

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)
Jason R. Evans (P61567)
Assistant Attorneys General
Attorneys for Petitioner
Corporate Oversight Division
P. O. Box 30755
Lansing, MI 48909
(517) 373-1160

**PETITION FOR APPROVAL OF SETTLEMENT RESOLVING
PRE-REHABILITATION CLAIM FOR SUPPLEMENTAL RETIREMENT BENEFIT**

R. Kevin Clinton, 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 for approval to pay the settlement amount resolving the pre-Rehabilitation claim of a former American Community executive related to his supplemental retirement benefit. In support of this 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”). Pursuant to MCL 500.8113(1), the Rehabilitation Order appointed the Commissioner as the Rehabilitator of American Community.

2. As required by MCL 500.8113(1), the Rehabilitation Order directed the Rehabilitator to “take immediate possession of all the assets of American Community and administer those assets under the Court's general supervision.” Rehabilitation Order, p 4, ¶ 3.

3. The Rehabilitation Order provides that “[a]mong his plenary powers provided by law, the Rehabilitator shall have full power ... to deal in totality with the property and business of American Community.” Rehabilitation Order, p 5, ¶ 8.

4. Additionally, the Rehabilitation Order provides that “[p]ursuant to MCL 500.8114(2) and (4), the Rehabilitator may take such action as he considers necessary or appropriate to reform or revitalize American Community....” Rehabilitation Order, p 6, ¶ 10.

5. Pursuant to the Rehabilitation Order, “[a]ll Creditor claims against American Community are within the exclusive jurisdiction of this Court and will be determined, resolved, paid, and/or discharged, in whole or in part, according to the terms and conditions approved by the Court.” Rehabilitation Order, p 6, ¶ 11.

6. With limited exceptions for employee wages and health care provider claims, the Rehabilitation Order prohibits the Rehabilitator from paying pre-Rehabilitation Creditor claims until further order of the Court. Rehabilitation Order, p. 7, ¶ 14.

7. In December 2011, after marshaling all the assets of American Community and reviewing the company’s books and records, the Rehabilitator determined that there were

sufficient assets available to pay the outstanding, accrued claims of certain identified Creditors of American Community. The Rehabilitator sought the Court's approval to pay these claims. Specifically, the Rehabilitator sought approval to pay: (a) the unpaid claims of fifteen non-provider, general Creditor vendors that accrued prior to entry of the Rehabilitation Order; (b) unpaid agent commissions that accrued either prior to entry of the Rehabilitation Order or during the Rehabilitation after the Rehabilitator suspended further payment of agent commissions on September 16, 2010; and (c) settlement amounts resolving the claims of six former American Community executives that accrued prior to entry of the Rehabilitation Order for the unpaid balances under their respective supplemental retirement, benefits equalization, or severance agreements.

8. The Rehabilitator filed a petition for approval to pay these claims on December 14, 2011, which this Court approved after hearing by Order dated January 4, 2012.

9. With respect to the settlement payments to the six former American Community executives, the prior petition explained that the Rehabilitator made "buyout" offers and sent settlement agreements and releases to these individuals, who had supplemental retirement, benefits equalization, or severance agreements that were fully effective and in active pay status prior to entry of the Rehabilitation Order. Because these payments constituted pre-Rehabilitation claims/debts, however, the Rehabilitator suspended the periodic payments under these agreements in April 2010, in compliance with the Rehabilitation Order.

10. As the prior petition also noted, as of the date that the petition was filed only five of the six former executives had agreed to accept the buyout offers and signed settlement agreements to that effect. The lone holdout at that time was Donald Bonner, whose periodic payments under his supplemental retirement agreement were suspended following entry of the

Rehabilitation Order. Mr. Bonner executed his supplemental retirement agreement on May 22, 1986, and at the time the Rehabilitation Order was entered he was receiving \$4,278.18 monthly under that agreement.

11. Mr. Bonner has now accepted the buyout offer by executing a Settlement Agreement and Release (“Agreement”), a copy of which is attached as Exhibit A. Pursuant to the Agreement, American Community will pay Mr. Bonner the total amount of \$285,853.02, in exchange for which Mr. Bonner releases any claims he may have against American Community relating to his supplemental retirement agreement and his employment generally.

12. The Rehabilitator has determined that payment of the settlement amount to liquidate and fully resolve Mr. Bonner’s pre-Rehabilitation claim, under the terms contained in the attached Agreement, is an appropriate and necessary step in the ongoing process to reform and revitalize American Community.

13. After paying the settlement of Mr. Bonner’s pre-Rehabilitation claim, American Community will still have sufficient assets to pay all currently-accrued policyholder and Creditor claims. With the exception of the surplus note holders’ claims discussed below, the Rehabilitator also believes that sufficient assets will remain to pay all other anticipated future policyholder and Creditor claims.

14. Prior to the Rehabilitation, American Community issued two surplus notes totaling \$30 million, which remain outstanding. As the attached Proof of Service reflects, a copy of this Petition, the proposed Order approving the settlement of Mr. Bonner’s pre-Rehabilitation claim (attached as Exhibit B), and a Notice of Hearing on this Petition have been served via regular mail on the two holders of the surplus notes: (1) Vik Ghei and Misha Zaitzeff, founding partners and representatives of surplus note holder HoldCo Advisors, LP; and (2) Carolyn Thagard of

Trapeza Capital Management, LLC on behalf of surplus note holder Credit Suisse, Cayman Branch. These papers have also been served via regular mail on the trustee of the two surplus notes, Mudahir Mohamed of The Bank of New York Mellon Trust Company, N.A.

15. Further, as the attached Proof of Service reflects, a copy of this Petition, the proposed Order approving the settlement of Mr. Bonner's pre-Rehabilitation claim, and a Notice of Hearing on this Petition have been served via regular mail on Mr. Bonner personally at his home address. The Rehabilitator has identified the surplus note holders, their trustee, and Mr. Bonner as the parties with the strongest potential interest in this transaction.

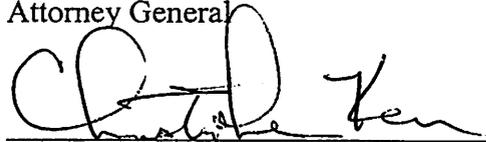
16. Beyond the surplus note holders, their trustee, and Mr. Bonner, providing personalized notice of this Petition and any resulting Order to all other parties that have a general interest in American Community's rehabilitation is impractical at this time because there has been no claims submission or other process to identify such interested parties. Moreover, attempting to identify and personally notify every party having a general interest 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 Petition, the Notice of Hearing, and any resulting Order on any potentially interested parties (other than the two surplus note holders, their trustee, and Mr. Bonner) 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 these other potentially interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

WHEREFORE, the Commissioner, as Rehabilitator of American Community, respectfully requests this Court to approve payment of the settlement amount resolving Donald

Bonner's pre-Rehabilitation claim related to his supplemental retirement benefit. Further, the Rehabilitator requests this Court to authorize and ratify service of this Petition, together with the attached Exhibits (including the proposed Order), the Notice of Hearing, and any resulting Order: (a) via regular mail on the two surplus note holders and their trustee; and (b) via regular mail on Mr. Bonner at his home address; and (c) on other potentially interested parties 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", written over a horizontal line.

Christopher L. Kerr (P57131)
Jason R. Evans (P61567)
Assistant Attorneys General
Michigan Department of Attorney General
Corporate Oversight Division
Attorneys for Petitioner
P.O. Box 30755
Lansing, Michigan 48909
(517) 373-1160

Dated: March 9, 2012

**E
X
H
I
B
I
T
A**



AMERICAN COMMUNITY
MUTUAL INSURANCE COMPANY

February 9, 2012

Donald C. Bonner
2924 Crescent St.
Traverse City, MI 49684

Dear Mr. Bonner:

This letter is regarding your pre-Rehabilitation claim with American Community Mutual Insurance Company ("American Community") for the unpaid amount of your supplemental retirement benefit. As you know, on April 8, 2010, Ingham County Circuit Court Judge William E. Collette issued a Rehabilitation Order placing American Community into Rehabilitation. The order prohibited American Community from paying any pre-Rehabilitation claims until further order of the Court.

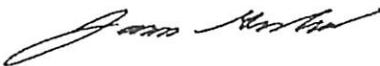
At this time, American Community is offering you a lump-sum payment in the amount of \$285,853.02 to settle your pre-Rehabilitation claim, in return for a release of any and all claims against the Company relating to your previous employment. This amount is based on actuarial life expectancy tables from the Social Security Administration and the value of your benefit at this time.

Please find enclosed a Settlement Agreement and Release ("Agreement") for you to review. If you wish to enter into this settlement, please sign and return the Agreement to me by no later than March 24, 2012. This offer was made to the other annuitants and each has accepted and was paid in January 2012.

Please note that the Agreement must be approved by the Ingham County Circuit Court before it is effective. The process of securing Court approval may take some time. Under the terms of the Agreement, American Community will make the required payment to you no later than fourteen (14) days after the Court has approved the Agreement.

Please also note that the Agreement provides "that each party has either consulted with or had ample opportunity to consult with legal counsel prior to executing this Agreement." You may therefore wish to consult with an attorney when deciding whether to sign the Agreement.

Very truly,



James Gerber
Special Deputy Rehabilitator
American Community Mutual Insurance
Company in Rehabilitation

/Enclosure (1)

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (hereinafter the "Agreement") is made this 9th day of February, 2012, by and between Donald C. Bonner ("Bonner") and American Community Mutual Insurance Company ("American Community"), with respect to the following facts:

- A. This Agreement relates to and is made in connection with the ongoing rehabilitation of American Community in the case entitled *Ken Ross, Commissioner of the Office of Financial and Insurance Regulation v American Community Mutual Insurance Company*, Ingham County Circuit Court Case No. 10-397-CR, assigned to the Honorable William E. Collette (the "American Community Rehabilitation Proceeding");
- B. American Community was placed into rehabilitation pursuant to a Stipulated Order Placing American Community Mutual Insurance Company into Rehabilitation, Approving Appointment and Compensation of Special Deputy Rehabilitators, and Providing Injunctive Relief (the "Rehabilitation Order") entered in the American Community Rehabilitation Proceeding on April 8, 2010;
- C. Under the Rehabilitation Order, and as required by statute, the Ingham County Circuit Court appointed the Commissioner of the Michigan Office of Financial and Insurance Regulation as Rehabilitator of American Community (the "Rehabilitator"), directed the Rehabilitator to take immediate possession of all the assets of American Community and administer those assets under the Court's general supervision, vested legal title to all assets, accounts, and money of American Community in the Rehabilitator, and granted the Rehabilitator the full and complete power of American Community's former directors, officers, and managers;
- D. The Rehabilitation Order further authorized the Rehabilitator to appoint one or more Special Deputy Rehabilitator(s) and approved the Rehabilitator's appointment and compensation of James Gerber as Special Deputy Rehabilitator of American Community, who possesses all the powers and responsibilities of the Rehabilitator subject to the supervision and direction of the Rehabilitator and the Court;
- E. American Community and Bonner desire to enter into this Agreement in full and complete settlement, discharge, and release of any and all causes of action, debts, choses in action, claims, damages, and demands, in law or in equity, whether known or unknown, that arose or could have arisen out of Bonner's employment with American Community or Bonner's resignation/termination from employment with American Community, including but not limited to claims for severance pay, pension benefits, benefits under a supplemental retirement agreement or benefits equalization plan, or other benefits that Bonner may have been entitled to as result of his employment with American Community;

- F. Bonner acknowledges that he has had sufficient time to review the terms of this Agreement and consult with legal counsel regarding this Agreement. Bonner understands the terms of this Agreement and freely and voluntarily accepts those terms and signs this agreement.

NOW, THEREFORE, in consideration of the foregoing and of the following mutually agreed upon promises and covenants and other good and valuable consideration, the adequacy and sufficiency of which are hereby expressly acknowledged, American Community and Bonner (collectively, the "Parties") agree as follows:

1. **Payment.** For and in consideration of Bonner's promises and covenants contained in this Agreement, American Community agrees to pay Bonner the full and final sum of Two Hundred Eighty Five Thousand Eight Hundred Fifty Three and 02/100 Dollars (\$285,853.02) (the "Settlement Amount") in one lump-sum payment, via certified U.S. funds, within fourteen (14) days after this Agreement has been approved by Order of the Court in the American Community Rehabilitation Proceeding.

2. **Release.** For and in consideration of American Community's promises and covenants contained in this Agreement, and except with respect to the obligations of the Parties contained in this Agreement, upon receipt of the payment described in Paragraph 1, Bonner and all other persons acting on his behalf, release and forever discharge American Community, its directors, officers, shareholders, employees, attorneys, agents, parent companies, subsidiaries, predecessors, successors, heirs, and assigns, together with the Rehabilitator, the Special Deputy Rehabilitators, the State of Michigan, Office of Financial and Insurance Regulation and their divisions, departments, institutions, agencies, sections, bureaus, boards, commissions, officers, agents, attorneys, employees, predecessors, successors, heirs, and assigns, from all causes of action, debts, choses in action, claims, damages, and demands, in law or in equity, whether known or unknown, that Bonner has or has ever had, relating to or arising out of Bonner's employment with American Community or Bonner's resignation/termination from employment with American Community, including but not limited to claims for severance pay, pension benefits, benefits under a supplemental retirement agreement or benefits equalization plan, or other benefits that Bonner may have been entitled to as result of his employment with American Community.

3. **Approval by the Court.** The Parties understand and agree that this Agreement shall not be binding upon either of them unless and until it has been approved by Order of the Court in the American Community Rehabilitation Proceeding. Notwithstanding this qualification, the Parties shall execute this Agreement prior to obtaining the requisite Court approval, and these documents shall become fully effective and binding upon entry of the Court Order approving same.

4. **Voluntary Undertaking.** Each party to this Agreement acknowledges and represents: (a) that each party has read this Agreement in its entirety and fully understands all of the Agreement's terms and conditions and the ramifications and consequences thereof; (b) that each party unconditionally consents to the terms of this Agreement; (c) that each party has either consulted with or had ample opportunity to consult with legal counsel prior to executing this

Agreement; (d) that each party is not relying upon any representations not contained in this Agreement, either written or oral, express or implied, made to them by any person; (e) that each party has freely and voluntarily signed this Agreement; and (f) that the consideration received by each party as described in this Agreement is adequate.

5. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties' heirs, successors, administrators, legal representatives, and assigns.

6. **Applicable Law and Venue / Cumulative Remedies.** This Agreement is made under and shall be governed by the laws of the State of Michigan, and any litigation involving this Agreement shall be venued in the Ingham County Circuit Court, State of Michigan. Each and every right and remedy of any party under this Agreement shall be cumulative and non-exclusive of any other right or remedy of any party under this Agreement, applicable law, or in equity.

7. **Partial Invalidity.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable in any manner, the remaining provisions of this Agreement shall nonetheless continue in full force and effect without being impaired or invalidated in any way. In addition, if any provision of this Agreement may be modified by a court of competent jurisdiction such that it may be enforced, then that provision shall be so modified and enforced as modified.

8. **Entire Agreement / Modification.** This Agreement contains the entire understanding of the Parties and supersedes and forever terminates all prior and contemporaneous representations, promises, agreements, understandings, and negotiations of the Parties, whether oral or written, with respect to its subject matter. There are no agreements or understandings of the Parties not expressly set forth in this Agreement. No parol evidence of any prior or contemporaneous agreements, understandings, or negotiations shall govern or be used to construe or modify this Agreement. This Agreement may only be amended, modified, or supplemented by a duly executed writing signed by both Parties.

9. **Waiver.** The failure of either party to this Agreement to complain of any act or omission on the part of the other party (no matter how long the same may continue) shall not be deemed to be a waiver by such party of any of its rights under this Agreement. No consent or waiver by any party at any time of any provision of this Agreement shall be deemed a consent to any other action or waiver of any breach of any other provision of this Agreement or a consent to any future action or later breach of the same or any other provision of this Agreement.

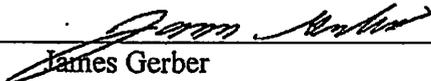
10. **Assistance of Counsel / Ambiguities.** The Parties acknowledge that they and/or their counsel have reviewed this Agreement and have suggested changes to its language and, therefore, any rule of construction that any ambiguity shall be construed against the drafter of this Agreement shall not apply in interpreting its provisions.

11. **Capacity and Authority of Signatories.** The signatories to this Agreement represent and warrant that they have the legal capacity and authority to enter into this Agreement

on behalf of the named Parties and to bind the named Parties to the promises and covenants contained herein.

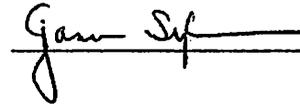
IN WITNESS WHEREOF, the undersigned have caused this Settlement Agreement and Release to be executed as of the day and year stated above.

AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY

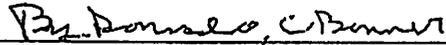
By: 
James Gerber
Special Deputy Rehabilitator
American Community Mutual Insurance
Company in Rehabilitation

Dated: 2/21/2012

WITNESS:



DONALD C. BONNER

By: 

Dated: 2-11-02

WITNESS:

E

X

H

I

B

I

T

B

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.

**ORDER APPROVING SETTLEMENT RESOLVING
PRE-REHABILITATION CLAIM FOR SUPPLEMENTAL RETIREMENT BENEFIT**

At a session of said Court held in the
Circuit Courtrooms for the
County of Ingham, State of Michigan
on the ____ day of March, 2012.

PRESENT: HONORABLE WILLIAM E. COLLETTE, CIRCUIT COURT JUDGE

WHEREAS, R. Kevin Clinton, the Commissioner of the Michigan Office of Financial and Insurance Regulation and duly appointed Rehabilitator of American Community Mutual Insurance Company (the "Rehabilitator") has filed a Petition for Approval of Settlement Resolving Pre-Rehabilitation Claim for Supplemental Retirement Benefit (the "Petition"); and

WHEREAS, the Rehabilitator has served the Petition, together with the attached Exhibits (which included a copy of this Order) and a Notice of Hearing: (a) via regular mail on American Community's two surplus note holders and their trustee; and (b) via regular mail on Donald Bonner, the individual whose pre-Rehabilitation claim this Order resolves, at his home

address; and (c) on other potentially interested parties by posting electronic copies on the “American Community” section of OFIR's website; and

WHEREAS, MCL 500.8114(4) authorizes the Rehabilitator take such action as he considers necessary or appropriate to reform or revitalize American Community; and

WHEREAS, all Creditor claims against American Community are within the exclusive jurisdiction of this Court and will be determined, resolved, paid, and/or discharged, in whole or in part, according to the terms and conditions approved by the Court; and

WHEREAS, the Rehabilitator has determined that payment of the settlement amount to liquidate and fully resolve Mr. Bonner’s pre-Rehabilitation claim, under the terms contained in the Settlement Agreement and Release attached as Exhibit A to the Petition, is an appropriate and necessary step in the ongoing process to reform and revitalize American Community; and

WHEREAS, based upon his review of American Community’s books and records, the Rehabilitator has determined that American Community will still have sufficient assets to pay all currently-accrued policyholder and Creditor claims after paying the settlement of Mr. Bonner’s pre-Rehabilitation claim. With the exception of the surplus note holders’ claims, the Rehabilitator also believes that sufficient funds will remain to pay all other anticipated future policyholder and Creditor claims; and

WHEREAS, the Court having reviewed the Petition and any objections or responses filed thereto, having heard oral arguments on March 21, 2012 at 11:00 a.m., and being otherwise fully advised;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Court APPROVES the settlement resolving Donald Bonner’s pre-Rehabilitation claim related to his supplemental retirement benefit, authorizes payment of the settlement amount from the funds of American

Community, and authorizes the Rehabilitator and/or Special Deputy Rehabilitator to execute any necessary documentation and take such other action required to finalize this settlement;

IT IS FURTHER ORDERED that the Court authorizes, approves, and/or ratifies the Rehabilitator's service of the Petition, together with the attached Exhibits, the Notice of Hearing, and this Order, via regular mail on American Community's two surplus note holders and their trustee, and via regular mail on Donald Bonner at his home address;

IT IS FURTHER ORDERED that due to the difficulty and prohibitive cost associated with providing personalized notice of the Petition, Notice of Hearing, and this Order to all other parties having an interest in the American Community rehabilitation, the Court authorizes, approves, and/or ratifies the Rehabilitator's service of these papers on other potentially interested parties by posting electronic copies on the OFIR website, www.michigan.gov/ofir, under the section "Who We Regulate", and the subsection "American Community." The Court finds that service in this manner is reasonably calculated to give these other potentially interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

IT IS SO ORDERED.

Honorable William E. Collette
Circuit Court Judge