

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

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

Petitioner,

Case 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
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(517) 373-1160

**EX PARTE PETITION FOR APPROVAL TO SETTLE
THREE DISPUTED PENDING CLAIMS AGAINST
AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY**

Annette E. Flood, Director of the Michigan Department of Insurance and
Financial Services,¹ as Rehabilitator of American Community Mutual Insurance

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.

Company (the "Rehabilitator"), by and through her attorneys, Bill Schuette, Attorney General, and Christopher L. Kerr, Assistant Attorney General, petitions this Court pursuant to MCL 500.8115(1) to approve the settlements reached with respect to three (3) disputed claims currently pending against American Community Mutual Insurance Company ("American Community"). In support of this Ex Parte 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"). The Rehabilitation Order appointed the Commissioner/Director as the Rehabilitator of American Community as required by MCL 500.8113(1), and further appointed James E. Gerber as the Special Deputy Rehabilitator under MCL 500.8114(1).

2. MCL 500.8115(1) governs legal actions or proceedings involving American Community 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 Community arising after entry of the Rehabilitation Order, MCL 500.8114(2) and the Rehabilitation Order authorize the Rehabilitator to "take such action as he [or she] considers necessary or appropriate to reform or revitalize American Community." Rehabilitation Order,

p 6, ¶ 10. In addition, this statute, as incorporated by the Rehabilitation Order, grants the Rehabilitator “full power and authority to direct and manage American Community . . . and to deal in totality with the property and business of” the company. Rehabilitation Order, p 5, ¶ 8.

4. Pursuant to the foregoing authority, the Rehabilitator seeks the Court’s approval to settle the following three (3) disputed claims that are currently pending against American Community:

a. ***Rocky Mountain Holdings LLC v Steven Randolph v American Community***, Miller County (Missouri) Circuit Court, Case No. 12ML-AC00264. On May 23, 2013, Defendant Steven Randolph (“Randolph”) filed a Cross Petition/Third-Party Complaint against American Community seeking payment/indemnity/reimbursement relative to the complaint filed by Rocky Mountain Holdings, LLC (“Rocky Mountain”) against Randolph demanding payment of \$15,409.47, plus interest and costs, arising from medical services that Rocky Mountain provided to Randolph on July 26, 2008. Although Randolph was formerly insured under an American Community insurance policy at the time Rocky Mountain provided the at-issue medical services, American Community disputed the Missouri court’s jurisdiction and further disputed that Randolph was entitled to insurance coverage for all or part of Rocky Mountain’s services under the terms of his insurance policy. Through negotiations, however, Randolph has agreed to dismiss his Cross Petition/Third-Party Complaint against American Community and to release American Community from any and all liability relating to his claim in exchange for American Community’s payment of \$5,780.00.

b. ***In re: Liberty Hospital, Nathan Young, and American Community***. Liberty Hospital of Liberty, Missouri (“Liberty”) demanded payment of its total billed charges in the amount of \$35,623.28 from Nathan Young (“Young”), an individual formerly insured under an American Community health insurance policy, arising from medical services that Liberty provided to Young between August 30 and September 4, 2009. Although Young was formerly insured under an American Community insurance policy at the time Liberty provided the at-issue medical services, American Community disputed that Liberty had any contractual or other direct claim against it, and further disputed that Young was entitled to insurance coverage for all or part of Liberty’s services under the terms of his insurance policy. Through negotiations, however, Liberty has agreed to

release American Community and Young from any and all liability relating to its claim in exchange for American Community's payment of \$21,122.33.

c. *In re: Carioscia v Richman Subrogation Lien Settlement.* On June 27, 2013, the claimant law firm Katz, Friedman, Eagle, Eisenstein, Johnson & Bareck, P.C. of Chicago, Illinois ("Claimant") filed a "Motion to Adjudicate Subrogation Lien of American Community Health Plan" in the Cook County, Illinois, Circuit Court, Case No. 2009-L-005776. Claimant's motion sought payment of a 1/3 contingency attorney fee under the Illinois common fund doctrine relative to the paid settlement of a subrogation lien that American Community had asserted, through its third-party subrogation contractor Healthcare Recoveries a/k/a HRI a/k/a Trover Solutions, Inc. ("HRI"), in connection with the lawsuit filed by American Community's insured (and Claimant's client) Cheryl Carioscia against Babette Richman. If successful, the 1/3 recovery sought by Claimant would have totaled \$23,708.40. American Community disputed the Illinois court's jurisdiction, and American Community and HRI further disputed that Claimant was entitled to recover any portion of their subrogation lien settlement proceeds under the common fund doctrine or otherwise. Through negotiations, however, Claimant has agreed to release American Community and HRI from any and all liability relating to its claim in exchange for American Community's payment of \$5,200 and HRI's payment of \$1,300.

5. With limited exceptions not applicable here, Paragraph 14 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. Moreover, for the reasons indicated, American Community disputes that the claimants identified in paragraphs 4(a) – (c) above are "Creditors" having valid and/or direct claims against American Community or its assets. Accordingly, an order approving these proposed settlements is needed from the Court.

6. The Rehabilitator believes that the settlement of these 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 Community's creditors, policyholders, and the public. In each case, a comparison of the settlement amount to the amount of the original 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 underlying disputes were adjudicated to judgment in this rehabilitation proceeding.

7. Providing personalized notice of this Ex Parte Petition and any resulting Order to all parties that may have a potential 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 all potentially interested parties 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 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," the subsection "Receiverships," and the sub-subsection "American Community 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 matters, 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 Community 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: August 8, 2014