

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

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

Petitioner,

Case No. 19-504-CR

HON. WANDA M. STOKES

v

PAVONIA LIFE INSURANCE COMPANY
OF MICHIGAN,

[IN REHABILITATION]

Respondent.

Christopher L. Kerr (P57131)
Assistant Attorney General
Attorneys for Petitioner
Corporate Oversight Division
P. O. Box 30736
Lansing, MI 48909
(517) 335-7632

**EX PARTE PETITION FOR APPROVAL TO SETTLE CLAIM AGAINST
THE LINCOLN NATIONAL LIFE INSURANCE COMPANY**

Anita G. Fox, Director of the Michigan Department of Insurance and Financial Services (“DIFS”), as statutory and Court-appointed Rehabilitator of Pavonia Life Insurance Company of Michigan (the “Rehabilitator”), by and through her attorneys, Dana Nessel, Attorney General, and Christopher L. Kerr, Assistant Attorney General, petitions this Court pursuant to MCL 500.8114(2) and the Rehabilitation Order to approve the settlement of a claim that Pavonia Life Insurance Company of Michigan (“Pavonia”) asserts against The Lincoln National

Life Insurance Company (“Lincoln”) related to overpayments on two annuities that Pavonia reinsured. In support of this *Ex Parte* Petition, the Rehabilitator states as follows:

1. On July 9, 2019, this Court entered a Stipulated Order placing Pavonia into Rehabilitation and appointing the DIFS Director as the Rehabilitator of Pavonia (“Rehabilitation Order”). The Rehabilitator further appointed James E. Gerber, Janice Sylvertooth, and Julianne Gulliver as Special Deputy Rehabilitators, whose compensation this Court approved.

2. MCL 500.8115(1) governs legal actions or proceedings involving Pavonia that were pending when the Rehabilitation Order was entered. The statute provides, *inter alia*, that “[t]he rehabilitator shall take action respecting the pending litigation as he or she considers necessary in the interests of justice and for the protection of creditors, policyholders, and the public.”

3. With respect to claims involving Pavonia arising after entry of the Rehabilitation Order, MCL 500.8114(2) and the Rehabilitation Order authorize the Rehabilitator to “take such action as she considers necessary or appropriate to reform or revitalize Pavonia.” (Rehabilitation Order, p 13, ¶ 11.) In addition, this statute, as incorporated by the Rehabilitation Order, grants the Rehabilitator “full power and authority to direct and manage Pavonia . . . and to deal in totality with the property and business of” the company. (Rehabilitation Order, p 13, ¶ 8.)

4. The Rehabilitator seeks the Court’s approval to settle the following claim that Pavonia asserts against Lincoln:

In re: Pavonia claim against Lincoln for overpayments on two annuities that Pavonia reinsured. As background, Pavonia and Lincoln are the successor parties to a "PPA Business 100% Coinsurance Agreement," effective October 1, 1995, an "Amended and Restated PPA Business 100% Coinsurance Agreement," executed September 30, 1996, and a "Second Household PPA Business 100% Coinsurance Agreement," effective September 30, 1996 (the "Coinsurance Agreements") under which Pavonia, as reinsurer, agreed to assume all of Lincoln's liabilities on certain life insurance policies and annuities known as the "PPA Business." Under the Coinsurance Agreements, Lincoln, acting as Pavonia's agent, agreed to continue to perform all administrative and policyholder servicing functions for the PPA Business, including payment of benefits. Furthermore, under the Coinsurance Agreements, Lincoln billed Pavonia for reimbursement of all benefits payments made on all policies included in the PPA Business.

The PPA Business included two annuity contracts (the "Annuities") that were issued as part of a structured settlement case involving the annuitant with initials A.M. (the "Annuitant"). The payment of benefits under the Annuities should have terminated upon the death of the Annuitant on March 15, 2005, but Lincoln was not timely informed by the owners and beneficiaries of the Annuities and Lincoln's routine business procedures did not timely detect the death of the Annuitant. As a result, during this rehabilitation the parties discovered that Lincoln overpaid benefits under the Annuities in the total amount of \$639,827 (the "Overpayments"), which were reimbursed by Pavonia.

Pavonia has asserted a claim against Lincoln for repayment of the Overpayments resulting from Lincoln's failure to timely detect the Annuitant's death and to timely cease paying benefits under the Annuities after the Annuitants' death. However, Lincoln disputes Pavonia's claim for repayment because the Overpayments were not the result of gross negligence, willful misconduct, or bad-faith administration of the PPA Business as required by the Coinsurance Agreements.

Through negotiations, the parties have agreed to settle this matter and have executed a settlement agreement toward that end. Under the settlement agreement, Lincoln has agreed to pay Pavonia \$200,000 and to amend the Coinsurance Agreements so that the administrative fee payable to Lincoln by Pavonia under those agreements is reduced by 1 basis point. In exchange, Pavonia has agreed to release and forever discharge Lincoln "from any and all claims, actions, causes of actions, damages, or other liabilities, known or unknown, which

Pavonia has or may claim to have against Lincoln as of the date of this Settlement Agreement arising out of or relating to the Overpayments and/or the Annuities.”

5. In light of the significant financial payments being made by Lincoln to Pavonia under the settlement agreement, together with the broad release that Pavonia is giving to Lincoln in exchange, the Rehabilitator and Special Deputy Rehabilitators are seeking this Court’s approval of the proposed settlement.

6. The Rehabilitator and Special Deputy Rehabilitators believe that settlement of the foregoing Pavonia claim in the amount indicated above and on the terms contained in the parties’ settlement agreement (which is not attached due to confidentiality provisions and/or concerns) is necessary and appropriate, is in the interests of justice, and will promote the protection of Pavonia’s creditors, policyholders, and the public. A comparison of the financial payments being made by Lincoln to the total amount of Pavonia’s asserted claim evidences that this settlement is reasonable and will secure needed assets for the Pavonia rehabilitation estate. Moreover, the settlement amount that Lincoln is paying to Pavonia would likely be exceeded by legal and other costs if Pavonia’s claim were fully adjudicated in this rehabilitation or otherwise.

7. Personally serving this *Ex Parte* Petition and any resulting Order on any individuals or entities that may have a general interest in Pavonia’s rehabilitation would be impractical at this time because there is no risk, given Pavonia’s solvent financial condition, that the Court’s approval of this settlement and authorization to serve this *Ex Parte* Petition and any resulting Order by posting

electronic copies on the DIFS website would negatively affect any of Pavonia's creditors, policyholders, or the public. Moreover, attempting to identify and personally notify every individual or entity having such a general interest would be time-intensive and costly to Pavonia's rehabilitation estate. For these reasons, the Rehabilitator requests that the Court authorize, approve, and/or ratify service of this *Ex Parte* Petition and any resulting Order by posting electronic copies on the DIFS website, www.michigan.gov/difs, under the section "Who We Regulate," the subsection "Receiverships," and the sub-subsection "Pavonia Life Insurance." Service in this manner is reasonably calculated to give potentially interested individuals and entities actual notice of these proceedings and is otherwise reasonable under the circumstances.

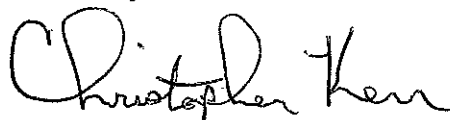
8. As further protection for this Court and any potentially interested individuals or entities, the proposed Order attached as Exhibit A expressly provides that Lincoln will only pay the Court-approved settlement amount to Pavonia after twenty-one (21) calendar days have elapsed following entry of this Court's approval Order, which is the applicable appeal period (the "Appeal Period"). Accordingly: (a) any potentially interested individual or entity will receive notice of this *Ex Parte* Petition and any resulting Order through the DIFS website posting; (b) any such individual or entity having standing can timely object to or appeal the Court's approval Order during the Appeal Period; and (c) Lincoln will not pay the Court-approved settlement amount to Pavonia until the Appeal Period has expired, or if a valid objection or appeal has been timely filed, until such objection or appeal is fully

and finally resolved. This procedure provides additional due process and ensures the ability of individuals or entities having standing to timely object to or appeal the Court's approval Order, although no such objection or appeal is anticipated.

WHEREFORE, for the reasons stated above, the Rehabilitator respectfully requests this Court to enter the *Ex Parte* Order in the form attached as Exhibit A, which: (a) approves the settlement reached in the above-referenced matter, in the amount and on the terms more fully set forth in the settlement agreement; and (b) authorizes, approves, and/or ratifies service of this *Ex Parte* Petition and the attached *Ex Parte* Order by posting electronic copies on the "Pavonia Life Insurance" section of the DIFS website.

Respectfully submitted,

Dana Nessel
Attorney General



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Assistant Attorney General
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Dated: September 9, 2021

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**EX PARTE ORDER APPROVING SETTLEMENT OF CLAIM AGAINST
THE LINCOLN NATIONAL LIFE INSURANCE COMPANY**

At a session of said Court
held in the Circuit Courtrooms
for the County of Ingham,
State of Michigan, on the
_____ day of _____, 2021.

PRESENT: HONORABLE WANDA M. STOKES, CIRCUIT COURT JUDGE

WHEREAS, Anita G. Fox, Director of the Michigan Department of Insurance
and Financial Services ("DIFS") and statutory and Court-appointed Rehabilitator of

Pavonia Life Insurance Company of Michigan (the "Rehabilitator"), has filed an *Ex Parte* Petition for Approval to Settle Claim against The Lincoln National Life Insurance Company (the "*Ex Parte* Petition"). Specifically, and as set forth in more detail in the *Ex Parte* Petition, Pavonia Life Insurance Company of Michigan ("Pavonia") has asserted a claim against The Lincoln National Life Insurance Company ("Lincoln") related to overpayments on two annuities that Pavonia reinsured;

WHEREAS, MCL 500.8115(1) governs legal actions or proceedings involving Pavonia that were pending when the Rehabilitation Order was entered and provides, *inter alia*, that "[t]he rehabilitator shall take action respecting the pending litigation as he or she considers necessary in the interests of justice and for the protection of creditors, policyholders, and the public";

WHEREAS, with respect to claims involving Pavonia arising after entry of the Rehabilitation Order, MCL 500.8114(2) and the Rehabilitation Order authorize the Rehabilitator to "take such action as she considers necessary or appropriate to reform or revitalize Pavonia." In addition, this statute, as incorporated by the Rehabilitation Order, grants the Rehabilitator "full power and authority to direct and manage Pavonia . . . and to deal in totality with the property and business of" the company; and

WHEREAS, the Rehabilitator and Special Deputy Rehabilitators have determined that settlement of the Pavonia claim in the amount indicated in the *Ex Parte* Petition and on the terms contained in the parties' settlement agreement is

necessary and appropriate, is in the interests of justice, and will promote the protection of Pavonia's creditors, policyholders, and the public;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Court APPROVES the settlement of the Pavonia claim asserted against Lincoln, as described above and in the *Ex Parte* Petition; authorizes Lincoln's payment to Pavonia as set forth in the *Ex Parte* Petition and the parties' settlement agreement; and authorizes the Rehabilitator and Special Deputy Rehabilitators to execute any necessary documentation and take such other action required to finalize the settlement.

IT IS FURTHER ORDERED that due to the difficulty and prohibitive cost associated with personally serving the *Ex Parte* Petition and this Order on any individuals or entities that may have a general interest in Pavonia's rehabilitation, the Court authorizes, approves, and/or ratifies the Rehabilitator's service of the *Ex Parte* Petition and this Order by posting electronic copies on the DIFS website, www.michigan.gov/difs, under the section "Who We Regulate," the subsection "Receiverships," and the sub-subsection, "Pavonia Life Insurance." The Court finds that service in this manner is reasonably calculated to give potentially interested individuals and entities actual notice of these proceedings and is otherwise reasonable under the circumstances.

IT IS FURTHER ORDERED that Lincoln will only pay the Court-approved settlement amount to Pavonia after twenty-one (21) calendar days have elapsed following entry of this approval Order, which is the applicable appeal period (the

“Appeal Period”). Accordingly: (a) any potentially interested individual or entity will receive notice of the *Ex Parte* Petition and this Order through the DIFS website posting; (b) any such individual or entity having standing can timely object to or appeal this Order during the Appeal Period; and (c) Lincoln will not pay the Court-approved settlement amount to Pavonia until the Appeal Period has expired, or if a valid objection or appeal has been timely filed, until such objection or appeal is fully and finally resolved. The Court finds that this procedure provides additional due process and ensures the ability of individuals or entities having standing to timely object to or appeal this approval Order.

IT IS SO ORDERED.

This Order does not resolve the last pending claim and does not close this case.

Honorable Wanda M. Stokes
Circuit Court Judge