

**NOTICE OF SPECIAL MEETING OF THE  
BOARD OF DIRECTORS OF THE  
REFUGIO COUNTY MEMORIAL HOSPITAL DISTRICT**

**NOTICE** is hereby given of the Special Meeting of the Board of Directors of the Refugio County Memorial Hospital District on July 15, 2020 at Noon in the Hospital Classroom, at which meeting the board will consider the following: **This meeting will be offered as a Telephonic Meeting-the toll free number is: 1-877-568-4106, Access Code: 919294845**

- I. Executive Session as authorized by Section 551.074 to consider proposal in the case of Refugio County Memorial Hospital v Certain Underwriters.
- II. Consider Executive Session discussion and take any action necessary.

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Hoss Whitt, Administrator

Date

Counsel –

I know that both parties have not agreed yet to me doing a mediator's proposal, which I raised on Monday and followed earlier conversations with both counsel. But based on my professional judgment as your mediator, I believe that one is necessary, has a reasonable chance of being accepted by both parties, and that now is the time to do one. Of course, while I hope that it is not the case, one or both of you could say "no" to the proposal based on the number or any other reason. While I say it below in the stock paragraphs, I want to emphasize that this proposal (and none that I do) is my evaluation of the merits of your dispute. Rather it is my best judgment as to an equal (albeit never mathematical) stretch to the parties. Many of my mediations are settled by a mediator's proposal, including 3 within just the last week or so.

I know everyone jumps to the number below, but please also consider the first two (admittedly stock) paragraphs, too.

1. **What is a mediator's proposal?** For clients not familiar with them, here is my standard description of a mediator's proposal:

The mediator proposes a settlement at \$X and gives each party so many days to give the mediator in confidence a "yes" or "no" to whether that party would settle for that amount. If all parties say "yes," there is a deal and the mediator announces such. If one or more say "no," there is no deal and the mediator reports simply that there is no deal. The benefit is this: If it doesn't settle, the parties will never know that one party may have said "yes." In other words, if a party says "no," then such party will never know whether settlement failed because of its own position, or whether the other party also rejected the number. When the case doesn't settle at that number, it assures that the party who may have said "yes" will not be later seen as having tipped its hand. In arriving at the proposal number, the mediator is trying to find a number he or she believes might stretch the parties to a common ground. It is based on his or her familiarity of all parties' positions learned during the session.

2. **How does a mediator arrive at the number?** A mediator's sole interest is in guiding the parties to a settlement. While the parties are focused on their view of the settlement value of the case, with risk analysis that includes the legal and factual issues and the costs of litigation, the mediator is only focused on those factors to the extent they affect the ability of the parties to reach agreement. A mediator's proposal is typically the last effort – after otherwise failed mediation efforts. My focus in arriving at a mediator's proposal is trying to find a number I believe might stretch the parties to a common ground. It is based on my familiarity of all parties positions, whether justifiable or not in my or some other party's view, as obtained during the session and our discussions. It is not my view of the value of the case. One, or likely both, of you may be upset with the number chosen. But it does no good for any mediator to propose a number that he knows or believes has no chance of being accepted by the other party.

As I likely told you in our opening session, frequently good settlements are made when both parties are stretched to a common middle that, upon reflection, you "can live with." And sometimes the number makes you mad. But it is my best effort at suggesting a number that has the reasonably best chance of being accepted by both parties with all parties stretching. Sometimes the mediator's proposal is too much of a stretch for one or both parties. I understand that. But I ask you to revisit your positions and realize that without your acceptance of this number, you will be going to down the road to trial with all of the costs and risks involved and with the inevitable delay of years before there is a final resolution. Everyone participated in good faith during our mediation process. I know that will continue as you consider this last effort to reach an agreement.

3. **My mediator's proposal.** My proposal is **\$2.7 million.**

4. **Conditions applicable here.** For payment of the amount above by Underwriters and its receipt by Refugio County Memorial Hospital District (the "District") (1) The District would obviously provide a full release to Underwriters (and their affiliates and other legal things lawyers do in releases); (2) there would be a dismissal with prejudice of the lawsuit; (3) there would be a confidentiality provision with the usual exceptions, which here would include such disclosures required under Texas law relating to a public entity; (4) a "yes" vote here from the District would be a representation that it has already obtained the necessary approval of the District's governing

body to enter into the settlement if there is one; and (5) other more typical terms one would see in a settlement of a case. I am not aware of any other particular or unusual conditions if there was to be a settlement, but please do not let your response be conditioned on such other matters. This is an effort to bridge the very large gap in the numbers. Good lawyers, as we have here, can work out such other matters or how the exact wording would be in a final formal agreement. So, I respectfully request that you simply let me know with a “yes” or “no” on the dollar amount(s). The rest is up to you guys if there is an agreement. It is my understanding that there are no loss payees under the policy, but if there are, counsel would reach an agreement as to the treatment of same if there is a deal.

5. **Deadline.** Please let me have your “yes” or “no” (via email sent only to me) by **5pm Central, Thursday, July 16, 2020.** This is a bit longer than I had earlier suggested, but I want both parties to have the time to carefully evaluate the proposal and seek necessary approvals to vote on it—especially with the intervening US holiday. PLEASE BE CAREFUL TO USE “REPY” AND NOT “REPLY ALL.”

6. **How and when I will report.** When I report, I will simply say “I am pleased to report that you have a deal” or “I am sorry to report that you do not have a deal.” If I get all “yes’s” before the deadline, of course, I will let you know upon receipt of the last “yes.” But, conversely, I will not report any failure until I have received all responses before the deadline. It would provide inappropriate information to those who are still considering a response that someone else has already said “no.” Do not be discouraged, though, if you do not hear anything until the deadline. I find that many people wait until the last day to respond. And if I do not hear by 24 hours after the deadline from a party either a vote or reasonable request for an extension, that party will be deemed to have voted “no.”

7. **Your “Yes” vote email as an electronic signature.** *From a legal point of view, if you vote “yes” and there is a deal because all other parties also voted “yes,” you are agreeing that your email to me accepting the proposal will constitute a valid electronic signature creating—along with the others’ “yes” responses—an enforceable agreement as to the proposal such that the responsive “yes” emails may be shared by me with all other parties, if necessary for any party to enforce such agreement.*