

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  
SETTLEMENT WITH STOEL RIVES, LLP AND JODI JOHNSON**

Burton W. Wiand, as Receiver (the “**Receiver**”), moves the Court for an order approving the proposed notice of settlement with Stoel Rives, LLP (“**Stoel Rives LLP**”) and Jodi Johnson (“**Johnson**”) (collectively “**Stoel Rives**”), 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 Settlement With Stoel Rives, LLP and Jodi Johnson And For Entry Of A Bar Order (the “**Settlement Motion**”), which requests that the Court approve the settlement.

In addition, the Settlement Motion requests that the Court enter orders barring any claims against Stoel Rives, including but not limited to claims by investors or by potential other parties for contribution, indemnity, or other claims, which relate in any way to Stoel Rives' representation of any Receivership Entity (the "**Bar Order**"). The Receiver wishes to provide notice of the settlements to investors, and other interested parties because the Bar Order 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 the Notice by U.S. First Class Mail to the last known address of (1) investors in the Receivership Entities; (2) potential other parties known to the Receiver; and (3) other related parties. 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 a Short Form Notice 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 a settlement agreement with Stoel Rives, LLP ("Stoel Rives LLP") and Jodi Johnson ("Johnson"). The settlement may affect your rights, as it includes a request to the Court for an order permanently barring and enjoining investors in receivership entities, potential other parties (*i.e.*, individuals and entities that may bear some liability in connection with Tri-Med Corporation and other receivership entities in this matter), and all others from commencing or continuing a claim, action, or proceeding of any kind and in any forum against Stoel Rives LLP or Johnson 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/Michael S. Lamont**

Michael S. Lamont, FBN 0527122

[mlamont@wiandlaw.com](mailto:mlamont@wiandlaw.com)

WIAND GUERRA KING P.A.

5505 West Gray Street

Tampa, FL 33609

Tel.: (813) 347-5100

Fax: (813) 347-5198

*Attorney for Burton W. Wiand, as Receiver*

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on June 5, 2017, 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:

Douglas Holcomb, Esq.  
Office of Financial Regulation  
400 West Robinson Street  
Suite S225  
Orlando, FL 32801  
Primary Email: [douglas.holcomb@flofr.com](mailto:douglas.holcomb@flofr.com)  
*Attorney for Plaintiff State of Florida,  
Office of Financial Regulation*

A. Gregory Melchior, Esq.  
Assistant General Counsel  
Office of Financial Regulation  
1313 Tampa Street, Suite 615  
Tampa, FL 33602-3394  
Primary Email: [Greg.Melchior@flofr.com](mailto:Greg.Melchior@flofr.com)  
Secondary Email:  
[Sharon.Sutor@flofr.com](mailto:Sharon.Sutor@flofr.com)  
*Attorney for Plaintiff State of Florida,  
Office of Financial Regulation*

Luke Lirot, Esq.  
LUKE CHARLES LIROT, P.A.  
2240 Belleair Road, Suite 190  
Clearwater, FL 33764  
Primary Email: [luke2@lirotlaw.com](mailto:luke2@lirotlaw.com)  
Secondary Email: [justin@lirotlaw.com](mailto:justin@lirotlaw.com)  
Secondary Email: [jimmy@lirotlaw.com](mailto:jimmy@lirotlaw.com)  
*Attorney for Defendants Eric Ager and Irwin  
Ager*

Thomas C. Little, Esq.  
THOMAS C. LITTLE, P.A.  
2123 NE Coachman Road, Suite A  
Clearwater, FL 33765  
Primary Email:  
[tomlittle@thomasclittle.com](mailto:tomlittle@thomasclittle.com)  
Secondary Email: [janet@thomasclittle.com](mailto:janet@thomasclittle.com)  
*Attorney for Defendants Eric Ager and Irwin  
Ager*

Edwin B. Kagan, Esq.  
Edwin B. Kagan, P.A.  
2709 North Rocky Point Drive  
Suite 102  
Tampa, FL 33607  
Primary Email: [ebkagan@earthlink.net](mailto:ebkagan@earthlink.net)  
Secondary Email: [livingston22@live.com](mailto:livingston22@live.com)  
*Attorney for Defendant Teresa Simmons  
Bordinat*

Douglas E. Nepp, Esq.  
Nepp & Hackert, LLC  
One West Lake Street, Suite 185  
Minneapolis, MN 55408  
Primary Email: [doug@nepphackert.com](mailto:doug@nepphackert.com)  
*Attorney for Defendants Jeremy Anderson,  
Anthony N. Nicholas, III, and Anthony N.  
Nicholas, Jr.*

Timothy A. Patrick, Esq.  
2102 West Cass Street  
Tampa, FL 33606  
Primary Email:  
[Tim@patrickpiplaw.com](mailto:Tim@patrickpiplaw.com)  
Secondary Email:  
[Aditamujica@gmail.com](mailto:Aditamujica@gmail.com)  
*Attorney for Defendants Jeremy Anderson,  
Anthony N. Nicholas, III, and Anthony N.  
Nicholas, Jr.*

Eric D. Jacobs, Esq.  
Jennis & Bowen, P.L.  
400 North Ashley Drive  
Suite 2540  
Tampa, FL 33602  
Primary Email: [eservice@jennislaw.com](mailto:eservice@jennislaw.com)  
Secondary Email:  
[karon@jennislaw.com](mailto:karon@jennislaw.com)  
[marj@jennislaw.com](mailto:marj@jennislaw.com)  
*Attorney for Non-Party A.J. Brent*

Daniel P. Rock  
ROCK & RILEY  
6328 U.S. Highway 19, Suite H  
New Port Richey, Florida 34652  
Primary Email: Danielprock@yahoo.com  
*Attorney for Anthony Nicholas*

**s/Michael S. Lamont**  
Michael Lamont, FBN 0527122

# **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 SETTLEMENT WITH STOEL RIVES, LLP AND JODI  
JOHNSON, INCLUDING PROPOSED BAR ORDER**

On June 5, 2017, 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 Agreement (the “**Settlement Agreement**”) between the Receiver, on behalf of the entities for which he serves as Receiver (the “**Receivership Entities**”), and Stoel Rives, LLP (“**Stoel Rives LLP**”) and Jodi Johnson (“**Johnson**”) (collectively, “**Stoel Rives**”). The Settlement Agreement represents the parties’ agreement to a resolution of heavily contested and vigorously defended claims, and Stoel Rives’ business decision to avoid the expense of further litigation. The Settlement Agreement requires the Receiver’s release of all claims that could have been asserted against Stoel Rives, 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 upon successful completion of the resolution and settlement approval process, at which time Stoel Rives will pay to the Receiver \$3,700,000 (for the ultimate benefit of the receivership estate) (the “**Settlement Amount**”). In addition, the Motion requests that the Court enter orders barring any claims against Stoel Rives relating to Tri-Med and the Receivership Entities, including by investors or by potential other parties for contribution or indemnity. A copy of the Motion is available on the Receiver’s website at

www.trimedreceivership.com.<sup>1</sup> The Settlement Agreement is attached to the Motion as Exhibit 1.

**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 settlement with Stoel Rives and the terms of the Settlement Agreement.

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

To carry out his mandate, the Receiver investigated the operations of Tri-Med and the Receivership Entities. The Receiver believes that Stoel Rives provided legal services to Tri-Med and certain Receivership Entities beginning October 25, 2012 and continuing through March 5, 2014, when the OFR filed this action. The Receiver has alleged that legal services provided by Stoel Rives included various engagements and objectives along with corresponding legal advice and direction. The Receiver and a group of Tri-Med investors filed a lawsuit against Stoel Rives on April 5, 2016.

Stoel Rives maintains that its conduct was in no way inappropriate, that it did not fail to comply with its duties and obligations in the rendition of these legal services, and that the firm and its lawyers had no knowledge that its advice and directions were not being followed. However, Stoel Rives decided to negotiate a resolution of the claims by the Receiver and investors to avoid the expense and disruption that would be caused by protracted litigation of heavily contested claims.

### **The Receiver’s Negotiations With Stoel Rives And Settlement Considerations**

In deciding to negotiate a settlement with Stoel Rives in resolution of all claims, the Receiver considered a number of significant factors. The Receiver considered the risks associated with litigating the claims. Primary among those risks is the uncertainty inherent in the litigation process, a potential trial, and any resulting appeal, not to mention the time consumed through the appellate process. The Receiver recognizes that Stoel Rives has vigorously defended itself and its attorneys, and would continue to do so for the duration of any case. Consequently, additional litigation is not without significant risks. If litigation is unsuccessful, nothing would be received, instead of the \$3,700,000 set forth in the Settlement Agreement.

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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.



Further, the Receiver considered the potential value of the claims against Stoel Rives, along with Stoel Rives' defenses that the conduct and services of the firm and its lawyers was at all time appropriate, that responsibility for losses to Tri-Med belongs entirely to numerous other parties, that the Receiver lacked standing, and that the Receiver's computation of damages was excessive. The Receiver considered that if Stoel Rives were to succeed on any defense, it could greatly limit or preclude any potential recovery. Finally, the Receiver considered the amount of fees earned by Stoel Rives for providing legal services to Tri-Med amounted to less than \$200,000. The Receiver believes the Settlement Amount represents an equitable and good faith compromise of existing claims.

### **The Terms Of The Settlement Agreement**

In exchange for the settlement payment of \$3,700,000, the Settlement Agreement contains the following terms required to provide assurances of finality:

1. Upon receipt of the settlement payment, 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 Stoel Rives LLP and Johnson, their parents, subsidiaries, and affiliates, and their respective present and former partners, employees, shareholders, principals, partners, members, managing members, member managers, insurers, agents, heirs, 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 Stoel Rives LLP and Johnson'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, Stoel Rives LLP and Johnson 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 or loaned money to a Receivership Entity, as well as all persons or entities who may have liability to the Receiver or one or more of the Receivership Entities, who may have a claim against the Receiver or one or more of the Receivership Entities, together with their respective heirs, trustees, executors, members, shareholders, 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 Stoel Rives or Johnson, their parents, subsidiaries, and affiliates, and respective former and present partners, attorneys, employees, agents, representatives, beneficiaries, insurers, heirs, successors, and assigns, that arises out of, is connected to, or which in any relates to the same nucleus of operative facts as those pending, or which could have been asserted in the Litigation by any party, including but not limited to any claims arising out of Stoel Rives' representation of any Receivership Entity or Stoel Rives' involvement with the Receivership Entities or any of their past or present officers, directors, members, shareholders, employees or agents, or the allegations of this enforcement action or any related proceeding or litigation,

including without limitation the suit brought by the Receiver and investors against Stoel Rives on April 6, 2015.

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: June 5, 2017

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