
Assistant Attorney General
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Dated: August 8, 2013

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American Community
NOLHGA Expenses

NOLHGA Expenses	Inception to 2012
Financial	
Strohm Ballweg, LLP	34,498
	<u>34,498</u>
Legal	
Baker & Daniels	128,480
	<u>128,480</u>
TPA	
R.N. Swanson	24,016
	<u>24,016</u>
Other	
Travel/Meetings	-
Postage/Shipping	21
Conference Calls	1,123
Miscellaneous	-
	<u>1,144</u>
Sub-total	188,139
NOLHGA Time Charges	18,018
	<u>18,018</u>
GRAND TOTAL	206,156
	<u><u>206,156</u></u>

American Community – NOLHGA Direct Expenses

(Inception to March 31, 2012)

1. Staff Time Charges (134.25 Hours X Rate of \$134.21) \$18,017.69¹

Reflects NOLHGA Staff time (1) coordinating and participating in discussions with the deputy rehabilitator regarding the status of the rehabilitation, strategies and issues relating to bringing about a “soft” landing, and ongoing efforts of the NOLHGA team to prepare for a possible liquidation; (2) monitoring developments with respect to the American Community Rehabilitation, including reviewing court filings, financial reports, agreements and other documents; (3) working with the NOLHGA team to prepare for a possible liquidation, including engaging and directing the work of outside consultants to assist with that effort, preparing necessary documentation (such as a TPA agreement and Early Access Agreement) for Guaranty Associations to handle claims; reviewing coverage and related issues; doing diligence with respect to claim matters, and coordinating and communicating with the NOLHGA Task Force and potentially affected guaranty associations.

2. Conference Calls \$ 1,123.00

3. Postage/Shipping \$ 21.00

Total: \$19,161.69

¹ The above amount reflects an allocation of the direct salary charges due to staff's expenditure of time on the American Community case. The principal staff person working on the case was Bill O'Sullivan. In addition, two other staff members (Peter Gallanis and Meg Melusen) recorded a small amount of time at the outset of the case.

**American Community
Strohm Ballweg
Summary of billing activity**

Total Fees and expenses for period April 1, 2010 through June 30, 2012 - \$34,498.10

Task categories:

Preliminary work:

- Review of Financial statements
- Meetings with NOLHGA Working Group for planning purposes

Two site visits were conducted, with Rich Swanson, in anticipation of potential liquidation

- Review of business
- Review of recent claim, premium and policy counts
- Meetings with Receiver and departments heads
- Meetings with key staff who will interact with GA's/consultants
- Provide NOLHGA administrative overview
- Review internal manual and electronic systems
- Reporting requirements for GA's, should liquidation occur
- Potential termination of certain blocks of business

Task Force and Working Group

- Prepare data for NOLHGA meetings
- Update group on potential activity in liquidation
- Status meetings with Receiver

Other

- Review updated financial statements and cash flow analyses
- Review updated policy assumption and move to Golden Rule data
- Various document and reports review
- Monitor in-force activity

R.N. SWANSON & ASSOCIATES, INC.

P.O. BOX 7217 • DEERFIELD, ILLINOIS 60015
PHONE: 847-803-9629
FAX: 847-803-9643

Fees and expenses for R.N. Swanson & Associates, Inc.
American Community Mutual Insurance Company

Total fees and expenses for period of April, 2010 through September, 2012 - \$ 24,016.46

Work performed:

. 2 site visits in anticipation of potential activation of affected Guaranty Associations

- Historical background
- Review of in-force business
- Meetings with Receiver and key staff
- Administration overview
- Systems overview
- Modifications required for Guaranty Association purposes
- Reporting requirements

. Task Force/Working Group participation

- Status updates with Receiver
- Planning for potential Guaranty Association activation

. Miscellaneous

- Documents and reports review
- Interaction with NOLHGA, consultants
- Financial updates and projections
- In-force business updates
- Assumptions updates

**Faegre Baker Daniels Fees And Expenses And Work In Connection
With The American Community Mutual Rehabilitation**

Fees And Expenses

Total Fees And Expenses For April 2010 Through September 2012: \$128,479.92

- 2010 Fees And Expenses: \$115,175.22
- 2011 Fees And Expenses: \$ 8,745.05
- 2012 Fees And Expenses: \$ 4,559.65

**Work Performed In Connection With Preparation For
Possible Liquidation And In Support Of Rehabilitation Efforts**

- 2010 Work
 1. Prepare Confidentiality Agreement and work with Chris Kerr on same to finalize.
 2. Review of Rehabilitation Petition, Rehabilitation Order and Michigan rehabilitation and liquidation statutes.
 3. Review of other Court papers, including filings and court orders concerning transfer of blocks of business to solvent insurers and Golden Rule individual health business rewrite offer.
 4. Quick review of proposed assumption agreements and Golden Rule and United rewrite agreements.
 5. Review of potential liquidation timing issues and consider action steps needed for guaranty association and receiver planning purposes.
 6. Consider agent commission issues and precedent.
 7. Multiple conference calls with Rehabilitator representatives and planning conference calls with NOLHGA working group and Task Force representatives.
 8. Prepare draft early access agreement and related follow-up.
 9. Prepare draft receiver/guaranty association service agreement and related follow-up.
 10. Review HIPPA issues, including HIPPA pull out research from Frank Dempsey and comment on same.
 11. Review PPACA research and compliance plan from Frank Dempsey and comment on same.

12. Preliminary coverage analysis, policy cancellation analysis and other planning for potential liquidation with respect to guaranty association coverage obligations.
13. Review draft FAQ from receiver.
14. Review other documents and information provided by Jim Gerber.
15. Quick review and consideration of proposed excess loss reinsurance agreement.

- 2011 Work

1. Review documents and information provided by Jim Gerber.
2. Quick review of Court filings and orders provided by Chris Kerr.
3. Quick review and consideration of potential Med Supp reinsurance agreement.
4. Several conference calls with Rehabilitator representatives and with NOLHGA working group representatives.

- 2012 Work

1. Quick review of Court filings and orders provided by Chris Kerr.
2. Consider and respond to Chris Kerr request for input on former employees' claims.
3. A few conference calls with Jim Gerber and with NOLHGA working group representatives.