

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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Jason R. Evans (P61567)  
Assistant Attorneys General  
Attorneys for Petitioner  
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**EX PARTE PETITION FOR APPROVAL TO  
SETTLE PENDING CLAIMS AGAINST AMERICAN COMMUNITY**

R. Kevin Clinton,<sup>1</sup> 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 and Jason R. Evans, Assistant Attorneys General, petitions this Court pursuant to MCL 500.8115(1) to approve the settlement of disputed claims currently pending against American

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<sup>1</sup> Governor Snyder duly appointed R. Kevin Clinton to succeed Ken Ross as the Commissioner of OFIR effective April 18, 2011. Consequently, Commissioner Clinton became the Rehabilitator of American Community on that date.

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 OFIR 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 disputed claims pending against American Community:

- a. *In re: Bronson Hospital (as assignee of William Carlee) and the Estate of William Carlee v. American Community.* Bronson Hospital and the Estate of William Carlee have asserted claims (a formal lawsuit has not been filed) against American Community due to its rescission of Mr. Carlee's policy of insurance and American Community's corresponding refusal to pay Mr. Carlee's medical bills resulting from certain treatment. American Community rescinded Mr. Carlee's policy based upon material misrepresentations made in his policy application. After his death, the Estate of William Carlee assigned its rights to sue American Community to Bronson Hospital, one of Mr. Carlee's unpaid medical providers. Bronson Hospital sought payment from American Community of Mr. Carlee's medical bills totaling \$189,882.54, plus 12% statutory interest, attorney fees, and costs. Through negotiations, Bronson Hospital has agreed to release all claims it has against American Community relating to and/or arising from any and all medical care and treatment that Bronson provided to William Carlee at any time, in exchange for American Community's payment of \$63,000. In addition, the Estate of William Carlee has agreed to release its claims against American Community as to any and all other unpaid medical bills of William Carlee in exchange for American Community's payment of \$1,143.81.

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 Bronson Hospital and the Estate of William Carlee 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 Mr. Carlee is not a "policyholder" if his policy was properly rescinded. Accordingly, an order approving this proposed settlement 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 the corresponding 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 amount to the amount of the original claims evidences that this settlement is reasonable and will limit potential liability to the Rehabilitation Estate. Moreover, the settlement is relatively modest in amount and would likely be exceeded by legal and other costs if this case 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 settlement reached in the above-referenced matter, in the amounts and on the terms more fully set forth in the corresponding 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

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Dated: October 27, 2011