

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DANIEL S. NEWMAN, as a Receiver for
Founding Partners Capital Management
Company; Founding Partners Stable-
Value Fund, L.P.; Founding Partners
Stable-Value Fund, II, L.P.;
Founding Partners Global Fund, Ltd.,
and Founding Partners Hybrid-Value
Fund, L.P.,

Plaintiff,

vs.

Case No. 2:09-cv-445-FtM-29SPC

SUN CAPITAL, INC. a Florida
corporation; SUN CAPITAL HEALTHCARE,
INC., a Florida corporation; HLP
PROPERTIES OF PORT ARTHUR, LLC, a
Texas limited liability company,

Defendants.

ORDER PRELIMINARY APPROVING SETTLEMENT TRANSACTION AND
SCHEDULING DEADLINES

This matter comes before the Court on the Joint Motion of the Parties For Expedited Approval of Proposed Procedure to Obtain Court Approval of the Proposed Settlement Transaction ("Joint Motion") (Docs. ## 248, 249), and the Court having reviewed the record, being advised of the agreement of counsel, and being otherwise fully advised in the premises,

It is hereby **ORDERED AND ADJUDGED** that the Joint Motion (Docs. ## 248, 249) is **GRANTED**, as follows:

1. The Court **preliminarily approves** the proposed settlement transaction as a reasonable means to resolve this action and other related claims, subject to an appropriate procedure to give notice to and address any objections raised by investors in the Receivership Funds and subject to such further submissions or hearings as the Court deems appropriate. The Court therefore authorizes the Receiver to take all steps reasonable and necessary to prepare for and proceed to the consummation of the proposed settlement transaction, as outlined in the Settlement Agreement and the Joint Motion.

2. The Court authorizes the Receiver to:

a. distribute a notice and disclosure package concerning the settlement transaction to all Fund Investors as set forth below;

b. provide to counsel for the Sun-Related Parties a current list of all investors in the Receivership Funds, containing their names and outstanding investment amounts (as well as the total outstanding amounts) based upon the books and records of the Receivership Entities available to the Receiver, subject to the Sun-Related Parties executing a confidentiality agreement in the form attached as Exhibit 10 to the Joint Motion;

c. begin preparing for, and submit a separate motion for approval of, an investor claims determination

process, which will establish a deadline for the submission of investor claim materials and executed Investor Releases (expected to be **within 45 days** after the entry of the claims process order, as set forth in the Joint Motion) and will provide for the exclusion of any non-Releasing Investors from any participation in the newly formed entity to be wholly-owned by the Founding Partners Stable-Value Fund, L.P. (the "FP Designee") or receiving proceeds from the transactions contemplated by the proposed Settlement Agreement; and

d. submit such other applications for approval of tasks related to the settlement transaction as are contemplated in the parties' Transaction Documents and/or Joint Motion.

3. The Court approves, as to form and content, the settlement disclosure package proposed to be distributed to Fund Investors, consisting of (a) a Notice to Fund Investors (the "Notice") substantially in the form attached to the Joint Motion as Exhibit 8, (b) the form of Investor Release required to be signed by any Fund Investor wishing to participate in the settlement transaction, (c) the entire Joint Motion, including all the Transaction Documents attached thereto as Exhibit 3, and (d) a form of confidentiality agreement attached to the Joint Motion as Exhibit 9, to be executed by any Fund investor who seeks to review

the Confidential Materials (collectively, the "Settlement Disclosure Package").

4. The Receiver is authorized to disseminate the Settlement Disclosure Package to Fund Investors as follows: Not later than **January 10, 2012**, the Receiver shall cause a copy of the Settlement Disclosure Package to be mailed by first-class mail, postage pre-paid, to all individuals and entities who, according to the books and records of the Receivership Entities in the Receiver's possession or control, invested in one or more of the Receivership Funds and maintained a capital balance in such Fund(s) **as of January 31, 2009**, at their last known address appearing in such books and records. The Receiver shall also cause a copy of the Settlement Disclosure Package to be published on the Founding Partners Receivership website maintained by the Receiver for the information of Fund Investors (www.foundingpartners-receivership.com); and shall cause a copy of the Notice to be published in a newspaper with national circulation for two weeks.

5. At least **five (5) calendar days** prior to any Settlement Hearing, the Receiver shall file with the Court proof of the foregoing mailing(s) and publication. The Court finds that the mailing and publication of the Notice substantially in the manner and form set forth above comports with due process and shall

constitute due and sufficient notice to all persons entitled thereto.

6. Any investor in any of the Receivership Funds who objects to the settlement and dismissal of this action, the proposed settlement transaction, or any other matter relevant to any aspect of the proposed settlement must submit such objection in writing if such investor wishes his/her/its views to be considered by the Court. In order for any objection to be considered, the investor must no later than **January 31, 2012**, either individually or through counsel, and at his/her/its own expense: (1) file with the Court a written notice or submission containing (a) proof of such person's status as an investor in one or more of the Receivership Funds, (b) a detailed statement of such person's objections or concerns regarding the proposed settlement transaction or procedure and the grounds therefor or the reasons why such person desires to be heard, and (c) all documents or writings such person desires the Court to consider; and (2) serve such materials on counsel for the parties set forth below, by e-filing them if permitted by the Court, e-mailing them, delivering them by hand, or sending them by first-class mail such that they are received not later than **January 31, 2012**. Counsel to be so served are:

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7. Any investor who does not make his, her or its objection in the manner provided herein shall be deemed to have waived such objection (including any right of appeal) and shall forever be foreclosed from making any objection to the Settlement Agreement, the dismissal of the case based thereon, or any other aspect of the proposed settlement transaction or procedure, unless otherwise ordered by the Court.

8. All papers responding to any objections duly filed and served, or otherwise supporting the settlement transaction or procedure, shall be filed by the Parties and served on any objectors by **February 15, 2012**.

9. A hearing (the "Settlement Hearing") shall be held before this Court on **Friday, March 30, 2012 at 9:00 a.m.**, before the undersigned, at Courtroom A, 2110 First Street, Fort Myers, FL 33901, to (a) determine, pursuant to ¶ 2(f) of the Order Appointing Replacement Receiver (Doc. #73 in 2:09-cv-229), whether to approve the proposed settlement of this action pursuant to the Settlement Agreement and related documents; (b) consider any objections to the settlement transaction submitted by investors in the Receivership

Funds; and (c) consider other matters related to the settlement as the Court may deem appropriate.

10. The Court approves and gives effect to the terms of the agreement between the Receivership Entities and MTS Health Partners, L.P., which is attached as Exhibit 7 to the Joint Motion.

11. If the settlement is approved, and if the subsequent investor claims procedure is approved, a final judgment will be entered herein providing for the dismissal with prejudice of all claims and counterclaims asserted in this action. All investors in the Receivership Funds shall be bound by the final judgment and all other determinations and orders made concerning the settlement herein.

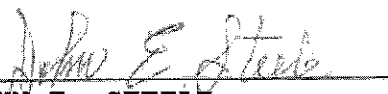
12. The Settlement Agreement and related documents, their contents, and the negotiations leading to them shall not be offered or received in evidence except as required to enforce the Settlement Agreement and related documents, and shall not be offered or deemed as a presumption, concession, or admission of any fault, liability, or wrongdoing of any party, in this action or in any other litigation or proceeding.

13. As agreed in the Joint Motion, the parties to the Settlement Agreement shall be bound by the provisions of Sections 7.1 and 7.4 of the Settlement Agreement from the date of this order until the earlier of: (i) the Court's disapproval of the proposed

Settlement Agreement, or (ii) the execution and delivery of the Settlement Agreement by the parties thereto.

14. If the settlement transaction is approved, the Court will retain jurisdiction over all aspects of the settlement transaction, including the enforcement and interpretation of the Settlement Agreement and related documents and any matters involving the Investor Releases or any submissions or claims of any investors in the Receivership Funds.

DONE AND ORDERED at Fort Myers, Florida, this 27th day of December, 2011.



JOHN E. STEELE
United States District Judge

Copies:
Counsel of record