

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

ANITA G. FOX, DIRECTOR OF THE  
MICHIGAN 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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**REHABILITATOR'S BRIEF SUPPORTING  
ASPIDA HOLDCO, LLC'S MOTION FOR EMERGENCY RELIEF  
IN THE FORM OF SPECIFIC PERFORMANCE**

Anita G. Fox, Director ("Director") of the Michigan Department of Insurance and Financial Services ("DIFS"), in her capacity as the statutory and Court-appointed Rehabilitator (the "Rehabilitator") of Pavonia Life Insurance Company of Michigan ("Pavonia"), by and through her attorneys, Dana Nessel, Attorney General, and Christopher L. Kerr and Aaron W. Levin, Assistant Attorneys General, submits this Brief supporting the *Motion for Emergency Relief in the Form*

*of Specific Performance* (“Motion”) filed by Aspida Holdco, LLC (“Aspida”), the Buyer in the transaction that the Court granted final approval to in its June 25, 2020 Order (as amended on June 29, 2020) approving the Rehabilitator’s Plan of Rehabilitation and related closing of the Stock Purchase Agreement between Aspida and the Seller, GBIG Holdings, Inc. The Rehabilitator states the following in support of her Brief, and respectfully asks this Court to grant Aspida’s Motion and all the relief requested therein.

## **INTRODUCTION**

As this Court knows, the Buyer and Seller fully executed the Stock Purchase Agreement (“SPA”) on July 9, 2019, almost one year ago. Pursuant to the SPA, the parties agreed in writing to the detailed terms under which the Seller would sell and the Buyer would buy both Pavonia Life Insurance Company of Michigan and its wholly-owned subsidiary, Global Bankers Insurance Group, LLC (collectively, the “Pavonia Entities”). On August 8, 2019, the Rehabilitator filed her Plan of Rehabilitation (“Plan”), which incorporated the SPA and contained as one of its central components the sale of the Pavonia Entities from Seller to Buyer. The reason for the sale was to protect the Pavonia Entities’ policyholders, creditors, and the public, which the sale accomplishes in two primary ways: (1) by removing the companies from the ownership and control of Greg Lindberg, who has been found guilty by a jury of wire fraud and bribery of a public official (the North Carolina Insurance Commissioner); and (2) by severing the companies’ affiliation with four North Carolina insurance companies (the “NC Insurer Affiliates”) that are in a

North Carolina rehabilitation proceeding and financially troubled because of loans/investments they made to Mr. Lindberg's non-insurance affiliated companies.

Time is of the essence in completing the sale of the Pavonia Entities to the Buyer, Aspida, pursuant to the Court-approved Plan and the incorporated SPA. Every additional day of delay in consummating the closing of the sale threatens the value of the Pavonia Entities as a going concern, and in turn threatens the companies' policyholders, creditors, and the public. Even so, Seller is now dragging its feet and attempting to go back to renegotiate the terms of the binding SPA that it signed nearly one year ago. Among other terms, Seller is complaining about the amount of "cost overruns" that are unequivocally its responsibility to pay under the SPA. In its effort to delay closing to renegotiate the agreed-to terms of the SPA, Seller also has made the untenable claim that it needs to obtain and review all the books and records of the Pavonia Entities before it can close, even though by law the Rehabilitator owns these books and records, the Seller has provided no reasonable justification for needing them, and the Rehabilitator has evidence-backed concerns that Seller desires the books and records to violate the "no shop" provisions in the SPA and/or to seek alternative financing so it can back out of the deal.

In summary, the SPA is ready to close and all documents needed to do so have been prepared, yet the Seller is failing to live up to its end of the bargain by signing and/or delivering the documents that are its responsibility. Under these circumstances, the Rehabilitator fully supports Aspida's Motion and asks the Court to grant all the relief requested therein.

## ARGUMENT

### **I. Seller has no legal right to renegotiate the executed SPA and should be compelled to close on the terms it agreed to.**

As stated, Seller is now refusing to close because it wants to renegotiate the terms of the binding SPA that it signed nearly one year ago. But Buyer has no obligation to renegotiate, as the parties already negotiated and agreed to the SPA that the parties executed on July 9, 2019. Among the terms that Seller is attempting to renegotiate is the provision relating to “cost overruns,” or the administrative expenses of operating the companies in rehabilitation. In the SPA, the parties agreed to a certain amount of fixed monthly expenses that the Seller would not be responsible for or reduce the purchase price, but if actual administrative expenses exceeded that threshold the Seller would be responsible for these cost overruns and they would be deducted from the purchase price.

After almost one year in rehabilitation, not surprisingly there were cost overruns that are being deducted from the Buyer’s purchase price. These additional costs were due in part to the criminal trials of Mr. Lindberg and John Gray, for which Mr. Lindberg had the companies advance millions of dollars to cover their criminal defense costs. Likewise, the Pavonia Entities (together with the NC Insurer Affiliates) retained a law firm to assist with responding to Department of Justice subpoenas and investigations relating to Mr. Lindberg’s criminal trial and conduct. Moreover, resolving Independent Insurance Group, LLC’s objection to the Plan delayed and added significant costs to the rehabilitation.

Seller was and is fully aware of all these expenses and cannot now claim to be surprised that there were substantial cost overruns for which it is responsible and that, consistent with the SPA, have been deducted from the purchase price. Even if the cost overruns were “more than Seller expected” as it claims, the parties signed a binding and enforceable contract on July 9, 2019, pursuant to which Seller is responsible for these cost overruns and they are unequivocally to be deducted from the purchase price. Seller has no right, nor does Buyer have any obligation, to renegotiate this SPA term. Accordingly, as requested in Aspida’s Motion, Seller should be ordered to close on the SPA and no further delays should be tolerated based on Seller’s attempts to renegotiate the contract to which it already agreed.

**II. Seller is not entitled to all the books and records of the Pavonia Entities, nor does it need them to close on the transaction.**

To enable its attempts to renegotiate the SPA, Seller has put forward various purported “obstacles” to closing that it says must be satisfied before it can close. Among these excuses is Seller’s recent argument that it cannot yet close because it first needs to obtain and review the entirety of the Pavonia Entities’ books and records. Seller claims to need all the Pavonia Entities’ books and records so it can turn them over to Buyer at closing, and to confirm Seller’s representations and warranties in the SPA. Both reasons are unfounded. Moreover, this request is particularly suspect if, as alleged by Buyer, Seller is attempting to shop the Pavonia Entities to another buyer and/or secure alternative financing by pledging the shares of the Pavonia Entities, both of which violate the Court-approved Plan.

Pursuant to MCL 500.8113(1) and the Rehabilitation Order, the Rehabilitator owns and controls all assets of the Pavonia Entities, including their books and records. MCL 500.8113(1) (“The order to rehabilitate the insurer shall by operation of law vest title to all assets of the insurer in the Rehabilitator.”); Rehabilitation Order, ¶ 3 (“Pursuant to MCL 500.8113(1), the Rehabilitator shall take immediate possession of all the assets of Pavonia and administer those assets under the Court’s general supervision.”). The Rehabilitator therefore informed Seller that she will handle the turnover of the Pavonia Entities’ books and records to Buyer at closing and Buyer has expressed no opposition to such an arrangement. Thus, there is absolutely no reason for Seller to take possession of the Pavonia Entities’ books and records to turn them over to Buyer at closing, as the Rehabilitator can and will discharge this responsibility. Similarly, with respect to Seller’s purported need for the books and records to confirm Seller’s representations and warranties in the SPA, these representations and warranties were made and effective at the time of signing the SPA, and Seller did not bargain for nor does the SPA provide that Seller has a right to re-negotiate its representations and warranties at closing.

For these reasons, the Rehabilitator concluded that Seller has not put forward any reasonable justification for acquiring the entirety of the Pavonia Entities’ books and records, nor has it reasonably limited its request to specified books and records that are truly needed to fulfill its perceived obligations under the SPA. In addition, although the Seller was directly asked to “confirm that the

materials have been requested solely for purposes related to the SPA and closing,” no such confirmation has been forthcoming from Seller despite numerous opportunities to do so. This failure, combined with the evidence contained in Aspida’s Motion that Seller indirectly sought access to the transaction due diligence data room and is trying to secure alternative financing to scuttle the deal, resulted in the Rehabilitator justifiably denying Seller’s request for all the books and records of the Pavonia Entities.

Seller’s request for the entirety of the Pavonia Entities’ books and records is not a legitimate request, but rather a ruse to delay the closing and/or engage in conduct that is prohibited by the Court-approved Plan. Accordingly, as requested in Aspida’s Motion, Seller should be ordered to close on the SPA and no further delays should be tolerated.

**III. If Seller does not close before the Court’s imposed deadline of July 31, 2020, the Court should grant the Rehabilitator all necessary authority to consummate the closing of this transaction.**

This rehabilitation and the Court-required closing of the transaction has lingered long enough. Seller has no viable excuse for refusing to close on the transaction, but the Rehabilitator recognizes that the Court in its June 29, 2020 Amended Order afforded the parties until July 31, 2020 to close the transaction. The Rehabilitator therefore intends to afford the parties the time granted by the Court to close. However, if the Seller still does not close before the Court-imposed July 31, 2020 deadline, the Rehabilitator respectfully requests the Court to grant

the Rehabilitator and her appointed Deputy Rehabilitators the authority to execute all documents necessary to consummate the closing of this transaction.<sup>1</sup>

### **CONCLUSION AND RELIEF REQUESTED**

For the reasons stated above, the Rehabilitator files this Brief supporting Aspida's Motion and respectfully requests this Court to grant all the relief requested therein. Further, the Rehabilitator requests that the Court grant the Rehabilitator and her appointed Deputy Rehabilitators the authority to execute all documents necessary to consummate the closing of this transaction if the transaction is not otherwise closed by July 31, 2020.

Respectfully submitted,

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Dated: July 1, 2020

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<sup>1</sup> As explained in Aspida's Motion, there is very little that the Seller needs to do to consummate the closing: 1) execute signature pages; 2) forward the Estimate Closing Statement (which has already been prepared by the Pavonia Entities); 3) provide wire instructions; and 4) provide a W-9. The Rehabilitator believes closing could occur far earlier than the July 31<sup>st</sup> deadline and, therefore, requests clarification that Seller is compelled to consummate closing as soon as possible, but no later than July 31, 2020.