STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

In the matter of the acquisition of control of Pavonia Life Insurance Company of Michigan by Ares Management Corporation

Order No. 2020-08-M

Issued and entered
this 23rd day of March 2020
by Anita G. Fox
Director

ORDER APPROVING ACQUISITION

On July 24, 2019, a Form A Statement was submitted to the Department of Insurance and Financial Services (DIFS) on behalf of Ares Management Corporation and its subsidiary, Aspida Holdco, LLC (Applicants) seeking approval of the acquisition of control of Pavonia Life Insurance Company of Michigan (Pavonia), a Michigan licensed life insurer. Pavonia is a direct wholly owned subsidiary of GBIG Holdings, Inc. (GBIG). Applicants propose to acquire ownership and control of Pavonia pursuant to a Stock Purchase Agreement dated July 9, 2019 between Applicants and GBIG (SPA). The purchase price listed in the SPA is $75 Million, which will be adjusted at closing for certain indebtedness of GBIG, certain costs associated with the settlement of intercompany loans, notes and advances, certain expenses of Pavonia, amounts to be held in escrow, and fees and expenses associated with the delivery of a fairness opinion by an independent third-party investment bank.

Applicants have indicated there are no plans or proposals to declare any dividend, liquidate, sell the assets of, or merge with Pavonia. Applicants propose to appoint a new board of directors of Pavonia. Additionally, Applicants intend that Pavonia, which is currently in run-off, will begin issuing new business.

Independent Insurance Group and Independent Life Insurance Company (collectively, Independent), purported interested parties, have submitted documentation expressing concerns about the

proposed acquisition of Pavonia by Applicants and raising certain objections within the rehabilitation proceeding currently pending in the Ingham County Circuit Court.[1] Without conceding that Independent has proper standing to raise its objections to the proposed acquisition, the Director acknowledges each of the substantive objections Independent raises and incorporates them as part of the Director's analysis of the proposed transaction.

After a full and thorough review of the Form A filing and Independent's voluminous objections to both the Form A and Rehabilitation Plan, the Director **FINDS** and **CONCLUDES** as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The proposed acquisition constitutes a change of control and is subject to prior approval of the Director pursuant to the provisions of Sections 1311 through 1319 of the Insurance Code (Code), MCL 500.1311 to 1319. "Control" is defined in Section 115 of the Code, MCL 500.115.

2. The Form A, as supplemented, meets the filing requirements of Section 1312 of the Code, MCL 500.1312, applicable to the proposed acquisition.

3. Section 1315(1) of the Code, MCL 500.1315(1), provides that the Director shall approve a merger or other acquisition of control of a domestic insurer unless the Director determines from information furnished to the Director on the merger or other acquisition of control one or more of the following:

    a. After the change of control, the domestic insurer described in Section 1311 of the Code, MCL 500.1311, would not be able to satisfy the requirements for the issuance of a certificate of authority to write the types of insurance for which it is presently authorized.

    b. The merger or other acquisition of control would substantially lessen competition in insurance in this state or tend to create a monopoly in this state.

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[1] In issuing this Order, the Director has fully considered the following objections filed by Independent: 1) Independent's Objection to Pavonia Rehabilitation Plan, dated October 4, 2019; 2) Independent's Objection to Form A Application #51403, dated October 31, 2019; 3) Independent's Supplemental Objection to Pavonia Rehabilitation Plan, dated December 30, 2019; and 4) Independent's Second Supplemental Objection to Pavonia Rehabilitation Plan, dated January 28, 2020.

c. The financial condition of an acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders or the interests of a remaining securityholder who is unaffiliated with the acquiring party.

d. The terms of the offer, request, invitation, agreement, or acquisition described in Section 1311 of the Code, MCL 500.1311, are unfair and unreasonable to the insurer's policyholders or securityholders.

e. The acquiring party's plan or proposal to liquidate the insurer, sell its assets, consolidate or merge the insurer with a person, or to make any other material change in its business or corporate structure or management, is unfair and unreasonable to the insurer's policyholders, and not in the public interest.

f. The competence, experience, and integrity of the persons who would control the operation of the insurer are such that it would not be in the interest of the insurer's policyholders or the general public to permit the merger or other acquisition of control.

g. The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

4. With respect to the Section 1315(1) factors, Independent alleges that the proposed transaction should be denied for two primary reasons: (1) because the terms of the acquisition are unfair and unreasonable to the insurer's policyholders, and not in the public interest,[2] and (2) that the competence, experience, and integrity of the persons who would control the operation of the insurer are such that it would not be in the interest of the policyholders or the general public to permit the transaction. MCL 500.1315(1)(d) and (f).

[2] Although Independent alleges that the terms of the acquisition are "not in the public interest," the Section 1315(1)(d) standard regarding fair and reasonable terms is applicable only to policyholders and security holders, not the public. Therefore, this Order will address such allegations according to the applicable standard.

5. Independent first asserts that the terms of the SPA between Applicants and Pavonia are not fair or reasonable to Pavonia's policyholders and security holders. This allegation is based on the existence of a loan transaction between Ares Management Corporation and an affiliate of Eli Global, American Academy Holdings, LLC. Independent asserts that the purchase price in the proposed transaction is intentionally inadequate in order to offset the debt owed under the previous loan.

6. Through its Form A analysis, DIFS has determined the following:

   a. The existence of the loan at issue was previously disclosed to DIFS during the Form A review process and has been "repaid in full out of proceeds from a competing lender."[3]

   b. DIFS obtained an Embedded-Value Opinion from an independent actuarial firm to determine the reasonableness of the purchase price under the SPA. The Embedded-Value Opinion supports the $75 Million purchase price. In addition, the SPA is supported by a Fairness Opinion that was obtained pursuant to Section 7.14 of the SPA.

7. Independent next argues that the SPA is unfair or unreasonable to policyholders based on details from a lawsuit filed by the North Carolina Department of Insurance (NCDOI) as rehabilitator of the North Carolina insurance companies[4] (North Carolina Companies) against Greg Lindberg (Lindberg) and several of his affiliated companies. The NCDOI lawsuit calls into question certain management buyouts and alleges that Lindberg engaged in a scheme that "duped and mislead" the NCDOI through complicated and interconnected relationships between his affiliated companies. Independent argues that the NCDOI lawsuit casts a shadow over the proposed sale of Pavonia and that this transaction would merely be an extension of Lindberg's scheme to confuse regulators.

8. Through its Form A analysis, DIFS has determined the following:

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[3] See Response of Aspida Holdco, LLC to Supplemental Post-Hearing Filing of Independent Insurance Group, at page 8.
[4] The four North Carolina affiliated companies are Colorado Bankers Life Insurance Company, Bankers Life Insurance Company, Southland National Reinsurance Corporation, and Southland National Insurance Company.

a. The NCDOI lawsuit was filed against Lindberg and certain of his non-insurance affiliated companies, not against Ares Management Corporation nor the members of the Pavonia management team[5] (management team).

b. There has been no factual basis provided to connect the management buyouts at issue in the NCDOI lawsuit with the management team.

c. The NCDOI complaint does not contain information that supports Independent's allegation that the proposed transaction is an extension of Lindberg's scheme to frustrate and confuse regulators through affiliated transactions.

9. Independent advances a final argument that the SPA is not in the best interests of Pavonia's policyholders because of the excessive expenses being charged by Global Bankers Insurance Group, LLC (Service Co.) to Pavonia resulting in a deterioration of the capital and surplus of Pavonia from $73.8 Million to $65.1 Million.

10. Through its Form A analysis, DIFS has determined the following:

a. The majority of the expenses at issue are legal expenses necessarily incurred for responding to the United States Department of Justice's (DOJ) subpoena of records from all of the Lindberg insurance companies, the North Carolina Companies, and Pavonia.

b. Michigan's Special Deputy Rehabilitator has reduced Pavonia's allocated share of the legal expenses at issue because most of the conduct and affiliated transactions investigated by the DOJ involved the North Carolina Companies and not Pavonia.

[5] The management team are employees of Global Bankers Insurance Group, LLC, which is a service company that provides administrative and management services to the North Carolina insurance companies and Pavonia, including CEO Lou Hensley, CFO Brian Stewart, and CLO Tamre Edwards.

c. Finally, much of Pavonia's increased legal expenditures are attributable to responding to Independent's voluminous filings-both in this Form A matter and the rehabilitation proceeding.

11. The remainder of Independent's objections are focused upon the "competence, experience, and integrity" of the proposed management team after the SPA is effectuated. The Applicants intend to retain the current management team for Pavonia, who are all presently employees of Service Co. and have provided management services for Pavonia and the four North Carolina Companies since late 2016. Independent alleges that the management team behaved without the requisite degree of prudence and competence, such that the Director should deny the proposed transaction based on the Applicants' decision to retain the management team consistent with Section 1315(1)(f) of the Code, MCL 500.1315(1)(f).

12. As a threshold matter, the Director questions whether Section 1315(1)(f) of the Code applies to the executive management or officers of an insurer subject to acquisition or merger. The Insurance Code defines "control" as "the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract including acquisition of assets or bulk reinsurance, . . . by pledge of securities, or otherwise, unless the power is the result of an official position with or corporate office held by the person." MCL 500.115(b)(i). Section 115(b)(i) of the Code expressly excludes managers and executive officers from the definition of "control" and there is nothing within the context of Section 1315(1)(f) of the Code to indicate that a different definition of control is meant to apply.

13. Without conceding that Section 1315(1)(f) of the Code applies to the management team in the proposed transaction, each of Independent's objections regarding the competence of the management team are individually analyzed below.

14. Independent asserts that under the management team's leadership $900 Million in investments in unaffiliated loans, later reclassified by the North Carolina Rehabilitator as affiliated, were made within a two-week period in July 2018 (Investment Surge) and that this Investment Surge may have been related to the indictment against the ultimate controlling person for Pavonia and the North Carolina Companies, Lindberg.

15. Through its Form A analysis, DIFS has determined the following:

    a. A review of the quarterly financial statements for the North Carolina Companies shows that nearly all the investments associated with Financial Companies (FinCos), which account for over half of the purported Investment Surge, were made outside the identified two-week period in July 2018.

    b. Additionally, while another $345 Million in Principal Protected Notes (PPN) transactions did largely take place during the two-week period in July 2018, these transactions were in fact part of an intended strategy to, in part, reduce affiliated transactions consistent with the direction of the NCDOI.

    c. Independent has failed to establish any factual basis for the Director to conclude that the management team was involved with or had any knowledge of the allegedly corrupt activities set forth in the March 18, 2019 bill of indictment against Lindberg or that the Investment Surge was in any way connected to those activities.

16. Independent next challenges the competence of the management team based on revisions to the 2018 Annual Statements filed on behalf of the North Carolina Companies. Independent alleges the Annual Statements were misleading because: (1) the NCDOI reclassified $1.6 Billion of unaffiliated investments as affiliated; (2) even if there was an understanding between the NCDOI and the management team as to how certain investments were to be reported, that should have been reported as a "Permitted Practice" in the Annual Statements; and (3) the North Carolina Companies

exceeded the agreed-upon 40% cap on affiliated investments once the investments were reclassified by the NCDOI.

17. Through its Form A analysis, DIFS has determined the following:

a. The North Carolina Companies reported that investments in the 2018 Annual Statement in a manner consistent with past practice in both the 2016 and 2017 Annual Statements.

b. The management team was hired in late 2016, after Lindberg and Eli Global designed and consulted with the NCDOI to move certain affiliated direct loans into Special Purpose Vehicles (SPVs) in an effort to disaffiliate the investments.

c. Similarly, in 2017, the SPVs were repackaged into FinCos in order to address certain rating concerns. The NCDOI was aware that the FinCos were affiliated with Lindberg economically but would be disaffiliated for purposes of public reporting through a trust structure.

d. The North Carolina Companies consistently reported their investments as affiliated for purposes of the 40% cap but disaffiliated on Schedule D to the Annual Statements for 2016, 2017 and 2018.

e. Because the NCDOI was aware of how the North Carolina Companies were reporting their investments before the NCDOI changed its interpretation regarding what constitutes an affiliated investment, the management team cannot be considered to have misrepresented or omitted anything relative to the North Carolina Companies' investments.

f. Independent's assertions that any understanding between the NCDOI and the North Carolina Companies regarding the reporting of investments as disaffiliated was a permitted practice that is required to be disclosed on the annual statements is not supported by the facts. A mutually agreed-upon interpretation of state law does not equate to a specifically sought-after practice which deviates from the NAIC Statutory Accounting Principles.

g. Independent's contention that, once reclassified by the NCDOI in 2019, the North Carolina Companies affiliated investments for 2018 exceeded the applicable 40% cap is also misplaced. In 2019, the 40% cap was no longer applicable as the North Carolina Companies were under supervision by the NCDOI and subject to a corrective action plan submitted on October 26, 2018, which contains different requirements for the reduction of the amount of affiliated investments over time.

18. Independent also challenges the competence of the management team by questioning the prudence of a $35 Million loan made by Colorado Bankers Life Insurance Company (CBLIC) to Agera Energy, LLC (Agera) on March 29, 2018 (Agera Loan) based upon the fact that the rating of Agera Loan was reduced, and North Carolina's Rehabilitator reclassified the loan to affiliated in July 2019.

19. Through its Form A analysis, DIFS has determined the following:

a. With respect to the prudence of the loan, Independent has not provided a sufficient factual basis to conclude that insufficient due diligence was performed by the management team before the loan was made in 2018. In fact, the North Carolina Companies conducted extensive due diligence before making the Agera Loan, including engaging a third party to conduct a full valuation of Agera.

b. Similarly, there appears to be nothing untoward regarding the change in rating for the Agera Loan. The original rating for the loan was effective from February 2018 through February 2019 and was effective at the time the 2018 Annual Statements were filed. By the time the amended Annual Statements were filed in July of 2019, the original rating for the Agera Loan had expired, and a new, lower rating had been issued in the normal course.

c. Lastly, while the North Carolina Rehabilitator reclassified the Agera Loan as affiliated in the amended CBLIC 2018 Annual Statement, the facts do not indicate that the original

classification of the Agera Loan as unaffiliated was unreasonable. The North Carolina Companies reported the Agera Loan as unaffiliated based on their interpretation of the ownership structure associated with the Agera Loan. That is, Agera was wholly owned by Agera Holdings, LLC, which in turn was owned and controlled by two unaffiliated third parties. Although the North Carolina Companies' parent, Eli Global, held a convertible note for all shares owned by one of those third parties, the note was never exercised and therefore the North Carolina Companies took the position that the Agera Loan was unaffiliated.

20. Independent challenges the fitness of the management team under the proposed transaction asserting that "[m]anagers of insurance companies are charged with ... a fiduciary duty of prudent management for the protection of policyholders" and points to the aforementioned conduct as examples of how the management team has repeatedly breached that fiduciary duty.

21. Without conceding that such a fiduciary duty exists in this instance,[6] through its Form A analysis, DIFS has determined the following:

    a. When the management team was hired in 2016, Lindberg and Eli Global had already initiated an affiliated investment strategy. In the ensuing three years, the North Carolina Companies and Eli Global communicated with the NCDOI and informed them of the investment structures and how the investments were to be reported on the Annual Statements. The management team appears to have relied on Eli Global's representations and the NCDOI's approvals with respect to the affiliated investment practices.

[6] Pavonia is a stock corporation, so the management team does owe a duty of prudent management, but such duty extends to the corporation and its shareholders. Although the duty of prudent management indirectly benefits policyholders, there is not a fiduciary relationship between the management and policyholders. See Ohio State Life Ins Co v Clark, 274 F2d 771, 775 (6th Cir 1960); see also Order of United Commercial Travelers of America v Wolfe, 331 US 586, 606-07 (1947); Silverman v Liberty Mut Ins Co, 13 Mass L Rptr 303, 2001 WL 810157, at *1, *6 (Mass Super July 11, 2001).

b. The management team became more involved in the monitoring and oversight of Eli Global's investment activity around the time that the North Carolina Companies executed a memorandum of understanding with the NCDOI in May of 2018. In the spring and summer of 2018, the management team objected to Eli Global's attempted use of PPNs for new affiliated debt which would have expanded the Companies' affiliated exposure and potentially put policyholders at risk. On August 6, 2018, the NCDOI requested Eli Global and the North Carolina Companies cease any further PPN transactions, and shortly thereafter, the North Carolina Companies were placed under supervision, which obviated the need for the management team to continue its vocal objections to these transactions.

22. Independent also questions the competence and integrity of the management team based on its perceived discovery of an allegedly "material loan" between Applicants and a Lindberg affiliate that it believes was not properly disclosed to DIFS or to the Ingham County Circuit Court in the rehabilitation proceeding.[7]

23. Through its Form A analysis, DIFS has determined the following:

a. During the Form A review, Applicants fully disclosed the existence of the allegedly "material loan" between Applicants and the Lindberg affiliate, and it was determined that:

i. The loan has been fully repaid, and

ii. The existence of the prior loan was not "material" such that it would disqualify the Applicants.

b. Independent has not presented any evidence of a loan between Applicants and Eli Global affiliates that has not been disclosed to DIFS through the Form A review process.

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[7] See paragraph 27 of this Order for an explanation of the Ingham County Circuit Court's ruling regarding Independent's Objections, including the allegation related to the allegedly "material loan."

24. Lastly, Independent asserts it has uncovered "actual evidence" that the management team "was actively involved in authorizing ... affiliated loans and investments" and that "[t]his type of activity clearly put the policyholders ... at risk and it raises questions about whether [the management team] continually placed the interests of [Service Co.] and Lindberg ahead of the interests of the policyholders."[8]

25. Through its Form A analysis, DIFS has determined the following:

a. The two transactions Independent cites as its "actual evidence" of malfeasance by the management team took place in May and June of 2019 and involved the authorization of an initial $15 Million line of credit by CBLIC to Academy Financial Assets, LLC and a subsequent extension of that line of credit to $40 Million.

b. CBLIC was under supervision by the NCDOI from October 18, 2018 until June 27, 2019. Therefore, any transactions taking place during that time were subject to review and approval by the NCDOI.

c. Furthermore, CBLIC had a prior investment relationship with Academy Financial Assets, LLC, a fact which was fully disclosed to the NCDOI.

26. In accordance with the foregoing findings as they relate to Independent's objections, the Director has determined that Independent has failed to establish a sufficient factual basis for the Director to conclude that any of the factors specified in Section 1315(1)(d) or (f) of the Code, MCL 500.1315(1)(d) or (f), exist.

27. Of important note, on March 9, 2020, after providing Independent with ample opportunity to present factual support for its objections to the SPA and the Rehabilitation Plan, Judge Wanda M. Stokes of the Ingham County Circuit Court concluded that "[b]ecause there's no meaningful evidence

[8] See Independent's Second Supplemental Objection to Pavonia Rehabilitation Plan, January 28, 2020, at page 11.

supporting [Independent's] various claims that Buyer's management team is, to generally characterize the arguments, complicit or corrupt, or that the sale process was not fair and equitable, there is no basis on which this Court can reasonably conclude that the SPA . . . is not fair and equitable to all parties." Therefore, Judge Stokes ordered "that the Objection to the Plan of Rehabilitation by . . . Independent Insurance Group, LLC is DENIED."[9]

28. Furthermore, through its Form A analysis, DIFS has determined that none of the factors set forth in Section 1315(1)(a-g), MCL 500.1315(1)(a-g), exist.

29. In addition, pursuant to Section 250 of the Code, MCL 500.250, "if . . . the director has reason to believe that an officer or director is untrustworthy or has abused his or her trust and that continuation as an officer or director is hazardous or injurious to the insurer, the policyholders, or the public . . . the director may order the removal of the officer or director."

30. Therefore, if a sufficient factual basis exists in the future such that the Director would have reason to believe that the management team's conduct and trustworthiness would be hazardous or injurious to the insurer, policyholders or the public, then the Director has continuing jurisdiction and authority to take appropriate administrative action pursuant to Section 250 of the Code.

31. In accordance with all the foregoing findings, the Director has determined that the SPA constitutes a proposed acquisition of control of a domestic insurer that satisfies all applicable requirements under Sections 1311 through 1319 of the Code, MCL 500.1311 through 1319.

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[9] Judge Stokes' March 9, 2020 Order contains many factual findings and conclusions of law that are relevant to DIFS' Form A analysis as it relates to Independent's Objections to the SPA. However, to avoid the unnecessary duplication of those findings and conclusions, this Order only references Judge Stokes' summary of conclusions and order denying Independent's Objections. For further details, see Judge Stokes' March 9, 2020 Order attached hereto as Exhibit 1.

Therefore, in consideration of the representations made by Applicants, the comments made by purported interested persons, and based on the above Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that:

1. The acquisition of control of Pavonia by Applicants in accordance with the Form A Statement is approved.

Anita G. Fox
Director

EXHIBIT 1

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

ANITA G FOX, DIRECTOR OF THE MICHIGAN DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES,

Petitioner,

ORDER REGARDING INDEPENDENT INSURANCE GROUP, LLC'S OBJECTION TO THE REHABILITATOR'S PLAN OF REHABILITATION

v

CASE NO. 19-504-CR

PAVONIA LIFE INSURANCE COMPANY OF MICHIGAN,

HON. WANDA M. STOKES

Respondent.

At a session of said Court
held in the City of Mason, County of Ingham,
this 9th day of March, 2020.

PRESENT: HON. WANDA M. STOKES

This case came before the Court on January 16, 2020, for a hearing on Objection to Plan of Rehabilitation by Interested Party Independent Insurance Group, LLC, and GBIG Holdings, Inc.'s Motion to Disallow/Strike the Untimely 12/30/19 Supplement Filed by Independent Insurance Group, LLC. In this receivership case, Independent Insurance Group, LLC ("IIG") argues that it must be permitted to offer to purchase Respondent, a life insurance company voluntarily placed into a solvent receivership due to the criminal prosecution of its controlling shareholder. The receiver, along with other interested parties, disagrees.

IIG filed an untimely supplement to its objection on December 30, 2019. The rehabilitator opposed the filing, and an interested party – GBIG Holdings, Inc. – moved to disallow or strike

the supplement. Shortly before this Court's opinion was due to be entered, IIG filed a Supplemental Post-Hearing Filing of Independent Insurance Group. This Court then entered an order permitting responses to the supplemental filing. Aspida HoldCo, LLC and the Rehabilitator chose to respond. IIG then filed a Response of Independent Insurance Group, LLC to Latest Responses (As Defined Below) on February 18, 2020, which was not requested by the Court, and not authorized by order, rule, or statute.

FACTS

Respondent was founded in 1980, and eventually acquired by GBIG Holdings, Inc. ("GBIG") in 2017. GBIG in turn is one of many companies owned by Eli Global, an international conglomerate corporation. Eli Global was founded by Greg Lindberg, one of three men alleged to have attempted to bribe an insurance commissioner in North Carolina. Criminal proceedings are ongoing against Mr. Lindberg, who denies all charges, in the United States District Court for the Western District of North Carolina.

Respondent is a Michigan company, but its acquisition by GBIG affiliated it with Eli Global and several North Carolina insurance companies also owned by GBIG. The North Carolina companies are subject to a receivership in North Carolina, and it appears they are insolvent. Respondent is solvent. However, it agreed to be placed into receivership, attempting to isolate itself from the North Carolina companies by giving control of all business and assets to a receiver appointed by the State of Michigan through the Department of Insurance and Financial Services ("DIFS").

Just prior to entering receivership, a stock purchase agreement ("SPA") was executed, conveying a controlling interest in Respondent to Aspida Holdco, LLC, a holding company

owned by Ares Management Corporation, a large publicly-traded corporation doing business in the insurance industry.

Independent Insurance Group, LLC ("IIG") objects to this purchase arrangement, and demands an opportunity to make a "superior proposal" to purchase Respondent. Petitioner, along with other interested parties, argues IIG has no standing to object, and that even if it did there is no basis in statute, contract, or other law to support IIG's demands. After careful review of the briefs and information provided to this court it agrees.

ANALYSIS

I. STANDING

> Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.

Lansing Sch Ed Ass'n v Lansing Bd of Ed, 487 Mich 349, 372; 792 NW2d 686, 699 (2010).

Here, Petitioner argues that IIG has no standing to object to the Rehabilitation Plan, and suggests the Court should dispose of the objection on that basis.

Chapter 81 of the Michigan Insurance Code generally governs receiverships in Michigan. MCL 500.8101(3) defines the purpose of Chapter 81, and sets forth several entities the Legislature intended to protect – insureds, claimants, creditors, and the public. IIG does not closely fit any of these. However, as the Michigan Supreme Court has stated, all that is necessary for standing to exist is "a . . . substantial interest . . . that will be detrimentally affected in a manner different from the citizenry at large."

IIG broadly alleges that the agreement for the purchase of Respondent struck the day before the receivership took effect was improper, raises concerns about who will control Respondent going forward, and argues its yet-to-be-made proposal to purchase Respondent should be considered. Without reaching the merits of these arguments, the Court finds IIG has demonstrated a substantial interest in the receivership process – ensuring a fair and equitable process of rehabilitation, and attempting to acquire Respondent under a separate proposal. That interest is sufficient to establish standing in this proceeding.

II. TIMELINESS

Petitioner asserts that IIG's objection is untimely. However, IIG's objection to the Plan was filed on October 4, 2019, which is the deadline for objections to the Plan, set in this Court's August 8, 2019 Order Preliminarily Approving Plan of Rehabilitation. IIG's Objection was timely.

IIG further filed a Supplement to Objection of Interested Party Independent Insurance Group, LLC ("Supplement") on December 30, 2019, 87 days past the deadline for objections. Petitioner, and Buyer GBIG Holdings Inc responded in opposition, and GBIG Holdings, Inc moved to disallow or strike the filing.

The Supplement was not proper under applicable statute, rule, or caselaw, and not permitted under the August 8, 2019 Order governing proceedings in this matter.

Further, on January 27, 2020, shortly before the Court's opinion was to issue, IIG submitted a Second Supplement to the Court. This Court delayed issuance of the opinion and entered an order permitting responses to the Second Supplement on January 28, 2020. Aspida HoldCo and the Rehabilitator responded. IIG then filed a response to these responses, which was not called-for, let alone timely. The Court cautions litigants against untimely filings made without leave or request therefor. As a general rule, untimely filings will not be considered.

However, this Court finds that it is ultimately immaterial whether the unauthorized filings are permitted, because their contents do not appreciably impact the Court's ruling or reasoning. For purposes of completeness of the record, these filings will not be stricken.

III. MERITS OF IIG'S OBJECTION

Receiverships in Michigan are principally governed by Chapter 81 of the Michigan Insurance Code. According to MCL 500.8101(3), "[t]he purpose of [Chapter 81] is the protection of the interests of insureds, claimants, creditors, and the public with minimum interference with the normal prerogatives of the owners and managers of insurers" through certain specified objectives. Chapter 81 spells out the broad authority granted to receivers, including but not limited to the power to sell, invest, encumber, transfer, dispose of, or borrow against the insurer's assets. MCL 500.8121.

IIG's written objection focuses on two principal arguments: 1) Petitioner should consider IIG's "Superior Proposal;" and 2) Petitioner did not conduct the receivership process fairly and equitably, and failed to take into account problems with Respondent's proposed leadership or Petitioner's own conflicts of interest.

A. "SUPERIOR PROPOSAL"

The "Superior Proposal" language relied upon by IIG in support of this element of its objection comes from Section 12.04(c) of the Stock Purchase Agreement ("SPA") entered into by GBIG Holdings, Inc. (Respondent's parent company) ("Seller") and interested party Aspida Holdco, LLC ("Buyer") – a holding company owned by Ares Management Corporation. Section 12.04 is entitled "Break-Up Fee," and provides that if Seller terminates the SPA and consummates a "Superior Proposal" by selling to an alternate bidder within 18 months of termination, Seller must pay a break-up fee to Buyer.

IIG insists its proposal, which in any event is conditional on the satisfactory completion of due diligence, is superior to Buyer's. However, even assuming *arguendo* that IIG made the proposal, and that the proposal did constitute a superior proposal under Section 12.04(c), this would trigger nothing more than an opportunity for Seller to terminate the existing SPA, suffer a significant break-up fee, and enter into an agreement with IIG. Seller has not terminated the SPA or otherwise indicated any intention whatsoever to do so. Further, Seller has indicated no interest in competing offers, and indicated at oral argument that the SPA with Buyer was a legitimate arms-length agreement between sophisticated parties, made with full disclosure of all potential risks, including the North Carolina litigation and the tertiary involvement of Greg Lindberg.

Nothing in the contract section on which IIG bases its "Superior Proposal" argument suggests IIG must be given an opportunity to make its own offer. IIG's position would require this Court to interpret the contract language in contravention of its own plain meaning, with little appreciable basis to do so. IIG's objection on this ground fails.

B. "FAIR AND EQUITABLE" PROCESS

Under MCL 500.8114(4),

> upon application of the rehabilitator for approval of the [Rehabilitation P]lan, and after notice and hearings as the court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. A plan approved under this section shall be, in the court's judgment, fair and equitable to all parties concerned.

IIG broadly argues the sale and receivership process involving these companies has not proceeded in a fair and equitable manner in the following ways:

1. CONTROL OF BUSINESS

IIG notes that the individuals in control of Respondent after the sale would be the same as those in control of the North Carolina insurers, and that since these individuals were in control

during the time of the illegal activity by Greg Lindberg, permitting those individuals to remain in control of Respondent would permit a "cancer" to continue to "infect" Respondent.

Concurrent with this litigation, the Michigan Department of Insurance and Financial Services ("DIFS") has been working through the "Form A" process pertaining to this acquisition. This process is provided for under MCL 500.1311 and 1315, and requires that any proposed acquisition of a Michigan insurance company be approved by the DIFS director, after submission of required statements and supporting information. The director may disapprove the acquisition if, among other reasons, "[t]he competence, experience, and integrity of the persons who would control the operation of the insurer are such that it would not be in the interest of the insurer's policyholders or the general public to permit the merger or other acquisition of control." MCL 500.1315(1)(f).

The Rehabilitation Plan is expressly contingent on Form A approval from the DIFS director, and the Form A process remains pending in this case. DIFS are the subject-matter experts on Michigan insurance policy, and have been provided with specific information (some of which is confidential) regarding the purchase agreement, the identities of the individuals who would control Respondent after the purchase, and the financial condition of the Buyer. The purchase cannot be made without the DIFS director's approval. MCL 500.1311(1). Apart from generally relying on their association with the North Carolina insurers, Ares, and Greg Lindberg, IIG has not provided evidence suggesting the individuals who would be in control of Respondent after the purchase would not be acceptable.

2. NON-CONSIDERATION OF IIG PROPOSAL

IIG next argues that there are conflicts of interest, self-dealing, and what amounts to favoritism in the rehabilitation process.

These allegations are not supported by evidence. IIG makes much of an affidavit sworn by an accounting expert, regarding events concerning an investment made by the same management team that controls Buyer. IIG in essence asks the Court, observing an ambiguous and tangentially-related fact pattern, to assume that something must be amiss. As set forth above, the management team to control Respondent following its acquisition by Buyer can only acquire Respondent after vetting and approval by the DIFS director. IIG's arguments aimed at discrediting or disparaging those individuals are scattered and inferential, and are especially unpersuasive where, as here, the acquisition will in no event go forward unless and until the management team is approved by the appropriate government agency.

IIG further argues that it would be better for it to acquire Respondent because such an acquisition would better separate Respondent from the North Carolina insurers and Greg Lindberg. That may be so, however this Court's role is to not to second-guess Respondent's business judgment, but rather to determine whether the Rehabilitation Plan (and in this case the SPA incorporated into it) are fair and equitable to all parties. There is nothing here to show a conflict of interest, self-dealing, or any other fact suggesting an inequitable process.

Finally, IIG argues that it made inquiries toward acquiring Respondent through various channels, but was either rebuffed or received no response. However, IIG also acknowledges that this type of corporate sale is generally commenced by the Seller, which invites offers to purchase the corporation from potentially interested buyers, and that Respondent sent no such invitation to IIG. Seller's general counsel executed an affidavit indicating that Seller sent such invitations out, and IIG admits it received no such invitation. IIG asks the Court to presume on this basis that the sale process is inherently questionable. The simple non-receipt of an invitation to purchase another corporate entity does not bring the validity of the sale process into question.

3. OTHER ASSERTIONS

IIG makes additional assertions and accusations, most notably that an Ares Management Corp affiliate made a loan of $270 million to Academy Holdings, LLC, a holding company indirectly owned by Greg Lindberg, and that Buyer has disclosed confidential information from a past, unsuccessful negotiation with a third party.

It must be recalled that this Court's role here is to ensure that the plan of rehabilitation is fair and equitable to all parties. MCL 500.8114(4). The loan from an Ares affiliate to a Greg Lindberg-related affiliate was publicly disclosed, and made up about 2% of Ares' lending portfolio. IIG argues that loan is material, that approval of the Plan would ratify it, that "it appears to be more than coincidental that Ares . . . is the purchaser," and that DIFS must examine it. This is begging the question – IIG in essence argues that the fact the loan was made shows it is suspicious or inequitable. No additional evidence is adduced to show Ares and Lindberg affiliates behaved improperly.

IIG argues that Buyer improperly disclosed confidential information from a past unsuccessful deal between IIG and GBIG, which information tended to show IIG may plan to appoint one of the same directors Buyer plans to appoint, and to which IIG now objects, if IIG is permitted to make its own offer to acquire Respondent. Presuming *arguendo* that the information was confidential, and that Buyer improperly disclosed it, it is not clear how an improper disclosure affects the fairness or equity of the Plan of Rehabilitation. This Court must not require absolute ethical virtue in the party acquiring Respondent. If courts imposed such a requirement, corporate acquisitions would rarely be permissible.

Because there's no meaningful evidence supporting IIG's various claims that Buyer's management team is, to generally characterize the arguments, complicit or corrupt, or that the

sale process was not fair and equitable, there is no basis on which this Court can reasonably conclude that the SPA between GBIG Holdings, Inc and Aspida Holdco, LLC is not fair and equitable to all parties.

IV. CONCLUSION

Pending Form A approval, this Court sees no reason to deviate from the Rehabilitation Plan, no reason to give special permission to IIG to have its non-binding, conditional offer considered, and no reason to delay the consummation of the SPA any longer.

THEREFORE IT IS ORDERED that the Objection to Plan of Rehabilitation by Interested Party Independent Insurance Group, LLC is **DENIED**.

IT IS FURTHER ORDERED that GBIG Holdings, Inc's Motion to Disallow/Strike the Untimely 12/30/19 Supplement Filed by Independent Insurance Group, LLC is **DENIED**.

In accordance with MCR 2.602(A)(3), the Court finds that this order does not resolve the last pending claim, and does not close the case.

3/9/2020
Date

/Wanda M. Stokes
Hon. Wanda M. Stokes
Circuit Court Judge

PROOF OF SERVICE

I hereby certify that I provided a copy of the above ORDER to each attorney of record, or to the parties, by hand delivery, or by placing a true copy in a sealed envelope, addressed to each, with full postage prepaid and placing said envelope in the United States mail, on March 9, 2020.

Tyler A. Smith, Esq (P-82780)
Law Clerk/Court Officer