

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION**

STATE OF FLORIDA,  
OFFICE OF FINANCIAL REGULATION,

Plaintiff,

v.

Case No.: 14-001695-CI

TRI-MED CORPORATION,  
TRI-MED ASSOCIATES INC.,  
JEREMY ANDERSON, ANTHONY N.  
NICHOLAS, III, ERIC AGER, IRWIN  
AGER, TERESA SIMMONS  
BORDINAT a/k/a TERESA  
SIMMONS, and ANTHONY N.  
NICHOLAS, JR.,

Judge Cynthia J. Newton

Defendants.

v.

TMFL HOLDINGS, LLC

Relief Defendant.

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**THE RECEIVER'S MOTION TO APPROVE  
PROPOSED NOTICE OF SETTLEMENTS WITH  
STEPHEN D. MARLOWE, BRIAN STAYTON, AND THEIR LAW FIRMS**

Burton W. Wiand, as Receiver (the “**Receiver**”), moves the Court for an order approving the proposed notice of settlement with (1) Steven Marlowe and his law firm, Marlowe McNabb Machnik, P.A. (f/k/a Marlowe McNabb, P.A.), (collectively, “**Marlowe**”), and (2) Brian Stayton and his law firm, The Stayton Law Group, P.A., (collectively, “**Stayton**”), attached hereto as **Exhibit A** (the “**Notice**”), and the proposed abbreviated notice for publication, as described below (the “**Short Form Notice**”). Concurrent with this

motion, the Receiver is filing The Receiver's Motion To Approve Settlements With Stephen D. Marlowe, Brian Stayton, And Their Law Firms And For Entry Of Bar Orders (the "Settlement Motion"), which requests that the Court approve the settlements of the Receiver's potential claims against Stayton and Marlowe for \$100,000 and \$500,000, respectively. In addition, the Settlement Motion requests that the Court enter orders barring any claims against Stayton or Marlowe, including by investors or by potential joint tortfeasors for contribution or indemnity, which relate in any way to the Tri-Med scheme (the "Bar Orders"). The Receiver wishes to provide notice of the settlements to investors, potential joint tortfeasors, and other interested parties because the Bar Orders may affect their rights.

To that end, the Notice provides that recipients will have 30 days from the issuance of the Notice to object or otherwise respond to the Settlement Motion. If the Court grants this motion, the Receiver will promptly send by U.S. First Class Mail the Notice to the last known address of (1) investors in the Receivership Entities and (2) potential joint tortfeasors known to the Receiver. In addition, to provide notice to other potentially interested parties, the Receiver will place for publication on one day in the St. Petersburg Times and a newspaper of national publication the Short Form Notice (or an abbreviated notice that is substantially similar) as follows:

Burton W. Wiand, the court-appointed receiver in *State of Florida, Office of Financial Regulation v. Tri-Med Corp., et al., Case No. 14-001695-CI* (Fla. 6th Cir. Ct.), for, among others, Tri-Med Corporation has entered into settlement agreements with (1) Stephen D. Marlowe and his law firm, Marlowe McNabb Machnik, P.A. (f/k/a Marlowe McNabb, P.A.), (collectively, "Marlowe"), and (2) Brian Stayton and his law firm, The Stayton Law Group, P.A., (collectively, "Stayton"). The settlements may affect your rights, as they include a request to the Court for orders

permanently barring and enjoining investors in receivership entities, potential joint tortfeasors (*i.e.*, individuals and entities that may bear some liability in connection with the fraudulent scheme underlying this matter), and all others from commencing or continuing a claim, action, or proceeding of any kind and in any forum against Stayton or Marlowe that arises from or relates to the services they performed for receivership entities. A notice of settlement, a copy of the settlement agreement, and the Receiver's motion to approve the settlement agreement are available on the Receiver's website at [www.trimedreceivership.com](http://www.trimedreceivership.com). Any person who objects to the settlement must do so in accordance with the procedures set forth in the notice of settlement by [30 DAYS FROM NOTICE DATE].

The legal and factual basis for the notices discussed in this motion is addressed in the Settlement Motion.

WHEREFORE, the Receiver respectfully requests that the Court enter an order approving (1) the proposed Notice, attached hereto as **Exhibit A**, and the procedures described therein and in this motion, and (2) the proposed Short Form Notice, so that the Receiver can promptly provide notice to interested parties.

#### **GOOD FAITH CERTIFICATION**

Counsel for the Receiver has conferred with counsel for the OFR and is authorized to represent to the Court that the OFR has no objection to the relief requested in this motion.

**s/Gianluca Morello**

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*TMFL Holdings, LLC, Interventional Pain Center, PLLC, Rejuva Medical and Wellness Center, L.L.C., and Rejuva Medical Center, L.L.C.*

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on August 15, 2016, I electronically filed a true and correct copy of the foregoing with the Clerk of the Court by using the Florida Courts E-Filing Portal, which served the following parties and non-parties:

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*Attorney for Non-Party A.J. Brent*

**s/Gianluca Morello**

Gianluca Morello, FBN 034997

# Exhibit A

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION**

STATE OF FLORIDA,  
OFFICE OF FINANCIAL REGULATION,

Plaintiff,

v.

Case No.: 14-001695-CI

Judge Cynthia J. Newton

TRI-MED CORPORATION, TRI-MED  
ASSOCIATES INC., JEREMY ANDERSON,  
ANTHONY N. NICHOLAS, III, ERIC AGER,  
IRWIN AGER, TERESA SIMMONS BORDINAT  
a/k/a TERESA SIMMONS, and ANTHONY N.  
NICHOLAS, JR.,

**PLEASE READ THIS NOTICE AS  
YOUR RIGHTS MAY BE AFFECTED**

Defendants,

v.

TMFL HOLDINGS, LLC,

Relief Defendant.

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**NOTICE TO INVESTORS AND OTHERS OF RECEIVER'S  
MOTION TO APPROVE SETTLEMENTS WITH STEPHEN D. MARLOWE, BRIAN  
STAYTON, AND THEIR LAW FIRMS, INCLUDING PROPOSED BAR ORDERS**

On August 15, 2016, Burton W. Wiand, as Receiver including for Defendants Tri-Med Corporation ("**Tri-Med**") and Tri-Med Associates, Inc., and the Relief Defendant (the "**Receiver**"), filed a motion (the "**Motion**") with the Court for approval of settlement agreements (the "**Settlement Agreements**") between the Receiver, on behalf of the entities for which he serves as Receiver (the "**Receivership Entities**"), and (1) Stephen D. Marlowe and his law firm, Marlowe McNabb Machnik, P.A. (f/k/a Marlowe McNabb, P.A.), (collectively, "**Marlowe**"), and (2) Brian Stayton and his law firm, The Stayton Law Group, P.A., (collectively, "**Stayton**"). The Settlement Agreements require Marlowe to pay to the Receiver \$500,000 and Stayton to pay to the Receiver \$100,000 (for the ultimate benefit of the receivership estate) (collectively, "**Settlement Amounts**") in exchange for the Receiver's release of all claims that could have been asserted against Marlowe or Stayton, including any and all claims, demands, rights, promises, and obligations arising from or related in any way to their involvement with or provision of services to Tri-Med or any other Receivership Entity. In addition, the Motion requests that the Court enter orders barring any claims against Marlowe or Stayton relating to Tri-Med, including by investors or by potential joint tortfeasors for contribution or indemnity. A



copy of the Motion is available on the Receiver's website at [www.trimedreceivership.com](http://www.trimedreceivership.com).<sup>1</sup> The Settlement Agreements are attached to the Motion as Exhibits A and B.

**Any objections or other responses to the Motion must: (i) be made in writing; (ii) bear the caption of this case (the "Receivership Action"), including the case number, at the top of the first page; (iii) be signed by the objecting or responding party, or that party's attorney; (iv) be filed with the Clerk of the Court no later than [30 DAYS FROM NOTICE DATE]; and (v) contemporaneously be served on the Receiver.** The address of the Clerk of the Court is 315 Court St., Clearwater, FL 33756. The address of the Receiver is Wiand Guerra King P.A., 5505 W. Gray St., Tampa, FL 33609. At any time after [30 DAYS FROM NOTICE DATE], the Court may rule on the Motion or direct such further proceedings as it deems appropriate.

The following sections summarize the background of the settlements with Marlowe and Stayton and the terms of the Settlement Agreements.

### **The Receiver's Investigation Of Tri-Med**

To carry out his mandate, the Receiver investigated Tri-Med's operations and the Ponzi scheme underlying this case (the "**scheme**"), which ultimately revealed that Insiders<sup>2</sup> retained professionals like lawyers and accountants – including Marlowe and Stayton – to give their scheme the appearance of legitimacy and make potential investors feel more comfortable. For example, investors were told that Marlowe was responsible for, among other things, holding investors' money in trust pending its use to purchase letters of protection ("**LOPs**"). During the entirety of the scheme, however, only approximately \$2.8 million of the more than \$17.6 million raised from investors was deposited in trust with Marlowe. Insiders diverted the vast majority of the money invested in Tri-Med for their personal and others' benefit.

Similarly, in some cases, Stayton signed Assignments of Interest associated with LOPs that did not exist. Insiders fabricated dozens of LOPs, and instead of purchasing medical receivables, they used investors' money to enrich themselves, purchase real estate, and fund unrelated business ventures.

Marlowe and Stayton have maintained, and continue to maintain, that their conduct was in no way inappropriate and that they did not fail to comply with their duties and obligations. However, due to practical concerns and a desire to resolve what could be a protracted dispute resolution process, Marlowe and Stayton determined early on to attempt to negotiate a resolution to the Receiver's claims to avoid the obvious expense, disruption, and risk that would be caused by protracted litigation.

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<sup>1</sup> If you do not have internet access or are otherwise unable to retrieve a copy of the Motion, please contact the Receiver's counsel.

<sup>2</sup> Defendants Jeremy Anderson; Anthony N. Nicholas, III; Eric Ager; Irwin Ager; Teresa Simmons Bordinat a/k/a Teresa Simmons; and Anthony N. Nicholas, Jr. are the primary "**Insiders.**"

## **The Receiver's Negotiations With Marlowe And Stayton And Settlement Considerations**

In deciding to accept these amounts from Stayton and Marlowe in resolution of all claims against them, the Receiver (along with a committee of investors) considered a number of significant factors. First, the risks associated with litigating the claims were considered. Among those risks is the fact that, in addition to acting as attorneys, Marlowe and Stayton also served as escrow agents for Tri-Med. Because of the narrow roles escrow agents typically play in business transactions, they are often insulated from liability by both the terms of their escrow agreements and pertinent Florida law. Also among those risks, is that Stayton and Marlowe likely would mount vigorous defenses. Consequently, litigation would likely require expenditure of substantial Receivership resources and would not be without significant risks. If litigation is unsuccessful, defrauded investors would recover nothing instead of the \$600,000 to be paid to the Receivership estate under the Settlement Agreements. These Settlement Amounts represent an equitable and good faith balance between the risks of litigation and the need to recover funds for the ultimate benefit of defrauded investors.

Second, the Settlement Amounts represent more than the maximum amounts presently available under Marlowe's and Stayton's respective professional liability policies and require the payment of personal funds in addition to insurance proceeds.

Third, based on the information reviewed by the Receiver, these settlements constitute a recovery by the Receivership Entities of an amount well in excess of all fees received by Stayton and Marlowe, collectively, as a result of their dealings with Tri-Med.

Fourth, litigation of claims against Stayton and Marlowe could easily cost in excess of the Settlement Amounts and would in no way guarantee the significant benefit to the Receivership estate that will occur as a result of the settlement reached with them.

## **The Terms Of The Settlement Agreements**

In exchange for the settlement payments of \$500,000 and \$100,000, the Settlement Agreements contain the following terms required to provide assurances of finality:

1. Upon receipt and clearing of the settlement payments, the Receiver, on behalf of the Receivership Entities and their present and former employees, agents, representatives, beneficiaries, investors, creditors, and assigns, shall be deemed to have released and forever discharged Marlowe and Stayton, their parents, subsidiaries, and affiliates, and their respective present and former officers, directors, employees, shareholders, principals, partners, members, managing members, member managers, agents, successors, and assigns of and from any and all claims which could have been asserted in litigation, as well as any and all other claims, demands, rights, promises, and obligations arising from or related in any way to Marlowe's and Stayton's involvement with or provision of services to Tri-Med or any of the Receivership Entities or the allegations of the Receivership Action.
2. Upon the Receiver's receipt and clearing of their respective full settlement payments, Marlowe and Stayton shall be deemed to have waived any claims that they had, have, or hereafter may have against the Receiver and/or any Receivership Entity relating to Tri-Med or any Receivership Entity or the allegations of the Receivership Action.

3. The Receiver will request that in any order granting the Motion, the Court order that all individuals or entities who invested money in a Receivership Entity, as well as all persons or entities who may have liability to the Receiver, the Receivership Entities, or such investors arising or resulting from the fraudulent scheme underlying the Receivership Action, together with their respective heirs, trustees, executors, administrators, legal representatives, agents, successors and assigns, are permanently enjoined and barred from commencing or pursuing a claim, action, or proceeding of any kind and in any forum against Marlowe or Stayton that arises from or relates to Tri-Med or the allegations of the Receivership Action.
4. Marlowe and Stayton will agree to continue to cooperate reasonably with the Receiver's efforts to gather information and otherwise fulfill his Court-ordered obligations imposed in this action, including by providing additional information relating to entities placed in receivership in this case which the Receiver may request through document requests or other discovery tools available to the Receiver under applicable laws and rules.

Should you have any questions or require further information concerning the proposed settlement terms or the process for submitting a response to the Receiver's Motion, please contact the Receiver's counsel, Jordan Maglich, either by email at [jmaglich@wiandlaw.com](mailto:jmaglich@wiandlaw.com) or by telephone at (813) 347-5100. Please take note that all responses concerning the Receiver's motion must be filed with the Court on or before [30 DAYS FROM NOTICE DATE].

Dated: [NOTICE DATE]

s/Burton W. Wiand  
Burton W. Wiand, as Receiver