

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,

Case No. 12-1173-CR

HON. WILLIAM E. COLLETTE

v

AMERICAN FELLOWSHIP MUTUAL
INSURANCE COMPANY,

Respondent.

Christopher L. Kerr (P57131)
Jason R. Evans (P61567)
Assistant Attorneys General
Attorneys for Petitioner
Corporate Oversight Division
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EX PARTE PETITION
FOR APPROVAL TO SETTLE FOUR PENDING NO-FAULT
PERSONAL INJURY PROTECTION BENEFITS LAWSUITS/CLAIMS
AGAINST 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 settlements reached with respect to four (4) no-fault personal injury protection (“PIP”) benefits lawsuits/claims currently pending against 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 four lawsuits/claims that are currently pending against American Fellowship:

a. ***Juan Salcedo v American Fellowship.*** This no-fault PIP benefits lawsuit filed by an American Fellowship insured was pending in the Macomb County Circuit Court in Mount Clemens, Michigan, assigned Case No. 11-2099-NF. Plaintiff's Complaint was filed pursuant to the Michigan No-Fault Insurance Act, MCL 500.3101 – 500.3179, and asserted claims for the payment of PIP benefits for injuries allegedly sustained by Plaintiff in connection with an automobile accident that occurred on or around May 24, 2010 in Macomb County, Michigan. American Fellowship denied Plaintiff's claims because it disputed the complexity and nature of Plaintiff's PIP attendant care benefits, specifically the hourly rate and number of hours per diem payable for those benefits during the period from May 24, 2010 through and including June 30, 2012. The attendant care benefits dispute was submitted to arbitration, which was subject to a non-disclosed "high-low" agreement with a range of \$45,000 - \$95,000. Plaintiff demanded \$218,000 in the arbitration but waived any interest, costs, and attorney fees. The arbitration resulted in an award in Plaintiff's favor in the amount of \$115,240.00 (\$14.00 an hour, 16 hours a day from May 24, 2010 through June 30, 2012, less American Fellowship's prior payment of \$55,000.00), which was reduced to \$95,000.00 pursuant to the "high-low" agreement. As a result of the arbitration agreement entered on May 22, 2012, Plaintiff has dismissed his lawsuit with prejudice and has further agreed to release American Fellowship from any and all liability on his PIP attendant care benefits claim for the period from May 24, 2010 through June 30, 2012 in exchange for American Fellowship's payment of the \$95,000 arbitration award.

b. ***Duane Black v American Fellowship.*** This no-fault PIP benefits lawsuit filed by an American Fellowship insured is pending in the Macomb County Circuit Court in Mount Clemens, Michigan, assigned Case No. 11-2150-NI. Plaintiff's Complaint was filed pursuant to the Michigan No-Fault Insurance Act, MCL 500.3101 – 500.3179, and asserts claims for the payment of PIP benefits for injuries allegedly sustained by Plaintiff in connection with an automobile accident that occurred on or around June 25, 2010 in Macomb County, Michigan. American Fellowship denied Plaintiff's claims due to the unreasonable and unnecessary nature of the treatment involved, the excessive, non-customary amounts charged, and the experimental nature of certain treatment. The matter was submitted to facilitation, at which Plaintiff demanded \$166,462.57 inclusive of interest, costs, and attorney fees. The facilitation resulted in a settlement pursuant to which American Fellowship has agreed to pay Plaintiff: (1) \$14,800 for wage loss from June 25, 2010 through June 25, 2013; (2) \$27,684 for medical expenses incurred

through November 14, 2012 (excepting payment for medical treatment performed by Dr. Jason Stanczak/American Surgical Center and certain medical testing performed by Silver Pine Imaging, which claims have been assigned to American Fellowship for resolution); and (3) \$3,200 for replacement services from June 25, 2010 through June 25, 2013. Plaintiff assumes responsibility for the payment of any medical expense or other liens. As a result of this facilitation settlement, Plaintiff has agreed to dismiss his lawsuit with prejudice and to release American Fellowship from any and all liability on these claims in exchange for American Fellowship's payment of the \$45,684.00 total amount agreed to in the facilitation.

c. ***In re: Shirley Wilson v American Fellowship.*** American Fellowship insured Shirley Wilson has asserted a no-fault PIP benefits claim (a lawsuit has not been filed) against American Fellowship under the Michigan No-Fault Insurance Act, MCL 500.3101 – 500.3179, seeking payment for PIP benefits arising from injuries that Ms. Wilson allegedly sustained in connection with an automobile accident that occurred on or around November 20, 2011 in Genesee County, Michigan. American Fellowship denied Ms. Wilson's claims because it disputed the nature and/or extent of her injuries and the corresponding existence and/or amount of applicable coverage under her insurance policy. Through negotiations, Ms. Wilson has agreed to release American Fellowship from any and all past, present, and future liability on her no-fault PIP benefits claim and to accept responsibility for any medical expenses and/or liens in exchange for American Fellowship's payment of \$6,000.00.

d. ***About Muhsson v American Fellowship.*** This no-fault PIP benefits lawsuit filed by an American Fellowship insured is pending in the Wayne County Circuit Court in Detroit, Michigan, assigned Case No. 13-002985-NF. Plaintiff's Complaint was filed pursuant to the Michigan No-Fault Insurance Act, MCL 500.3101 – 500.3179, and asserts claims for the payment of PIP benefits for injuries allegedly sustained by Plaintiff in connection with an automobile accident that occurred on or around January 21, 2012 in Wayne County, Michigan. American Fellowship denied Plaintiff's claims because it disputed the nature and/or extent of his injuries and the corresponding existence and/or amount of applicable coverage under his insurance policy. Plaintiff demanded \$25,000.00 for a full and final settlement of his claims. Through negotiations, Plaintiff has agreed to dismiss his lawsuit with prejudice, to release American Fellowship from any and all past, present, and future liability on his no-fault PIP benefits claim, and to accept responsibility for any medical expenses and/or liens (with the exception of the claims sought in *Garden City Rehab L.L.C. v American Fellowship*, Case No. 12-0132-NF) in exchange for American Fellowship's payment of \$6,500.00.

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 no-fault PIP benefits claimed in these cases arise in whole or in part 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 existence and/or amount of insurance coverage for these no-fault PIP claims. Accordingly, an order approving these proposed settlements is needed from the Court.

6. The Rehabilitator believes that the settlement of these lawsuits/claims in the amounts indicated above and on the terms contained in their respective settlement agreements (which are 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. In each case, a comparison of the settlement amount to the amount of the Plaintiff’s original claim and/or American Fellowship’s maximum potential exposure for the claim evidences that these settlements are reasonable and will limit potential liability to the Rehabilitation Estate. Moreover, each of the settlements is relatively modest in amount and would likely be exceeded by legal and other costs if the 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 settlements reached in the above-referenced lawsuits, in the amounts and on the terms more fully set forth in their respective settlement agreements. 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

A handwritten signature in black ink, appearing to read "Christopher L. Kerr". The signature is fluid and cursive, with a large initial "C" and "K".

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Dated: April 19, 2013