

# CLARK HILL

---

Zachary C. Larsen  
T 517.318.3053  
F 517.318.3099  
Email: zlarsen@clarkhill.com

Clark Hill PLC  
212 East César E. Chávez Avenue  
Lansing, MI 48906  
T 517.318.3100  
F 517.318.3099

clarkhill.com

June 24, 2020

**VIA FED EX OVERNIGHT**

Ingham County Circuit Court  
Attn: Clerk of the Court  
315 S. Jefferson Street  
Mason, MI 48854

***Re: Anita G. Fox v Pavonia Life Insurance Company of Michigan  
Ingham County Circuit Court Case No. 19-504-CR  
Honorable Wanda M. Stokes***

Dear Clerk:

Enclosed for filing, please find originals of GBIG Holdings, Inc.'s Response to Aspida Holdco, LLC's Motion for Specific Performance and Sur-Reply to Rehabilitator's Reply with Exhibits A (under seal), B, and C (under seal) and Proof of Service in the above-referenced matter.

Judge's copies of the pleadings are also enclosed.

Thank you for your assistance in this matter. Should you have any questions, please contact me.

Sincerely,

CLARK HILL PLC  
  
Zachary C. Larsen  
Senior Attorney

ZCL:kmt  
Encs.

cc w/encs: Christopher K. Kerr, Esq.  
Aaron W. Levin, Esq.  
Lori McAllister, Esq.  
Stephen W. Schwab, Esq.  
Carl H. Poedtke, III, Esq.  
Peter B Kupelian, Esq.  
Robert D. Heitmeyer, Esq.  
Elliott Stein, Esq.  
Stephen Scott, Esq.  
Sharon Williams, Esq.  
Mike Dinius, Esq.  
Steven Ferguson, Esq.  
Jonathan Raven, Esq.

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM**

ANITA G. FOX, Director of the Michigan  
Department of Insurance and Financial  
Services,

Case No. 19-504-CR

Hon. Wanda M. Stokes

Petitioner,

v.

PAVONIA LIFE INSURANCE COMPANY  
OF MICHIGAN,

Respondent.

---

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

Peter B. Kupelian (P31812)  
Clark Hill PLC  
151 S. Old Woodward Avenue, Suite 200  
Birmingham, MI 48009  
(248) 530-6336  
[pkupelian@clarkhill.com](mailto:pkupelian@clarkhill.com)

Lori McAllister (P39501)  
DYKEMA GOSSETT PLLC  
201 Townsend Street, Suite 900  
Lansing, MI 48933  
(517) 374-9100  
[lmcallister@dykema.com](mailto:lmcallister@dykema.com)

Ronald A. King (P45088)  
Zachary C. Larsen (P72189)  
Clark Hill PLC  
212 E. Cesar E. Chavez Ave.  
Lansing, MI 48906  
(517) 318-3015  
[rking@clarkhill.com](mailto:rking@clarkhill.com)  
[larsenz@clarkhill.com](mailto:larsenz@clarkhill.com)  
*Counsel for GBIG Holdings, Inc.*

Stephen W. Schwab  
Carl H. Poedtke III  
DLA PIPER LLP (US)  
444 West Lake Street, Suite 900  
Chicago, IL 60606  
(312) 368-4000  
[stephen.schwab@dlapiper.com](mailto:stephen.schwab@dlapiper.com)  
[carl.poedtke@dlapiper.com](mailto:carl.poedtke@dlapiper.com)  
*Counsel for Aspida Holdco, LLC*

---

**GBIG HOLDINGS, INC.'S ("GBIG")**  
**RESPONSE TO ASPIDA HOLDCO, LLC'S MOTION FOR SPECIFIC**  
**PERFORMANCE AND SUR-REPLY TO REHABILITATOR'S REPLY<sup>1</sup>**

---

<sup>1</sup> Due to the time constraints as a result of Aspida's late filing, GBIG is unable to respond to all of the assertions made by Aspida or to provide all documents that are relevant to this Court's review of Aspida's motion. GBIG requests the opportunity to supplement this filing with evidence and/or argument as necessary.

## INTRODUCTION

Less than 72 hours before a scheduled hearing on the Rehabilitator's motion, proposed buyer Aspida Holdco, LLC ("Aspida") has filed its own motion making numerous and wide-ranging allegations of breaches of the parties' Stock Purchase Agreement ("SPA") and seeking to transform a voluntary sale and consent rehabilitation into a forced sale upon a threat of contempt. Remarkably, Aspida suggests that it is looking for "specific performance" of the SPA. But Aspida then proceeds to tell the Court that it must ignore the SPA's plain terms regarding the parties' choice of jurisdiction, choice of law, and termination provisions in order to "enforce" the SPA and grant Aspida's request.

This Court need not entertain such mental gymnastics. The SPA submits any dispute regarding the SPA to the exclusive jurisdiction of the courts of New York, SPA Section 14.11(a), and subject to resolution under New York law. Section 14.12. This Court has jurisdiction only over the Rehabilitation of and the assets of Pavonia—not over a contract dispute between the parties to the SPA. Respectfully, this Court cannot summarily resolve a contract dispute in a matter of three days when no complaint has been filed, no motion for summary judgment is pending, and where the parties have exclusively committed jurisdiction over such matters to the courts of New York.

Nonetheless, Aspida's late-filed and unfounded motion implicates one thing that *does* concern this Court: whether this Court should enter an order "finally" approving a Plan of Rehabilitation to sell Pavonia from GBIG to Aspida when the parties to the proposed sale are in such discord that the prospective buyer has filed a motion to cut short negotiations on outstanding issues and force a closing. This Court should not enter any such order at this time. The Rehabilitator's Reply to GBIG's adjournment request and its request that this Court move forward with a "final" approval of the Plan of Rehabilitation optimistically presumes that the parties will

negotiate and work out their differences and proceed to closing in just three business days. Aspida's filing suggests otherwise.

Moreover, while such disagreement persists, there are several underlying facts that this Court is expected to "find" as part of entering the Rehabilitator's order that remain in dispute. Ultimately, in adopting a Plan of Rehabilitation, this Court is charged with determining whether the Plan is "fair and equitable to all parties concerned." MCL 500.8114(4). "All parties concerned" certainly includes GBIG as the proposed seller of Pavonia. *Id.* As part of that determination, the Rehabilitator asks this Court to make a factual finding that the sale's price is a fair representation of Pavonia's value. It is not. Pavonia is worth an estimated \$161 million—a combination of the company's reported Capital and Surplus and its IMR and AVR (assets that are accounted for uniquely for insurance companies). (Ex A, Project Triangle Analysis PLICMI dated June 8, 2020.) Yet Aspida is scheduled to pay only \$75 million. And, due to \$15.3 million in mysteriously ballooning "Expense Overruns" incurred during rehabilitation (among other factors), GBIG is expected to receive just \$7.5 million at closing. A closing purchase price of \$7.5 million for a \$160 million asset is not "fair and equitable" to GBIG. GBIG hopes to resolve these issues and continues to work diligently towards the contemplating closing. But exercising reasonable diligence and questioning millions of dollars of expenditures should not be lightly dismissed, and these issues highlight why entry of an order is not appropriate until such issues are resolved.

For those reasons, this Court should reject Aspida's attempt to transform a voluntary sale into a forced sale. Further, the Court should not render a "final" approval of a Rehabilitation Plan that will require the parties to close on a sale just three business days after entry of the Court's order when the parties' negotiations have not placed them in a position to close on that timeline. Nor should this Court enter an order finding "fair and equitable" a sale of Pavonia for \$75 million when its value is more than double that amount.

Accordingly, GBIG believes the best course of action for this Court is still to delay entry of such an order until the parties resolve their differences. In that way, any Plan that this Court approves may be implemented smoothly, swiftly, and without doubt as to whether such Plan will be executed in a timely manner.

## ARGUMENT

### **I. Aspida Holdco's motion is not properly before the Court, invites this Court to usurp jurisdiction committed "exclusively" to the courts of New York by contract, and is otherwise unfounded.**

Aspida's motion for specific performance was not timely filed or noticed for hearing before this Court, and it should be denied for that reason alone. Moreover, Aspida's request that this Court "specifically enforce" the SPA by ignoring the Agreement's terms committing jurisdiction of all disputes to New York is unfounded. Additionally, Aspida's allegations of breach are unfounded and immaterial. And Aspida's request for a forced sale of Pavonia contradicts both the nature of this hearing as a *consent* rehabilitation of a solvent insurer and the terms of the SPA.

#### **a. Aspida has not filed a timely motion with this Court.**

Aspida motion for specific performance is not timely and has not provided GBIG with an adequate opportunity to respond under the Michigan court rules.

MCR 2.119(A)(1) & (A)(2) require any "application to the court for an order in a pending action" to be made "by motion," which "[u]nless made during a hearing or trial . . . must (a) be in writing . . . (c) state the relief or order sought" and "be accompanied by a brief." The motion must be noticed for hearing "at the time designated by the court." MCR 2.119(A)(3), (C)(1), & (E)(1). And, to provide an opposing party adequate opportunity to respond to the allegations and legal arguments, the motion and any supporting brief or attached documents must be served "*at least 9 days* before the time set for hearing" if served via first-class mail or "*at least 7 days* before the time set for the hearing" if served via personal service. MCR 2.119(C)(1)(a) & (C)(1)(b) (emphasis added).

Aspida did not follow these rules. Most importantly, Aspida asks for this Court to consider its arguments at the hearing scheduled for June 25<sup>th</sup>, but it did not obtain a hearing for this motion and did not provide GBIG with sufficient time to respond. In light of the numerous and far-ranging allegations Aspida makes in its motion as well as the gravity of the relief it seeks—to transform a voluntary sale and consent rehabilitation of a multimillion dollar insurance company into a forced sale and a non-consensual proceeding—Aspida must follow these procedural rules, and this Court must provide GBIG with the due-process protection of adequate notice and a meaningful opportunity to be heard. *Klco v Dynamic Training Corp*, 192 Mich App 39, 42 (1991) (noting that due process “requires notice” and “an opportunity to be hear in a meaningful time and manner”).

Accordingly, this Court should deny Aspida’s request to compel a closing on the SPA for that simple reason: Aspida has not followed the rules for filing a motion.

**b. Aspida invites this Court to usurp jurisdiction that the parties have exclusively committed to the courts of New York.**

Additionally, Aspida’s request for “specific performance” on the SPA brushes over a significant fact. The parties have “irrevocably and unconditionally” submitted themselves “in any Action arising out of or relating to this Agreement, the Transactions, the formation, breach, termination, or validity of this Agreement, or the recognition and enforcement of any judgment in respect of this Agreement, to the *exclusive jurisdiction of the courts of the State of New York sitting in the County of New York, the federal courts for the Southern District of New York, and appellate courts having jurisdiction of appeals from any of the foregoing . . .*” SPA Section 14.11(a) (emphasis added). Further, “*any claims* in respect of such action shall be heard and determined in such New York courts . . .” *Id.* (emphasis added). Concordantly, the parties have required any argument regarding the SPA to be “governed by, and construed in accordance with, the Laws of the State of New York.” Section 14.12.

Aspida seeks to avoid the parties' agreement under these sections of the SPA. Ironically, while touting its alleged claim to "specific performance" of the SPA, it ignores the very terms of the agreement it claims it is asking this Court to enforce. Aspida asks this Court to rule on specific performance based on Michigan law. Further, Aspida suggests—without much explanation of exactly *how*—that the placement of Pavonia into Rehabilitation has somehow negated the plain terms of the SPA. (Aspida's Motion, at 12.) Not so.

The SPA contemplated that Pavonia would be placed within Rehabilitation. In fact, the placement of Pavonia into Rehabilitation was a required condition of Pavonia's sale that was negotiated by Aspida and the Plan of Rehabilitation proceeded from the SPA. (SPA, Ex F.) Aspida's assertion that certain SPA provisions have no effect because of a *contemplated* rehabilitation is without merit. Put simply, Aspida asks this Court to give effect to a term Aspida negotiated (the placement of Pavonia into rehabilitation) but ignore other terms that are an equal part of the parties' bargain (the choice of jurisdiction). Such a reading of the SPA is contrary to the maxims that contracts are construed as a comprehensive whole and that effect must be given to every provision. *CNR Healthcare Network, Inc v 86 Lefferts Corp*, 59 AD3d 486, 489 (NY Sup Ct App Div 2009) ("A contract should be read as a whole" and "[a] reading of the contract should not render any portion meaningless"); *Royal Property Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 715 (2005) (a contract "should be read as a whole" and "meaning should be given to all terms"). Because this Court must give effect to the *whole* contract, it cannot rewrite the SPA's terms on choice of jurisdiction and law to grant Aspida's request.

Further, Aspida's reliance on MCL 500.8113(1) and MCL 500.8114(2) does not change the SPA's terms. The fact that the Rehabilitator has been vested with "title to all assets of" Pavonia or given authority to manage Pavonia does not change which court determines the rights of Aspida

vis-à-vis GBIG as a matter of contract under the SPA. Again, Section 14.11(a) committed those decisions to New York, not to this Court. This Court lacks jurisdiction over such questions.

**c. Aspida’s allegations of breaches of the SPA are immaterial. But, in any event, GBIG did not breach the SPA by asking for an adjournment to evaluate millions of dollars in cost overruns and has not otherwise breached.**

Aspida spends much of its motion in an attempt to smear GBIG’s principal and to present the specter of disaster, hoping to thereby persuade this Court that GBIG’s concerns with the transaction are not legitimate.<sup>2</sup> Those smears have little to do with how this Court should address a Rehabilitation based on the owner’s consent.<sup>3</sup> (See Stipulated Petition, at pp 3–4, ¶¶ 6–8.) Moreover, Aspida’s lopsided presentation of its breach allegations (1) fails to even provide this Court with GBIG’s response letter; and (2) makes unfounded inferences regarding an “alternative sale” attempt. Aspida’s claim of breaches of the SPA are unfounded. But, regardless, its claims are irrelevant because this Court has no jurisdiction over any contract dispute between the parties under the SPA.

On the first claim, Aspida has asserted that the mere fact that GBIG has requested additional time to evaluate issues, such as \$15.3 million in Expense Overruns that are proposed to be subtracted from GBIG’s purchase price (including \$1.6 million that mysteriously was added days before the prior scheduled hearing) or Aspida’s demand that GBIG back up Aspida’s indemnification of the Rehabilitator, is a breach of the SPA. It is not. Section 7.03(a) requires the parties to use “reasonable best efforts” to proceed to entry of this Court’s final order and closing. But GBIG does not view the “reasonable best efforts” standard as requiring the company to eat millions of dollars in unexpected costs that are far beyond what the parties anticipated when they entered into the SPA.

---

<sup>2</sup> Aspida sprinkles throughout its brief unsourced quotations purportedly from GBIG’s owner, Greg Lindberg. The basis of these quotations is unknown, but GBIG’s counsel believes that they are framed in a misleading manner.

<sup>3</sup> This Court is not now asked to return Pavonia to GBIG, and Aspida presents a false dichotomy—force a sale to Aspida now or expose policyholders to alleged risk.

Specifically, the parties expected that Expense Overruns would be *no more than* \$8 million as evidenced by spreadsheets created at that time. (See, e.g., Aspida’s Ex D, p 1.) Those have ballooned far beyond this cap. Aspida has not been willing to make more than minimal concessions to GBIG on this issue. Moreover, this reduction for expense overruns was intended to compensate for any reduction of Pavonia’s value due to Rehabilitation. But while the value of Pavonia has only been slightly reduced—by about \$5.3 million—GBIG has been asked to accept a price reduction of three times that amount.

GBIG has explained its position to Aspida that taking time to evaluate and discuss such expenses and Aspida’s indemnification demand is not a breach. (Ex B, GBIG Holdings Response to Notice of Default, dated June 18, 2020). Indeed, Aspida contrived allegations of breach despite the fact that the contractual close date had not moved an inch, and that the parties’ ultimate obligation on the time to close (the “Outside Date”) is September 30, 2020. In other words, Aspida’s insistence that any delay is a breach is inconsistent with the parties’ contractual expectations on when the Rehabilitation would finalize. (*Id.*) Accordingly, GBIG has asked Aspida to withdraw its allegations of breach. (*Id.*) Aspida has refused to do so.

On the second, Aspida insinuates that GBIG “may be attempting to conduct an alternative sale in violation of the SPA.” GBIG has done no such thing. Rather, GBIG has stayed far away from even the appearance of a violation of the “no-shop” provisions of the SPA by refusing to return voicemails left by attorneys for Independent Insurance Group inquiring as to the current status of the proceeding. GBIG then affirmatively *informed* Aspida about such messages to avoid any appearance of impropriety. Aspida’s claim of a breach is baseless.

Significantly though, Aspida alleges breaches that, by their terms, are *curable*. That means that GBIG is provided 45 days to cure under the SPA. Section 12.01(d). Nonetheless, within a week of asserting such alleged breaches, Aspida has run to this Court to demand action. Because

any dispute regarding an alleged breach of the SPA belongs in New York courts, and GBIG has not committed any such breach, this Court should deny Aspida's request to compel a closing.

**d. Aspida's attempt to transform a consent Rehabilitation and voluntary sale into a forced sale on threat of contempt is baseless.**

Aspida ultimately asks this Court to force a sale of Pavonia rather than allow the parties to negotiate a resolution. Aspida claims that a combination of this Court's prior orders and statutory authority governing Rehabilitation require this result and (again) rewrite the SPA to negate GBIG's right to terminate if necessary. The orders do no such thing. Moreover, Aspida's entire argument ignores the fact that this Rehabilitation is based on a single statutory justification: the consent of Pavonia's owner and management.

First, Aspida seeks to transform this Court's March 9, 2020 Order Regarding Independent Insurance Group, LLC's Objection into a mandate to proceed to closing. (Aspida Mot, at ¶ 2.) Respectfully, GBIG believes that Aspida misreads this Court's pronouncement. Though this Court said in passing that it saw "no reason to delay the consummation of the SPA any longer," the Court by no means ordered the parties to close. An equally important passing comment was the Court's observation that "this Court's role is not to second-guess Respondent's business judgment . . . ." (Opinion at p 8.) The Court rightfully acknowledged limitations on the judicial role in this matter, and those limitations do not support Aspida's request to compel an immediate closing before resolving differences among the parties.

Second, Aspida asserts that GBIG has violated various provisions of the Rehabilitation Order, subject to the sanctions of MCL 500.8105 & MCL 500.8106. Aspida fails to demonstrate any such violation. GBIG has raised legitimate concerns with the economics of this transaction and worked diligently to attempt to resolve those concerns. Aspida's assertion that GBIG has "obstructed" the Rehabilitation, (Aspida Mot at ¶¶ 23–26), by raising concerns about the economics of the sale in a *consent* Rehabilitation intended to facilitate a sale and attempting to

negotiate through those concerns under an SPA that allows both parties the right to terminate at any time, see Section 12.01(g) & (h), is disingenuous.

Lastly, Aspida's requested relief—to transform a consent rehabilitation and voluntary sale into a forced closing—contradicts both the SPA and the Order Placing Pavonia into Rehabilitation. This Rehabilitation was agreed to as a condition of the sale of Pavonia. To that effect, a form of the Plan of Rehabilitation was attached to the SPA as Exhibit F. The proceeding exists because of the contemplated sale and Pavonia was placed into Rehabilitation *solely* by consent. (Stipulated Petition, ¶¶ 6–8); (Stipulated Order, p 3) (“The Pavonia Affiliates, as well as their ultimate controlling person, Greg E. Lindberg, consented to the rehabilitation.”). Though Aspida speaks about other reasons for the Rehabilitation Plan to move forward, that is the only statutory basis for the Rehabilitator's exercise of control and for this Court's jurisdiction over this proceeding. Moreover, Michigan law recognizes the rights of shareholders even while an entity is in Rehabilitation and instructs that Rehabilitation should be conducted and the provisions of Chapter 81 should be construed to protect the public “*with minimum interference with the normal prerogatives of owners and managers of insurers . . .*” MCL 500.8101(3). Aspida's suggestion that this Court should therefore *compel* or *force* GBIG to take action to move forward on closing contradicts the sole statutory basis for Rehabilitation.

It also contradicts the SPA's termination provisions, which—as noted above—allow for termination by either party at any time. Section 12.01(g) & (h). Aspida suggests it is not contractually bound to negotiate with GBIG to resolve GBIG's concerns relating to closing. True enough. But the parties preserved both sides' right to terminate “for any reason or for no reason” to account for some of the uncertainty of placing Pavonia into the Rehabilitation process and to ensure that the parties would attempt to negotiate and to resolve any disputes that arose. Section

12.01(g) & (h). Though GBIG is working diligently to resolve the differences that have arose, this contractual arrangement cuts against Aspida's demand for an order to compel closing.

**II. Respectfully, this Court should delay ruling on the Rehabilitator's request to grant "final" approval to a Plan when the execution of that Plan is in doubt.**

Though the Court should deny Aspida's motion, this Court should also delay ruling on the Rehabilitator's request for entry of an order the provides "final" approval to the Plan of Rehabilitation. With due respect to the desires of the Rehabilitator, it does not make sense to enter an order requiring a sale of Pavonia when the parties have yet to come to resolve fundamental disagreements. Nor will entry of the order facilitate a resolution of those issues. Just the opposite, Aspida's filing indicates that it intends to close by force. An order at this time will merely vindicate Aspida's ultimatums-and-threats approach when what is needed is a strong suggestion that Aspida should rethink such an approach. Accordingly, now is not the time to enter a "final" approval of a Plan.

**a. The Rehabilitator's reply assumes the parties will work out their differences prior to closing. Aspida's motion suggests otherwise.**

First, the Rehabilitator suggests that, if this Court enters its order *now*, the parties can proceed to closing and then work out their differences. Aspida's strident motion suggests that the Rehabilitator's view is too optimistic. Indeed, Aspida's filing indicates that it is unwilling to rationally resolve the parties' differences. Instead, as it has done throughout the parties' discussions so far, it seeks to close this transaction through ultimatums rather than through rational discussion of GBIG's concerns. As Aspida notes, GBIG has asked Aspida a number of questions in an attempt to formulate a counter-proposal that will allow the parties to close. Those questions have mostly gone unanswered. An order from this Court that requires the parties to proceed immediately to closing will merely vindicate Aspida's approach and cause Aspida to dig in further. This Court should not proceed on any other assumption.

**b. Entry of a “final” approval of the Plan at the hearing will place the parties on an untenable path.**

Further, the Rehabilitator suggests that this Court’s entry of an order making “final” approval of the Plan of Rehabilitation and sale of Pavonia to Aspida will help facilitate resolution of any differences between the parties. The opposite is true. Entry of such an order terminates the ability of the parties to negotiate resolution. As seen in Aspida’s motion, Aspida seeks to force GBIG to close. And, as Aspida acknowledges, entry of such an order requires closing within three business days (Aspida Motion at ¶ 44)—and also certain deliverables that would therefore be required from Seller on the day of the hearing. See, e.g., Section 2.03(a) (Estimated Closing Statement due three business days prior to close). Entering an order that requires closing in such short order will not be conducive to negotiating a resolution of these issues.

By contrast, delaying a few weeks to allow the parties to resolve their differences could place this Court in a position where its “final” approval of the Plan of Rehabilitation really is “final” and, upon resolution, closing could proceed immediately after entry of the order. Though Aspida suggests that delay for any period of time is delay for a month, the parties are permitted to close at any time by agreement. SPA Section 3.01(a). Thus, the more prudent path is to resolve the parties’ negotiations *before* entering an order that will trigger closing, not the other way around.

**c. The Rehabilitator’s proposed order includes findings that presume the fairness of the proposed sale. GBIG does not agree with that conclusion and would like an opportunity to rebut it factually.**

Additionally, the Rehabilitator’s proposed order includes findings that presume the fairness of the proposed sale. For example, the finding in Paragraph 50 concludes that “[t]he consideration that Buyer is providing is fair and constitutes reasonably equivalent value for the stock it is acquiring.” (Proposed Order, p 16.) That is not so. When valuing the company by including the assets of IMR and AVR together with the Capital and Surplus of Pavonia, the current value of the company is close to \$161 million. (Ex A, Project Triangle Analysis, Capital and Surplus). And

past submissions to Michigan regulators confirm that valuation. (Ex C, Pavonia Proforma Submitted to DIFS in April 2017.) Selling to Aspida at \$75 million—reduced by \$15.3 million in “expense overruns” to a mere \$50 million and reduced further by other items—will not provide a fair value to GBIG. That valuation differential is significant because it is not merely what GBIG as an entity receives but also implicates fairness to the creditors and policyholders of the *other* insurance companies who are lenders to GBIG and whose interests must also be taken into account when this Court determines what is “fair and equitable to all concerned.” MCL 500.8114(4).

**d. The proposed order retains jurisdiction that does not belong to this Court.**

Finally, even if this Court were to enter the proposed order, it must make changes. Notably, the order purports to “retain exclusive jurisdiction over this matter” including jurisdiction over “[t]he taking of any action necessary to ensure the continued vitality and legality of the SPA, the transaction, the Plan and this Order.” (Rehabilitator’s Reply, Ex A, Proposed Order, ¶ N.) To the extent that provision purports to grant this Court exclusive jurisdiction over any disputes arising out of the SPA, that contradicts the parties’ commitment of “exclusive jurisdiction” to the courts of New York under Section 14.11(a), discussed above.

**CONCLUSION**

Aspida’s request to compel a closing on this transaction is unjustified and contrary to both the SPA and the nature of this consent rehabilitation. Additionally, Aspida’s filing indicates that the parties are not prepared to close, and this Court should adjourn this hearing and delay entry of an order approving a “final” Plan until such time as the parties have resolved their differences.

For those reasons, this Court should adjourn this hearing to allow the parties to resolve their differences before entering an order that approves a “final” Plan.

Respectfully Submitted,

CLARK HILL PLC



Peter B. Kupelian (P31812)

Clark Hill PLC

151 S. Old Woodward Avenue, Suite 200

Birmingham, MI 48009

(248) 530-6336

[pkupelian@clarkhill.com](mailto:pkupelian@clarkhill.com)

Ronald A. King (P45088)

Zachary C. Larsen (P72189)

Clark Hill PLC

212 E. Cesar E. Chavez Ave.

Lansing, MI 48906

(517) 318-3015

[rking@clarkhill.com](mailto:rking@clarkhill.com)

[larsenz@clarkhill.com](mailto:larsenz@clarkhill.com)

*Counsel for GBIG Holdings, Inc.*

Dated: June 24, 2020

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

ANITA G. FOX, Director of the Michigan  
Department of Insurance and Financial  
Services,

Case No. 19-504-CR

Hon. Wanda M. Stokes

Petitioner,

v.

PAVONIA LIFE INSURANCE COMPANY  
OF MICHIGAN,

Respondent.

---

EXHIBIT

A

(Filed Under Seal)

# **EXHIBIT**

**B**

**GBIG Holdings, Inc.**  
2222 Sedwick Road  
Duiham, NC 27713

June 18, 2020

VIA MAIL AND E-MAIL

Daniel Hall  
2000 Avenue of the Stars  
12<sup>th</sup> Floor  
Los Angeles, CA 90067  
[DHall@aresmgmt.com](mailto:DHall@aresmgmt.com)

David D. Luce  
DLA Piper LLP (US)  
1251 Avenue of the Americas  
New York, NY 10020-1104  
[David.Luce@DLAPiper.com](mailto:David.Luce@DLAPiper.com)

Re: Response to Buyer's June 15, 2020 Notice of Default

Dear Messrs. Hall and Luce:

We are in receipt of your Notice of Default dated June 15, 2020, and delivered under Section 12.01(d) of the Stock Purchase Agreement between GBIG Holdings, Inc. ("Seller") and Aspida Holdco, LLC ("Buyer"), dated July 9, 2019 ("the SPA"). We are both surprised and confused by your letter, which per the terms of that section serves as precursor to a termination by Buyer. Given the Buyer's repeated assertions that it wishes to close on the transaction, it is unclear why Buyer is taking steps towards termination of the SPA. It is also particularly perplexing in light of the parties' ongoing negotiations and attempt to resolve our differences through negotiation. Nonetheless, we understand your invocation of that section to mean that Buyer believes that the asserted breach is curable and that Seller has the 45 days provided within Section 12.01(d) to cure the claimed breach.

On the substance of your claim, we wholly disagree with your assertion that Seller has committed any breach. Buyer's allegations of breach are premised on the assertion that Seller's has failed to comply with its obligations under Section 7.03 of the SPA to use reasonable best efforts to fulfill the conditions of the SPA and to consummate the Closing and the Transactions. Buyer also contends that the alleged breach "has resulted in the conditions to Closing set forth in Section 11.02(a) not being satisfied."

Both assertions are demonstrably false. On the first, Seller has used "reasonable best efforts" to move both the transaction and the Closing forward. But "reasonable best efforts" does not require Seller to waive concerns over ballooning and unexplained Expense Overruns many millions of dollars above the parties' pre-signing expectations without further investigation. Nor does that standard require Seller to accept Buyer's insistence that, to comply with the requirement of the Rehabilitator that Pavonia indemnify the Rehabilitator against the US Claim,

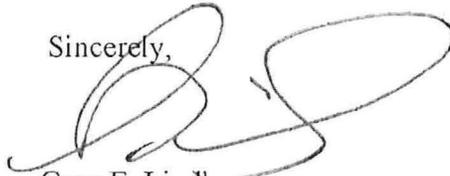
June 18, 2020

Page 2

the Seller must provide a back-to-back indemnification of Pavonia. On the second, nothing Seller has done to date has resulted in any delay of the contractual Closing date. Based on the parties' expectations that an order would be entered on May 28, 2020, the Seller's contractual obligation to close would have been no earlier than June 30, 2020. That has not changed to date. Moreover, as indicated in both Section 12.01(d) and elsewhere in the SPA, the parties' ultimate obligation on the time to close is the Outside Date—effectively, September 30, 2020. While Seller agrees that the parties must work diligently to attempt to resolve our differences and move towards Closing, we do not believe that requires the parties to ignore substantive issues with the transaction in that process. Moreover, using reasonable best efforts to fulfill the conditions of the SPA does not mean closing on a date dictated by Buyer.

Accordingly, Buyer's assertion of a breach is premature and unhelpful. We therefore demand that Buyer immediately withdraw its assertion of breach.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg E. Lindberg", written over a white background.

Greg E. Lindberg  
GBIG Holdings, Inc.

cc: James Gerber, CFE  
James Long, AAG  
Christopher Kerr, AAG  
Randall Gregg, DIFS  
Stephen Schwab, DLA Piper

CLARK HILL

Clark Hill\J6331\403107\223999808.v1-6/17/20

Clark Hill\J6331\403107\224008107.v1-6/18/20

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

ANITA G. FOX, Director of the Michigan  
Department of Insurance and Financial  
Services,

Case No. 19-504-CR

Hon. Wanda M. Stokes

Petitioner,

v.

PAVONIA LIFE INSURANCE COMPANY  
OF MICHIGAN,

Respondent.

---

EXHIBIT

C

(Filed Under Seal)



I, Kinneitha M. Thomas, being duly sworn, depose and say that on June 24, 2020, I caused to be served a copy of *GIBG Holdings, Inc.'s Response to Aspida Holdco, LLC's Motion for Specific Performance and Sur-Reply to Rehabilitator's Reply with Exhibits A (under seal), B, and C (under seal)* and a copy of this *Proof of Service* upon:

Stephen W. Schwab  
Counsel for Aspida Holdco LLC  
stephen.schwab@dlapiper.com

Sharon Williams  
Counsel for U.S. Department of Justice  
Sharon.Williams@usdoj.gov

Robert D. Heitmeyer  
Counsel for U.S. Internal Revenue Service  
robert.d.heimeyer@irsounsel.treas.gov

Mike Dinius  
Deputy Rehabilitator  
NC Insurer Affiliates  
MDinius@noblecon.net

Elliott Stein  
Counsel for Andesa Claim  
ejs@stevenslee.com

Steve Ferguson  
Counsel for Sharp Litigation  
fergatty@aol.com

Stephen Scott  
Counsel for Schwab Claim  
sscott@hayesscott.com

Jonathan Raven  
Counsel for Independent Insurance Group,  
LLC  
jraven@fraserlawfirm.com

Christopher L. Kerr  
Counsel for Rehabilitator  
kerrc2@michigan.gov

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-section "Pavonia Life Insurance."

The following individuals were served via First Class Mail by placing same in a United States mail depository, enclosed in an envelope bearing postage fully prepaid and addressed properly:

Christopher L. Kerr  
Aaron W. Levin  
Assistant Attorneys General  
Corporate Oversight Division  
P. O. Box 30736  
Lansing, MI 48909

Lori McAllister  
DYKEMA GOSSETT PLLC  
201 Townsend Street, Suite 900  
Lansing, MI 48933

Stephen W. Schwab  
Carl H. Poedtke III  
DLA PIPER LLP (US)  
444 West Lake Street, Suite 900  
Chicago, IL 60606

Dated: June 24, 2020



Kinneitha M. Thomas

Subscribed and sworn to before me  
this 24<sup>th</sup> day of June, 2020.



Tema L. Crowell, Notary Public,  
Gratiot County, Michigan  
Acting in Ingham County, Michigan.  
My Commission Expires: 11/16/2025.