

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]

Christopher L. Kerr (P57131)
Aaron W. Levin (P81310)
Assistant Attorneys General
Attorneys for Petitioner
Corporate Oversight Division
P. O. Box 30736
Lansing, MI 48909
(517) 335-7632

**REHABILITATOR’S BRIEF IN SUPPORT OF THE COURT’S
JULY 10, 2020 ORDER AFFIRMING THE REHABILITATOR’S
AUTHORITY TO EXECUTE ALL NECESSARY
DOCUMENTATION AND TAKE ALL NECESSARY ACTIONS
ON BEHALF OF SELLER TO CONSUMMATE THE CLOSING
ON THE TRANSACTION IN THE EVENT THE PARTIES TO
THE STOCK PURCHASE AGREEMENT DO NOT CLOSE ON
THE TRANSACTION BY 5:00 P.M. ON JULY 14, 2020**

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 Court's July 10, 2020 Order, which provided, in part, that "[i]n the event that the parties to the SPA do not close on the transaction by the deadline ordered by the Court [July 14, 2020], the Court affirms the Rehabilitator's authority to execute all necessary documentation and take all necessary actions on behalf of Seller to consummate the closing on the transaction as soon thereafter as possible.

The basis for the rehabilitation of Pavonia was to disaffiliate the company from its relationship with the financially troubled North Carolina insurer affiliates and from the legal issues involving its upstream owner, Greg Lindberg. These bases remain intact unless and until Pavonia and its wholly-owned subsidiary, Global Bankers Insurance Group, LLC (collectively, the "Pavonia Entities") are sold to Aspida Holdco, LLC ("Buyer"), or some other third-party, independent buyer(s).

Under the Rehabilitation Order and Chapter 81 of the Michigan Insurance Code ("Chapter 81"), MCL 500.8101 – 500.8159: (a) the Rehabilitator has exclusive possession and control over the assets of the Rehabilitation Companies; (b) the Rehabilitation Order by operation of law vests title to all assets of the Rehabilitation Companies in the Rehabilitator, including but not limited to the shares of Pavonia; and (c) the Rehabilitator is now charged with administering those assets under the Rehabilitation Court's general supervision. MCL 500.8113(1). In addition, the Rehabilitator has and exercises all powers of the directors, officers, and managers of the Rehabilitation Companies, and may take such action as she considers necessary or appropriate to reform and revitalize the Rehabilitation Companies, including, but not limited to, certain listed and other

powers contained in MCL 500.8121(1). MCL 500.8114(2). The Rehabilitator is further vested with full power to direct and manage, to hire and discharge employees, and to deal with the property and business of the Rehabilitation Companies. MCL 500.8114(2). Pursuant to these Chapter 81 provisions, which are also contained in the Rehabilitation Order, to which neither Buyer nor Seller has objected, the Rehabilitator exercises plenary and exclusive authority over the Rehabilitation Companies.

This plenary authority, which includes the power “to conduct public and private sales of the” Rehabilitation Companies’ property [MCL 500.8121(1)(g)], necessarily includes the Rehabilitator’s authority to proceed with the private sale of the Pavonia Entities to Buyer as contemplated under the already-approved Rehabilitation Plan. Further, this Court’s June 25, 2020 Order “authorizes the Pavonia Entities [which are in the exclusive possession and control of the Rehabilitator] to enter into and execute for purposes of Closing agreements that memorialize the termination in their entirety of intercompany agreements between the Pavonia Entities, the NC Insurer Affiliates, all other wholly-owned subsidiaries and affiliates of GBIG Capital, LLC, including Greg E. Lindberg personally, and settle all payables accrued under intercompany agreements, other than for tax liabilities and obligations.” (6-25-20 Order, pp 18-19, ¶C.)

Moreover, as set forth in its June 25, 2020 Order, this Court has ordered that “[c]losing under the terms of the Stock Purchase Agreement ... *shall take place* on or before July 14, 2020,” and that “Seller is compelled to perform its [various enumerated] SPA obligations....” (6-25-20 Order, p 3, ¶¶1-2.)

Thus, Seller's failure or refusal to proceed to closing in accordance with this Court's June 25, 2020 Order approving the plan of rehabilitation, and this Court's July 10, 2020 Order (providing, in part, that "[f]ailure of any party to comply with this Order shall result in sanctions allowed by law and the provisions of the various agreements and orders, 7-10-20 Order, p 4, ¶8), would violate the terms of those Orders warrant civil contempt sanctions, which this Court is vested with the inherent authority to impose. See Mich Const 1963, art 6, § 1; see also *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 708 (2000); MCL 600.1701. Separate and apart from any civil sanctions that this Court may impose for contempt, however, because the Rehabilitator is already fully vested with the custody and control of all of the assets of the Pavonia Entities, and in light of the plenary authority of the Rehabilitator under Chapter 81 and this Court's prior Order approving the plan of rehabilitation, the Rehabilitator has the authority and capacity, as Ordered by this Court, "to execute all necessary documentation and take all necessary actions on behalf of Seller to consummate the closing of the transaction" in the event the parties do not close the transaction by the Court-imposed deadline of July 14, 2020. (7-10-20 Order, p 4, ¶6).

While it is true that this Court's June 25, 2020 Order provided, in part, that "[n]othing in this Order will affect, relinquish, modify, or waive any Closing condition, termination right, or other right or obligation due under or set forth in the SPA and any related agreements (see 6-25-20 Order, p 23, ¶L), termination of the SPA has not occurred (and it is not clear that either party could terminate at this point given the Court's July 10, 2020 Order) and, in any event, to the extent

that either party to the transaction contends that the other party has violated the terms of the SPA post-closing, that party can still assert its contract rights under the SPA. But an alleged breach of the SPA, however, or the right to seek redress for an alleged breach or violation of the SPA, does not negate the Rehabilitator's plenary authority over the assets of the Pavonia Entities, or this Court's authority to ensure that the Rehabilitation Plan, which includes consummation of the sale of the Pavonia Entities to Buyer, proceeds as Ordered by this Court.

CONCLUSION

For the reasons stated above, the Rehabilitator contends that the Rehabilitator's authority to execute all necessary documentation and take all necessary actions on behalf of seller to consummate the closing on the transaction in the event the parties to the stock purchase agreement do not close on the transaction as ordered by this Court, is authorized by Chapter 81, and that the Court's July 10, 2020 Order and that this Court's July 10, 2020 Order affirming that authority was proper and within this Court's jurisdiction and authority.

Respectfully submitted,

Dana Nessel
Attorney General

/s/ Christopher L. Kerr
Christopher L. Kerr (P57131)
Assistant Attorney General
Michigan Dep't of Attorney General
Corporate Oversight Division
Attorneys for Petitioner
P.O. Box 30736
Lansing, Michigan 48909
(517) 335-6755

Dated: July 11, 2020