

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



**BILL SCHUETTE**  
ATTORNEY GENERAL

P.O. Box 30755  
LANSING, MICHIGAN 48909

December 19, 2013

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

*Via U.S. First Class Mail*

**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 Establishing Claims Bar Date**, which was entered by the Court on December 18, 2013.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher L. Kerr".

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

Enc

c Lori McAllister (w/ enc)  
Daniel Brown (w/ enc)  
Phillip L. Sternberg (w/ enc)  
Ronald W. Ryan (w/ enc)  
Mollie Dajani Perez (w/ enc)

Christopher M. Rohrer (w/ enc)  
Illinois Department 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.

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**ORDER ESTABLISHING CLAIMS BAR DATE**

At a session of said Court held in the  
Circuit Courtrooms for the  
County of Ingham, State of Michigan  
on the 18<sup>th</sup> day of December, 2013.

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")<sup>1</sup> has filed a Petition to Establish Claims Bar Date (the "Petition") requesting this Court to approve the

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<sup>1</sup> 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.

Rehabilitator's establishment of a 90-day bar date for asserting any previously unasserted claims against the American Community rehabilitation estate; 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**, prior to this rehabilitation (in April and December 2005), American Community issued two surplus notes totaling \$30 million in exchange for

cash (the "Surplus Notes"). One Surplus Note in the principal amount of \$20,000,000 is currently held by Financials Restructuring Partners, Ltd., which is represented by its authorized agent, HoldCo Advisors, L.P. The other Surplus Note in the principal amount of \$10,000,000 is currently held by Trapeza CDO IX, Ltd. and Trapeza CDO X, Ltd., which are represented by their authorized agent Trapeza Capital Management, LLC. The holders of the Surplus Notes are collectively referred to in this Order as the "Surplus Noteholders"; and

**WHEREAS**, the entire \$30 million (combined) that was loaned to American Community under the Surplus Notes remains outstanding, and the resulting claims of the Surplus Noteholders constitute 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**, the Rehabilitator and Special Deputy Rehabilitator have marshaled all significant assets of American Community, and have paid in full all known, allowed, and undisputed claims against American Community's rehabilitation estate having higher payment priority than the Surplus Notes; and

**WHEREAS**, other than the Surplus Noteholders' claims and Class 1 claims for the ongoing and future expenses of administering American Community's rehabilitation estate (the "Administrative Expense Claims"), the Rehabilitator and Special Deputy Rehabilitator are only aware of the following claims that have been previously asserted against the rehabilitation estate: (a) a Class 6 fine owed to the

Illinois Department of Insurance that is allowed but subject to a delayed payment agreement (the "Illinois Fine"); and (b) four separate claims against the American Community rehabilitation estate (one involving multiple former officer claimants) that are disputed, remain outstanding, and are either pending on appeal or subject to ongoing discussions (the "Disputed Outstanding Claims"); and

**WHEREAS**, this Court agrees with the Rehabilitator's and Special Deputy Rehabilitator's determination that establishing a claims bar date ninety (90) days after entry of this Order, or on March 18, 2014, is fair to other potential claimants that have not previously asserted claims against American Community's rehabilitation estate because: (a) this rehabilitation proceeding has been ongoing for over three years and eight months, affording other potential claimants an inordinate amount of time to assert any claims that they believe they may have against the rehabilitation estate; and (b) American Community no longer has any insurance policies issued and in force, and any additional policyholder claims made at this time would be contractually time-barred; and

**WHEREAS**, this Court finds that the above-cited provisions of the Rehabilitation Order and Chapter 81 of the Insurance Code authorize the Rehabilitator to establish a 90-day bar date by which potential claimants must assert any previously unasserted claims against the American Community rehabilitation estate. The Court further agrees with the Rehabilitator's and Special Deputy Rehabilitator's determination that establishing this claims bar date is necessary and appropriate to terminate the estate's potential liability for previously

unasserted claims as of a date certain (versus the current indeterminate period), which promotes the effective and efficient administration of the rehabilitation estate and is the only way to ultimately bring closure to this rehabilitation proceeding; and

**WHEREAS**, although existing claimants are not affected by the Petition or this Order, 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) Counsel for the respective claimants asserting the Disputed Outstanding Claims—Phillip Sternberg, Ronald Ryan, Mollie Dajani Perez, and Christopher Rohrer;

(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](http://www.michigan.gov/difs), under the section “Who We Regulate” and the subsection “American Community Mutual”; and

**WHEREAS**, in an effort to provide other Potentially Interested Parties notice of the Petition and an opportunity to be heard, the Rehabilitator additionally published a Notice, in the form attached as Exhibit B to the Petition, in the Legal Notices section of the USA Today for one day at least five days prior to the date the Petition was set for hearing; 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**, upon entry of this Order, the Rehabilitator will thereafter publish a Notice, in the form attached as Exhibit C to the Petition, in the Legal Notices section of the USA Today for one day within ten (10) days after the Order is entered; and

**WHEREAS**, the Court having reviewed the Petition and any objections or responses filed thereto, having heard oral arguments on December 18, 2013 at 11:00 a.m., and being otherwise fully advised;

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Court APPROVES and GRANTS the Petition, and establishes a claims bar date of **March 18, 2014**, on or before which any potential claimant that has not previously asserted a claim against the American Community rehabilitation estate must make his, her, or its claim, failing which the claim will be forever barred.

2. To make a valid claim, any potential claimant must submit in writing to the Rehabilitator's counsel, on or before **March 18, 2014**, a "Proof of Claim" that includes all of the applicable information required under MCL 500.8136(1). The Proof of Claim must be received by the Rehabilitator's counsel by **March 18, 2014**, and mailed to the following address: Christopher L. Kerr, Assistant Attorney

General, Attorney for the Rehabilitator, Corporate Oversight Division, P. O. Box 30755, Lansing, MI 48909.

3. For purposes of clarity, claims that have already been asserted against American Community's rehabilitation estate prior to the filing of the Petition, specifically, the Surplus Noteholders' claims, the Administrative Expense Claims, the Illinois Fine, and the Disputed Outstanding Claims (as those terms are defined in the Petition) are not affected by this Order. These claims are recognized as having been made, and the parties asserting them need take no further action in this rehabilitation proceeding (i.e., by filing a separate Proof of Claim) to preserve their claims against the established bar date.

4. 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 16-19 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.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
Honorable William E. Collette  
Circuit Court Judge

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

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

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**PROOF OF SERVICE**

The undersigned certifies that a copy of the **Order Establishing Claims Bar Date**, 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 19th day of December, 2013:

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.  
4851 N. Winchester Ave.  
Third Floor  
Chicago, IL 60640

Phillip L. Sternberg  
Couzens, Lansky, Fealk, Ellis,  
Roeder & Lazar, P.C.  
Attorneys for ACMIC Former  
Officers M. Tobin, E. Downey, F.  
Dempsey, M. McCollom, B.  
McCrohan & L. Gola  
39395 W. Twelve Mile, Suite 200  
Farmington Hills, MI 48331

Mollie Dajani Perez  
Katz, Friedman, Eagle, Eisenstein,  
Johnson & Bareck, P.C.  
Attorney for same (law firm)  
77 West Washington Street  
20<sup>th</sup> Floor  
Chicago, IL 60602

Ronald W. Ryan  
Attorney for Thomas R. Tibble  
136 East Michigan Avenue  
Suite 800  
Kalamazoo, MI 49007

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

Christopher M. Rohrer  
Law Office of Christopher M. Rohrer, LLC  
3738 Osage Beach Parkway  
Suite 102  
Osage Beach, MO 65065

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

And on all other parties in interest by: (a) posting electronic copies on the Department of Insurance and Financial Services website, [www.michigan.gov/difs](http://www.michigan.gov/difs), under the section "Who We Regulate" and the subsection "American Community Mutual"; and (b) publishing a Notice in the Legal Notices section of the USA Today for one day within ten days after the date the Order was entered.

  
Linda S. Miers, Legal Secretary