

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.

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

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**EX PARTE PETITION FOR APPROVAL TO SETTLE LAWSUIT AGAINST  
PAVONIA LIFE INSURANCE COMPANY OF MICHIGAN  
BY CLAIMANTS CHARLES SCHWAB & CO., INC. AND  
THE CHARLES SCHWAB CORPORATION**

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 500.8115(1) to approve the

settlement of a lawsuit filed against Pavonia Life Insurance Company of Michigan (“Pavonia”) by Charles Schwab & Co. Inc. and The Charles Schwab Corporation (“Claimants”) related to two corporate-owned life insurance policies. 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 against 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 lawsuit filed against Pavonia:

**Charles Schwab & Co. Inc., a California corporation and The Charles Schwab Corporation, a Delaware corporation, Plaintiffs v Pavonia Life Insurance Company of Michigan, a Michigan corporation, et al.** On January 10, 2019, Claimants filed a Complaint in the Superior Court of the State of California, County of San Francisco, initiating the action entitled *Charles Schwab & Co. Inc., a California corporation and The Charles Schwab Corporation, a Delaware corporation, Plaintiffs v. Pavonia Life Insurance Company of Michigan, a Michigan corporation; Enstar (US) Inc., a Delaware corporation; Enstar Group Limited, a Bermuda company; Andesa Services, Inc., a Pennsylvania corporation; Southland National Holdings, Inc., a Delaware corporation; and DOES 1 through 50, Defendants*, Case No. CGC-19-572711 (the "Lawsuit"). On April 8, 2019, Claimants filed an Amended Complaint adding The Lincoln National Life Insurance Company, an Indiana corporation ("Lincoln"), as a defendant and removing Enstar Group Limited and Southland National Holdings, Inc. as parties.

In the Lawsuit, Claimants seek (from the Defendants other than Andesa) payment of death benefits, interest payments, and other amounts allegedly due in connection with two group life insurance policies known as corporate-owned life insurance ("COLI") policies. In December 1994, Alexander Hamilton Life Insurance Company of America ("Alexander Hamilton") issued one COLI policy to Charles Schwab & Co., Inc. and another COLI policy to The Charles Schwab Corporation (jointly, the "COLI Policies"). The COLI Policies were reinsured by Hamilton National Life Insurance Company under a COLI Business 100% Coinsurance Agreement, dated October 1, 1995 (the "Reinsurance Agreement"). Following a series of mergers, acquisitions, and name changes, Alexander Hamilton was merged with and into Lincoln, and Hamilton National Life Insurance Company ultimately became Pavonia. As a result, Lincoln became the direct insurer of the COLI Policies, and Pavonia reinsured the COLI Policies. Pursuant to the Reinsurance Agreement, Pavonia has agreed to indemnify Lincoln for the Lawsuit.

On or about November 6, 2019, Claimants filed a Proof of Claim in the Pavonia rehabilitation proceeding asserting a claim against the Pavonia rehabilitation estate in the amount of \$19,602,624 as of the date of filing in connection with the Lawsuit and the COLI Policies ("Claimants' Proof of Claim").

On July 17, 2020, the parties to the Lawsuit participated in a mediation to discuss resolution of the Lawsuit and the dispute pertaining to the COLI Policies, after which mediation the parties agreed to settle the Lawsuit. The parties thereafter negotiated and executed a settlement agreement, pursuant to which Claimants have agreed to release and forever discharge Pavonia from "all causes of action, choses in action, claims, damages (including, without limitation, all damages sought in the Lawsuit), demands, costs, expenses, experts' fees, attorneys' fees, consultant fees, Delayed Claim Interest ('DCI'), and all other amounts, in law or in equity, whether known or unknown, which exist or may exist, or may accrue in the future, that the Claimants have, have ever had, or may have in the future, relating to or arising out of," *inter alia*, the Lawsuit and the COLI Policies, in exchange for Pavonia's payment of \$2,000,000.00 to Claimants.

5. Paragraph 23 of the Rehabilitation Order provides that "[a]ll Creditor claims against Pavonia 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." Further, paragraph 25 of the Rehabilitation Order provides that "[a]ny and all claims by Creditors against Pavonia must be raised or asserted within the rehabilitation proceeding before this Court and are subject to this Court's orders regarding the submission and determination of claims." Accordingly, an order approving this proposed settlement is needed from the Court.

6. The Rehabilitator believes that settlement of the foregoing Lawsuit 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 settlement amount to the amount of Claimants' Proof of Claim evidences that this

settlement is eminently reasonable and will limit potential liability to the Pavonia rehabilitation estate. Moreover, given the complexity of the Lawsuit and the number of parties involved, the settlement amount would likely be exceeded by legal and other costs if the case were 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 and ratify service of this *Ex Parte* Petition and any resulting Order by posting electronic copies on the DIFS website, [www.michigan.gov/difs](http://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.

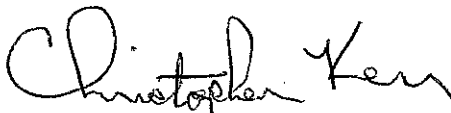
8. As further protection for this Court and any potentially interested individuals or entities, the settlement agreement and proposed Order expressly

provide that Pavonia (through the Deputy Rehabilitators) will only pay the Court-approved settlement amount to Claimants 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) Pavonia (through the Deputy Rehabilitators) will not pay the Court-approved settlement amount to Claimants 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



Christopher L. Kerr (P57131)  
Assistant Attorney General  
Attorneys for Petitioner  
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P. O. Box 30736  
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Dated: August 24, 2021

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**EX PARTE ORDER APPROVING SETTLEMENT OF LAWSUIT AGAINST  
PAVONIA LIFE INSURANCE COMPANY OF MICHIGAN  
BY CLAIMANTS CHARLES SCHWAB & CO., INC. AND  
THE CHARLES SCHWAB CORPORATION**

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 Lawsuit against Pavonia Life Insurance Company of Michigan by Claimants Charles Schwab & Co. Inc. and The Charles Schwab Corporation (the “*Ex Parte* Petition”). Specifically, on January 10, 2019, Charles Schwab & Co. Inc. and The Charles Schwab Corporation (“Claimants”) filed a Complaint against Pavonia Life Insurance Company of Michigan (“Pavonia”) and several other defendants in the Superior Court of the State of California, County of San Francisco, initiating the action entitled *Charles Schwab & Co. Inc., a California corporation and The Charles Schwab Corporation, a Delaware corporation, Plaintiffs v. Pavonia Life Insurance Company of Michigan, a Michigan corporation; Enstar (US) Inc., a Delaware corporation; Enstar Group Limited, a Bermuda company; Andesa Services, Inc., a Pennsylvania corporation; Southland National Holdings, Inc., a Delaware corporation; and DOES 1 through 50, Defendants*, Case No. CGC-19-572711 (the “Lawsuit”). On April 8, 2019, Claimants filed an Amended Complaint adding The Lincoln National Life Insurance Company, an Indiana corporation (“Lincoln”), as a defendant and removing Enstar Group Limited and Southland National Holdings, Inc. as parties;

**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 against 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 has determined that settlement of the Lawsuit 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 Lawsuit described above and in the *Ex Parte* Petition, authorizes payment to Claimants of the settlement amount of \$2,000,000 from the funds of Pavonia, 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](http://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 as provided in the settlement agreement, Pavonia (through the Deputy Rehabilitators) will only pay the Court-approved settlement amount to Claimants 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) Pavonia (through the Deputy Rehabilitators) will not pay the Court-approved settlement amount to Claimants 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.

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Honorable Wanda M. Stokes  
Circuit Court Judge