

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

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

Petitioner,

**ORDER REGARDING INDEPENDENT
INSURANCE GROUP, LLC'S
OBJECTION TO THE
REHABILITATOR'S PLAN OF
REHABILITATION**

v

CASE NO. 19-504-CR

PAVONIA LIFE INSURANCE
COMPANY OF MICHIGAN,

HON. WANDA M. STOKES

Respondent.

At a session of said Court
held in the City of Mason, County of Ingham,
this 9th day of March, 2020.

PRESENT: HON. WANDA M. STOKES

This case came before the Court on January 16, 2020, for a hearing on Objection to Plan of Rehabilitation by Interested Party Independent Insurance Group, LLC, and GBIG Holdings, Inc.'s Motion to Disallow/Strike the Untimely 12/30/19 Supplement Filed by Independent Insurance Group, LLC. In this receivership case, Independent Insurance Group, LLC ("IIG") argues that it must be permitted to offer to purchase Respondent, a life insurance company voluntarily placed into a solvent receivership due to the criminal prosecution of its controlling shareholder. The receiver, along with other interested parties, disagrees.

IIG filed an untimely supplement to its objection on December 30, 2019. The rehabilitator opposed the filing, and an interested party – GBIG Holdings, Inc. – moved to disallow or strike

the supplement. Shortly before this Court's opinion was due to be entered, IIG filed a Supplemental Post-Hearing Filing of Independent Insurance Group. This Court then entered an order permitting responses to the supplemental filing. Aspida HoldCo, LLC and the Rehabilitator chose to respond. IIG then filed a Response of Independent Insurance Group, LLC to Latest Responses (As Defined Below) on February 18, 2020, which was not requested by the Court, and not authorized by order, rule, or statute.

FACTS

Respondent was founded in 1980, and eventually acquired by GBIG Holdings, Inc. ("GBIG") in 2017. GBIG in turn is one of many companies owned by Eli Global, an international conglomerate corporation. Eli Global was founded by Greg Lindberg, one of three men alleged to have attempted to bribe an insurance commissioner in North Carolina. Criminal proceedings are ongoing against Mr. Lindberg, who denies all charges, in the United States District Court for the Western District of North Carolina.

Respondent is a Michigan company, but its acquisition by GBIG affiliated it with Eli Global and several North Carolina insurance companies also owned by GBIG. The North Carolina companies are subject to a receivership in North Carolina, and it appears they are insolvent. Respondent is solvent. However, it agreed to be placed into receivership, attempting to isolate itself from the North Carolina companies by giving control of all business and assets to a receiver appointed by the State of Michigan through the Department of Insurance and Financial Services ("DIFS").

Just prior to entering receivership, a stock purchase agreement ("SPA") was executed, conveying a controlling interest in Respondent to Aspida Holdco, LLC, a holding company

owned by Ares Management Corporation, a large publicly-traded corporation doing business in the insurance industry.

Independent Insurance Group, LLC (“IIG”) objects to this purchase arrangement, and demands an opportunity to make a “superior proposal” to purchase Respondent. Petitioner, along with other interested parties, argues IIG has no standing to object, and that even if it did there is no basis in statute, contract, or other law to support IIG’s demands. After careful review of the briefs and information provided to this court it agrees.

ANALYSIS

I. STANDING

Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.

Lansing Sch Ed Ass'n v Lansing Bd of Ed, 487 Mich 349, 372; 792 NW2d 686, 699 (2010).

Here, Petitioner argues that IIG has no standing to object to the Rehabilitation Plan, and suggests the Court should dispose of the objection on that basis.

Chapter 81 of the Michigan Insurance Code generally governs receiverships in Michigan. MCL 500.8101(3) defines the purpose of Chapter 81, and sets forth several entities the Legislature intended to protect – insureds, claimants, creditors, and the public. IIG does not closely fit any of these. However, as the Michigan Supreme Court has stated, all that is necessary for standing to exist is “a . . . substantial interest . . . that will be detrimentally affected in a manner different from the citizenry at large.”

IIG broadly alleges that the agreement for the purchase of Respondent struck the day before the receivership took effect was improper, raises concerns about who will control Respondent going forward, and argues its yet-to-be-made proposal to purchase Respondent should be considered. Without reaching the merits of these arguments, the Court finds IIG has demonstrated a substantial interest in the receivership process – ensuring a fair and equitable process of rehabilitation, and attempting to acquire Respondent under a separate proposal. That interest is sufficient to establish standing in this proceeding.

II. TIMELINESS

Petitioner asserts that IIG’s objection is untimely. However, IIG’s objection to the Plan was filed on October 4, 2019, which is the deadline for objections to the Plan, set in this Court’s August 8, 2019 Order Preliminarily Approving Plan of Rehabilitation. IIG’s Objection was timely.

IIG further filed a Supplement to Objection of Interested Party Independent Insurance Group, LLC (“Supplement”) on December 30, 2019, 87 days past the deadline for objections. Petitioner, and Buyer GBIG Holdings Inc responded in opposition, and GBIG Holdings, Inc moved to disallow or strike the filing.

The Supplement was not proper under applicable statute, rule, or caselaw, and not permitted under the August 8, 2019 Order governing proceedings in this matter.

Further, on January 27, 2020, shortly before the Court’s opinion was to issue, IIG submitted a Second Supplement to the Court. This Court delayed issuance of the opinion and entered an order permitting responses to the Second Supplement on January 28, 2020. Aspida HoldCo and the Rehabilitator responded. IIG then filed a response to these responses, which was not called-for, let alone timely. The Court cautions litigants against untimely filings made without leave or request therefor. As a general rule, untimely filings will not be considered.

However, this Court finds that it is ultimately immaterial whether the unauthorized filings are permitted, because their contents do not appreciably impact the Court's ruling or reasoning. For purposes of completeness of the record, these filings will not be stricken.

III. MERITS OF IIG'S OBJECTION

Receiverships in Michigan are principally governed by Chapter 81 of the Michigan Insurance Code. According to MCL 500.8101(3), "[t]he purpose of [Chapter 81] is the protection of the interests of insureds, claimants, creditors, and the public with minimum interference with the normal prerogatives of the owners and managers of insurers" through certain specified objectives. Chapter 81 spells out the broad authority granted to receivers, including but not limited to the power to sell, invest, encumber, transfer, dispose of, or borrow against the insurer's assets. MCL 500.8121.

IIG's written objection focuses on two principal arguments: 1) Petitioner should consider IIG's "Superior Proposal;" and 2) Petitioner did not conduct the receivership process fairly and equitably, and failed to take into account problems with Respondent's proposed leadership or Petitioner's own conflicts of interest.

A. "SUPERIOR PROPOSAL"

The "Superior Proposal" language relied upon by IIG in support of this element of its objection comes from Section 12.04(c) of the Stock Purchase Agreement ("SPA") entered into by GBIG Holdings, Inc. (Respondent's parent company) ("Seller") and interested party Aspida Holdco, LLC ("Buyer") – a holding company owned by Ares Management Corporation. Section 12.04 is entitled "Break-Up Fee," and provides that if Seller terminates the SPA and consummates a "Superior Proposal" by selling to an alternate bidder within 18 months of termination, Seller must pay a break-up fee to Buyer.

IIG insists its proposal, which in any event is conditional on the satisfactory completion of due diligence, is superior to Buyer's. However, even assuming *arguendo* that IIG made the proposal, and that the proposal did constitute a superior proposal under Section 12.04(c), this would trigger nothing more than an opportunity for Seller to terminate the existing SPA, suffer a significant break-up fee, and enter into an agreement with IIG. Seller has not terminated the SPA or otherwise indicated any intention whatsoever to do so. Further, Seller has indicated no interest in competing offers, and indicated at oral argument that the SPA with Buyer was a legitimate arms-length agreement between sophisticated parties, made with full disclosure of all potential risks, including the North Carolina litigation and the tertiary involvement of Greg Lindberg.

Nothing in the contract section on which IIG bases its "Superior Proposal" argument suggests IIG must be given an opportunity to make its own offer. IIG's position would require this Court to interpret the contract language in contravention of its own plain meaning, with little appreciable basis to do so. IIG's objection on this ground fails.

B. "FAIR AND EQUITABLE" PROCESS

Under MCL 500.8114(4),

upon application of the rehabilitator for approval of the [Rehabilitation P]lan, and after notice and hearings as the court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. A plan approved under this section shall be, in the court's judgment, fair and equitable to all parties concerned.

IIG broadly argues the sale and receivership process involving these companies has not proceeded in a fair and equitable manner in the following ways:

1. CONTROL OF BUSINESS

IIG notes that the individuals in control of Respondent after the sale would be the same as those in control of the North Carolina insurers, and that since these individuals were in control

during the time of the illegal activity by Greg Lindberg, permitting those individuals to remain in control of Respondent would permit a “cancer” to continue to “infect” Respondent.

Concurrent with this litigation, the Michigan Department of Insurance and Financial Services (“DIFS”) has been working through the “Form A” process pertaining to this acquisition. This process is provided for under MCL 500.1311 and 1315, and requires that any proposed acquisition of a Michigan insurance company be approved by the DIFS director, after submission of required statements and supporting information. The director may disapprove the acquisition if, among other reasons, “[t]he competence, experience, and integrity of the persons who would control the operation of the insurer are such that it would not be in the interest of the insurer's policyholders or the general public to permit the merger or other acquisition of control.” MCL 500.1315(1)(f).

The Rehabilitation Plan is expressly contingent on Form A approval from the DIFS director, and the Form A process remains pending in this case. DIFS are the subject-matter experts on Michigan insurance policy, and have been provided with specific information (some of which is confidential) regarding the purchase agreement, the identities of the individuals who would control Respondent after the purchase, and the financial condition of the Buyer. The purchase cannot be made without the DIFS director’s approval. MCL 500.1311(1). Apart from generally relying on their association with the North Carolina insurers, Ares, and Greg Lindberg, IIG has not provided evidence suggesting the individuals who would be in control of Respondent after the purchase would not be acceptable.

2. NON-CONSIDERATION OF IIG PROPOSAL

IIG next argues that there are conflicts of interest, self-dealing, and what amounts to favoritism in the rehabilitation process.

These allegations are not supported by evidence. IIG makes much of an affidavit sworn by an accounting expert, regarding events concerning an investment made by the same management team that controls Buyer. IIG in essence asks the Court, observing an ambiguous and tangentially-related fact pattern, to assume that something must be amiss. As set forth above, the management team to control Respondent following its acquisition by Buyer can only acquire Respondent after vetting and approval by the DIFS director. IIG's arguments aimed at discrediting or disparaging those individuals are scattered and inferential, and are especially unpersuasive where, as here, the acquisition will in no event go forward unless and until the management team is approved by the appropriate government agency.

IIG further argues that it would be better for it to acquire Respondent because such an acquisition would better separate Respondent from the North Carolina insurers and Greg Lindberg. That may be so, however this Court's role is to not to second-guess Respondent's business judgment, but rather to determine whether the Rehabilitation Plan (and in this case the SPA incorporated into it) are fair and equitable to all parties. There is nothing here to show a conflict of interest, self-dealing, or any other fact suggesting an inequitable process.

Finally, IIG argues that it made inquiries toward acquiring Respondent through various channels, but was either rebuffed or received no response. However, IIG also acknowledges that this type of corporate sale is generally commenced by the Seller, which invites offers to purchase the corporation from potentially interested buyers, and that Respondent sent no such invitation to IIG. Seller's general counsel executed an affidavit indicating that Seller sent such invitations out, and IIG admits it received no such invitation. IIG asks the Court to presume on this basis that the sale process is inherently questionable. The simple non-receipt of an invitation to purchase another corporate entity does not bring the validity of the sale process into question.

3. OTHER ASSERTIONS

IIG makes additional assertions and accusations, most notably that an Ares Management Corp affiliate made a loan of \$270 million to Academy Holdings, LLC, a holding company indirectly owned by Greg Lindberg, and that Buyer has disclosed confidential information from a past, unsuccessful negotiation with a third party.

It must be recalled that this Court's role here is to ensure that the plan of rehabilitation is fair and equitable to all parties. MCL 500.8114(4). The loan from an Ares affiliate to a Greg Lindberg-related affiliate was publicly disclosed, and made up about 2% of Ares' lending portfolio. IIG argues that loan is material, that approval of the Plan would ratify it, that "it appears to be more than coincidental that Ares . . . is the purchaser," and that DIFS must examine it. This is begging the question – IIG in essence argues that the fact the loan was made shows it is suspicious or inequitable. No additional evidence is adduced to show Ares and Lindberg affiliates behaved improperly.

IIG argues that Buyer improperly disclosed confidential information from a past unsuccessful deal between IIG and GBIG, which information tended to show IIG may plan to appoint one of the same directors Buyer plans to appoint, and to which IIG now objects, if IIG is permitted to make its own offer to acquire Respondent. Presuming *arguendo* that the information was confidential, and that Buyer improperly disclosed it, it is not clear how an improper disclosure affects the fairness or equity of the Plan of Rehabilitation. This Court must not require absolute ethical virtue in the party acquiring Respondent. If courts imposed such a requirement, corporate acquisitions would rarely be permissible.

Because there's no meaningful evidence supporting IIG's various claims that Buyer's management team is, to generally characterize the arguments, complicit or corrupt, or that the

sale process was not fair and equitable, there is no basis on which this Court can reasonably conclude that the SPA between GBIG Holdings, Inc and Aspida Holdco, LLC is not fair and equitable to all parties.

IV. CONCLUSION

Pending Form A approval, this Court sees no reason to deviate from the Rehabilitation Plan, no reason to give special permission to IIG to have its non-binding, conditional offer considered, and no reason to delay the consummation of the SPA any longer.

THEREFORE IT IS ORDERED that the Objection to Plan of Rehabilitation by Interested Party Independent Insurance Group, LLC is **DENIED**.

IT IS FURTHER ORDERED that GBIG Holdings, Inc's Motion to Disallow/Strike the Untimely 12/30/19 Supplement Filed by Independent Insurance Group, LLC is **DENIED**.

In accordance with MCR 2.602(A)(3), the Court finds that this order does not resolve the last pending claim, and does not close the case.

3/9/2020
Date

Wanda M. Stokes
Hon. Wanda M. Stokes
Circuit Court Judge

PROOF OF SERVICE

I hereby certify that I provided a copy of the above ORDER to each attorney of record, or to the parties, by hand delivery, or by placing a true copy in a sealed envelope, addressed to each, with full postage prepaid and placing said envelope in the United States mail, on March 9, 2020.



Tyler A. Smith, Esq (P-82780)
Law Clerk/Court Officer