

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In Re:	§	Chapter 11
	§	
NEIGHBORS LEGACY HOLDINGS, INC.	§	Case No. 18-33836-H1-11 (MI)
	§	
	§	
Debtor.	§	

**LIQUIDATING TRUSTEE'S MOTION FOR ENTRY OF AN ORDER
AUTHORIZING THE LIQUIDATING TRUSTEE TO TAKE ALL
NECESSARY ACTIONS TO TERMINATE THE LIQUIDATING TRUST**

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.

A hearing will be conducted on this matter on August 22, 2023 at 1:30 p.m. in Courtroom 404, 4th floor, 515 Rusk, Houston, Texas 77002. You may participate in the hearing either in person or by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at 832-917-1510. Once connected, you will be asked to enter the conference room number. Judge Isgur's conference room number is 954554. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Isgur's home page. The meeting code is "JudgeIsgur." Click the settings icon in the upper right corner and enter your name under the personal information setting.

Represented parties should act through their attorney.

Tensie Axton, as the Trustee (the "Liquidating Trustee") of the NLH Liquidating Trust (the "Liquidating Trust"), hereby submits this motion (the "Motion") for entry of an order substantially in the form attached hereto (the "Order"), pursuant to 11 U.S.C. § 105 and Rule 9013-1 of the



Local Bankruptcy Rules for the Southern District of Texas (the “Bankruptcy Local Rules”), authorizing the Liquidating Trustee to take all necessary actions to terminate and wind down the Liquidating Trust. In support of the Motion, the Liquidating Trustee respectfully shows as follows:

JURISDICTION

1. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. § 1408.

BACKGROUND

2. On July 12, 2018 (the “Petition Date”), Debtors Neighbors Health System, Inc. (formerly known as Neighbors Legacy Holdings, Inc.) and certain affiliated entities (“Debtors” or “Neighbors Health”) commenced a case by filing a petition for relief under Chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”).

3. On February 20, 2019, the Debtors filed their *First Amended Joint Plan of Liquidation of Neighbors Legacy Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* (the “Plan”) [Docket No. 772].¹

4. On March 22, 2019, the Court entered its *Order Approving Debtors’ Second Amended Disclosure Statement and Confirming Debtors’ First Amended Joint Plan of Liquidation of Neighbors Legacy Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* (the “Confirmation Order”) [Dkt. No. 847]. The Plan created two trusts to facilitate the wind down of Neighbors Health—the Unsecured Creditor Trust and the Liquidating Trust. [Dkt. No. 772 at 24-25]. A trustee was appointed to manage each trust. *Id.* at 28-30. Mark Shapiro was appointed as trustee of the Unsecured Creditor Trust and is responsible for administering and

¹ Capitalized terms not specifically defined herein are given the meaning ascribed to such terms in the Plan.

distributing the Unsecured Trust Assets, which are primarily proceeds from Debtors' retained causes of action. *Id.* at 18, 29.

5. Tensie Axton was appointed as trustee of the Liquidating Trust, which was established primarily to liquidate the Debtors' remaining assets. [Dkt. No. 772 at 12, 28]; [Dkt. No. 806 (Liquidating Trust Agreement) at 8]. The Plan directed the Liquidating Trustee to "accept, on behalf of the beneficiaries of the Trust, (a) all Liquidating Trust Cash and (b) all other Liquidating Trust Assets" (as defined by the Plan). *Id.* at 28. The Plan also empowered the Liquidating Trustee to serve as the representative and "sole manager" of the remaining Debtor entities (the "Liquidating Debtors"). *Id.* at 34.

6. The Liquidating Trust assets have all been distributed with the exception of one small final distribution. The final outstanding litigation involving the Liquidating Trustee (the "Infinity Litigation") was resolved on January 25, 2023, when the Court approved a settlement between Infinity Emergency Management Group, LLC, the Liquidating Trustee and Mark Shapiro, the Trustee of the Unsecured Creditors Trust [Dkt. No. 1234]. Although the Infinity Litigation remains ongoing, the Liquidating Trustee is no longer a party.

RELIEF REQUESTED

7. The Liquidating Trustee seeks entry of an Order authorizing her to take all necessary actions to terminate and wind down the Liquidating Trust. No further outstanding litigation involving the Liquidating Trustee exists, and there are no further assets to be liquidated, other than the final distribution. Accordingly, the Liquidating Trustee requests entry of an Order authorizing the Liquidating Trustee to terminate the Liquidating Trust.

BASIS FOR REQUESTED RELIEF

I. Termination of the Liquidating Trust

8. Under the Plan, the Liquidating Trust and the Unsecured Creditor Trusts have an initial term of five (5) years from the Effective Date. *See* Plan, Art. V.R.

9. The Liquidating Trust Agreement “shall terminate immediately upon the closing of the Chapter 11 Cases.” Liquidating Trust Agreement, § 8.1. However, closing the Chapter 11 Cases is not necessary to terminate the Liquidating Trust. The Plan provides that,

Either Plan Trust may be terminated earlier than its scheduled termination if (a) the Bankruptcy Court has entered a Final Order closing the Case pursuant to section 350(a) of the Bankruptcy Code or (b) **the applicable Plan Trustee has administered all of the Plan Trust’s Assets and performed all other duties required by this Plan and the applicable Plan Trust Agreement.**

See Dkt. No. 772 at Art. V.R (emphasis added). Further, Section 8.1 of the Liquidating Trust Agreement provides as follows:

Section 8.1 Termination of the Liquidating Trust. This Agreement shall terminate immediately upon the closing of the Chapter 11 Cases; *provided that* if, at any time, the Liquidating Trustee determines, in reliance upon such professionals as the Liquidating Trustee may retain, that the expense of administering the Liquidating Debtors’ assets, including the making of a final Distribution to Holders of Allowed Claims, other than Class 4 Claims, against the Liquidating Debtors, is likely to exceed the value of the Liquidating Trust Assets remaining in the Liquidating Trust, the Liquidating Trustee may apply to the Bankruptcy Court for authority to reserve any amounts necessary to terminate the Liquidating Trust and dissolve the Liquidating Debtors.

[Dkt. No. 806 at 17]. While the Chapter 11 Cases remain open because of the Infinity Litigation, the primary purpose of the Liquidating Trust has been accomplished. All distributions under the Plan have been made by the Liquidating Trustee with the exception of one small final distribution, and only ministerial tasks remain to wind down the Liquidating Trust. Accordingly, the Liquidating Trustee seeks authorization to terminate the Liquidating Trust and dissolve the Liquidating Debtors.

II. Winding Down the Liquidating Trust

10. Upon the termination of the Liquidating Trust, the Liquidating Trustee and the Liquidating Trust’s professionals will be required to perform certain post-termination activities required by the Trust Agreement to wind-down the Trust (collectively, the “Wind-Down Activities”). Section 8.3 of the Liquidating Trust Agreement provides, in relevant part, the following:

After the termination of the Liquidating Trust and for the purpose of liquidating and winding down the affairs of the Liquidating Trust, **the Liquidating Trustee shall continue to act as such over the Liquidating Trust until their duties have been fully performed.** . . . Except as otherwise specifically provided herein, upon the termination of the Liquidating Trust, the Liquidating Trust[ee] and its professionals and agents shall have no further duties or obligations hereunder.

Liquidating Trust Agreement, § 8.3 (emphasis added). Specifically, the Wind-Down Activities include, among other things,² retaining “the books, records, lists of the Beneficiaries, the registry of claims and Beneficiaries, and other documents and files that have been delivered to or created by the [Liquidating Trustee]” for a period of three years. [Dkt. No. 806] Liquidating Trust Agreement, § 8.3; *see also* [Dkt. No. 772] Plan, Art. V.S.

11. Furthermore, the Liquidating Trust Agreement allows the Liquidating Trustee to reserve necessary funds to terminate the Liquidating Trust. For example, “the Liquidating Trustee may apply to the Bankruptcy Court for authority to reserve any amounts necessary to terminate the Liquidating Trust and dissolve the Liquidating Debtors.” Liquidating Trust Agreement, § 8.1.³

² Pursuant to Section 2.7 of the Liquidating Trust Agreement, “within 30 days after the end of each calendar quarter until entry of a final decree closing the Chapter 11 Case, the Liquidating Trustee . . . will file a quarterly receipts and disbursement report with the Bankruptcy Court. . . . In connection with the entry of a final decree closing the chapter 11 cases, the Liquidating Trustee . . . will file a final receipts and disbursements report with the Bankruptcy Court.”

³ Section 8.1 of the Liquidating Trust Agreement provides in full that:

This Agreement shall terminate immediately upon the closing of the Chapter 11 Cases; provided that if, at any time, the Liquidating Trustee determines, in reliance upon such professionals as the Liquidating Trustee may retain, that the expense of administering the Liquidating Debtors’ assets, including the making of a final Distribution to Holders

Additionally, the Liquidating Trust Agreement states that before the final distribution of the remaining Liquidating Trust Assets, the Liquidating Trustee is entitled to reserve “any and all amounts required to provide for [her] own reasonable costs and expenses, until such time as the winding down of the Liquidating Trust is completed.” *See* Liquidating Trust Agreement, § 8.3.

12. The Liquidating Trustee may incur expenses for filing the final tax returns and related fees. The Liquidating Trustee may also incur ministerial costs associated with document requests relating to the Infinity Litigation by the parties, as well as third parties. In accordance with the Liquidating Trust Agreement, the Liquidating Trustee seeks to reserve the right to retain professionals to prepare and file the final tax returns and reserve remaining funds in the amount of \$50,000.00 to pay necessary professional fees. [Dkt. No. 806 at § 8.3]. The Liquidating Trustee further requests that the Court order that the parties to the Infinity Litigation pay the reasonable attorneys’ fees of the Liquidating Trusts’ counsel associated with reviewing and producing any documents requested in the Infinity Litigation. The party requesting the documents must bear the burden of the production of such documents. The Liquidating Trustee further requests that upon the full and final conclusion of the Infinity Litigation, whether by a final non-appealable order or settlement of the parties, that she be permitted to destroy the hard drives in her possession containing the data of the Neighbors entities, including emails.

13. Pending the tasks and expenses identified above, such as the filing of the final tax returns, the Liquidating Trustee has administered the Liquidating Trust in compliance with the Liquidating Trust Agreement and has taken all actions necessary or appropriate to accomplish the

of Allowed Claims, other than Class 4 Claims, against the Liquidating Debtors, is likely to exceed the value of the Liquidating Trust Assets remaining in the Liquidating Trust, the Liquidating Trustee may apply to the Bankruptcy Court for authority to reserve any amounts necessary to terminate the Liquidating Trust and dissolve the Liquidating Debtors.

purpose of the Liquidating Trust. The Liquidating Trustee, in the exercise of her business judgment and upon consultation with the Liquidating Trust's professionals, believes the relief sought herein is reasonable and fair and equitable and therefore is in the best interests of the Litigation Trust Beneficiaries.

III. Discharge of the Liquidating Trustee

14. By this Motion, the Liquidating Trustee reports that the Liquidating Trust assets have been distributed pursuant to the Plan. Therefore, the Liquidating Trustee requests entry of a Final Decree discharging her from the powers, duties, and obligations conferred upon her pursuant to the Liquidating Trust Agreement, the Plan, and the Confirmation Order.

15. Pursuant to the Liquidating Trust Agreement, the Liquidating Trustee and the directors, affiliates, employee, employer, professionals, agent, or representative of the Liquidating Trustee, in their capacity as such, shall not be personally liable for any act or omission with respect to the implementation or administration of the Liquidating Trust provided, however, that such limitation of liability will not apply to any acts or omissions ultimately and finally determined by Final Order of a court of competent jurisdiction to be the direct result of such Exculpated Party's fraud, willful misconduct, or gross negligence. *See* Liquidating Trust Agreement at § 6.1(a).

16. Therefore, upon termination of the Liquidating Trust, the Liquidating Trustee requests discharge from all liability to the Liquidating Trust, its beneficiaries, and all persons and entities for acts or omissions in the Liquidating Trustee's capacity as the Liquidating Trustee or in any other capacity contemplated by the Liquidating Trust Agreement or the Plan.

NOTICE

17. Notice of this Motion will be given to all parties that have requested, or that are required, to receive notice pursuant to Bankruptcy Rule 2002 and any party required to be served

under Bankruptcy Local Rule 9013-1(d). The Liquidating Trustee respectfully submits that no further notice of this Motion is required.

WHEREFORE, the Liquidating Trustee respectfully requests that the Court enter the proposed order submitted with this Motion granting the relief requested in this Motion and such other and further relief as may be just and proper.

Dated: Houston, Texas
July 27, 2023

Respectfully Submitted,

PORTER HEDGES LLP

By: /s/ Heather K. Hatfield

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TRUST OF NEIGHBORS LEGACY
HOLDINGS, INC. AND CERTAIN OF
ITS AFFILIATES AND SUBSIDIARIES**

CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing document was forwarded by electronic transmission to all registered ECF users appearing in the case on July 27, 2023.

/s/ Heather K. Hatfield

Heather K. Hatfield

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In Re: NEIGHBORS LEGACY HOLDINGS, INC. Debtor.	§ § § § § §	Chapter 11 Case No. 18-33836-H1-11
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**ORDER AUTHORIZING THE LIQUIDATING TRUSTEE TO TAKE ALL
NECESSARY ACTIONS TO TERMINATE THE LIQUIDATING TRUST**

[Relates to Docket No. ____]

The court has considered, and hereby GRANTS the Liquidating Trustee’s Motion for Entry of an Order Authorizing the Liquidating Trustee to Take All Necessary Actions to Terminate the Liquidating Trust.

Tensie Axton, as the Liquidating Trustee (“Liquidating Trustee”) of the NLH Liquidating Trust (the “Liquidating Trust”), is hereby authorized to take all necessary actions to wind down and terminate the Liquidating Trust created in accordance with the terms of the Liquidating Trust Agreement dated March 15, 2019. [Dkt. No. 806].

The Liquidating Trustee may retain professionals to prepare and file the final tax return and may reserve funds to pay for necessary professional fees in accordance with the Liquidating Trust Agreement in the amount of \$50,000.00.

The parties to the pending adversary proceeding styled Infinity Emergency Management Group, LLC v. Tensie Axton, et al.; Adversary Proceeding No. 18-3276 (the “Infinity Litigation”) are ordered to pay the reasonable attorneys’ fees of the Liquidating Trustee’s counsel associated with reviewing and producing documents requested in the Infinity Litigation. The party who requests the documents of the Liquidating Trustee must bear the cost of the review and production of such documents. Upon the full and final conclusion of the Infinity Litigation, whether by a final

non-appealable order or settlement of the parties, that she be permitted to destroy the hard drives in her possession containing the data of the Neighbors entities, including the emails of the Neighbors entities.

The Liquidating Trustee may terminate the Liquidating Trust upon the filing of final tax returns, payment of professionals and completing any other actions necessary to the terminate the Liquidating Trust.

Upon termination of the Liquidating Trust, the Liquidating Trustee and her directors, affiliates, employees, employers, agents, professionals, and representatives are discharged from all liability related to the Trust.

DATED: _____, 2023

**THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE**