

**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,

vs.

Case No.: 14-001695-CI

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

Judge Anthony Rondolino

Defendants.

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THE RECEIVER'S FIRST INTERIM REPORT

Receivership Information and Activity from March 5, 2014, through March 25, 2014.

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INTRODUCTION

Burton W. Wiand, the Court-appointed Receiver for Tri-Med Corporation (“**Tri-Med**”) and Tri-Med Associates Inc. (“**TMA**”) (collectively the “**Receivership Entities**”), hereby files this First Interim Report to inform the Court, the investors, and others interested in the Receivership Entities of activities to date, as well as the proposed course of action.¹

The Receiver was appointed on March 5, 2014. By March 7, 2014, the Receiver established an informational website www.trimedreceivership.com. The Receiver will update this website periodically with the Receiver’s most significant actions to date; important court filings in this proceeding; and other news that might be of interest to the public. This First Interim Report, as well as all subsequent reports, will be posted on the Receiver’s website. On or about March 26, 2014, the Receiver will mail correspondence to all known investors informing them of this Receivership and the Receiver’s website.

Overview of Significant Activities During this Reporting Period

During the time covered by this Interim Report, the Receiver and professionals he has retained have engaged in the following significant activities:

- Seized and secured (1) an office used by the Receivership Entities in Palm Harbor, Florida, and documents and computers located in that office; (2) two storage units in Tampa, Florida; (3) documents and computers from a home owned by one of the Defendants in Lake Mary, Florida; and (4) documents and computers which one of the Tri-Med principals had given to someone else to hold to try to evade the Receiver’s efforts to recover them;

¹ This First Interim Report is intended to report on information and activity for the Receiver’s first twenty days of appointment from March 5, 2014, through March 25, 2014. As directed by the Court, the Receiver will submit his next Interim Report to the Court 120 days from the date of this Report.

- Served the Order appointing the Receiver and freezing the assets of the Receivership Entities and the Defendants on 75 individuals and entities who possibly could have assets and/or records belonging to Receivership Entities;
- Successfully froze funds in the total amount of \$4,896,656.45, of which \$4,828,966.97 has been deposited into accounts in the name of the Receiver; the remaining funds which the Receiver will attempt to obtain are held in the names of individual defendants and related entities;
- Issued more than 45 subpoenas for documents on various financial institutions, medical clinics, real estate companies, and sales agents and are preparing approximately 20 additional subpoenas to individuals and entities which may have documents relevant to the Receivership;
- Interviewed numerous individuals including employees, sales agents, investors, doctors, legal counsel, and real estate property managers;
- Uncovered five residential real properties which were purchased and/or funded with money from investors;
- Fielded dozens of calls from investors and is preparing correspondence to all known investors informing them of this Receivership; and
- Established an informational website for investors and other interested parties.

The above activities are discussed in more detail in the pertinent sections of this Interim Report.

BACKGROUND

I. Procedure and Chronology.

On March 5, 2014, the Florida Office of Financial Regulation (“**OFR**”) filed a complaint in the Circuit Court for the Sixth Judicial Circuit in Pinellas County against the Receivership Entities and Jeremy Anderson, Anthony N. Nicholas, III, Eric Ager, Irwin Ager, and Teresa Simmons Bordinat, a/k/a Teresa Simmons (the individuals listed here are collectively referred to as “**Defendants**”) charging the Receivership Entities and the Defendants with violations of the Florida securities laws and seeking to enjoin their violations of these laws in connection with a fraudulent scheme to offer and sell unregistered securities. The OFR alleges that the Defendants

used the Receivership Entities to defraud approximately 232 investors from at least October 2011 forward by using false claims and purported above market rates of return to lure investors into purportedly investing in medical-practice-related accounts receivable subject to Letters of Protection (“LOPs”).² The OFR also asserts that the Defendants raised more than \$13 million from these investors and misappropriated at least \$6.2 million of these investor funds.

That same day, the Honorable Anthony Rondolino issued an order appointing Burton W. Wiand as Receiver over the Receivership Entities, noting the imminent danger of the loss of investor funds (the “**Order Appointing Receiver**”). The Order also imposed a temporary injunction and granted other relief as to all Defendants. Among other things, this Order enjoined the Receivership Entities and other Defendants from further violations of the Florida securities laws, froze their assets, and required an accounting of all investor funds and other assets by March 10, 2014.

Pursuant to the Order Appointing Receiver, the Receiver has the duty and authority to, among other things, take immediate possession of all assets and properties of the Receivership Entities and hold and manage them until further order of the Court; and marshal and safeguard all such properties and assets. (Order Appointing Receiver at 9.)

² LOPs are typically provided by motor vehicle accident victims who are seeking damages from another party’s insurance company to medical clinics that agree to see them. These treating medical clinics agree to provide treatment in exchange for a LOP from the patient and the attorney, not from any insurance company. The LOP is essentially a promise to pay a reasonable fee for necessary medical services from any settlement or judgment obtained by the patient in connection with the accident. Often due to cash flow constraints, these medical clinics sell these accounts receivable at a discount to other businesses. While there may be legitimate businesses engaged in purchasing such accounts receivable, as discussed in the Overview of Preliminary Findings below, the evidence shows that Tri-Med engaged in widespread fraud.

II. Overview of Preliminary Findings.

The Receiver is in the process of reviewing voluminous records recovered by him and is also working on obtaining additional documents from third parties. It does not appear that the Defendants kept thorough customary books and records for the Receivership Entities, which has complicated this review process. The Receiver has formed some preliminary conclusions based on his review of a portion of the records received and interviews with employees, sales agents, doctors, and others. While these conclusions are not final, and may change as the review becomes more complete, the Receiver believes they should be shared with the Court, the investors, and other potentially interested parties.

There is abundant evidence that the Defendants, through the Receivership Entities, were operating a fraudulent investment scheme. The Defendants raised money mainly from elderly investors through the promise of high interest rates from the purported purchase of medical accounts receivable purportedly subject to LOPs which they represented were secured, guaranteed, and/or backed by major insurance companies. The Defendants fraudulently likened their "investment program" to bank CDs. While Defendants raised more than \$13 million from investors, significantly less actually was used to purchase medical accounts receivable. The Defendants guaranteed annual rates of return ranging from approximately 5% to 8% with interest payments paid monthly for a term of up to two years. They purportedly assigned different accounts receivable to different investors and guaranteed that if the receivable was not paid by the end of the two-year term that Tri-Med would still pay back to the investor the full principal amount or the investor could roll the investment amount over and continue receiving interest payments for another term. In many cases, the Defendants represented that the interest payments were paid from the company's profits and that the LOPs were fully backed by a major insurance company. These representations were false and are part of the many acts of securities fraud

perpetrated by the Defendants that the Receiver has already uncovered. A few other examples of material facts that were not disclosed to investors or of material misrepresentations made by the Defendants include:

- The Defendants took 40% of the amount invested by each investor and used that money to pay the investors' "interest payments" and to pay themselves without disclosing it to investors;
- The OFR found that \$1,037,458.80 was paid to two Defendants and \$1,560,320.76 million was paid to TMA;
- Although the Defendants' "investment program" was based on purportedly assigning LOPs to investors, investors were not told that at least some of the LOPs included language that prohibited their assignment;
- The investors were not told that the Defendants used investor money to purchase real property, purchase medical equipment, and, among other things, make loans to various individuals and entities, including a limousine driver, a contractor, and a Tri-Med employee;
- The Defendants informed investors that the investments were registered with the OFR even though this was false;
- In other instances, the Defendants informed investors the investments were exempt from registration, yet that was also false;
- The Defendants falsely told investors the investments were akin to bank Certificates of Deposit (or CDs) and that investors' principal investment was protected and their investments were safe;
- The Defendants falsely told investors their investment money would be held in attorney trust accounts during the time it was not used to purchase accounts-receivable;
- In at least several instances, misrepresentations were made to the investors and the investors were shown documents which purported to show those misrepresentations were true; in reality, those documents were forgeries, and they included a forgery of a purported opinion from a major Florida law firm that the securities being sold to investors were exempt from registration; and
- Investors were not told that their funds were used to fund medical clinics that in turn were a source of purported medical accounts receivable for Tri-Med.

Indeed, during the scheme Tri-Med's attorneys provided to the Defendants a comprehensive memorandum that clearly notified the Defendants they were violating state and federal securities laws. The memorandum notified the Defendants they were violating securities laws by, among other things, not providing full and fair disclosure of information to investors; making inaccurate or misleading representations; advertising the Tri-Med "investment program" in newspapers and on Tri-Med's website; failing to register the securities and certain entities and individuals; and paying unlawful commissions. In fact, this memorandum bluntly notified the Defendants that,

"Tri-Med and its principals have potential exposure to liability for claims by purchasers, as well as exposure for sanctions by Federal securities regulators."

It also explained that,

"[u]ntil the Investors are repaid in full, the only way to eliminate the potential claims by purchasers would be to conduct a rescission offer to all prior purchasers who purchased" investments from Tri-Med.

The memo also warned that,

"Florida securities regulators could impose sanctions, require a rescission offer or pursue other civil or criminal liabilities."

The memo concluded:

"Tri-Med should discontinue all offers and sales of [investments]...immediately."

Although the Defendants knew they were violating state and federal securities laws, they continued their investment scheme in violation of those laws. Roughly a year after that memorandum, Defendants were told by the same attorneys that,

You still have all of the problems outlined in our memo and our recommendation remains that you shouldn't sell

securities...unless you are doing everything else we recommend in our memo to comply with the securities law.

As shown by the above sample of evidence, the Receiver has discovered significant evidence that investor funds were regularly used for purposes that are very different from the representations made to investors, that the Defendants made numerous material misrepresentations and omissions to investors, and that the Defendants knew full-well that they were violating federal and state securities laws.

III. The Receiver's First Twenty Days.

In the first twenty days, the Receiver took a number of steps to fulfill his mandates under the Order Appointing Receiver.

A. Taking Possession of Receivership Property.

- **Physical premises and Receivership books and records.**

On the day of his appointment, the Receiver took possession of an office at 34931 U.S. Hwy 19, Suite 104, Palm Harbor, Florida (the "**Office**"). The Office was being leased to Tri-Med and Defendant Anthony Nicholas, III, but was being used primarily by Eric Ager for TMA and by a clerical assistant. The Receiver secured the premises by changing the locks. The Receiver inventoried and removed physical property that was at the premises. The office contained books and records of the Receivership Entities, office furniture, and computer equipment. TMA also was being operated out of Teresa Simmons' home and a "virtual office,"³ which are both in Lake Mary, Florida. The Receiver seized five boxes of documents and two

³ The virtual office was leased from a Regus facility which provides a business address, call and mail handling, and very limited use of a private office. No documents or computers were kept at this virtual office.

computers from Ms. Simmons' home on the same day of his appointment. The Receiver also searched two office suites in Clearwater, Florida, which were leased to Tri-Med. These office suites were empty except for a desk and chair which had been provided by the landlord.

On March 7, 2014, the Receiver was notified that a principal of Tri-Med had delivered Tri-Med documents and computers to a former employee to try to evade the Receiver's efforts to recover them. An agent of the Receiver immediately went to the former employee's home and seized the documents and computers. The Receiver also learned of two storage units in a public storage facility on Gunn Highway in Tampa, Florida. One unit was being leased by Tri-Med and the other by Defendant Jeremy Anderson. The Receiver seized and secured the units and inventoried the contents, which consisted of exercise equipment, office furniture, and household items. None of the items in the storage units appear to have any significant value.

The Receiver has provided change of address notifications to the United States Postal Service and Federal Express, as well as all known service providers to the Receivership Entities. The Receiver also changed the message on the answering machine at the Office to direct any calls to the Receiver's office.

The Receiver has retained experienced forensic information technology experts with the firm of E-Hounds, Inc., to assist in securing and analyzing the electronic data on the computers. All of the computers seized have been delivered to E-Hounds and its personnel have secured the data and begun their forensic analysis. All documents have been moved to the Receiver's offices and are being reviewed.

Since obtaining control of the Receivership Entities, the Receiver and his professionals have had discussions with a number of people associated with the Receivership Entities, including employees, sales agents, investors, medical providers, legal counsel, and real estate

property managers. Since the Receiver's appointment, he has served more than 39 subpoenas for documents on various financial institutions, medical clinics, real estate companies, and sales agents and is preparing approximately 20 additional subpoenas to entities and individuals which may have documents relevant to the Receivership.

- **Securing Receivership Funds.**

The Receiver coordinated with the OFR to move swiftly to freeze all funds of which they were aware. The Receiver and his attorneys engaged in a preliminary review of documents and other information for the purpose of identifying institutions that potentially held relevant financial accounts or lines of credit. The Receiver immediately provided copies of the asset freeze order to the pertinent institutions.

The Receiver successfully froze \$4,896,656.45 at various financial institutions including Wells Fargo Bank, N.A., Regions Bank, and Bank of America.⁴ The Receiver opened two accounts for the Receivership at USAmeriBank, a money market account with a .5% interest rate and a non-interest bearing checking account. The Receiver has deposited \$4,828,966.97 of the frozen funds into these accounts. The remaining \$67,689.48 is currently being held in various accounts in the names of individual Defendants and related entities. The Receiver will attempt to obtain as much of these funds as possible.

One of the Receiver's highest priorities is to locate and recover any additional funds. The Receiver has retained a forensic accounting firm to assist in tracing funds.

⁴ The Receiver hand-delivered the asset freeze order to Wells Fargo on the morning it was entered. Shortly after this order had been provided to Wells Fargo, one of the Defendants went to the bank and was able to get cashier's checks totaling \$2.4 million drawn from Receivership Entities' accounts. The Defendant then tried to deposit the cashier's checks in an account at Regions Bank, which also had been provided with the asset freeze order that morning. The Regions fraud department did not allow the Defendant to negotiate the cashier's checks and the Receiver was able to recover the funds.

- **Medical Accounts Receivable.**

The Receiver is in the process of analyzing and investigating what medical accounts receivable were **actually** purchased by the Receivership Entities and remain outstanding. The Receiver is working diligently on preparing a comprehensive list of these accounts receivable and will try to obtain the maximum value possible for them for the benefit of the defrauded investors. However, because of the close relationship between the Defendants and certain medical providers, there is substantial concern as to the validity of a number of receivables purportedly purchased by Tri-Med, and the Receiver's investigation to date indicates that there may be problems with a significant amount of the receivables that were actually purchased.

- **Promissory Note.**

The Receiver also has discovered evidence of a \$500,000 loan made by Tri-Med to Spine Pain Management, Inc., in Texas. The loan is secured by a convertible promissory note with a maturity date of March 27, 2014. Spine Pain Management has asserted that the note's maturity was extended to March 27, 2015. The note provides that six quarterly payments of 12% interest should have been paid on this note. The Receiver is investigating this transaction and will attempt to recover the amount of the note as well as any interest which has not been paid. As indicated above, additional loans were made to others using investors' money and the Receiver is in the process of investigating those loans.

B. Real Properties.

As previously mentioned, the Receiver's investigation has revealed that investor funds were misappropriated for unauthorized uses, including the purchase of real estate and the transfer of funds to TMFL Holdings LLC, a business formed on September 12, 2013 by Defendant Anthony Nicholas, III. Specifically, evidence shows that Defendants used investor funds to purchase five parcels of residential real estate. Two of these properties were purchased in the

name of TMFL and one property was purchased through a straw buyer who has executed a quitclaim deed to Tri-Med. Following are the addresses and purchase prices of each of the properties:

- 4202 Bay Club Circle, Tampa, Florida, purchased for \$95,000;
- 909 E. Cayuga Street, Tampa, Florida, purchased for \$89,000;
- 15316 Stonecreek Lane, Tampa, Florida, purchased for \$174,500;
- 11029 117th Street, Seminole, Florida, purchased for \$88,500; and
- 9035 St. Regis Lane, Port Richey, Florida, purchased for \$38,000.

There do not appear to be any encumbrances on these properties.

C. Litigation.

Despite the Defendants' representations that medical accounts receivable were being purchased from numerous hospitals and surgery centers, it appears that all of the receivables that Tri-Med actually purchased were purchased from three medical services providers, including clinics run by chiropractor Dr. Eric Groteke.⁵ Dr. Groteke offered medical services through three different entities: Visum Management, LLC ("**Visum**"), Spine Injury Physicians, LLC ("**SIP**"), and Wellness Worx Center, PLLC ("**Wellness Worx**"). The Receiver discovered that the Receivership Entities provided start-up capital of \$390,000 for Visum. In exchange for this loan, the Receivership Entities received a note secured by the assets of Visum. The Receiver also learned that Receivership Entities used investor money to purchase medical equipment for Dr. Groteke in the amount of approximately \$79,000. In January of this year, all three of the

⁵ The other two medical services providers that sold accounts-receivable to Tri-Med are Florida Surgery Consultants, LLC, and Interventional Pain Center, P.L.L.C. Despite Defendant Jeremy Anderson's denials through his counsel, evidence recovered by the Receiver shows that Defendant Jeremy Anderson is intimately involved in Interventional Pain Center's business operations.

above entities filed for protection under Chapter 11 of the United States Bankruptcy Code. The Receiver has retained bankruptcy counsel and is working diligently on trying to protect the Receivership Entities' interests and recover as many assets as possible in connection with this bankruptcy.

The Receiver is also reviewing information to determine if any individuals or entities may have liability in connection with the activities underlying this case. If warranted, the Receiver will institute such actions in the future after approval by the Court.

IV. The Next 120 Days.

The Receiver has only begun receiving documents from subpoenas he has issued to third parties. It will be necessary to obtain and review all such documents in order to have a complete understanding of the flow of funds through the Receivership Entities, to identify any additional sources of recovery, and to prepare an accounting. The Receiver is working diligently on this task, but without knowing the volume of documents he expects to receive, it is difficult to estimate the time needed for completion. Further, as mentioned above, because the Receivership Entities did not maintain thorough customary books and records, this task may take more time.

During this process, the Receiver is also compiling and analyzing individual investor investments. This is a necessary task to assess and administer investor claims. The Receiver intends to send information requests to investors in the next thirty days and will likely request investors to send him copies of all documentation related to their investments in Tri-Med. He will review and analyze all documents relating to each investment to determine the amounts owed, if any, to each investor. The Receiver recognizes the importance of the return of funds to investors and will commence a claims process as soon as possible. While this may change as the Receiver's analysis progresses, the Receiver hopes to initiate the claims process in the next ninety days.

The Receiver will continue his investigation and analysis of the accounts receivable which were purchased and remain outstanding. He will make every effort to maximize the value he receives from these receivables.

The Receiver will continue to attempt to locate additional funds and other assets and will likely institute proceedings to recover assets on behalf of the Receivership Entities. In an effort to more fully understand the conduct at issue and in an attempt to locate more assets, the Receiver will continue to conduct interviews and/or depositions of parties and third parties who may have knowledge of the fraudulent scheme.

CONCLUSION

Creditors and investors in the Receivership Entities are encouraged to periodically check the informational website, www.trimedreceivership.com, for information concerning this Receivership. To minimize expenses, creditors and investors are encouraged to consult the Receiver's website before contacting the Receiver or his counsel. However, if an investor does not receive the correspondence the Receiver will be mailing shortly and is concerned that the Receiver does not have a record of the investor, beginning March 28, 2014, the investor may register on the Receiver's website. Alternatively, the investor may contact the Receiver's office by email to calbritton@wiandlaw.com, or call Cal Albritton at (813) 347-5100 to provide his or her information. The Receiver also encourages individuals or attorneys representing investors who may have information that may be helpful in securing further assets for the Receivership estate or identifying other potential parties who may have liability to either the Receivership estate or investors to either email jrizzo@wiandlaw.com, or call Jeffrey Rizzo at (813) 347-5100.

Dated this 25th day of March, 2014.

Respectfully submitted,

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

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on March 25, 2014, I electronically filed a true and correct copy of the foregoing, which will be emailed to the following individuals by the Court's electronic filing system:

Jonathan S. Robbins, Esq. (jonathan.robbins@akerman.com)
Steven Wirth, Esq. (steven.wirth@akerman.com)
Jason Margolin, Esq. (jason.margolin@akerman.com)
Attorneys for Defendants Jeremy Anderson & Anthony Nicholas, III

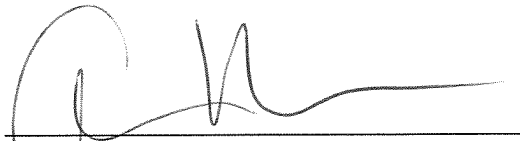
Douglas Holcomb, Esq. (douglas.holcomb@flofr.com)
Attorney for Plaintiff State of Florida, Office of Financial Regulation

I **FURTHER CERTIFY** that on March 25, 2014, I served a copy of the foregoing by first-class mail delivery to the following individuals:

Eric Ager
2891 Endicott Court
Clearwater, FL 33761
Defendant

Irwin Ager
1424 Shadwell Circle
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