

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA – FORT MYERS DIVISION**

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

DANIEL S. NEWMAN, as 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.

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

Defendants.

PARTIES' JOINT NOTICE CONCERNING SETTLEMENT STATUS

Plaintiff, the Receiver (the "Receiver") for Founding Partners Capital Management Co., Founding Partners Global Fund, Ltd., Founding Partners Stable-Value Fund, LP ("Stable-Value"), Founding Partners Stable-Value Fund II, LP, and Founding Partners Hybrid-Value Fund, LP (collectively, the "Receivership Entities"), and Defendants, Sun Capital Healthcare, Inc., Sun Capital, Inc. (together, "Sun Capital"), and HLP Properties of Port Arthur, LLC, hereby submit this joint Notice to the Court in accordance with the Court's Order dated July 8, 2010 (D.E. # 202 at 3, ¶ 4). Briefly, while the parties are working diligently towards a settlement transaction, a great deal of work remains, and it is anticipated that if a resolution can be reached, it will take another 120 days to complete the transaction, although the parties recommend the submission of a further status report in 60

days.

1. On June 12, 2010, Defendants moved for a stay of litigation proceedings for 120 days to allow Defendants, their affiliates, Promise Healthcare, Inc. and Success Healthcare, LLC, and their principals, Peter Baronoff, Howard Koslow, and Lawrence Leder (collectively, “the Sun-related Parties”), to pursue negotiation of a comprehensive settlement transaction with a group of large Stable-Value investors (“the Investor Group”), who had retained both a business advisor and legal counsel. D.E. #196.

2. On June 28, 2010, the Receiver filed his opposition to the Defendants’ motion for stay, arguing that although he was not averse to the notion of possibly reaching a commercial resolution to the present dispute, he did not, at that time, have even the most minimal information relating to the settlement discussions to permit him to make an informed judgment concerning the requested stay. D.E. #200.

3. On July 8, 2010, this Court entered an order granting in part and denying in part the motion for stay (the “Stay Order”). D.E. #202. The Court stayed the filing of an answer or other response to the First Amended Complaint in this action until further order of the Court. *Id.* at ¶1. The Court also stayed the responses to the outstanding subpoenas referred to in Defendants’ motion for stay in this case and in Case No. 2-09-cv-229 until further order of the Court. *Id.* at ¶2. Additionally, certain pending motions (D.E. ##11, 67, 68, 176, 182) were deferred during the stay. *Id.* at ¶3. The Court further ordered the parties in this action to file a “joint Notice” setting forth the progress of settlement discussions within sixty (60) days of the date of the Stay Order (i.e., September 6, 2010). *Id.* at ¶4.

4. Since the entry of the Stay Order, the parties and the legal and business

advisors representing the Investor Group have been working diligently toward the proposed comprehensive resolution, which would essentially transfer ownership of the assets of Sun Capital for the benefit of the investors in the Receivership Entities.

5. The Receiver and his counsel discussed the proposed settlement transaction and process in an all-day meeting with the Investor Group's legal counsel and business advisor (respectively, James Chadwick of Patton Boggs LLP and Dean Graham of Specialty Finance Advisors), and in several additional conversations with them and with Defendants' counsel.¹

6. The Sun-related Parties and the Investor Group's professionals have negotiated certain preliminary agreements concerning the use of the Sun-related Parties' financial consultant and access to its work product and compensation of the Investor Group's professionals. Also, the Receiver and the Sun-related Parties have negotiated a uniform confidentiality agreement for any investors or their representatives who seek access to confidential information of the Sun-related Parties in connection with the proposed settlement transaction.²

7. In addition, the Receiver has been advised that the Investor Group's

¹ The Receiver was not involved in the negotiations that led to the term sheet between the Investor Group and the Sun-related Parties that forms the basis for the present due diligence activities. The Receiver's position is that, consistent with his duties, he will provide his own opinion on whether and on what terms to settle the Receiver's claims at the time when he believes it is appropriate to do so. For now, the Receiver supports further due diligence to determine whether a settlement can be reached that, in his view, is in the best interests of all of the investors and the Receivership Entities.

² Also, to eliminate any need for the Receiver to assert in a separate action the claims he had previously sought but was not permitted to assert via an amended complaint in this action, the Sun-related Parties and the Receiver have negotiated a tolling agreement suspending the limitations periods for those claims while settlement efforts are pursued.

professionals are engaged in various due diligence activities. The Receiver has been advised that the Sun-related Parties' principals have made financial and business presentations to the Investor Group's professionals; there have been site visits to certain hospital facilities and projects on the West Coast and in the Southwest; and the Investor Group's professionals are analyzing the financial and business information prepared by the Sun-related Parties' financial consultant, among other things. The Receiver received a status summary from the Investor Group's professionals relating to the foregoing on September 1, 2010.

8. The Sun-related Parties have represented to the Receiver that their investment banker, Cain Brothers, has established and continues to update an electronic due diligence data room and access to that site has been granted to the Investor Group's legal and financial professionals, to several members of the Investor Group, and to any other investor representatives who have executed the required confidentiality agreement and provided other necessary information.

9. Although the Receiver is satisfied with the foregoing developments thus far, the Investor Group's professionals, the Receiver, and the Defendants acknowledge that there is still much to be done.

10. The due diligence activities and analyses are expected to be ongoing, and the Investor Group's professionals have advised that it should take them approximately 30-45 additional days to finalize the "financial" due diligence phase of what they have described as a multi-phase process. The Receiver has advised that he will be engaging his own consultants to provide him with independent analyses of the diligence and of the proposed

transaction.

11. The Investor Group's professionals have advised the Receiver that, at the end of the financial due diligence period, they should have the necessary information -- as it relates to the finances and value of the assets involved in the proposed transaction -- to begin the further steps needed to move forward with the proposed transaction; and the Receiver and his professionals will be in a position to determine whether they agree that the proposed transaction should be consummated.

12. Upon completion of the "financial" due diligence period, there are additional phases needed to complete diligence for the proposed transaction. The parties need to undertake a legal and regulatory due diligence, which would include operational testing at hospital facilities and taking all actions necessary to comply with regulatory requirements.

13. Finally, the parties need to prepare drafts of transaction documents (which are expected to be fairly complex) and negotiate such documents into final and mutually acceptable form. It is hoped that these subsequent phases (*i.e.*, legal, regulatory and documentation of the transaction itself) will be able to proceed concurrently.

14. All told, the Investor Group's professionals and the Sun-related Parties have advised the Receiver that they expect it will take about another 120 days, or roughly until the end of this calendar year, to complete all the due diligence and legal steps that are necessary prior to the completion of the proposed settlement transaction. The Receiver believes this estimate to be reasonable based upon the information provided to him thus far; as noted, the Receiver will be engaging his own consultants to provide him with independent analyses of the diligence and of the proposed transaction. None of the parties,

however, foreclose the possibility that the entire process might take more than that amount of time.

15. Based upon the foregoing, the Receiver is satisfied with the collective effort thus far and he favors a continuation of the stay described in the Court's Stay Order so that the parties may proceed along the course set forth above with the involvement of the Receiver and his professionals.

16. However, because there are material and complex tasks that will have to be undertaken by the parties in the coming weeks and months, the parties believe that it would be prudent to again report to the Court on an interim basis. The completion of "financial" due diligence is an important milestone and, as noted above, that is estimated by the Investor Group's professionals to take an additional 30-45 days. The parties, therefore, respectfully suggest that the Court set a further interim reporting date at or about 60 days from today³, for the parties to provide another "Joint Notice" to the Court on the status of the settlement and their recommendations concerning a stay of litigation.

17. In the interim, the parties jointly request that the stay described in the Stay Order be continued at least until the next reporting date, so as to eliminate any unnecessary costs or distractions while the parties proceed as outlined above.

³ Sixty days from today's date is November 6, 2010, which is a Saturday; therefore, the parties respectfully submit that another "Joint Notice" might be required by the Court the first business day thereafter or on November 8, 2010.

Dated: September 7, 2010

Respectfully submitted,

By: /s/ Jonathan Etra

Jonathan Etra
Florida Bar No. 0686905
jetra@broadandcassel.com
BROAD AND CASSEL
2 South Biscayne Blvd., 21st Floor
Miami, FL 33131
Tel.: 305.373.9447
Fax: 305.995.6403
Attorneys for Plaintiff

By: /s/ Jonathan Galler

Sarah S. Gold, Esq. (*pro hac vice*)
Florida Bar No. 0032190
sgold@proskauer.com
Karen E. Clarke, Esq. (*pro hac vice*)
kclarke@proskauer.com
PROSKAUER ROSE LLP
1585 Broadway
New York, NY 10036-8299
Tel: (212) 969-3000
Fax: (212) 969-2900
- and -

Jonathan Galler, Esq.
Florida Bar No. 0037489
jgaller@proskauer.com
PROSKAUER ROSE LLP
2255 Glades Road, Suite 340W
Boca Raton, FL 33431
Tel: (561) 241-7400
Fax: (561) 241-7145
Attorneys for Defendants