

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

In re:

NEIGHBORS LEGACY HOLDINGS, INC.,
et al.,¹

Debtors.

Chapter 11

Case No. 18-33836 (MI)

Jointly Administered

UNSECURED CREDITOR TRUSTEE'S OBJECTION TO PROOF OF CLAIM NO. 126
FILED BY FRANK LOYD, DO, PA

THIS IS AN OBJECTION TO YOUR CLAIM. THE OBJECTING PARTY IS ASKING THE COURT TO DISALLOW THE CLAIM THAT YOU FILED IN THESE BANKRUPTCY CASES. IF YOU DO NOT FILE A RESPONSE WITHIN 30 DAYS AFTER THE OBJECTION WAS SERVED ON YOU, YOUR CLAIM MAY BE DISALLOWED WITHOUT A HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

Mark Shapiro, the Trustee of the Unsecured Creditor Trust (the "Unsecured Creditor Trustee") files this *Unsecured Creditor Trustee's Objection to Proof of Claim No. 126 Filed by Frank Loyd, DO, PA* (this "Objection"). In support of this Objection, the Unsecured Creditor Trustee respectfully represents as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this case and this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(B). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409(a).

¹ Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtors and the last four digits of their tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at www.kccllc.net/neighbors. The location of Debtors' principal place of business and the Debtors' service address was: 10800 Richmond Avenue, Houston, Texas 77042.



2. The predicates for the relief requested herein are section 502(b) of title 11 of the United States Code (“**Bankruptcy Code**”) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

Relief Requested

3. The Unsecured Creditor Trustee respectfully requests entry of an order, substantially in the form filed herewith (the “**Proposed Order**”) disallowing the Disputed Claim for the reasons set forth herein.

General Background

4. On July 12, 2018 and July 23, 2018, Neighbors Legacy Holdings Inc. and certain of its affiliates and subsidiaries (collectively, the “**Debtors**”) each commenced a case by filing a petition for relief under Chapter 11 of the Bankruptcy Code.

5. 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] (the “**Plan**”) and accompanying *Second Amended Disclosure Statement* [Docket No. 773].

6. 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 Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 847] (the “**Confirmation Order**”).

7. The Confirmation Order and Plan, among other things, approved the form of the Unsecured Creditor Trust Agreement and the appointment of the Unsecured Creditor Trustee to administer the Unsecured Creditor Trust. Additionally, the Plan provided for the establishment

of the Unsecured Creditor Trust effective on the effective date of the Plan, which occurred on April 8, 2019 (the “**Effective Date**”). *See* Section V.D. of the Plan; Docket No. 862.

8. Article VIII.B of the Plan expressly provides, “with respect to all Claims other than Administrative and Priority Claims, the Unsecured Creditor Trustee shall have the exclusive right to File, Settle, compromise, withdraw or litigate to judgment any objections as permitted under the Plan.” The Plan defines claims in Class 4 as General Unsecured Claims; and claims in Class 5 as Bankruptcy Code Section 510(b) Claims. Article V, Section A of the Plan provides that the Plan is a “joint plan of liquidation for all of the Debtors and results in the consolidation of the Debtors and their respective Estates solely for purposes of . . . making Distributions pursuant the Plan”.

9. Pursuant to Section VIII.C. of the Plan, the original deadline to file objections to claims was 180 days after the Effective Date, i.e. October 5, 2019. On October 21, 2019, the Court extended the Deadline to December 31, 2019 [Docket No. 1005]; on December 4, 2019, the Court extended the Deadline April 29, 2020 [Docket No. 1032]; on April 16, 2020 the Court extended the Deadline to June 30, 2020 [Docket No. 1064]; on July 8, 2020, the Court extended the Deadline to September 30, 2020 [Docket No. 1099]; and on October 28, 2020, the Court extended the Deadline to December 31, 2020 [Docket No. 1151] (the “**Claims Objection Deadline**”).

The Claims Reconciliation Process and the Disputed Claim

10. On July 12, 2018, the Court entered the *Order Granting Complex Chapter 11 Bankruptcy Case Treatment* [Docket No. 14], which established a deadlines for filing proofs of claim. On October 5, 2018, the Debtors filed their Notice of Deadlines for Filing Proofs of Claim [Docket No. 551] (the “**Bar Date Notice**”), which provided notice that the deadline for all entities, other than Governmental Unites, to file proofs of claim was November 14, 2018 (the “**General Bar Date**”). The deadline for governmental unites to filed proofs of claims was 180 days after the Petition date, or January 8, 2019 (the “**Governmental Unit Bar Date**” and collectively, with the General Bar Dates, the “**Bar Dates**”).

11. The official claims register, prepared and maintained by the Debtors’ claims agent, reflects that over 1,700 proofs of claim were filed against the Debtors’ estates, and that such claims, coupled with the claims scheduled by the Debtors, represented in the aggregate in excess of \$1.5 Billion in unsecured, non-priority claims.

12. Since the Effective Date, the Unsecured Creditor Trustee and its advisors have been working diligently to review these proofs of claim, including any supporting documentation filed together with any proof of claim. In this regard, the Court has previously sustained each of the Unsecured Creditor Trustees’ five previous omnibus claim objections to date. *See* Docket Nos. 1085-1087, 1121, 1154.

13. The Unsecured Creditor Trustee has reviewed and reconciled claims for which he is responsible in order to administer the Unsecured Creditor Trust and has identified Claim No. 126 (“**Claim No. 126**”) filed by Frank Loyd, DO, PA (“**Loyd**”) which is the subject of, *inter alia*, this Objection. More particularly, the Unsecured Creditor Trustee identified that Claim No. 126 asserts a claim based on the purchase of certain equity interests in certain of the Debtors,

including describing the basis of the claim as “NHS Emergency Centers, LLC – Series B Investor” and attaching a *Series Interest Purchase Agreement*.

14. Attached hereto as **Exhibit A** is the *Declaration of Mark Shapiro in Support of the Unsecured Creditor Trustee’s Objection to Proof of Claim No. 126 Filed by Frank Loyd, DO, PA* (the “**Declaration**”).

Basis for Relief

15. Pursuant to section 502(a) of the Bankruptcy Code, a filed proof of claim is deemed allowed, unless a party in interest objects. 11 U.S.C. § 502(a). A properly executed and filed proof of claim constitutes *prima facie* evidence of the validity and the amount of the claim under section 502(a) of the Bankruptcy Code. FED. R. BANKR. P. 3001(f). To receive the benefit of *prima facie* validity, however, a proof of claim must assert factual allegations which would entitle the claimant to a recovery. *In re Heritage Org., LLC*, 04-35574 (BJH), 206 WL 6508477, at *8 (Bankr. N.D. Tex. Jan. 27, 2006). A claimant’s proof of claim is entitled to the presumption of *prima facie* validity under Bankruptcy Rule 3001(f) only until an objecting party refutes at least one of the allegations that is essential to the claim’s legal sufficiency. *See Cal. State Bd. of Equalization v. Official Unsecured Creditors’ Comm. (In re Fidelity Holding Co., Ltd.)*, 837 F.2d 696, 698 (5th Cir. 1988); *In re Starnes*, 231 B.R. 903, 912 (N.D. Tex. 1998). Once an allegation is refuted, “the burden shifts to the claimant to prove by a preponderance of the evidence.” *In re Fidelity Holding Co., Ltd.*, 837 F.2d at 698; *In re Congress, LLC*, 529 B.R. 213, 219 (Bankr. W.D. Tex. 2015); *see also Cavu/Rock Props. Project I, LLC v. Gold Star Constr., Inc. (In re Cavu/Rock Props. Project I, LLC)*, 516 B.R. 414, 422 (Bankr. W.D. Tex. 2014). “The ultimate burden of proof always lies with the claimant.” *In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006).

16. Bankruptcy Rule 3007 requires that an objection to a proof of claim be made in writing, and that the claimant be provided with not less than thirty days' notice of the hearing to be held in respect of such objection. See FED. R. BANKR. P. 3007(a).

17. Loyd asserts that the Disputed Claim is entitled to non-priority general unsecured claim status under the Bankruptcy Code. However, since an equity interest does not provide a holder with a "right to payment," it does not constitute a "claim" under section 101(5) of the Bankruptcy Code. 11 U.S.C. § 101(5); *see also In re Hedged Investments Associates*, 84 F.3d 1267, 1272 (10th Cir. 1996) (stating that an equity interest is not a claim against the debtor"); *see also In re Pine Lake Vill. Apartment Co.*, 21 B.R. 478, 480 (Bankr. S.D.N.Y. 1982) (stating that an equity interest is not a claim against the debtor and the equity holder is only entitled to a proof of interest). Instead, the Disputed Claim sets forth an interest in equity securities under section 101(16) of the Bankruptcy Code, and, as such, is not entitled to treatment as either secured, priority or unsecured claims under the Bankruptcy Code. 11 U.S.C. § 101(16). Accordingly, equity interests in the Debtors do not constitute liabilities of the Debtors or their estate. *See In re Texas Petrochemicals, L.P.*, No. 03-40258, 2007 WL 2086693, at *1-2 (Bankr. S.D. Tex. July 18, 2007) (disallowing claims of ESOP participants on the theory that each claim was founded upon the claimant's equity interest in the company, which does not give rise to a claim under the Bankruptcy Code).

18. In addition, section 510(b) of the Bankruptcy Code provides that claims "for damages arising from the purchase or sale of [a security of the debtor or an affiliate of the debtor] . . . shall be subordinated to all claims . . . that are senior to or equal the claim . . . represented by such security." 11 U.S.C. § 510(b). The Bankruptcy Code definition of "security" includes not only equity securities, but also debt securities like notes and bonds. 11

U.S.C. § 101(49). Loyd admits in the Disputed Claim that the Disputed Claim is based on his holdings of certain Series B equity interests in certain of the Debtors. *In re Mid-American Waste Sys., Inc.*, 228 B.R. 816, 825 (Bankr. D. Del. 1999) (“The Bankruptcy Code defines the term ‘security’ to include a ‘note,’ ‘bond,’ or ‘debenture.’ Thus, by its plain terms § 510(b) is intended to apply to both debtholders and equityholders.”). Therefore, even if the Court did grant creditor treatment based upon the equity interests asserted by the Claimant in the Disputed Claims, the Disputed Claims would be subordinated under section 510(b) of the Bankruptcy Code, as they assert amounts arising in connection with the claimants’ ownership of stock. *See In re Med Diversified, Inc.*, 461 F.3d 251, 257 (2d Cir. 2006); *In re Worldcom*, Case No. 02-13533 AJG) (S.D.N.Y. December 21, 2006); *In re Enron Corp.*, 341 B.R. 141, 162-63 (Bankr. S.D.N.Y. 2006).

19. Accordingly, the Unsecured Creditor Trustee respectfully requests that the Court disallow the Disputed Claim in its entirety.

Reservation of Rights

20. In the event that the Disputed Claim is not disallowed on the grounds asserted herein, the Unsecured Creditor Trustee hereby reserves his rights to object to such Disputed Claim on any other grounds. Additionally, the Unsecured Creditor Trustee expressly reserves the right to amend, modify, or supplement the objections asserted herein and to file additional objections to the Proof of Claim or any other claims that may be asserted against the Debtors’ estates.

21. Nothing contained herein or any actions taken pursuant to such relief is intended or should be construed as: (a) an admission as to the validity of any prepetition claim against a Debtor entity or such Debtor entity’s estate; (b) a waiver of any party’s right to dispute any

prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Objection or any order granting the relief requested by this Objection; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Unsecured Creditor Trustee's rights under the Bankruptcy Code or any other applicable law.

Notice

22. Notice of this Objection has been given to: (a) all parties on the Master Service List; and (b) the holder of the Disputed Claim. 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.

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Conclusion

WHEREFORE, based upon the foregoing, the Unsecured Creditor Trustee respectfully request that the Court: (a) sustain this Objection; (b) enter the Proposed Order sustaining this Objection and providing that the Disputed Claim shall be disallowed; and (c) grant such other and further relief as the Court deems just and proper under the circumstances.

Dated: December 31, 2020

Respectfully submitted,

/s/ Michael D. Warner

Michael D. Warner (TX Bar No. 00792304)

Benjamin L. Wallen (TX Bar No. 24102623)

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*Counsel for Mark Shapiro, Unsecured Creditor
Trustee*

EXHIBIT A

Declaration of Mark Shapiro

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

In re:

NEIGHBORS LEGACY HOLDINGS, INC.,
et al.,¹

Debtors.

Chapter 11

Case No. 18-33836 (MI)

Jointly Administered

**DECLARATION OF MARK SHAPIRO IN SUPPORT OF
UNSECURED CREDITOR TRUSTEE'S OBJECTION TO PROOF OF CLAIM NO. 126
FILED BY FRANK LOYD, DO, PA**

Pursuant to 28 U.S.C. § 1746, I, Mark Shapiro, hereby declare as follows:

1. I am the duly appointed Unsecured Creditor Trustee of the Unsecured Creditor Trust. My business address is 3500 Maple Avenue, Suite 420, Dallas, Texas 75219.
2. Contemporaneously with the filing of this Declaration, the Unsecured Creditor Trustee filed the *Unsecured Creditor Trustee's Objection to Proof of Claim No. 126 Filed by Frank Loyd, DO, PA* (the "**Objection**").²
3. I am duly authorized to make and submit this Declaration in support of the Objection.
4. The facts set forth in this Declaration are based upon my personal knowledge or upon records kept in the ordinary course of my business as the Unsecured Creditor Trustee, as

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² All capitalized terms used but not defined herein shall have the meanings given to them in the Objection.

well as the Debtors' business records provided to me that were reviewed by me or professionals of I have retained to represent me and the Unsecured Creditor Trust under my supervision and direction. If called and sworn as a witness, I could and would testify competently to the matters set forth herein.

5. I have coordinated and supervised the claims reconciliation process. Accordingly, I, or other professionals retained by me, under my supervision and direction, reviewed and analyzed the Disputed Claims.

The Objection

6. Based upon my review of the Disputed Claim and for the reasons set forth in the Objection, I have determined that the Disputed Claim should be disallowed in its entirety and reclassified as an equity interest.

7. For these reasons, I respectfully request that the Court disallow each Disputed Claim in its entirety.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Dated: December 31, 2020

/s/ Mark Shapiro

Mark Shapiro
solely in his official capacity as Unsecured
Creditor Trustee

Proposed Order

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

In re:

NEIGHBORS LEGACY HOLDINGS, INC.,
et al.,¹

Debtors.

Chapter 11

Case No. 18-33836 (MI)

Jointly Administered

**ORDER SUSTAINING UNSECURED CREDITOR TRUSTEE'S OBJECTION TO
PROOF OF CLAIM NO. 126 FILED BY FRANK LOYD, DO, PA**

[Related Docket No. ____]

Upon the objection (the “**Objection**”)² of Mark Shapiro, Unsecured Creditor Trustee of the Unsecured Creditor Trust (the “**Unsecured Creditor Trustee**”) seeking entry of an order (this “**Order**”) disallowing the Disputed Claim filed by Frank Loyd, DO, PA, it is **HEREBY ORDERED THAT:**

1. Pursuant to Section 502(b) of the Bankruptcy Code and Bankruptcy Rule 3007, the Disputed Claim is hereby disallowed in its entirety.
2. The Debtors’ Claims Agent is authorized and directed to update the claims register maintained in these chapter 11 cases to reflect the relief granted in this Order.
3. Except as otherwise provided in this Order, nothing in this Order shall be deemed:
(a) an admission as to the validity of any prepetition claim against a Debtor entity or such Debtor

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² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Objection.

entity's estate; (b) a waiver of any party's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Objection or any order granting the relief requested by this Objection; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Unsecured Creditor Trustee's rights under the Bankruptcy Code or any other applicable law.

4. The terms and conditions of this Order will be immediately effective and enforceable upon its entry.

5. The Unsecured Creditor Trustee, the Claims Agent, and the Clerk of the Court are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Objection.

6. This Court shall retain exclusive jurisdiction to resolve any dispute arising from or related to this Order.

Dated: _____, 2021

THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE