

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: § Chapter 11
NEIGHBORS LEGACY HOLDINGS, §
INC., § Case No. 18-33836-H1-11 (MI)
§
§ Debtors. §
§

UNSECURED CREDITOR TRUSTEE’S MOTION FOR ENTRY OF AN ORDER
EXTENDING DURATION OF UNSECURED CREDITOR TRUST

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.

Mark Shapiro, solely in his capacity as the Unsecured Creditor Trustee (the “*Unsecured Creditor Trustee*”) of the Unsecured Creditor Trust (the “*Unsecured Creditor Trust*”), hereby files this motion (the “*Motion*”) seeking entry of an order in a form substantially similar to that attached hereto as **Exhibit “A”** (the “*Proposed Order*”) extending the duration of the Unsecured Creditor Trust by one year through and including April 8, 2025.¹ In support thereof, the Unsecured Creditor Trustee respectfully submits as follows:

¹ A capitalized term used but not defined herein shall have the meaning ascribed to it in the Plan (defined below).



PRELIMINARY STATEMENT

1. The Unsecured Creditor Trust has not been in a position to make a first and final distribution to its beneficiaries while ongoing litigation has been underway, and is currently approaching the five-year terminus of the Unsecured Creditor Trust under the Plan, on April 8, 2024. On December 18, 2023, the Bankruptcy Court entered an Order [Docket No. 1264] resolving for all time an adversary proceeding brought by Infinity Emergency Management Group, LLP (the “*Infinity Litigation*”). *See* Docket No. 1253. While the Unsecured Creditor Trust had previously settled Infinity’s claim [*see* Docket No. 1243], ongoing litigation with the Debtors’ insurers still required the Unsecured Creditor Trust to reserve funds in the event discovery was served on the Unsecured Creditor Trust. With the Infinity Litigation fully resolved, the Unsecured Creditor Trustee has been actively working to make distributions in these cases and prepare for the winddown of the Unsecured Creditor Trust and the conclusion of these chapter 11 cases.

2. Accordingly, the Unsecured Creditor Trustee is seeking to extend the duration of the Unsecured Creditor Trust by one year to complete any distributions, complete any required taxing or other compliance obligations, wind down the Unsecured Creditor Trust, and close these chapter 11 cases. In order to complete these final tasks, the Unsecured Creditor Trust will begin by filing a motion in the coming weeks seeking, *inter alia*, approval of up to three distributions to applicable Unsecured Creditor Trust Beneficiaries who hold Allowed Class 4 General Unsecured Claims under the Plan.

3. In order to complete distributions from the Unsecured Creditor Trust, the Unsecured Creditor Trustee may need to wait up to 180 days for applicable Unsecured Creditor Trust Beneficiaries to cash any checks issued on account of distributions from the Unsecured Creditor Trust, before making any subsequent distributions in accordance with the Plan and Trust Agreement (defined below). *See* Plan, at Art. VII.F.2. Similarly, the Unsecured Creditor Trustee

may also be required to wait up to 6 months following the date of the request for applicable Unsecured Creditor Trust Beneficiaries to provide required tax reporting information (which process the Unsecured Creditor Trustee has already begun). *See* Trust Agreement, at § 5.3.

4. Only once these distributions have been completed may the Unsecured Creditor Trustee then complete, *inter alia*, its final accounting and tax reporting obligations, before moving to close these cases and wind down the Unsecured Creditor Trust. Given the terms of the Plan and the required time required to complete the distribution process and the final steps in these chapter 11 cases, the Unsecured Creditor Trustee believes that the extension requested herein is reasonable and should be approved by the Court.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §1334, and Article V.R. of the Plan.

6. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

7. The statutory and rule-based predicates for the relief sought herein are sections 105(a) and 1142 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 3020 and 9006 of the Federal Rules of Bankruptcy Procedure, Article V of the Plan, and this Court’s *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* [Docket No. 847] (the “**Confirmation Order**”).

BACKGROUND

A. GENERAL BACKGROUND

8. On July 12, 2018, Neighbors Legacy Holdings Inc. and certain of its affiliates and subsidiaries (the “*Debtors*”), each commenced a case by filing a petition for relief under Chapter 11 of the Bankruptcy Code.

9. 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* [Docket No. 772] (as amended, supplemented, or modified, the “*Plan*”).²

10. On March 22, 2019, the Court entered the Confirmation Order confirming the Plan. The Plan created two trusts to facilitate the wind down of Neighbors Health – the Unsecured Creditor Trust and the Liquidating Trust. Plan 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 Tensie Axton was appointed as trustee of the Liquidating Trust. *Id.* at 12, 18, 28, 29.

B. DURATION OF LIQUIDATING TRUST AND EXTENSION OF TERM

11. On April 8, 2019 (the “*Effective Date*”)³, the Plan became effective and the Unsecured Creditor Trust, as governed by that certain Unsecured Creditor Trust Agreement (the “*Trust Agreement*” and, together with the Plan and Confirmation Order, the “*Plan Documents*”), was also created and effective. Pursuant to Article V of the Plan,

The Plan Trusts shall have an initial term of five (5) years from the Effective Date, provided however, that, if warranted by the facts and circumstances, and subject to the approval of the Court, upon a finding that an extension of the term of either Plan Trust is necessary to accomplish the purpose of the respective Plan Trust, the applicable Plan Trustee shall be authorized to extend the Plan Trust for six (6)

² Doc. No. 772.

³ Doc. No. 862.

months or longer provided that such extension is approved by the Bankruptcy Court within six (6) months of the beginning of such extended term.

Plan, Article V.R.⁴ Absent the relief requested herein, the Unsecured Creditor Trust is scheduled to terminate on April 8, 2024.⁵

ARGUMENT

12. To ensure “that the terms and provisions of a confirmed chapter 11 plan are carried out until the plan is completed and the final decree is entered closing the case”⁶ 11 U.S.C. § 1142(b) authorizes a court to “direct the debtor and any other necessary party to . . . perform any other act . . . that is necessary for the consummation of the plan.”⁷ Moreover, following the Confirmation Order’s entry, FED. R. BANKR. P. 3020(d) empowers a court to “issue any other order necessary to administer the estate.”

13. Pursuant to Article V.R. of the Plan, absent an extension granted by the Court within six months of the beginning of the extended term of the Unsecured Creditor Trust, the Unsecured Creditor Trust is scheduled to terminate on April 8, 2024. As set forth below, based on the status of pending activities conducted by the Unsecured Creditor Trust, the Unsecured Creditor Trustee believes that an extension of the duration of the Unsecured Creditor Trust for an additional year is necessary and warranted. The Unsecured Creditor Trustee requests that the

⁴ See also Trust Agreement at Article 10.1 (“The Unsecured Creditor Trust shall commence on the Effective Date and terminate no later than the fifth anniversary of the Effective Date . . .”). The Trust Agreement does provide that extension of the Trust Agreement must be approved 90 days prior to scheduled termination [*id.*]; however, such limitation is not controlling as the Plan controls over the Trust Agreement [*see* Trust Agreement, Article 1.4; Plan XV.M] and the Plan permits extension within six months of the beginning of the extended term.

⁵ As may be applicable, the current deadline for the termination of the Unsecured Creditor Trust is automatically extended until the Court rules on this Motion by virtue of the automatic bridge order contained in paragraph 30 of the *Procedures for Complex Cases in the Southern District of Texas*, effective October 18, 2023.

⁶ *In re Chateaugay Corp. v. Back*, 201 B.R. 48, 66 (Bankr. S.D.N.Y. 1996) (citing *In re Johns-Manville Corp.*, 97 B.R. 174, 180 (Bankr. S.D.N.Y. 1989)).

⁷ 11 U.S.C. § 1142(b).

Unsecured Creditor Trust term be extended through and including April 8, 2025. This is the Unsecured Creditor Trustee's first request for an extension of the duration of the Unsecured Creditor Trust.

14. The relief requested herein is consistent with the terms of the Plan, the Confirmation Order, the Trust Agreement,⁸ and applicable bankruptcy law. The Unsecured Creditor Trustee has the power and authority to perform such functions as are provided in the Plan and the Trust Agreement and any powers reasonably incidental thereto, including seeking Court authority to extend the duration of the Trust. Liquidating Trust Agreement as set forth in Article V.R. of the Plan.

15. The relief requested herein is also supported by governing bankruptcy law. Bankruptcy Rule 9006(b) provides that "when an act is required or allowed to be done at or within a specified period . . . by order of [the] court, the court for cause shown may at any time in its discretion . . . order the period enlarged" Fed. R. Bankr. P. 9006(b).

16. The Unsecured Creditor Trust has not been in a position to make a first and final distribution to its beneficiaries while ongoing litigation has been underway. On December 18, 2023, the Bankruptcy Court entered an order resolving the Infinity Litigation. While the Unsecured Creditor Trust had previously settled Infinity's claim [*see* Docket No. 1243], ongoing litigation with the Debtors' insurers still required the Unsecured Creditor Trust to reserve funds in the event discovery was served on the Unsecured Creditor Trust. Now that such litigation has been recently resolved, the Unsecured Creditor Trust will work to make distributions to applicable

⁸ See footnote 3, *supra*.

Unsecured Creditor Trust Beneficiaries as soon as reasonably possible and wind down the Unsecured Creditor Trust and these chapter 11 cases, as discussed above.⁹

17. The Unsecured Creditor Trustee requests the extension of the duration of the Unsecured Creditor Trust because additional time is necessary to make appropriate distributions to Beneficiaries in accordance with the Plan, and enable the GUC Trust to fulfill various tax, accounting, and administrative functions relating to the termination of the Trust. Accordingly, the Trustee respectfully requests that the relief sought herein be granted, without prejudice to seek further extensions upon notice and hearing.

NOTICE

18. Notice of this Motion will be provided to: (i) all Unsecured Creditor Trust Beneficiaries, (ii) the Office of the United States Trustee, (iii) the Internal Revenue Service, and (iv) any other party who registered to receive electronic notification via the Court's CM/ECF noticing system. The Unsecured Creditor Trustee respectfully submits that such notice is sufficient and proper under the circumstances and that no other or further notice is required.

CONCLUSION

WHEREFORE, the Unsecured Creditor Trustee respectfully requests that the Court: (a) enter the Proposed Order, in a form substantially similar the form attached hereto as Exhibit A and (b) grant such other and further relief as the Court deems just and necessary under the circumstances.

⁹ Plan, at p. 25 (Art. V.D. of the Plan).

Dated: January 31, 2024

Respectfully submitted,

By: /s/Michael D. Warner

Michael D. Warner (TX Bar No. 00792304)

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Creditor Trustee*

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of January, 2024, a true and correct copy of the above and foregoing was caused to be served through this Court's CM/ECF noticing system to all parties registered to receive notices in these cases.

/s/ Michael D. Warner

Michael D. Warner

EXHIBIT A
PROPOSED ORDER

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: § Chapter 11
NEIGHBORS LEGACY HOLDINGS, §
INC., § Case No. 18-33836-H1-11 (MI)
§
Debtors. §

**ORDER (I) APPROVING UNSECURED CREDITOR TRUSTEE’S MOTION FOR
ENTRY OF AN ORDER EXTENDING DURATION OF UNSECURED CREDITOR
TRUST**

(Related Docket No. ____)

Upon the *Unsecured Creditor Trustee’s Motion for Entry of an Order Extending Duration of Unsecured Creditor Trust* (the “*Motion*”);¹ and this Court having found that (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. § 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter a final order consistent with Article III of the United States Constitution; (iii) venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (iv) notice of the Motion was sufficient; and (v) good and sufficient cause exists for the granting of the relief requested in the Motion and necessary to accomplish the purpose of the Unsecured Creditor Trust after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion,

IT IS HEREBY ORDERED THAT:

1. The term of the Unsecured Creditor Trust is extended through and including April 8, 2025.

¹ Unless otherwise noted, the capitalized terms herein shall have the definitions ascribed to them in the Motion or the Plan Documents.

2. The Unsecured Creditor Trustee's right to request further extensions for cause upon notice and hearing is hereby preserved.

3. This Court retains exclusive jurisdiction and authority to interpret and enforce this Order, and to resolve any dispute arising from or related to this Order.

Signed:

MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE