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February 11, 2020

Via Hand-Delivery

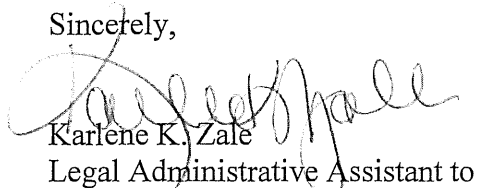
Clerk of the Court
Ingham County Circuit Court
341 S Jefferson St
Mason, MI 48854

Re: *Anita G. Fox v. Pavonia Life Insurance Company of Michigan*
Case No. 19-504-CR

Dear Clerk:

Enclosed for filing is the original and Judge's copy of the *Further Response of Aspida Holdco, LLC to the 1/27/20 Supplemental Post-Hearing Filing by Independent Insurance Group, LLC*, as well as Certificate of Service. Please file in your usual manner. Thank you.

Sincerely,



Karlene K. Zale
Legal Administrative Assistant to
Lori McAllister

Enclosures

cc: Christopher L. Kerr (w/encl.)
Jonathan E. Raven (w/encl.)
Timothy W. Volpe (w/encl.)
Ellen M. Dunn (w/encl.)
Ryan Shannon (w/encl.)

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STATE OF MICHIGAN
CIRCUIT COURT FOR THE COUNTY OF INGHAM

ANITA G. FOX, Director of the Michigan
Department of Insurance and Financial
Services,

Plaintiff,

v.

PAVONIA LIFE INSURANCE COMPANY
OF MICHIGAN,

Defendant.

Case No. 19-504-CR

Hon. Wanda M. Stokes

REC'D - 30th CIRCUIT COURT

FEB 11 2020

BY: _____
Deputy Clerk

CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2020, I caused to have served by first class mail,
with postage prepaid a copy of the *Further Response of Aspida, Holdco, LLC to the 1/27/20
Supplemental Post-Hearing Filing by Independent Insurance Group, LLC* upon:

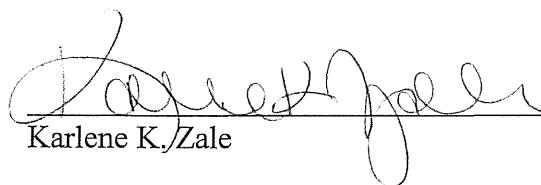
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Karlene K. Zale

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

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

Petitioner,

v

PAVONIA LIFE INSURANCE COMPANY
OF MICHIGAN,

Respondent.

Case No. 19-504-CR

HON. WANDA M. STOKES

[IN REHABILITATION]

REC'D - 30th CIRCUIT COURT

FEB 11 2020

BY: _____
Deputy Clerk

**FURTHER RESPONSE OF ASPIDA HOLDCO, LLC
TO THE 1/27/20 SUPPLEMENTAL POST-HEARING FILING
BY INDEPENDENT INSURANCE GROUP, LLC**

Objector's scheme to expand its business and thwart a potential competitor belies its claim to protect policyholders and the public. Continued delay in these proceedings serves Objector's interests, but not those of Pavonia's policyholders. Pavonia's costs in this transition process continue to mount, without offsetting reserves on new business, as do the odds that the crucially important insurance platform built to service Pavonia's policyholders - and which Objector regards a competitor - will suffer from attrition during the delay due to employees' uncertainty of continued employment if the SPA does not close soon.

Objector has repeatedly defamed the members of ServiceCo / Global Bankers Insurance Group, LLC's ("GBIG") Management Team whom Buyer will retain in order to maintain and grow Pavonia's business. DIFS, the NC rehabilitator and NC DOI have and will continue to

carefully supervise this retention. The GBIG Management Team is comprised of skilled, knowledgeable, and diligent professionals who have worked closely with DIFS and NC DOI for many months. Those professionals and their working institutional knowledge of Pavonia's operations are integral to Pavonia's continued success and a smooth transition to new ownership. Only the self-interested Objector, - and nobody else - has claimed otherwise.

Objector has failed to advise the Court that Objector would replace Buyer and the Management Team with support from – if not the direct involvement of by way of an employment offer – a former GBIG Management Team leader who himself participated in the same Affiliate Investment activities Objector lays at the feet of the Management Team today. Objector apparently had that leader report to Independent Life's Board on the potential for a Pavonia transaction on its own.

Pursuant to the Court's January 28, 2020 Order Permitting Responses and Setting Supplemental Briefing Schedule, Buyer / Aspida Holdco, LLC hereby further responds to Objector's January 27, 2020 Second Supplement to address additional points in the Second Supplement not discussed in Buyer's February 4, 2020 Response,¹ and to augment the evidence for certain points made therein.

ADDITIONAL ARGUMENT

Objector has actively engaged the former leader of the GBIG Management Team

Disruption of both the SPA and an orderly transition of Pavonia ownership is Objector's goal, and it contravenes the public good. Objector covets access to Pavonia's 1,546 structured settlement annuities ("SSAs"), but ignores the vast majority of over 400,000 policyholders that hold life insurance and accidental death and disability policies in the U.S. and in Canada. Indeed,

¹ Please note that on p. 3 of Buyer's Response, the references to "Plaintiff" should be to "Objector," and on p. 14 "Buyer has never had" should read "Objector has never had."

Objector previously sought a long-term partnership with Mr. Lindberg and Eli Global affiliates in transacting SSAs several years ago, before Eli acquired Pavonia. And, Objector has withheld this information from the Court.

A recent discovery belies Objector's "concerns" about the GBIG Management Team. The Court will be surprised to learn that George Luecke was a chief executive officer and a board chairperson of Global Bankers Insurance Group, LLC ("Global Bankers"). Buyer expects that Seller will confirm that Mr. Luecke was Co-CEO and Vice Chairman of the GBIG Management Team throughout the period when the North Carolina Insurer Affiliates engaged in the same Affiliate Investments that Objector now decries as some kind of evidence of the GBIG Management Team's improper behavior. Seller will also confirm that Mr. Luecke was involved in approving a substantial number of the Affiliate Investments.

More to the point, it appears that when Mr. Luecke left the GBIG Management Team, his ServiceCo email account remained active. Buyer has learned from Seller that Mr. Luecke received multiple emails from Objector's Michael Upchurch, Chairman of Objector's board of directors and founder of ILIC, who attended this Court's January 16, 2020 hearing.² It seems that Mr. Upchurch sought to partner with Eli in 2016 and 2017 (through various of their respective affiliates) and so had communicated with Mr. Luecke, first in his capacity as Co-CEO of the GBIG Management Team, and then again in 2019:

- May 16, 2016: Mr. Upchurch emailed to Mr. Luecke a power point entitled "Envoy Presentation," which purported to provide an overview of a business opportunity for Eli. The power point includes an "Executive Team" slide that lists Objector's counsel Tim Volpe and a slide that lists Mr. Volpe's law firm Adams and Reese LLP as "Company General Counsel." (See **Group Ex. A³** at 1, 24 and 27, slides 23, 26.)

² See Transcript, p. 5:24-25.

³ Patricia Hussain is a legal assistant in DLA Piper, Buyer's law firm, who printed the email messages.

- May 20, 2016: Mr. Upchurch added Mr. Luecke to a lengthy email string attaching a signed “Mutual Non-Disclosure Agreement”. (See *id.* at 32 and 37-38.)
- June 5, 2016: Mr. Luecke emailed Mr. Upchurch “a proposal for a potential transaction,” attached to which is a letter of intent Mr. Luecke signed, and attached to which as “Exhibit A” is another May 27, 2016 email that includes Objector’s counsel Tim Volpe. (See *id.* at 39-45.)
- September 30, 2016: Mr. Luecke emailed Mr. Upchurch, attaching a “Nondisclosure Agreement” signed by Mr. Luecke. (See *id.* at 46 and 51-58.)
- December 18, 2016: Mr. Upchurch emailed to Mr. Luecke an attached letter of intent signed by Greg Lindberg and Mr. Luecke, attached to which as “Exhibit A” is another copy of the May 27, 2016 email that includes Objector’s counsel Tim Volpe. (See *id.* at 59-67.)
- December 21, 2016: Mr. Luecke emailed to Mr. Upchurch setting forth additional terms for the parties’ proposed relationship. (See *id.* at 68-70.)
- January 30, 2017: Mr. Luecke emailed Mr. Upchurch, retracting the December 18, 2016 “offer.” (See *id.* at 71.)
- July 9, 2019: DIFS filed the Stipulated Order of Rehabilitation in these proceedings.
- July 22, 2019: Mr. Upchurch emailed to Mr. Luecke a copy of an attachment entitled “FW: 2015 Investments” and an earlier email copying Objector’s counsel Tim Volpe. Mr. Upchurch then emailed the same attachment to Edward Buttner,⁴ Objector’s statutory accountant expert witness. (See *id.* at 72-158.)

⁴ Mr. Buttner’s “affidavits” of October 29 and December 30, 2019 contain statements too numerous to count that are inadmissible as evidence (as well as being redundant in many respects), including, but not limited to: (i) no statement of personal knowledge or other showing that Mr. Buttner can testify competently; (ii) “opinions” ventured without any statement of reasonable certainty (*e.g.*, *id.* par. 48 at 15; “likely,” Dec. 30 Aff. par. 9 at 4); (iii) numerous conclusions of fact (*e.g.*, “the very same managers,” Oct. 29 Aff. par. 5 at 2), (iv) numerous conclusions of law (*e.g.*, “materially in error,” *id.* par. 20 at 7; “could be subject to recovery as fraudulent transfers,” Dec. 30 Aff. Par. 9 at 4; “is consistent with,” *id. par. 14 at 7*); (v) reliance on uncited hearsay (*e.g.*, “It has been widely reported,” Oct. 29 Aff. par. 7 at 3); (vi) no foundation (*e.g.*, “the Receiver determined,” *id.* par. 27 at 9; “there were 34 transactions,” *id.* par. 54 at 17; “It is also my understanding,” Dec. 30 Aff. par. 9 at 4); and (vii) the use of undefined terms and acronyms (*e.g.*, “RBC,” *id.* par. 35 at 13), among many others.

The affidavits plainly violate MCR 2.119(B)(1)-(2): “(1) If an affidavit is filed in support of or in opposition to a motion, it must: (a) be made on personal knowledge; (b) state with particularity facts admissible as evidence establishing or denying the grounds stated in the motion; and (c) show affirmatively that the affiant, if sworn as a witness, can testify competently to the facts stated in the affidavit. (2) Sworn or certified copies of all documents or parts of documents referred to in

- August 8, 2019: the Court entered an Order granting preliminary approval to the Plan of Rehabilitation and establishing the Procedural Order, setting an October 4, 2019 deadline for objections.
- August 22, 2019: Mr. Upchurch emailed to Mr. Luecke an attached Independent Insurance Employment Agreement (and a separate Award Agreement). (See *id.* at 159-180 (highlighting not added).)
- September 5, 2019: Mr. Upchurch emailed to Mr. Luecke a power point slide deck entitled “IIG Board Presentation 09.12.19.” The slide deck includes “III. Acquisition Opportunity, i. Update on Pavonia,” followed by “ii. Presentation by George Luecke.” (See *id.* at 181-220; the described slide 2 is at 183.) Mr. Upchurch attempted to recall the email. (See *id.* at 221.)
- October 4, 2019: Objector filed its Objection, claiming, *inter alia*, that “allowing the GBIG Management Team to continue to be involved with Pavonia is not in the best interests of Pavonia, its policyholders, its creditors and the public.” (See Objection, p. 6.)

Granted, these e-mails include some but not all of Mr. Luecke’s responses, but they illustrate how Objector speaks out both sides of its mouth. For an entity so “extremely concerned” about the ethics and practices of the GBIG Management Team, Objector never gave a second thought to communicating with, offering employment to, and receiving board presentations from the same Co-CEO and Vice Chairman who led the GBIG Management Team during the very period in which the allegedly “questionable” or “concerning” Affiliate Investment activity occurred.

Perhaps the most interesting facts about Mr. Luecke appear in the MOU Amended Complaint on which Objector hangs its entire Second Supplement hat: First, Mr. Luecke is listed on the Certificate of Service as the representative for defendant Private Bankers Life and Annuity

an affidavit must be attached to the affidavit unless the documents: (a) have already been filed in the action; (b) are matters of public record in the county in which the action is pending; (c) are in the possession of the adverse party, and this fact is stated in the affidavit or the motion; or (d) are of such nature that attaching them would be unreasonable or impracticable, and this fact and the reasons are stated in the affidavit or the motion.

Co., Ltd. (“**Private Bankers**”). (See 2d Supp. Ex. A: p. 30 of 192, also appearing as p. 59 of 214.) Second, and more revealing, is a Private Bankers transaction that Objector highlights in its Supplemental Response as involving a \$700 million transaction related to a “pledge [that] would gut the MOU.” (2d Supp. at 6; 8 of 214.) In other words, Objector has hitched its own Trojan horse to the very wagon that Objector asserts carried the NC Insurer Affiliates right into insolvency.

If there was any merit to the notion that the GBIG Management Team presented a risk to Pavonia’s shareholders - and there is not - Objector would itself become “contaminated” – if not completely undone - by “importing the cancer” of the Co-CEO and Vice Chairman of that same team.

CONCLUSION

The Rehabilitator has provided ample evidence and support for approval of the Plan. The Plan remains contingent on the Director’s approval of the Form A application. Pursuant to statute, DIFS is fully evaluating management’s *bona fides* and Buyer’s investment strategies that will be implemented post-closing.

To the extent the Court desires additional information, it may consult with the Rehabilitator. But the Court should not seek or allow further input from Objector. Objector’s submissions have shown it to be unreliable, self-interested, and willing to cast unfounded and speculative aspersions that are not helpful to this Court, to the public, or to the interests of Pavonia’s policyholders.

For all of these reasons, as well as those set forth in the prior submissions and January 16, 2020 argument of the Rehabilitator, the Seller and the Buyer: (i) the Objection should be overruled and Objector’s participation terminated; (ii) the Plan should be approved without delay or modification; (iii) the Court should remedy Objector’s baseless attempt to substitute itself for

Buyer and for its frivolous delay of these proceedings; and (iv) the Court should grant such further additional relief as the Court deems fair and equitable.

Dated: February 11, 2020

Respectfully submitted,

ASPIDA HOLDCO, LLC

By: Lori McAllister

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