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

R. KEVIN CLINTON, COMMISSIONER
OF THE OFFICE OF FINANCIAL AND
INSURANCE REGULATION,

Petitioner,

v

AMERICAN FELLOWSHIP MUTUAL
INSURANCE COMPANY,

Respondent.

Case No. 12-1173-CR

HON. WILLIAM E. COLLETTE

Christopher L. Kerr (P57131)
Jason R. Evans (P61567)
Assistant Attorneys General
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EX PARTE PETITION FOR APPROVAL TO SETTLE PENDING AUTOMOBILE COLLISION DAMAGE LAWSUIT INVOLVING AMERICAN FELLOWSHIP MUTUAL INSURANCE COMPANY

R. Kevin Clinton, Director of the Michigan Department of Insurance and Financial Services,[1] as Rehabilitator of American Fellowship 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 Financial and Insurance 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 and Jason R. Evans, Assistant Attorneys General, petitions this Court pursuant to MCL 500.8115(1) to approve the settlement of a disputed automobile collision damage lawsuit involving American Fellowship Mutual Insurance Company ("American Fellowship"). In support of this *Ex Parte* Petition, the Rehabilitator states as follows:

1. On October 29, 2012, this Court entered an Order placing American Fellowship into Rehabilitation and appointing the OFIR Commissioner as the Rehabilitator of American Fellowship.

2. MCL 500.8115(1) governs legal actions or proceedings involving American Fellowship 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. With respect to claims against American Fellowship arising after entry of the Rehabilitation Order, MCL 500.8114(2) and the Rehabilitation Order authorize the Rehabilitator to "take such action as he considers necessary or appropriate to reform or revitalize American Fellowship." Rehabilitation Order, p 6, ¶ 11. In addition, this statute, as incorporated by the Rehabilitation Order, grants the Rehabilitator "full power and authority to direct and manage American Fellowship . . . and to deal in totality with the property and business of" the company. Rehabilitation Order, p 5, ¶ 8.

4. The Rehabilitator seeks the Court's approval to settle the following pending lawsuit involving American Fellowship:

a. ***American Fellowship v Mary Petretis and Charles Shelton.*** This automobile collision damage lawsuit is pending in the Macomb County Circuit Court in Mount Clemens, Michigan, assigned Case No. 12-1487-CK. American Fellowship filed this lawsuit for the appointment of an umpire to determine the salvage value of Defendants' vehicle after it was totaled in an accident that occurred on or around October 26, 2011 in Macomb County, Michigan. American Fellowship's appraisal evaluated the actual cash value of the vehicle to be $3,990.00, while Defendants' appraisal determined the value to be $7,608.16. The independent umpire determined the value to be $3,990.00, consistent with American Fellowship's appraisal. Through negotiations, Defendants have agreed to release American Fellowship from any and all liability on this claim in exchange for American Fellowship's payment of $3,152.40 and Defendants' retention of the vehicle in "as is" condition.

5. With limited exceptions not applicable here, Paragraph 15 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 automobile collision damage claim at issue in this case arises from events that occurred prior to the date of the Rehabilitation Order. More importantly, the exception in Paragraph 15 authorizing the payment of pre-rehabilitation claims "arising from covered losses under American Fellowship insurance policies" does not apply because American Fellowship disputes the amount of insurance coverage for Defendants' claim. Accordingly, an order approving this proposed settlement is needed from the Court.

6. The Rehabilitator believes that the settlement of this lawsuit in the amount indicated above and on the terms contained in the corresponding settlement agreement (which is 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 Fellowship's creditors, policyholders, and the public. A comparison of the settlement amount to the amount of Defendants' original claim evidences that this settlement is reasonable and will limit potential liability to the Rehabilitation Estate. Moreover, the settlement is relatively modest in amount and would likely be exceeded by legal and other costs if this case were adjudicated to judgment in this Rehabilitation or otherwise.

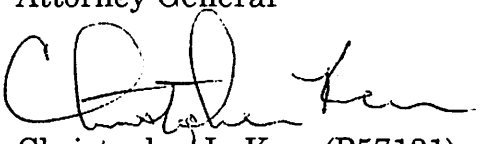
7. Providing personalized notice of this *Ex Parte* Petition and any resulting Order to all parties that may have an interest in this matter is impossible at this time because there has been no claims submission or other process to identify such parties. Moreover, attempting to identify and personally notify parties in interest would be time-intensive and costly to American Fellowship'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 Fellowship 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 settlement reached in the above-referenced lawsuit, in the amount and on the terms more fully set forth in the corresponding settlement agreement. 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 Fellowship Mutual" section of the DIFS website.

Respectfully submitted,

Bill Schuette
Attorney General



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