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January 10, 2020

VIA HAND DELIVERY

Clerk of the Court  
Ingham County Circuit Court  
315 S. Jefferson Street, 3<sup>rd</sup> Floor  
Mason, MI 48854

Re: Case No: 19-504-CR  
Anita G. Fox v Pavonia Life Insurance Company

Dear Clerk:

Please find enclosed GBIG Holdings, Inc.'s Motion to Disallow/Strike the Untimely 12/30/19 Supplement Filed by Independent Insurance Group, LLC, Proof of Service, and our \$20 check for the Motion fee.

If you have any questions, please contact me.

Sincerely,

Ryan M. Shannon

CAS

Enclosures

cc: The Honorable Wanda M. Stokes  
Christopher Kerr and James Long  
Jonathan E. Raven  
Timothy W. Volpe  
LANSING 88848-1 550104v1

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30<sup>TH</sup> JUDICIAL CIRCUIT  
INGHAM COUNTY

Anita G. Fox, Director of the Michigan  
Department of Insurance and  
Financial Services

Plaintiff,

v

Pavonia Life Insurance Company  
of Michigan,

Defendant.

Case No. 19-504-CR

Hon. Wanda M. Stokes

PROOF OF SERVICE

The undersigned hereby certifies that on January 10, 2020, he caused to be served on the following, by first class mail, postage prepaid, GBIG Holdings, Inc.'s Motion to Disallow/Strike the Untimely 12/30/19 Supplement Filed by Independent Insurance Group, LLC:

Michigan Department of Attorney General  
Attn: Christopher Kerr and James Long  
Corporate Oversight Division  
P.O. Box 30736  
Lansing, MI 48909

Timothy W. Volpe  
Adams and Reese LLP  
501 Riverside Avenue, Suite 601  
Jacksonville, FL 32202

Jonathan E. Raven  
Fraser Trebilcock Davis & Dunlap PC  
124 W. Allegan Street, Suite 1000  
Lansing, MI 48933

The undersigned further certifies that on January 10, 2020, he caused to be served via hand-delivery, a Judge's copy of the foregoing documents on the Honorable Wanda M. Stokes, Ingham County Circuit Court, 315 S. Jefferson Street, 3<sup>rd</sup> Floor, Mason, MI 48854.

  
Ryan M. Shannon

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30<sup>TH</sup> JUDICIAL CIRCUIT  
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Anita G. Fox, Director of the Michigan  
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Plaintiff,

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Pavonia Life Insurance Company  
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Defendant.

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Case No. 19-504-CR

Hon. Wanda M. Stokes

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**GBIG Holdings, Inc.'s Motion to Disallow/Strike the Untimely  
12/30/19 Supplement Filed by Independent Insurance Group, LLC**

GBIG Holdings, Inc., by and through its counsel, Dickinson Wright PLLC, hereby moves this Court to disallow, or to strike pursuant to MCR 2.115(B), the "Supplement to Objection" filed in the above-captioned matter by Independent Insurance Group, LLC, on or about December 30, 2019. The Supplement is not a proper pleading in this matter. It is not permitted by the Court's August 8, 2019 Procedural Order, and Independent Insurance Group, LLC has filed no motion to revise the Procedural Order or to otherwise seek permission to file untimely comments or objection materials.

In the event the Court does not strike the Supplement, GBIG Holdings, Inc. requests that the Court nonetheless consider the additional legal and factual discussion set forth in the attached Brief in Support. Chiefly, the Court is requested to consider that the very same concerns and factual issues raised in the Supplement (including as relates to Pavonia's post-rehabilitation management, investment activity, and intercompany services agreements) are already the subject of a separate "Form A" review process under way at the Department of Insurance and Financial Services. The Plan of Rehabilitation is made *contingent* on the outcome of that separate review process. Independent Insurance Group should not be permitted to put the cart before the horse by injecting these same issues into *this* proceeding when those issues are statutorily identified for the Department's review. See MCL 500.1315(1).

**Brief in Support of GBIG Holdings, Inc.'s Motion to Disallow/Strike the Untimely  
12/30/19 Supplement Filed by Independent Insurance Group, LLC**

**I. Introduction and Background**

- a. GBIG Holdings, Inc. voluntarily submitted to rehabilitation and desires that Pavonia be returned to normal operations as soon as the Director is satisfied that such return complies with the Insurance Code.**

GBIG Holdings, Inc. (“GBIG”) is the owner and intended seller of Pavonia Life Insurance Company (“Pavonia”).<sup>1</sup> GBIG *voluntarily* consented to the initiation of this rehabilitation proceeding by the Director of the Department of Insurance and Financial Services (“DIFS”), and has been in discussions with DIFS concerning the proposed sale of Pavonia since October of 2018. (See Response, p. 4.) GBIG submitted to voluntary rehabilitation cognizant of the fact that the Michigan Insurance Code’s provisions concerning rehabilitation emphasize “minimum interference with the normal prerogatives of the owners and managers of insurers.” MCL 500.8101(3).

Consistent with its voluntary stipulation to these proceedings, GBIG desires a swift and efficient return of Pavonia to its normal operations (albeit under a new ultimate controlling person). Among other reasons for this desire is that delay in the confirmation of the proposed Rehabilitation Plan increases the risks to Pavonia’s successful operations and to its policyholders. As previously discussed in GBIG’s submissions to this Court, delay would increase the costs of estate administration (which are to be paid by Pavonia), increase the likelihood that key employees will depart for other opportunities if they believe their position to be in jeopardy, and increase execution

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<sup>1</sup> The details of GBIG’s ownership and involvement in this proceeding as well as other facts germane to the issues before this Court are more fully detailed in the November 1, 2019 Response of GBIG Holdings to the 10/04/2019 Objection to Plan of Rehabilitation by Independent Insurance Group LLC (the “Response”).

risk on the purchase deal that has already been negotiated over many months of good faith efforts by GBIG, Aspida Holdco, Inc. and DIFS.<sup>2</sup>

**b. This Court's August 8, 2019 Procedural Order does not permit the filing of out-of-time "supplements."**

The Director, acting as Rehabilitator, filed a Stipulated Order of Rehabilitation with this Court on July 9, 2019, and thereafter submitted a proposed Plan of Rehabilitation, which this Court preliminarily approved on August 8, 2019. Also on August 8, 2019, and pursuant to MCL 500.8114(4),<sup>3</sup> this Court entered a Procedural Order establishing the timelines and other requirements for filings by both the Rehabilitator as well as other interested parties. Pursuant to Part II of the Court's Procedural Orders (the "Plan Procedures"), interested parties desiring to submit any comment or objection to the Plan of Rehabilitation were to file and serve the comment or objection by no later than "October 4, 2019, at 4:30 p.m. Eastern Standard Time." (Procedural Order, p. 12.) The Rehabilitator, as well as other interested parties desiring to *respond* to a comment or objection, were permitted to do so on or before November 1, 2019. (*Id.*) The Plan Procedures afforded no person or party an opportunity to file "supplemental" materials or a reply to a response of any kind at any time after November 1, 2019.

Independent Insurance Group, LLC ("IIG") filed a 397-page "Supplement" on December 30, 2019. This "Supplement" should be stricken or disallowed as it fails to comply with the Procedural Order. The Supplement further fails to identify any material "new" information that is

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<sup>2</sup> See Response, p. 2, p. 13. Pavonia employs approximately 178 staff members who may depart if they view their positions to be in jeopardy. Many of these staff members hold important institutional and operational knowledge.

<sup>3</sup> Chapter 81 provides that the Court may approve or disapprove a proposed plan, or modify such plan, "after notice and hearings *as the court may prescribe*." MCL 500.8114(4) (emphasis added).

not already known to DIFS or that will not be considered in DIFS separate and statutorily-mandated review of the proposed acquisition of Pavonia.

## **II. Argument**

### **a. IIG's out-of-time Supplement should be disallowed or stricken as it is untimely.**

Eighty-seven days *after* the October 4, 2019 deadline established in the Procedural Order, on December 30, 2019, Independent Insurance Group, LLC ("IIG") submitted 397 pages of materials to the Court, including 35 pages of briefing denominated as a "Supplement to Objection." IIG made no motion asking for permission to file the Supplement, and the Court's Procedural Order has not been modified in the interim to allow for the filing of additional materials by any party or non-party to these proceedings.

In its December 31, 2019 Supplement, IIG repeated the requests already made in its October 4, 2019 filing. That is, it asked that the Court postpone consideration of a proposed Plan of Rehabilitation for an indeterminate period, that the Court require DIFS to provide discovery to IIG concerning Pavonia while IIG considers whether to make a proposal to acquire, and, in the event IIG does decide to make such a proposal, that the Court afford time for consideration by the proposal by "DIFS, the MI Rehabilitator and/or this Court." (See Supplement, pp. 34-35.)

The Supplement should be disallowed or stricken<sup>4</sup> because is not a permissible pleading under the Michigan Court Rules, Chapter 81 of the Insurance Code (governing rehabilitation proceedings), or this Court's existing orders in this case. Pursuant to MCR 2.115(B), "on a motion by a party or on the court's own initiative, the court may strike from a pleading redundant,

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<sup>4</sup> A determination of whether to strike or disallow a filing is left to the discretion of the trial court. See *Hamad v Wayne County*, 284 Mich App 681, 699 (2009), judgment rev'd on other grounds, 490 Mich 1 (2011).

immaterial, impertinent, scandalous, or indecent matter, or may strike all or part of a pleading not drawn in conformity with these rules.” The Supplement is not made pursuant to a motion, is not itself a motion and thus is not “drawn in conformity with the Court] rules,”<sup>5</sup> is untimely, and includes information that is either impertinent, immaterial or that was available before the October 4, 2019 deadline.

**b. Even if IIG had moved for permission to file (and it did not) the information in the Supplement is not “new.”**

Even if IIG had properly moved to file the Supplement, there is no “new” information contained therein that would support making a delayed filing 87 days after the original deadline imposed by the Procedural Order.

IIG purports to summarize other “new” information leading to its filing of the Supplement in a total of nine bullets appearing at pages 30-32 of the Supplement. Five of the nine bullets concern actions occurring *on or before* the October 4, 2019 deadline (with two of these relating not to Pavonia but to its North Carolina or upstream affiliates). Of the latter four bullets concerning post-deadline activities, two bullets concern public reports made with respect to Pavonia’s North Carolina affiliates, one concerns a statement made by Aspida Holdco, Inc. in its filed Response before this Court on November 1 (about loans that are unrelated to Pavonia), and the final bullet concerns the creation of a December 20, 2019 Affidavit by Mr. Edward R. Buttner (the “Buttner Affidavit”).

While the Buttner Affidavit was not apparently executed until late December of 2019, it is principally based on material that was available to IIG well in advance of October 4, 2019. That

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<sup>5</sup> MCR 2.119(A)(1) provides that “an application the court for an order in a pending action must be *by motion*.” (Emphasis added.)



is, paragraphs 31 through 42 of Mr. Buttner's Affidavit discuss his analysis of management fees, premiums, and service agreement expenses contained in Pavonia's 2018 annual and 2019 quarterly financial statements. The financial statements reviewed by Mr. Buttner were both filed with state regulators *and* would have been publicly available<sup>6</sup> in advance of the October 4, 2019 filing deadline with only one exception—Pavonia's 3Q financial statement (which was filed in November of 2019.) This last statement, however, showed a 51.3% *decrease* in the estimated management agreement expenses compared to Q2, which decrease is ultimately in tension with Mr. Buttner's conclusions in any event. (See Buttner Aff., attached to Supplement, p. 22).

The filings Mr. Buttner reviewed are filings that are made by Pavonia *with the Department of Insurance and Financial Services*, and thus are known to the rehabilitator.

In short, for all the "new" information identified, the only information specific to Pavonia's solvency position and *not* available to IIG before October 4, 2019 is a single 3Q financial statement—filed by Pavonia directly with DIFS while the company was *in rehabilitation*—that showed a decrease in management fees compared to the prior period.

- c. **The concerns raised in the Supplement fall squarely within the separate Form A review process now being carried out by the Director, the successful completion of which is already a contingency for the Plan of Rehabilitation.**

The Director of DIFS acts in these proceedings in her role as rehabilitator under Chapter 81. The Plan of Rehabilitation is proposed by her in that role, and is subject to the statutory

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<sup>6</sup> Insurance companies domiciled in the United States are required to make three quarterly and one annual financial statement filing each year with their respective states of domicile. These statements are also provided to the National Association of Insurance Commissioners, which makes them available to the public for electronic download through its "Insdata" portal and for a nominal fee.

standard that each of her actions or inactions in carrying out rehabilitation shall be “made or reached in the reasonable exercise of discretion.” See MCL 500.8114; MCL 500.205.

The Director has a separate statutory role, wholly apart from this rehabilitation proceeding, in overseeing the transfer of control of Pavonia. That role is delineated in Chapter 13 of the Insurance Code, and is subject to the same “reasonable exercise of discretion” standard. See MCL 500.1315. In this latter role, the Director acts not as rehabilitator, but as Michigan’s chief insurance regulator; the Legislature assumed that the Director had the qualifications to assess issues affecting the industry, and gave the commissioner “very large powers” to carry out these statutory duties. See *Basic Prop Ins Ass’n v OFIR*, 288 Mich App 552, 561-562 (2010), appeal granted 488 Mich 1034, appeal dismissed 811 NW2d 497.

The Director’s Chapter 13 review of the proposed sale requires her to disapprove of the transfer in the event that she finds any of several statutory conditions, i.e., that:

- the insurer would not be safe and entitled to public confidence after the transfer (MCL 500.1315(1)(a), MCL 500.249, MCL 500.249a);
- the financial condition of the buyer might jeopardize the financial stability of the insurer or prejudice the interests of its policyholders (MCL 500.1315(1)(c));
- the buyer’s terms are “unfair and unreasonable” to the insurer’s policyholders or securityholders (MCL 500.1315(1)(d));
- the buyer’s offer in general is “unfair and unreasonable” to the insurer’s policyholders, and not in the public interest (MCL 500.1315(1)(e)); or
- the proposed management for the insurer lack “competence, experience or integrity” such that their control “would not be in the interest of the insurer’s policyholders or the general public.” (MCL 500.1315(1)(f).)

The allegations contained in the Supplement concern these very same issues—i.e., IIG seeks to insert into this *rehabilitation* proceeding concerns over the Buyer’s terms (e.g. service agreements), the Buyer’s offer (the amount of capital to be used to support Pavonia), and the

proposed management of Pavonia when those issues are already squarely before the Director *under Chapter 13*.

Because Chapter 13 requires the Commissioner to review the same items identified in the Supplement, and because the Chapter 81 Plan of Rehabilitation is made expressly contingent on the successful completion of those Chapter 13 proceedings,<sup>7</sup> the Supplement is inappropriate here. (See Plan of Rehabilitation, p. 8, p. 16; Stock Purchase Agreement, Section II.)<sup>8</sup> Nothing in the Supplement suggests in any way that the Director is incapable of reviewing these matters and making a competent determination in her role as Michigan's chief insurance regulator. Nor could it. In carrying out her Chapter 13 duties, the Commissioner has broad statutory powers to investigate and inquire into the proposed transfer, to inspect books, gather and review records, and compel disclosure of information on the proposed purchaser and management as well. See MCL 500.1312. The statute already commands that Aspida Holdco, Inc. provide detailed information on its proposals (including the persons who will exercise day-to-day management of Pavonia) in the context of the Form A application itself. See MCL 500.1312(1)(a).

For these reasons, as well as those discussed above, it would be inefficient, unnecessary, and contrary to the Legislature's entrustment of these issues to the Director, for this Court to consider the Supplement, and the Supplement should be disallowed or stricken.

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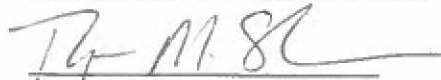
<sup>7</sup> The Director may decide, in her discretion, to hold public hearings to receive evidence and hear parties affected by a proposed change of control. See MCL 500.1315(2).

<sup>8</sup> The Rehabilitator states in the Plan that she has "determined that *assuming DIFS' Form A regulatory approval*, the rights of Policyholders to coverage under their Policies will be completely secured as a result of the Stock Purchase Agreement and Buyer's acquisition of Pavonia." (See Plan of Rehabilitation, p. 16 (emphasis added).)

WHEREFORE, for the reasons set forth above, GBIG Holdings, Inc. respectfully requests that the Court enter an Order disallowing the December 30, 2019 Supplement to Objection filed by Independent Insurance Group, LLC, and granting such other and further relief as the Court deems just and equitable.

Respectfully submitted

DICKINSON WRIGHT PLLC

A handwritten signature in black ink, appearing to read "R. M. Shannon", is written over a horizontal line.

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Dated: January 10, 2020

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