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March 13, 2013

Via Overnight Federal Express

Court of Appeals
925 W. Ottawa
Lansing, MI 48915

Att: Clerk of the Court

Re: American Community Mutual Insurance Company's Former Officers
vs. The Office of Financial and Insurance Regulation as Rehabilitator
of American Community Mutual Insurance Company
Ingham County Circuit Court Case No. 10-397-CR
Court of Appeals Case No. 312470

Dear Sir or Madam:

Enclosed please find an original and five copies (six total) of Petitioners'/Appellants' Reply Brief - Oral Argument Requested, with Affidavit of Mailing thereon, concerning the above-referenced matter.

Kindly file the original and four copies (five total) on our behalf and return a time-stamped copy to the undersigned in the self-addressed, stamped return envelope provided herein for your convenience.

Thank you for your assistance in this matter.

Very truly yours,

COUZENS, LANSKY, FEALK, ELLIS,
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PHILLIP L. STERNBERG

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STATE OF MICHIGAN
IN THE COURT OF APPEALS

KEN ROSS, COMMISSIONER OF
THE OFFICE OF FINANCIAL AND
INSURANCE REGULATION,

Court of Appeals Case No: 312470

Lower Court Case No: 10-397-CR

Petitioner,

vs.

AMERICAN COMMUNITY MUTUAL
INSURANCE COMPANY,

PETITIONERS'/APPELLANTS'
REPLY BRIEF

Respondent.

ORAL ARGUMENT REQUESTED

AFFIDAVIT OF MAILING

In Re the Matter of:

AMERICAN COMMUNITY MUTUAL INSURANCE
COMPANY'S FORMER OFFICERS MICHAEL TOBIN,
ELLEN DOWNEY, FRANCIS DEMPSEY, MICHAEL
McCOLLOM, BETH McCROHAN and LESLIE GOLA,

Claimants/Appellants,

vs.

The Office of Financial and Insurance Regulation as
Rehabilitator of AMERICAN COMMUNITY MUTUAL
INSURANCE COMPANY,

Respondent/Appellee.

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PETITIONERS'/APPELLANTS' REPLY BRIEF

ORAL ARGUMENT REQUESTED

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Dated: March 13, 2013

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ARGUMENT

I. The Respondents are Seeking this Court Ignore the Unambiguous Language of the Statute and Engage in Judicial Activism in Order to Defeat the Petitioners' Claims.

In order to advance their cause of awarding millions of dollars more to two bottom rung creditors who are already in line to receive millions of dollars, the Respondents at once, without an iota of evidence impugn the integrity and competence of the Claimants, twist the clear meaning of the statute into pretzels. Their arguments entreat that the Court engage in judicial activism by adopting their convoluted interpretations.

According to Respondent Trapeza, Claimants should be defeated in part because "the statutory provisions must be followed and construed to protect the policyholders, creditors and the public" (Respondent Trapeza Brief, p. 7). Yet, said Respondent ignores the fact that by definition, the Claimants are not only "creditors" they are creditors with higher priorities.

"Creditor" is defined at MCLA 500.8103(b), which provides:

"Creditor" is a person having a claim against the insurer, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent."

Although "claim" itself is not defined in the statute, Black's Law Dictionary defines "claim" as:

"Right to payment, whether or not such right is reduced to judgment liquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured. . ." *Black's Law Dictionary*, p. 247 (6th Ed, 1990).

Thus, there is no doubt that Claimants are Creditors, because at a minimum they have claims. Whether or not their claims are enforceable because of statutory restrictions does not

negate the fact that they are creditors and, therefor, should be accorded the same policy consideration in the construction of the statute as Respondent Holdco and Respondent Trapeza.

Respondents have also disputed the priority of the claims. However, assuming the claims are enforceable, they are clearly superior in priority to those of Respondent Holdco and Respondent Trapeza. Priority of claims are set forth at MCLA 500.8142. Class 1 claims at MCLA 500.8142(a)(vii) include claims for employee wages not exceeding a thousand dollars accrued within a year of the Rehabilitation (not including claims of officers) *if* the Rehabilitator determines the payment is necessary for the orderly administration for the protection of Class 2 claimants. Class 4 claims at MCLA 500.8142(d) includes payment for employee wages not exceeding a thousand dollars accrued within a year of the Rehabilitation (not including claims of officers) if the Rehabilitator determines the payment was not necessary for the orderly administration for the protection of Class 2 claimants.

The mere fact that regular wage claims not to exceed \$1,000, to the exclusion of officers, are granted a priority above that of general creditors is evidence of nothing in regard to this matter. However, Respondents would have the Court believe that this is somehow indicative of a legislative intent to deprive officers a right to file claims, wage related or otherwise. Following Respondents' logic, any wage claim for over \$1,000, even by a janitor, would be barred as opposed to receiving a general creditor priority, because it's neither a Class 1 or Class 4 priority. This argument is nothing but a strawman set up to support their policy arguments which contradict the unambiguous language of MCLA 500.8137(4). That Claimants' claims are neither Class 1 or 4 no more de-legitimizes their claims than the fact that neither Respondent Trapeza or Respondent Holdco have rights of higher priorities.

The primary key to whether or not Claimants are entitled to receive the benefits they were promised for continuing to render services for American Community until the change in control, via the rehabilitation, occurred, is MCLA 500.8137(4). As Claimants have argued extensively in their primary brief, the language utilized in the section, “payment for services rendered” has a long judicial history consistent with their position. On the other hand, Respondents’ arguments require the Court to assume that the section includes words within that phrase which simply do not exist.

Respondent Trapeza argues for instance:

“The Legislature has plainly stated that there is no right for these former officers, who were at the helm of the sinking ship, to recover for anything other than the hours worked prior to the issuance of the order of rehabilitation on April 8, 2010. As a result, the claims must be denied under Section 8137(4).” Respondent Trapeza Brief at p. 8.

The Section says nothing of the sort about recovery for “hours worked.” It speaks only to payment for prior services rendered, which has decades of unquestioned judicial meaning.

The Attorney General acknowledges the general enforceability of the contracts “outside of rehabilitation” but argues, without factual or legal basis, that MCL 8137(4) “bars the non-wage benefits those agreements purport to confer.” (Respondent Attorney General’s Brief at p. 2). The Attorney General insists “Under the statute, the payment must be for services ‘rendered’ and fully earned/payable ‘prior to’ entry of the rehabilitation order.”(Respondent Attorney General’s Brief at p. 3). Surely, had the Legislature wanted to include such restrictive language it fully had the opportunity to do so.

Finally, Respondent Holdco’s argument seems to acknowledge that the Claimants’ claims are compensable under the section as it states: “The type of compensation that you get for ‘services

rendered', quite obviously, is wages, salary and benefits."(Respondent Holdco Brief at p. 2)
These, in fact, are benefits which Claimants earned by having rendered services prior to entry of the Rehabilitation Order.

All the arguments seek to add verbiage and elements to the statute and encourage judicial activism. The arguments are similar to those which lead to the faulty and ultimately overturned reasoning in Kreiner v Fischer, 471 Mich 109, 683 NW2d 611 (2004) regarding threshold injuries in third party auto accident cases. As the Respondents seek this Court do, the Kreiner Court engaged in judicial activism¹. The Kreiner Court took a phrase in the MCL 500. 3135(7) and sought to add elements to it which simply did not exist. Under Kreiner, the test to pass the threshold required not only an impairment be objectively manifested but the *injury* which caused impairment had to be objectively manifested. Moreover, the impairment, according to Kreiner, had to change the entire course or trajectory of the person's life.

The rationale applied in McCormick to overturn the judicial activist construction of Section 3135 is equally applicable here. As the Court stated:

“. . .the *Kreiner* majority's departure from the plain language of *MCL 500.3135(7)* defies practical workability. As discussed above, the majority took unambiguous statutory text and, through linguistic

¹"In summary, the *Kreiner* majority's interpretation of the third prong departed from the idea that a court "should not casually read anything into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute." *Kreiner*, 471 Mich at 157 (CAVANAGH, J., dissenting). Indeed, as I remarked in dissent, the *Kreiner* majority's "interpretation" of the plain language of *MCL 500.3135(7)* was a "chilling reminder that activism comes in all guises, including so-called textualism." *Kreiner*, 471 Mich at 157. Therefore, we hold that the *Kreiner* majority's interpretation of this prong, including the list of non-exhaustive factors, is not based in the statute's text and is incorrect." McCormick v Carrier, 487 Mich. 180, 209; 795 N.W.2d 517, 534 (2010).

gymnastics, contorted it into a confusing and ambiguous test.”
Supra, p.212

Here, the Respondents seek to do the same with language which is not only unambiguous, but which has a long history of judicial recognition as to its meaning.

Further support can be found in Curry v Meijer’s, Inc., 286 Mich. App. 586 (2009). There an injured Plaintiff sought an interpretation of the Tort Reform Act, so as to create liability for a seller of defective goods which sells the product without knowledge of the defect nor negligently. The Plaintiff argued that language in that statute allowed for a suit in negligence *or* implied warranty. In rejecting Plaintiff’s argument, the Court explained:

“We begin our analysis by reviewing the plain language of the statute to determine the Legislature’s intent. *DiBenedetto v West Shore Hosp*, 461 Mich 394, 402; 605 NW2d 300 (2000). [***8] Where the language is clear and unambiguous, “further construction is neither required nor permitted.” *Nastal v. Henderson & Assocs. Investigations, Inc.*, 471 Mich. 712, 720; 691 N.W.2d 1 (2005).”
Supra. p.606.

The Court went on to say:

“Additionally, because we are not dealing with common-law tort issues, plaintiffs’ argument invoking economic policy issues should be raised to their state representative or senator for debate within the halls of our Legislature, not to the Judiciary. *Nemeth v Abonmarche Dev, Inc*, 457 Mich 16, 43; 576 NW2d 641 (1998); *Ambs v Kalamazoo Co Rd Comm*, 255 Mich App 637, 650; 662 NW2d 424 (2003). **We will not engage in judicial activism simply to rectify the injustice plaintiffs perceive will result from a straightforward application of § 2947(6)(a).**” [emphasis added]
Supra pp. 598-599.

Here, a straight reading of the statute demonstrates that the claims sought are for services rendered prior to the Rehabilitation Order. To uphold the trial court’s decision and adopt the baseless interpretation of the MCL 8137(4) advanced by the Respondents would be nothing more than

engaging in judicial activism simply to rectify an injustice which the Respondents perceive will result from a straightforward application of the section.

Additionally, Respondents' concerns that a decision in favor of the Claimants would encourage greedy, self-dealing is misplaced. In advancement of their encouragement of judicial activism, they seek to have this Court add quantification to MCL 500.8137(4). The section does not address amounts, it simply restricts payments to those in consideration for prior services rendered. Other provisions within the Statute address whether or not the sought after payment is for fair consideration. Specifically, MCLA 500.8126 deals with fraudulent transfers and MCLA 500.8103(e) defines "Fair Consideration." If the Respondents truly believed that these Claimants engaged in wrongful, self-dealings they had a multitude of methods to attack the claims. However, the automatic disallowance of claims simply because they are for significant compensation is not available pursuant to MCL 500.8137(4) or otherwise.

II. The Rehabilitation Order Did Not and Could Not Bar Payments for Change in Control or Severance Benefits.

As Claimants have argued in their initial brief, Paragraph 14 of the Rehabilitation Order, when read in its entirety, did nothing more than defer the payment of potential severance or non-wage type payments of American Community officers to a later date. In essence, Paragraph 14 was meant to track the Statute by freezing past creditor claims and ensure payment of new obligations so as to provide for continuity in the day to day operations post-rehabilitation. Clearly, when put in the proper context, the provision referenced by the Attorney General does not bar the claims. Rather, claims for regular wages could be paid within the ordinary course without further order. However, claims other than for wages, i.e. severance and/or Change in Control benefits,

were stayed until further order of the Court. Matters other than ordinary wages would require separate attention by the Court. Considering these claims are a Class 5 or possibly Class 7 priority, it simply makes sense that they not be paid until higher priority payments are satisfied. For the Respondents to argue otherwise is disingenuous and ignores the clear intent of the provision, which is to assure the day to day operation of American Community with minimum disruption by paying regular wages which had been earned up until the Rehabilitation.

Moreover, the Attorney General's argument goes beyond merely the prioritizing of claims. The argument would seek to allow for the Attorney General and the insurer to agree between themselves, that a particular class of creditor should not be paid, regardless of the assets available for distribution. The Attorney General and American Community, through their stipulation, had no more right to bar the legitimate claims of the Claimants than they would have had the right to proclaim that the Rehabilitator shall not pay Surplus Noteholders. If, as Claimants herein argue, these claims are statutorily permissible, they could not be barred by a stipulation between the Attorney General and American Community, even if the language means what the Respondents claim it means, which it unambiguously does not. Respondents' interpretation of the provision is tantamount to a usurpation of this Court's authority and an unconstitutional impairment on existing contracts. See Robinson v People's Bank of Leslie, 266 Mich 178 at pp.187-188 (1934).

Finally, the Attorney General argument is contradicted by his actions. Pursuant to the Petition For Approval To Pay Vendor Claims, Agent Commissions, Benefits Equalization Payments, and Severance Payments adopted by the Trial Court's Order of December 11, 2011, severance was paid to Jeffery Erickson and Cathleen Walker, both former executives of American Community terminated prior to the Rehabilitation Order (Exhibit 1). If the interpretation as

advanced by the Attorney General were correct, those payments should not have been made either. Despite the fact that both those individuals were terminated prior to the Rehabilitation Order, the Petition at Paragraph 12 sought court approval of Severance Payments to these two individuals in a total amount in excess of \$100,000. The only difference between those two individuals and the Claimants is that the Claimants chose to stay on and do their best to see the matter through to a rehabilitation successful enough for pay outs to Class 9 Creditors.

III. The Voluntary Severance Payments Made to Erickson and Walker Act as an Admission by the Attorney General that the Consideration for the Payments Sought by the Claimants Consists Solely of Services Rendered Prior to the Rehabilitation Order.

Respondents have argued, and the Trial Court held, that Claimants are not entitled to the payments sought, because additional services had to be rendered subsequent to the Rehabilitation Order, despite that alleged additional service being de minimis. According to both the Trial Court and the Respondents, incredulously, that de minimis "service" consists of the actual termination of the employment.²

The speciousness of Respondents' argument is exposed by the payments which were made to Erickson and Walker. Even though their employment was terminated prior to the rehabilitation, technically there remained one additional "service" to be performed for them to be entitled to payment. As the Attorney General states at Paragraph 12 of the Petition (Exhibit 1), settlement agreements had to be signed. As specious as that argument may sound, it is no more specious than the argument that a complete rendering of services includes actual termination after entry of the Rehabilitation Order. In other words, by the Respondents' logic, at the time the Rehabilitation

² Claimants argue more rationally that termination is simply a triggering event as opposed to a rendering of services.

Order was entered, neither Erickson nor Walker had completed rendering the consideration necessary to entitle them to severance. Thus, payment to them should likewise have been barred by MCL 500.8137(4).

Clearly, Claimants' argument is the more logical and persuasive one. Just as Erickson and Walker had completed rendering services prior to the Rehabilitation Order so as to entitle them to severance, Claimants too had completed rendering services while working as officers up to the time of the Rehabilitation Order. Their employment termination subsequent to the Rehabilitation Order is no more a required rendering of services than Erickson and Walker having to sign settlement agreements

CONCLUSION AND RELIEF REQUESTED

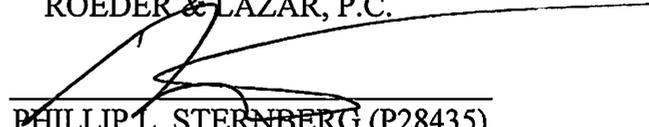
The Claimants were all loyal employees dedicated to American Community. Through their efforts, every Class of creditor through to the Surplus Noteholders have been compensated in full. Even upon Claimants receiving their compensation, the Surplus Noteholders will still receive the lion's share of what they've invested.

The Attorney General argues three bases for denying the claims, each of which has been rebutted by Claimants in the initial brief and herein. First, Michigan law has long recognized that the benefits sought are payable, because they are in consideration for services which were rendered prior to the Rehabilitation Order. Second, the Rehabilitation Order did not and legally could not have deprived these Claimants of their claims without a right to a hearing. And, it is beyond the realm of the Trial Court as well as this Court to legislate from the bench and ignore the unambiguous language of the statute for what the Respondents claim is Public Policy. For all those

reasons set forth above and in Claimants primary brief the matter should be reversed and remanded.

Respectfully submitted,

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Dated: March 13, 2013

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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.

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Jason R. Evans (P61567)
Assistant Attorneys General
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**PETITION FOR APPROVAL TO PAY VENDOR CLAIMS, AGENT COMMISSIONS,
BENEFITS EQUALIZATION PAYMENTS, AND SEVERANCE PAYMENTS**

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, petitions this Court for approval to pay: (1) pre-Rehabilitation vendor claims; (2) accrued but unpaid insurance agent commissions; and (3) settlement amounts resolving the benefits equalization and severance agreements of five

former American Community executives. 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 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 provided that "[a]mong his plenary powers provided by law, the Rehabilitator shall have full power ... to deal in totality with the property and business of American Community." Rehabilitation Order, p 5, ¶ 8.

4. Additionally, the Rehabilitation Order provided 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 6, ¶ 11.

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.

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 vendor claims, agent commissions, benefits equalization payments, and severance payments specified in Exhibits A, B, C, and D, while leaving sufficient reserve funds to pay all other currently-accrued policyholder and Creditor claims and all anticipated future policyholder and Creditor claims.

8. American Community has approximately \$33,062,187 in assets from which to pay Creditor claims. (Exhibit E).

9. The Rehabilitator has determined that payment of the Creditor claims specified in Exhibits A, B, C, and D is an appropriate and necessary step in the ongoing process to reform and revitalize American Community.

10. In compliance with the Rehabilitation Order, the Rehabilitator has not paid the pre-Rehabilitation claims of 15 non-provider, general Creditor vendors identified in Exhibit A.

11. Pursuant to the Rehabilitation Order, the Rehabilitator did not pay insurance agent commissions that were earned but unpaid as of the date of the April 8, 2010 Rehabilitation Order. From April 8, 2010 through September 15, 2010, the Rehabilitator paid agent commissions as they became due in the ordinary course of business. Effective September 16, 2010, the Rehabilitator suspended the payment of further insurance agent commissions in an effort to reform and revitalize American Community and conserve the company's assets.

Throughout the Rehabilitation, however, the Rehabilitator has calculated and recorded all pre-Rehabilitation and suspended insurance agent commissions that have been earned but unpaid. The total of these commissions owed to each agent is identified in Exhibit B.

12. In anticipation of seeking court approval to pay these claims, the Rehabilitator made buyout offers and sent settlement agreements to six former American Community employees who have agreements for supplemental pension payments, retirement benefits equalization payments, or severance payments. In compliance with the Rehabilitation Order, the Rehabilitator suspended periodic payments under these pre-Rehabilitation agreements in April 2010. Five of the six former American Community employees have now agreed to accept the buyouts and have signed settlement agreements to that effect. The amounts to be paid to the former employees who accepted the buyouts are listed in Exhibits C and D. The signed settlement agreements are attached as Exhibits F, G, H, I, and J. The Rehabilitator will maintain sufficient reserve funds to pay the claim, if made, of the former employee who did not respond to the buyout offer. This remaining claim will either be paid out later as part of this rehabilitation proceeding, with Court approval, or will remain on American Community's books upon termination of the rehabilitation.

13. Although not a part of this Petition, the Rehabilitator has also made buyout offers and sent settlement agreements to certain insurance agents to resolve future critical care commission obligations. These buyouts are necessary in order to eliminate these commission liabilities before transferring American Community's contractual obligations under critical care policies to another insurer. The Rehabilitator will maintain sufficient reserve funds to pay the claims of these agents and anticipates submitting an additional petition for approval to pay these claims after all the agents with future critical care commission obligations have had an opportunity to respond to the buyout offers.

14. After payment of the claims specified in Exhibits A, B, C, and D, American Community will still have approximately \$30,652,579 for the payment of current and future Creditor claims. (Exhibit E).

15. Prior to the Rehabilitation, American Community issued two surplus notes totaling \$30 million, which remain outstanding. As the attached Proof of Service reflects, a copy of this Petition, the proposed Order approving the payment of these Creditor claims, and a Notice of Hearing on this Petition have been served via regular mail on the two holders of the surplus notes: (1) Vik Ghei and Misha Zaitzeff, founding partners and representatives of surplus note holder HoldCo Advisors, LP; and (2) Carolyn Thagard of Trapeza Capital Management, LLC on behalf of surplus note holder Credit Suisse, Cayman Branch. These papers have also been served via regular mail on the trustee of the two surplus notes, Mudasir Mohamed of The Bank of New York Mellon Trust Company, N.A.

16. Further, as the attached Proof of Service reflects, a copy of this Petition, the proposed Order approving the payment of these Creditor claims, and a Notice of Hearing on this Petition have been served via regular mail on the vendors identified in Exhibit A, the insurance agents with commission claims over \$25,000 identified in Exhibit B, and the five former American Community executives who have agreed to settle their benefits equalization and severance agreements identified in Exhibits C and D. The Rehabilitator has identified these individuals as the parties with the strongest potential interest in this transaction.

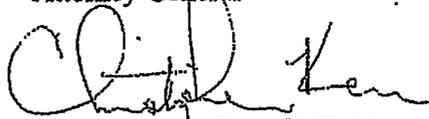
17. Providing personalized notice of this Petition and any resulting Order to the over 4,000 insurance agents with claims under \$25,000 identified in Exhibit B is impractical because of the expense involved with serving so many agents. Further, providing personalized notice to other parties that have 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, while 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 Petition, the Notice of Hearing, and any resulting Order on any potentially interested parties (other than the parties listed in paragraphs 15 and 16 above) 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 those 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 approve payment of the vendor claims, agent commissions, benefits equalization payments, and severance payments identified in Exhibits A, B, C, and D. Further, the Rehabilitator requests this Court to authorize and ratify service of this Petition, together with the attached Exhibits (including the proposed Order) and Notice of Hearing: (a) via regular mail on the two surplus note holders and their trustee; and (b) via regular mail on the vendors identified in Exhibit A, the insurance agents with claims over \$25,000 identified in Exhibit B, and the five former American Community executives who have agreed to settle their benefits equalization and severance agreements identified in Exhibits C and D; and (c) on other potentially interested parties by posting electronic copies on the "American Community" section of OFIR's website. The proposed Order is attached as Exhibit K.

Respectfully submitted

Bill Schuette
Attorney General

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

Christopher L. Kerr (P57131)
Jason R. Evans (P61567)
Assistant Attorneys General
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Attorneys for Petitioner
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Lansing, Michigan 48909
(517) 373-1160

Dated: December 14, 2011

EXHIBIT D

**American Community Mutual Insurance Company
Severance Payments
For Service Performed Prior to April 8, 2010
As of October 31, 2011**

Cathleen Walker	\$ 76,000.00
Jeffery Erickson	28,000.00
	<u>\$ 104,000.00</u>