

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

R. KEVIN CLINTON, COMMISSIONER
OF THE OFFICE OF FINANCIAL AND
INSURANCE REGULATION,

Petitioner,

Case No. 12-1173-CR

HON. WILLIAM E. COLLETTE

v

AMERICAN FELLOWSHIP MUTUAL
INSURANCE COMPANY,

Respondent.

Christopher L. Kerr (P57131)
Jason R. Evans (P61567)
Assistant Attorneys General
Attorneys for Petitioner
Corporate Oversight Division
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**EX PARTE PETITION FOR APPROVAL TO SETTLE TWO PENDING
THIRD-PARTY AUTOMOBILE NEGLIGENCE LAWSUITS AGAINST
AMERICAN FELLOWSHIP MUTUAL INSURANCE COMPANY**

R. Kevin Clinton, Commissioner of the Michigan Office of Financial and Insurance Regulation, as Rehabilitator of American Fellowship 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 settlements reached in two (2) third-party automobile negligence lawsuits

currently pending against American Fellowship Mutual Insurance Company (“American Fellowship”). In support of this *Ex Parte* Petition, the Rehabilitator states as follows:

1. On October 29, 2012, this Court entered an Order placing American Fellowship into Rehabilitation and appointing the OFIR Commissioner as the Rehabilitator of American Fellowship.

2. MCL 500.8115(1) governs legal actions or proceedings involving American Fellowship 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 Fellowship arising after entry of the Rehabilitation Order, MCL 500.8114(2) and the Rehabilitation Order authorize the Rehabilitator to “take such action as he considers necessary or appropriate to reform or revitalize American Fellowship.” Rehabilitation Order, p 6, ¶ 11. In addition, this statute, as incorporated by the Rehabilitation Order, grants the Rehabilitator “full power and authority to direct and manage American Fellowship . . . and to deal in totality with the property and business of” the company. Rehabilitation Order, p 5, ¶ 8.

4. The Rehabilitator seeks the Court’s approval to settle the following two lawsuits that are currently pending against American Fellowship:

a. *Souzan Kamel Ankouni v Rhonda Lenora Hines*. This third-party automobile negligence lawsuit is pending in the Wayne County Circuit Court

in Detroit, Michigan, assigned Case No. 11-012081-NI. Plaintiff's Complaint was filed pursuant to the Michigan No-Fault Insurance Act, MCL 500.3101 – 500.3179, and asserts claims for negligence, breach of contract, and uninsured motorist coverage against American Fellowship's insured, Rhonda Lenora Hines, for injuries allegedly caused by Ms. Hines in connection with an automobile accident that occurred on or around September 14, 2011 in Wayne County, Michigan. American Fellowship assumed Ms. Hines' defense and denied Plaintiff's claims because her alleged injuries do not satisfy the statutory threshold for third-party tort liability under MCL 500.3135. Plaintiff sought the payment of at least \$100,000 in damages, plus interest, costs, and attorney fees. Through negotiations, Plaintiff has agreed to dismiss her lawsuit with prejudice and to release American Fellowship from any and all liability in exchange for American Fellowship's payment of \$7,500.00.

b. *Diane Habel v John Bolyea*. This third-party automobile negligence lawsuit is pending in the Macomb County Circuit Court in Mount Clemens, Michigan, assigned Case No. 11-004741-NI. Plaintiff's Complaint was filed pursuant to the Michigan No-Fault Insurance Act, MCL 500.3101 – 500.3179, and asserts a claim for negligence against American Fellowship's insured, John Bolyea, for injuries allegedly caused by Mr. Bolyea in connection with an automobile accident that occurred on or around October 28, 2010 in Macomb County, Michigan. American Fellowship assumed Mr. Bolyea's defense and denied Plaintiff's claims because her alleged injuries do not satisfy the statutory threshold for third-party tort liability under MCL 500.3135. Plaintiff's Complaint sought damages in excess of \$25,000, plus interest, costs, and attorney fees. Through negotiations, Plaintiff has agreed to dismiss her lawsuit with prejudice and to release American Fellowship from any and all liability in exchange for American Fellowship's payment of \$5,000.00.

5. With limited exceptions not applicable here, Paragraph 15 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 third-party automobile negligence claims asserted in each of the foregoing cases arise from events that occurred prior to the date of the Rehabilitation Order. More importantly, the exception in Paragraph 15 authorizing the payment of pre-rehabilitation claims "arising from covered losses under

American Fellowship insurance policies” does not apply because American Fellowship disputes the existence and/or amount of insurance coverage for these third-party automobile negligence claims. Accordingly, an order approving these proposed settlements is needed from the Court.

6. 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 Fellowship’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 and other costs if these cases were adjudicated to judgment in this Rehabilitation or otherwise.

7. 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 Fellowship’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 Fellowship 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 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 Fellowship Mutual" section of OFIR's website.

Respectfully submitted,

Bill Schuette
Attorney General

A handwritten signature in black ink, appearing to read "Christopher Kerr", written over the typed name below.

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Dated: January 9, 2013