

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 RESPONSE IN OPPOSITION TO  
INDEPENDENT INSURANCE GROUP, LLC'S SUPPLEMENT TO  
OBJECTION TO THE REHABILITATOR'S PLAN OF REHABILITATION**

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 Response in support of her Plan of Rehabilitation filed with

this Court on August 8, 2019 (“Plan of Rehabilitation” or “Plan”), and in opposition to Independent Insurance Group, LLC’s (“Independent’s”) Supplement to Objection to the Plan of Rehabilitation (“Supplement”) filed with the Court on December 30, 2019. The Rehabilitator states the following in support of her Response, and respectfully asks this Court to deny Independent’s Objection and allow the Rehabilitator’s Plan of Rehabilitation to proceed.

## INTRODUCTION

While Independent ostensibly requests the opportunity to submit a bid to purchase Pavonia, the practical effect of its request is to unnecessarily delay implementation of a Plan of Rehabilitation that is fair and equitable to all parties concerned and that fully protects all policyholders, creditors, and the public.

In general, Independent contends that this Court should reject the Plan because the same management team that operates Pavonia also operates four North Carolina insurance companies, also in rehabilitation in North Carolina, through Global Bankers Insurance Group, LLC (“ServiceCo”), a wholly-owned subsidiary of Pavonia, that provides all executive management, regulatory oversight review, and administrative services for Pavonia’s operations. Independent contends that Aspida Holdco LLC (“Aspida”), the proposed buyer of Pavonia, also intends to retain the same management team post-rehabilitation and, therefore, the sale of Pavonia to Aspida, which is in essence the sum and substance of the Plan, should not be allowed to proceed. Independent contends that the Rehabilitator may not be aware of certain information that would give the Rehabilitator and this Court pause with

proceeding with the Plan. The Rehabilitator, however, is fully aware of the information contained in Independent's Supplement and maintains that the Plan remains fair and equitable, is proceeding as expected, and should ultimately be adopted by this Court upon the occurrence of Form A approval by DIFS and resolution of the Department of Justice's filed proof of claim, for which Pavonia has requested a release.

Accordingly, for the reasons set forth in the Rehabilitator's previously filed Response in Opposition to Independent's Objection, and the reasons set forth below, this Court should enter an order denying Independent's Objection and affirming the Rehabilitator's continued pursuit of the Plan, subject to final Form A approval and resolution of the Department of Justice's claim, for which a release request is outstanding.

## **ARGUMENT**

### **I. Contrary to Independent's assertion, it lacks standing to assert any objection to the Plan of Rehabilitation.**

As previously stated in the Rehabilitator's response in opposition to Independent's Objection, because Independent is not an insured, a claimant, a creditor, or a member of the public that has any concrete, vested legal or equitable interest in Pavonia or its assets, it lacks standing to object to the Plan of Rehabilitation. See *Lansing Sch Educ Ass'n v Lansing Bd of Educ*, 487 Mich 349, 359 (2010) (To establish standing "[i]n a case involving private rights . . . the litigant should have "some real interest in the cause of action, or a legal or

equitable right, title, or interest in the subject matter of the controversy.”) (quoting *Bowie v Arder*, 441 Mich 23, 42 (1992)).

Independent’s assertion that it is an interested party with standing to challenge the Plan of Rehabilitation because it is a member of “the public” or part of the insurance industry is not supported by Chapter 81 of the Insurance Code. Independent acknowledges as much (see Supplement, p 7), and instead relies on inapplicable federal contracting statutes to support its position. But Independent’s contention that it is akin to an unsuccessful bidder under federal contracting statutes, and therefore entitled to challenge the Plan based on its status as a “prospective bidder,” is equally spurious. The Stock Purchase Agreement (“SPA”) entered into between Pavonia and Aspida was not part of any governmental bidding process, but rather an arms-length negotiation between two parties conducted in good faith and made prior to Pavonia’s entry into rehabilitation. While it is true that the Rehabilitator is not bound to abide by the terms of the SPA, the Rehabilitator has determined that the Plan, which entails consummation of the SPA, is in the best interests of the public and Pavonia’s creditors and policyholders.

The Rehabilitator, through this Court proceeding and as part of the regulatory Form A approval process, has reviewed and considered Independent’s filings and objections, notwithstanding Independent’s lack of standing as an interested party, and for the reasons set forth in the Plan and as set forth below, the Rehabilitator maintains that the Plan is fair and equitable and should be allowed to proceed. Accordingly, this Court should deny Independent’s Objection to the Plan.

**II. Even if Independent had standing to object to the Plan, this Court should not reject or alter the Plan. The Plan is proceeding as scheduled and Independent's request to conduct a due diligence review, to determine whether it may want to offer to purchase Pavonia, will only delay resolution of Pavonia's rehabilitation and, ultimately, offer no additional protections to Pavonia's policyholders, creditors, or the public.**

As previously stated in the Rehabilitator's response in opposition to Independent's Objection, Pavonia is fully solvent and has adequate funds to pay all insured obligations and creditor claims. Indeed, during rehabilitation, Pavonia has paid all undisputed insured and creditor claims when due and has adequate net worth and assets to continue to do so. Further, the rehabilitation has completed the claims submission process and received seven proofs of claim. The Rehabilitator has resolved some of those claims already and is in the process of resolving all remaining claims. Pavonia has adequate reserves/assets to pay all remaining proofs of claim that have been submitted with known amounts. While the United States Government, through the Department of Justice ("DOJ"), filed a proof of claim in an unknown amount on September 18, 2019, Pavonia, through its Deputy Rehabilitator, has taken steps to address and resolve this claim as well. Specifically, on November 18, 2019, the Deputy Rehabilitator submitted a request to the DOJ for release from Federal Priority Statute liability, with supporting materials supporting the release request, and has confirmed that the DOJ is in the process of reviewing and conducting due diligence to determine whether to release the United States Government's unknown claim against Pavonia. To date, the Deputy Rehabilitator has no reason to believe that the United States Government

will not release its claim and, in any event, anticipates a decision from the United States Government within the next few weeks.

While waiver of the United States Government's claim is likely a necessary prerequisite to Aspida proceeding with the purchase of Pavonia as contemplated under the Plan, this contingency provides no basis for rejecting the Plan at this time. Indeed, neither Independent nor any other potential purchaser of Pavonia is in a position to purchase Pavonia so long as the United States Government's claim remains outstanding. Again, however, the Deputy Rehabilitator has taken action to attempt to resolve the United States Government's claim. Upon receiving a release of the claim by the United States Government, and Form A approval by DIFS, the Rehabilitator will be able to secure this Court's final approval of the Plan. In turn, Aspida will be in a position to immediately consummate the SPA in compliance with the Plan, and the Pavonia rehabilitation can then be terminated.

The Deputy Rehabilitator anticipates that determinations on these sole remaining contingencies—release by the United States Government of its claim and Form A approval—may be made within the next few weeks, and perhaps as early January 31, 2020. Thus, the current Plan is on schedule and resolution of Pavonia's rehabilitation, provided this Court approves the Plan, may be imminent.<sup>1</sup>

Requiring Pavonia to provide Independent with information and access to Pavonia's records, so that Independent may determine whether it might possibly want to

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<sup>1</sup> For a more thorough description of the status of Rehabilitation, please see the Deputy Rehabilitator's First Report and Accounting, which will be filed with the Court on or before January 15, 2020.

make a bid to purchase Pavonia, is unduly burdensome and necessarily delays resolution of Pavonia's rehabilitation. Even if Independent ultimately determined that it was interested in making a bid to purchase Pavonia, and even if that bid price was greater than the pre-rehabilitation negotiated sale price between Pavonia's parent and Aspida, the interests of the public and Pavonia's creditors or policyholders will receive no additional protections. Thus, a determination by Independent of what it believes it would be willing to pay to purchase Pavonia, even if Independent could determine that amount in relatively short order, does nothing to protect policyholders, creditors, and the public and can only result in a delay of an otherwise reasonable and fair Plan of Rehabilitation.

As previously stated in the Rehabilitator's response in opposition to Independent's objection, MCL 500.8121(1)(g) grants the Rehabilitator the power "[t]o conduct public and private sales of the insurer's property." The Rehabilitator is authorized to proceed with a Plan of Rehabilitation that provides for the sale of Pavonia to Aspida under the executed SPA, subject to DIFS' ongoing Form A review and approval. Conversely, Chapter 81 does not require the Rehabilitator to conduct a public sale of Pavonia in connection with rehabilitating Pavonia. The current SPA between Pavonia and Aspida was negotiated by two interested and motivated parties, pre-rehabilitation, over several months. There is no reason to believe, even if Independent were interested in purchasing Pavonia, that a transfer in ownership to Independent and resolution of Pavonia's rehabilitation could possibly occur in the foreseeable future, if at all. Delaying approval of the Plan, which is proceeding as

scheduled, by allowing Independent to conduct a financial analysis of Pavonia serves no purpose. The current Plan fully protects the public, policyholders, and creditors, and Independent's financial analysis of Pavonia, regardless of the result, will have no effect or result in additional protections for the public, policyholders, or creditors. The current Plan already fully protects these truly interested parties and is therefore fair and equitable to all parties concerned and should be allowed to proceed. Accordingly, this Court should deny Independent's Objection to the Plan.

**III. There is no evidence to support Independent's claim that Pavonia's management team should disqualify Aspida from proceeding with the SPA or that this Court should reject or delay the Plan of Rehabilitation.**

Independent goes to great lengths to disparage Pavonia and ServiceCo's management team—the same management team that also oversaw four North Carolina insurance companies that are in rehabilitation in North Carolina, and the same management team Aspida intends to retain post-rehabilitation. However, neither Michigan's nor North Carolina's Rehabilitators have discovered any information or evidence that the current Pavonia management team engaged in any illegal conduct that would otherwise disqualify them from continuing involvement with Pavonia post-rehabilitation. Further, notwithstanding Independent's allegations that various loans and/or investments by the North Carolina insurance companies were recharacterized by the North Carolina Rehabilitator after those companies proceeded into rehabilitation, the North Carolina Rehabilitator has not alleged that those loans/investments were initially or improperly mischaracterized.



The North Carolina Rehabilitator has certainly not supported Independent's assertions with respect to those loans/investments and has taken no steps to remove any members of the current management team from involvement with those North Carolina companies. Moreover, the Rehabilitators for the North Carolina insurance companies, like the Rehabilitator for Pavonia, remain authorized to remove any management team member under their respective rehabilitations if conditions warranting such removal were to arise.

Finally, DIFS's Director, in accordance with MCL 500.1311, is in the process of reviewing and assessing Aspida's request to acquire Pavonia (i.e., the "Form A review"). The standards for Form A review are set forth in MCL 500.1315 and *require* the Director to approve Aspida's acquisition of control of Pavonia unless the Director makes certain determinations. More specifically, MCL 500.1315 provides, in relevant part, as follows:

(1) The director shall approve a merger or other acquisition of control described in section 1311 [MCL 500.1311] of a domestic insurer unless the director determines from information furnished to the director on the merger or other acquisition of control 1 or more of the following:

(a) After the change of control, the domestic insurer described in section 1311 would not be able to satisfy the requirements for the issuance of a certificate of authority to write the types of insurance for which it is presently authorized.

(b) The merger or other acquisition of control would substantially lessen competition in insurance in this state or tend to create a monopoly in this state.

(c) The financial condition of an acquiring party might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of a remaining securityholder who is unaffiliated with the acquiring party.

(d) The terms of the offer, request, invitation, agreement, or acquisition described in section 1311 are unfair and unreasonable to the insurer's policyholders or securityholders.

(e) The acquiring party's plan or proposal to liquidate the insurer, sell its assets, consolidate or merge the insurer with a person, or to make any other material change in its business or corporate structure or management, is unfair and unreasonable to the insurer's policyholders, and not in the public interest.

(f) The 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.

(g) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

Thus, the Form A review specifically requires a determination by the Director on the competence, experience, and integrity of those who would control the operation of Pavonia post-rehabilitation, as well as a determination on the fairness and reasonableness of such an acquisition for the policyholders, securityholders, and the public. The Form A review is ongoing and, upon completion, will be provided to this Court. Accordingly, this Court should not short-circuit that Form A review or otherwise nullify the Director's due diligence and statutorily required review of Aspida's acquisition of Pavonia. Instead, this Court should deny Independent's Objection to the Plan and allow the Form A review to continue to completion, at which time the Court will be well-positioned to ultimately rule on whether to enter a final order approving the Plan of Rehabilitation.

## CONCLUSION AND RELIEF REQUESTED

For the reasons set forth above and in the Rehabilitator's previously filed response in opposition to Independent's Objection, the Rehabilitator respectfully requests that this Court enter an Order in the form attached as Attachment A that 1) denies with prejudice Independent's Objection to the Plan of Rehabilitation, 2) allows the Rehabilitator's Plan of Rehabilitation to proceed, and 3) grants such other relief as this Court deems appropriate.

Respectfully submitted,

Dana Nessel  
Attorney General

A handwritten signature in blue ink, appearing to read "Christopher Kerr", is written over a horizontal line.

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Dated: January 10, 2020

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

ANITA G. FOX, DIRECTOR OF THE  
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HON. WANDA M. STOKES

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PAVONIA LIFE INSURANCE  
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**ORDER DENYING INDEPENDENT INSURANCE GROUP, LLC'S  
OBJECTION TO THE REHABILITATOR'S PLAN OF REHABILITATION  
AND  
AFFIRMING THE REHABILITATOR'S CONTINUED ACTION TO  
EFFECTUATE AND SECURE FINAL APPROVAL OF THE  
PLAN OF REHABILITATION**

At a session of said Court  
held in the Circuit Courtrooms  
for the County of Ingham,  
State of Michigan, on the  
\_\_\_\_\_ day of January, 2020.

PRESENT: HONORABLE WANDA M. STOKES, CIRCUIT COURT JUDGE

**WHEREAS**, on July 9, 2019, this Court entered the *Stipulated Order Placing Pavonia Life Insurance Company of Michigan into Rehabilitation, Approving Compensation of Special Deputy Rehabilitators, and Providing Injunctive Relief* (the "Rehabilitation Order").

**WHEREAS**, as required by MCL 500.8113(1), the Rehabilitation Order appointed Anita G. Fox, Director (“Director”) of the Michigan Department of Insurance and Financial Services (“DIFS”), as the Rehabilitator (“Rehabilitator”) of Pavonia Life Insurance Company of Michigan (“Pavonia”). The Rehabilitator further appointed James Gerber, Janice Sylvertooth, and Julieanne Gulliver as Special Deputy Rehabilitators (collectively, the “Deputy Rehabilitators”), whose compensation the Court approved under MCL 500.8114(1).

**WHEREAS**, on August 8, 2019, this Court entered the *Order Preliminarily Approving Plan of Rehabilitation to: (i) Set Bar Date and Establish Mandatory Procedures for Claims for Unscheduled Liabilities; (ii) Establish Procedures for Notice, Comment and Hearing Concerning Final Approval of Plan of Rehabilitation; and (iii) Authorize Combined Notice* (the “Procedural Order”).

**WHEREAS**, simultaneously with submitting the Procedural Order for entry by the Court, the Rehabilitator filed with the Court a Plan of Rehabilitation under MCL 500.8114(4) to effect the reorganization and transformation of Pavonia (the “Plan”).

**WHEREAS**, the Procedural Order established detailed procedures relating to notice, the filing of any comments or objections, and a hearing on the Court’s final approval of the Plan. Specifically, interested parties desiring to submit any comment or objection to the Plan were required to prepare “a written document memorializing the comment or objection and providing all applicable legal support,” then both file the comment or objection with the Court Clerk and serve a copy on

the Rehabilitator's legal counsel at the Michigan Department of Attorney General on or before Friday, October 4, 2019. The Procedural Order further provided that the Rehabilitator and other interested parties were entitled to file a written response to any timely-filed comment or objection on or before Friday, November 1, 2019.

**WHEREAS**, on October 4, 2019, Independent Insurance Group, LLC ("Independent") filed an *Objection to Plan of Rehabilitation*.

**WHEREAS**, on November 1, 2019, the Rehabilitator filed her *Response in Opposition to Independent Insurance Group, LLC's Objection to the Rehabilitator's Plan of Rehabilitation*. Likewise, on November 1, 2019, GBIG Holdings, Inc. ("GBIG Holdings"), the parent company of Pavonia and seller of the company under the Plan and associated Stock Purchase Agreement ("SPA"), filed a *Response of GBIG Holdings, Inc. to the 10/04/2019 Objection to Plan of Rehabilitation by Independent Insurance Group, LLC*. Also on November 1, 2019, Aspida Holdco, LLC ("Aspida Holdco"), the buyer of Pavonia under the Plan and associated SPA, filed a *Response to Objection of Independent Insurance Group*. Each of these responses argued against Independent's objection and in favor of the Rehabilitator's consummation of her Plan.

**WHEREAS**, on December 30, 2019, Independent filed a 35-page *Supplement to Objection*, together with an Affidavit and Exhibits thereto (the "Independent Supplement").

**WHEREAS**, on January 14, 2020, Deputy Rehabilitator James Gerber filed with the Court his *First Report and Accounting dated January, 2020* (the “Deputy Rehabilitator’s First Report”), which advised the Court of all significant developments in the Pavonia rehabilitation through December 31, 2019.

**WHEREAS**, under the Procedural Order, a hearing on any comments or objections to the Plan was originally scheduled on December 5, 2019 at 9:00 a.m., but was subsequently adjourned at the request of the Rehabilitator and re-noticed for hearing on Thursday, January 16, 2020 at 8:30 a.m. (the “Re-Notice of Hearing”).

**WHEREAS**, this matter having come before the Court based on the Procedural Order and the Re-Notice of Hearing; the Court having reviewed Independent’s original objection and the responses filed thereto, the Independent Supplement and any responses filed thereto, and the Deputy Rehabilitator’s First Report; the Court having heard oral argument on January 16, 2020; and the Court being otherwise duly advised.

**NOW, THEREFORE**, for the reasons stated on the record,

**IT IS HEREBY ORDERED** that the Court denies, with prejudice, Independent’s objection to the Rehabilitator’s Plan. Pursuant to MCR 2.604(B), this order constitutes an immediately appealable final order on an express determination made in this ongoing rehabilitation of Pavonia and there is no just reason for delay.



IT IS FURTHER ORDERED that the Court affirms and directs the Rehabilitator to pursue continued action to effectuate the Plan, with the ultimate goal of securing this Court's final approval of the Plan. Specifically, but without limitation, final approval of the Plan remains contingent on: (a) a release from the United States Government, through its Department of Justice counsel, from Federal Priority Statute liability, which the Rehabilitator has requested and continues to pursue; (b) DIFS' issuance of an order approving the Form A submitted by Aspida Holdco to acquire Pavonia; and (c) this Court's entry of an order for final approval of the Plan.

IT IS FURTHER ORDERED that after all contingencies to final approval of the Plan have been resolved and/or satisfied, the Rehabilitator will file a petition with this Court requesting such final approval.

**IT IS SO ORDERED.**

This Order does not resolve the last pending claim and does not close this case.

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Honorable Wanda M. Stokes  
Circuit Court Judge

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

ANITA G. FOX, DIRECTOR OF THE  
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Case No. 19-504-CR

HON. WANDA M. STOKES

[IN REHABILITATION]

**PROOF OF SERVICE**

The undersigned certifies that a copy of the **Rehabilitator's Response in Opposition to Independent Insurance Group, LLC's Supplement to Objection to the Rehabilitator's Plan of Rehabilitation** was served upon the individuals or entities listed below by mailing the same to them at the addresses indicated with first class postage fully prepaid thereon, on the 10<sup>th</sup> day of January, 2020:

Lori McAllister  
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Ryan M. Shannon  
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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](http://www.michigan.gov/difs), under the section "Who We Regulate," the subsection "Receiverships," and the sub-subsection "Pavonia Life Insurance."

  
Linda S. Miers, Legal Secretary