

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,

v

PAVONIA LIFE INSURANCE COMPANY  
OF MICHIGAN,

Respondent.

Case No. 19-504-CR

HON. WANDA M. STOKES

[IN REHABILITATION]

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**EX PARTE PETITION FOR APPROVAL TO  
SETTLE DECLARATORY AND DEFAULT JUDGMENT AGAINST PAVONIA  
LIFE INSURANCE COMPANY OF MICHIGAN BY CLAIMANTS BARBARA  
GENDASZEK, INDIVIDUALLY AND AS ADMINISTRATOR OF THE  
ESTATE OF JOHN GENDASZEK**

Anita G. Fox, Director of the Michigan Department of Insurance and  
Financial Services (“DIFS”), as Rehabilitator of Pavonia Life Insurance Company of  
Michigan (the “Rehabilitator”), by and through her attorneys, Dana Nessel,  
Attorney General, and Christopher L. Kerr and Aaron W. Levin, Assistant  
Attorneys General, petitions this Court pursuant to MCL 500.8115(1) to approve

the settlement of a declaratory judgment and default judgment entered against Pavonia Life Insurance Company of Michigan (“Pavonia”) and Pavonia’s predecessor, Alexander Hamilton Life Insurance Company of American, related to a credit life insurance policy. 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.

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 declaratory judgment and default judgment against Pavonia:

***Barbara Gendaszek, individually and as Administrator of the Estate of John Gendaszek v Pavonia Life Insurance Co of Michigan.*** On August 20, 2018, Barbara Gendaszek, individually and as Administrator of the Estate of John Gendaszek ("Claimants") secured a declaratory judgment order against Pavonia that, *inter alia*, required Pavonia to: (1) provide life insurance benefits to Claimants under a certain insurance policy (as defined below); (2) pay the principal balance due on Claimants' mortgage as of August 15, 2017 to Select Portfolio Servicing, Inc., the designated beneficiary of the insurance policy; and (3) reimburse Claimants for any interest payments paid to Select Portfolio Servicing, Inc. since the date of John Gendaszek's death on August 15, 2017, in a lawsuit filed in the Superior Court of New Jersey, Law Division, Camden County Vicinage, Case No. L-001200-18, assigned to the Honorable Francisco Dominguez (the "Declaratory Judgment Action").

In follow up to the Declaratory Judgment Action, on June 7, 2019, Claimants secured an order entering a default judgment against Pavonia and scheduling a proof hearing to determine damages in a separate lawsuit filed in the Superior Court of New Jersey, Law Division, Camden County Vicinage, Case No. L-003402-18, assigned to the Honorable Anthony M. Pugliese (the "Default Judgment Action").

The Declaratory Judgment Action and Default Judgment Action are based on a credit life insurance policy, identified with account number ending 9058 effective July 18, 2001, that was issued to Claimants by Pavonia's predecessor, Alexander Hamilton Life Insurance Company of America (the "Credit Life Policy"). On September 26, 2019, Claimants filed a Proof of Claim in the Pavonia Rehabilitation Proceeding claiming that as of the date of filing, Pavonia owed Claimants \$111,180.94 in connection with the Declaratory Judgment Action, the Default Judgment Action, and the Credit Life Policy ("Claimants' Proof of Claim").

Through negotiations, Claimants and all other persons acting on their behalf, including but not limited to their respective agents, representatives, attorneys, employees, heirs, and assigns, have agreed to release and forever discharge Pavonia and all other persons acting on its behalf, including but not limited to the Rehabilitator, Special Deputy Rehabilitators, its directors, officers, shareholders, employees, insurers, attorneys, agents, representatives, parent companies, subsidiaries, affiliates, predecessors, successors, and assigns, from all causes of action, debts, choses in action,

claims, damages, or demands, in law or in equity, whether known or unknown, that Claimants have or have ever had, relating to or arising out of the Declaratory Judgment Action, the Default Judgment Action, the Credit Life Policy, or Claimants' Proof of Claim in exchange for Pavonia's payment of \$55,000.00 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 declaratory judgment and default judgment 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 the Declaratory Judge Action, the Default Judgment Action, the Credit Life Policy, and Claimants' Proof of Claim, and the settlement's release of all future claims, evidences that this settlement is reasonable and will limit potential liability to the Rehabilitation Estate. Moreover, the settlement is relatively modest in

amount and 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 all parties that may have a general interest in Pavonia's rehabilitation would be impractical at this time and there is no risk, given Pavonia's financial condition, that this Court's authorization to serve this *Ex Parte* Petition and any resulting Order by posting electronic copies on DIFS' website will negatively affect any of Pavonia's creditors, policy holders or the public. Moreover, attempting to identify and personally notify every party 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 parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

WHEREFORE, for the reasons stated above, the Rehabilitator respectfully requests this Court to approve the settlement reached in the above-referenced matter, in the amount and on the terms more fully set forth in the settlement agreement. The Rehabilitator further requests the Court to authorize and ratify service of this *Ex Parte* Petition and any resulting Order by posting electronic copies on the "Pavonia Life Insurance" section of the DIFS website.

Respectfully submitted,

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