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.

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RECEIVER'S SIXTH STATUS REPORT

Daniel S. Newman, as Court-appointed receiver (the "Receiver") for Defendant Founding Partners Capital Management Company ("FPCMC") and the 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 Sixth Status Report (the "Sixth Report").

I. INTRODUCTION

On April 20, 2009, the United States Securities and Exchange Commission filed its complaint ("SEC Action") against FPCMC and William L. Gunlicks ("Gunlicks"), alleging that FPCMC and Gunlicks 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 retraining 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"Receiver") was appointed Replacement Receiver by Court Order on May 20, 2009 (the "Receivership Order"), which Order superseded the Initial Receivership Order.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 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 recent events relevant to the settlement in the action styled *Daniel S. Newman, as Receiver for Founding Partners Capital Management Company; et al v. Sun Capital, Inc., et al.*, U.S. District Court, Middle District of Florida – Fort Myers, Case No. 2:09-cv-445-FtM-29SPC, as well as the status of actions styled: (i) *Daniel S. Newman v. William L. Gunlicks Irrevocable Trust f/b/o Nissa Cox, et al.*, U.S. District Court, Middle District of Florida – Fort Myers, Case No. 2:09-CV-229; and (ii) *Newman v. Ernst & Young, LLP, et al.*, Broward County Circuit Court, Case No. 10-49061.

II. BACKGROUND AND RECENT EVENTS

A. Closing of The Settlement Agreement

On August 28, 2012, the Court entered its Amended Order and Opinion fully approving the revised Settlement Agreement in the action styled *Daniel S. Newman, as Receiver for Founding Partners Capital Management Company; et al v. Sun Capital, Inc., et al.*, U.S. District Court, Middle District of Florida – Fort Myers, Case No. 2:09-cv-445-FtM-29SPC (the "*Sun Litigation*"). [*Sun Litigation*, D.E. 308].

Based on the investor records, approximately 99% of investors whose claims were validated in the claims process provided releases indicating they chose to participate in the Settlement Transaction. After verifying the releases and receiving required updated schedules, the Settlement Agreement was fully executed by the parties on January 9, 2013.

The Receiver and Defendants since that date undertook significant efforts to close the

settlement transaction and ensure compliance with all other closing conditions, as well as undertake all collateral actions necessary to effectuate a smooth transition in the change of ownership of the healthcare companies that are now subsidiaries of Founding Partners Designee, LLC (the "FP Designee") .

As described in previous filings, among other things, the tasks necessary to close the settlement transaction included: (1) establishing a line of credit for Promise Healthcare, Inc.("Promise") and Success Healthcare LLC ("Success"), the subsidiary healthcare provider companies transferred to FP Designee, under the Settlement Transaction; (2) resolving Internal Revenue Service Liens, state liens and other issues necessary to procure the third-party financing described in item 1 above; (3) filing governmental applications and notices related to the change of ownership of the Promise and Success hospitals over to the FP Designee and resolving individual state issues; (4) the negotiation of certain ancillary documents between the parties to effectuate the settlement; and (5) establishing the FP Designee Board and preparing same for a smooth transition. [*See Sun Litigation*, D.E. 322, 324]. Below is a discussion on each of the above items.

1. The Line of Credit Negotiations

The professionals working on behalf of the Receiver and Defendants began discussions with four potential lenders. Based on preliminary communications with the potential lenders and the parameters for any credit agreement, two of the four potential lenders were viable candidates to provide the revolving line of credit.

A number of complex issues arose during the discussions. First, as was previously discussed by the Receiver [D.E. 362], shortly after the Court approved the Settlement Transaction, it was discovered by the Defendants and their auditors that a former employee

processing payroll stole funds from the Defendants. The conduct at issue occurred between September 2010 and October 2012 and resulted in a tax liability to the IRS of in excess of $20 Million. The IRS and certain states placed liens on assets of the entities that were to be acquired by FP Designee. This complicated procuring a line of credit. Both potential lenders were unwilling to even begin negotiations in earnest until an agreement was in place with the IRS. After protracted negotiations and discussions, on September 25, 2013 and October 23, 2013, Promise and Success, respectively, entered installment agreements with the IRS that allowed them to pay back tax liabilities and interest created by the defalcation over an eighty-four (84) month period.

Second, the potential lenders also required that the IRS and various states agree to subordinate their liens to the potential lenders. Through discussions between Promise and Success, their professionals, the IRS, and the Receiver, the Company was able to procure subordination agreements acceptable to the lenders in or about March 2014.

Negotiations with both potential lenders included the Company and its counsel, the Receiver and his counsel and advisors, and the lenders and their counsel. Due diligence on the part of potential lenders was extensive and required all companies involved in the transaction to continuously update and provide follow-up information. Negotiations lasted several months as the parties worked through complex legal, business and financial issues while at the same time negotiating the collateral issues with the IRS leading to the subordination agreements. Promise and Success entered into a Credit and Security Agreement and the related documents with Midcap Financial LLC on March 17, 2014.

2. Negotiations With The Principals

While the Settlement Agreement set out the parameters for the Settlement Transaction, it

required further documents to be negotiated and agreed upon. Among other things, the parties were required to negotiate performance security documents reflecting the principals' security for the obligations set forth in the Settlement Agreement. These negotiations were complicated by the lender's requirement that the principals subordinate their security interest in certain collateral to the lender. The parties were able to agree upon terms for performance security documents as well as other required documents.

3. Changes In Ownership Process

As previously mentioned in the Receiver's Fifth Report [D.E. 394], the Receiver, working with the principals and management of Promise and Success, filed governmental applications and notices related to the change of ownership of the Promise and Success hospitals over to the FP Designee. These applications were required to be filed prior to closing and took significant time to prepare to ensure that there were no material deficiencies that would delay the estimated closing timetable. Given the ownership structure of the FP Designee, time was also dedicated to seeking the appropriate signatures for such applications.

4. FP Designee Board

On February 11, 2013, pursuant to the Limited Liability Company Agreement (the "LLC Agreement") of the FP Designee, approved by the Court on August 28, 2012 in connection with the Motion to Approve the Settlement Agreement [*Sun Litigation*, D.E. 308], the Receiver filed a Motion for Court Approval of the FP Designee Board Member Designations. ("Board Approval Motion") [*Sun Litigation*, D.E. 322]. Under the LLC Agreement, which was approved by the Court in connection with the Motion to Approve the Settlement Agreement, the Court had the authority, but may decline, to review or approve the Receiver's initial designations.

On February 11, 2013, the Receiver filed a Motion requesting that the Court either: (1)

enter an order approving the designation of Mr. Ian Stokoe, Mr. James Brown, Mr. Keith Kennedy, and Mr. Edmund Woodbury as the initial four investor representative board members of the FP Designee, to serve until their successors are appointed in accordance with the provisions of the LLC Agreement, or until their earlier death, resignation, or removal;[1] or (2) enter an order declining to review and approve the Receiver's initial designations of FP Designee board members, in which case the designations take effect in accordance with the provisions of the LLC Agreement. [*Sun Litigation*, D.E. 322]. By Order dated, August 23, 2013, the Court declined to exercise its option to approve the Board absent "absent any allegations or arguments that any of the Board Members nominated by the Receiver were unsuited for the position." [*Sun Litigation*, D.E. 339].

Each proposed Board Member was asked to execute, and executed, a Proposed Managers Questionnaire and an Agreement to Serve as a Board Member of the FP Designee Board. An informational meeting was held with the proposed Board on September 20, 2013, in Boca Raton, Florida. Since then, the proposed Board has frequently met to discuss and provide input on Company business issues. The proposed Board retained the services of Kirkland & Ellis to serve as its counsel and the investment banking firm of MTS Health Partners, L.P. to advise it on business related issues. The Board was advised of significant business issues.

On March 14, 2014, the Board was formally constituted and approved the closing transaction. Subsequent to closing, with the approval of the Board, Promise closed on an agreement with SMV Property Holdings LLC a property owner of long-term acute care facilities and skilled nursing facilities, to manage six existing facilities (four LTACs and two skilled

[1] In accordance with the LLC Agreement, which was approved by the Court, no approval is required for the Receiver's appointment to the Board of FP Designee. [*See* LLC Agreement section 8.2(a)(ii), D.E. 248-3 at 9].

nursing facilities)[2] owned by that entity which had been previously managed by a competitor of Promise.

The Board, in consultation with its advisors, has also addressed other issues, such as: (1) exercising an option to purchase a Missouri facility in which it already operates; (2) utilization of funds for construction of two facilities for which Promise had previously obtained certificates of need, which certificates were discussed in the settlement papers;[3] (3) approved agreements with key management; (4) reviewed governance structure and proposed changes to strengthen internal controls, (5) evaluated the potential acquisition of two facilities in Arizona; (6) proposed and approved expenditure of funds to pay off existing receivables and address critical facility-related issues; (7) approved a loan transaction between City National Bank and FP Designee subsidiaries to fund construction and equipment for the LTAC facilities in development;[4] (8) proposed amendments the LLC Agreement;[5] and (9) considered other amendments to the FP Designee's governing documents. Each of these actions was considered only after review of substantial review of materials prepared by the FP Designee or its advisors, discussions with management

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2 "LTACs" or "long term acute care facilities" are specialty-care hospitals designed for patients with serious medical problems requiring intense treatment for extended periods of time. Unlike traditional hospitals, which provide general medical specialties such as emergency care or maternity care, LTACs focus their resources on applying higher standards to a narrower set of patients.

"Skilled nursing facilities," commonly referred to as nursing homes, are healthcare facilities that offer long- and short-term care for individuals requiring rehabilitation and/or care as a result of serious or persistent health issues that are too complicated to be treated at home or in an assisted living facility.

3 One LTAC facility under construction is located in Fort Myers, Florida right off I-75. The other LTAC facility under construction is located in Miami Lakes, Florida. Both facilities are expected to be completed by September 2014, and to begin receiving patients for a demonstration period shortly thereafter.

4 The transaction closed on July 7, 2014.

5 On March 12, 2014, after consultation with counsel, the LLC Agreement was amended to provide Board members with certain indemnification rights and to address Board member standards of care.

and advisors and among the Board.[6]

The Receiver wants to formally recognize the efforts of the Board to date, and the critical role it has played in providing advice and oversight to the Company. Each Board member has dedicated significant hours in reviewing voluminous materials and meetings that have benefited the entities and ultimately their future interest holders.

B. The Claims Process

On July 10, 2013, the Receiver filed his recommendations to the Court in connection with the claims process (the "Recommendations"). [D.E. 396]. The claims process was complex, as there were hundreds of investors with interests at stake in the various Receivership litigations, many of whom had unique viewpoints and concerns. The Receiver was charged with conducting a claims process in which hundreds of these investors submitted claims. In connection with conducting the claims process, the Receiver was required to make a recommendation to the Court for each claim, as well as recommendations on distribution methodology. There was an extraordinarily large volume of documents and materials that needed to be reviewed in order for the Receiver to make his recommendations to the Court. The Receiver also was required to follow up and obtain information from many investors to verify that his Recommendations were based on complete information.

As part of the process, the Receiver held telephone conferences with the Joint Official Liquidator ("JOL") for the Global Fund, Inc., which is one of the largest investors in the Receivership Entities, to negotiate an agreement of the Global Fund, Inc. claim. The Receiver believed that the size and complexity of the issues surrounding the Global Fund, Inc. claim

[6] On May 6 and 7, 2014, the Board met for two days in person in California to discuss business operations, finances, governance, and other issues. The Board also toured three facilities located in Southern California and met staff at those facilities.

warranted pre-filing negotiations to try to avoid potential objections and motion practice with regard to this claim. Those discussions proved successful.

On March 6, 2014, the Court entered an Order setting forth an objection schedule concerning the Receiver's Recommendations, including the proposed distribution of membership interests in the FP Designee. [D.E. 409]. Only two objections were received to the Recommendations, one of which was ultimately withdrawn. The Receiver filed his response to the objections on May 23, 2014. [D.E. 417]. As the Receiver noted, neither objector took issue with the Receiver's methodologies for calculating claim amounts. Moreover, while the Receiver disagreed with the foundation and factual assertion for the remaining objection, he recommended that the sole remaining objector be allowed to participate in the Settlement Transaction by providing a release in order to receive a *pro rata* ownership interest in FP Designee, even though the objector admitted to missing a Court-ordered deadline.

On June 10, 2014, the Court held a hearing to address the Recommendations, the objections to the Recommendations, and the fairness of the issuance of membership interests in FP Designee pursuant to Section 3(a)(10) of the securities laws. Thereafter, on July 3, 2014, the Court entered an order approving the Receiver's Recommendations [D.E. 430]. The Order approving Recommendations was consistent with the positions taken by the Receiver: (i) in his Recommendations [D.E. 396]; (ii) in his Response to Objections [D.E. 417]; (iii) in his Pre-Hearing Brief [D.E. 423]; and (iv) at the June 10, 2014 hearing.

C. Investor Call

On May 2, 2014, the Receiver held an investor call. Notice was provided prior to the call and investors were advised that they could submit any questions they had by email prior to the call and the Receiver would attempt to respond to such questions during the call. The call was a

one way call, meaning only the Receiver could speak and others were solely able to listen. During the call the Receiver provided an update concerning the closing, which occurred two weeks prior to the call, the claims process, the acquisition transaction that occurred soon after closing, the location of facilities, the status of current litigations and responded to previously submitted questions to the best of his ability.

III. LITIGATION

A. The Receiver's Ernst & Young/Mayer Brown Litigation

On December 30, 2010, the Receiver, represented by the law firm of Beus Gilbert, sued the Receivership Entities' former auditor, Ernst & Young ("E&Y"), and the Receivership Entities' former counsel, Mayer Brown LLP ("Mayer Brown"). The lawsuit was filed in and for the Seventeenth Judicial Circuit in and for Broward County, Florida.

On June 22, 2011, E&Y filed its Motion to Compel Arbitration and Dismiss or Stay the Claims ("Motion to Compel"). After the Receiver filed his response to the Motion to Compel on August 23, 2011, counsel for the Receiver and for Ernst & Young discussed the parameters for resolving the Motion to Compel Arbitration by agreement, including issues relating to the scope of discovery in arbitration proceedings. Those discussions did not result in an agreement. Because the Receiver's counsel is preparing an amended complaint, the E&Y Motion to Compel Arbitration will likely be refiled and then decided by the court.

On July 25, 2011, Mayer Brown filed two separate Motions to Dismiss. Mayer Brown's first motion sought to dismiss the Receiver's claims for lack of personal jurisdiction and *forum non-conveniens*, and argued that the Broward County litigation against Mayer Brown should be litigated in Cook County, Illinois, where Mayer Brown is headquartered. Mayer Brown's second motion sought to dismiss the Receiver's claims for failure to state a cause of action and to strike

the Receiver's request for punitive damages. The Receiver filed a response and affidavits with supporting documents in opposition to Mayer Brown's motions to dismiss for lack of personal jurisdiction and *forum non conveniens*. After a hearing on Mayer Brown's motion to dismiss based on alleged lack of personal jurisdiction and *forum non-conveniens*, the Court denied the motion. Mayer Brown appealed the ruling to the Fourth District Court of Appeals. On November 21, 2013, the Fourth District Court of Appeal affirmed the trial court ruling. The court has not heard argument on Mayer Brown's motion to dismiss for failure to state a cause of action and to strike the Receiver's request for punitive damages. As stated above, the Receiver's counsel is currently amending the complaint in this action. Once the complaint is amended, it is expected that Mayer Brown will file a new motion to dismiss addressing the allegations in the amended complaint.

Subsequent to the District Court of Appeal affirmance on November 21, 2013, the Receiver and Mayer Brown determined that mediation at this juncture of the case made sense. On February 24, 2014, the Receiver and his counsel and Mayer Brown and its counsel attended mediation in Washington, D.C. Mediation was not successful.

Counsel for the Receiver continues to prepare for the litigation of the merits of the Receiver's claims against E&Y and Mayer Brown.

B. The Gunlicks Litigation in this Court

On August 26, 2011, the Receiver filed a complaint against Nissa Cox, Annalee Good, William V. Gunlicks (collectively, the "Individual Defendants"), the William L. Gunlicks Irrevocable Trust F/B/O Nissa Cox, the William L. Gunlicks Irrevocable Trust f/b/o Annalee Good, and the William L. Gunlicks Irrevocable Trust f/b/o William V. Gunlicks (collectively,

the "Trust Defendants"). [Gunlicks Family Litigation, D.E. 1].[7] The Receiver's claims arose from a series of allegedly fraudulent transfers made by William L. Gunlicks to trusts belonging to his three children, the Individual Defendants (the Individual Defendants and William L. Gunlicks are collectively referred to as the "Gunlicks Family"). In his Complaint, the Receiver sued the Individual Defendants and the Trust Defendants for fraudulent transfer and unjust enrichment. [GFL, D.E. 1 at 7-18].

On December 20, 2011, the Individual Defendants and the Trust Defendants moved to dismiss the Receiver's Complaint. [GFL, D.E. 13]. The Receiver filed his opposition brief on January 20, 2012, and the Individual Defendants and the Trust Defendants replied on January 27, 2012. [GFL, D.E. 16, 17].

Shortly thereafter, and before the Court ruled on their Motion to Dismiss, the Defendants' counsel twice moved to withdraw. [GFL, D.E. 18, 20]. The Court granted the withdrawal on May 18, 2012, and ordered that the Trust Defendants must acquire new counsel within twenty-one (21) days or face the possibility of defaults. [GFL, D.E. 21]. Over the next several months, the Defendants were granted continuances while they purportedly sought new counsel [D.E. 22, 23, 24, 25], and the Court set the Defendants' Motion to Dismiss for hearing on September 24, 2012 [D.E. 17].

On September 25, 2012, the Court entered an order granting in part and denying in part Defendants' Motion to Dismiss. [D.E. 34]. On December 11, 2012, current counsel for Defendants, Michael Horan ("Mr. Horan") entered an appearance as counsel for the Defendants. [D.E. 43]. Mr. Horan has remained counsel for Defendants to date. On January 4, 2013, Defendants filed their Answer and Affirmative Defenses [D.E. 47], and settlement negotiations

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[7] Docket entries in the Gunlicks Family Litigation will hereafter be cited as [GFL, D.E. __].

began between the parties.

On March 21, 2014, the parties filed a Joint Notice of Settlement, informing the Court that a settlement in principle had been reached, pending confirmatory due diligence and the approval of the relief sought herein – namely, the approval of the Settlement Agreement. [D.E. 57].

After filing the Joint Notice of Settlement, the parties continued negotiating the confirmatory due diligence required by the Receiver. The Court extended the stay of the proceedings on March 25 and March 31, 2014, at the request of the parties. [D.E. 58, 60]. On April 4, 2014, rather than request a third stay of the proceedings, the parties filed an Amended Case Management Report and endeavored to continue negotiating the confirmatory due diligence issues. [D.E. 62]. The Receiver will be filing a motion with the Court detailing the parties' proposed settlement and why he believes it is in the best interests of the Receivership Estate for the Court to approval such proposed settlement.

C. William L. Gunlicks' Chicago Litigation Against Mayer Brown/E&Y

William L. Gunlicks ("Gunlicks") and his children (collectively, the "Gunlicks Family") filed five versions of their Complaint against Mayer Brown and Ernst & Young in the Circuit Court for Cook County, Illinois, along with discovery requests for privileged documents belonging to the Receivership Estate, held in the possession of Mayer Brown.

On January 25, 2012, the Receiver filed a Motion to Intervene and Objection to Gunlicks' discovery requests in Cook County, Illinois. The Receiver had to intervene in this case based on Gunlicks' repeated interference with the Receivership's claims and privileged materials. Gunlicks used the Cook County case to interfere with the Receivership by including but not limited to: (a) usurping claims rightfully belonging to the Receiver; (b) seeking damages which

are the subject of the Receiver's claims pending in Broward County, Florida; and (c) requesting privileged, confidential records from Mayer Brown which rightfully belong to the Receivership. For these reasons, on March 28, 2012, the Court granted the Receiver's Motion to Intervene.

On October 12, 2012, the Circuit Court for Cook County dismissed the Gunlicks Family's fourth amended complaint with prejudice. On November 13, 2012, Gunlicks filed a Motion for Reconsideration of the order dismissing his fourth amended complaint. The Court denied Gunlicks' Motion for Reconsideration on February 6, 2013.

On March 7, 2013, Gunlicks filed a notice of appeal of the Court's February 6, 2013 order denying his Motion for Reconsideration. Oral arguments were held on April 22, 2014, but the appeal has not yet been resolved. On June 26, 2014, Gunlicks moved to file supplemental authority in support of his appeal.

IV. OTHER MATTERS

In addition to the events detailed above, the Receiver reports the following additional matters:

A. Franklin Street Properties - Galleria North Corp.

As indicated in the Receiver's prior reports, Hybrid Value had purchased numerous investments, one of which is in Franklin Street Properties ("FSP"). [D.E. 294].

FSP is an investment firm that manages real estate assets. FSP managed three commercial office buildings: (i) "Galleria North" in Dallas, Texas; (ii) "Phoenix Tower" in Houston, Texas; and (iii) "50 South Tenth Street" in Minneapolis, Minnesota. Each of the three properties is classified as a private real estate investment trust.

According to the Receivership books and records, Hybrid Value owns 5 preferred shares in Galleria North, which amounts to approximately a .581% interest in that project. Hybrid

Value's investment basis in Galleria North was approximately $500,000.00.

On June 20, 2014, FSP disclosed that it had sold Galleria North for $86,000,000.00. The FSP company operating Galleria North is in the process of winding down its business and transferring its assets to a liquidating trust. FSP disclosed that it expected to make an initial liquidating distribution in the amount of $80,000 per share of preferred stock to holders of record who are deemed beneficiaries of the liquidating trust by early July.

On July 11, 2014, the Receiver received a check for $400,000.00 from the FSP Trust for Hybrid Value's ownership of 5 preferred shares valued at $80,000 per share. The Receiver has been told that a second check for $5,000 is in the mail, or will also be sent, consistent with FSP's disclosure that there may be future distributions to preferred shareholders so long as the balance of funds remaining after the initial liquidating distribution is not exhausted settling obligations and covering expenses related to the Plan of Dissolution.

FSP further disclosed that it anticipates mailing to investors a "report of the determination of net liquidating proceeds per share of preferred stock" by no later than August 1, 2014. The Receiver will keep the Court apprised of the status of distributions in future reports and other updates.

B. RCP Capital Partners LLP

As indicated in the Receiver's prior reports, Hybrid Value also owned an investment in RCP Capital Partners LLP ("RCP"). [D.E. 294]. RCP managed thirteen investment properties, consisting of residential and commercial developments located in 6 different state. One such investment property was RCP Hometown Apartments Ltd. ("Hometown"), in which Hybrid Value invested a total of approximately $100,000.00 on or about January 16, 2008.[8]

[8] Hybrid Value's total investment in RCP was approximately $1,200,000.00.

On July 15, 2014, the Receiver received a check for $9,742.00 from the Hometown, which amount reflects Hybrid Value's *pro rata* share of Hometown's first investment distribution, totaling $245,000.00. In a letter accompanying the distribution, RCP disclosed that it expected all investors to receive a full return of equity and some profit on the Hometown investment. The Receiver will keep the Court apprised of further distributions in future reports.

C. Trade-PMR Sale

As indicated in the Receiver's prior reports, Hybrid Value also owned an investment in a company named Trade-PMR, Inc. ("Trade-PMR"). [D.E. 294]. Trade-PMR is a privately held brokerage firm, located in Gainesville, Florida, developed to service Registered Investment Advisors ("RIAs") and their clients. In 2001, Hybrid Value purchased 40 shares of common stock, which represented an ownership position of approximately 2.41%. Hybrid Value's investment basis in Trade-PMR was approximately $200,000.00.

As previously discussed, the Receiver received an offer to purchase the Trade-PMR shares. The initial offer was $7,000.00. On November 24, 2012, after some negotiating, the Receiver and his retained professionals made a counter-offer to sell the Shares for $18,000.00, with the caveat that the sale would need to first be approved by the Court. The Court approved the sale of the Trade-PMR shares on March 28, 2013 [D.E. 383], and the sale was effectuated.

The Receiver continues to seek offers for the purchase of other investments held by Hybrid Value. Because most of the investments were in small, illiquid companies, it has been difficult to obtain offers.

D. Motion to Pay Fees to Patton Boggs and Investor Group

Pursuant to the terms of the Settlement Agreement between the Receiver and Sun Entities, both the Founding Partners Investor Group (the "Investor Group") and its counsel,

Patton Boggs LLP ("Patton Boggs"), are to be reimbursed by the Sun Entities for expenses and fees incurred in support of the Settlement Agreement. Section 9.1 of the Settlement Agreement provides:

> The Companies [Sun Entities] shall pay the reasonable out-of-pocket expenses of each Party (and, for the purposes of the FP Designee, the expenses incurred by the Founding Partners Investor [Group]) incurred by such Party in connection with the preparation and negotiation of this Agreement and the consummation of the transactions contemplated by this Agreement . . .

See Section 9.1 of Settlement Agreement. [*Sun Litigation* D.E. 249 at p. 23, Section 9.1]

As for the Investor Group, based upon the Receiver's discussions with the representatives of the members of the Investor Group, and with the consent of the SEC and the Investor Group, the Receiver supported payment of funds to the Investor Group to reimburse its members for funds spent that benefitted the Settlement Transaction. With regard to Patton Boggs, based upon the Receiver's discussions and negotiations with representatives from Patton Boggs, and with the consent of the SEC and Patton Boggs, the Receiver supported a partial reimbursement of $280,000.00 of Patton Boggs' outstanding attorneys' fees and costs.

On June 30, 2014, the Receiver filed motions with the Court requesting authorization to disburse monies from holding accounts that contain funds to be used for the payments to Patton Boggs and the Investor Group. [D.E. 428, 429]. On July 11, 2014, the Court entered an order approving the payments to Patton Boggs and the Investor Group, consistent with the recommendations made by the Receiver in his motions. [D.E. 431].

E. The Receiver's Applications for Fees

On June 13, 2013, the Receiver filed his Fifth Application for fees. As the Receiver's counsel told the Court the Receiver wanted to wait until the closing of the Settlement Transaction and the conclusion of the hearing on the Receiver's Recommend Claims Distribution

prior to filing his Sixth Fee Application. Having concluded that hearing, the Receiver will be filing two new applications for fees in the near future, including: (1) the Sixth Application for Fees and Expenses Incurred by the Receiver, Retained Counsel, and Other Professionals, pending in this Court (the "Sixth Fee Application"); and (2) a Second Application for Allowance and Payment of Fees and Expenses Incurred by the Receiver, Retained Counsel, and Other Professionals in the *Sun Litigation* (the "Second Sun Settlement Application"). [9]

CONCLUSION

The Receiver will be filing additional reports with the Court to advise the Court of the status of the Receivership.

Dated: July 18, 2014.

Respectfully submitted,

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By: /s/ Jonathan Etra
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[9] The Sixth Application will be filed in the above-styled proceedings, while the Second Sun Settlement Application will be filed in the Sun Litigation.

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2014, 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 Notices of Electronic Filing.

By: /s/ Jonathan Etra
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SERVICE LIST

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