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January 10, 2020

Via Hand-Delivery

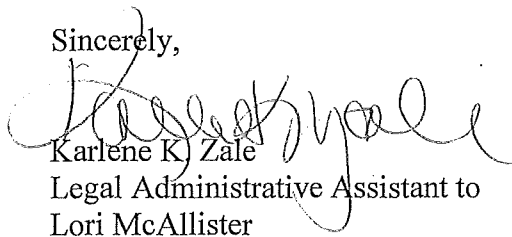
Clerk of the Court
Ingham County Circuit Court
341 S Jefferson St
Mason, MI 48854

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 Buyer's Response to Late Submission by Independent Insurance Group, 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.)

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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,

Case No. 19-504-CR

v.

Hon. Wanda M. Stokes

PAVONIA LIFE INSURANCE COMPANY
OF MICHIGAN,

Defendant.

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GENERAL CORPORATE OVERSIGHT
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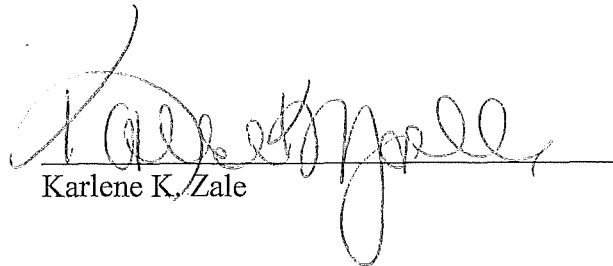
CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2020, I caused to have served by first class mail, with postage prepaid a copy of *Buyer's Response to Late Submission by Independent Insurance Group*, upon:

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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,

Case No. 19-504-CR

v.

Hon. Wanda M. Stokes

PAVONIA LIFE INSURANCE COMPANY
OF MICHIGAN,

Defendant.

**BUYER'S RESPONSE TO LATE SUBMISSION BY
INDEPENDENT INSURANCE GROUP, LLC**

Independent Insurance Group ("Objector") has no right or standing to object to the Plan of Rehabilitation ("Plan") nor to continue filing submissions with this Court after applicable dates for any filings by interested parties have passed. For the reasons previously expressed and the reasons provided briefly below, the Court should overrule the objection and issue a final order terminating Objector's participation in this matter.

RESPONSE TO LATE SUBMISSION

1. Objector is Not an Interested Party and Lacks Standing

Objector continues to lack standing to participate in these proceedings. *See* Buyer's Nov. 1 Brief at pp. 7-11; Rehabilitator's Nov. 1 Brief at pp. 3-4; Seller's Nov. 1 Brief at 10-15. Objector makes no demonstration as to why it is an "interested party" so as to give rise to standing under Michigan law. Objector's misinterpretations of MCL 500.8101 and citation to inapposite authority wholly fail to establish its standing in this matter. *See* Ind. Life Suppl. Brief at 5-7.

2. The Issues Raised by Objector are Subject to Exclusive Administrative Proceedings

Objector has raised the same issues and arguments in the Form A process pending before DIFS. The issues raised by the Objector are within the exclusive purview of that process, which is mandatory under the Holding Companies Act. *See* Buyer's Nov. 1 Brief at pp. 13-14; Seller's Nov. 1 Brief at 16. Objector's concerns and protestations are not matters for which the Objector should be heard to express here, and the Objection should be overruled as a matter of law.

3. Delay is Not in the Best Interests of, and Would be Prejudicial to, the Interests of Policyholders and Staff

For many months, Buyer, Seller and DIFS staff have been working toward achieving the full protection of Pavonia's policyholders and creditors. The Plan and the Stock Purchase Agreement that supports the Plan have been found by the Director to fully protect those interests. While the Director is performing her independent Form A review as mandated by the Insurance Laws, Buyer anticipates, based on all the information available, that approval will follow and permit the ultimate closing of the transaction. Subject to such approval, and addressing the remaining objections and/or claims from other parties, Pavonia will be in a position to exit rehabilitation with restored operations pursuant to the Plan and this Court's final Order approving such Plan. Restoring the Company's operations is of foremost importance to policyholders, and is further a critical component of securing the company's key staff. Creditors and the public will likewise benefit in the ultimate approval of the Plan and closing of the transaction. There is no basis for a non-party who purports to be an "interested person" and suggests it might provide an alternative proposal to cause a delay which only prejudices parties Chapter 81 is intended to protect, and whom the Director has already found will be protected. *See* Plan at 15-16.

4. Abuse of Discretion is the Proper Standard of Review

Objector suggests that the abuse of discretion standard is not the appropriate standard of review. *See* Ind. Life Suppl. Brief at 5-7. As previously set forth, that standard is applied widely across the United States in precisely this context. *See* Buyer's Nov. 1 Brief at pp. 14-19. Objector offers nothing to suggest the standard is inappropriate or erroneously applied elsewhere. It is in fact an important principle in insurance receivership law that is widely recognized in that it preserves the discretion of the expert -- the Director *qua* receiver -- in developing a strategic plan in a highly regulated industry for the benefit of thousands of policyholders and creditors. *See* Buyer's Nov. 1 Brief at pp. 14-19. There has been no abuse of discretion, and the Plan is consistent with law.

5. The "Supplemental" Filing Is Untimely And Should Be Stricken.

The Court's Order entered on August 8, 2019 Preliminarily Approving Plan of Rehabilitation established procedures for objections to the Plan of Rehabilitation. In particular, "interested parties" were permitted to file a written document memorializing the comment or objection and providing all applicable legal support. Such an objection was required to be filed "on or before Friday, October 4, 2019 at 4:30 p.m. Eastern Standard Time." Order, p. 12. In the event that an objection was not timely filed by the deadline, the Order states as follows:

Any comment or objection that is not both filed with the Clerk of the Court and served on the Rehabilitator's legal counsel by the deadlines provided above will be *deemed untimely*, and an interested party who fails to comply with these two requirements will be *deemed to have waived* his, her, or its right to comment or object and will have *no further right to comment or object* to matters related to the Plan of Rehabilitation or any specific aspects thereof.

Order, p. 12 (emphasis added).

The Supplemental Objection filed by Objector was filed on December 30, 2019 according to the Court's docket. This is far beyond the October 4, 2019 deadline. There is no indication that Objector sought or obtained the Court's permission to make an untimely filing (assuming arguendo that Objector had any standing to file something in the first place). The contents of the Supplemental Objection should therefore be deemed untimely and Objector has waived any right to further object.

Nor should Objector be given the right to file an unauthorized reply brief, even if it had the right to file the original objection. The Court's August 8, 2019 Order spelled out the precise process to be used in briefing any timely objections filed by the Court. There is no provision for an Objector to file the equivalent of a reply brief after filing a timely objection. Undeterred by this lack of authority to make its filing, Objector claims its filing should be permitted so that it can bring "New Information" not available on the date of filing its objection to the Court's attention. (Supp. Brief, p. 3.) The fallacy of this argument is demonstrated by the following 22 pages of its Supplemental Brief which reply to arguments made by the Rehabilitator and the Buyer, as opposed to arguments based on any purported "New Information." (Supp. Brief, pp. 4-26.)

The balance of the Supplemental Brief does not really present anything new. Instead, it takes updated financial information and then submits an Affidavit from a purported expert analyzing the past and current financials. (Supp. Brief, pp. 26-34.) The time for retaining experts and submitting reports to the Court has long since passed. A further delay in implementing the Plan of Rehabilitation hurts only the policyholders and the Estate. Harm to a hypothetical bidder is not sufficient to delay this matter further.

CONCLUSION

Objector continues to have no right or other interest upon which to object to the Plan. Objector has placed its “concerns” before the DIFS’s Form A regulatory review process, which is the administrative forum in which such issues are uniquely and exclusively addressed. The Director has not abused her discretion in proposing the Plan, which is the standard applied by courts across the country in this context. The Plan is fair and equitable to Pavonia, its policyholders, creditors and the public. The Objection should be overruled with the Objector’s participation terminated, and the Plan should be approved without delay or modification.

Dated: January 10, 2020

Respectfully submitted,

APSIDA HOLDCO, LLC

By: *Lori McAllister*

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