

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.

Christopher L. Kerr (P57131)
Allison M. Dietz (P73612)
Assistant Attorneys General
Attorneys for Petitioner
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**EX PARTE PETITION FOR APPROVAL TO
SETTLE ONE PENDING LAWSUIT AND ONE PENDING CLAIM
AGAINST AMERICAN COMMUNITY**

Ken Ross, 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, Assistant Attorney General, petitions this Court pursuant to MCL 500.8115(1) to approve the settlement of one (1) pending lawsuit and one (1) disputed claim 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 an Order placing American Community into Rehabilitation and appointing the Commissioner as the Rehabilitator of American Community.

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. The Rehabilitator seeks the Court's approval to settle the following insurance coverage disputes that are currently pending against American Community:

- a. *Andy & Dana Jones v. American Community & Roger Overby*. This lawsuit is pending in the 31st Judicial Circuit Court in New Madrid County, Missouri. The Complaint alleges claims for breach of contract and vexatious denial of an insurance claim against American Community arising from its denial of Plaintiff Dana Jones' request for the payment of certain maternity benefits. The Complaint also alleges a claim against Plaintiffs' insurance agent, Roger Overby, for misrepresentation. American Community denied coverage because Ms. Jones incurred the maternity expenses before the expiration of the 270-day waiting period applicable to maternity coverage found in her health insurance policy. Plaintiffs sought to recover \$38,757.24 for the payment of medical bills that were not covered due to the waiting period, plus additional amounts for attorney fees, interest, and costs. Through negotiations, Plaintiffs have agreed to dismiss this lawsuit in exchange for American Community's payment of \$5,000.
- b. *In the matter of Barbara Veneklasen v. American Community*. Ms. Veneklasen and her attorneys were prepared to file in the Ingham County Circuit Court a petition for relief from the Rehabilitation Order's injunction against new lawsuits to allow the filing of Ms. Veneklasen's accompanying Complaint for Declaratory Relief. The proposed Complaint sought a declaratory judgment against American Community arising from its rescission of Ms. Veneklasen's health insurance policy. American Community rescinded the policy based upon material misrepresentations made in Ms. Veneklasen's policy application. Ms. Veneklasen sought to recover \$79,366.72 for the payment of medical bills that were not covered due to the rescission, additional amounts for interest (penalty, statutory, and pre-filing), attorney fees, and costs, and reinstatement of her policy. Through negotiations, Ms. Veneklasen has agreed to release American Community from any and all claims or lawsuits that she may have against the company in exchange

for American Community's payment of \$30,000, plus negotiation of her rescission refund check in the amount of \$1,905.33.

4. 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. The claims asserted in the above-referenced matters arise from services provided or actions taken prior to the date of the Rehabilitation Order. Moreover, the exceptions in Paragraph 14 do not apply because Ms. Veneklasen is not a "policyholder" if her policy was properly rescinded, while Mr. and Mrs. Jones are not "Creditors" if the treatment at issue was not covered by their American Community policy. Accordingly, an order approving these proposed settlements is needed from the Court.

5. The Rehabilitator believes that the settlement of these disputed 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. A comparison of the settlement amounts to the amount of the claimants' original claims evidences that these settlements are reasonable and will limit potential liability to the Rehabilitation Estate. Moreover, the settlements are relatively modest in amount and would likely be exceeded by legal and other costs if these cases were adjudicated to judgment in this Rehabilitation or otherwise.

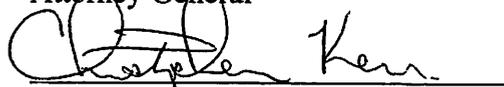
6. Providing personalized notice of this Ex Parte Petition and any resulting Order to all parties that may have an interest in this matter is impossible at this time because there has been no claims submission or other process to identify such parties. Moreover, attempting to identify and personally notify parties in interest would be time-intensive and costly to American Community'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 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 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" section of OFIR's website.

Respectfully submitted,

Bill Schuette
Attorney General

A handwritten signature in black ink, appearing to read "Christopher L. Kerr", is written over a horizontal line.

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Dated: February 22, 2011