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.

Fort Myers, Florida
March 30, 2012

9:06 a.m.

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.

TRANSCRIPT OF FAIRNESS HEARING

HELD BEFORE THE HONORABLE JOHN E. STEELE
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S

FOR PLAINTIFF DANIEL S. NEWMAN:

Broad and Cassel
21st Floor
2 S. Biscayne Blvd.
Miami, FL 33131
(305) 373-9477
BY: JONATHAN ETRA, ESQ.
DANIEL S. NEWMAN, ESQ.
CHRISTOPHER CAVALLO, ESQ.
DAVID POWERS, ESQ.

A P P E A R A N C E S
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FOR SUN CAPITAL DEFENDANTS:

Proskauer Rose, LLP
Eleven Times Square
New York, NY 10036-8299
(212) 969-3370
BY: SARAH S. GOLD, ESQ.
KAREN E. CLARKE, ESQ.
VINCENZO PAPARO, ESQ.

FOR 118 OBJECTORS:

Boies, Schiller & Flexner, LLP
Suite 1200
401 E. Las Olas Boulevard
Fort Lauderdale, FL 33301
(954) 356-0011
BY: STUART H. SINGER, ESQ.
TODD THOMAS, ESQ.

FOR ROMAN CATHOLIC CHURCH OF THE ARCHDIOCESE OF NEW ORLEANS:

Reasonover & Olynde, LLC
400 Poydras Street
Suite 1980
New Orleans, LA 70103
(504) 587-1440
BY: KIRK REASONOVER, ESQ.

Vernon Healy
Fifth Third Center
Suite 200
999 Vanderbilt Beach Road
Naples, FL 34108
(239) 649-5390
BY: SUSAN R. HEALY, ESQ.

REPORTED BY: JEFFREY G. THOMAS, RPR-CP
Official Federal Court Reporter
U.S. Courthouse
2110 First Street, Suite 2-194
Fort Myers, FL 33901
(239) 461-2033

I N D E X

* * *

THEREUPON, the above-entitled case having been called to order, the following proceedings were held herein, to-wit:

- - -

THE COURT: This is the case of Daniel S. Newman, as receiver, versus Sun Capital, Inc. and others. It's Case 2:09 Civil 445.

Counsel, if you would identify yourselves and your respective parties, beginning with counsel for the plaintiff.

MR. ETRA: Good morning, Your Honor. Jonathan Etra, counsel for the receiver, Daniel S. Newman. Mr. Newman, the receiver, is present here --

MR. NEWMAN: Good morning, Your Honor.

MR. ETRA: -- as well as other legal and financial advisors for the receiver.

THE COURT: I have on my list here a Chris Cavallo?

MR. ETRA: Your Honor, Chris Cavallo is an associate in our firm. Scott Bouchner is with Berkowitz-Dick, the financial advisors. And David Powers is our transactional attorney at Broad and Cassel.

THE COURT: Sure you got enough lawyers?

All right. And over on the other side.

MS. GOLD: Good morning, Your Honor. Sarah Gold,

Proskauer Rose, for the defendants. And I have with me Karen Clarke and Vince Paparo, both from the firm of Proskauer Rose.

THE COURT: All right.

MR. SINGER: Good morning, Your Honor. Stuart Singer and Todd Thomas, from for Boies, Schiller & Flexner. We are here on behalf of the 118 investors listed on Pages 1 through 4 of our objection, which is Docket Entry 260.

THE COURT: All right.

MR. REASONOVER: Good morning, Judge. Kirk Reasonover. I'm here with Susan Healy for the Archdiocese.

MS. HEALY: And I'm Susan Healy. I'm with the law firm of Vernon Healy.

THE COURT: All right. Good morning to all of you.

We are here with regard to a proposed settlement agreement. Let's begin, unless you folks see it otherwise, with plaintiff.

MR. ETRA: Thank you, Your Honor.

Your Honor, the receiver believes that the settlement agreement should be approved as in the best interests of the estate and the investors, and far preferable to what we see as the alternative of continued litigation.

The legal standard is clear in the 11th Circuit,

the Court will decide whether the proposed agreement is fair, adequate, and reasonable, as a compromise of the claim. Your Honor, that's in the Sterling case. The Sterling case cites the 11th Circuit class-action settlement case of Cotton. We went through, in our papers in response to the objections, the six factors which we believe show, as in Cotton, that the settlement agreement should be approved, as well as Your Honor's decision in the Canupp case, in a class action case.

I won't go through the whole six factors, Your Honor, because they're briefed; but one point in particular in the Cotton case is, in that case the Circuit Court approved a settlement that gave 25 percent of the value to the investors. Here, we're getting 96 percent of what we're after, of the goals of the litigation, now, without further litigation; and we think that's even better than we get at the end of litigation, even in the best case scenario, because the assets will go down in value, and decay, and could be a lot worse.

Now, I quoted a lot from the Cotton case. I just want to do a few quotes in the Cotton case here that I think are very informative and instructive with respect to the objections.

Page 1330 to 1332. In terms of this process, the settlement terms should be compared with the likely rewards

obtained following successful trial of the case; but the judge should not try the case at the settlement hearing in his evaluation of settlement terms. Moreover, the Court should not make the parties justify each term of settlement against a hypothetical or speculative measure of what concessions might have been gained if there were further negotiations. Inherent in settlement is an abandoning of highest hopes.

The Court is entitled to rely on the judgment of experienced counsel. While the Court must allow the objectors to be heard, it is not required to open to debate every provision of the settlement agreement. A settlement agreement may be fair where there are a large number of objectors.

The Court must consider the settlement as a whole, and the Court is not free to delete, modify, or substitute certain provisions of the settlement, and not others. The settlement should stand or fall as a whole.

It's also instructive to receive, Your Honor, is the Court's order Docket Entry 202 in response to the motion to stay, where the Court stated this particular case is not typical, and literally cries out for a good-faith effort at resolution before the only people left standing are the lawyers and other litigation professionals.

It would appear that a settlement may only be

accomplished if the efforts include substantial involvement of an informed receiver in the settlement process. The receiver was appointed not only for his legal and business acumen, but to bring common sense to a process which, by its very nature, can be complex.

Your Honor, we took your guidance and the instructions of the Cotton case very much to heart to pursue and achieve what we think is a settlement agreement that achieves the goals of litigation. And the goals of litigation have been clear from the beginning, Your Honor.

We have -- had less information than we have now; but one of the first things we did, we filed suit, and we seized the lockboxes. We did that because we recognized that the identifiable assets that would bring relief and value to the investors were these hospitals which are now the subject of the settlement agreement.

Thereafter, we amended the -- we litigated the preliminary injunction issue, which is pending, as Your Honor knows. Thereafter, we moved to amend the complaint to sue directly these downstream entities, Promise, Success, and the real estate companies. The motion was denied, and we were determined then to file a separate action, which we're allowed to do. However, we started settlement so we have a tolling agreement on that.

So we are ready to go if we have to go in

litigation mode, which you don't want to do; but it's going to be bigger, messier, uglier, and more involved than the current proceedings, because we're going to be suing those entities. Instead of doing that, we'd just like to get what we're after in the settlement.

I want to do a brief overview of what I think are the factors to discuss today. I'll try and be very brief. I think the first section is a little longer than the others, so if the Court would bear with me.

I want to briefly review the due diligence that's been done. I want to give you an overview of the nature of the contract negotiations. Third, discuss the general terms of the settlement. Fourth, briefly, why the receiver believes this is in the best interests of the estate, and should be approved. And, finally, discuss the consequences, in the receiver's view, of non-approval.

Your Honor, we got involved --

THE COURT: If it's of help to you what interests me is three, four, and five. Over your list.

MR. ETRA: Okay.

THE COURT: So I mean . . .

MR. ETRA: Your Honor, I will take your guidance.

The summary of the terms, what we're getting out of this, the receiver is getting out of it, is the contract terms. Is that what Your Honor is interested in?

THE COURT: It is.

MR. ETRA: Your Honor, we get a hundred percent of Sun, a hundred percent of Success, and what's most valuable is 96 percent of the equity of Promise, as well as the related real estate entities associated with it.

What happens is, upon closing, if it's approved, that gets put into a subsidiary of Stable-Value, called the Founding Partners Designee, we sometimes refer to it as FP Designee, stage one closing, the assets -- the hospitals are out of the defendants' hand, they are in the receivers' hands. We have a board that's set up with the receiver and investors. And then, with the claims process, the membership interests get distributed out to the investors, and we're done. Instead of distributing cash, we're distributing membership interests.

Of course that's beneficial because we don't have a fire sale. We want to let the receivers maximize value, do what we need to do to put the hospitals in better shape, and make more money. In the nature of a settlement, of course, there is compromise. There is a lot of back and forth. And some of the key provisions that were what some wanted --

THE COURT: Let me stop you and make sure I understand the basic outline of what you're talking about.

MR. ETRA: Sure.

THE COURT: Basically, you're taking the ownership of the companies and their assets, and transferring it from them, almost completely, to this designee institution, who will then essentially run the hospitals and, hopefully, do a better job, and make money?

MR. ETRA: Only on an interim basis. The goal is, like in any receivership, to get the claims process out. We'll be the stewards of it, and we'll start to do what we think we need to -- one of the main things, Your Honor, we'll do, frankly, is get a line of credit. These hospitals have been running, funding themselves, and at some point -- which means they're real hospitals. They're able to support themselves. Because, with the receivership, or even before the receivership, when Mr. Gunlicks stopped funding, they couldn't get outside cash. They can't get outside cash in the litigation, the receivership environment that they're in. I know they're not in receivership, but in the nature of this case.

So we want to get a line of credit, get things going, put it in shape. We've got great advisors helping us to put us in shape to make money for the investors.

THE COURT: Well, once the receiver gets the companies and runs the hospitals, how does that translate into money for the investors? You don't want to be running hospitals.

MR. ETRA: No. Absolutely not, Your Honor. We don't want to. We're going to give them membership interests. They will own these entities. They will each have an interest. It's an LLC. Right? So we're going to distribute membership interests pro rata with their interests as validated in the claims process. So instead of giving them a check they are going to get a membership interest. And it's fully functional, it will be set up, there will be a board, and it will run.

And what we could do, Your Honor, is we could just sell it once we get it. We just don't think that's necessarily -- we think the vultures will come in, Your Honor, and they'll get it on the cheap. And we don't think that's in their best interests. We don't think that's fair to the investors to do.

THE COURT: But after the designee gets it, I mean there's nothing to stop the designee from selling it three years from now. Or is there?

MR. ETRA: No, Your Honor. The designee -- first of all, the designee would be subject to court approval. And that's laid out more specifically -- and if Your Honor wants more information from that, I can get that from my corporate lawyer about the details of that.

But we don't want to be holding this for three years. The designee wants to do -- what the receiver wants

to do for the designee what it would do if there was a big bundle of cash. It wants to get it to the investors. We want the investors to drive the bus on this.

And frankly, Your Honor, a lot of things can happen. People can say well -- they can do deals among each other with the interest if they want to. We just want to get it out to the investors, and we want to do it in a way that's not a fire sale. Because we don't think that's fair to the investors.

THE COURT: All right. Go ahead. Thank you.

MR. ETRA: In the back and forth of the receiver getting what he's been after in this litigation, Your Honor, there are certain things they wanted. Among the key provisions -- I'm obviously not going to hit every provision in this agreement -- they get an obligation to pay approximately $5.8 million over three years. They get post-transaction consulting and employment agreements. They get indemnification. They also have a provision, that we agreed to, that any investor that wants to participate in the way Your Honor discussed, has to sign a release to join in, to opt into the deal.

And there's also a closing condition in favor of Sun, and it's specified in the agreement, where if they don't get a sufficient number of these releases from the investors, if enough investors say we don't like this deal,

they have a right to say we're not going to do it. Expose us.

There's just a few things on those provisions, Your Honor, because it came up a lot in the papers. The employment of Mr. Baronoff -- he's the current CEO -- that was a strong demand by Sun. From our perspective, we had questions about that. We decided we should be asking for it if they're offering it. It helps with the transition. And be subject to strict board control. We think that's a very beneficial thing. They have licenses, they have their doctors, their staff, and we don't want to just fire everyone in the executive suite and hope there is something there when we take over.

And on the issue of indemnification and releases, Sun's position makes a certain amount of sense in the context of negotiations. Because whether we like it or not, Your Honor, whether the receiver likes it or not, they've got the assets. The assets are funding the litigation. The assets are spending on professionals in litigation. The assets have now been funding the due diligence. We want to get it out of their hands.

They don't want to give up this asset. If they're going to face lawsuits, this is how they are going to pay for the defense, and this is how they're going to pay judgments. Like I said, Your Honor, that's our goal in this

case. So it was a compromise position to get the assets out of their hands and recognize their issues.

And, Your Honor, Your Honor recalls the term sheet which was in place when Your Honor first stayed this case. Indemnification was in the term sheet. It's a broad outline in the term sheet, Your Honor, but it was there all along. Because it was always an issue for them.

Your Honor, I could tell you we fought long and hard over details of these things. We think we got material concessions. And when you look at the agreement, you see a compromise. And we think, with all the arm's length negotiation -- and it was very intense, and very much involved.

I just want to say for a moment, Your Honor, that the investor group did the term sheet. They have Mr. Chadwick, of Patton Boggs. And the professionals that were helping them were absolutely important in this process. We are here in large measure from their effort and their guidance in this process. We disagreed at times, but we are very grateful for their involvement.

The fourth item I was going to raise, which, I guess, now the second item, is why I believe it's in the best interests of the state. Your Honor, with this deal, the litigation, the bleeding ends. We get essentially what we're looking for, and we get it in a cooperative setting,

with a smooth transition, and not burn the barn down and see what's left. And it just doesn't seem to make sense to conduct further litigation when we can get so much of what we're looking for, 96 percent of the value.

Without this deal, Your Honor, we have the -- a long, expensive, and uncertain litigation, which is always an issue in settlement. But in this issue, Your Honor, if we win, if we spend the money, and we win, there might be a pyrrhic victory. We might win and lose. Because a year from now, two years from now, whenever this case ends, and we stand with our judgment, and we look at the hospitals, well, we might not have gotten that far. They might not be there anymore.

The hospitals are suffering. That's because they don't have outside financing. They're self funding. They're spending money on professionals. They're spending money on due diligence. They spent a lot of money on acquisitions and improvements, which we can take advantage of. And if the vendors stop showing up, and if the patients leave, and the doctors leave, the hospitals are dead. Whether the state closes down or something else. And we're concerned about that happening. And we want to get this in place before that does happen.

We have a lot of reasons to believe there's value here, Your Honor. There is the due diligence, which Your

Honor didn't want to hear from, but I can go over that because -- I'd suggest, Your Honor, that in a context like this, I don't think any other receiver can point to this level of due diligence, with audited reports, with Wall Street bankers, and financial advisors examining everything.

There were site visits. They went to a site visit -- the receiver took a trip to New Orleans and visited two sites. They're all kicking their tires here. It's real. The audited books tell you that it's real.

Anecdotally, Your Honor, I get calls, on a regular basis, from persons who are interested in -- and not in the whole thing, Your Honor. They may be interested in picking off a hospital that they know about. And I always tell them that I don't own these hospitals, I'm not in a position to sell, and I try to be polite. I know they want it on the cheap, and they're not going to get it on the cheap. We want to do this right and set it up right.

Early on in the negotiation process there was an offer from an entity. The Sun folks had hired another Wall Street investment -- we had MTS Health, they're one Wall Street investment banker. They hired Cain Brothers, another Wall Street investment banker. And they came up with an offer from a fund. The numbers looked pretty good. But we were concerned that, as it played out, if we went down that road too early, we could be do better.

So there are a lot of reasons to believe -- along with the self funding. These hospitals are funding, and in pain, and need to be fixed. We have a lot of reasons to believe that this works.

And although I don't think it's strictly speaking, Your Honor, an element of the Cotton analysis, if you look at it from a broad fairness issue, which I don't think -- I don't think receiverships are necessarily all about perfect fairness -- and I would argue they're not -- we have a very large group of investors, we think majority, that support -- or at least haven't objected. We have a large group on the other side, Your Honor, a large group. We think it's a third. Maybe it's 38 percent. In that range. That object.

Here is the good news, Your Honor. If Your Honor approves the settlement agreement, it's a win-win. The receiver gets what he believes is appropriate. A large group gets what they believe is appropriate. No one is forcing anything. They can opt out. A lot of the objectors have filed lawsuits against the Sun entities that they think they have a direct claim against them. They're stayed, or -- for one reason or another. Your Honor has seen some of the papers and the orders on that. They can pursue their claim. No one is stopping them from doing it. And frankly, that's where the indemnity provision kicks in. So they can't say all the assets are gone. I don't want them to

pursue the claim, because if this goes through, there's an indemnity issue; but that's the nature of this deal.

THE COURT: You've hit a point that concerns me. And maybe you can alleviate my concerns by explaining how the indemnity works. It seems to me that, if the objectors opt out, but there's still enough to approve, and the Court does approve, that the objectors are basically going to be saying this is great, because what the settlement agreement does is not only does it provide cost for the defense to the current defendants, but it provides a source of funding for all damages; and so where the objectors were in the position of suing entities that were of questionable financial value, now they've got the settling investors basically kicking in a fresh pot of money for them to obtain in lawsuits via the indemnification.

MR. ETRA: I think you're right, Your Honor.

THE COURT: Why would any investor do that?

MR. ETRA: I'm sorry. I'm not following.

THE COURT: Why would any investor agree to that? Basically what they're doing is saying you've got defendants that are -- I don't want to say litigation prone, but they're subject to litigation already; and as soon as this settlement agreement is approved, the settling investors will pay for the defense, and will pay for damages.

MR. ETRA: Well, they want damages. I think

that's a good thing for them. We think we're going to improve the value of the pot.

THE COURT: That may be a good thing for the non-settling, but how is it good for the settlers?

MR. ETRA: The settlers are hoping that the investors realize that there's a great opportunity, without litigation, to take value. We think it's a good deal, Your Honor. We're not just saying it because we want you to approve the settlement agreement. We think this is a good deal.

We've got what I think is a majority of the investors think is a good deal. And I suspect -- I could be wrong -- that when it's all said and done, and it's a yes or no to participate in this, a lot of people objecting are going to say okay, do I want to take something now, or do I want to go down this road of litigation, which is expensive, and difficult, and uncertain?

And I haven't assessed their claims, Your Honor. I don't know how many of them -- how strong their claims are. It's not my job to figure out how meritorious their claims are, or to budget it and to figure out if they have the stomach.

THE COURT: Well, what is your projection as to how much money it will cost the investors to indemnify both defense and to pay damages that the people that you thought

were the wrongdoers a year or two ago are saddled with?

MR. ETRA: We don't have that information. This is a very complicated, multiple moving parts deal. I will tell you this, Your Honor. There are cases that both we cited, and I know Sun cited, which say, in Your Honor's discretion, Your Honor has a right to do a claims bar, like in bankruptcy courts, for the benefit of the whole. We thought this was fairer.

We didn't want to come here and say, Your Honor, just block everyone, although there is authority for that in Your Honor's discretion. But we don't . . . . It depends, Your Honor. We don't know how many people opt in, opt out. Maybe too many people will opt out, and they'll vote, and they'll vote that way.

What we're looking for, Your Honor, is we're looking for chance. Because one road is we have a chance to get this thing done, and bring value, and get these hospitals back; the other road is we're back to, okay, let's role up our sleeves . . . . And, Your Honor, instead of talking about this, I'm going to be, I suppose, in front of your magistrate, arguing about motions to compel, challenging privilege logs, on what's going to be a case that Your Honor stated cries out for a good-faith resolution.

THE COURT: If you were going to try this case

based upon what you know today -- and, of course, the trial wouldn't be for a couple years most likely -- but what would you stand in front of the jury and say you're entitled to?

MR. ETRA: I would have a large money judgment, no question. I would argue for a large money judgment. From a collection purposes --

THE COURT: I don't know what a large money judgment is.

MR. ETRA: I'm sorry.

THE COURT: A hundred bucks, to me, is large.

MR. ETRA: In the hundreds of millions. Could be three, four. It could be five. It would be something in that range, Your Honor. I don't have that number on me. But I also know that, whatever it is -- and maybe, with interest, maybe it's more; but I could ask for all that, and get a piece of paper, but these entities is all I'm going to get, is all I can see in my hand that I can get.

THE COURT: Well, that's my next question. Assuming you prevail as to whatever multimillion-dollar judgment you request, what is your assessment of the value of the entities? And I think it's in the papers. My memory is like 150 million to 215, or some such thing.

MR. ETRA: Something along those lines, Your Honor. It's not going to be that, Your Honor, because it's not going to be worth that. Every indication we have, from

people who do this for a living, the professionals in this, is it's not going to be worth that much. And if you're talking about two years, I think we'll be selling off real estate and scrap. At least, there is a good chance that's what we'll be doing. And we are not comfortable that level of risk in continuing to pursue litigation, because there is no outside funding, the vendors are giving difficult terms.

You know, this -- these entities have been in receivership for two years. There is a morale issue at the facilities. They see this. Ultimately, every business is local. You've got a bunch of local businesses. They can't keep the doctors, they can't keep the patients. It just all disappeared. It dissolves while we're litigating whatever it is we're litigating in this case, or while we're doing whatever it is that comes out of this proceeding if it's not a settlement agreement. So very low.

THE COURT: Explain to me, if will you -- and I may be getting you out of your order there, but explain to me the gag order that's provided in the settlement agreement.

MR. ETRA: Are you referring to the release?

THE COURT: A combination of the release and what's referred to as a confidentiality, which seems to me that says that, if the U.S. Attorney's Office subpoenaed somebody, they would have to run to the Sun people, and

first of all they'd have to say we can't talk to you, and they'd have to report it to the Sun people. Presumably, if they were compelled to testify, your investors may have to pay for that defense, as well.

MR. ETRA: Well, certainly we would have to pay for that defense, Your Honor. I understand that the release permits responses to subpoenas. Your Honor -- I believe Your Honor is a former federal prosecutor. I'm a former federal prosecutor. Certainly, when we drafted this, there was no intent to interfere with a criminal proceeding at any level.

This was a general thought, like in any confidentiality agreement, you can't respond unless you get a subpoena. That's it. That's certainly not the intent, to interfere with any criminal investigation whatsoever. If Louisiana has an investigation, they need to do their job and follow the evidence as they see fit.

THE COURT: All right. Go ahead.

MR. ETRA: Your Honor, I think I've covered -- because you didn't want to hear about one and two of the due diligence.

THE COURT: I'll let you do it. I don't think it's necessary unless somebody raises it.

MR. ETRA: Then I don't need to, Your Honor.

I just want to make one final point. From the

receiver's perspective, there was a constant struggle in this process about when to say enough, and go to the Court for settlement, or enough and walk away. Because there was always this threat that these businesses were cratering.

They were close to that point. And it was a very difficult struggle, and Your Honor mentioned the receiver's business acumen, and we were constantly -- the receiver was constantly advised, as we were struggling, do we push for these terms, and do we push for the audit that we received, and the valuation received.

And Your Honor may recall there was a motion by Sun, first, unilaterally, to approve a settlement. Then that was withdrawn, and we did a joint motion. Your Honor may wonder what's going on over here. And the answer is that, in good faith, Sun came to us and said enough. I know you want this last audit, but you just can't have it. We have to move forward. Sorry. The auditors won't issue it again. And we fought hard, and we came to a compromise that we'd file our motion, but we'd have to have the audit, and other things, which we have as a condition of closing, and we have them now.

The point I want to make, Your Honor, is, in the receiver's acumen, and with the help of the investors, and the back and forth -- a lot of back of forth about how much to push, and when to say enough, let's get this done. And

the receiver's view and recommendation is we've pushed it as far as we can. Let's get it done.

Your Honor, we request, if Your Honor approves -- we request that Your Honor approve the agreement, and that, if so, that you order the parties to obtain all necessary parties to execute the agreement. And I guess I'll wait to see what the objectors say, and if Your Honor will let me respond to them, I would appreciate that.

THE COURT: All right. That's fine.

Anyone from the defendants wish to address the Court?

MS. GOLD: Thank you, Your Honor.

I'm not going to repeat anything that Mr. Etra said. Obviously, the defendants support the settlement. I would just point out that the parties who have agreed to turn over assets in the settlement, other than the two Sun entities which are defendants in this case, are not defendants, they're not judgment debtors, and the underlying basis for what would be the receiver's claim to the hospital entities basically is kind of a fraudulent transfer type of a claim; and we believe that, even on a preliminary basis, the evidence that we submitted to the Court with respect to the uses of the proceeds that the Sun entities borrowed from Stable-Value were all approved by the lender -- there is overwhelming documentary evidence to that effect -- and so,

from our point of view, we view this transaction to really be a loan restructuring transaction which, in fact, was under way before there were any receivers, or litigations, or any such thing, because, as we had explained in some of our papers to the Court, most of the monies that were borrowed were, in fact, equity contributions to these hospitals.

Now, you know, what was going on up at the Stable-Value and the investor level I can't comment on. What I can say is that, from our point of view, that is what this settlement, or this transaction, sets out to do, which is to make good on the underlying agreements with the lender, and to bring those to fruition. There really -- the litigation is settled incidentally.

At no time did we believe that any of the allegations in respect of the litigation had any merit whatsoever. We do not believe that the receiver would be able to demonstrate, to a jury or otherwise, that these loan funds were misused, were fraudulently transferred, or any such thing.

These issues, which I understand in the context of a receiver seeking to terminate loan agreements, which this Court has recognized, early, in order to get money or assets for the investors, is all very well and good, it's a litigation position; but, frankly, I think it was a losing

litigation position. Fortunately, we were able to resolve all of this, and it never had to be litigated; but that position, instead of the position of the underlying loans and agreements, as far as we're concerned, was meritless.

So we're settling the underlying agreements principally in accord with what they were from their inception and over the years, and I thought it was worth pointing those things out to the Court.

THE COURT: Let me ask you a couple questions, if I might. Do you have any sense as to the value of the indemnification provision, given either pending lawsuits or reasonably anticipated lawsuits against both the Sun defendants and these Sun principals, or Sun parties, I forget what you would call them?

MS. GOLD: To be honest, Your Honor, I think that would depend on, at the end of the day, if this Court approves the settlement, how many of the of the investors, in fact, get on board. As I understand it -- and, of course, we have parties here, in court, to make their argument; but, as far as I understand it, there's only one actual objector to settling, which, as I understand it, is the Archdiocese. I thought that the other objectors are in favor of a settlement. They want to change the terms. You know, they don't want the defendants to have any favorable terms. I'm not sure how you have such a settlement.

But, at the end of the day, we are hopeful, and I believe the receiver is hopeful, that, if the Court approves the settlement, the vast majority of investors will actually join the settlement.

So I can't really address that. I don't think there are many investors who have some type of a separate claim, so I don't think it will be a substantial amount. But again, I don't think it's reasonable to ask people who are neither defendants, nor judgment debtors, nor has anything ever been proved against them -- and, as I say, as far as we're concerned, never could be -- to turn over all their assets, voluntarily, and not get either releases or indemnity. It just is, in our view, quite basic.

And I don't see how a settlement could possibly be structured without either releases or -- and, as Mr. Etra pointed out to the Court, this is a consensual plan. This is not one in which a bar order is being sought. So I think it's an entirely reasonable, fair provision, and standard provision, to either get a release or an indemnity.

THE COURT: In your view, is there any business related claim that would not be subject to the indemnification provision?

MS. GOLD: A business related claim?

THE COURT: Sure.

MS. GOLD: No, I don't think so.

THE COURT: So --

MS. GOLD: These are corporate officers who are signing onto this settlement.

THE COURT: So it's an exit strategy. Basically, this settlement agreement immunizes the individuals in terms of cost, both in terms of cost of any litigation that's brought against them, and in terms of damages that would be awarded against them, is now going to be shifted to the settling investors?

MS. GOLD: Well, it's the same as it would be if they didn't turn over the companies. They are, as corporate officers, indemnified for business judgments and other matters; and they're turning over their companies, and they will continue to be indemnified in respect of the business activities.

THE COURT: So you're telling me that this provision of the settlement agreement is no different than the provisions they operate under now, in terms of indemnification, presumably, that company pays for?

MS. GOLD: Well, it's contractual. So I would say it's both. So it --

THE COURT: I don't understand that. I'm sorry.

MS. GOLD: I'm sorry?

THE COURT: I didn't understand what you meant.

MS. GOLD: It's a contractual indemnity. So

instead of whatever -- and I can't tell you what the provisions are underlying it, but Delaware law -- let's say the indemnity provided the corporate officers under Delaware law or whatever. But I can't address it for each of the entities. I don't know.

THE COURT: But you know that the individuals currently are indemnified.

MS. GOLD: They are indemnified. Certainly.

THE COURT: All right. Why New York law? In terms of choice of law in this settlement agreement.

MS. GOLD: The agreements were -- all the contractual agreements with the lender were all under New York law, and so we thought it was prudent to continue to have any claims, or anything, analyzed in respect to New York law as they always had been.

THE COURT: All right. Thank you.

Anyone else care to address the Court?

Mr. Singer?

MR. SINGER: Yes, Your Honor.

Your Honor, we're here on behalf of 118 investors whose capital value amounts to $211 million measured in the same way that we think the receiver said that the supporting investors had $144 million in support of the settlement, although with the difference being we understand that consisted of eight investors who worked with them, as

opposed to the broad array of investors who are objecting.

These investors are not objecting lightly. They would like a settlement to end this. But this settlement is not that. And I'd like to spend some time explaining that position.

We have, first of all, rejected the settlement, and our clients -- and Sun Capital seems to be uncertain about this. It is not just the Archdiocese who is saying this settlement should not be approved. It is our position that, if it's just a binary choice between approving the settlement and rejecting the settlement, that the Court should reject the settlement.

THE COURT: Isn't that what it is, an up or down vote?

MR. SINGER: Well, we think, Your Honor, that you could tell the parties to go back, for 60 days, to meet with us, our representatives from these investors, and see if it's possible to come up with revised terms that would satisfy the investors; to deal with the indemnification issues I'm going to discuss, to deal with the priority issues, to deal with some of the related party transaction issues that give our objector investors a great deal of concern.

In addition, it would allow the consideration, by everyone, of audited financials for Promise that were

received just a week ago, and as far as we know, other financial information, such as an update to this MTS report and cash flow information hasn't even been received now. The last cash flow information we're aware of is from March, 2011.

So I think the Court has the discretion to tell the parties that it is deferring ruling on the current motion, that we have serious issues, and that those should be addressed by the parties; and if we don't get anywhere, we'll be back in 60 days, and we'll be urging the Court to reject the settlement. If it's just a binary choice, that's where our investors are.

Now, we think it's not quite accurate for the parties to say that this is a receipt of 96 percent of the value of these assets, because what has happened under the settlement is that, between our clients' ultimate equity interests and that 96 percent of value, you have layered on top all sorts of additional obligations that have priority.

One of those is indemnification. A second one is the money being paid to these officers, $5.8 million plus consulting plus an employment fee. A third is this working capital loan. And it's true a company needs working capital, but this working capital would be subject to being used or lost in the same way that tens of millions of dollars have been lost by the current existing management of

these hospitals.

So this is not a situation where, to answer the Court's question, which we think is the right question, as to exactly how will this result in cash for the investors. Our clients don't see cash coming out of this, our clients don't see value coming out of this. And so that's why we don't view this as a win-win, but rather as a losing situation.

They shouldn't be put to a test with having to deal with this vote that would follow an approval. That vote would pit investors against investors. The investors who approve the deal really wouldn't know what they're getting, because, among other things, you have this open-ended indemnification obligation. The investors who opt out would keep their individual claims, but they would be losing the right to share in the receiver's recovery on assets that those opting out investors have a right to rely upon to be made whole from to the extent there's anything there. That's not a fair choice they Should be forced to make. So this settlement --

THE COURT: Why is it not a fair choice? It may be a hard choice. Why is it not fair?

MR. SINGER: Respectfully, Your Honor, we don't think it's fair because, first of all, you don't have the right information. To approve, in the absence of

information about what you're buying, with an indemnification that's open ended, means you don't know what you're getting. And that's on top of not having certain of the information we say is needed.

If you opt out, it's not fair because you're being asked to give up rights with respect to the receiver's interests, who is supposed to be representing your interest as the lender, and you don't know what you're getting in return. So I think that it is not -- it is why we don't just put every settlement up directly for a vote. It's why you have the responsibility to determine that fairness before it just goes out to a vote of interested parties.

Now, one of the issues that's been raised is, well, this is -- I think, the Sun Capital defendants didn't mince any words. They said, basically, this is all you get. You should like it because you'll get less in litigation.

We don't see it that way, Your Honor. While we would prefer a fair settlement, in litigation you would get the assets without these millions of dollars of additional payments to the Sun Capital parties, without the indemnification obligations, without the individuals who have either run this company negatively into the ground, or who have, in the words of the receiver, in their own complaint, engaged in fraud. That wouldn't happen.

If there is no settlement, the receiver can seek a

receiver to preserve the remaining assets under this loan agreement. If necessary, this can even go into a bankruptcy, or reorganization, where a trustee can seek to preserve these assets so they're not continuously being dissipated. So it is not true that litigation is a worse option than the settlement as our clients see this settlement currently structured.

THE COURT: That assumes the receiver wins.

MR. SINGER: It does. And it assumes that, when you have a half-billion-dollar claim, as a secured lender, and where the defense seems to be that these can just be orally modified, and where the receiver has made allegations that he says he will stand by that the defendants have engaged in fraudulent conduct, it adds a strong case.

In fact, Your Honor, what I would like to do, if I might approach, certain of the information is under seal and confidential. We've put together some binders that has, so I can refer to it without being explicit in terms of numbers and other items that I would like to refer to in connection with these issues.

THE COURT: You may.

MR. ETRA: Your Honor, may I be heard on the legal issue of confidentiality? I don't know what he's going to do, and I don't want to jump up in the middle of his presentation.

THE COURT: You may.

MR. ETRA: Obviously, I have no problem, of course, with Mr. Singer handing confidential information to Your Honor; but if we're going to discuss it, as I'm sure Mr. Singer will do, we have a court-ordered confidentiality agreement that would be violated; and I don't know what measures Mr. Singer proposes to take care of that.

This is not -- the concept that the Court ordered, from our perspective, why we asked for the confidentiality agreement, it's anticompetitive -- we want to keep -- for the benefit of the businesses, which are now owned by the defendants and that we hope to take over, we don't want all this information getting out in the public. So I'm open to any reasonable suggestion. I just want to make sure we're preserving the confidentiality.

MR. SINGER: My intent was to respect that by having the Court see the charts, the parties to see the charts, but for me to be sufficiently general in my comments that it doesn't disclose confidential information with respect to at least certain of the points in this material.

MR. ETRA: May I be heard briefly, Your Honor?

What I gather from just my brief review, which I will say I haven't seen until right now, is that, instead of making arguments in court, he's making arguments in paper, which, or course, I can't respond to, because I didn't

prepare arguments in paper. And I have my own view on these confidential materials, so -- again, I'm open to any reasonable way of getting this done. I want Mr. Singer to make his argument, but I have to be able to respond, because I know I have my own positions on this.

MR. SINGER: I intend to make my argument. I just don't intend to be explicit about particular facts, numbers, circumstances that are in the confidential material. Some of this is not confidential. Other parts are under the confidentiality order. I think it's a better alternative than clearing the courtroom and the other options that would allow people not to hear parts of this which are not confidential.

THE COURT: Well, let's see how it goes. I'm looking at the first one, and there's nothing there that's confidential.

MR. SINGER: The first one simply indicates who we're speaking for, the number of investors. Tabs 2 and 3 is the very recent information, which really is subsequent to this motion to approve the settlement, and even the objections, which come out of the audits from Promise and for Success.

Tab 2 -- and there is one mistake I want to correct on Tab 2. The audited information in there was posted in their data room February 10th, not March 23rd,

with respect to Success. For the next slide, March 23rd is correct.

And as the Court can see from the comparison between the information on net income for 2010 that was unaudited to the amount listed which is the audited result, that there is a significant difference, a difference that I think is consistent with what the receiver says, that they really can't look to the Success entities as a source of value here.

THE COURT: Is Tab 2 based on confidential information?

MR. SINGER: It is.

THE COURT: Okay.

MR. SINGER: Tab 3 also is, because the audit has been put under this confidentiality order. And the left-hand side part of the bar shows for 2010, the unaudited net income/net loss figure for Promise, and the right-hand bar shows the audited figures.

Now, these audited figures were just received a week ago. So this is information which is, we think, very material, something that could be explored further in this 60-day period I'm proposing; but it goes to a lot of issues. It goes to the likelihood that the investors will receive any value at the end of the day if this settlement is approved --

THE COURT: Let me stop you.

MR. SINGER: Um-hum.

THE COURT: One of the parties, and I forget now, it might have been Sun, essentially argued that audited statements, or more complete information, really isn't needed, because at the end of the day you're going to get the companies, whatever they are. And you get them today per the settlement or you get them at the end of two or three years with a judgment; but, whatever they are, that's what you're getting. And knowing what you're getting, may or may not make you feel better, but it's not going to change the reality that it is what it is.

MR. SINGER: We heard them say that. We don't agree, Your Honor, for several reasons.

First of all, if the value is low, rather than high, it makes it even more significant that, before you get at that residual equity, you have these millions of dollars going to the Sun Capital defendants, you have the indemnification obligations. So it changes the equation of whether the receivers will likely receive anything, as opposed to continuing with the litigation, not having that, and trying to perhaps get some interim relief to preserve what's left of these entities for the investors.

The second reason we don't agree is because it ignores the issue of personal liability against the

Sun Capital principals. We haven't seen anywhere, in any of these papers, any analysis that the receiver has done, any information they've checked into the assets of these defendants. Information in here shows there's substantial millions of dollars of related party transactions. Those are all being released. They are not only being released, but any liability is being indemnified over, and the . . . if the settlement is approved, the new entity is responsible for protecting the Sun Capital defendants from that.

So, for both of those reasons, it matters a great deal whether this was a company which -- let's say, hypothetically, if it had $500 million of value, our clients would feel a lot differently about a settlement which terminates the litigation even at the cost of providing some of these benefits to the defendants. But when this is the value that we're looking at, our investors can't approve it. Because we don't think we'll get anything.

And we explained that on Tabs 4 and 5, which are not confidential. That is information which is in the public part of the record. What we've sought to do -- and this partly answers the Court's question about what will be the likely value of the indemnification. We really don't know, but there is a way of estimating that. These are the interests, under the settlement, that would be senior to the investors' equity on Tab 4.

You have $3.6 million plus -- in consulting, plus a payment to Mr. Baronoff which they've deemed to be confidential, so I haven't included the amount here, but I believe it has been provided to the Court. There are secured notes to the Sun principals, spouses, that's almost $6 million, that comes ahead of the investors. There's a working capital line of credit that's estimated to be in the range of 40 to $50 million. That will be ahead of the investors, and will be subject to being managed by the same people who have been operating the existing entities at a loss. There's a forgiveness of shareholder loans. Payment of expenses. Including an amount we still don't know for the steering committee and the Sun principals.

But, most significantly, you have the indemnification of the Sun principals. If one just looks at the claims outstanding now for investors, which is a suit in Texas, a suit by the Archdiocese, those claims, on their face, are for a loss of over $100,000,000, in fact $105,000,000.

The indemnification -- and this is to answer the question that you asked Sun Capital's counsel, how does this differ from what you have right now? There's a couple of important differences. One of them is that, as a matter of law, it's my understanding you can't indemnify someone who is an officer for intentionally wrongful conduct like fraud.

For the existing claims, we read the settlement agreement's indemnification as having no exceptions whatsoever. So that if these people opt out, proceed on these lawsuits with a fraud judgment against Sun Capital principals, that would be subject to indemnification and being paid from assets that otherwise would be there for the settlement investors. That wouldn't happen under the existing indemnification. And second, they're ignoring the possibility of interim relief, that the receiver here doesn't need to sit by and let the remaining value of assets in this condition be used to fund the defendant's obligations. It can at least seek to get a receiver; seek, if necessary, to take this into reorganization, or, if necessary, a bankruptcy proceedings.

Tab 5 is a chart which seeks to illustrate why our investors are so concerned at this situation. If we accept the midpoint of the value of Promise of around 150, $160 million -- and I must say this valuation was before anyone had the audited financials that came last week, and which shows the picture that we showed Your Honor at Tab 3. But if you even accept that $160 million, the right-hand part of the graph shows how all of that could be eaten up before you even get to any money for the investors.

When you start with the consulting and employment agreement, the secured notes, the working capital, their

loan forgiveness, and then if you just add in the amount for the current claims of indemnification, there would be nothing left.

But the indemnification obligations here go beyond that. Not only are current claims indemnified, but any future claims, although those are more limited, they exclude intentionally wrongful conduct, but any future claims by people who opt out, but haven't brought a suit already, would also be in the indemnification column.

So our clients look at this and say where is the money? That's where you have the extraordinary situation of 118 investors who would like a fair settlement but can't do go along with this one.

THE COURT: And tell me where your clients see the money if this is rejected.

MR. SINGER: If the receiver then takes aggressive action to get a receiver over Sun Capital, Sun Capital has security interest with Promise, and you get your trustee or receiver in place to preserve the remaining value of those assets that go directly, then, for the benefit of the lender, and thus the investors without, in the middle, between those two, having millions of dollars of payments to the Sun Capital principals, without an indemnification obligation, and without a release that releases these defendants from any potential additional liability. So

that's why we see that as a better option if that's the binary choice.

THE COURT: So what is your client's estimate of the probability that the receiver is going to prevail at a trial?

MR. SINGER: We think it should be high. We think that, first of all, no interest has been paid for years. The loans mature next year. There's simply no defense to not paying that. The defendants' argument is for a verbal approval by someone who the receiver has really suggested has been engaged in fraud along with the Sun Capital parties. The related party transaction issues, we think, are very strong. So we think the receiver has a strong case. We think the investors have a strong case. In fact, if you look --

THE COURT: Do you think, at the end of the day, after the judgment is obtained, and the receiver goes to execute on it, there's going to be anything left?

MR. SINGER: If no interim relief is obtained, there may not be anything left at that point. But we don't think that's likely how this is going to play out because, given the rate at which these entities, we think, are losing money, we think that it will either wind up in a court-appointed receiver to preserve those assets, or, at some point, a bankruptcy, or reorganization, where you have

a trustee to also preserve those assets for the benefit of the investors and the secured lender. We don't see it as playing out for years and years as they continue to be run down in this fashion.

THE COURT: Do you see that happening before this case is over? A bankruptcy, of course, would stay this proceeding.

MR. SINGER: I think that would likely happen before this case is over, that, given, particularly, the information we've just seen regarding how these companies are doing and we don't even have a cash flow analysis.

One of the facts, which is at Tab 13, if I could jump ahead to that --

THE COURT: Well, before you do that, basically what you're saying is your clients are content to have this go into bankruptcy and deal with it there.

MR. SINGER: It would be preferable to this settlement. It's a tough choice, but better than what we're faced with here. I mean, Tab 13 shows, as just one example -- and this is just information on March 23rd -- of a particular type of delinquency that gives us the highest degree of concern, because if obligations of this character are not being paid, it suggests there really isn't any cash here to operate this company, and things are worse than even contemplated.

THE COURT: And 13 is a confidential document?

MR. SINGER: Yes; because it comes from the audit, and all of that has been designated as confidential.

THE COURT: Thank you.

MR. SINGER: But there is something that isn't confidential, and it's the slides at Tabs 6, 7, 8, and 9; and would I like to briefly touch on those, because those are statements taken from the receiver's own proposed amended complaint, the complaint which he says, if there is no settlement, he will file as an independent action, he has a tolling agreement that he will pursue; and in fact the receiver says in his papers, and I quote, we still strongly -- the receiver still strongly believes in his position.

And what exactly was that position? As we see on Tab 6, they allege that the Sun Capital parties provided monthly financial reports that were false and fraudulent. That they masked the fact that these Sun Capital entities were insolvent. That the aging reports provided by the Sun principals to Stable-Value were fraudulent and misleading.

At Tab 7, that the officer certificates executed by Mr. Koslow and delivered to Stable-Value had false representations. That the Sun Capital principals continue to borrow millions more that they knew could not be repaid, and to simply sustain other businesses with the funds here.

If you turn to Tab 8, that the Sun Capital principals caused Sun Capital to purposely engage in transactions designed to result in losses, and to engage in fraudulent transfers solely for the benefit of the Sun principals.

This isn't us saying it, this is what the receiver said in a pleading, subject to Rule 11, in which he says he's prepared to litigate. And what we can't comprehend about this settlement is how you could then turn around and propose a settlement where, the very individuals that you have said have engaged in fraud, you are going to keep one of them as the CEO of the entities, and you're going to have other two as consultants. That's just totally unacceptable to our clients.

THE COURT: But if there was more money, it would be acceptable?

MR. SINGER: Frankly, I think that one would be hard to swallow unless there was such a huge amount of money there that our clients felt they would be secure. But it's hard, given anything here, with these values, to see that that could be acceptable. That seems to be just such an egregious provision, that you have individuals -- even if you separate out the fraud allegations for a moment, you have the type of financial performance that is reflected on these financials, and to say you're going to have them keep

running the business? But then you add in, on top of that, allegations that they have been actively engaged in fraud, and you say you are going to let those individuals run the business? That is a major, major issue.

Your Honor, there's also additional concerns raised with respect to the audit, and those are in a number of confidential slides, which are 10, 11, 12, 13; and they reflected the concerns that the auditors have raised in it's filing just March 23rd, something that may have been predicted by the receiver, or understood by Sun Capital, but certainly this is when it's been issued, that raise doubts as to why, or as to how this settlement is ever going to result in any value for our clients, or anyone who would approve them.

The Tab at 11 shows the increase in owners deficiency, or losses that have accumulated. Tab 10 provides the overall opinion of the auditing firm with respect to the company. Tab 12 talks about increases in losses at Promise Healthcare during the period that was being audited. Which are substantial.

THE COURT: So what is the import that you take from these last exhibits?

MR. SINGER: That this settlement is even less likely to ultimately provide value to the investors if it's approved, and that there would be a compelling case for

interim relief if the settlement doesn't go forward, and the receiver is in a litigation mode, and needs to seek that relief in order to protect a dwindling asset. So we take away those two things here. That this even raises the concerns that were had before this was provided last week.

THE COURT: Your suggestion is the receiver ask the Court to appoint a receiver?

MR. SINGER: We think that would be appropriate. Over Sun Capital. And then Sun Capital has control over, because they're related entities, Promise and Success. And let's preserve what's there without an indemnification provision, without releasing personal liability for the Sun Capital principals, without entering a new employment contract and a consulting contract, and that person can then, whether it's selling it off for whatever value we can receive now, or managing it, or taking it into a reorganization if necessary, but doing something that simply doesn't allow for another -- the loss of the remaining value through continued operations by the same individuals who have led it to its current condition and, according to the investor, done so while engaging in fraud.

THE COURT: Would there be anything under the settlement agreement that would preclude your clients from not agreeing to it, and then suing the Sun defendants, and yourself requesting the same relief you want the receiver to

request?

MR. SINGER: Yes. I think, if this was approved, the assets would be gone, because the loans would be forgiven under the settlement agreement. So the strong legal basis to get those assets would be released as part of the settlement. And that's why it's important that this not just be, say, well, let's say what the shareholders do, I'll approve it and see what happens, and then, if it's approved, the opt outs can file their suits.

We have the indemnification, for what that's worth, but what you've lost then is the ability to go in there now and get protection over these assets so that a 40 or $50 million working capital line, for example, is not being run by an individual -- and, admittedly, there's a board, but that's the CEO, and that's the same CEO who the receiver has accused of fraud. We don't want that to happen. Because that may be all that's there, is 40 or $50 million worth of value. We don't want another 6 million going out to pay Sun Capital principals.

We don't think there should be the repayment of investor committee expenses, that the investors who have been working with them should may their own way, like our clients are paying their own way, and that that shouldn't come out of the pot. And we don't even know how much has been paid in that. And we believe that they have even been

paid by Promise to date. So, to the extent those investors have received those payments, there's an issue there whether they should be repaid, and these related party transactions should be repaid.

Which is, in fact, if the Court will bear with me a little bit longer, on Tabs 14 and succeeding tabs, also confidential information from a disclosure statement that the parties provided, that indicates the cumulative total compensation of the shareholders, the Sun Capital principals and related persons, then you have the total related-party loans.

Now, most of those loans went to settlement entities, but a substantial amount of those loans went to other businesses that the Sun Capital individuals were involved in, and therefore is not -- is just being released. It's an amount which may be pursued with success if the receiver went after fraudulent conveyances.

And, as I mentioned before, we have no idea, we haven't been shown anything that the receiver has sought financial statements from the individuals, and knows what he's giving up, and he's releasing these principals from potential liability.

There's expenses. And you can see the total is a very large figure on Tab 14. That is then supported by some of the following charts. On Tab 15, you have a photocopy,

really, of the disclosure statement, Exhibit 2, which breaks down the shareholders' compensation payments and other persons' compensation. These are the related-party transactions.

And you can see, here, the amount paid to the shareholders in the first part, and what that totals to, in this business that's losing this degree of money. You can see, in the second part, payments to individuals who are related to those shareholders, and the amount that that adds up to.

Then you have related third-party service providers that are related to the principals, and you see what amount that adds up to. And then there's some miscellaneous amounts. And, at the very bottom, you have the total of the cumulative total compensation to the Sun Capital principals.

That is the related-party claim that an insolvent business, the receiver, absent this settlement, can and should be pursuing. And let's see where all that money went, and let's see how much can be recaptured. We can't just accept, on faith, that there's nothing there outside of the Sun Capital assets, the entity assets, to make good on any of these payments.

As I noted at Tab 16, in addition to those outright payments, there's substantial related-party

transactions which would be forgiven in the sense that those couldn't be pursued after this settlement, which include loans and . . . . Just to take one substantial one on Tab 15 is to look at the very top item, Your Honor. This is actually Tab 17. It's the very first bullet point. This is a loan balance where money was loaned on a transaction that is unrelated to the business of these hospitals as far as we understand. That loan was written off. It's a significant figure, as the Court can see.

That's something that could be pursued. That's a claim that we're having to release on the basis of no information as to whether or not it could be recovered in litigation against these individuals.

You then have Tab 18, which are expense items. And while this number is smaller than the number on some of the prior charts, it's still a significant number. On Tab 19 -- and Tab 19 has the third-party advisory fees, which include unpaid fees to advisors. And we still don't have information about steering committee fee disclosures or what amount would be reimbursed to Sun related parties under the settlement agreement.

Your Honor, I'd like to conclude by analogizing this to a much simpler situation, which Tabs 20 and 21 do. If, like many, unfortunately far too many, Americans, there was a foreclosure on a house, and you tried to settle it,

what you would do is you would likely have a situation where the lender would seek to get the house back without paying the debtors anything else. You certainly wouldn't pay the debtor. You certainly wouldn't indemnify the debtor for anything. The lenders would have control of what happened with any further financing, such as any home repairs; and you wouldn't rely on the old owners to control that money.

But if you compare that -- and we do that at Tab 21 -- to how different this settlement is, you basically are paying the debtors to live in the house, because you're paying them more money to continue running this business that they've either, in the best case, run unprofitably, and in the worst case, the case that the receiver says is accurate, committed fraud, they are indemnified for any damage they will have done to the house, they will get a home equity loan, in the form of this 40 to $50 million working capital loan to repair the house, and trust them to spend it wisely.

As I started with saying, we don't lightly come here and say reject the settlement. We are even hopeful that, with this Court's instruction that they meet with us, and that this be revisited, that in the period of 60 days, maybe there's interest in coming up with something that is fair. But if it's just faced with the choice between approving this as written or not approving it, we must ask

the Court to reject it.

THE COURT: Do you dispute the standard the Court is to apply in deciding whether to approve the settlement that was discussed?

MR. SINGER: No. I think the legal standard is recognized to be a fairness standard here.

THE COURT: Same as a class action?

MR. SINGER: We don't think there's a substantial difference in the legal standard. That's not where we disagree.

THE COURT: All right. Thank you.

Do you have another copy of what -- your notebook?

MR. SINGER: Yes.

THE COURT: I have written on mine, and I would like to have one sealed for the record, for whatever review purposes are appropriate.

MR. SINGER: Certainly.

THE COURT: Mr. Reasonover?

MR. REASONOVER: Yes, Judge. Good morning, Your Honor.

THE COURT: Good morning.

MR. REASONOVER: I apologize, I have added to the Court's already heavily burdened paperwork yesterday. We had enrolled as counsel in the receivership action in April of 2010. As counsel pro hoc vice, we realized yesterday

that I had not moved to apply for pro hoc admission in the ancillary proceeding. I have filed my motion, and request the Court's permission to proceed.

THE COURT: You mean I can stop you from talking by denying the request?

MR. REASONOVER: Yes, Judge, you can.

THE COURT: Go ahead.

MR. REASONOVER: Thank you, Your Honor.

Judge, I'd echo, you know, the concerns that were expressed by Mr. Singer, certainly shared by the Archdiocese. I would also like to clear up, you know, words that were attributed to the Archdiocese that are not its own.

The Archdiocese certainly is not taking the position that it would not want to participate in a reasonable settlement. We would certainly join in any effort to get the case resolved. We would work with all counsel in the room to do our level best to get it done. The observations that we've made in the motion -- in the objection, I think, though, would cause the Archdiocese to be in a position where it would, with respect, decline to participate in the settlement, because the settlement embodies problems that, from the perspective of the Archdiocese, are insurmountable.

As Mr. Singer noted, there is a compulsory nature

to the settlement that, for those who participate in the settlement, they would forego direct claims, which are not the property of the receiver, not something that he has the power to compromise, the authority to compromise. He just doesn't own them.

The Archdiocese was one of the last investors into the investment. An in-person presentation was made to representatives of the Archdiocese by Sun Capital. The presence of inaccurate statements in the presentation to the representatives of the Archdiocese, combined with the out of . . . the highly unusual transactions involved in the case, would support, under Louisiana law, a claim that the Sun Capital principals and the -- Mr. Gunlicks participated in a conspiracy.

There's also direct claims that the Archdiocese has asserted against the owners of Sun Capital, individually, for their involvement in offering the securities, materially aiding in violations of our state securities laws.

Sun Capital has raised the suggestion that, you know, they're offering materials that say that, essentially, anything can be done with the money. You know, I think the Court would recognize that there are anti-waiver provisions in the state and federal anti-securities laws that just don't get somebody around the obligation to explain

accurately what an investment is at the time it is made.

The concerns that the Archdiocese has raised with respect to the language of the release, I think, are significant because, as we read the release, it states that we would be agreeing to accept known return for agreeing not to cooperate with the efforts by law enforcement in a pending proceeding that, as we understand it, involves the issuance of a grand jury subpoena by state law enforcement. That is something that is simply not for sale. We have not solicited that, have not agreed to participate in it, won't agree to participate in something like that in any way.

The final problem that was raised in the objection is that the proposed settlement imposes a choice: Either give up any ability to participate in the proceeds of your investment because you will have waived -- the Archdiocese will have waived its right to participate in the proceeds of the loans, which represent the overwhelming bulk of the assets of the receivership, and pursue the individual claim; or, if you participate -- I'm sorry. And accept an ownership interest in hospitals. It imposes on the Archdiocese an obligation to accept an investment if it wishes to participate in the receivership that does not fit the Archdiocese's investment criteria.

The Archdiocese went to considerable effort, by sending representatives, including its investment

consultant, for on-site due diligence to address those very concerns. It's not surprising, in the context of the claims that we've already made, that there are misrepresentations alleged in connection with the claim, and the lack of understanding that the investment activities might not fit within the Archdiocese's investment criteria is something that I think we . . . is beside the point of having a court basically impose a choice to give up assets or accept an investment -- an equity investment that the church would not accept.

THE COURT: I'm afraid you've lost me. With regard to the last point. Let me try it this way. The settlement agreement doesn't compel you to participate. Doesn't compel the Archdiocese to participate. And the Archdiocese has the option of not joining the others in the settlement agreement, and continue to pursue the litigation that you have. Unimpeded, I think, by those that settle. Why with that option present, what's the problem?

MR. REASONOVER: The problem is, Judge, that, by pursuing that option, the Archdiocese would lose the ability to recover the proceeds of its investment from the receivership. In other words, all . . . everything that's coming back to the receiver through Sun Capital, Promise, Success, for investors who opt out, they're losing access to the proceeds of their investment. And that choice of saying

look, if we have . . . if we have an investment, the receiver can settle the receiver's own claims without imposing on investors the obligation to settle direct claims, or . . . without imposing on investors the goal to settle direct claims and the right to participate in the proceeds of the Archdiocese's own investment money shouldn't be waived by imposing an agreement to accept an investment that the church couldn't take.

THE COURT: How is it different than the situation where multiple parties are pursuing a single defendant in multiple lawsuits, and the claims are such that you know not everyone is going to be able to get their money back, and it may just be the first one through the system, and it may be tough, but that's the way it is?

MR. REASONOVER: Judge, there are certainly circumstances that could create that situation, where the -- you know, the receivership process, you know, involves avoiding that, involves avoiding the race to the courthouse. The Archdiocese consent to the stay of the pending state court proceeding so that this orderly process of liquidation could proceed.

You know, it is our hope that the claims -- all claims can be resolved in a way that any rational party would want to see getting litigation resolved; but the investment is one that the church cannot accept.

THE COURT: So, essentially, your position is similar to Mr. Singer's in that, if you get what your client believes to be a better deal, you're all in favor of it; and as it is now, it is not a good enough deal.

MR. REASONOVER: Judge, I think it's simply -- it's not that that misstates concerns that the Archdiocese is raising by suggesting -- you know -- that it's just a matter of getting more money, which it certainly is not.

THE COURT: That's exactly what I'm suggesting.

MR. REASONOVER: It's a matter of structure. To say the church is not soliciting and agreeing to say, if we have initiated a complaint to law enforcement because we believe a crime has occurred, that if law enforcement calls and asks a question, that we would take money not to cooperate. That's not for sale. The structure of an agreement that requires an acceptance in -- and equity participation in an investment that the guidelines -- investment guidelines set out by the church would not permit is something that, structurally, I think, could be addressed without saying it's simply a matter of money.

THE COURT: But isn't that the Archdiocese's problem? I mean, you invested -- or it invested in this organization. If the organization made misrepresentations to the type of business it does as a hospital, and that, in fact, it is against the principles that the Archdiocese

believes in, I can see where that's a problem. I'm not sure that's the receiver's problem.

MR. REASONOVER: I think we've got two issues there. First, the suggestion that the appreciation of what was involved was something that the Archdiocese fully appreciated at the outset, that it's a position that the Archdiocese has placed itself in. And the second one is the question that there's an exercise of line drawing.

THE COURT: Of what?

MR. REASONOVER: Line drawing. What is a permissible investment, what is not a permissible investment. In the context of the current motion to compromise puts the Court in the untenable position of trying to draw that line as to whether or not the equity participation is different -- materially different from a prior investment that the Archdiocese made that I think would -- is not a position the courts have accepted in the context of this type of a decision when the Court would be asked to compel a church to make the decision of giving up assets or accepting an investment. And that's what this motion asks.

THE COURT: Sometimes clients have to make tough choices.

MR. REASONOVER: Yes, Judge. Thank you.

THE COURT: All right.

MR. ETRA: May I be heard, Your Honor?

THE COURT: Hang on a second.

I'm sorry, I'm not sure if I asked you if you had any disagreement with the standard of the Court's review of what the others have told me.

MR. REASONOVER: We do not, Your Honor.

THE COURT: Thank you.

MR. ETRA: May I, Your Honor?

THE COURT: You may.

MR. ETRA: May I approach the bench?

THE COURT: If you have a reason.

MR. ETRA: I do.

THE COURT: Sure.

MR. ETRA: Your Honor, what I have handed up is a summary sheet of two groups: The investors who had joined Mr. Singer's group, as well as the Archdiocese, as the objectors; and another group that's the consenting, or releasing investors. And you see Mr. Singer's group is approximately a 33 percent, a little more than that, range; and the number of investors who are for this, who have at least spoken up as a majority or plurality, is 48 percent.

And the disjunct between what Mr. Singer is saying and what I am saying is explainable. First of all, we're doing invested capital, cash in cash out, and they're doing the book value. But that's an apples and oranges issue.

But that's not the main issue.

The main issue when they submitted their opposition -- when we submitted our motion, we only had so many investors sitting around the table with us who got us consents in time to file the papers. We knew there were more. That's what they looked at, and they compared that to their group. Over time, we've gotten more consents, and more releases.

Your Honor, this is not a popularity contest or a majority vote, because I would be making this argument if they had five percent or 95 percent. But when you consider the fact that all Mr. Singer is saying is I want more, and the investors are calling up other investors saying don't you want more, and a majority are saying I'm going to resist the siren's call of war because I have to make hard choices. I think is very significant, Your Honor. It's very easy to join that group. It's harder to say I have looked at this, I have to make hard choices, to use Your Honor's words.

Your Honor, I have not studied this book, but I will tell you something: There is an air of unreality to arguments made by Mr. Singer. One of the things he says is let's put a receiver in charge of the hospitals. As Your Honor recalls -- and I wasn't in the case at the time -- that was tried and it failed. The initial receiver, Miss Blanco, moved to expand the receivership over the Sun

entities. Your Honor denied the motion.

Separately, and it's only a related issue, initially the Sun entities were relief defendants. They moved to dismiss. The SEC opposed it. Your Honor granted the motion. Your Honor made admitted preliminary findings of fact. We are litigating something like that right now in the preliminary injunction.

So it's easy to say, oh, I know the answer to this isn't more litigation, it's appoint a receiver. That's more litigation, Your Honor. It's failed. Although, if we're back in litigation, I'll make my argument, no question about it. But all he's saying is put it back in litigation. And that's where we are. So to say that's an interim relief, we have been fighting interim relief for two years. Or a year or so.

If you appoint a receiver, or whether you expand the receivership to include the current receiver and another receiver. Now it's great. Now we've got professional fees going out the wazoo. I haven't heard, in all the time that we've -- since the time we've seen the term sheet, anyone present a viable alternative. We have all sat here, and we haven't heard a viable alternative.

Everyone is coming in and saying I could do better. Teddy Roosevelt said it is not the critic who counts. We sat there and, for two years, we've had

professionals do the due diligence, Mr. Chadwick and his group. We have all of Wall Street here, and they have done their best, and they have told Your Honor we can't get more water from this rock. And we can't, Your Honor. We've really, really, really, really tried. You can see how long this has gone on for.

And he's not saying he can. He's saying, well, maybe, if I get involved, we can. Maybe if we do a little bit more litigation, who knows? It may be better. That's not a realistic alternative solution, and if we walk out without solution, it's not going to be a good day.

The other air of unrealistic quality of Mr. Singer's submission is this doesn't talk about valuation. So you've got a lawyer, and you've got a lawyer. And I don't want to put down my profession, but we're not business people. Anyone could take -- but what we can do is take any audited financial statements and point to this, and point to that, and make arguments, because that's what our clients ask to us do, and we do it in good faith because someone says it makes sense to do it.

He just said there's no value. He's ignoring the value. We have a valuation from MTS, our partners. Your Honor, we got one early. We've received another valuation. We got it, unfortunately, only yesterday. Under our system, we've given notice to people. At least one of Mr. Singer's

client have provided the requisite form, so I assume Mr. Singer has that valuation. It's recent, it's up to date.

We are under very strict guidelines as to what we can say and do under the MTS agreement we have with them. And, to be clear, unless I'm going to write checks I don't have, if Your Honor will let me write checks the receiver doesn't have, I couldn't pay for a full-fledged M & A, a Wachtell-Lipton transaction where I have reliance opinion. I don't have reliance opinion. I have a lot of limitations. But I have a lot of numbers that range from under a hundred to in the two hundreds.

So this doesn't mean anything. It just means a lawyer has gone through this. And I'll go through it because I'm lawyer too, and I can do what Mr. Singer does, ignoring the reality of what happens -- that's not a personal attack on Mr. Singer. I'm focusing on his argument.

So Tab 2, comparison of unaudited and audited net income for Success. Okay. We are not focusing on Success, Your Honor. That's not the focus.

I thought, Your Honor, going through -- oh, here is Promise. Tab 3 for Promise. So they show this negative income for Promise, unaudited, for 2010, not this year, and much worse negative income before then.

Your Honor, there's EBITDA, and there's the below the line. And there is a lot of details here. And that's what professionals do. This doesn't mean anything.

Your Honor, may I approach the bench and submit something?

THE COURT: You may.

MR. ETRA: And I'd ask that this be treated as -- the list of investors is a matter of public record, it's been redacted; but I'd request that this all be put under seal.

THE COURT: I'm sorry, you confused me as to what you want under seal.

MR. ETRA: I apologize. I'm doing too many things at once. What I have submitted to you just now, I ask that that one be put under seal. The first thing I provided doesn't need to be.

THE COURT: Okay.

Any objection, from any party, to placing under seal the third piece of paper given to me?

MR. REASONOVER: No, Judge.

MR. SINGER: No, Your Honor.

THE COURT: All right. From Sun?

MS. GOLD: No, Your Honor.

THE COURT: All right.

MR. ETRA: Your Honor, for valuation purposes, you

look at EBITDA. You look at above the line. And if you follow this form . . . if you follow this form, Your Honor, the first category is internal management financials. And there's a number there. And I don't want to state it out loud. It's under seal. And the next column are the adjustments. Okay? That's the white column. I'm sorry, I have black and white. The third column is the audit result.

So there was an adjustment of a certain amount of net income, and there is a final result. And that's the number -- it's a positive number for Promise that the auditors came up with. And if you go to -- further to the right, under the normalized column, you see another number. And that's what we're suggesting, Your Honor, is the true number for purposes of valuation.

And now I need to talk about the audit, and what it means and what it doesn't mean. And then, below that, there's issues about expenses as well.

Okay. EBITDA, income above the line. There's a lot of adjustments in the audit. An audit is not a valuation. A valuation is a valuation. It's a piece of the puzzle. It has its own purpose.

So, of all the audited, of all the adjustments, a huge amount, or a large amount, tens of millions of dollars, was due to something called imputed interest. And what does that mean? I'm going to explain it, Your Honor, if Your

Honor will allow me to.

It's an issue in this case that we're litigating that, when Founding Partners gave money to Sun under the loan agreement, Sun would factor it. Sun factored Promise and Success, but they over financed. So they ended up lending a substantial amount. We each have our litigation positions on whether that was equity or debt, and whether it was authorized or not authorized, and hopefully we won't be litigating that forever in front of Your Honor. On the books and records, they treat it as equity. Part of it they treat as a low-interest loan, part of it they treat as equity.

The auditors came in and said, look, auditors coming in are -- imagine, auditors coming into this cauldron of litigation. We're going to be super, super conservative. And god bless the auditors, that's what they're supposed to do. And they said, Judge, we're going to treat this as a loan, and we're going to have to add interest we never added before.

So now you've got this big interest number. You know what that means in terms of valuation? Absolutely nothing. Because it's a debt from Promise to Sun. Under this deal we put them together, we go in the FP Designee, it's a paper transaction. It's one of the reasons we don't do this type of work. Instead, we work on valuations.

There's another component in the adjustment. There's a write down of accounts receivables. I'm surprised that wasn't mentioned, because I think that would have been more specific, and a little bit more interesting to talk about. Some of the accounts receivables were written down.

Now, they could say, oh, that's a big problem. This means that you're not really making that money. That's not your income. There's a simple answer, Your Honor. The auditors focused on their auditing rules of revenue recognition. They were looking at management financials from 2010, which were completed in early '11. The audit wasn't completed until a year later, 2012, just now.

They looked at this and they said sometimes auditors do different things with receivables. They said this time we're going to apply a principle which says if it's over 360 days old, over a year old, we're not going to recognize it as revenue. And when they do that, Judge, they're making their auditing determination for recognition of revenue. But they're not speaking, one way or the other, about whether it's collectible or not.

So, again, we think -- we're told that's collectible -- and, Your Honor, not only that, but they ignored the fact that money came in and was collected. So this is the difference between -- this is an explanation for what the audited financials show. And I believe, if you

take a step back from all this, Your Honor, this doesn't mean anything, because Mr. Singer is not saying there's no value. He doesn't know if there is value. And we have a valuation.

Your Honor, if I could turn to the Tab 4, all these expenses, employment and consulting . . . .

THE COURT: Tab 4 of his?

MR. ETRA: His Tab 4, Your Honor. I'm sorry.

THE COURT: Okay.

MR. ETRA: By the way, in the audited financial statements are also expenses that are not expected not to be recovered, so they don't affect valuation.

In Tab 4, all these expenses. Your Honor, there are expenses in running a business. There's a reality to dealing with that, and an air of unreality in not dealing with it. Item one, employment consultants were the Sun principals. Yes, it was part of a deal for some consulting agreements.

Mr. Baronoff -- part of what Mr. Singer says is he didn't like the idea of someone that the receiver accused of fraud still being there. Your Honor, this is not about whether you like the idea, it's about what makes sense for the benefit of the investors. There is continuity, and there's benefit. We analyzed it, and he's going to be under tight, tight control, under court supervision ultimately, by

the receiver and by investors. So to say that it's run by the same company, same people, is just disingenuous.

The other two principals will not be there. We'll put a strong CFO, we'll put in strong controls. We're trying to make decisions that are based on reality, that we don't have a choice, but we -- but to ignore.

Secured notes, that was part of the transaction. Working line of credit. I don't understand the objection to working line of credit. Your Honor, they have assets. They're hard assets. They can secure a note. They could probably get reasonably good terms. They need a line of credit. I don't understand what the substitute for it -- I don't see their clients offering to put in money to run these hospitals. And the alternative is to let it blow up. This is normal business considerations. And the receiver can say that based on his business acumen, on all the advice that he has received.

And I don't get an answer to the line of credit. I don't understand the criticism to the line of credit. Is it going to be senior? Of course it's going to be senior. We've got to get a bank in here, and it's got to be secured. That's how you run a business.

Forgiveness of loans of Sun principals? It's paper. The Sun owes -- they owe money to the -- the Sun principals owe money to the Sun entities. We're not going

to get it. It's gone.

Indemnification, Your Honor. To follow up on your discussion with Miss Gold, there are limits in Delaware law whatever the indemnification currently is; but in my view -- and I don't know if Miss Gold will agree with this -- this is a private company. Who decides whether a check is written? The current CFO.

The Court asked me to put a number on indemnity. I don't have it. But, whatever that number is, it's not going to change. Right now it's there, and we can't control it. We can't control anything they do. Or it gets transferred. It's a net effect of zero.

Payment of expenses. I don't understand, Your Honor. The term sheet, as in most deals, said that the Sun entities can pay -- that was part of the term sheet, and it's traditional. We paid for due diligence. Some of the due diligence was done by the receiver -- and Your Honor knows we came late to the game. A lot of it was done by Mr. Chadwick and his advisors. They worked around the clock.

And your Honor didn't want me to go through the due diligence, and that that's fine; but it was extensive, it was a lot of work. This it wasn't taken lightly. They should be paid. They were doing the job. I don't know why they don't get paid for doing the job. Anyone that came to

the table, did their due diligence, did their job, should get paid. If it was the receiver doing it, subject to your approval, we're supposed to get paid for our work as the receiver's advisors.

It so happened that someone else got involved, frankly took initiative, and pushed this thing. I don't know why they're punishing them for the work they did that's going to help everyone. That 48 percent recognizes and the others say we like it but we want a better deal.

I mean, the senior interest, the idea of the senior interest will swallow everything up, I think Your Honor asked the question, how does that change? Right now, they have the entities. Well, I guess the question is, if it's not worth a lot, how does it change?

We don't see where it changes anything. If it is not worth a lot, it's going to be worthless in the future. And we're playing with fire in this situation.

Your Honor, I apologize. I didn't get a chance to look at this binder.

We certainly have alleged fraud. The growing concern, though, in the early audit report and the current one too, note ten, of course it's a going concern. That's my point. If you are an auditor, you have to point out the cash flow problems, you have to point out that the vendors are having issues.

Another interesting point about the audit, Your Honor, they didn't even credit the company that, when it's financed, the vendor terms will get better. You know, we'll be able to attract more people. Things get better. There will be an improvement in operations. Because that's not what an audit report does.

Of course it's a going concern. If it wasn't, we'd say, Your Honor, we'll just sit back and keep litigating. Or I might say that, depending on the deal, obviously. The whole point is there's a going concern though.

A lot of deficits and all that? Yes. These guys, we don't like the way they run our business. We don't like what's happening. That's why we've tried to take over these companies since we got here. The previous receiver wanted receivership. That didn't work. We wanted to seize the lockboxes. That didn't work. Now we're doing this.

But the deficits are running up because they went -- I'm trying not to litigate with Miss Gold at this hearing. They spent a lot of money. They spent a lot of money, and they bought all this stuff. And it's going to crater. So we either accept reality and take it -- and that's what you get. You have an accumulation of deficits over time. This is why -- again, you can believe me, you can believe Mr. Singer, or Your Honor's experience in

dealing with financial matters, we've got a valuator that tells us that the fact that there is a lot of accumulated deficit doesn't really tell us anything, we know there is going to be an accumulation of deficit.

Same with -- there's a reference to a specific kind of liability, payroll tax liability. Again, Your Honor, Your Honor knows, when people run short on cash, they don't pay payroll. You know what happens is there is a liability, and eventually the IRS comes in and says I trump everyone, and we sit back, and the IRS takes over. That's my point.

And I don't understand how asking for a receivership, or a renegotiation, when we can't get more water out of this rock, is going to help if they're going to have more payroll tax liability, and the IRS is going to come in here, and they'll be the first one to argue next time we have a hearing.

There's a lot of related party transactions. We don't like it, Judge. We're trying to make tough decisions.

Your Honor, I'm just amazed by this -- by the bank. I mean, this isn't a house, Your Honor. It's a business that we have been trying to foreclose on. And we tried to get, since the prior receiver and we -- Mr. Newman, when he came in, he tried to seize the lockbox. We couldn't get it. I wish we had. It would be a very different story

if we had.

If we go back to litigation, we'll push hard, Your Honor, and I'll be arguing here, in front of Your Honor, why we should get control of the assets. But, Your Honor, I don't know that that's going to happen. I don't have the certainty, I don't have the confidence. And I can't tell the investors don't worry, sit back, and I'm going to win this case for you. You just ride on my coattails. I'm going to explain to the Judge that I'm right, and I'm going to win everything in front of that Judge. I don't know how I can make that guarantee. I can't.

And I also can't guarantee that, while we're doing this, and while it's on Mr. Newman's watch, and these objections go on, the state doesn't come in and shut down these hospitals.

Your Honor, some relatively minor issues. The 96 percent equity. They were saying it's not real because of the. It's actually a great feature that I didn't get into because I thought it might be too granular; but there's a debt in favor of Sun -- and essentially Sun becomes us in this deal. So the first 275 -- expenses have to be paid and all that. The first 275 million, before the four percent kicks in -- and someone tell me if I've got this wrong -- goes to the benefit of the investors. So we built that in.

Your Honor, I could go -- I can't go; but, if I'm

properly prepared, I can go granular on all the things that we wrestled with. Mr. Paparo is here. I mean, you know, around the clock, screaming, and yelling, and hanging up on each other. I think Mr. Paparo hung up on us a few sometimes. Then he called back, and we talked, because we had to get the job done.

May I have a moment, Your Honor?

THE COURT: You may.

(Mr. Etra confers with others at plaintiff's counsel table and with Ms. Gold.)

MR. ETRA: Your Honor, one last point. In the related-party transactions that are troubling to -- you know, to the investors, and, as receiver counsel, it's a big part of our case. I'm not going to put a number on it, but a lot of them went to Promise, Success, and the real estate.

And that's a big issue for us in this litigation. How could they do this? How could they take it and put in it their pocket? And I -- sorry, I don't want to get into the litigation, Ms. Gold. And, by the way, I don't agree with Ms. Gold on everything she said about the case, but we're not here to debate why we're going to lose this case in front of Your Honor. But all of that went to these hospitals we're trying to get back.

Thank you, Your Honor.

THE COURT: You're not done yet. I have a couple

questions for you.

MR. ETRA: Sorry.

THE COURT: Talk to me a little bit about Mr. Singer's suggestion that, if I did nothing for another 60 days, and let he and the Archdiocese counsel participate in further settlement agreements, that perhaps this could be worked out to the other investors' agreement.

MR. ETRA: I think the problem with that suggestion is that we've had, over almost two years, many 60-day periods, where people who've worked very hard, and I assure you are well motivated to get the best deal we can for the sake of the investors, have tried and done what they can; and the notion that some new people are going to swoop in and magically make this better, there's just no reason to think -- there's no reason to think it will get better, and there's reason to think that we're just going to lose time.

Your Honor, it's an awkward situation, because we have an investor's counsel involved, and that comes up; but it's helpful. We've had two people on our side of our table push, and pull, and cajole, and do everything that we could legally to get more. We want to get this closed. We want to get a secure line of credit in. We want to keep these hospitals done.

So the short answer to your question is there is no reason to think there is an upside, and every reason to

think there is a downside.

THE COURT: What impact should the Court give to your numbers public documents with regard to, in your view, 48 percent and change consent, and 34 percent and change don't consent? That's a fairly close . . . .

MR. ETRA: Your Honor, that is fairly close. And I think it could be five percent and 95 percent, and if the Court thinks it's the right deal -- and I do think it happens sometimes, that settlement agreements are approved, and there is a huge number -- I think it doesn't matter who has more people if it's the right deal.

And the other answer is that, like I said earlier, you know what? If I was an investor, and I wasn't necessarily well advised by -- because this is not really my area. I'm a litigator. I do what I can when I need to. I might have joined those guys, because I would have gotten a call from some very well meaning -- and I just want to be clear.

The objectors are people that I have had many, many conversations with, I have a great deal of respect for, they are very good people, and they're operating in good faith. I want to be clear on that. And the receiver thinks that, as well.

I would say you're right, we should do better. Because, in the unreality of that phone call, and that

meeting, and sitting in a litigator's office, with a fine litigator, and a fine firm, sure, why not? It doesn't mean that they're prepared to go -- to litigate. And I think the Court needs to make, most respectfully, the hard decision here to approve, which I don't really think is that hard given the circumstances.

THE COURT: And finally, there was another set of objections filed, by TJNJH Investment Partnership and Kathleen Ann Olberts?

MR. ETRA: Your Honor, they haven't shown up, and the way -- what we believe what their objection is, is essentially a very preemptive objection in the claims process. Their position is that they're investors in a different fund, called the hybrid fund, and some of the hybrid fund money went into Stable-Value and some went into other investments, purportedly as a hedge fund. But they are what they are. And they have a view as to how they should be treated in the claims process. Frankly, it's premature.

I do think, though, that some or all of them joined -- they didn't object to the deal, but I do think some or all of them are in Mr. Singer's group, and we credited whoever he listed.

THE COURT: All right. Thank you.

MR. ETRA: I have been handed a note about the --

the patient safety issues, as well, that are at play here. Thank you, Your Honor.

THE COURT: All right.

Ms. Gold anything further from you?

MS. GOLD: Nothing further, Your Honor.

THE COURT: Mr. Singer, anything further from you?

MR. SINGER: Yes. If I might.

The issue with respect to how many dollars and how many investors are in each column is, first of all, a little bit beside the point, because the consents and investment approvals they have received are before, for example, these financial audits which Your Honor has been taking a look at. It's also very easy for someone to --

THE COURT: I'm sorry. You're suggesting that the consents will change after the information is known?

MR. SINGER: I think that may well happen with certain individuals. It's also not clear to us how many of these investors who approve are accepting on face value the statement that, well, we're getting 96 percent of the value out of these entities without recognizing that you're getting 96 percent subject to indemnification, subject to working capital priorities, subject to payments to Sun Capital principals, forgiveness of loans, and so forth.

In addition, under the agreement, you don't only need, I think it's two thirds of the dollar value, you need

a majority of the number of investors, and they haven't even said how many investors are improving.

THE COURT: I'm sorry, say that again, please?

MR. SINGER: Yes. We have 118 investors who clearly have objected. It's not clear how many investors, by number, they are purporting to have obtained consents from. Mr. Etra says that, well, we tried to expand the receivership over the Sun entities.

My understanding is that was at the very beginning of the case, as more of a matter of saying that they're related, rather than what I'm talking about, which is the type of receivership that is entered into every day in courts, where a borrower is wasting an asset that's subject to a security interest, and courts impose receivers to protect the further dissipation of that asset. There is nothing that I have seen to indicate that that type of motion was made.

Furthermore, with respect to the TRO that this Court put in place, the Court made very clear that, under the rules, it would entertain a motion to convert that to a preliminary injunction or dissipate that. And that's just been hanging out there. So it's not clear how that would turn out.

We have had two years of effort to try to reach settlement. It seems extraordinary that they would suggest

that to provide 60 days, with very definitive objections to the structure, having these managers continue to manage, the indemnification provisions, the information on the audit that was just received last week, their updated valuation -- which we don't even have, which they just got yesterday -- the cash flow information that they haven't updated since March, 2011, that somehow this should be rushed through without this defined period to see if this is, in fact, possible to resolve those issues.

THE COURT: You know, only lawyers can, with a straight face, say a two-year process is rushing through something.

MR. SINGER: Well, what I'm saying is rushing through it despite the two years. You're now being asked to give approval, when you've just had audited financials for 2010 one week ago, where he has an updated valuation that we haven't seen, where a cash flow hasn't been provided, and, more importantly, where you have issues regarding individuals who have been alleged by the receiver to engage in fraud control the entity post settlement.

THE COURT: Well, what, in your view, is a deal breaker, in terms of if you get involved, you have 60 days, you say all right, what's got to go?

MR. SINGER: I think Mr. Baronoff as CEO. There should be an independent CEO who is running the company, who

hasn't . . . as I said before, at best case, run these companies at a huge loss, and in a worst case, and the case that the receiver said is correct, engaged in fraud. That's starters.

The second is an indemnification provision so that you do not have coming ahead of the investors' return on its investment this huge open-ended indemnification liability. That needs to be restructured.

And third, I think something needs to be done regarding the related-party transactions.

And those are the three big items which, if the Court tells the other side -- or tells both parties that these are serious concerns and, you know, with 118 investors out there objecting, with these type of issues that have merit, they need to revisit these issues, that you're not just going to rubber stamp this. Because I think that this is a . . . the fact that two years has elapsed to get to this point doesn't mean that anything that they propose, which has these type of fundamental problems, should pass the muster of fairness at this juncture.

And we're prepared to work with them. We're prepared to work with them quickly. But that process should occur. If, at the end of that process of 60 days, they aren't willing to budge, then we would be back here and saying, Your Honor, these are simply unacceptable

provisions, reject them, and let's resume with the litigation, and let's see if there's an argument for putting a receiver in place to protect these assets without having to incur an indemnification obligation for everything that they have done.

I mean, that is an extraordinary provision that someone is to be indemnified for fraudulent conduct; to be indemnified, as the Archdiocese counsel indicated, for expenses in dealing with a U.S. Attorney's Office investigation, to be indemnified for any future claims, and for all of those to be a priority on any return of any cash to the investors who have secured interests. And yet that's what's being proposed here.

THE COURT: Didn't Ms. Gold tell me that that is essentially the way it is now?

MR. SINGER: We disagree, Your Honor. For two fundamental reasons. Number one, we don't believe that the existing indemnification would be permitted for intentional wrongful fraudulent conduct, if that's found.

THE COURT: You did mention that.

MR. SINGER: And secondly, their ability to pay everything they want in indemnify these claims is, of course, subject to the fact that . . . whether they retain control of the hospitals and the revenue stream. If this Court or another court were to change that so that, instead

of that money being used to indemnify their officers to fight the litigation, but instead to be preserved to pay the secured debt which has not been paid interest on for years, it's an entirely different situation. They may have a theoretical right to indemnification, but the cash wouldn't be used in that manner.

So that's a very important provision to us. They are essentially assuring themselves, through this settlement, that, before money goes to repay the investors, it's there to pay their legal defenses for anything that's related to this, and to pay any settlement, or to pay any judgment that relates to their wrongful conduct in running this business in the past. And that all comes off the top. That is an extraordinary provision, Your Honor.

THE COURT: If there is a settlement agreement that does not have this indemnification provision, and there's litigation, and the FP Designee is now the owner, doesn't the FP Designee get named as a defendant as well as the Successor?

MR. SINGER: Not necessarily, because I think that if this was -- if the settlement was approved without those provisions, I don't see how the FP Designee would necessarily be liable to indemnify for past acts. If they conduct future wrongful acts --

THE COURT: I'm sorry. I was not precise, I

guess. I'm not talking about indemnification. Wouldn't they be named as a defendant as a successor entity, and therefore subject to damages, which is, perhaps, not much different than indemnifying?

MR. SINGER: I'm not sure that they would be subject to that as a successor entity that came through a court approved settlement. I would hate to speculate on the answer to that very important question as to whether or not they might be subject to that claim.

THE COURT: All right.

MR. SINGER: They say -- this is, I think, an extraordinary statement -- that audited financials don't mean anything. Well, I think that audited financials mean a lot. I mean, just -- and I've only had a few minutes to look at this reconciliation sheet that they have provided to Your Honor; but if you look at the audit adjustments, a lot of those go right to operating income, provisions for bad debt, ERISA accrual, payroll penalties.

I mean, Mr. Etra mentioned they're not paying their payroll taxes. If they're not paying their payroll taxes, if cash flow is so bad they can't even pay payroll taxes, then how are they going to pay any interest on a working capital loan? Right now, this is without paying any money above the line on interest, because that's all below the line of EBITDA, and they haven't paid any money to us.

But presumably they intend to repay a working capital loan. If they can't pay payroll taxes, how are they going to repay the interest on the working capital loan?

Is this just a device where you have a husk of a company, that's going to be continued to be run by Mr. Baronoff and others, where one year from now we're back here, and there's no value at all to go to the receiver? I guess we wouldn't be back here -- they would be in a reorganization court a year or two down the road -- but where the investors have given up rights against these -- to collect on these assets, and where a lot of money has been spent indemnifying the Sun Capital principals rather than making the investors whole.

I don't think you can look at this, and look at the net income difference, which we put in our charts, and say that isn't a cause for alarm, and that isn't, in itself, reason to question this type of a settlement. And this was provided just a week ago.

Why don't we have a cash flow analysis for a company that's been operating that isn't more recent than March, 2011? I'm not talking about an audit, I'm just talking about an unaudited document that says where's the cash flow? Can they even make a working capital loan? Is there any reason to pursue this type of transaction instead of taking this into a reorganization proceeding, an issue

Mr. Etra didn't address.

So for those reasons, Your Honor, we believe that the objections are well taken here, that this Court . . . our first option is the 60-day period; and the second option, if it's a binary choice, is that this settlement be rejected.

THE COURT: All right. Thank you.

Mr. Reasonover, anything further?

MR. REASONOVER: I thank the Court for your time. Thank you.

THE COURT: Ms. Gold?

MS. GOLD: May I just speak real briefly?

I just wanted to add that, with due respect to Mr. Singer's negotiating skills, I don't think 60 days, or six months, is going to change the deal. The deal has been negotiated for 18 months; and, as Mr. Etra advised the Court, heavily fought over with the group representing the investors, with the defendants, with the non-defendant parties that are giving their assets to the settlement, with the receiver, with everyone. And there really is nothing here that is going to be changed in 60 days.

What is going to happen is that . . . these hospitals are coming to the end of the time period when they can proceed without any funding whatsoever. As Your Honor will recall, in January, 2009, over two years ago, all of

the commitments, all of their funding, all of the loans, were just stopped dead in their tracks.

There were obligations to fund ongoing projects, including the construction of The Villages, which has gone ahead, and is complete, and is now in demonstration. There are significant other assets which need to be addressed. There are two licensing agreements from the State of Florida. Those facilities have to go forward or assets will be lost.

And, as I think everybody was pointing out, there are significant cash flow problems. Why? Because it's been over two years without a nickel, and these hospitals, contrary to everybody's predictions, and Sun Capital has managed to go forward, meet the commitments that were absolutely necessary on an extremely, extremely tight situation, in the middle of extensive litigation, and all kinds of allegations which were harmful, very harmful, to these entities, and cost a great deal of management time, and money, and it has to come to an end. It has to come to an end for the benefit of the investors, frankly.

As I think I said to the Court at the beginning of this hearing, from my client's point of view, they want to address the underlying loans and agreements. They don't have agreements and arrangements with these investors, but they did borrow money. They do want to address it. They

want to get the matter resolved. And it just really . . . the issues that have been raised really make no sense in the overall scheme of these assets.

But the idea that there should be no indemnification makes absolutely no sense. The alternative which they're proposing is, okay, well, we'll just continue to litigate. Well, these people are indemnified against that litigation. All these defense costs, on both sides, are really being paid by the investors. It just simply makes no sense. It's never made any sense, from day one, in a matter which really was a matter of a resolution of a loan -- of loan agreements.

And, you know, frankly, maybe with the wisdom of hindsight -- I don't mean any criticism of any comment -- you know, it might have been resolved years ago, and the situation would be better. And it's only going to get worse. It isn't going to change.

Thank you, Your Honor.

THE COURT: You're not done yet, either.

MS. GOLD: Oh, I'm sorry.

THE COURT: Come on back. You heard Mr. Singer's top three objections on his hit list. Are any of these deal breakers from your perspective?

MS. GOLD: Yes. They're all deal breakers. In fact, the third one, I'm not really sure I understand him.

He's objecting to the related-party transactions. Well, that goes all the way back to whether or not using the loan proceeds for the hospitals, for the real estate, for these other things, were or were not authorized by the lender; but it's . . . it makes no difference, because all of those entities are being transferred in this settlement.

You don't need to go ahead and demonstrate whether they were or they were not fraudulent transfers because those hospitals and the real estate entities are being contributed to the settlement. So I'm not sure what benefit it would do to litigate the issue. We're resolving the issue. We're turning over the companies and the entities to which these so-called related-party transaction funds were given.

Indemnification would most assuredly be a deal breaker. Absolutely would be a deal breaker. If we litigate, our costs are covered. If we're contributing all of these corporate entities to the settlement, to the Founding Partners designee, and for the benefit of the investors, we certainly -- if somebody wants to opt out and sue, certainly there's an indemnity.

Those claims . . . the claims that the defenders are saying should be brought are claims against the entities. That's what they are. They're not going to get $400 million from these three people. The money went to

these hospitals, and the hospitals are being turned over. That's what there is. So there is no way to have some other resolution of that issue, and no need for litigation.

THE COURT: All right. Thank you.

Mr. Etra, there was a question raised in terms of the number of investors on your side, and I use that loosely.

MR. ETRA: Sure.

THE COURT: Compared to the 118 objectors represented by Mr. Singer. I know the number in terms of the dollar amounts. What are the number of investors in terms of individuals or entities?

MR. ETRA: I don't have that but would I venture to speculate that, in terms of numbers of investors, Mr. Singer probably has more than we have. We tend to have, generally speaking, large hedge fund -- not purely large and . . . sort of larger investors who bring a level of -- have helped us in bringing a level of sophistication to this.

THE COURT: Do you currently have a sufficient number to meet the requirements for closing?

MR. ETRA: Your Honor, I believe so. But it's difficult because not everyone has voted yet, essentially. We don't have the claims process. So that's why it's like an election. Now, we would win the vote, but the electorate

hasn't fully voted.

THE COURT: So this is kind of the primary.

MR. ETRA: Yes, it is the primary. I know, with respect to the suggestion that the recent financial information would change views, I think the benefit of having a smaller group that's been involved is -- you know, I don't think it's going to happen. I don't think that's a reasonable speculation on Mr. Singer's part. We certainly -- you know, we think we'll get it. I can't sit here and guarantee it to you, so I'm being very candid when I said it's possible that it doesn't close and, you know, the investors speak that way. I can't guarantee that, Your Honor.

THE COURT: Okay.

MR. ETRA: Could I just, on the issue -- if I may, Your Honor, on the issue of negotiable terms, actually, the Baronoff employment is not nonnegotiable for us. We've been through this. We've analyzed this. If we turn him down, he might leave. The whole thing might fall apart before closing. We need him there. That's why we want him there. That's actually a situation there, even though they asked, we sat down and we asked ourselves why are we fighting this? We need him.

But I'd also ask that the portion of the transcript that dealt with -- Mr. Singer went on a roll, I

didn't want to interrupt him, but the portion where he talked about the audited financial statements in his last argument be sealed. And I think that --

THE COURT: I don't know how to seal what part you're referring to. I'm not sure I remember him saying anything sealable, but . . . . And I don't want you to repeat it, I guess.

MR. ETRA: Okay. I was talking about the expenses. There are certain non-recuring expenses that came up that I'd ask that the portion where he talked -- I'd ask if the Court Reporter can do this. I don't want to overly tax the Court Reporter, and I know it's not very precise, the portion where Mr. Singer referred to the audited reports in his last argument, if that could be placed under seal.

THE COURT: If the two of you can consult with the Court Reporter, and if he can do it without undue hardship, that's fine.

MR. ETRA: Thank you, Your Honor.

THE COURT: Mr. Singer?

MR. SINGER: Your Honor, a couple of points, briefly. The document which Mr. Etra provided the Court, and provided us this morning, shows that their consenting investors of $195 million, it consists of 25 investors plus Global Fund Class A and B; which I'm not sure exactly what that represents, but it seems like, in any event, a much

smaller group than the 118 investors who have joined this objection, which has a cross-section of sophisticated, less sophisticated, smaller and larger investors who simply, despite having had to deal with this for several years, say this is not a settlement that they can live with.

THE COURT: How many investors are there? Do you know?

MR. SINGER: We don't know the total number. Which is one of the things that makes it difficult to know exactly where that stands. Maybe the receiver knows, but we don't have a total.

THE COURT: Does the receiver know --

MR. ETRA: Your Honor, that's one of the people I didn't bring, is the person who -- I apologize -- who has the handle on this. I could say the -- there was an issue with counting on -- well, I guess -- issue of counting -- one of the investors is the liquidator for the Cayman Fund. So he's a person, and he's speaking for a larger group. Although I still think -- I want to concede that I think they have the majority of investors.

And there are funds that are made up of individual investors. It's not something I care to deal with offhand, without having my person here who has the handle on this.

THE COURT: Okay.

MR. SINGER: And even in terms of dollar terms, we

don't see why you don't look at the appreciated capital. Unless they're going to say that this is some type of a Ponzi scheme where you just look at the cash in. Our clients had appreciation in their capital and that led to the $211 million which, if you look at that, is more, even in dollar terms, than they claim is their consenting investors.

The second point that I'd like to address deals with Sun Capital's argument saying that, well, the related-party transaction shouldn't matter because those assets went to other settlement entities. That's not entirely the case. If you look at certain of the charts which we provided Your Honor, you'll see there's transactions, including one that involved a significant eight-figure amount where a loan was forgiven.

That has nothing to do with these hospital entities. That was a separate investment that they took our client's money, essentially put it into that investment, forgave the loan, and now they'll be released from personal liability.

And there was an issue, which has never been addressed by the receiver, why are they entering into a settlement releasing the individual defendants when, as far as we know, they've never gotten financial statements from those defendants to see whether or not they, having received

substantial sums of compensation, and substantial related-value transactions, that they might be subject to having that money recaptured. They are releasing those claims without knowing what they are releasing.

So I think that, if the Court sent a message to the defendants, to the receiver, saying that it was concerned with the indemnification provision like this, it was concerned with having a CEO who the receiver has accused of fraud, and somehow he's now indispensable -- he's accused of fraud but he's indispensable? That those things are troubling, and that those things should be addressed over this 60-day period. It wouldn't be the first time that the parties have moved from positions that they have initially taken.

Your Honor, unless you have additional questions, we have raised the issues I wanted to cover.

THE COURT: Thank you.

Counsel, one last chance, anything else from anybody?

MR. REASONOVER: Judge, if I may.

THE COURT: You may.

MR. REASONOVER: Very quickly. I do think the statement that nothing further can be done isn't really supportable in light of the ability of counsel to make modifications to agreements to remove troubling language.

It would be a simple thing to remove concerns about obstructing an ongoing investigation or, you know, in exchange for compensation, for criminal proceedings that are unrelated.

THE COURT: That really gives me the least concern, because I don't think that's what they intend to do; and, to the extent the verbiage may be vague, I'm fairly confident that, if that's the only hangup, that we can fix it. I think.

MR. REASONOVER: Very simple things. Revisiting the indemnity that exceeds what exists in the state of nature for unknown third-party claims is a troubling --

THE COURT: That may be more of a problem.

MR. REASONOVER: Is a troubling thing, but I think is something that the parties could address, certainly, with more information. And for us getting access to information . . . more information, and not being in a position where we're asked to accept the settlement blind.

I'm not suggesting reopening discovery, but -- or intruding in the discovery process, but being given more comprehensive access to the receiver's materials so that we can have more direct discussions with him about discovery that has already been taken by the receiver of simple things. Where did the cash go? You know?

THE COURT: That may not be so simple.

MR. REASONOVER: That type of -- it may not, Judge. It may not. But not having access to it, I think, puts parties in an untenable position of being asked to accept a settlement somewhat in the blind.

THE COURT: How does the answer to the question where did the cash go impact your client's settlement decision?

MR. REASONOVER: For example, Judge, hypothetically, if we're being asked to release individuals who set up -- were involved in setting up a fund, may have been more involved than we know in setting up the specific pitch to my client, as opposed to being present, and may have directly participated in receiving the benefit of proceeds of a transaction, that would weigh into the decision making that my client, I'm sure, would be very focused on. And should have a right to consider before being forced to either forego any benefit from the receivership or proceed down the road with its litigation. And I think it can be addressed by access to the discovery that the receiver may have already taken.

THE COURT: And has that been denied? I thought there was a --

MR. REASONOVER: We have access to the deal-room materials, but not discovery materials that . . . you know, obviously, the receiver has gone through tremendous expense.

I think the people who have conducted the analysis for the receiver may be able to answer questions that clear things up for us. Significantly.

THE COURT: All right.

MR. REASONOVER: Thank you, Judge.

THE COURT: Thank.

Anything further, from anyone?

All right. Counsel, I will get an order out as soon as I can. I appreciate your help.

MR. ETRA: Thank you, Judge.

MS. GOLD: Thank you, Your Honor.

MR. NEWMAN: Thank you, Your Honor.

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(Thereupon, at 11:23 o'clock a.m., the above-entitled matter was concluded.)

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CERTIFICATE

I CERTIFY THAT THE FOREGOING TRANSCRIPT IS A TRUE AND ACCURATE TRANSCRIPT FROM THE ORIGINAL STENOGRAPHIC RECORD IN THE ABOVE-ENTITLED MATTER.

Dated this 10th day of April, 2012.

/s/ Jeffrey G. Thomas
JEFFREY G. THOMAS, RPR