

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CASE NO.: 2:09-CV-229-FTM-29SPC

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT,
and WILLIAM L. GUNLICKS,

Defendants,

FOUNDING PARTERS STABLE-VALUE FUND, LP,
FOUNDING PARTNERS STABLE-VALUE FUND II, LP,
FOUNDING PARTNERS GLOBAL FUND, LTD., and
FOUNDING PARTNERS HYBRID-VALUE FUND, LP,

Relief Defendants.

RECEIVER'S MOTION TO RETAIN SPECIAL COUNSEL *NUNC PRO TUNC*

Receiver Daniel S. Newman, not individually, but solely in his capacity as receiver (the “Receiver”) for defendant Founding Partners Capital Management Co. (“FPCMC”) and relief defendants Founding Partners Stable-Value Fund, LP, Founding Partners Stable-Value Fund II, LP, Founding Partners Global Fund, Ltd., and Founding Partners Hybrid-Value Fund, LP (collectively, the “Receivership Entities”), by and through undersigned counsel, respectfully files this Motion to Retain Special Counsel *Nunc Pro Tunc*¹, and in support states as follows:

¹ As explained in further detail below, this Motion has been filed *nunc pro tunc* because the Receiver retained special counsel immediately to begin handling issues related to the closing of the settlement transaction (the “Settlement Transaction”) contemplated by the settlement agreement (the “Settlement Agreement”) approved by the Court in *Newman v. Sun Capital, Inc., et al.*, Case No. 09-445, Middle District of Florida, on August 28, 2012. [Sun Litigation, D.E. 308].

BROAD and CASSEL

One Biscayne Tower, 21st Floor 2 South Biscayne Blvd. Miami, Florida 33131-1811 305.373.9400

1. This action was initiated by the Securities and Exchange Commission (“SEC”) on April 20, 2009. That same day, the Court entered its Order Appointing Receiver which named Leyza F. Blanco, Esq. the Receiver for the Receivership entities. [D.E. 9]. On May 13, 2009, the Court removed Leyza F. Blanco, Esq. as Receiver. [D.E. 70].

2. On May 20, 2009, this Court appointed Daniel S. Newman, Esq. as Replacement Receiver for the Receivership Entities. [D.E. 73]. Pursuant to the Order Appointing Replacement Receiver, the Receiver is obligated to “[t]ake immediate possession of all property, assets and estates of every kind of [the Receivership Entities], whatsoever and wheresoever located . . . and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court.” *Id.* The Order also requires that the Receiver investigate the manner and the affairs of the Receivership Entities. *Id.*

3. In order to assist the Receiver in his efforts, the Receivership Order, at Paragraph 2(d), allows the Receiver to “[a]ppoint one or more special agents, employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses.” *Id.*

4. Under the terms of the Settlement Agreement, special counsel will be needed to: (1) file governmental applications and notices related to the change of ownership (the “CHOW Process”) of the Promise and Success hospitals over to the FP Designee (as defined in the Settlement Agreement); and (2) review and file documents that are required pursuant to the Settlement Agreement and are governed by Louisiana law.

5. In order to expedite the closing of the Settlement Transaction, the Receiver already retained the special counsel that are the subject of this Motion, pending the Court's approval. Both special counsel were retained once the Settlement Agreement was approved by the Court. The Receiver did not do this earlier to save from expending assets on the assistance of special counsel in the event the Settlement Agreement would not be approved by the Court.

6. Specifically with regard to the CHOW Process, once the Settlement Agreement was approved, the Receiver negotiated with CHOW lawyers, and entered into an agreement with Arnall Golden Gregory LLP ("AGG") to act on his behalf as CHOW Process counsel, pending Court approval. *See* the AGG Engagement Agreement attached as **Exhibit A**. No up-front retainer fee was required to begin AGG's representation of the Receiver as CHOW Process counsel.

7. Pursuant to the Engagement Agreement, AGG will provide legal advice to the Receivership Estate in connection with all of the necessary healthcare license transfers related to the closing of the Settlement Transaction, including CHOW Process filings and required notices regarding, among others, Medicare and Medicaid provider numbers, hospital licenses, pharmacy licenses, laboratory permits and DEA controlled substance registrations. AGG's role will primarily be to review work completed by counsel for Settlement Entities, as well as to troubleshoot with respect to the overall CHOW Process and provide guidance with respect to these matters.

8. AGG has experience handling multi-state healthcare license transfers in each of the seven states applicable to this transaction (Arizona, California, Florida, Louisiana, Missouri, Mississippi and Utah) and thus, it is hoped, will eliminate the need to engage separate healthcare counsel in each such jurisdiction.

9. Similarly, once the Settlement Agreement was fully approved, the Receiver also negotiated with real estate lawyers in Louisiana, and entered into an agreement with The Touchstone Law Firm (“Touchstone”) to act on his behalf as Louisiana counsel, pending Court approval. *See* the Touchstone Engagement Letter attached as **Exhibit B**.

10. Touchstone will review the Performance Security documents (defined in the Settlement Agreement) for local law compliance under Louisiana law, including compliance with local laws applicable to mortgages and the granting of security interests in various classes of personal property.

11. Thus, the Receiver now seeks entry of an order *nunc pro tunc* authorizing him to retain: (a) AGG as his CHOW Process counsel; and (b) Touchstone as his Louisiana counsel. The Receiver also seeks Court approval of the Engagement Agreement and Engagement Letter, attached as **Exhibit A** and **Exhibit B** respectively.

12. The Receiver files this Motion *nunc pro tunc* because time was of the essence in retaining the above-referenced special counsel once the Settlement Agreement was approved by the Court. The CHOW Process in particular is lengthy and complicated and the quicker the Receiver retained special counsel, the higher the likelihood of an expedited closing of the Settlement Transaction.

CONCLUSION

For the foregoing reasons, Receiver respectfully requests that this Court enter an order *nunc pro tunc*: (a) granting the Receiver permission to hire AGG as CHOW Process counsel; (b) granting the Receiver permission to hire Touchstone as Louisiana counsel; and (c) approving of the Engagement Agreement and Engagement Letter, attached as **Exhibit A** and **Exhibit B**.

MEET AND CONFER CERTIFICATION

Receiver's counsel conferred with counsel for the SEC and William L. Gunlicks prior to filing this Motion. Counsel for the SEC had no objection to the Receiver filing this motion and counsel for William L. Gunlicks has been unresponsive.

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted,

BROAD AND CASSEL

Attorneys for Receiver
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2 South Biscayne Boulevard
Miami, FL 33131
Tel: (813) 225-3011
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By: /s/ Jonathan Etra

Jonathan Etra, Esq.
Florida Bar No. 0686905

SERVICE LIST

<p>Christopher Ian Anderson, Esq. U.S. Securities and Exchange Commission 801 Brickell Avenue Suite 1800 Miami, FL 33131 305-982-6317 305-536-4154 (fax) andersonci@sec.gov <i>Counsel for U.S. Securities and Exchange Commission</i></p> <p><u>Service via CM/ECF</u></p>	<p>Gabrielle D'Alemberte, Esq. The D'Alemberte Trial Firm, P.A. 1749 N.E. Miami Ct. Suite 301 Miami, FL 33132 gabrielle@dalemberte.com <i>Counsel for William & Pamela Gunlicks</i></p> <p><u>Service via CM/ECF</u></p>
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October 2, 2012

Daniel S. Newman, Esq., as Receiver for the entities identified herein
c/o Broad and Cassel
One Biscayne Tower
2 South Biscayne Blvd.
21st Floor
Miami, FL 33131

Re: Engagement Letter

Dear Daniel:

You have asked this firm to assist you, as the court-appointed receiver of Founding Partners Stable-Value Fund, L.P.; Founding Partners Global Fund, Ltd.; Founding Partners Stable-Value Fund II, L.P.; Founding Partners Hybrid-Value Fund, L.P.; and Founding Partners Capital Management Company in connection with health care regulatory matters arising in connection with the receivership and a proposed settlement transaction. You are receiving this engagement letter because we have opened a new client number for this project.

Fees. Our fees are based on our standard hourly rates. I will be principally responsible for this matter and currently bill my time at \$510.00 per hour. We also may use other attorneys and paralegals as appropriate. The billing rates of the various attorneys in the firm vary depending upon experience and area of practice, and range from \$350.00 to \$725.00 per hour for each attorney. The charges of the paralegals and research assistants presently range between \$100.00 and \$270.00 per hour. There may, of course, be more than one attorney, paralegal or research assistant working on this matter at any one time. Our firm reviews and may adjust these hourly rates annually. All hourly rates will be subject to the 10.0% discount on fees as we discussed previously. All invoices are due upon presentment and considered past due if not paid within thirty (30) days.

Invoices normally will be rendered monthly for work performed and expenses recorded on our books during the previous month. Because you are a Receiver, we understand that you will seek Court approval *nunc pro tunc* of our firm's retention and of the payment of our fees and expenses. You have agreed to request the Court to allow for the payment in full of our fees and expenses at the closing of the proposed settlement



transaction; however, to the extent that such closing does not take place by December 31, 2012, you will seek authority to pay our outstanding fees and expenses in full by no later than December 31, 2012.

Our invoice will describe the services performed by each attorney and paralegal working on this matter with particularity and we bill our time in 1/10th of an hour increments.

Expenses. Our monthly statements also include any out-of-pocket expenses incurred in the representation, such as court filing fees, court reporter fees, deposition subpoena fees, long-distance telephone charges, photocopying charges, courier or overnight delivery charges, and computerized legal research.

Termination of Engagement. You, at any time, may terminate our services and representation upon written notice to AGG. Such termination shall not, however, relieve you of the obligation to pay for all services already rendered, including work in progress at the time of termination, and to pay for all expenses incurred on your behalf through the date of termination.

We reserve the right to withdraw from our representation as required or permitted by the applicable rules of professional conduct upon written notice to you in the event that we terminate the engagement, we will take such steps as are reasonably practicable to protect your interests in the above matter, and you agree to take all steps necessary to free us of any obligation to perform further work, including the execution of any documents necessary to perfect our withdrawal. We will be entitled to be paid for all services rendered and costs or expenses incurred on your behalf through the date of withdrawal. If permission for withdrawal is required by the court, we will promptly request such permission, and you agree not to oppose our request.

Conclusion of Representation; Retention and Disposition of Documents. Unless previously terminated, our representation in this matter will terminate upon our sending you our final statement for services rendered in the matter. At your request, your papers and property will be returned to you. Our own files pertaining to the matter will be retained by AGG. These firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, credit and accounting records and internal lawyers' work product, such as drafts, notes, internal memoranda and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers. All such documents retained by AGG will be transferred to the person responsible for administering our records retention program. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any such documents or other materials retained by us within a reasonable time after the termination of the engagement.

... [faint, illegible text] ...

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Post-engagement Matters. After our engagement concludes, changes may occur in the applicable laws or regulations that could have an impact upon your future rights and liabilities. Unless you engage us after completion of these matters to provide additional advice on issues arising from these matters, the firm has no continuing obligation to advise you with respect to future legal developments.

If you have any questions regarding the terms of this representation, please contact me at your convenience. We appreciate the confidence you have placed in our firm.

Best regards.

Sincerely,

ARNALL GOLDEN GREGORY LLP

A handwritten signature in black ink, appearing to read "Hedy S. Rubinger". The signature is fluid and cursive, with a long horizontal flourish at the end.

Hedy S. Rubinger

HSR:cre

11/20/12 10:00 AM
Case 2:09-cv-00229-JES-SPC
Document 361-1

The Touchstone Law Firm

PO Box 5396, Bossier City, LA 71171

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David M. Touchstone

R. Lee Coltharp, Associate

Amanda J. Hulett, Associate

Mr. Daniel S. Newman
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Miami, Florida 33131

October 25, 2012

Re: Properties owned by Sun Capital Health Care and Related Companies

Dear Mr. Newman,

I understand that you are the Court appointed Receiver in a securities case and that as part of the resolution of the case you may need my services. I further understand that the ownership interests of one or more medical facilities in the Shreveport metropolitan area are to be transferred to a newly formed entity composed of or acting for the benefit of the investors in the companies which were the subjects of your recovery efforts.

My background is primarily in Louisiana property law. I also own a title agency, First Commerce Title, Inc. which is licensed to write title insurance on behalf of Fidelity National Title Insurance Company and First American Title Insurance Company. The aforesaid underwriters are the two largest title insurance companies in the United States and in the world.

I understand that my scope of representation, should you engage me, will be to provide you with general advice regarding Louisiana real estate law matters relating to the subject transaction and in particular to assist with the negotiation of mortgages encumbering Louisiana real property and to advise you with respect to local transfer taxes applicable to the transfer of ownership interests in companies which own Louisiana real property. I consider it probable that I will advise you to purchase owner's title insurance coverage to insure title to the properties to be acquired by the new entity. If the new entity opts to obtain title insurance, I will provide you with a title insurance commitment prior to the acquisition of the properties and I will discuss with you and explain to you the meaning of the various provisions in the title insurance commitment.

My standard hourly rate is \$250.00 per hour, but inasmuch as you are acting as Receiver, I will discount my hourly rate to \$225.00 per hour. Should you elect to purchase title insurance,

premiums are based on standard Louisiana Insurance Rating Commission rates and are determined primarily by the amount of coverage being written. The Companies require that the policies are to be paid for before they are issued.

As to my hourly rate, I will bill you from time to time. I understand that you are under Court supervision regarding disbursement of Receiver funds, and my billing to you will be correlated to information you reasonably provide to me regarding fee applications or other Court directed procedures. In addition to my hourly rate, I will bill you for all actual out-of-pocket expenses for which I will make an accounting to you. I understand that because you are a court-appointed receiver, you will be seeking court approval of my firm's retention and of the payment of my fees and expenses, and I hereby consent to your filing this engagement letter with the receivership court.

Our title agency, First Commerce Title, Inc. employs professional land abstractors. On commercial transactions, it is our practice to bill the abstractor's time at \$45.00 per hour; we will be billing you at this rate for our abstractor's title search work.

My services in this matter will conclude at such time as all properties have been transferred (or you inform me that you decline to proceed with any further transfers) and I have provided you with all transactional documentation, including recordation of those documents which should be recorded.

Sincerely,



David M. Touchstone

DMT/sl