

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



BILL SCHUETTE
ATTORNEY GENERAL

P.O. Box 30755
LANSING, MICHIGAN 48909

December 3, 2014

Via U.S. First Class Mail

Clerk of the Court
Ingham County Circuit Court
Veterans Memorial Courthouse
313 W. Kalamazoo St.
Lansing, MI 48901

Re: *Ken Ross, Commissioner of the Office of Financial and Insurance Regulation v American Community Mutual Insurance Company*
Case No. 10-397-CR; Honorable William E. Collette

Dear Clerk of the Court:

Enclosed for filing in the above-referenced case is the Proof of Service of the **Order Approving Payment of Second Interim Distribution to Surplus Noteholder Creditors**, which was entered by the Court on December 3, 2014.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Kerr", written over a circular stamp.

Christopher L. Kerr (P57131)
Assistant Attorney General
Corporate Oversight Division
(517) 373-1160

Enc

c Lori McAllister (w/ enc)
Daniel Brown (w/ enc)
Nancy R. Johnson (w/ enc)

Illinois Dept. of Insurance (w/ enc)
U.S. Internal Revenue Service (w/ enc)

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,

[IN REHABILITATION]

Respondent.

**ORDER APPROVING PAYMENT OF SECOND INTERIM DISTRIBUTION
TO SURPLUS NOTEHOLDER CREDITORS**

At a session of said Court held in the
Circuit Courtrooms for the
County of Ingham, State of Michigan
on the ~~31~~ day of December, 2014.

PRESENT: HONORABLE WILLIAM E. COLLETTE, CIRCUIT COURT JUDGE

WHEREAS, Annette E. Flood, Director of the Michigan Department of
Insurance and Financial Services and duly appointed Rehabilitator of American
Community Mutual Insurance Company (the "Rehabilitator")¹ has filed a Petition

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. Governor Snyder duly appointed Annette E. Flood as the Director of DIFS effective November 1, 2013, making her the Rehabilitator of American Community as of that date.

for Approval to Pay Second Interim Distribution to Surplus Noteholder Creditors (the "Petition"); and

WHEREAS, 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"). The Rehabilitation Order appointed the Commissioner/Director as the Rehabilitator of American Community and appointed James E. Gerber as the Special Deputy Rehabilitator; and

WHEREAS, 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"; and

WHEREAS, consistent with MCL 500.8114(2), the Rehabilitation Order provided that "[a]mong his plenary powers provided by law, the Rehabilitator shall have full power and authority to direct and manage American Community . . . and to deal in totality with the property and business of" the company; and

WHEREAS, 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"; and

WHEREAS, on April 19, 2005, American Community issued ALESCO Preferred Funding VII, Ltd. ("ALESCO") a surplus note in the amount of

\$20,000,000 in exchange for cash. Financials Restructuring Partners, Ltd. is the successor in interest to ALESCO's surplus note via purchase and assignment, and is represented by its authorized agent, HoldCo Advisors, L.P. (the "FRP Note"); and

WHEREAS, on December 1, 2005, American Community issued Credit Suisse a surplus note in the amount of \$10,000,000 in exchange for cash. Trapeza CDO IX, Ltd. and Trapeza CDO X, Ltd. are the successors in interest to the Credit Suisse surplus note via purchase and assignment, and are represented by their authorized agent Trapeza Capital Management, LLC (the "Trapeza Note"); and

WHEREAS, throughout this Order, the FRP Note and Trapeza Note are collectively referred to as the "Surplus Notes," and the current holders of the Surplus Notes are collectively referred to as the "Surplus Noteholders"; and

WHEREAS, based on the loans made to American Community under the Surplus Notes, the Surplus Noteholders possess valid, allowed Creditor claims against American Community's rehabilitation estate. Pursuant to Section 8142 of the Michigan Insurance Code, MCL 500.8142, the Surplus Noteholders' claims are granted Class 8 payment priority from the rehabilitation estate's assets.

WHEREAS, by Order dated December 18, 2013, this Court approved the Rehabilitator's petition for approval to pay a first interim distribution to the Surplus Noteholders in the total amount of \$13.5 million, to be divided pro-rata among the principal balances then outstanding on their respective Surplus Notes. Accordingly, on or around December 26, 2013, the Deputy Rehabilitator made a \$9 million distribution on the FRP Note (leaving an unpaid principal balance of \$11

million) and a \$4.5 million distribution on the Trapeza Note (leaving an unpaid principal balance of \$5.5 million).

WHEREAS, the Rehabilitator and Special Deputy Rehabilitator have marshaled all significant assets of American Community, and have identified and paid in full all known, allowed, and undisputed claims against American Community's rehabilitation estate having higher payment priority than the Surplus Notes, with the exception of: (a) Class 1 claims for the ongoing and future expenses of administering American Community's rehabilitation estate (the "Estate Administrative Expenses"); and (b) a Class 6 fine owed to the Illinois Department of Insurance that is subject to a delayed payment agreement (the "Illinois Fine"); and

WHEREAS, the approximately five (5) known, disputed claims against the American Community rehabilitation estate that were pending at the time of the first interim distribution, and that would have had higher payment priority than the Surplus Notes if they were ultimately allowed and determined to be payable by the rehabilitation estate (the "Disputed Outstanding Claims"), have now been fully and finally resolved; and

WHEREAS, on December 13, 2013, this Court entered an Order Establishing Claims Bar Date requiring any potential claimant that had not previously asserted a claim against the American Community rehabilitation estate to submit his, her, or its claim to the Rehabilitator's counsel by no later than March 18, 2014, failing which the claim would be forever barred. The Rehabilitator's counsel received no additional claims before the claims bar date; and

WHEREAS, because the Disputed Outstanding Claims have all been resolved while any new claims are precluded by the claims bar date, the outstanding liabilities of the American Community rehabilitation estate are now reasonably fixed and known; and

WHEREAS, the Rehabilitator and Special Deputy Rehabilitator have determined that the rehabilitation estate possesses sufficient assets to pay a second interim distribution of estate funds to the Surplus Noteholders, while reserving amounts sufficient to pay: (a) the Estate Administrative Expenses; (b) the Illinois Fine; and (c) assessment notices received from various state guaranty associations for amounts first assessed after the claims bar date, which are disputed but remain outstanding and would have higher payment priority than the Surplus Notes if they are ultimately allowed and determined to be payable by the rehabilitation estate (the “Guaranty Association Assessments”); and

WHEREAS, as of October 31, 2014, the American Community rehabilitation estate possessed assets totaling \$7,348,893. The Rehabilitator and Special Deputy Rehabilitator have determined that it is appropriate to pay a second interim distribution to the Surplus Noteholders representing a 36.36% pro-rata portion of the outstanding principal balances on their respective Surplus Notes (the “Second Interim Distribution”); and

WHEREAS, after paying the Second Interim Distribution to the Surplus Noteholders, American Community’s rehabilitation estate will still possess assets totaling \$1,348,893. Based on conservative estimates, the Rehabilitator and Special

Deputy Rehabilitator have determined that these remaining funds of over \$1.3 million are sufficient to pay all Estate Administrative Expenses and the Illinois Fine, plus the Guaranty Association Assessments if they are ultimately determined to be payable by the rehabilitation estate; and

WHEREAS, this Court agrees that the above-cited provisions of the Rehabilitation Order and Chapter 81 of the Insurance Code authorize the Second Interim Distribution to the Surplus Noteholders. The Court further agrees with the Rehabilitator's and Special Deputy Rehabilitator's determination that the Second Interim Distribution 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/or the public; and

WHEREAS, the Rehabilitator has served the Petition, together with the attached Exhibits (which included a copy of this Order) and Notice of Hearing:

- (1) Via U.S. First Class Mail on the following interested parties:
 - (a) Counsel for the Surplus Noteholders' authorized agents—Lori McAllister and Daniel Brown;
 - (b) The Indenture Trustee for the Surplus Notes— Nancy Johnson at The Bank of New York Mellon Trust Company, N.A.;
 - (c) The Illinois Department of Insurance, Market Conduct Examination Section;
 - (d) The U.S. Internal Revenue Service (collectively, the "Personal Service Parties"); and
- (2) On other potentially interested parties (the "Potentially Interested Parties") by posting electronic copies on the DIFS website, www.michigan.gov/difs, under the

section “Who We Regulate,” the subsection “Receiverships,” and the sub-subsection “American Community Mutual”; and

WHEREAS, the Rehabilitator intends to serve this Order in the same manner outlined above, i.e., via U.S. First Class Mail with respect to the Personal Service Parties and via posting on the DIFS website with respect to other Potentially Interested Parties; and

WHEREAS, the Court having reviewed the Petition and any objections or responses filed thereto, having heard oral arguments on December 3, 2014 at 9:00 a.m., and being otherwise fully advised;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court APPROVES and GRANTS the Petition, authorizes payment of the Second Interim Distribution from the assets of American Community’s rehabilitation estate, and authorizes the Rehabilitator and/or Special Deputy Rehabilitator to execute any necessary documentation and take such other action required to finalize the Second Interim Distribution.

2. The Second Interim Distribution shall be paid in an amount representing a 36.36% pro-rata portion of the outstanding principal balances on the Surplus Noteholders’ respective Surplus Notes. Accordingly, \$4 million will be distributed on the FRP Note (leaving an unpaid principal balance of \$7 million) and \$2 million will be distributed on the Trapeza Note (leaving an unpaid principal balance of \$3.5 million), for a total Second Interim Distribution in the amount of \$6 million.

3. The Second Interim Distribution shall be free and clear of any liens, claims, encumbrances, or other interests.

4. Any objections to the Petition that have not been stricken, withdrawn, waived, or settled, and all reservations of rights pertaining to the Petition included therein or otherwise made in any pleading, correspondence, written or oral statement, or other communication to: (a) the Court; (b) American Community, the Rehabilitator/Special Deputy Rehabilitator, or their counsel; (c) the Surplus Noteholders or their counsel; or (d) other parties in interest, are OVERRULED.

5. American Community, the Rehabilitator/Special Deputy Rehabilitator, and the Surplus Noteholders, together with their respective directors, officers, employees, shareholders, members, partners, agents, representatives, third-party professionals, parent companies, subsidiaries, predecessors, successors, heirs, and assigns, shall not have or incur any liability to any person or entity (including each other) for any act or omission made in good faith in connection with or related to the Second Interim Distribution.

6. The Surplus Noteholders shall accept and be solely responsible for any federal, state, or local tax consequences to the Surplus Noteholders arising out of or relating to the Second Interim Distribution.

7. The Court authorizes, approves, and/or ratifies the Rehabilitator's service of the Petition, together with the attached Exhibits (which included a copy of this Order), the Notice of Hearing, and this Order, in the manner described above and in Paragraphs 23 and 24 of the Petition. The Court finds that service in this

manner is reasonably calculated to give interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

8. This Order shall bind all parties that may have an interest in American Community, whether presently known or unknown, and all parties that received actual or constructive notice of the Petition, including without limitation the following: (1) American Community; (2) the Rehabilitator/Special Deputy Rehabilitator; (3) the Surplus Noteholders; (4) the U.S. Internal Revenue Service; (5) any holders of claims against American Community of any kind, whether known or unknown, asserted or unasserted, disputed or undisputed, matured or unmatured, liquidated or unliquidated, fixed or contingent, arising in law or equity; (6) all parties in interest; and (7) all federal, state, and local governmental entities and fiscal intermediaries thereof. This Order shall bind each and every one of the foregoing persons or entities, without limitation, regardless of whether or not: (a) any claims such party may have are impaired pursuant to this Order; (b) such person or entity has responded to the Petition or participated in the hearing thereon; and/or (c) such person or entity has filed or is deemed to have filed a proof of claim, made a demand for payment of any claim, or has made an appearance in the American Community rehabilitation proceeding.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'W S Collette', written over a horizontal line.

Honorable William E. Collette
Circuit Court Judge

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,

[IN REHABILITATION]

Respondent.

Christopher L. Kerr (P57131)
Assistant Attorney General
Attorney for Petitioner
Corporate Oversight Division
P. O. Box 30755
Lansing, MI 48909
(517) 373-1160

PROOF OF SERVICE

The undersigned certifies that a copy of the **Order Approving Payment of Second Interim Distribution to Surplus Noteholder Creditors**, together with this Proof of Service, was served upon the parties listed below by mailing the same to them at their respective addresses with first class postage fully prepaid thereon, on the 3rd day of December, 2014:

Lori McAllister
Dykema Gossett PLLC
Attorneys for Surplus Noteholders
Trapeza CDO IX, Ltd. and CDO X, Ltd.
Capitol View
201 Townsend Street, Suite 900
Lansing, MI 48933

Daniel Brown
Brown Legal Advisors, LLC
Attorneys for HoldCo Advisors, L.P. on
behalf of Surplus Noteholder Fin.
Restructuring Partners, Ltd.
5315 North Clark Street
Suite 601
Chicago, IL 60640

The Bank of New York Mellon
Trust Company, N.A., Indenture Trustee
Attn: Ms. Nancy R. Johnson, V. P.
Senior Client Service Manager
525 William Penn Place, 38th Floor
Pittsburgh, PA 15259

Illinois Department of Insurance
Attn: Market Conduct Examination
320 West Washington Street
Springfield, IL 62767

U.S. Internal Revenue Service
P.O. Box 409101
Ogden, UT 84409

And on all other parties in interest by posting electronic copies on the DIFS website, www.michigan.gov/difs, under the section "Who We Regulate," the subsection "Receiverships," and the sub-subsection "American Community Mutual."


Linda S. Miers, Legal Secretary