

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]

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**REHABILITATOR'S RESPONSE TO GBIG HOLDINGS, INC.'S OBJECTION
TO *EX PARTE* ORDER APPROVING WILLIS TOWERS WATSON'S
COMPENSATION AS VALUATION ACTUARIES**

GBIG Holdings, Inc. ("GBIG Holdings") has filed an objection to the *Ex Parte* Order Approving Willis Towers Watson's Compensation as Valuation Actuaries (the "Willis Towers Order"), which this Court entered on September 22, 2021. For the following reasons, the Court should overrule GBIG Holdings' objection and affirm the Willis Towers Order, thereby allowing the Rehabilitator to proceed with the necessary rehabilitation work of determining the present value of Pavonia Life Insurance Company of Michigan ("Pavonia").

I. Greg Lindberg is a convicted felon, which prohibits him from being Pavonia's ultimate controlling person and compels a transaction to remove Pavonia from Mr. Lindberg's control.

It is undisputed that Greg Lindberg is a convicted felon and Favonia's upstream owner and ultimate controlling person. On March 5, 2020, a federal jury in the Western District of North Carolina convicted Mr. Lindberg on felony counts of bribing the North Carolina Insurance Commissioner and wire fraud. Mr. Lindberg is the sole upstream owner of Pavonia and the company's ultimate controlling person, through his ownership of GBIG Capital, LLC, which in turn owns GBIG Holdings, which in turn owns Pavonia. GBIG Holdings also owns four North Carolina insurance companies that are affiliated with Pavonia through GBIG Holdings' common ownership (the "NC Insurer Affiliates"). On June 27, 2019, the North Carolina Insurance Commissioner placed the NC Insurer Affiliates in rehabilitation due to their financial trouble stemming from loans/investments directed by Mr. Lindberg with various non-insurance affiliate companies that he owns.

Both Michigan and federal law prohibit Mr. Lindberg, as a convicted felon, from being Pavonia's ultimate controlling person. Under MCL 500.8112(d), an additional ground for rehabilitation exists because "[c]ontrol of the insurer, whether by stock ownership or otherwise, and whether direct or indirect, is in a person or persons found after notice and hearing to be untrustworthy." Mr. Lindberg controls Pavonia and has been convicted, following a jury trial, of felony charges of wire fraud and bribing the North Carolina Insurance Commissioner. By definition, this makes Mr. Lindberg untrustworthy and subjects Pavonia to rehabilitation such that

the Rehabilitator must pursue a transaction that ends Mr. Lindberg's prohibited control of the company.

In addition, rehabilitation is warranted under MCL 500.8112(m) if Pavonia "[i]s found, after examination, to be in a condition so that it could not presently meet the requirements for incorporation and authorization." MCL 500.403 sets forth an essential requirement for Pavonia's continued authorization to conduct business in Michigan, providing that "[a] domestic . . . insurer shall not . . . continue to be authorized to do business in this state if the insurer . . . does not continue to be safe, reliable, and entitled to public confidence." MCL 500.436a further provides standards to "determine whether the continued operation of an insurer transacting an insurance business in this state . . . is safe, reliable, and entitled to public confidence." One of these standards, found in MCL 500.436a(1)(k), considers "[w]hether the management of an insurer, including . . . any other person who directly or indirectly controls the operation of the insurer, possesses and demonstrates the competence, fitness, and character considered necessary to serve the insurer in such a position." Because he is a convicted felon, Mr. Lindberg does not possess and demonstrate the competence, fitness, and character necessary to serve as Pavonia's ultimate controlling person. Accordingly, Pavonia, under the continued control of Mr. Lindberg, is no longer "safe, reliable, and entitled to public confidence" as required by MCL 500.403, which in turn subjects Pavonia to rehabilitation under MCL 500.8112(m) to end Mr. Lindberg's prohibited control

because his control places Pavonia “in a condition so that it could not presently meet the requirements for . . . authorization” as a Michigan insurance company.

A further basis for removing Mr. Lindberg as Pavonia’s ultimate controlling person exists under federal law, which makes it illegal for a person convicted of a criminal felony involving dishonesty to engage or participate in the business of insurance. Specifically, 18 USC § 1033(e) provides that “[a]ny individual who has been convicted of any criminal felony involving dishonesty . . . and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both.” Because Mr. Lindberg has been convicted of two felony charges involving dishonesty, namely wire fraud and bribing the North Carolina Insurance Commissioner, this federal law makes it illegal for him to continue willfully engaging and participating in the business of insurance in his capacity as Pavonia’s ultimate controlling person. Again, to bring Pavonia into compliance with this federal law, the Rehabilitator must use this rehabilitation to remove Mr. Lindberg as Pavonia’s ultimate controlling person.¹

¹ Another basis for Pavonia’s rehabilitation under MCL 500.8112(m) arises from the troubled financial condition of the NC Insurer Affiliates. MCL 500.436a(1)(g) provides as a standard for whether Pavonia continues “to be safe, reliable, and entitled to public confidence,” as required by MCL 500.403, “[w]hether any affiliate . . . is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligation.” Because the NC Insurer Affiliates are all in a North Carolina rehabilitation due to their financial trouble stemming from the loans/investments directed by Mr. Lindberg with various non-insurance affiliates, the NC Insurer affiliates are “threatened with insolvency” if not “insolvent.” For this additional reason, Pavonia does not satisfy MCL 500.403 and in turn “could not presently meet the requirements for . . . authorization” under MCL 500.8112(m).

Because he is a convicted felon, the foregoing statutes clearly prohibit Mr. Lindberg from being Pavonia's ultimate controlling person. Accordingly, a transaction is necessary in this rehabilitation to remove Mr. Lindberg as Pavonia's ultimate controlling person, which GBIG Holdings concedes in its objection by stating that "the task for this Court in the near future will be to approve an alternative sale" now that the Stock Purchase Agreement between Aspida Holdco, LLC ("Aspida") and GBIG Holdings has been terminated. (GBIG Holdings' Objection, p 2.) As explained below, this impending transaction to remove Mr. Lindberg first requires a valuation of Pavonia before the transaction can proceed, meaning the Court should affirm the Willis Towers Order.

II. The present valuation of Pavonia is a necessary precondition to any future transaction that ends Mr. Lindberg's prohibited control of the company, and the Rehabilitator is plainly authorized to employ an assistant for this purpose.

A necessary precondition to any future transaction involving Pavonia—whether by the Rehabilitator through an auction process (which will be detailed in the forthcoming Amended Plan of Rehabilitation that the Rehabilitator's assistants are preparing) or even by GBIG Holdings through a sale to Axar Capital, LLC ("Axar")—is to determine the present value of Pavonia. This valuation will ensure that the future transaction involving Pavonia to end Mr. Lindberg's prohibited control of the company both yields a fair price and fully protects the company's creditors, policyholders, and the public.

MCL 500.8114(1) plainly authorizes the Rehabilitator to hire, and with the Court's approval compensate, Willis Towers Watson ("Willis Towers") to perform the necessary valuation. The statute empowers the Rehabilitator to "employ such counsel, clerks, and assistants" as she considers necessary, and to fix the compensation of such counsel, clerks, and assistants with the court's approval. (*Id.*) Standing alone, these provisions in MCL 500.8114(1) vest the Rehabilitator with full discretion to conduct this rehabilitation by employing Willis Towers as a valuation assistant and to fix Willis Towers' compensation with the Court's approval. Additionally, MCL 500.8114(2) vests the Rehabilitator with "all the powers of the directors, officers, and managers" of Pavonia, while authorizing the Rehabilitator to "take such action as . . . she considers necessary or appropriate to reform and revitalize" the company. MCL 500.8114(2) further entrusts the Rehabilitator with "full power to direct and manage" Pavonia and "to deal with the property and business of the" company. Lastly, MCL 500.8114(4) states that if "the [R]ehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of" Pavonia is appropriate, then the Rehabilitator—not GBIG Holdings or anyone else—"shall prepare a plan to effect those changes."

Under these Chapter 81 provisions, the Rehabilitator exercises plenary authority over the Pavonia rehabilitation proceedings and has the present authority to hire Willis Towers to perform the necessary valuation of Pavonia, regardless of whether the amended plan has been filed or approved. Accordingly, this Court

should overrule GBIG Holdings' objection and affirm the Willis Towers Order, thereby allowing the Rehabilitator to proceed with the necessary rehabilitation work of determining the present value of Pavonia.

III. The Court of Appeals decision does not prohibit the Rehabilitator from conducting this rehabilitation proceeding and pursuing alternative measures to remove Mr. Lindberg from controlling Pavonia, nor does GBIG Holdings' request to "wait for the potential Axar transaction" provide a viable basis to delay the Rehabilitator's hiring of Willis Towers for the necessary valuation.

Although the Court of Appeals ruled that the Rehabilitator could not force a sale to Aspida when the first rehabilitation plan was based on the Stock Purchase Agreement ("SPA") between Aspida and GBIG Holdings and GBIG Holdings had a right to terminate that SPA, which it purported to exercise, the Court of Appeals did not prohibit the Rehabilitator from conducting this rehabilitation proceeding and pursuing alternative measures to remove Mr. Lindberg from control of Pavonia. See *Director of the Department of Insurance and Financial Services v GBIG Holdings, Inc*, unpublished opinion per curiam of the Court of Appeals, issued Mar 25, 2021 (Docket No 354182), p 16, attached as Exhibit A to GBIG Holdings' Objection. Moreover, while the Court of Appeals ruled that some form of GBIG Holdings involvement with, and consent to, a sale of Pavonia was required, GBIG Holdings cannot unreasonably withhold this consent when the Rehabilitator takes steps toward implementing a transparent, fair process that will end Mr. Lindberg's prohibited control of Pavonia and maximize Pavonia's sale value. Accordingly, the Rehabilitator's authority to

presently hire and pay Willis Towers to conduct the necessary valuation of Pavonia is both consistent with the Court of Appeals decision and falls squarely within the Rehabilitator's Chapter 81 powers and authority as detailed above. This Court should therefore affirm the Willis Towers Order.

In its objection, GBIG Holdings further argues that the Willis Towers valuation of Pavonia is "likely unnecessary" because GBIG Holdings is discussing a potential sale of Pavonia with Axar. (GBIG Holdings' Objection, p 5.) As this Court is aware, "more delay" has been GBIG Holdings' constant refrain, and we are now over two years into this rehabilitation. There is no reason to delay Willis Towers' valuation of Pavonia, which is authorized and necessary for the impending transaction that ends Mr. Lindberg's control of the company, merely because GBIG Holdings is "working on a potential deal" with Axar. Indeed, GBIG Holdings' argument about a sale of Pavonia to Axar is completely speculative because it is conditioned on Axar deciding to buy, the parties' execution of a binding purchase agreement, and Form A approval by DIFS. By GBIG Holdings' own admission, Axar is not even going to decide whether or not to buy Pavonia until the end of November 2021, and GBIG Holdings has not submitted to the Court any term sheet, purchase agreement, or other document evidencing that Axar is "highly likely to move forward with this deal." (GBIG Holdings' Objection, pp 5-6.) Thus, the Court should allow the necessary valuation of Pavonia to proceed by overruling GBIG Holdings' objection and affirming the Willis Towers Order.

IV. Willis Towers' compensation is reasonable, and the company has methods to avoid any claimed conflict of interest.

Willis Towers' compensation of up to \$275,000 to perform an actuarial valuation of Pavonia is reasonable as evidenced by the competing proposals submitted to the Rehabilitator, one of which would have charged from \$800,000 to \$1 million, and the other from \$400,000 to \$500,000, and both taken longer than Willis Towers to complete the appraisal report. In contrast, GBIG Holdings' asserted lowball cost of "less than \$50,000" to perform this valuation lacks any support and calls into question the qualifications of any company that would perform this work at such a low cost. (GBIG Holdings' Objection, p 6.) Thus, the Court should disregard this unfounded objection and affirm the Willis Towers Order.

Likewise, Willis Towers is well-qualified to perform the necessary valuation and has methods to avoid any claimed conflict of interest or appearance of bias. (GBIG Holdings' Objection, p 6.) Willis Towers has 45,000 employees, so it is not surprising that some "personnel of Willis Towers" has prior involvement with GBIG Holdings. (*Id.*) Notably, GBIG Holdings does not (and likely cannot) claim that the same Willis Towers employees who have testified adversely to GBIG Holdings in the past will be performing the necessary valuation. Moreover, Willis Towers can implement conflict walls and other measures to ensure that its employees who previously testified against GBIG Holdings have no involvement or interactions with the employees who are performing the valuation project. Again, this objection

provides no basis to delay Willis Towers conducting the necessary valuation, so the Court should affirm the Willis Towers Order.

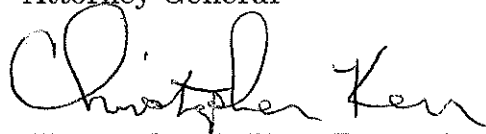
V. The Court should not afford GBIG Holdings an opportunity to “supplement” its objection.

The Court should not grant GBIG Holdings’ request for additional time to “supplement” its objection. On September 17, 2021, the Rehabilitator filed and served on GBIG Holdings’ counsel the petition for approval of Willis Towers’ compensation. GBIG Holdings did not file any objection to this petition, which would have prevented entry of the Court’s resulting approval order on September 22, 2021. Accordingly, GBIG Holdings was advised of the Rehabilitator’s intention to hire and pay Willis Towers over three and a half weeks before GBIG Holdings eventually filed its objection to the resulting approval order. Consistent with due process, GBIG Holdings has had ample time and opportunity to object to the Rehabilitator’s petition for approval of Willis Towers’ compensation, and no additional time to “supplement” its objection is warranted. Rather, the Court should overrule GBIG Holdings’ objection and affirm the Willis Towers Order based on GBIG Holdings’ objection filed on October 13, 2021 and this Rehabilitator response.

WHEREFORE, for the reasons stated above, the Rehabilitator respectfully requests this Court to overrule GBIG Holdings' objection filed on October 13, 2021 and to affirm the *Ex Parte* Order Approving Willis Towers Watson's Compensation as Valuation Actuaries that this Court entered on September 22, 2021.

Respectfully submitted,

Dana Nessel
Attorney General

A handwritten signature in black ink, appearing to read "Christopher Kerr". The signature is written in a cursive, flowing style.

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Dated: October 19, 2021

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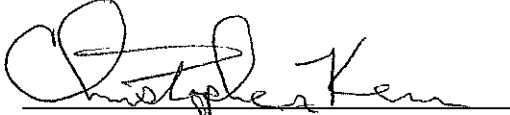
[IN REHABILITATION]

PROOF OF SERVICE

The undersigned certifies that a copy of the **Rehabilitator's Response to GBIG Holdings, Inc.'s Objection to *Ex Parte* Order Approving Willis Towers Watson's Compensation as Valuation Actuaries**, together with this **Proof of Service**, was served upon the individual listed below by electronic mail at the address indicated on the 19th day of October, 2021:

Zachary Larsen
Counsel for GBIG Holdings, Inc.
ZLarsen@clarkhill.com

In addition, electronic copies of the foregoing documents will be provided to the Department of Insurance and Financial Services, which will provide courtesy notice to other potentially interested individuals/entities by posting the documents on its website, www.michigan.gov/difs, under the section "Who We Regulate," the subsection "Receiverships," and the sub-subsection "Pavonia Life Insurance."


Christopher Kerr