

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  
COMPANY, WILLIAM L. GUNLICKS, and  
PAMELA L. GUNLICKS,

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,

Relief Defendants.

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**RECEIVER'S SECOND REPORT**

Daniel S. Newman, as Court-appointed Receiver (the "Receiver") for defendant Founding Partners Capital Management Company and relief defendants 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. (collectively, the "Receivership Entities"), respectfully files his Second Report.

**I. INTRODUCTION**

On April 20, 2009, the United States Securities and Exchange Commission filed its complaint ("SEC Action") against Founding Partners Capital Management Company ("Founding Partners") and William L. Gunlicks ("Gunlicks"), alleging that Founding Partners and Gunlicks

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had engaged, and were engaging, in a scheme to defraud investors and violate the federal securities laws. (D.E. 1). In the Complaint, the SEC sought, among other relief, entry of a temporary restraining order and a preliminary injunction. After reviewing the SEC's submission, on April 20, 2009, the Court entered an Order Freezing Assets of Founding Partners and Gunlicks (the "Asset Freeze Order"). The Asset Freeze Order also applies to Founding Partners Stable-Value Fund, L.P., ("Stable-Value"), Founding Partners Stable-Value Fund II, L.P. ("Stable-Value II"), Founding Partners Global Fund, Ltd., ("Global Fund") and Founding Partners Hybrid-Value Fund, L.P. ("Hybrid-Value") (collectively, "Founding Partners Funds").

On April 20, 2009, the Court also entered an order (the "Initial Receivership Order") appointing a receiver (the "Initial Receiver") for Founding Partners and the Founding Partners Funds (collectively, the "Receivership Entities"). (D.E. 9). The Initial Receiver was subsequently removed by Court Order on May 13, 2009. (D.E. 70). Daniel S. Newman, Esq. (the "Receiver"), was appointed Replacement Receiver by Court Order on May 20, 2009 (the "Receivership Order"), which Order supersedes the Initial Receivership Order. (D.E. 73). The Receivership Order provides that the Receiver shall, among other things:

- (a) Take immediate possession of all property, assets and estates of every kind of Founding Partners and each of the Founding Partners Relief Defendants, whatsoever and wheresoever located, including but not limited to all offices maintained by Founding Partners and the Founding Partners Relief Defendants, rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of Founding Partners and the Founding Partners Relief Defendants wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order... ; and
- (b) Investigate the manner in which the affairs of Founding Partners and the Founding Partners Relief Defendants were conducted and

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institute such actions and legal proceedings, for the benefit and on behalf of Founding Partners or the Founding Partners Relief Defendants and their investors and other creditors as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred money or other proceeds directly or indirectly traceable from investors in Founding Partners and the Founding Partners Relief Defendants...

This Report summarizes the Receiver's activities and those of his retained professionals between October 1, 2009 and December 31, 2010 ("Reporting Period").<sup>1</sup>

## II. BACKGROUND

### A. **The Receiver's First Report**

On November 16, 2009, the Receiver filed his First Report with this Court, which covered the time period beginning May 20, 2009, and ending September 30, 2009. (D.E.177). The Receiver discussed the extensive work performed by the Receiver and his team of retained professionals upon his appointment.<sup>2</sup> By way of background, some of the work performed during that period by the Receiver and/or his team of retained professionals, as more fully discussed in the Receiver's First Report, included the following:

- Retaining counsel (*i.e.*, Broad and Cassel) and accountants (*i.e.*, Berkowitz Dick Pollack & Brant Certified Public Accountants & Consultants, LLP (the "Berkowitz Firm") to assist the Receiver in carrying out his duties;

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<sup>1</sup> The Receiver's staff has regularly updated the Receivership website to provide information, including posting pertinent filings and Orders.

<sup>2</sup> The First Report also discussed some of the work performed by the Initial Receiver, Leyza Blanco, and her team prior to the Receiver's appointment, including but not limited to securing the Founding Partners Naples and Chicago offices, preserving the computer data at these offices by imaging the hard drives of the computers located in the offices to preserve critical evidence, creating inventories of documents, furniture, and equipment, redirecting all mail to the Receiver's office, and setting up a designated phone line to receive all calls to the former Founding Partners offices.

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- Issuing, through counsel, correspondence and subpoenas to third parties for their records concerning the Receivership Entities in order to freeze any additional assets and prevent dissipation;
- Creating the [www.foundingpartners-receivership.com](http://www.foundingpartners-receivership.com) website to update investors about developments in the Receivership, including Court filings, and establishing a toll-free number (877) 373-9479 to handle investor calls;
- Freezing the bank accounts of the Receivership Entities and Defendant William Gunlicks.

The Receiver further discussed multiple litigations, which were in the preliminary stages at that time. They included:

- The “Sun Litigation” which was initiated by the Receiver against Sun Capital Healthcare, Inc. (“SCHI”), and Sun Capital, Inc. (“SCI”) (collectively the “Sun Entities”) seeking recovery of more than \$550 million based upon loans made by Stable-Value to the Sun Entities pursuant to two similar credit and security agreements<sup>3</sup> and the failed negotiations and circumstances leading up to the inception of that case;
- The “Global Fund/Joint Provisional Liquidator Litigation (Bermuda)” which was initiated because the Receiver sought to freeze and recover investor funds held in the name of Founding Partners Global Fund, Ltd., a Cayman entity (“Global Fund Ltd.”) and one of the Receivership Entities, at HSBC The Bank of Bermuda. On June 11, 2009, the Grand Court of Cayman issued an Order appointing Joint Provisional Liquidators, Ian Stokoe and David Walker (the “JPLs”) for Global Fund Inc. and Global Fund Ltd. At the time of the First Report, the Receiver was pursuing the parallel course of negotiating with the JPLs in an effort to resolve the matter without the need for litigation and the ensuing costs to the receivership estate but such efforts had not resulted in the execution of a formal settlement document; and
- The “Annandale Litigation” which involved a two separate cases, one that was initiated on March 25, 2009 against Founding Partners, Stable-Value, Stable-Value II, and Gunlicks (the “Annandale/Founding Partners Litigation”), and the other that was initiated on March 27, 2009 against the Sun Entities and Sun Capital Group, Inc. (the “Annandale/Sun Litigation”), as well as certain investors’ efforts to intervene therein.

Finally, in the First Report, the Receiver discussed various other administrative matters including:

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<sup>3</sup> The two credit and security agreements have been previously filed with the Court as Exhibits A and B of Receiver’s Emergency Motion to Expand Powers of Receiver, D.E. 29.

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- Investigation of the financial transactions entered into by the Receivership Entities, including those entered into during the 2008 tax year, and determining that due to the lack of complete information to date, the most prudent course of action at that time was to file a blank return with the Internal Revenue Service which included a detailed disclosure statement putting the Internal Revenue Service on notice of why the Receiver was unable to file a complete and accurate tax return by the September 15, 2009 deadline; and
- Execution of tolling agreements with one accounting/auditing firm and one law firm that provided services to the Receivership Entities.

**B. The Receiver's Bank Accounts**

In the Receiver's First Report, the Receiver delineated the various bank accounts that had been frozen upon entry of the Initial Receivership Order and the amounts in those accounts at that time. Since then, all such accounts have been closed, and the funds therein were transferred into accounts held in the Receiver's name.

The current ending balances of the Receiver's accounts, as of November 31, 2010, are as follows:

Founding Partners Capital Management Co.	\$ 80,837.37
Hybrid Value Fund	\$ 293,675.68
Stable Value Fund	\$ 620,641.00
Stable Value Fund II	\$ 223,493.30

The Receiver has disbursed certain funds for rent, for professional services pursuant to Court Order, and for services rendered by vendors<sup>4</sup> contracted by the Receiver. The Receiver attaches as Exhibit "A" to this report a Standardized Fund Accounting Report (SFAR) for the period July 1, 2010 to September 30, 2010,<sup>5</sup> reflecting the Receiver's receipt and expenditure of funds.

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<sup>4</sup> This includes distributions to Xact Data Discovery, for database storage and organization, to assist the Receiver in reviewing documentation and responding to document requests by the Defendants in the Sun Litigation.

<sup>5</sup> The Receiver's accountants are still compiling the data for the SFAR for the period October 1, 2010 through December 31, 2010.

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**C. The Receiver's First and Second Interim Application for Fees**

On November 13, 2009, the Receiver filed his Receiver's First Interim Application for Allowance and Payment of Fees and Expenses Incurred by the Receiver, Retained Counsel and Other Professionals for services rendered for the time period beginning May 20, 2009 and ending August 31, 2009 (the "First Fee Application"). (D.E. 176). The Receiver requested entry of any order authorizing payment of \$374,503.80 in fees and costs to Broad and Cassel, \$217,853.31 in fees and costs to the Berkowitz Firm, and \$123,019.88 in fees and costs to Attride-Sterling & Woloniecki ("ASW"), the Receiver's Cayman counsel. On May 18, 2010, the Receiver filed his Second Interim Application for Allowance and Payment of Fees and Expenses Incurred by the Receiver, Retained Counsel and Other Professionals for services rendered for the time period beginning September 1, 2009 and ending December 31, 2009 (the "Second Fee Application"). (D.E. 220). The Receiver requested entry of any order authorizing payment of \$674,297.36 in fees and costs to Broad and Cassel, \$249,445.75 in fees and costs to the Berkowitz Firm, \$147,877.96 to ASW, \$285,425.00 to Huron Consulting Group, and \$3,158.00 to Gregory A. Whittmore, Esq.

On August 10, 2010, the Court entered an Order Granting the Receiver's First Motion for Disbursement of Funds, granting in part and denying in part the Receiver's Second Fee Application. (D.E. 238).

On November 23, 2010, the Receiver filed a Third Interim Application for Allowance and Payment of Fees and Expenses Incurred by the Receiver, Retained Counsel and Other Professionals for services rendered during a portion of the Reporting Period. (D.E. 260).

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### III. LITIGATION UPDATE

#### A. The Sun Litigation

The Receiver's work on the Sun Litigation during the Reporting Period can be divided into four areas: (1) conducting expedited discovery and briefing to challenge Defendants' Motion for Preliminary Injunction, in an effort to re-gain control over the lockboxes; (2) opposing Motions to Intervene; (3) preparing the case for trial in accordance with the Court's Scheduling Order; and (4) addressing Defendants' Motion to Stay the litigation and working towards a potential settlement of the litigation.<sup>6</sup>

##### 1. Conducting Expedited Discovery And Briefing To Challenge Defendants' Motion for Preliminary Injunction In An Effort To Re-Gain Control Over The Lockboxes

From October 2009 through approximately April 2010, much of the work of the Receiver and his professional staff involved expedited discovery and then briefing to challenge Defendants' pending Motion for Preliminary Injunction. ( D.E. 11).<sup>7</sup>

Defendants' pending Motion for Preliminary Injunction seeks to continue the current TRO (D.E. 20), which enjoins the Receiver from exercising his contractual right to controlling the lockboxes that fund the hospitals. Given the Receiver's concern that the hospitals were in distress and losing money, that the Defendants' principals continued to divert and misuse loan proceeds, and that Receiver's already diminished collateral was dissipating further, the Receiver believed that control over the lockboxes was of singular importance.

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<sup>6</sup> Docket entry cites in Section II.A of this Report are cites to the Sun litigation, Case No. 2:09-CV-445-FtM-99SPC.

A critical part of this work was obtaining discovery from Defendants and their affiliated hospitals because the Receiver believed that the two affidavits submitted by Mr. Howard Koslow (D.E 11-2, 11-3) – upon which the TRO was obtained and under which Defendants still seek a preliminary injunction -- were false and misleading in numerous respects, including with respect to the status of the collateral and the viability or value of the hospitals.

Therefore, the Receiver noticed for deposition the Defendants and their affiliated companies that owned the hospitals – Promise and Success – pursuant to Fed. R. Civ. P. 30(b)(6). In September 2010, Defendants produced for deposition Mr. Howard Koslow. However, Mr. Koslow did not answer numerous questions on the areas listed in the notices -- including questions about his two affidavits, which formed the basis for the Motion for Preliminary Injunction. Thereafter, the Defendants produced Mr. Lawrence Leder, who testified, in accordance with Rule 30(b)(6), on October 15, October 23, October 27, and November 4.<sup>8</sup>

Defendants propounded document requests on the Receiver, focusing extensively on the Founding Partners computer databases. Before and during the Reporting Period, the Receivership expended significant resources complying with the Defendants' requests, even though the Receiver believed that the purpose of the expedited discovery period was for the Receiver to obtain discovery on the allegations in the Motion for Preliminary Injunction and the Koslow affidavits upon which they were based – not for the Defendants to attempt to shore up their evidence. With respect to the Defendants' demand that the Receiver search all Founding Partners computer databases, the Receiver formulated search terms to extract likely responsive documents and then, at significant cost, extracted those files and searched them for responsive

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<sup>8</sup> Defendants originally took the position that the Receiver was not entitled to any discovery from their affiliated hospitals. Upon Motion by the Receiver (D.E. 46), however, the Court compelled discovery from their affiliated hospitals. (D.E. 57).

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documents. The Receiver informed Defendants of this approach, and Defendants neither objected nor suggested any search terms. Later, when Defendants insisted that the Receiver's staff manually review every Founding Partners' electronic file, the Receiver offered to run additional search terms to be provided by the Defendants, but the Defendants refused to provide any search terms, and insisted that every file be manually reviewed.

On November 5, 2010, Defendants filed an Emergency Motion to Compel and for Sanctions concerning what the Receiver perceived to be unnecessary, unreasonably broad, and excessively expensive document requests directed primarily at Founding Partners' computer databases. (D.E. 77). Defendants argued that, if the full discovery demanded (including the demand that every computer file be manually searched) was not produced by certain deadlines, the Receiver should not be permitted to continue to seek control over the lockboxes, as a discovery sanction, without regard to the merits of the Motion for Preliminary Injunction. (D.E. 77). The Receiver believed that the Defendants sought to force a delay of the resolution of the Motion for Preliminary Injunction (while the TRO remained in place) and to force the Receiver to expend limited receivership resources to satisfy Defendants' electronic discovery demands, or face the Court's entry of a Preliminary Injunction against the Receiver controlling the lockboxes until the conclusion of the litigation. Upon briefing by the parties,<sup>9</sup> the Court ordered the Receiver to produce communications with certain individuals and entities, but otherwise denied Defendants' Motion. (D.E. 120).<sup>10</sup>

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<sup>9</sup> The Receiver opposed the Defendants' Motion. (D.E. 81). The matter was fully briefed with a reply brief and a sur-reply brief. (D.E. 89, 97).

<sup>10</sup> The Receiver filed a motion to modify or reconsider, in connection with certain communications that were ordered produced due to events occurring after the Order (D.E. 176); the resolution of this Motion is stayed (*see* D.E. 202). There was additional discovery motion practice during the expedited discovery period. For example, in response to Defendants' subpoena upon Founding Partners' former auditors, Ernst & Young, the Receiver filed a Motion for Protective Order. (D.E. 74). Defendants opposed the Motion for Protective Order. (D.E. 76). The

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In view of the nature of the deposition testimony of Mr. Leder and the financial records produced by Mr. Leder or under his supervision, the Receiver believed that testimony from a national health care and accounting expert in support of the Receiver's Opposition to Defendant's Motion for Preliminary Injunction was necessary, and for that reason, the Receiver's counsel engaged Mr. Michael Kennelly of Huron Consulting. Mr. Kennelly produced an expert report detailing his analyses and findings, including with respect to the status of the collateral (compared to the way it was represented to the Court in the Koslow affidavits) and the value and viability of the Hospitals.<sup>11</sup> On January 19, 2010, the Receiver filed his Memorandum in Opposition to the Defendants' Motion for Preliminary Injunction. (D.E. 125). The Receiver's Memorandum in Opposition relied upon the admissions and evidence uncovered in the expedited discovery and the analyses and findings in Mr. Kennelly's report. (D.E. 131-2). The Receiver believed that his Memorandum in Opposition showed that the Defendants' principals had unquestionably engaged in fraud on the investors, that the Koslow affidavits upon which the Court relied in granting the TRO were false and misleading in numerous ways, and that the Motion for Preliminary Injunction was factually and legally unsupported.<sup>12</sup>

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Court granted the Motion and quashed the subpoena. (D.E. 77). In addition, the Receiver filed an Emergency Motion to Compel the production of documents from Defendants the affiliated hospitals, focusing mostly on missing financial records. (D.E. 90). Defendants opposed the Motion. (D.E. 96). The Receiver sought leave to file a reply brief (D.E. 94), the Court granted leave to file a reply brief (D.E. 110), and the Receiver filed a reply brief. (D.E. 110, 117). Thereupon, Court denied the Receiver's Motion to Compel. (D.E 122).

<sup>11</sup> Mr. Kennelly and his staff at Huron Consulting were required to devote substantial resources to decipher and analyze Mr. Leder's testimony and the financial reports created by him or those reporting to him.

<sup>12</sup> The Receiver requested an evidentiary hearing on the Motion for Preliminary Injunction.

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In response to the Receiver's Memorandum in Opposition to Defendants' Motion for Preliminary Injunction, Defendants submitted their reply brief. (D.E. 161).<sup>13</sup> Defendants' reply brief, which was longer than the Receiver's opposition brief, contained new legal arguments. Defendants' reply brief disregarded the Koslow affidavits upon which Defendants' moving papers were based, and instead relied upon four new declarations – one from Mr. Leder (D.E. 162-69) and three from third-parties under contract with Defendants or the affiliated hospitals. (D.E. 170-72.).<sup>14</sup>

The Receiver and his staff, working with Mr. Kennelly, analyzed the reply brief's new arguments, the four new declarations, and the documents attached to the Leder declaration. Based on that work, the Receiver filed his (a) Motion to Strike Reply Declarations (D.E. 182),<sup>15</sup> and (b) his Motion for Leave to File a Sur-Reply to Defendants' reply memorandum. (D.E. 183).

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<sup>13</sup> Defendants opposed the Receiver's request for an evidentiary hearing on the Motion for Preliminary Injunction.

<sup>14</sup> Also, in response to the Receiver's Memorandum in Opposition to the Motion for Preliminary Injunction, the Defendants again filed an Emergency Motion to Compel and for Sanctions. The Defendants again argued that, if the full discovery demanded was not produced by certain deadlines, the Receiver should not be permitted to continue to seek control over the lockboxes, that is, the Preliminary Injunction should be entered as a discovery sanction, not on its merits. (D.E. 149). The Receiver believed this was another effort by Defendants to force a delay of the resolution of the Motion for Preliminary Injunction (while the TRO remained in place) and to force the Receiver to devote his limited resources for a full manual search of all Founding Partners computer databases and other discovery that the Receiver believed to be unnecessary given the issues being litigated, unduly burdensome and expensive (D.E. 149). (Id.). Accordingly, the Receiver opposed Defendants' Motion to Compel and for Sanctions (D.E. 153). The Magistrate Judge issued an Order, denying the Motion. (D.E. 154). Defendants objected to the Magistrate's Order (D.E. 157), which forced the Receiver to further brief the issue and file an opposition to the objection (D.E. 173).

<sup>15</sup> The Receiver argued that the four Declarations were improper. For example, Mr. Leder's declaration was 70 pages long and attached 102 documents -- notwithstanding Defendants' insistence in their two Emergency Motions to Compel and for Sanctions that Defendants could not be expected to defend their Motion for Preliminary Injunction unless the Receiver incurred the costs necessary for a complete manual review of all Founding Partners' databases. In his Motion to Strike, the Receiver argued that Mr. Leder's reply declaration contradicted the Rule 30(b)(6) deposition testimony he gave and upon which the Receiver relied in preparing his opposition brief. The Receiver also argued that the three other new declarants sought to rebut Mr. Kennelly's expert report, with new testimony that contradicted the sworn testimony provided by the Sun principals at the Rule 30(b)(6) depositions, with witnesses who had not been deposed, and who relied on hospital data (or purported hospital data) that was not produced during the expedited discovery period, was not attached to the declarations, and has never been produced.

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Although the Court denied the Motion for Leave to File a Sur-Reply (D.E. 184), the Court stated that “a surreply is not required at this time” and that “[i]f the Court desires a surreply at a later time, it will be requested.” *Id.*

Defendants’ Motion for Preliminary Injunction, the Receiver’s request for an evidentiary hearing on the Motion for Preliminary Injunction, and the Receiver’s Motion to Strike the declarations submitted in reply, are all pending, and are subject to the stay of the Sun litigation, discussed more fully below.

## **2. Opposing Motions to Intervene**

Prior to the Reporting Period, on September 3, 2009, a group of investors filed a Motion to Intervene in this litigation. (D.E. 38).

On October 12, 2009, the Receiver filed his Memorandum in Opposition to the Motion to Intervene. (D.E. 70). On December 11, 2009, the Magistrate Judge issued a Report and Recommendation, recommending that the Motion to Intervene be denied. (D.E. 103). On December 24, 2009, the investors filed an Objection to the Report and Recommendation. (D.E. 106). On January 7, 2010, the Receiver filed his brief opposing the Objection. (D.E. 112). On January 21, 2010, the Court issued an Order and Opinion denying the Objection and adopting the Report and Recommendation. (D.E. 150).

On February 19, 2010, the investors filed a notice of appeal of the January 21, 2010 Order denying their Objection. (D.E. 158). The Appellants have not yet filed their appellate brief. Initially, Appellants obtained extensions of time to file their appeals brief, through unopposed motions to the 11<sup>th</sup> Circuit Court of Appeals. On September 8, 2010, Appellants filed an unopposed motion to abate the appeal, in view of the stay of litigation and the ongoing

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settlement discussions. On September 22, 2010, the 11<sup>th</sup> Circuit granted Appellants' unopposed motion to abate the appeal. Under that appellate Order, Appellants are required to file monthly reports and have done so. The appeal currently remains abated.

In addition, on December 10, 2010, Mr. Gunlicks and his children filed a Motion to Intervene in the Sun Litigation. (D.E. 216). On December 30, 2010, the Receiver filed his opposition to the Motion to Intervene (D.E. 223), which currently remains pending.

### **3. Preparing The Case For Trial In Accordance With The Court's Scheduling Order**

Prior to the Reporting Period, the Receiver filed the Complaint that initiated the Sun litigation (D.E. 1), and the Defendants filed an answer that included affirmative defenses and counterclaims (D.E. 29).

During the Reporting Period, the Receiver filed his Motion to Dismiss the Counterclaims (D.E. 67) and his Motion to Strike Affirmative Defenses (D.E. 68). Defendants opposed both Motions. (D.E. 87, 88) With the Court's permission (D.E. 109, 110), the Receiver submitted a reply brief in further support of these two Motions (D.E. 116, 118). The Receiver's Motion to Dismiss the Counterclaims and Motion to Strike Affirmative Defenses are pending and subject to the stay order in the Sun litigation. (D.E. 202).

With respect to the Rule 26(f) Conference, Defendants opposed meeting until after the resolution of their Motion for Preliminary Injunction. (D.E. 50). However, on motion by the Receiver, the Court ordered the parties to meet and for the Case Management Report to be filed by January 5, 2010. (D.E. 100). Therefore, counsel for the parties met in person on December 21, 2009 and filed their Case Management Report on January 5, 2010. (D.E. 107).

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On March 1, 2010, the Receiver sought leave to amend the Complaint because the expedited discovery revealed that the existing Defendants engaged in large-scale transfers of funds to related parties, and those transfers were improper. (D.E. 159). The proposed amended complaint sought to add claims and also to add as new defendants the transferees of investor funds from the Defendants. Defendants opposed the Receiver's motion. (D.E. 179). The Magistrate Judge issued a Report and Recommendation permitting the addition of claims to the existing Defendants, but otherwise denying the Motion. (D.E. 181). The Receiver objected to the Report and Recommendation (D.E. 190), but the Court denied the Objection and adopted the Report and Recommendation. (D.E. 193). On June 7, 2010, the Receiver filed his first Amended Complaint, adding only those claims permitted by Court Order against existing Defendants, and adding no new defendants. (D.E. 195).

On June 1, 2010, the Receiver issued thirty-one subpoenas in the Sun litigation in order to obtain information on the Receiver's collateral that had not been provided during the expedited discovery period. Those subpoenas are outstanding, and compliance is stayed. (D.E. 202).<sup>16</sup>

#### **4. Addressing Defendants' Motion to Stay Proceedings and Work Towards A Potential Settlement**

On June 12, 2010, Sun filed an Emergency Motion to Stay Proceedings During Settlement Negotiations. (D.E. 196). On June 14, 2010, the Receiver filed his Notice of Intent to File Memorandum in Opposition to Defendants' Emergency Motion to Stay. (D.E. 197). Soon thereafter, this Court entered an order temporarily staying responses to the subpoenas and pending Amended Complaint for fourteen days. (D.E. 198). On June 28, 2010, the Receiver

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<sup>16</sup> At the same time, the Receiver issued similar subpoenas in the main litigation, pursuant to his Court-appointed duties.

filed his opposition to the Defendants' Motion to Stay, arguing that although he was not opposed to a potential commercial resolution to the present dispute, he did not, at that time, have even the most minimal information relating to the settlement discussions to permit him to make an informed judgment concerning the requested stay. (D.E. 200).

On July 8, 2010, the Court entered an order staying certain deadlines in the litigation for a period of 60 days, upon which the Receiver and the Defendants were required to file a joint notice on the status of settlement. (D.E. 202).<sup>17</sup>

On July 23, 2010, the Receiver and his counsel met in Washington, D.C. with the investor group's legal and financial advisory professionals that had been engaged in the settlement discussions with the Defendants.

On September 7, 2010, the Receiver and the Defendants filed a joint notice on the status of settlement. (D.E. 205). The joint notice reflected the status of due diligence and requested that the stay be extended and that the parties file a joint notice in another 60 days.

On September 10, 2010, the Court issued an Order, extending the stay to and through November 8, 2010 and requiring the parties to file a second joint notice by November 8, 2010. (D.E. 205).

Thereafter, the stay and the deadline to file the second joint notice were extended to and through December 3, 2010, on joint motions of the Parties, to permit the Parties to continue their work on the second joint notice. (D.E. 208, 210, 212).

On December 3, 2010, the Receiver and the Defendants filed a second joint notice on the status of settlement. (S-2 and D.E. 220). The second joint notice reported on the status of due

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<sup>17</sup> Both parties have treated the stay as a stay of the Sun Litigation as a whole, in order to facilitate the due diligence and potential settlement.

diligence and requested that the stay be extended and that the parties file another joint notice 75 days later.

On December 7, 2010, the Court issued an Order, extending the stay for 75 days.

**B. Draft Complaint And Tolling Agreement Relating to Claims Against the Hospitals and Other Fraudulent Transferees**

The Receiver believes that the Sun Capital Entities improperly diverted and transferred substantial amounts of investor funds to companies under their control, including their affiliated hospitals. The Receiver believes that he has claims against the hospitals and other fraudulent transferees. As noted above, in the Sun Litigation, the Receiver moved for leave to add as new defendants the transferees, including the hospitals, who are affiliated with Sun and who received and benefitted from the investor funds that were lent to the Defendants. Because the Receiver was not permitted to add new defendants in the Sun litigation, the Receiver prepared a draft complaint against the transferees to file in a new action. In view of the stay entered in the Sun Litigation, and in order to ensure that Defendants were permitted to devote their resources to providing promised due diligence and working towards a resolution as requested by Defendants' counsel, counsel for the Receiver agreed to enter into a tolling agreement with the hospitals and other fraudulent transferees.

**C. The Bermuda Litigation**

As the Court was previously advised, after entry of the Initial Order Appointing Receiver, the Asset Freeze Order and the Order Appointing Receiver in this case and after the Receiver had asserted an interest in certain funds held by the Bank of Bermuda derived from investor funds, on April 20, 2009, several investors, instituted an action in the Grand Court of Cayman to appoint Joint Provisional Liquidators over Founding Partners Global Fund, Inc., a Cayman

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corporation (“Global Fund Inc.”), and the Global Fund Ltd. On June 11, 2009, the Grand Court of Cayman issued an Order appointing Joint Provisional Liquidators, Ian Stokoe and David Walker (the “JPLs”), for Global Fund Inc. and Global Fund Ltd. On June 23, 2009 the JPLs instituted a proceeding in Bermuda to release funds held under the name of Global Fund Ltd. styled *In the Matter of the Liquidation of Founding Partners Global Fund Ltd and in the Matter of a Letter of Request of the Grand Court of Cayman dated 16 June 2009*, in the Supreme Court of Bermuda, Commercial Court, 2009: No. 190.

Thereafter, on July 16, 2009, the Receiver, through his Bermuda counsel, the law firm of Attride-Stirling & Woloneicki (“ASW”), filed a petition in the Supreme Court of Bermuda “Commercial Court” Civil Jurisdiction to intervene in the Bermuda matter that had been initiated by the JPLs. The Court of Bermuda granted the Receiver’s petition to intervene. Thereafter, on July 16, 2009, the Supreme Court of Cayman entered an order allowing the Receiver to file affidavit evidence, including expert evidence of the United States law in connection with the Receiver’s rights to funds in Bermuda held under the name of the Global Fund Ltd.

While proceeding with the Bermuda litigation, including preparing for a hearing to determine who has rights to the funds held in the name of Global Fund Ltd. held at The Bank of Bermuda, the Receiver also pursued the parallel course of negotiating with the JPLs in an effort to resolve the matter without the need for litigation and the ensuing costs to the receivership estate. Those negotiations were successful and culminated in a “Protocol” agreed to by the Receiver and the JPLs. The Protocol provided for a transfer of \$3.5 million to the Receivership, with \$650,000 remaining with the JPL. The Protocol also permitted the Receiver to pursue further litigation in Bermuda in order to pursue the rest of the assets in Bermuda. On April 13, 2010, the Receiver filed a Motion for Approval of Protocol With Cayman Joint Provisional

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Liquidators (the “Motion to Approve Protocol”). (D.E. 211). On April 21, 2010, the Court entered an Order Granting the Motion to Approve Protocol. (D.E. 215).

Notwithstanding the foregoing, on or about August 2010, the Receiver was advised that the JPLs were rescinding the Agreement because certain investors in the Founding Partners Global Fund had changed their position and would no longer support the JPLs honoring the Protocol. The Receiver maintains that there was an enforceable agreement reached by the parties on all material terms in the form of the Protocol and is presently engaging in discussions with the JPLs to determine whether there is a mutually acceptable resolution to the present circumstances. The Receiver, the JPLs, and the investors in Founding Partners Global Fund who have changed their position are attempting to resolve this dispute without litigation. To the extent that the parties are unable to reach such a resolution, the Receiver is prepared to seek that the Protocol, which has already been approved by this Court, be enforced as originally agreed-upon by the parties, especially given his efforts and those of his retained professionals to achieve that agreement in the first place.

#### **D. The Annandale Litigation**

As mentioned above, prior to the inception of the receivership, certain investors initiated the Annandale/Founding Partners litigation in the 298<sup>th</sup> District Court in and for Dallas County, Texas. On March 27, 2009, certain investors initiated the Annandale/Sun Litigation in the 134<sup>th</sup> District Court in and for Dallas County, Texas. On July 22, 2009, the Receiver filed a Notice of Filing Order Freezing Assets and Order Appointing Replacement Receiver in the Annandale/Founding Partners Litigation, and on July 23, 2009, the Receiver filed a Plea in Intervention in the Annandale/Sun Litigation in order to represent the interests of the Receivership Entities therein. Ultimately, by order dated September 30, 2009, and pursuant to

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an agreement between the parties, the court in the Annandale/Sun Litigation entered an order staying those proceedings. No such order was, however, entered in the Annadale/Founding Partners Litigation.

On or about December 15, 2009, the Receiver (through his local Texas counsel) filed a Motion to Stay in the Annandale/Founding Partners Litigation wherein he was authorized by the Texas Plaintiffs' counsel to represent that his clients (i.e., the Texas Plaintiffs) did not oppose the relief sought. Notwithstanding Plaintiffs' consent to the Motion to Stay, Plaintiffs' counsel did not cooperate in finalizing an order granting the motion.

As a result, on April 16, 2010, the Receiver filed his Emergency Motion for an Order to Show Cause Why the Texas Plaintiffs and Their Counsel Should Not Be Held In Contempt for Violating the Receivership Order and Sanctioning Them to Coerce Compliance with the Court's Order. (D.E. 212). As explained therein, the Receiver took that action against victims of the underlying fraud and against their counsel only as a last resort and to defend the integrity of the Court's Order because a trial in the matter was scheduled for three (3) days thereafter. However, immediately upon the filing of the Emergency Motion, Plaintiffs' counsel contacted the Receiver's counsel to clarify that Plaintiffs would honor the Court's Order and seek a stay in Texas State Court. The Receiver therefore withdrew his Motion. (D.E. 213, 214). The Annandale/Founding Partners Litigation is presently stayed.

**E. Gunlicks Litigation and Motion for Order to Show Cause**

On December 30, 2010, the Receiver filed his Motion for an Order to Show Cause why the Gunlicks Children, Mr. William L. Gunlicks, and their Illinois Counsel Should Not Be Held in Contempt of Court for Violating the Receivership Order and Sanctioning Them to Coerce Compliance with the Court's Order ("Motion for Order to Show Cause"). (D.E. 265). The

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Motion for Order to Show Cause was based on an Illinois state court action instituted and pursued by the Gunlicks children, as purported shareholders in Receivership Entity Founding Partners Capital Management Company, against the Receivership Entities' former auditor, Ernst & Young, and former law firm, Mayer Brown. (Gunlicks Litigation"). *Id.* at 6-7. Before filing the Motion for Order to Show Cause, the Receiver's counsel had asked the Gunlicks family and their Illinois counsel to voluntarily seek to stay the Gunlicks Litigation, but they refused. *Id.* at 8-11. The Motion for Order to Show Cause currently remains pending.

#### **IV. OTHER MATTERS**

##### **A. Continuing Investigation of The Receivership Entities**

Pursuant to Court Order, the Receiver and his staff continue to investigate the Receivership Entities, including determining how investor funds were spent and assessing potential actions to recover investor funds.

As noted above, during the expedited discovery period in the Sun Litigation, the Receiver was able to gain certain information from the Sun Capital Entities and affiliated parties, including the Hospitals. That information, however, is subject to a litigation confidentiality agreement, which the Receiver entered into as pre-condition to obtaining discovery from the Sun Capital Entities and the hospitals. (D.E. 62).<sup>18</sup> As a result of the restrictions in the litigation confidentiality agreement, the information obtained from the expedited discovery period is contained in filings in the Sun Litigation that are under seal.

In addition, due to the fact that Sun Capital Entities and the hospitals provided only limited and incomplete information during the expedited discovery period, the Receiver served

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<sup>18</sup> Docket entry cites in Section IV.A of this Report are cites to the Sun litigation, Case No. 2:09-CV-445-FtM-99SPC.

subpoenas on Sun Capital entities and on various other entities and individuals affiliated with the Sun Capital entities. The subpoenas were issued, not just in the Sun litigation, but also in the main case. Compliance with all such subpoenas has been stayed in favor of the due diligence and settlement process that is still ongoing.

In addition, as a result of the due diligence and settlement process, the Receiver has obtained certain additional information on the uses of investor funds. However, that information is or may be covered by a settlement confidentiality agreement entered into by the Receiver, as a prerequisite to obtaining due diligence materials and participating in the settlement negotiation process. (D.E. 203, 204). Therefore, absent an order from the Court to modify the terms of the settlement confidentiality agreement, the Receiver will provide the Court with information obtained during the due diligence process only through sealed filings in the Sun Litigation.

Other aspects of the Receiver's investigation of the affairs of the Receivership Entities are covered below.

**B. Engagement of Special Counsel For Potential Third-Party Professional Claims And Filing of Lawsuit Against Ernst & Young and Mayer Brown**

On August 9, 2010, the Receiver filed the Receiver's Unopposed Emergency Motion to Retain Litigation Counsel, in which he indicated that he had discovered that certain professionals (the "Potential Defendants") may have breached legal duties to the Receivership Entities. (D.E. 235). The Receiver further explained that he had entered into tolling agreements with certain of the Potential Defendants, one of which recently expired and cannot be renewed, and another which would soon expire and may not be renewable. *Id.* The Receiver indicated that he and his staff had conducted due diligence on firms specializing in these kinds of claims, including on behalf of receivers or trustees and that, upon such due diligence, he had determined that the firm

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of Beus Gilbert possessed the requisite and best qualifications. *Id.* at ¶ 5. In addition, the Receiver represented that he had negotiated the terms of a proposed retainer agreement with Beus Gilbert, which was attached to the Original Motion. *Id.* at ¶ 6. The Receiver, therefore, sought permission to retain Leo R. Beus, Esq. of the law firm of Beus Gilbert, on the terms of the proposed retainer agreement, to evaluate and file appropriate claims against the Potential Defendants on behalf of the Receiver. *Id.* at ¶ 4.

On August 10, 2010, this Court entered the Order denying the Receiver's Original Motion, and set forth certain specific concerns. (D.E. 241).

On August 13, 2010, the Receiver filed his Unopposed Amended Emergency Motion to Retain Litigation Counsel (the "Amended Motion"), in which the Receiver indicated that he would also retain the Miami law firm of Colson Hicks as local and co-counsel. (D.E. 242). On August 18, 2010, this Court entered an order granting the Receiver's Amended Motion. (D.E. 247).

Since that time, the Receiver, Beus Gilbert, and Colson Hicks worked to finalize their investigation of the Potential Defendants, and the drafting of a complaint. .

On December 30, 2010, the Receiver, represented by Beus Gilbert and Colson Hicks, sued the Receivership Entities' former auditor, Ernst & Young, and the Receivership Entities' former counsel, Mayer Brown. The lawsuit was filed in the 17<sup>th</sup> Judicial Circuit in and for Broward County, Florida.

### **C. Catalyst Financial**

The Receiver filed a Motion for Entry of an Order Authorizing the Receiver to Retain Catalyst Financial, LLC, attaching a proposed retainer agreement. (D.E. 254). The Receiver requested permission to retain Catalyst Financial to serve as his financial advisor with respect to

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individual holdings within two specified portfolios, Hybrid Value Fund, LLP and Stable Value Fund, LLP (the “Portfolios”). The Court issued an Order permitting the Receiver to engage Catalyst, but only if Catalyst agreed to certain modifications to the proposed retainer agreement. (D.E. 255). Catalyst agreed to the modifications, and the Receiver and Catalyst entered into the proposed retainer agreement as modified pursuant to the Order of the Court. Catalyst has been at work analyzing the Portfolios to assist the Receiver’s recovery efforts.

**D. Tax Issues**

As noted above, due to the lack of complete information relating to the Receivership Entities’ financial transactions during the 2008 tax year, last year, the Receiver filed a blank return with a detailed disclosure statement putting the Internal Revenue Service on notice as to why the Receiver was unable to file a complete and accurate tax return by the September 15, 2009 deadline.

This year, in order to comply with applicable deadlines and based upon his investigation since last year’s submission to the Internal Revenue Service, the Receiver, through the Berkowitz Firm, issued K-1s to investors which reported interest income to the investor-taxpayers for 2008. The Receiver also filed tax returns for the 2009 tax year. Due to the complex nature of the various tax issues presented in this case, however, the Receiver has not yet filed completed tax returns for 2008.

Several investors have contacted the Receiver’s professionals with suggestions and concerns about certain tax issues. The Receiver is presently working with the Berkowitz Firm, as well as with his tax attorney at Broad and Cassel, to further analyze the tax issues. Their review and analysis is ongoing.

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## **E. Ongoing Investigation**

In addition to the foregoing, the Receiver's investigation of the underlying fraud is ongoing. The Receiver issued subpoenas to various banking institutions in order to gather the records necessary to complete the forensic analysis of funds transferred in and out of the Founding Partners entities, including but not limited to transfers to Defendant Gunlicks and his children. The Receiver's counsel is working with the applicable banks in order to determine the most cost-effective manner by which to gather such records, which given the number of years and accounts involved, is somewhat of a costly, yet necessary, undertaking.

The Receiver's counsel and the Berkowitz Firm are also working together to identify target payees of the Receivership Entities and to determine the circumstances underlying those transfers. The Receiver will be serving additional subpoenas to certain of those transferees to gain additional information necessary to determine the validity of those transfers.

Finally, the Receiver recently mailed investor-specific confirmation letters to confirm that the records in the Receiver's possession related to those investors' respective investments are accurate.

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**CONCLUSION**

The Receiver will be filing additional reports with the Court to advise the Court of the progress of the Receiver's work and to make recommendations. The Receiver continues to encourage investors and others who are in possession of information they believe may assist the Receiver to contact the Receiver or his counsel by calling toll-free (877) 373-9479.

Dated: January 7, 2011

Respectfully Submitted,

**BROAD AND CASSEL**

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2 S. Biscayne Boulevard  
Miami, FL 33131  
Telephone: (305) 373-9400  
Facsimile: (305) 995-9443

By: s/Jonathan Etra

Jonathan Etra, Esq.  
Florida Bar No. 0686905  
*Counsel for Receiver*

**BROAD and CASSEL**

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 7, 2011, 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.

s/Jonathan Etra  
Jonathan Etra, Esq.

**SERVICE LIST**

**U.S. Securities and Exchange Commission v. Founding Partners Capital  
Management, Inc., et al  
Case No. 2:09-CV-229-FTM-29SPC  
United States District Court, Middle District of Florida**

***C. Ian Anderson, Esq.***  
andersonci@sec.gov  
U.S. Securities and Exchange Commission  
801 Brickell Avenue, Suite 1800  
Miami, FL 33131  
Tel: (305) 982-6317  
Fax: (305) 536-4154  
*Attorney for Plaintiff*  
*U.S. Securities and Exchange Commission*  
*Via CM/ECF*

***William and Pamela Gunlicks***  
341 Sheridan Road  
Winnetka, Illinois 60093  
*Via U.S. Mail*

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# **EXHIBIT A**

Daniel Newman, Esq., Receiver  
Broad and Cassel, 21st Floor, One Biscayne Tower, 2 S. Biscayne Blvd, Miami, FL 33131  
305-373-9400

## STANDARDIZED FUND ACCOUNTING REPORT

CIVIL - RECEIVERSHIP FUND

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Consolidated Founding Partners Entities <sup>1</sup>  
Civil Court Docket No. 2:09-cv-229-FtM-29SPC

Reporting Period 07/01/10 to 09/30/10

**Note 1:** Founding Partners Capital Management, Co. ("FPCMC"), Founding Partners Stable-Value Fund, LP ("SVF"), Founding Partners Stable-Value Fund II, LP ("SVFII"), Founding Partners Global Fund Ltd. ("Global"), and Founding Partners Hybrid-Value Fund, LP ("HVF") have been consolidated and are collectively referred to in this report as the "Consolidated Founding Partners Entities."

STANDARDIZED FUND ACCOUNTING REPORT for Consolidated Founding Partners Entities - Cash Basis  
 Receivership; Civil Court Docket No. 2:09-cv-229-FtM-29SPC  
 Reporting Period 07/01/10 to 09/30/10

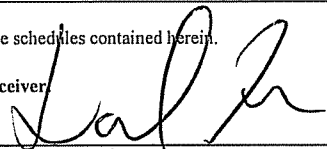
FUND ACCOUNTING (See Instructions):				
		Detail	Subtotal	Grand Total
Line 1	Beginning Balance (As of 07/01/2010): (See Schedule 1.1)	\$ 2,986,116.40		
	<i>Increases in Fund Balance:</i>			
Line 2	Business Income			
Line 3	Cash and Securities (See Schedule 3.1)	-		
Line 4	Interest / Divided Income (See Schedule 4.1)	26,446.52		
Line 5	Business Asset Liquidation (See Schedule 5.1)	-		
Line 6	Personal Asset Liquidation			
Line 7	Third-Party Litigation Income			
Line 8	Miscellaneous - Other (See Schedule 8.1)	-		
	<b>Total Funds Available (Lines 1-8)</b>		<b>\$ 26,446.52</b>	<b>\$ 3,012,562.92</b>
	<i>Decreases in Fund Balance:</i>			
Line 9	Disbursements to Investors			
Line 10	Disbursements for Receivership Operations			
Line 10a	Disbursements to Receiver or Other Professionals (See Schedule 10.1)	855,374.27		
Line 10b	Business Asset Expenses (See Schedule 10.1)	71.81		
Line 10c	Personal Asset Expenses			
Line 10d	Investment Expenses			
Line 10e	Third-Party Litigation Expenses (See Schedule 10.1)			
	1. Attorney Fees	908,321.00		
	2. Litigation Expenses	28,437.87		
	Total Third-Party Litigation Expenses	936,758.87		
Line 10f	Tax Administrator Fees and Bonds			
Line 10g	Federal and State Tax Payments	-		
	<b>Total Disbursements for Receivership Operations</b>		<b>\$1,792,204.95</b>	
Line 11	Disbursements for Distribution Expenses Paid by the Fund:			
Line 11a	Distribution Plan Development Expenses:			
	1. Fees:			
	Fund Administrator			
	Independent Distribution Consultant (IDC)			
	Distribution Agent			
	Consultants			
	Legal Advisers			
	Tax Advisers			
	2. Administrative Expenses			
	3. Miscellaneous			
	Total Plan Development Expenses			
Line 11b	Distribution Plan Implementation Expenses:			
	1. Fees:			
	Fund Administrator			
	IDC			
	Distribution Agent			
	Consultants			
	Legal Advisers			
	Tax Advisers			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice / Publishing Approved Plan			
	Claimant Identification			
	Claims Processing			
	Web Site Maintenance / Call Center			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. Federal Account for Investor Restitution (FAIR) Reporting Expenses			
	Total Plan Implementation Expenses			
	<b>Total Disbursements for Distribution Expenses Paid by the Fund</b>		<b>-</b>	
Line 12	Disbursements to Court / Other:			
Line 12a	Investment Expenses / Court Registry Investment System (CRIS) Fees			
Line 12b	Federal Tax Payments			
	<b>Total Disbursements to Court / Other:</b>			
	<b>Total Funds Disbursed (Lines 9-11)</b>			<b>\$ 1,792,204.95</b>
Line 13	Ending Balance (As of 09/30/2010): (See Schedule 13.1)			<b>\$ 1,220,357.97</b>

**STANDARDIZED FUND ACCOUNTING REPORT for Consolidated Founding Partners Entities - Cash Basis**  
**Receivership; Civil Court Docket No. 2:09-cv-229-FtM-29SPC**  
**Reporting Period 07/01/10 to 09/30/10**

		Detail	Subtotal	Grand Total
Line 14	<b>Ending Balance of Fund - Net Assets</b>			
Line 14a	<i>Cash &amp; Cash Equivalents</i>			\$ 1,220,357.97
Line 14b	<i>Investments</i>			
Line 14c	<i>Other Assets or Uncleared Funds</i>			
	<b>Total Ending Balance of Fund - Net Assets</b>			<b>\$ 1,220,357.97</b>

<b>OTHER SUPPLEMENTAL INFORMATION:</b>				
		Detail	Subtotal	Grand Total
	<i>Report of Items NOT To Be Paid by the Fund:</i>			
Line 15	<b>Disbursements for Plan Administration Expenses Not Paid by the Fund:</b>			
Line 15a	<i>Plan Development Expenses Not Paid by the Fund:</i>			
	1. Fees:			
	Fund Administrator			
	IDC			
	Distribution Agent			
	Consultants			
	Legal Advisers			
	Tax Advisers			
	2. Administrative Expenses			
	3. Miscellaneous			
	<i>Total Plan Development Expenses Not Paid by the Fund</i>			
Line 15b	<i>Plan Implementation Expenses Not Paid by the Fund:</i>			
	1. Fees:			
	Fund Administrator			
	IDC			
	Distribution Agent			
	Consultants			
	Legal Advisers			
	Tax Advisers			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice / Publishing Approved Plan			
	Claimant Identification			
	Claims Processing			
	Web Site Maintenance / Call Center			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. Federal Account for Investor Restitution (FAIR) Reporting Expenses			
	<i>Total Plan Implementation Expenses Not Paid by the Fund</i>			
Line 15c	<i>Tax Administrator Fees &amp; Bonds Not Paid by the Fund</i>			
	<b>Total Disbursements for Plan Administration Expenses Not Paid by the Fund</b>			
Line 16	<b>Disbursements to Court / Other Not Paid by the Fund:</b>			
Line 16a	<i>Investment Expenses / CRIS Fees</i>			
Line 16b	<i>Federal Tax Payments</i>			
	<b>Total Disbursements for to Court / Other Not Paid by the Fund:</b>			
Line 17	<b>DC &amp; State Tax Payments</b>			
Line 18	<b>No. of Claims</b>			
Line 18a	# of Claims Received This Reporting Period			
Line 18b	# of Claims Received Since Inception of Fund			
Line 19	<b>No. of Claimants / Investors</b>			
Line 19a	# of Claimants / Investors Paid This Reporting Period			
Line 19b	# of Claimants / Investors Paid Since Inception of Fund			

NOTE: Transfers between accounts of the consolidated entities on this report are not included in the schedules contained herein.

Receiver \_\_\_\_\_  
 By:   
 (signature)  
Daniel Newman  
 (printed name)  
 Receiver  
 (title)  
 Date: 1/7/11

**SCHEDULE 1.1**

**STANDARDIZED FUND ACCOUNTING REPORT for Consolidated Founding Partners Entities - Cash Basis  
Receivership; Civil Court Docket No. 2:09-cv-229-FtM-29SPC  
Reporting Period 07/01/10 to 09/30/10**

**DETAIL OF LINE 1, BEGINNING BALANCE**

Entity	Bank Name	Account Number	As of Date	Balance
Founding Partners Capital Management Co.	Sabadell United Bank *	006-607312-6	6/30/2010	\$ 385,386.35
Hybrid Value Fund	Sabadell United Bank	006-607316-7	6/30/2010	238,750.37
Stable Value Fund	Sabadell United Bank	006-607313-4	6/30/2010	1,736,409.65
Stable Value Fund II	Sabadell United Bank	006-607314-2	6/30/2010	625,570.03
	* formerly Mellon Bank			\$ 2,986,116.40

**SCHEDULE 3.1**

**STANDARDIZED FUND ACCOUNTING REPORT for Consolidated Founding Partners Entities - Cash Basis**  
**Receivership; Civil Court Docket No. 2:09-cv-229-FtM-29SPC**  
**Reporting Period 07/01/10 to 09/30/10**

**DETAIL OF LINE 3, CASH AND SECURITIES**

Date	Bank Name	Account Name	Account Number	Ref	Payee	Purpose	Amount
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**SCHEDULE 4.1**

**STANDARDIZED FUND ACCOUNTING REPORT for Consolidated Founding Partners Entities - Cash Basis  
Receivership; Civil Court Docket No. 2:09-cv-229-FtM-29SPC  
Reporting Period 07/01/10 to 09/30/10**

**DETAIL OF LINE 4, INTEREST/DIVIDEND INCOME**

Date	Bank Name	Account Name	Account Number	Ref	Payee	Purpose	Amount
7/9/10	Sabadell United Bank *	HVF	006-607316-7	Deposit	Hybrid Value Fund	Dividend Income	\$ 15,863.88
7/30/10	Sabadell United Bank	HVF	006-607316-7	Deposit	Hybrid Value Fund	Interest Income	204.49
8/31/10	Sabadell United Bank	HVF	006-607316-7	Deposit	Hybrid Value Fund	Interest Income	223.41
9/15/10	Sabadell United Bank	HVF	006-607316-7	Deposit	Hybrid Value Fund	Dividend Income	3,654.00
9/30/10	Sabadell United Bank	HVF	006-607316-7	Deposit	Hybrid Value Fund	Interest Income	211.12
7/30/10	Sabadell United Bank	SVF	006-607313-4	Deposit	Stable Value Fund	Interest Income	1,427.18
8/31/10	Sabadell United Bank	SVF	006-607313-4	Deposit	Stable Value Fund	Interest Income	1,523.59
9/30/10	Sabadell United Bank	SVF	006-607313-4	Deposit	Stable Value Fund	Interest Income	999.62
7/30/10	Sabadell United Bank	SVFII	006-607314-2	Deposit	Stable Value Fund II	Interest Income	514.17
8/31/10	Sabadell United Bank	SVFII	006-607314-2	Deposit	Stable Value Fund II	Interest Income	548.90
9/30/10	Sabadell United Bank	SVFII	006-607314-2	Deposit	Stable Value Fund II	Interest Income	360.13
7/30/10	Sabadell United Bank	FPCMC	006-607312-6	Deposit	Founding Partners Capital Management Co.	Interest Income	312.61
8/31/10	Sabadell United Bank	FPCMC	006-607312-6	Deposit	Founding Partners Capital Management Co.	Interest Income	312.71
9/30/10	Sabadell United Bank	FPCMC	006-607312-6	Deposit	Founding Partners Capital Management Co.	Interest Income	290.71

\* formerly Mellon Bank

\$ 26,446.52

**SCHEDULE 5.1**

**STANDARDIZED FUND ACCOUNTING REPORT for Consolidated Founding Partners Entities - Cash Basis  
Receivership; Civil Court Docket No. 2:09-cv-229-FtM-29SPC  
Reporting Period 07/01/10 to 09/30/10**

**DETAIL OF LINE 5, BUSINESS ASSET LIQUIDATION**

Date	Bank Name	Account Name	Account Number	Ref	Payee	Purpose	Amount
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\$ -

**SCHEDULE 8.1**

**STANDARDIZED FUND ACCOUNTING REPORT for Consolidated Founding Partners Entities - Cash Basis  
Receivership; Civil Court Docket No. 2:09-cv-229-FtM-29SPC  
Reporting Period 07/01/10 to 09/30/10**

**DETAIL OF LINE 8, MISCELLANEOUS- OTHER**

Date	Bank Name	Account Name	Account Number	Ref	Payee	Purpose	Amount
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\$ -

**SCHEDULE 10.1**

**STANDARDIZED FUND ACCOUNTING REPORT for Consolidated Founding Partners Entities - Cash Basis  
Receivership; Civil Court Docket No. 2:09-cv-229-FtM-29SPC  
Reporting Period 07/01/10 to 09/30/10**

**DETAIL OF LINE 10a, DISBURSEMENTS TO RECEIVER OR OTHER PROFESSIONALS**

Date	Bank Name	Account Name	Account Number	Ref/ Chk #	Payee	Purpose	Amount
9/17/10	Sabadell United Bank *	FPCMC	006-607312-6	136	Berkowitz Dick Pollack & Brant	Accounting Fees	\$ 467,299.06
9/14/10	Sabadell United Bank	FPCMC	006-607312-6	135	Broad and Cassel	Attorney Fees	388,075.21
							<u>\$ 855,374.27</u>

**DETAIL OF LINE 10b, BUSINESS ASSET EXPENSES**

Date	Bank Name	Account Name	Account Number	Ref/ Chk #	Payee	Purpose	Amount
7/15/10	Sabadell United Bank *	FPCMC	006-607312-6	129	T3 Communications	Telephone Hotline	\$ 35.63
8/5/10	Sabadell United Bank	FPCMC	006-607312-6	132	T3 Communications	Telephone Hotline	36.18
							<u>\$ 71.81</u>

**DETAIL OF LINE 10e1, THIRD-PARTY LITIGATION EXPENSES - Attorney Fees**

Date	Bank Name	Account Name	Account Number	Ref/ Chk #	Payee	Purpose	Amount
7/2/10	Sabadell United Bank *	FPCMC	006-607312-6	126	DyKema Gossett, PLLC	Attorney Fees	\$ 8,539.21
8/26/10	Sabadell United Bank	FPCMC	006-607312-6	134	Beaus Gilbert LLC	Attorney Fees	15,000.00
9/14/10	Sabadell United Bank	FPCMC	006-607312-6	135	Broad and Cassel	Attorney Fees	610,725.95
9/17/10	Sabadell United Bank	FPCMC	006-607312-6	138	Gregory A. Whitmore	Attorney Fees	3,158.00
9/24/10	Sabadell United Bank	FPCMC	006-607312-6	Wire	Attride-Stirling & Woloniecki	Attorney Fees	270,897.84
							<u>\$ 908,321.00</u>

**DETAIL OF LINE 10e2, THIRD-PARTY LITIGATION EXPENSES - Litigation Expenses**

Date	Bank Name	Account Name	Account Number	Ref/ Chk #	Payee	Purpose	Amount
7/15/10	Sabadell United Bank *	FPCMC	006-607312-6	128	Miami PSPI, LLC	Process Service Fees	\$ 170.00
7/15/10	Sabadell United Bank	FPCMC	006-607312-6	127	Proedje Group	Process Service Fees	2,264.83
7/27/10	Sabadell United Bank	FPCMC	006-607312-6	130	NRAI Corporate Services	Process Service Fees	285.00
7/27/10	Sabadell United Bank	FPCMC	006-607312-6	131	Collier County Tax Collector	Tax Warrant	179.08
8/5/10	Sabadell United Bank	FPCMC	006-607312-6	133	Xact Data Discovery	Data Storage	25,538.96
							<u>\$ 28,437.87</u>

\* formerly Mellon Bank

**SCHEDULE 13.1**

**STANDARDIZED FUND ACCOUNTING REPORT for Consolidated Founding Partners Entities - Cash Basis**  
**Receivership; Civil Court Docket No. 2:09-cv-229-FtM-29SPC**  
**Reporting Period 07/01/10 to 09/30/10**

**DETAIL OF LINE 13, ENDING BALANCE**

Entity	Bank Name	Account Number	As of Date	Balance
Founding Partners Capital Management Co.	Sabadell United Bank *	006-607312-6	9/30/2010	\$ 119,010.23
Hybrid Value Fund	Sabadell United Bank	006-607316-7	9/30/2010	258,907.27
Stable Value Fund	Sabadell United Bank	006-607313-4	9/30/2010	619,320.21
Stable Value Fund II	Sabadell United Bank	006-607314-2	9/30/2010	223,120.26
	* formerly Mellon Bank			<u>\$ 1,220,357.97</u>