

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

IN RE: §
§
NEIGHBORS LEGACY HOLDINGS, INC., § CASE NO. 18-33836 (MI)
et al., § (Chapter 11)
Debtors. §

INFINITY EMERGENCY MANAGEMENT §
GROUP, LLC, §
§
Plaintiff, §
§
VS. § ADV. P. NO. 18-3276
§
SETUL G. PATEL, M.D. AND §
PAUL ALLEYNE, M.D., §
§
Defendants. §

JOINT MOTION OF PLAINTIFF AND DEFENDANTS IN LITIGATION
BROUGHT BY INFINITY EMERGENCY MANAGEMENT GROUP, LLC
FOR ENTRY OF AN ORDER APPROVING SETTLEMENT OF CONTROVERSIES
PURSUANT TO FED. R. BANKR. P. 9019

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the court, you must file your response electronically at <https://ecf.txsb.uscourts.gov/> within twenty-one days from the date this motion was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk within twenty-one days from the date this motion was filed. Otherwise, the court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on October 19, 2023 at 11:00 a.m. in Courtroom 404, fourth 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.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the “Electronic Appearance” link on Judge Isgur’s home page. Select the case name, complete the required fields and click “submit” to complete your appearance.

Represented parties should act through their attorneys.

**TO THE HONORABLE MARVIN ISGUR,
UNITED STATES BANKRUPTCY JUDGE:**

The parties, Plaintiff and Counter-Defendant Infinity Emergency Management Group, LLC (“Infinity”), and Defendants and Counter-Plaintiff Setul G. Patel, M.D. and Defendant Paul Alleyne, M.D. (the “Defendants”), and collectively with Infinity, the “Settling Parties”) file this Joint Motion requesting entry of an order, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, approving the compromise and settlement of controversies (the “Settlement”) with respect to all remaining claims and counterclaims of all parties, past or present, to the extent not previously settled, that have been asserted or are capable of assertion in Adversary Proceeding No. 18-3276 pending in this Court (the “Adversary Proceeding” or “Adv. P.”), and approving the Settlement Agreement attached hereto, marked as **Exhibit 1** (the “Settlement Agreement”) executed by and between the Settling Parties, and in support, respectfully state:

I. Jurisdiction and Venue

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334.
2. Venue of this chapter 11 case in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(A), (M), and (O). This Court has the constitutional authority to enter a final order in this matter. If it is determined that this

Court does not have the constitutional authority to enter a final order or judgment in this matter, the Settling Parties consent to the entry of a final order or judgment by this Court in this matter.

3. The statutory predicate for the relief sought is 11 U.S.C. § 105(a), and Rule 9019 of the Federal Rules of Bankruptcy Procedure. Moreover, the Court retained jurisdiction of matters such as are presented here in the Confirmation Order (as defined below) (Main Case ECF No. 847) as well as under Article XIII of the Plan (as defined below) (Main Case ECF No. 772). *See*, Confirmation Order, Findings of Fact (a) and (b); Conclusions of Law ¶¶ 34-36. (Main Case ECF No. 847 at 3, 25-26).

II. Summary of Relief Requested

4. Settling Parties believe that the proposed Settlement of all matters in controversy between Infinity, the Defendants, and the Neighbors O&Ds,¹ as embodied in the Settlement Agreement, is in the best interest of all parties in interest and the Unsecured Creditor Trust (the “Unsecured Creditor Trust”) of Neighbors Legacy Holdings, Inc. (“Neighbors”), and certain of its affiliates and subsidiaries who filed chapter 11 cases in this Court (collectively, the “Debtors”), and accordingly, the Settling Parties file this Motion seeking entry of an order (a) granting this Motion; (b) approving the Settlement and the Settlement Agreement; and (c) granting all other relief to which the Settling Parties are justly entitled.

III. Facts and Procedural Background

5. Infinity filed a lawsuit in 2017 in state court (the “Infinity Lawsuit”) alleging that the following individuals, Setul G. Patel, M.D., Paul Alleyne, M.D., Cyril Gillman, M.D., Michael

¹ As used herein, the term Neighbors O&Ds means the Defendants, Setul G. Patel, M.D. and Paul Alleyne, M.D., as well as former defendants Cyril Gillman, M.D., Michael Chang, M.D., Andy Chen, M.D., Quang Henderson, M.D., Hitesh Patel, M.D., and Dharmesh Patel, M.D., in all capacities, including but not limited to QSH Family LP and Girish Capital, LLC, and any and all persons or parties at any time insured under the Beazley Insurance Company policy, and their present and former affiliates (the “Neighbors O&Ds”).

Chang, M.D., Andy Chen, M.D., Quang Henderson, M.D., Hitesh Patel, M.D., and Dharmesh Patel, M.D., fraudulently induced Infinity into investing in the two Series LLCs, then failed to uphold the contractual and fiduciary duties owed to Infinity.

6. On July 12, 2018 (the “Petition Date”), the Debtors filed their chapter 11 cases, which have been and are being jointly administered as Bankruptcy Case No. 18-33836-H1-11, now 18-33836 (MI) (the “Bankruptcy Case” or “Main Case”). On September 19, 2018, Defendants Michael Chang, Andy Chen, Quang Henderson, and Hitesh Patel filed a Notice of Removal, removing the Infinity Lawsuit to the Bankruptcy Court for the Southern District of Texas, Houston Division, (“Bankruptcy Court”). The removed action became Adversary Proceeding No. 18-03276 (Adv. P. No. 18-03276, ECF No. 1).

7. On November 2, 2018, Infinity filed Unsecured Proof of Claim No. 223 (the “Infinity Claim”) in the amount of \$8,646,313.01 against Neighbors Legacy Holdings, Inc., et al. in the Bankruptcy Case.

8. 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”) (Main Case ECF No. 772).

9. On March 5, 2019, the Debtors filed the Debtors’ Objection to Infinity Emergency Management Group, LLC’s Claim No. 223 (Main Case ECF No. 792).

10. On March 22, 2019, the Court held the plan confirmation hearing (the “Confirmation Hearing”). At the conclusion of the Confirmation Hearing, the Court, among other things, held that the Debtors proposed their Plan in good faith and entered its *Order Approving Debtors’ Second Amended Disclosure Statement and Confirming 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”) (Main Case ECF No. 847).

11. The Plan and the Confirmation Order established the Unsecured Creditor Trust and approved an Unsecured Creditor Trust Agreement (the “Unsecured Creditor Trust Agreement”), which, among other things, appointed Mark Shapiro the Unsecured Creditor Trustee to distribute certain assets (the “Unsecured Creditor Trust Assets”) to Creditors in Class 4 established under the Plan, in accordance with the Plan and the Confirmation Order. Pursuant to the Plan, the Debtors’ estates are deemed consolidated for purposes of making distributions to certain claimants. The Effective Date of the Plan occurred on January 6, 2017. The Plan contains broad injunctive and discharge provisions, as well as language relating to the transfer of proceeds of D&O Policies to the Unsecured Creditor Trust.

12. Pursuant to Articles V. D and G of the Plan (Main Case ECF No. 772 at 25-27) and Article 3 of the Unsecured Creditor Trust Agreement (Main Case ECF No. 802 at 10-17), the Unsecured Creditor Trustee has the exclusive authority to file, settle, compromise, withdraw, or litigate to judgment any objection to claims constituting Class 4 General Unsecured Claims. Infinity’s Proof of Claim was classified as a Class 4 General Unsecured Claim. Moreover, under the Plan, the Unsecured Creditor Trust was empowered, on behalf of the beneficiaries thereof, to accept claims under and proceeds of D&O Policies. The Unsecured Creditor Trustee was authorized and empowered to, among other things, resolve all Disputed General Unsecured Claims, including objecting, prosecuting, settling, and compromising such Disputed General Unsecured Claims (i) in any manner approved by the Bankruptcy Court or (ii) in the Trustee’s discretion, subject to any relevant provisions of this Agreement, without Bankruptcy Court approval. (Main Case ECF 802 at 6).

13. On April 26, 2019, the Court entered an order consolidating the Debtors' objection to Infinity's Claim No. 223 with this Adversary Proceeding (Main Case ECF No. 893, Adv. Pro. ECF No. 43). Thereafter, Infinity's Claim was resolved by this Court's approval of a settlement by Infinity with Mark Shapiro, the Trustee of the Unsecured Creditors Trust and Tensie Axton, the Liquidating Trustee appointed pursuant to the Plan (the "Liquidating Trustee") (Main Case ECF No. 1243). To the extent not previously dismissed by order of this Court (Adv. P. ECF No. 207), or settled, the Adversary Proceeding continues with Infinity asserting certain claims against Defendants which, until the approval of this Motion, remain unresolved.

14. Prior to filing these chapter 11 cases and in the ordinary course of business, the Debtors obtained a directors and officers liability insurance policy. For the policy period January 1, 2017 to January 1, 2018, the Debtors maintained the Beazley Remedy Insurance Policy, Policy No. V1A63E170201 (the "D&O Policy").² The D&O Policy is a so-called "wasting" or "burning candle" policy, where payment for any loss covered under the D&O Policy necessarily reduces the amount of proceeds available to cover subsequent losses, and includes defense costs in its definition of covered loss.

15. On March 21, 2019, the Court entered an *Order Allowing Payments under Neighbors D&O Insurance Policy* and, among other things, lifted the automatic stay to the extent necessary to allow Beazley to remit, advance, or make payments under the D&O Policy. The Order states that the automatic stay shall not subject Beazley to liability for making and/or advancing any payment in connection with past, present or future defense costs paid under the D&O Policy. (Main Case ECF No. 835) The Neighbors D&Os, including the Defendants, are "Insured Persons" as defined in the D&O Policy. (Main Case ECF No. 1022 at 2, ¶ D.)

² The terms "D&O" and "O&D" are equivalent and used interchangeably herein and elsewhere throughout these proceedings.

16. On November 20, 2019, the Bankruptcy Court entered the *Stipulation and Agreed Order Allowing Payments Under Neighbors D&O Insurance Policy* (Main Case ECF No. 1022), which states, in relevant part, that:

[t]he automatic stay and the injunctive provisions contained in the Plan and Section 524(a) of the Bankruptcy Code (collectively, “Discharge and Injunctive Provisions”) shall be modified to permit the Neighbors D&Os to allow Beazley [Insurance Company] to remit, advance, or make payments under the D&O Policy to or on behalf of the Neighbors D&Os relating to the following litigation: (1) the Phipps Litigation; and (2) the Alam Litigation... Any payment and/or advancement made by Beazley [Insurance Company] under the D&O Policy shall not be considered property of the Unsecured Creditors Trust or the Liquidating Trust.

(Main Case ECF No. 1022 at 4). Because any payment or advancement under the D&O Policy is not considered property of the Unsecured Creditors Trust, the Liquidating Trust, or property of the bankruptcy estate generally, the Settling Parties believe Beazley is authorized to make the Settlement Payment (defined below) contemplated by this Settlement without the need for further relief from the automatic stay or the injunctive provisions contained in the Plan and Section 524(a) of the Bankruptcy Code. Included in the requested relief are comfort provisions to this effect.

IV. The Dispute and the Proposed Settlement

17. On April 13, 2021, Infinity filed its most recent amended complaint, *Plaintiff's Fifth Amended Complaint*, in the Adversary Proceeding (Adv. P. ECF No. 102) (the "Fifth Amended Complaint"). The Defendants continue to deny all of the allegations raised by Infinity in the Adversary Proceeding, and have asserted and do assert that they have valid defenses to all of the claims Infinity asserts in the Fifth Amended Complaint. Paul Alleyne, M.D. filed his Answer to the Fifth Amended Complaint (Adv. P. ECF No. 172), and Setul G. Patel, M.D., filed not only his Answer to the Fifth Amended Complaint, but included his Counterclaim (Adv. P. ECF No. 174), which Infinity answered and which Infinity contested and continues to contest.

18. Infinity and the Defendants have expended considerable resources to prosecute and defend the Adversary Proceeding. The Settling Parties seek to avoid the uncertainties and expenses associated with further litigation, and with the assistance of legal counsel and more than one experienced and capable mediator, have engaged in extensive settlement negotiations.

19. After careful consideration of the facts and applicable law, and the uncertainties and expenses associated with further litigation, the Settling Parties have reached an agreement to resolve all issues raised in the Adversary Proceeding, or capable of being raised in the Adversary Proceeding, the terms of which are fully contained in a Settlement Agreement, a true and complete copy of which, marked as **Exhibit 1**, is attached hereto and incorporated by this reference. The material terms of the Settlement Agreement are:

- a. **Settling Parties.** The parties to the Settlement Agreement are: (1) Infinity, and (2) Setul G. Patel, M.D. and Paul Alleyne, M.D.
- b. **Subject to Bankruptcy Court Approval.** The Settling Parties' Settlement and the Settlement Agreement are conditioned upon and subject to entry of a final, non-

appealable order by the Bankruptcy Court (the “Bankruptcy Court Approval Order”).

- c. **Settlement Payment.** Within ten (10) business days after the Bankruptcy Court Approval Order becomes a final, non-appealable order, Beazley Insurance Company, on behalf of the Defendants, will pay Infinity funds under the O&D Policy in the amount of Eight-Hundred Ninety-Six Thousand and No One Hundredths Dollars (\$896,000.00) (the “Settlement Payment”).
- d. **Releases.** The Settling Parties grant mutual releases of any claims that have been brought, or could have been brought, or may be brought in the future of any kind, as of the date the Settlement is approved. In addition, because Infinity had sued other defendants, although Infinity’s claims against those other defendants have been dismissed, they had not been settled or released; accordingly, because those other defendants are all insureds under the D&O Policy, the Settlement Agreement also entails mutual releases in favor of and by those other defendants and related or affiliated parties, referred to herein as the Neighbors O&Ds. *See* footnote 1.
- e. **Covenants not to Sue.** The Settling Parties covenant not to bring suit against each other for any claims related to the events leading up to the Adversary Proceeding, and Infinity and Defendants covenant not to seek recovery of any claims that formed the basis for claims at any time asserted or capable of assertion in the Adversary Proceeding.
- f. **Non-Disparagement Clause.** The Settling Parties agree that they are prohibited from making disparaging allegations against one another.

- g. **Joint Agreed Dismissal of Adversary Proceeding.** Within five (5) business days of receipt of the Settlement Payment, the Settling Parties will jointly file in this Court all papers necessary to dismiss the Adversary Proceeding with prejudice with respect to Infinity, all Defendants, and all Neighbors O&Ds.

V. Argument and Authorities

A. Criteria Governing Approval and Standard of Review

20. Bankruptcy Rule 9019(a) authorizes settlements if they are “fair and equitable and in the best interest of the estate.” Compromises of controversy in a bankruptcy case are judged under the criteria set out in *Protective Committee for Independent Stockholders of TMT Traylor Fairy, Inc. v. Anderson*, 390 U.S. 414 (1968). Under the criteria of *TMT Trailer*, a compromise must be “fair and equitable.” *TMT Trailer*, 390 U.S. at 424; *In re AWECO, Inc.*, 725 F.2d 293, 298 (5th Cir.), *cert denied*, 469 U.S. 880 (1984). “Fair and Equitable” means that (1) senior interests are entitled to full priority over junior interests; and (2) the settlement is reasonable in relation to the likely rewards of litigation. *In re Cajun Electric Power Coop*, 119 F.3d 349, 355 (5th Cir. 1997); *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980).

21. Under *TMT Trailer*, a Court should consider the following factors in determining whether a compromise and settlement is fair and equitable:

- a. The probabilities of success of the litigation, with due consideration for uncertainty in fact and law;
- b. The complexity and likely duration of the litigation and any attendant expense inconvenience and delay; and
- c. The difficulties of collecting a judgment rendered from such litigation; and

- d. All other factors relevant to a full and fair assessment of the wisdom of the compromise.

TMT Trailer, 390 U.S. at 424. In assessing the fourth factor, the “wisdom of the compromise,” a bankruptcy court should consider: (a) the paramount interest of creditors with proper deference to their reasonable views, (b) the extent to which the proposed settlement is the product of arms-length negotiations, (c) whether the proposed settlement is with an insider, and (d) whether the proposed settlement promotes the integrity of the judicial system. *Official Comm. of Unsecured Creditor v. Cajun Elec. Power Coop., Inc. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997); *In re Foster Mortg. Corp.*, 68 F.3d 914, 917 (5th Cir. 1996); *In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir. 1990); *In re Flight Transp. Corp. Sec. Litig.*, 730 F.2d 1128, 1135 (8th Cir. 1984). In addition, under the rubric of the fourth, catch-all provision, the Fifth Circuit has identified two additional factors that bear on the decision to approve a proposed settlement:

- a. Whether the compromise serves “the best interests of the creditors, with proper deference to their reasonable views.” *Id.* (internal citations omitted).
- b. The extent to which the settlement is truly the product of arms-length bargaining and not of fraud or collusion. *Id.* (internal citations omitted).

22. The movant bears the burden of establishing that the balance of the settlement factors warrant approval. However, that burden is not great. The movant need only show that the settlement falls within the “range of reasonable litigation alternatives.” *In re WT Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983); *Cook v. Waldron*, 2006 WL 1007489, at *4 (S.D. Tex. Apr. 8, 2006). Moreover, the movant is not required to present a mini-trial or evidentiary hearing to adjudicate the issues being settled. *Cajun Elec.*, 119 F.3d at 355. The Court may give weight to the “informed

judgments of the ... debtor-in-possession and their counsel that a compromise is fair and equitable, and consider the competency and experience of counsel who support the compromise.” *Drexel Burnham Lambert Group*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991). In the current procedural status of this case, the Unsecured Creditor Trustee performs the role of the debtor-in-possession in evaluating whether a litigation settlement affecting the Unsecured Creditor Trust falls within the “range of reasonable litigation alternatives” and is a compromise that is fair and equitable.

23. The decision to approve a “compromise lies within the discretion of the trial judge.” *Matter of AWECO, Inc.*, 725 F.2d 293, 297 (5th Cir. 1984). In exercising its discretion, the Court may give more weight to one or more of the factors than to the others. *See In re Bard*, 49 Fed.Appx. 528, 532–33 (6th Cir. 2002); *In re Adelpia Commc'ns. Corp.*, 327 B.R. 143, 160–65 (Bankr. S.D.N.Y. 2005) (giving certain factors “some weight,” “no weight,” or “moderate weight”).

B. Probabilities of Ultimate Success

24. This litigation has persisted since it was filed in 2017, and Infinity is on its sixth attempt at pleading a viable cause of action. In response to motions by the Neighbors O&Ds, over the past years, the Bankruptcy Court has dismissed all but two remaining defendants, and all but two remaining causes of action, in part because the Court believes dismissal had not been sought with respect to those causes of action. Infinity’s only remaining claims are for negligent misrepresentation and violation of the Texas Securities Act. Defendants maintain that these last two claims are also flawed in several ways, but most simply by a lack of cognizable damages that Infinity can prove. By the time Infinity filed its lawsuit, the Infinity group had received more than \$1.0 million in distributions from their membership interests. Thus, in addition to their salaries for working as physicians at their centers, they received a return on the initial \$1.0 million invested, plus additional returns on their investment. Defendants also believe that they will successfully

establish not only that there were no actionable misrepresentations, but also that Infinity approved in writing the cross-collateralization that is the gravamen of its claims. Infinity, for its part, believes it can succeed on the merits of its remaining claims, and recover substantial damages.

25. In sum, Infinity believes it can prove its claims, while Defendants maintain that they have the stronger position in the litigation, and Defendant Patel has asserted a counterclaim for indemnity that he asserts is available pursuant to the underlying documents. All parties acknowledge that litigation always involves risk and uncertainty to all litigants. Based on the range of possible outcomes, the Settling Parties submit that the Settlement Agreement appropriately accounts for the risks of litigation and costs of even successful litigation, the Settlement is supported by sound and reasonable business judgment, and is in the best interest of the Unsecured Creditor Trust.

C. Complexity, Expense and Likely Duration

26. As an initial matter, it is not possible to complete the process of winding up the bankruptcy estate until this dispute is resolved. Additionally, continued litigation of the Adversary Proceeding, which has already been the subject of a substantial amount of litigation and contested motion practice, would be complex, time consuming, and expensive, given the number of allegations at issue and the legal disputes that would need to be determined by the Court presiding over the Adversary Proceeding. The Settling Parties have not yet really undertaken extensive discovery on the substantive issues. Absent settlement, the parties will now need to conduct discovery on the substantive issues, designate expert witnesses, possibly engage in additional substantive dispositive and pretrial motions, and try the case. Given the volume of documents that would be required to be produced, and the fact that the Settling Parties might have to pay the Liquidating Trustee or her legal counsel to arrange production of the pertinent documents at

considerable expense (Main Case ECF No. 1246), the anticipated future cost of the litigation, including expense that will be incurred in document discovery, fact and expert witness depositions yet to be conducted, the trial of the case, and any appeals, will likely exceed hundreds of thousands of dollars.

27. Although a trial in the Bankruptcy Court could be accomplished in a timely manner, the appeals process could be lengthy. The expense of the litigation would be significant unless the claims at issue are decided on dispositive motions, but perhaps that much-traveled pathway in this case is no longer open.

D. Difficulties of Collection and Other Factors

28. Neither Infinity nor Defendants are likely to forgo the right to appeal an adverse outcome in the trial court, which means that there could be continuing difficulties of collection for Infinity, and a potential loss of the remaining insurance coverage to litigation costs leaving Defendants potentially exposed to paying any claim out of their own resources, if any. Moreover, if Infinity is the losing party at trial, it will be able to appeal not only the portion of the case that remains, but potentially also appeal from the dismissals obtained by the other Neighbors O&Ds at earlier junctures in this Adversary Proceeding, with the additional delay and uncertainty that will entail. Accordingly, collection of a judgment at the end of further protracted rounds of litigation and appeals entails not only more delay but also additional uncertainties.

29. The Settling Parties believe that the foregoing factors and other factors that courts consider also warrant approval of the compromise, namely that the Settlement Agreement represents a good faith, extensively negotiated arm's-length resolution of these issues, arrived at following two lengthy mediations. The Settlement was negotiated through numerous communications between the counsel for Infinity and counsel for the Defendants with the

assistance of Sylvia Mayer, a skilled and capable mediator and a person well known to this Court, and it fairly represents the bargained-for-terms of all of the Settling Parties.

30. The Settlement Agreement will benefit the Unsecured Creditor Trust by, among other things, resolving for all time the Adversary Proceeding brought by Infinity and Infinity's claims against the Neighbors O&D policy and/or the Unsecured Creditor Trust Assets, and avoiding the expense of continued litigation, thereby preserving the remaining O&D Policy proceeds instead of potentially diminishing the value of the Unsecured Creditor Trust Assets. The Settlement does not diminish the recovery available to other creditors, and may accelerate the date when distributions to them can be made. As such, Settling Parties believe the proposed settlement constitutes a favorable resolution of the dispute between Infinity and the Defendants and certainly falls within the "range of reasonable litigation alternatives." *See Cook*, 2006 WL 1007489, at 4. The Settling Parties believe that the Settlement is in the best interest of the Unsecured Creditor Trust and its creditors, and all of the Neighbors O&Ds, and accordingly seek this Court's approval of the Settlement and Settlement Agreement.

VI. Prior Conferences and Attempts at Prior Conference

31. Prior to filing this Motion, the undersigned conferred with the various counsel for the other Neighbors O&Ds regarding the relief requested. All such counsel who responded advised that their clients are not opposed to the relief requested. The undersigned also made several attempts to confer with counsel for several other Neighbors O&Ds who were dismissed from this adversary proceeding. After several attempts by telephone and email detailed further below, whether or not that counsel opposes the relief requested in the Motion could not be ascertained.

VII. Notice

32. The Certificate of Service below reflects Notice of this Motion being provided.

VIII. Request for Relief

WHEREFORE, Settling Parties respectfully request that the Court enter an order in substantially the form of the proposed order (with **Exhibit 1** attached) submitted with this Motion:

- (a) granting this Motion; (b) approving the Settlement and the Settlement Agreement; and
- (c) granting all other relief to which Settling Parties are justly entitled.

Dated: September 22, 2023

Respectfully submitted,

/s/ Mark S. Finkelstein

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*Attorney for Infinity Emergency Management Group,
LLC*

CERTIFICATE OF PRIOR CONFERENCE

I hereby certify that on August 31, 2023, I conferred with Christina Minshew Lewis, attorney for Dharmesh Patel, who advised that her client is not opposed to the relief requested in this Motion. I also attempted on several occasions, including on August 22, September 20, and September 21, 2023, to confer with Jay Munisteri and/or Rachel O’Neil, attorneys for the remaining Neighbors O&Ds, Michael Chang, M.D., Andy Chen, M.D., Hitesh Patel, M.D., Quang Henderson, M.D., and QSH Family LP., regarding the proposed settlement. Mr. Munisteri and Ms. O’Neil did not indicate whether or not their clients are not opposed to the relief requested in this Motion, despite my several attempts to ascertain their position over the course of a month.

/s/ Millard A. Johnson
Millard A. Johnson

CERTIFICATE OF PRIOR CONFERENCE

I hereby certify that on September 7, 14, and 19, 2023, I conferred by telephone and email exchanges with Michael D. Warner, attorney for Mark Shapiro, the Unsecured Creditor Trustee, regarding the proposed settlement and foregoing Motion. Mr. Warner advised that the Unsecured Creditor Trustee is not opposed to the relief requested in this Motion.

/s/ Mark S. Finkelstein
Mark S. Finkelstein

CERTIFICATION OF ACCURACY

I hereby certify that the foregoing statements of fact are true and complete to the best of my knowledge.

/s/ Mark S. Finkelstein
Mark S. Finkelstein

CERTIFICATE OF SERVICE

I certify that on September 22, 2023, a true and complete copy of the foregoing *Joint Motion of Plaintiff and Defendants in Litigation Brought by Infinity Emergency Management Group, LLC for Entry of an Order Approving Settlement of Controversies Pursuant to FED.R.BANKR.P. 9019* was served via CM/ECF on the Debtors and Debtors' counsel, the Trustee of the Unsecured Creditor Trust of Neighbors Legacy Holdings, Inc. and its Debtor affiliates and such Trustee's counsel, the Liquidating Trustee and Liquidating Trustee's counsel, the Office of the U.S. Trustee, and all others who receive service via ECF filings in the main bankruptcy case or in the referenced Adversary Proceeding.

/s/ Mark S. Finkelstein

Mark S. Finkelstein

EXHIBIT 1
Settlement Agreement

“Bankruptcy Court”). The removed action became an adversary proceeding under Adversary Proceeding No. 18-03276 [Adv. P. No. 18-03276, ECF No. 1].

B. That removal triggered new, bankruptcy-experienced counsel for Infinity who took the opportunity to replead the claims, including asserting Infinity’s allegations against Tensie Axton, the Trustee of the NLH Liquidating Trust, because the Liquidating Trustee is the “successor-in-interest to Neighbors Health System, Inc. and NHS Emergency Centers, LLC.” (ECF No. 102 at 3).² Infinity asserted both direct and derivative claims based on its allegations.

C. Infinity’s Fifth Amended Complaint filed in the Bankruptcy Case asserted derivative claims on behalf of the two Series LLCs in which Infinity held ownership interests. Generally, Infinity contended that Neighbors Health and the Neighbors O&Ds failed to “properly maintain and protect” the two Series LLCs’ property, from which Infinity’s distributions were derived. (ECF No. 102 at 14–15). Infinity’s derivative claims include:

- (1) *Derivative Breach of Fiduciary Duty, Negligent and Gross Mismanagement, and Abuse of Control* against Neighbors Health and the Neighbors O&Ds for causing Series LLC property to be withheld from the Series LLCs, causing physicians fees to be withheld from the Series LLCs’ net profits calculation, and “causing confusion over the ownership of limited partnership interests” in the Center LPs, (ECF No. 102 at 18–21); and
- (2) *Derivative Breach of Contract* based on Neighbors Health’s breach of its Management Agreement with the Series LLCs, (ECF No. 102 at 21–22).

D. Infinity alleged it had standing to assert its derivative claims under section 101.463 of the Texas Business Organizations Code. (ECF No. 102 at 15). Under section 101.463, Infinity could assert derivative standing to bring claims on behalf of closely held LLCs (*e.g.*, the Series LLCs). (ECF No. 102 at 15). Infinity asserted that Section 101.463 would also allow Infinity to dispense with the usual requirement of making a pre-suit demand on Series LLC management. (*See* ECF No. 102 at 15). Alternatively, Infinity maintained that any pre-suit demand to Neighbors Health or the Liquidating Trustee would be futile. (ECF No. 102 at 16–18).

E. Infinity’s direct claims concern the Neighbors O&Ds’ solicitation of outside investors and Neighbors O&Ds’ management of Neighbors Network entities. (ECF No. 102 at 22–29). Based on the Neighbors O&Ds’ conduct, Infinity asserted claims for:

- (3) *Negligence and Gross Negligence* against the Neighbors O&Ds for failing to maintain and preserve Infinity’s share of Series LLC profits, (ECF No. 102 at 22);
- (4) *Fraud and Fraudulent Inducement*:
 - (a) Based on Dr. Patel’s and Dr. Alleyne’s false statements and representations to Infinity that induced Infinity into purchasing its interests in the Series LLCs and

² Under Neighbors Health’s confirmed Plan of Reorganization, Ms. Axton “assumed the role of representative and sole manager of” the Neighbors debtor entities. (ECF No. 98 at 34 n.25).

devoting Infinity physicians to operate the Series LLCs, (ECF No. 102 at 22–24); and

(b) Based on the Neighbors O&Ds’ knowing failure to disclose that Dr. Patel’s and Dr. Alleyne’s statements and representations were false, (ECF No. 102 at 24–26);

- (5) *Conspiracy and Aiding and Abetting Common Law Fraud* arising from the Neighbors O&Ds’ support of Dr. Patel’s and Dr. Alleyne’s false pitch to Infinity, (ECF No. 102 at 26);
- (6) *Negligent Misrepresentations* based on Dr. Patel’s and Dr. Alleyne’s failure to exercise “care” in making statements to Infinity regarding the membership interests Infinity purchased in the Series LLCs, (ECF No. 102 at 27); and
- (7) *Violations of the Texas Securities Act* because the Neighbors O&Ds “offered and sold securities” in the Series LLCs “by means of an untrue statement [or omission] of material fact,” (ECF No. 102 at 28–29).

Based on the damage Defendants allegedly caused, Infinity was seeking alleged actual damages, statutory damages, exemplary damages, attorneys’ fees, costs, and pre- and post-judgment interest. (ECF No. 102 at 30). Infinity is not asserting its claims for the first time. Rather, its latest Complaint is Infinity’s sixth. (*See* ECF No. 102 at 2). The Complaint’s latest iteration is the product of the Parties’ summary judgment dispute over Infinity’s standing to assert certain derivative claims.

F. The Court determined that Infinity only had standing, if any, to assert derivative claims based on injuries suffered by the two Series LLCs (non-debtor entities). (ECF No. 98 at 19, 27–28). Notably, the Court determined Infinity does not have standing to assert derivative claims on the Series LLCs’ behalf arising from the Neighbors Network’s failure to make distributions to the Series LLCs. (*See* ECF No. 98 at 25–26).³ Essentially, Infinity does not have standing to assert derivative claims arising from Center-LP-level or NHS-LLC-level “mismanagement” (both debtor entities) because such claims belong to the Debtors (ECF No. 98 at 19) and could be brought only by the General Unsecured Creditor Trustee, Mark Shapiro. The Court allowed Infinity to replead its claims following the standing dispute’s resolution.

G. The Defendants have filed motions challenging each claim and cause of action asserted by Infinity, generally deny all of the allegations raised by the Infinity in the Adversary Proceeding, assert that they have valid defenses to all claims and causes of action asserted by Infinity, and Defendants Setul G. Patel, M.D. asserted a counterclaim for indemnity (ECF No. 174).

H. Infinity and the Defendants have been forced to expend considerable resources to prosecute and defend the Adversary Proceeding.

³ Infinity could not predicate its standing on its beneficial interest in Series LLC property held by NHS LLC (a debtor entity). (*See* ECF No. 98 at 27).

I. The Parties seek to avoid the uncertainties and expenses associated with further litigation, and have engaged, with the assistance of legal counsel and a skilled and capable mediator, in extensive settlement negotiations.

J. After careful consideration of the facts and applicable law, the Parties have reached an agreement to resolve all issues between them, the terms of which are fully contained in this Settlement.

K. The Bankruptcy Court will be asked to schedule and perhaps conduct a hearing on the anticipated Joint Motion to be filed by the Parties pursuant to Federal Rule of Bankruptcy Procedure 9019 seeking approval of this Settlement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants set forth herein, the Parties agree as follows.

1. **Subject to Bankruptcy Court Approval.** This Settlement and all of the rights, obligations, covenants, conditions, releases, and waivers contained herein are conditioned upon and subject to entry of a final, non-appealable order by the Bankruptcy Court (the “Bankruptcy Court Approval Order”) approving this Settlement to be submitted by Infinity and the Defendants Jointly, with each bearing its own costs (the “Motion to Approve Settlement”).

2. **The Settlement Payment.** Within ten (10) business days after the Bankruptcy Court Approval Order becomes final and non-appealable, Beazley Insurance Company, on behalf of the Defendants, shall pay Infinity funds under the O&D Policy in the amount of Eight-Hundred Ninety-Six Thousand and No One Hundredths Dollars (\$896,000.00) (the “Settlement Payment”). The Parties’ expressly stipulate and agree that the Settlement Payment is not a statement of the true value of the litigation or the recovery potentially available to Infinity at trial or on appeal. Instead, it is the Parties’ compromise and settlement of vigorously contested claims, the validity of which is not confessed but remains in dispute, subject to execution and performance of this Settlement Agreement. The Settlement Payment shall be made via check or wire transfer made payable to Infinity’s sole legal counsel, The Probus Law Firm, in care of the Matthew Probus, into his designated IOLTA Account in trust on behalf of and for the benefit of Infinity. By executing below, Matthew Probus certifies under penalty of perjury that no other legal counsel has any right in or claim to the Settlement Payment or any other amount arising out of or in connection with the Infinity Lawsuit or claims capable of assertion therein.

3. **Release by Infinity.** Immediately upon the Bankruptcy Court Approval Order becoming final and non-appealable, and without further action by Defendants, as consideration for the mutual covenants set forth herein, which Infinity acknowledges as good and valuable consideration, Infinity for itself and each person comprising Infinity, and each present and former member thereof, agrees to release, waive, and discharge the Defendants, each of the Neighbors O&Ds, in all capacities, and any and all persons or parties at any time insured under the Beazley Insurance Company policy, and their present and former affiliates (including but not limited to Girish Capital, LLC and QSH Family LP), heirs, successors-in-interest, members, directors,

officers, shareholders, partners, limited partners, spouses, parents, subsidiaries, assigns, agents, employees, insurers, reinsurers, trustees, representatives, and attorneys (the “Defendant Releasees”) from any and all claims, interests, obligations, debts, rights, suits, damages, demands, causes of action, remedies, and liabilities, including any derivative claims, any and all causes of action that have been brought, could have been brought, or may be brought in the future of any kind by or on behalf of Infinity in any court or tribunal whatsoever, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, contingent or non-contingent, existing or hereafter arising, in law, at equity or otherwise, any damages or administrative expenses, whether for tort, contract, alleged violations of fiduciary duties, negligence and/or gross negligence, conspiracy to breach fiduciary duties, aiding and abetting breach of fiduciary duties, recovery of alleged transfers as fraudulent transfers pursuant to 11 U.S.C. §§ 544, 548, and applicable state law, including Texas Business and Commerce Code § 24.006(a), the Texas Securities Act, or the Texas Business Organizations Code, and any other claims or causes of action arising under the Bankruptcy Code, or causes of action arising in cases thereunder, or any other federal or state laws, included all core, non-core or related to claims or causes of action, or otherwise, against the Defendant Releasees, as of the date the Bankruptcy Court Approval Order is entered, including but not limited any claim or cause of action arising out of, based on, or related to the Adversary Proceeding and/or the events leading up to the Adversary Proceeding and the Proofs of Claim filed by any of the Parties in the Bankruptcy Case (“Infinity Released Claims”). **THIS RELEASE INCLUDES MATTERS ATTRIBUTABLE TO THE SOLE OR PARTIAL NEGLIGENCE (WHETHER GROSS OR SIMPLE) OR OTHER FAULT, INCLUDING STRICT LIABILITY, OF THE DEFENDANT RELEASEES.**

4. **Release by Defendant Releasees.** Immediately upon the Bankruptcy Court Approval Order becoming final and non-appealable, and without further action by any Party, as consideration for the mutual covenants set forth herein, which the Defendant Releasees acknowledge as good and valuable consideration, Defendant Releasees agree to release, waive, and discharge Infinity and its present and former members, affiliates, heirs, successors, directors, officers, shareholders, partners, limited partners, spouses, parents, affiliates, subsidiaries, assigns, agents, employees, insurers, and attorneys (the “Infinity Releasees”) from any and all claims, counterclaims, interests, obligations, debts, rights, suits, damages, demands, causes of action, remedies, and liabilities, including any derivative claims, any and all causes of action that have been brought, could have been brought or may be brought in the future of any kind by or on behalf of the Defendant Releasees in any court whatsoever, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, contingent or non-contingent, existing or hereafter arising, in law, at equity or otherwise, any damages or administrative expenses, whether for tort, contract, or any federal or state laws, or otherwise, against the Infinity Releasees, as of the date the Bankruptcy Court Approval Order is entered, including but not limited to any claim or cause of action arising out of, based on, or related to the Adversary Proceeding and/or the events leading up to the Adversary Proceeding, or any Proof of Claim, or the Bankruptcy Case (“Defendant Released Claims”). **THIS RELEASE INCLUDES MATTERS ATTRIBUTABLE TO THE SOLE OR PARTIAL NEGLIGENCE (WHETHER GROSS OR SIMPLE) OR OTHER FAULT, INCLUDING STRICT LIABILITY, OF THE INFINITY RELEASEES.**

5. **Infinity’s Covenant Not to Sue or Seek Recovery.** Immediately upon receipt of the Settlement Payment by Infinity, as additional consideration for the foregoing, the receipt and

sufficiency of which is hereby acknowledged, Infinity hereby covenants not to bring suit or assert any claim in any tribunal against, or seek any recovery of any kind from, the Defendant Releasees for any Infinity Released Claims released herein.

6. **Defendant Releasees' Covenant Not to Sue or Seek Recovery.** Immediately upon the full execution of this Settlement by Infinity, as additional consideration for the foregoing, the receipt and sufficiency of which is hereby acknowledged, the Defendant Releasees hereby covenant not to bring suit against, or seek any recovery from the Infinity Releasees for any Defendant Released Claims.

7. **Cooperation.** The Parties agree to fully cooperate with each other in connection with his preparation, filing, and entry of the Joint Rule 9019 Motion to Approve Settlement.

8. **Joint Agreed Dismissal of Adversary Proceeding.** Within five (5) business days of the receipt of the Settlement Payment by Infinity, and without further action by Defendants except to join in filing same, as consideration for the mutual covenants set forth herein, which Infinity acknowledges as good and valuable consideration, Infinity and Defendants will file the necessary notices, motion(s), and order(s) with the Bankruptcy Court to dismiss the Adversary Proceeding with prejudice with respect to Infinity, all Defendants, and all Neighbors O&Ds.

9. **Successors and Assigns.** The provisions of this Settlement shall be binding on the Parties and their successors, heirs, and assigns and shall inure to the benefit of every person at any time involved in the Infinity Lawsuit and their successors and assigns.

10. **Entire Agreement.** This Settlement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and there are no representations, understandings, or agreements relative hereto which are not fully expressed herein. This Settlement may not be modified, altered, or amended in whole or in part except by a written instrument executed by each Party.

11. **Governing Law.** This Settlement shall be governed by and construed under the laws of the State of Texas without regard to conflicts of laws principles that would require the application of the law of another jurisdiction.

12. **No Assignment.** The Parties warrant and represent that they have not assigned, conveyed, transferred, sold, or granted, in any fashion, any right, privilege, claim, or cause of action, or any part thereof, that they have or may have against each other arising out of, based on, or related to the Adversary Proceeding and/or the subject matter of this Settlement.

13. **No Reliance.** The Parties, separately and collectively, represent and warrant that in entering into this Settlement they are relying on their own judgment, belief, and knowledge and, as applicable, on that of any attorney they have retained to represent them in this matter. In entering into this Settlement, no Party is relying on any representation or statement made by any other Party or any person representing such other Party.

14. **Construction.** This Settlement has been drafted through a cooperative effort of all Parties, and no Party or Parties shall be considered the drafter of this Settlement so as to give rise to any presumption of convention regarding construction of this document. All terms of this Settlement were negotiated in good faith and at arm's-length, and this Settlement was prepared and executed without fraud, duress, undue influence, or coercion of any kind exerted by any of the Parties upon the other. The execution and delivery of this Settlement is the free and voluntary act of the Parties.

15. **Headings.** The Headings contained in this Settlement are inserted for convenience only and do not affect in any way the meaning or interpretation of this Settlement.

16. **No Liability.** It is understood and agreed by the Parties that this Settlement represents a settlement and compromise and neither this Settlement itself, any of the payments or covenants described herein, nor anything else connected with this Settlement is to be construed as an admission of fault or liability on behalf of the Defendants.

17. **Execution in Counterparts.** This Settlement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All signatures of the Parties to this Settlement may be transmitted by facsimile or by electronic mail, and such transmission will, for all purposes, be deemed to be the original signature of such Party whose signature it reproduces, and will be binding upon such Party. Defendants agree to execute the settlement agreement within ten (10) business days of receipt of the Settlement Agreement executed by Infinity.

18. **Severability.** If any provision of this Settlement is determined to be prohibited or unenforceable by reason of any applicable law of a jurisdiction, then such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

19. **Compliance with Applicable Law.** The Parties represent, warrant, and covenant that each document, notice, instruction, or request provided by each respective Party shall comply with applicable laws and regulations. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby irrevocably waived by the Parties hereto to the fullest extent permitted by law, to the end that this Settlement shall be enforced as written.

20. **Further Assurances.** The Parties agree to take all reasonable actions necessary to effectuate the approval, performance, validity, and enforceability of this Settlement including, without limitation, the prompt execution of any and all documents of any kind, which the other Parties may reasonably require in order to implement the provisions and objectives of this Settlement.

21. **Costs.** Except as otherwise indicated herein, the Parties shall bear their own costs, expenses, and attorneys' fees incurred in connection with the Adversary Proceeding and this Settlement.

22. **Authorization.** Each person signing this Settlement represents and warrants that he/she is duly authorized and has legal capacity to execute and deliver this Settlement. Infinity represents and warrants to the other Parties that the execution and delivery of the Settlement Agreement and the performance of Infinity's obligations hereunder have been duly authorized and that the Settlement Agreement is a valid and legal agreement binding on Infinity and all persons claiming by, through or under Infinity, and enforceable in accordance with its terms.

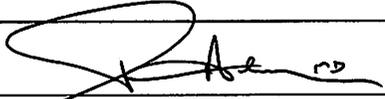
23. **No Impairment of Claims in Other Disputes.** Notwithstanding any provision in this Settlement Agreement to the contrary, nothing in this Settlement Agreement releases or impairs any claim or right that any person or entity has or may have against Sohail Alam, Beaumont Emergency Physicians Associates, PLLC, or any of their members, officers, directors, affiliates, or attorneys, including but not limited to Steven King, Gerard Tiffault, Ali Osman, Darella Cooper, Robby Eaves, Shawna Lambert-Pitt and Lylieth Mitchell and any of their legal counsel or successors or assigns of any of them.

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Infinity Emergency Management Group, LLC, Individually and as Class B Non-Voting Members on Behalf of NHS Emergency Centers, LLC Series 114 - Eastside and NHS Emergency Centers, LLC Series 115 – Zaragoza,	Paul Alleyne, M.D.
By: 	Setul G. Patel, M.D., MBA
Duly authorized, sole managing member	

APPROVED AS TO FORM AND CONTENT:

The Probus Law Firm	PRATT AND FLACK LLP
By: /s/ Matthew Probus Texas Bar No. 16341200; S.D. Tex. No. 10915 10479 Town & Country Way, Suite 930 Houston, Texas 77024 (713) 258-2700 – Telephone matthewprobus@theprobustlawfirm.com	By: /s/ Paul D. Flack TBA # 00786930 4306 Yoakum Blvd., Suite 500 Houston, Texas 77006 (713) 705-3087 pflack@prattflack.com
COUNSEL FOR INFINITY EMERGENCY MANAGEMENT GROUP, LLC	and
JOHNSON DELUCA KURISKY & GOULD, P.C.	SHANNON, MARTIN, FINKELSTEIN, ALVARADO & DUNNE, P.C.
By: /s/ Millard A. Johnson TBA # 10772500 Sara J. Sherman TBA # 24068168 1221 Lamar, Suite 1000 Houston, Texas 77010 (713) 652-2525 – Telephone mjohnson@jdkglaw.com ssherman@jdkglaw.com	By: /s/ Mark S. Finkelstein Texas Bar No. 07015100 S.D. Tex. No. 5543 1001 McKinney Street, Suite 560 Houston, Texas 77002 (713) 646-5503 – Telephone mfinkelstein@smfadlaw.com
COUNSEL FOR PAUL ALLEYNE, M.D.	COUNSEL FOR SETUL G. PATEL, M.D.

Infinity Emergency Management Group, LLC, Individually and as Class B Non-Voting Members on Behalf of NHS Emergency Centers, LLC Series 114 - Eastside and NHS Emergency Centers, LLC Series 115 - Zaragoza,	 Paul Alleyne, M.D.
	Setul G. Patel, M.D., MBA
By:	
Duly authorized, sole managing member	

APPROVED AS TO FORM AND CONTENT:

The Probus Law Firm	PRATT AND FLACK LLP
By: /s/	By: /s/
Matthew Probus	Paul D. Flack
Texas Bar No. 16341200; S.D. Tex. No. 10915	TBA # 00786930
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COUNSEL FOR INFINITY EMERGENCY MANAGEMENT GROUP, LLC	and
JOHNSON DELUCA KURISKY & GOULD, P.C.	SHANNON, MARTIN, FINKELSTEIN, ALVARADO & DUNNE, P.C.
By: /s/	By: /s/
Millard A. Johnson	Mark S. Finkelstein
TBA # 10772500	Texas Bar No. 07015100 S.D. Tex. No. 5543
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(713) 652-2525 – Telephone	
mjohnson@jdkglaw.com	COUNSEL FOR SETUL G. PATEL, M.D.
ssherman@jdkglaw.com	
COUNSEL FOR PAUL ALLEYNE, M.D.	

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Duly authorized, sole managing member	

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By: <i>/s/ Matthew Probus</i>	By: <i>/s/ Paul D. Flack</i>
Matthew Probus	Paul D. Flack
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COUNSEL FOR INFINITY EMERGENCY MANAGEMENT GROUP, LLC	and
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mjohanson@jdkglaw.com	
ssherman@jdkglaw.com	
COUNSEL FOR PAUL ALLEYNE, M.D.	

reasonable litigation alternatives, is in the best interests of the Unsecured Creditor Trust and its creditors and should be approved. Accordingly, the Court having considered the Motion and any objections or responses to it, HEREBY ORDERS THAT:

1. The relief requested in the Motion is granted as set forth in this Order;
2. The Settlement is approved, and Movants are authorized to enter into the Settlement Agreement attached hereto, marked as **Exhibit 1**;
3. The Settling Parties are authorized and directed to take all actions necessary to effectuate the relief granted in this Order;
4. Any payment and/or advancement made by Beazley under the D&O Policy shall not be considered property of the Debtors' estates or of the Unsecured Creditors' Trust or of the Liquidating Trust;
5. The automatic stay imposed by section 362(a) of the Bankruptcy Code and the injunctive provisions contained in the Plan and Section 524(a) of the Bankruptcy Code (the "**Discharge and Injunctive Provisions**") either do not apply, or to the extent they apply, are hereby modified to permit the Neighbors O&Ds to allow Beazley to remit, advance, or make the Settlement Payment under the D&O Policy on behalf of the Settling Parties and the Neighbors O&Ds in order to effectuate the Settlement;
6. The Discharge and Injunctive Provisions shall not subject Beazley to liability for making and/or advancing any payment in connection with past, present, or future defense costs paid under the D&O Policy;
7. This Court shall retain jurisdiction of the Settlement, including, without limitation, to hear and determine all disputes arising in connection with or relating to the Settlement, enforce

the Settlement Agreement and all orders previously entered by the Bankruptcy Court, and adjudicate all other matters over which Bankruptcy Court has jurisdiction.

SO ORDERED

Signed:

Marvin Isgur
United States Bankruptcy Judge

AGREED:

/s/ Mark S. Finkelstein
Mark S. Finkelstein
Texas Bar No. 07015100 | S.D. Tex. No. 5543
Shannon, Martin, Finkelstein, Alvarado & Dunne, P.C.
1001 McKinney Street, Suite 560
Houston, Texas 77002
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Email: mfinkelstein@smfadlaw.com

and

/s/ Paul D. Flack
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Attorneys for Defendant and Counter-plaintiff, Setul G. Patel, M.D.

and

[Signatures continue on next page]

/s/ Millard A. Johnson

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Attorneys for Defendant Paul Alleyne, M.D.

and

/s/ Matthew B. Probus

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(713) 258-2700 (Telephone)
(713) 258-2701 (Facsimile)

Attorney for Plaintiff and Counter-defendant, Infinity Emergency Management Group, LLC

EXHIBIT 1
Settlement Agreement

“Bankruptcy Court”). The removed action became an adversary proceeding under Adversary Proceeding No. 18-03276 [Adv. P. No. 18-03276, ECF No. 1].

B. That removal triggered new, bankruptcy-experienced counsel for Infinity who took the opportunity to replead the claims, including asserting Infinity’s allegations against Tensie Axton, the Trustee of the NLH Liquidating Trust, because the Liquidating Trustee is the “successor-in-interest to Neighbors Health System, Inc. and NHS Emergency Centers, LLC.” (ECF No. 102 at 3).² Infinity asserted both direct and derivative claims based on its allegations.

C. Infinity’s Fifth Amended Complaint filed in the Bankruptcy Case asserted derivative claims on behalf of the two Series LLCs in which Infinity held ownership interests. Generally, Infinity contended that Neighbors Health and the Neighbors O&Ds failed to “properly maintain and protect” the two Series LLCs’ property, from which Infinity’s distributions were derived. (ECF No. 102 at 14–15). Infinity’s derivative claims include:

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- (7) *Violations of the Texas Securities Act* because the Neighbors O&Ds “offered and sold securities” in the Series LLCs “by means of an untrue statement [or omission] of material fact,” (ECF No. 102 at 28–29).

Based on the damage Defendants allegedly caused, Infinity was seeking alleged actual damages, statutory damages, exemplary damages, attorneys’ fees, costs, and pre- and post-judgment interest. (ECF No. 102 at 30). Infinity is not asserting its claims for the first time. Rather, its latest Complaint is Infinity’s sixth. (*See* ECF No. 102 at 2). The Complaint’s latest iteration is the product of the Parties’ summary judgment dispute over Infinity’s standing to assert certain derivative claims.

F. The Court determined that Infinity only had standing, if any, to assert derivative claims based on injuries suffered by the two Series LLCs (non-debtor entities). (ECF No. 98 at 19, 27–28). Notably, the Court determined Infinity does not have standing to assert derivative claims on the Series LLCs’ behalf arising from the Neighbors Network’s failure to make distributions to the Series LLCs. (*See* ECF No. 98 at 25–26).³ Essentially, Infinity does not have standing to assert derivative claims arising from Center-LP-level or NHS-LLC-level “mismanagement” (both debtor entities) because such claims belong to the Debtors (ECF No. 98 at 19) and could be brought only by the General Unsecured Creditor Trustee, Mark Shapiro. The Court allowed Infinity to replead its claims following the standing dispute’s resolution.

G. The Defendants have filed motions challenging each claim and cause of action asserted by Infinity, generally deny all of the allegations raised by the Infinity in the Adversary Proceeding, assert that they have valid defenses to all claims and causes of action asserted by Infinity, and Defendants Setul G. Patel, M.D. asserted a counterclaim for indemnity (ECF No. 174).

H. Infinity and the Defendants have been forced to expend considerable resources to prosecute and defend the Adversary Proceeding.

³ Infinity could not predicate its standing on its beneficial interest in Series LLC property held by NHS LLC (a debtor entity). (*See* ECF No. 98 at 27).

I. The Parties seek to avoid the uncertainties and expenses associated with further litigation, and have engaged, with the assistance of legal counsel and a skilled and capable mediator, in extensive settlement negotiations.

J. After careful consideration of the facts and applicable law, the Parties have reached an agreement to resolve all issues between them, the terms of which are fully contained in this Settlement.

K. The Bankruptcy Court will be asked to schedule and perhaps conduct a hearing on the anticipated Joint Motion to be filed by the Parties pursuant to Federal Rule of Bankruptcy Procedure 9019 seeking approval of this Settlement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants set forth herein, the Parties agree as follows.

1. **Subject to Bankruptcy Court Approval.** This Settlement and all of the rights, obligations, covenants, conditions, releases, and waivers contained herein are conditioned upon and subject to entry of a final, non-appealable order by the Bankruptcy Court (the “Bankruptcy Court Approval Order”) approving this Settlement to be submitted by Infinity and the Defendants Jointly, with each bearing its own costs (the “Motion to Approve Settlement”).

2. **The Settlement Payment.** Within ten (10) business days after the Bankruptcy Court Approval Order becomes final and non-appealable, Beazley Insurance Company, on behalf of the Defendants, shall pay Infinity funds under the O&D Policy in the amount of Eight-Hundred Ninety-Six Thousand and No One Hundredths Dollars (\$896,000.00) (the “Settlement Payment”). The Parties’ expressly stipulate and agree that the Settlement Payment is not a statement of the true value of the litigation or the recovery potentially available to Infinity at trial or on appeal. Instead, it is the Parties’ compromise and settlement of vigorously contested claims, the validity of which is not confessed but remains in dispute, subject to execution and performance of this Settlement Agreement. The Settlement Payment shall be made via check or wire transfer made payable to Infinity’s sole legal counsel, The Probus Law Firm, in care of the Matthew Probus, into his designated IOLTA Account in trust on behalf of and for the benefit of Infinity. By executing below, Matthew Probus certifies under penalty of perjury that no other legal counsel has any right in or claim to the Settlement Payment or any other amount arising out of or in connection with the Infinity Lawsuit or claims capable of assertion therein.

3. **Release by Infinity.** Immediately upon the Bankruptcy Court Approval Order becoming final and non-appealable, and without further action by Defendants, as consideration for the mutual covenants set forth herein, which Infinity acknowledges as good and valuable consideration, Infinity for itself and each person comprising Infinity, and each present and former member thereof, agrees to release, waive, and discharge the Defendants, each of the Neighbors O&Ds, in all capacities, and any and all persons or parties at any time insured under the Beazley Insurance Company policy, and their present and former affiliates (including but not limited to Girish Capital, LLC and QSH Family LP), heirs, successors-in-interest, members, directors,

officers, shareholders, partners, limited partners, spouses, parents, subsidiaries, assigns, agents, employees, insurers, reinsurers, trustees, representatives, and attorneys (the “Defendant Releasees”) from any and all claims, interests, obligations, debts, rights, suits, damages, demands, causes of action, remedies, and liabilities, including any derivative claims, any and all causes of action that have been brought, could have been brought, or may be brought in the future of any kind by or on behalf of Infinity in any court or tribunal whatsoever, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, contingent or non-contingent, existing or hereafter arising, in law, at equity or otherwise, any damages or administrative expenses, whether for tort, contract, alleged violations of fiduciary duties, negligence and/or gross negligence, conspiracy to breach fiduciary duties, aiding and abetting breach of fiduciary duties, recovery of alleged transfers as fraudulent transfers pursuant to 11 U.S.C. §§ 544, 548, and applicable state law, including Texas Business and Commerce Code § 24.006(a), the Texas Securities Act, or the Texas Business Organizations Code, and any other claims or causes of action arising under the Bankruptcy Code, or causes of action arising in cases thereunder, or any other federal or state laws, included all core, non-core or related to claims or causes of action, or otherwise, against the Defendant Releasees, as of the date the Bankruptcy Court Approval Order is entered, including but not limited any claim or cause of action arising out of, based on, or related to the Adversary Proceeding and/or the events leading up to the Adversary Proceeding and the Proofs of Claim filed by any of the Parties in the Bankruptcy Case (“Infinity Released Claims”). **THIS RELEASE INCLUDES MATTERS ATTRIBUTABLE TO THE SOLE OR PARTIAL NEGLIGENCE (WHETHER GROSS OR SIMPLE) OR OTHER FAULT, INCLUDING STRICT LIABILITY, OF THE DEFENDANT RELEASEES.**

4. **Release by Defendant Releasees.** Immediately upon the Bankruptcy Court Approval Order becoming final and non-appealable, and without further action by any Party, as consideration for the mutual covenants set forth herein, which the Defendant Releasees acknowledge as good and valuable consideration, Defendant Releasees agree to release, waive, and discharge Infinity and its present and former members, affiliates, heirs, successors, directors, officers, shareholders, partners, limited partners, spouses, parents, affiliates, subsidiaries, assigns, agents, employees, insurers, and attorneys (the “Infinity Releasees”) from any and all claims, counterclaims, interests, obligations, debts, rights, suits, damages, demands, causes of action, remedies, and liabilities, including any derivative claims, any and all causes of action that have been brought, could have been brought or may be brought in the future of any kind by or on behalf of the Defendant Releasees in any court whatsoever, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, contingent or non-contingent, existing or hereafter arising, in law, at equity or otherwise, any damages or administrative expenses, whether for tort, contract, or any federal or state laws, or otherwise, against the Infinity Releasees, as of the date the Bankruptcy Court Approval Order is entered, including but not limited to any claim or cause of action arising out of, based on, or related to the Adversary Proceeding and/or the events leading up to the Adversary Proceeding, or any Proof of Claim, or the Bankruptcy Case (“Defendant Released Claims”). **THIS RELEASE INCLUDES MATTERS ATTRIBUTABLE TO THE SOLE OR PARTIAL NEGLIGENCE (WHETHER GROSS OR SIMPLE) OR OTHER FAULT, INCLUDING STRICT LIABILITY, OF THE INFINITY RELEASEES.**

5. **Infinity’s Covenant Not to Sue or Seek Recovery.** Immediately upon receipt of the Settlement Payment by Infinity, as additional consideration for the foregoing, the receipt and

sufficiency of which is hereby acknowledged, Infinity hereby covenants not to bring suit or assert any claim in any tribunal against, or seek any recovery of any kind from, the Defendant Releasees for any Infinity Released Claims released herein.

6. **Defendant Releasees' Covenant Not to Sue or Seek Recovery.** Immediately upon the full execution of this Settlement by Infinity, as additional consideration for the foregoing, the receipt and sufficiency of which is hereby acknowledged, the Defendant Releasees hereby covenant not to bring suit against, or seek any recovery from the Infinity Releasees for any Defendant Released Claims.

7. **Cooperation.** The Parties agree to fully cooperate with each other in connection with his preparation, filing, and entry of the Joint Rule 9019 Motion to Approve Settlement.

8. **Joint Agreed Dismissal of Adversary Proceeding.** Within five (5) business days of the receipt of the Settlement Payment by Infinity, and without further action by Defendants except to join in filing same, as consideration for the mutual covenants set forth herein, which Infinity acknowledges as good and valuable consideration, Infinity and Defendants will file the necessary notices, motion(s), and order(s) with the Bankruptcy Court to dismiss the Adversary Proceeding with prejudice with respect to Infinity, all Defendants, and all Neighbors O&Ds.

9. **Successors and Assigns.** The provisions of this Settlement shall be binding on the Parties and their successors, heirs, and assigns and shall inure to the benefit of every person at any time involved in the Infinity Lawsuit and their successors and assigns.

10. **Entire Agreement.** This Settlement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and there are no representations, understandings, or agreements relative hereto which are not fully expressed herein. This Settlement may not be modified, altered, or amended in whole or in part except by a written instrument executed by each Party.

11. **Governing Law.** This Settlement shall be governed by and construed under the laws of the State of Texas without regard to conflicts of laws principles that would require the application of the law of another jurisdiction.

12. **No Assignment.** The Parties warrant and represent that they have not assigned, conveyed, transferred, sold, or granted, in any fashion, any right, privilege, claim, or cause of action, or any part thereof, that they have or may have against each other arising out of, based on, or related to the Adversary Proceeding and/or the subject matter of this Settlement.

13. **No Reliance.** The Parties, separately and collectively, represent and warrant that in entering into this Settlement they are relying on their own judgment, belief, and knowledge and, as applicable, on that of any attorney they have retained to represent them in this matter. In entering into this Settlement, no Party is relying on any representation or statement made by any other Party or any person representing such other Party.

14. **Construction.** This Settlement has been drafted through a cooperative effort of all Parties, and no Party or Parties shall be considered the drafter of this Settlement so as to give rise to any presumption of convention regarding construction of this document. All terms of this Settlement were negotiated in good faith and at arm's-length, and this Settlement was prepared and executed without fraud, duress, undue influence, or coercion of any kind exerted by any of the Parties upon the other. The execution and delivery of this Settlement is the free and voluntary act of the Parties.

15. **Headings.** The Headings contained in this Settlement are inserted for convenience only and do not affect in any way the meaning or interpretation of this Settlement.

16. **No Liability.** It is understood and agreed by the Parties that this Settlement represents a settlement and compromise and neither this Settlement itself, any of the payments or covenants described herein, nor anything else connected with this Settlement is to be construed as an admission of fault or liability on behalf of the Defendants.

17. **Execution in Counterparts.** This Settlement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All signatures of the Parties to this Settlement may be transmitted by facsimile or by electronic mail, and such transmission will, for all purposes, be deemed to be the original signature of such Party whose signature it reproduces, and will be binding upon such Party. Defendants agree to execute the settlement agreement within ten (10) business days of receipt of the Settlement Agreement executed by Infinity.

18. **Severability.** If any provision of this Settlement is determined to be prohibited or unenforceable by reason of any applicable law of a jurisdiction, then such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

19. **Compliance with Applicable Law.** The Parties represent, warrant, and covenant that each document, notice, instruction, or request provided by each respective Party shall comply with applicable laws and regulations. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby irrevocably waived by the Parties hereto to the fullest extent permitted by law, to the end that this Settlement shall be enforced as written.

20. **Further Assurances.** The Parties agree to take all reasonable actions necessary to effectuate the approval, performance, validity, and enforceability of this Settlement including, without limitation, the prompt execution of any and all documents of any kind, which the other Parties may reasonably require in order to implement the provisions and objectives of this Settlement.

21. **Costs.** Except as otherwise indicated herein, the Parties shall bear their own costs, expenses, and attorneys' fees incurred in connection with the Adversary Proceeding and this Settlement.

22. **Authorization.** Each person signing this Settlement represents and warrants that he/she is duly authorized and has legal capacity to execute and deliver this Settlement. Infinity represents and warrants to the other Parties that the execution and delivery of the Settlement Agreement and the performance of Infinity's obligations hereunder have been duly authorized and that the Settlement Agreement is a valid and legal agreement binding on Infinity and all persons claiming by, through or under Infinity, and enforceable in accordance with its terms.

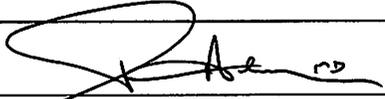
23. **No Impairment of Claims in Other Disputes.** Notwithstanding any provision in this Settlement Agreement to the contrary, nothing in this Settlement Agreement releases or impairs any claim or right that any person or entity has or may have against Sohail Alam, Beaumont Emergency Physicians Associates, PLLC, or any of their members, officers, directors, affiliates, or attorneys, including but not limited to Steven King, Gerard Tiffault, Ali Osman, Darella Cooper, Robby Eaves, Shawna Lambert-Pitt and Lylieth Mitchell and any of their legal counsel or successors or assigns of any of them.

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Infinity Emergency Management Group, LLC, Individually and as Class B Non-Voting Members on Behalf of NHS Emergency Centers, LLC Series 114 - Eastside and NHS Emergency Centers, LLC Series 115 – Zaragoza,	Paul Alleyne, M.D.
By: 	Setul G. Patel, M.D., MBA
Duly authorized, sole managing member	

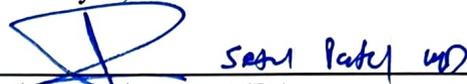
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Duly authorized, sole managing member	

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By:	Setul G. Patel, M.D., MBA
Duly authorized, sole managing member	

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