

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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Christopher L. Kerr (P57131)  
David W. Silver (P24781)  
Assistant Attorneys General  
Attorneys for Petitioner  
Corporate Oversight Division  
P. O. Box 30755  
Lansing, MI 48909  
(517) 373-1160

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**EX PARTE PETITION FOR APPROVAL TO  
SETTLE FIVE PENDING LAWSUITS 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, Michael A. Cox, Attorney General, and Christopher L. Kerr, Assistant Attorney General, petitions this Court pursuant to MCL 500.8115(1) to approve the settlements reached in five (5) lawsuits 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 five lawsuits that are currently pending against American Community:

- a. *Adams v American Community*. This lawsuit is pending in Lancaster County, Nebraska. The Complaint alleges claims against American Community for breach of contract and bad faith. In addition, Plaintiffs seek a declaratory judgment declaring the rights and obligations of the parties. Plaintiffs' claims arise from American Community's rescission of the health insurance policy issued to them. American Community rescinded the policy based upon material misrepresentations made in Plaintiffs' policy application. Plaintiffs sought to recover \$56,682.03 for the payment of medical bills that were not covered due to the rescission, plus attorney fees and costs. Through negotiations, Plaintiffs have agreed to dismiss the lawsuit in exchange for American Community's payment of \$16,750.
- b. *Grooms v American Community v Bally Spartan Golf Club*. This lawsuit was filed in the State of Michigan, 16<sup>th</sup> District Court and is currently pending on appeal in Wayne County Circuit Court. The Complaint alleges a claim for breach of contract against American Community arising from its rescission of Plaintiff's health insurance policy. American Community rescinded the policy based upon material misrepresentations made in Plaintiff's policy application. American Community also filed a Third-Party Complaint against Plaintiff's employer, Bally Spartan Golf Club, seeking indemnification because the case may have triggered ERISA as Plaintiff's coverage may have been part of an employee welfare benefit plan. Plaintiff sought to recover \$15,839.66 for the payment of medical bills that were not covered due to the rescission, plus attorney fees and costs. Through negotiations, Plaintiff has agreed to dismiss the lawsuit in exchange for American Community's payment of \$3,500.
- c. *Perrault v American Community*. This lawsuit is pending in the Superior Court in Maricopa County, Arizona. The Complaint alleges claims for breach of contract

and bad faith against American Community arising from its rescission of Plaintiff's health insurance policy. The Complaint also alleges a claim of professional negligence against the insurance agent involved. American Community rescinded the policy based upon material misrepresentations made in Plaintiff's policy application. Plaintiff sought to recover \$64,559.85 for the payment of medical bills that were not covered due to the rescission, plus attorney fees, costs, and an award of punitive damages. Through negotiations, Plaintiff has agreed to dismiss the lawsuit in exchange for American Community's payment of \$15,000.

- d. *Ekberg v American Community*. This lawsuit is pending in Hall County District Court, Nebraska. The Complaint alleges a claim for breach of contract against American Community arising from its rescission of Plaintiff's health insurance policy. American Community rescinded the policy based upon material misrepresentations made in Plaintiff's policy application. Plaintiff sought to recover \$30,471.87 for the payment of medical bills that were not covered due to the rescission, plus attorney fees and costs. Through negotiations, Plaintiff has agreed to dismiss the lawsuit in exchange for American Community's payment of \$10,000.
- e. *Yarbrough v. American Community*. This lawsuit is pending in the Justice Court in Maricopa County, Arizona. The Complaint alleges claims for breach of contract and bad faith against American Community arising from its failure to waive Plaintiff's health insurance policy deductible relative to the payment of medical bills associated with an accidental injury. American Community refused to waive Plaintiff's deductible because the conditions for doing so pursuant to the policy terms had not been satisfied. Plaintiff sought to recover \$2,500, or the amount of the deductible. Through negotiations, Plaintiff has agreed to dismiss the lawsuit in exchange for American Community's payment of \$1,529.66.

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 of the Plaintiffs in these lawsuits 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 the Plaintiffs are not "policyholders" if their policies were properly rescinded (Plaintiffs Adams, Grooms, Perrault, and Ekberg) or because the claims are not based upon the provision of health care services

(Plaintiff Yarbrough). Accordingly, an order approving these proposed settlements is needed from the Court.

5. The Rehabilitator believes that the settlement of these lawsuits 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 Plaintiff's 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 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](http://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 lawsuits, 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

Michael A. Cox  
Attorney General

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

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

Dated: October 14, 2010