

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]

Christopher L. Kerr (P57131)
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***EX PARTE* PETITION FOR APPROVAL TO SETTLE
INDEMNIFICATION CLAIMS BETWEEN
PAVONIA LIFE INSURANCE COMPANY OF MICHIGAN AND
ENSTAR (US) INC.**

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 indemnification claims made between Pavonia Life Insurance

Company of Michigan (“Pavonia”) and Enstar (US) Inc. (“Enstar”) in connection with the lawsuit filed by Charles Schwab & Co. Inc. and The Charles Schwab Corporation (collectively, “Schwab”) 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 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 indemnification claims made between Pavonia and Enstar in connection with the Schwab lawsuit:

In re: indemnification claims between Pavonia and Enstar in connection with the Schwab lawsuit. On January 10, 2019, Schwab 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, Schwab filed an Amended Complaint adding The Lincoln National Life Insurance Company, an Indiana corporation, as a defendant and removing Enstar Group Limited and Southland National Holdings, Inc. as parties.

In the Lawsuit, Schwab sought (from the Defendants other than Andesa Services, Inc.) 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 policies (the "COLI Policies"). As a result of the Lawsuit, GBIG Holdings, Inc. (f/k/a Southland National Holdings, Inc.) ("GBIG") sent a letter dated June 27, 2019, demanding that Laguna Life Holdings SARL ("Laguna"), a subsidiary of Enstar Group Limited, indemnify GBIG for any losses suffered by GBIG related to the Lawsuit pursuant to Sections 10(a) and (d) of the Stock Purchase Agreement, dated as of February 17, 2017, by and between GBIG and Laguna (the "SPA"). In turn, Enstar, on behalf of Laguna, sent a letter dated July 1, 2019, demanding that GBIG indemnify Laguna for any losses suffered by Laguna, Enstar (US) Inc., or Enstar Group Limited related to the Lawsuit and demanded that GBIG assume liability for Schwab's claims against Enstar in the Lawsuit pursuant to Section 6(b) of the SPA. Both Pavonia and Enstar dispute the other party's indemnification 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 principal settlement agreement, pursuant to which Schwab agreed to release each Defendant from all claims relating to, *inter alia*, the Lawsuit and the COLI Policies. In exchange for this release, Pavonia agreed to pay Schwab \$2,000,000. The Court approved this settlement by Order dated September 7, 2021.

Through this *Ex Parte* Petition, Pavonia and Enstar seek the Court's additional approval of a separate settlement agreement entered into between them. Under this separate settlement agreement, Pavonia and Enstar have agreed to release each other from, *inter alia*, the indemnification claims made between them and all claims relating to the Lawsuit and the COLI Policies, in exchange for Enstar's payment of \$200,000 to Pavonia.

5. In light of the significant monetary payment being made by Enstar to Pavonia under the separate settlement agreement, together with the broad mutual releases that the parties are giving each other in exchange, the Rehabilitator and Special Deputy Rehabilitators are seeking the Court's approval of this proposed settlement.

6. The Rehabilitator believes that settlement of the foregoing indemnification claims between Pavonia and Enstar 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 payment being made by Enstar to the total amount of Pavonia's asserted indemnification claim evidences that this settlement is reasonable and will secure needed assets for the Pavonia rehabilitation estate. Moreover, the settlement amount that Enstar is paying to Pavonia would likely be exceeded by legal and other costs if Pavonia's

asserted indemnification claim were fully adjudicated in this rehabilitation or otherwise. Additionally, in its Order dated September 7, 2021, this Court has already approved the principal settlement that resolved the Lawsuit.

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.

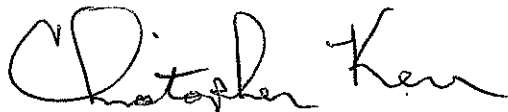
8. As further protection for this Court and any potentially interested individuals or entities, the proposed Order attached as Exhibit A expressly provides that Enstar will only pay the Court-approved settlement amount to Pavonia after

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) Enstar 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
Attorneys for Petitioner
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Dated: September 17, 2021

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***EX PARTE ORDER APPROVING SETTLEMENT OF
INDEMNIFICATION CLAIMS BETWEEN
PAVONIA LIFE INSURANCE COMPANY OF MICHIGAN AND
ENSTAR (US) INC.***

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 Indemnification Claims between Pavonia Life Insurance Company of Michigan and Enstar (US) Inc. (the “*Ex Parte* Petition”). Specifically, and as set forth in more detail in the *Ex Parte* Petition, Pavonia Life Insurance Company of Michigan (“Pavonia”) and Enstar (US) Inc. (“Enstar”) have made indemnification claims against each other in connection with the lawsuit filed by Charles Schwab & Co. Inc. and The Charles Schwab Corporation related to two corporate-owned life insurance policies (the “Lawsuit”). Although the Lawsuit was settled by the parties thereto and the Court approved that principal settlement agreement by Order dated September 7, 2021, the *Ex Parte* Petition seeks the Court’s additional approval of a separate settlement agreement entered into between Pavonia and Enstar under which the parties have agreed to release each other from, *inter alia*, the indemnification claims made between them and all claims relating to the Lawsuit, in exchange for Enstar’s payment of \$200,000 to Pavonia;

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 indemnification claims between Pavonia and Enstar 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 indemnification claims between Pavonia and Enstar, as described above and in the *Ex Parte* Petition; authorizes Enstar’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 Enstar 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) Enstar 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