

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

1

CASE NO.: 2012-001695-CI

-----X
STATE OF FLORIDA, :
OFFICE OF FINANCIAL REGULATION, :
: :
Plaintiff, :
: :
vs. :
: :
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., :
: :
Defendants. :
-----X

BEFORE: The Honorable Anthony Rondolino
Circuit Judge

PLACE: 545 1st Avenue North
St. Petersburg, Florida

DATE: October 22, 2014

TIME: 9:00 a.m. to 3:40 p.m.

REPORTED BY: Katherine A. Lyle
Court Reporter

HEARING

Volume I
Pages 1 - 188

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1 PROCEEDINGS 4

2 THE COURT: Good morning, counsel. We're

3 here on the State of Florida versus Tri-Med, et

4 al.

5 Counsel note your appearances for the

6 record, please.

7 MR. MELCHIOR: Greg Melchior, Office of

8 Financial Regulation, Plaintiff.

9 MR. MORELLO: Gianluca Morello on behalf

10 of the receiver, your Honor.

11 MR. BORJA: William Borja on behalf of

12 Anthony Nicholas, Sr., the III, and Jeremy

13 Anderson and Anthony Nicholas, Jr.

14 THE COURT: All right. There are a number

15 of matters to be addressed this morning.

16 Counsel has already advised me that one of the

17 concerns needs to be addressed first, and

18 that's Mr. Borja's continuation of

19 representation in the case.

20 Mr. Borja, what's the status of your

21 representation at this time?

22 MR. BORJA: Your Honor, my clients have

23 confirmed again this morning that they wish for

24 me to withdraw in this matter and not continue

25 any further.

Page 5

1 THE COURT: Okay. Is there anybody that 5

2 wishes to be heard further on that?

3 MR. MELCHIOR: Yes, your Honor. The State

4 is opposed to any such option of letting

5 Mr. Borja withdraw at this late hour. This

6 case started more than seven months ago and

7 it's been essentially held up by virtue of the

8 pending motions to dissolve. The court was

9 generous enough to give us a whole day today to

10 resolve those pending motions, and we're here

11 ready to go forward.

12 We have multiple witnesses, but, more

13 importantly, your Honor, I believe in the event

14 Mr. Borja withdrew it may compromise the

15 ability to go forward with the evidentiary

16 hearing, and a critical concern is the fact

17 that after seven months the receiver still has

18 his hands tied with respect to contemplating a

19 distribution of any funds to the original

20 investors. So, until the motion to dissolve

21 gets reconciled, the receiver is stuck in its

22 tracks.

23 The foreign investors are still waiting on

24 the expectation of the receiver setting up a

25 claims process so they can get some of their

Page 6

1 money and get their lives back going. 6

2 THE COURT: Let me see if I can translate

3 what you said in a more simplistic form.

4 It's either that you have an objection to

5 him withdrawing or you have no objection to him

6 withdrawing, but it shouldn't prejudice your

7 right to proceed as scheduled this morning.

8 MR. MELCHIOR: Yes. Perfectly summarized,

9 your Honor.

10 THE COURT: All right. I certainly

11 understand that.

12 Mr. Borja, do your clients have a position

13 on that?

14 MR. NICHOLAS, JR.: Your Honor, I am

15 Anthony Nicholas, Jr., and he's the III. We

16 got this notice yesterday at noon that he

17 didn't want to proceed. We thought we were on

18 course over the weekend up until something

19 happened on Monday. Monday night he calls us

20 and decides he's not going to pursue it. We

21 had no chance to get other counsel. There was

22 no time to do it that fast.

23 THE COURT: Okay. Mr. Borja, I understand

24 your desire to not continue with

25 representation, but this 11th hour announcement

Page 7

1 can't enure to the detriment to both your 7

2 clients and the opposing sides. I don't think

3 the court can allow you to remove yourself from

4 the case at this stage, so we'll be going

5 forward with the hearings this morning.

6 Understanding that, maybe we don't need to

7 address some of the motions that you previously

8 filed. I don't even know if those are

9 scheduled for hearing today, but certainly the

10 Plaintiff can go forward.

11 I have a list of pending motions. The

12 receiver's motion to compel a request for

13 sanctions against McClellon (phonetic) motion

14 to compel, request for sanctions against

15 Parkerhurst (phonetic) and response in

16 opposition to non party Robert McClellon. The

17 motion for protective order is the first one

18 that I have listed. I really don't have a

19 preference in terms of which matters to take up

20 first.

21 What's the State's position?

22 MR. MELCHIOR: Well, your Honor, we have

23 standing outside the door counsel for three

24 parties in this matter that have motions on the

25 docket. We've reached an agreement in the last

Page 8

1 day. I asked that they appear today to 8

2 announce.

3 THE COURT: Well, let's do that. Let's

4 put the agreed upon matters on the record

5 first. That certainly makes good sense.

6 MR. MELCHIOR: Mr. Lirot is here today.

7 THE COURT: Okay. Mr. Lirot.

8 MR. LIROT: Good morning, your Honor.

9 THE COURT: We already went on the record

10 and noted appearances. Mr. Borja was the only

11 one present at the time, but I understand you

12 all have resolved certain matters with the

13 State. So if you would admit your appearance

14 on the record and your client's name.

15 MR. LIROT: Very good, your Honor. Luke

16 Lirot. I'm appearing for Irwin Ager and Eric

17 Ager.

18 THE COURT: Okay. And what's your

19 agreement at this time?

20 MR. LIROT: Judge, we entered a memorandum

21 of understanding. It involves basically a

22 consent to the entry of a permanent injunction.

23 It doesn't require an admission, but it does

24 concede that the Plaintiff has said that there

25 is an evidentiary basis for the relief

Page 9

1 requested and essentially we choose not to 9

2 defend this action anymore and have consented

3 to the entry of the injunction based on the

4 terms and conditions articulated in the letter

5 of intent.

6 THE COURT: Okay. Anything from the State

7 regarding that?

8 MR. MELCHIOR: Yes, your Honor. It does

9 contemplate restitution to the receivership, so

10 I would note that.

11 THE COURT: Okay. Is there a formal

12 document that needs to be filed or has it

13 already been filed?

14 MR. MELCHIOR: We have a written

15 confirmation. This contemplates putting a

16 settlement agreement before you because within

17 the settlement agreement there is an agreed

18 permanent injunction that will be issued. So

19 we'll be providing that agreement to you with a

20 proposed order that adopts the settlement

21 agreement and initiates the adoption and

22 enforcement to the terms of the agreement.

23 MR. LIROT: I have a faxed copy. There

24 are 15 different points. I didn't want to take

25 up the court's time. I can pass up a copy to

Page 10

1 the court if you would like to take a look. 10
 2 THE COURT: I just want to make sure there
 3 will be something filed of record. It doesn't
 4 need to be -- the formal announcement is
 5 sufficient for that and your information that
 6 you will be filing the agreement and you will
 7 submit it to the court for approval at a later
 8 time.
 9 MR. LIROT: Yes, Judge.
 10 THE COURT: Then the next matter of --
 11 there are a number of items on the calendar. I
 12 don't know if it means --
 13 MR. LIROT: We will withdraw all pending
 14 motions filed by my clients.
 15 THE COURT: Okay.
 16 MR. MELCHIOR: And one last point, your
 17 Honor. This agreement does contemplate the
 18 consent by the Defendants, the two Defendant
 19 Agers, to the receivership as well.
 20 THE COURT: Okay.
 21 MR. LIROT: That's correct, your Honor.
 22 THE COURT: Very good. That's noted and
 23 you're free to go.
 24 MR. LIROT: I think I'll remain.
 25 THE COURT: You're free to stay also.

Page 11

1 MR. LIROT: I'll enjoy the company of my 11
 2 colleagues, your Honor.
 3 THE COURT: What's the next order of
 4 business?
 5 MR. MELCHIOR: Your Honor, additionally
 6 Mr. Kagan is here on behalf of Defendant Teresa
 7 Simmons Bordinat who we've also reached an
 8 agreement with.
 9 THE COURT: Would you like to make your
 10 appearance known?
 11 MR. KAGAN: Yes, your Honor. My name is
 12 Edwin Kagan. I represent Teresa Simmons
 13 Bordinat. The claims of the Office of
 14 Financial Regulation against my client have
 15 been settled along the same lines as the Agers
 16 that Mr. Lirot announced. We will submit a
 17 signed settlement agreement. All other claims
 18 in this case, including those of receiver, have
 19 not been settled.
 20 My client has two pending motions before
 21 the court today. One is a motion to dismiss
 22 the complaint and the other a motion to lift
 23 the injunction and ancillary relief. Being
 24 that these motions are now moot, my client
 25 hereby withdraws those motions.

Page 12

1 THE COURT: Very well. So noted. 12
 2 MR. MELCHIOR: And the settlement also
 3 contemplates a consent to the permanent
 4 injunction as well as recognition of the
 5 receivership.
 6 THE COURT: All right. Very good. Thank
 7 you, sir.
 8 Is there anyone else that's reached an
 9 agreement?
 10 MR. MELCHIOR: That is all we have as to
 11 settlement.
 12 THE COURT: All right. Then the court
 13 does need to take up the contested motions at
 14 this time. So I'll allow the State then to
 15 address those as meets your needs.
 16 MR. MELCHIOR: Your Honor, the State would
 17 suggest that we'd like to move forward on the
 18 motion to dissolve which calls for an
 19 evidentiary hearing.
 20 THE COURT: All right.
 21 MR. MELCHIOR: I have submitted to the
 22 court previously a memorandum of law addressing
 23 a number of the legal issues that are
 24 contemplated by such and, while it's an
 25 evidentiary hearing, I believe it's the State's

Page 13

1 burden to establish a prima facie case and I 13
 2 believe there is the opportunity for evidence,
 3 direct evidence, to be heard as well as hearsay
 4 evidence to be heard. We would like to call a
 5 number of witnesses.
 6 THE COURT: Well, let's commence to do
 7 that. Call your first witness.
 8 MR. MELCHIOR: We would call Anthony
 9 Nicholas, III.
 10 THE COURT: Very well. Come up, sir.
 11 Thereupon:
 12 ANTHONY NICHOLAS, III,
 13 was called as a witness, having been duly sworn, was
 14 examined and testified as follows:
 15 THE COURT: Come right up here and have a
 16 seat in the witness stand.
 17 MR. MELCHIOR: Your Honor, I have a
 18 duplicate of the exhibits that I can provide
 19 for the court.
 20 THE COURT: That would be excellent.
 21 MR. MELCHIOR: If I may approach?
 22 THE COURT: You may.
 23 Let's proceed.
 24 DIRECT EXAMINATION
 25

Page 14

1 BY MR. MELCHIOR: 14

2 Q State your name, sir.

3 A Anthony Nicholas, III.

4 Q And how old are you, sir?

5 A Twenty-six.

6 Q And did you go to college?

7 A Yes.

8 Q Where did you go?

9 A USF.

10 Q And do you have a degree?

11 A Yes.

12 Q In what?

13 A Journalism and Mass Communications.

14 Q Okay. Is your father Anthony Nicholas,

15 Jr.?

16 A Yes.

17 Q Between 2011 and the date of the

18 injunction in this matter -- you're the Defendant in

19 this matter, right?

20 A Yes.

21 Q Between 2011 and the date of this

22 injunction, were you the secretary and treasurer of

23 Tri-Med Corporation in Florida?

24 A I'd like to plead the Fifth Amendment. I

25 don't have counsel at this time, and I don't have a

Page 15

1 defense attorney at this time. 15

2 THE COURT: You don't? I thought

3 Mr. Borja was your attorney.

4 THE WITNESS: But he's --

5 THE COURT: He hasn't been permitted to

6 withdraw.

7 MR. MELCHIOR: Okay. I have additional

8 questions.

9 BY MR. MELCHIOR:

10 Q What was Tri-Med's --

11 A I plead the Fifth Amendment.

12 Q Did it sell \$17,000,000 in monthly income

13 agreements to Florida investors?

14 A I plead the Fifth Amendment.

15 Q Okay. Let me show you what has been

16 marked as Exhibit 1.

17 MR. MELCHIOR: If I may approach, your

18 Honor?

19 THE COURT: You may.

20 BY MR. MELCHIOR:

21 Q That's a pleading that was filed in this

22 matter by your attorneys or your earlier attorneys

23 on behalf of yourself and Tri-Med Corporation

24 indicating -- do you recognize that document first,

25 sir?

Page 16

1 A Can I plead the Fifth Amendment the rest 16

2 of my testimony?

3 THE COURT: Is it your desire to express

4 that your intention is to assert your rights

5 under the Fifth Amendment to the United States

6 Constitution?

7 THE WITNESS: Yes.

8 THE COURT: Okay. And you wish to do so

9 regarding any questions on this matter because

10 you're concerned you would incriminate yourself

11 in a criminal proceeding?

12 THE WITNESS: Yes.

13 THE COURT: Okay.

14 BY MR. MELCHIOR:

15 Q Mr. Nicholas, attached to that pleading

16 was an accounting of investor funds which was marked

17 as Exhibit 3; is that accurate?

18 A I plead the Fifth Amendment.

19 Q Okay. Let me show you a blown-up copy of

20 what's been marked as Plaintiff's Exhibit 2.

21 MR. MELCHIOR: If I may approach?

22 THE COURT: You may.

23 BY MR. MELCHIOR:

24 Q Do you recognize that accounting of --

25 A I plead the Fifth Amendment.

Page 17

1 Q Did you help prepare it? 17

2 A I plead the Fifth Amendment.

3 Q Is it accurate?

4 A I plead the Fifth Amendment.

5 Q Mr. Nicholas, I'd like to show you what's

6 been marked as Plaintiff's Exhibit 3.

7 MR. MELCHIOR: If I may approach, your

8 Honor?

9 THE COURT: Okay.

10 BY MR. MELCHIOR:

11 Q If you would be so kind, sir, to stack

12 those up in order as you go along.

13 Do you recognize that document?

14 A I plead the Fifth.

15 Q Isn't that an opinion letter that was

16 issued by Stoel Rives law firm in December 7th,

17 2012?

18 A The Fifth Amendment.

19 Q That opinion letter, is it directed to

20 Tri-Med Corporation?

21 A Plead the Fifth.

22 Q Doesn't this opinion letter identify that

23 there are registration issues with the -- first of

24 all, that the Tri-Med monthly income agreement

25 program is a security; are you familiar with that

Page 18

1 conclusion? 18

2 A Plead the Fifth.

3 Q Are you aware that this opinion letter

4 communicated the law firm's concern that this

5 security needed to be registered?

6 A Plead the Fifth.

7 Q Are you aware that that opinion concluded

8 that the Tri-Med Corporation was not fully

9 disclosing its investment program?

10 A Plead the Fifth.

11 Q I'd like to show you what's been marked as

12 Exhibit 3.

13 MR. MELCHIOR: I'm sorry, your Honor.

14 Exhibit 4.

15 THE COURT: All right.

16 MR. MELCHIOR: May I approach?

17 THE COURT: Certainly.

18 BY MR. MELCHIOR:

19 Q Do you recognize that document?

20 A Plead the Fifth.

21 Q Is that not an e-mail from Laura Hatary

22 (phonetic) at the law firm Stael Rives?

23 A Plead the Fifth.

24 Q Directed to Tri-Med Corporation?

25 A Plead the Fifth.

Page 19

1 Q Weren't you the secretary and treasurer 19

2 of --

3 A I plead the Fifth.

4 Q Wouldn't you be familiar with

5 correspondence from legal counsel?

6 A Plead the Fifth.

7 Q This e-mail suggests that there are

8 continuing problems with the sale of Tri-Med

9 Corporation monthly income agreements; do you agree?

10 A I plead the Fifth.

11 THE COURT: Wait for him to conclude his

12 question, please.

13 BY MR. MELCHIOR:

14 Q Do you agree?

15 A I plead the Fifth.

16 Q Did Tri-Med stop selling monthly income

17 agreements based on this second opinion?

18 A I plead the Fifth.

19 Q If I may approach, I'll show you what's

20 been marked as Exhibit 5.

21 MR. NICHOLAS, JR.: He's going to plead

22 the Fifth on everything. Do we have to go

23 through everything? I mean, I don't

24 understand. He's already had the depositions

25 and he's already pleaded the Fifth. Does he

Page 20

1 have to do this in court again? 20

2 THE COURT: I'm afraid so.

3 BY MR. MELCHIOR:

4 Q Coincidentally, did you have your

5 deposition taken?

6 A I plead the Fifth.

7 Q Did you plead the Fifth Amendment

8 throughout that deposition?

9 A Yes.

10 Q Is that a copy of the deposition?

11 A Yeah. I plead the Fifth.

12 MR. MELCHIOR: Your Honor, we would move

13 into evidence Exhibit 5.

14 THE COURT: What would be the basis for

15 admission?

16 MR. MELCHIOR: Admissions. There are

17 numerous admissions throughout his --

18 THE COURT: It would be found upon the

19 witness' testimony.

20 MR. MELCHIOR: These are admissions

21 against inference, your Honor. There is an

22 inference that he is taking the Fifth because

23 the form of the question invites an answer

24 that --

25 THE COURT: Okay. So this is a deposition

Page 21

1 of Anthony Nicholas, III. So it's an 21

2 out-of-court statement, if any, by this witness

3 under oath. Statement of party opponent,

4 right?

5 MR. MELCHIOR: Yes.

6 THE COURT: That's an exception to the

7 hearsay rule. It's received without any

8 foundation necessary.

9 MR. MELCHIOR: Thank you, your Honor.

10 BY MR. MELCHIOR:

11 Q Mr. Nicholas, did we also discuss

12 Exhibit 2, the summary, during that deposition?

13 A Plead the Fifth.

14 MR. MELCHIOR: We would move Exhibit 2

15 into evidence.

16 THE COURT: That will be received.

17 BY MR. MELCHIOR:

18 Q Mr. Nicholas, did we talk about Exhibit 3

19 as well as Exhibit 4?

20 A I plead the Fifth.

21 THE COURT: Well, Exhibit 5 is the

22 deposition and the attachments. That's been

23 received. What else is it that you're

24 attempting to --

25 MR. MELCHIOR: I'm just trying to tie up

Page 22

1 the loose ends. Exhibit 2 is the summary that 22
 2 was submitted before the court. I guess that
 3 is already before the court, but through a
 4 pleading, but I believe it is.
 5 THE COURT: This is the accounting of the
 6 investment terms of Tri-Med. It looks like
 7 it's a demonstrative exhibit of some sort. So
 8 I'm failing to see how the testimony of this
 9 witness, particularly upon which he's taken the
 10 Fifth, supports an admission of the document.
 11 We certainly don't need to have him up here --
 12 I guess you could introduce the whole box and
 13 say do you know about the whole box.
 14 THE WITNESS: No. I'm taking the Fifth.
 15 I'm not going to say anything about that.
 16 THE COURT: Introduce the whole box. That
 17 would shorten the proceeding if you're
 18 suggesting that that's providing a foundation
 19 for the admissibility of the documents.
 20 MR. MELCHIOR: No, your Honor. This is a
 21 very specific document, at least Number 2. It
 22 is a document that was attached to a pleading
 23 that was submitted on his behalf by his
 24 attorney on behalf of himself and Anthony
 25 Nicholas, Jr., and the corporation as an

Page 23

1 accounting, and I've asked him questions about 23
 2 whether it is accurate. It's not being
 3 necessarily offered for the truth of the matter
 4 asserted, it's been --
 5 THE COURT: Okay. So the foundation, as I
 6 understand it, is, you're explaining this
 7 foundation to be it's unnecessary to consider
 8 the testimony of this witness that based upon
 9 the record this is a statement of a party
 10 opponent that's a representation that they made
 11 through counsel, it was attached to their
 12 submissions; is that what I understand?
 13 MR. MELCHIOR: I will adopt that thinking
 14 as well, yes, your Honor.
 15 THE COURT: Well, first of all, you're not
 16 a witness. So you're advising me of what I
 17 understand to be the facts in this case and
 18 that would be that this is actually a
 19 representation submitted by and through
 20 counsel. So, understanding that, it will be
 21 received.
 22 BY MR. MELCHIOR:
 23 Q Mr. Nicholas, are you aware if Defendant
 24 Jeremy Anderson was deposed in this matter?
 25 A I plead the Fifth.

Page 24

1 Q Are you aware if he took the Fifth 24
 2 Amendment?
 3 A I plead the Fifth.
 4 Q Are you aware if he resides in the state
 5 of Florida?
 6 A I plead the Fifth.
 7 Q Are you aware that I, Greg Melchior, went
 8 to Minnesota to take his deposition?
 9 A I plead the Fifth.
 10 Q Are you aware if he's here today?
 11 A I plead the Fifth.
 12 Q Mr. Nicholas, I show you what's been
 13 marked as Exhibit 6.
 14 MR. MELCHIOR: If I can approach, your
 15 Honor?
 16 THE COURT: You may.
 17 BY MR. MELCHIOR:
 18 Q Do you recognize that as the deposition of
 19 Jeremy Anderson?
 20 A I plead the Fifth.
 21 Q Your Honor, we would move Exhibit 6 into
 22 evidence.
 23 MR. NICHOLAS, JR.: Your Honor, I would
 24 like to put on the record that our attorney is
 25 not -- he's not prepared and he's not

Page 25

1 representing us and this is highly prejudicial. 25
 2 I just want to put that on the record.
 3 THE COURT: Well, the record --
 4 MR. NICHOLAS, JR.: He's not here to do
 5 this and we're getting no representation.
 6 THE COURT: All right. Well, your
 7 feelings on that are noted.
 8 Proceed.
 9 MR. MELCHIOR: If I could approach. I may
 10 have --
 11 THE COURT: Let's go back to the previous
 12 exhibit. What number was that?
 13 MR. MELCHIOR: I think I provided him
 14 Exhibit 6 and asked if it was a deposition of
 15 Defendant Jeremy Anderson.
 16 BY MR. MELCHIOR:
 17 Q If I can show you Exhibit 7.
 18 Do you recognize that document?
 19 A I plead the Fifth.
 20 Q My previous question was, are you aware --
 21 THE COURT: You know, it's really
 22 insufficient simply just to plead the Fifth on
 23 everything. For there to be a valid basis that
 24 you have some fear of criminal prosecution from
 25 the answer of a question, the question has to

Page 26

1 be somehow connected to that. You recognize a 26
 2 piece of paper that is a deposition of Jeremy
 3 Anderson. What possible criminal liability
 4 would a person serve if they said yeah, that
 5 appears to be Jeremy Anderson's depo. Let's
 6 all hope that there could be no way that the
 7 State could prosecute us for recognizing that a
 8 document is a deposition.
 9 Be that as it may, it seems to be somewhat
 10 of a waste of the court's time. If
 11 Mr. Anderson's deposition is admissible,
 12 certainly it must be admissible on other bases
 13 other than having him say yeah, that's a
 14 deposition of Jeremy Anderson, right?
 15 So, I'm all for using up all the time we
 16 have today, but let's use it up in a reasonable
 17 way.
 18 MR. MELCHIOR: Your Honor, I would move
 19 for the admission of Jeremy Anderson's
 20 deposition.
 21 THE COURT: And tell me who Jeremy
 22 Anderson is.
 23 MR. MELCHIOR: Jeremy Anderson is a
 24 Defendant in this matter.
 25 THE COURT: Then it would be a statement

Page 27

1 of a party opponent admission under the 27
 2 exception rule in this regard.
 3 Let's proceed.
 4 MR. MELCHIOR: Your Honor, as I
 5 understand, we have what's marked as Exhibit 6,
 6 which is the deposition of Anthony Nicholas,
 7 Jr.
 8 THE COURT: Proceed.
 9 MR. MELCHIOR: I have no further questions
 10 of this witness.
 11 THE COURT: All right, sir.
 12 Mr. Borja, do you wish to ask any
 13 questions of the witness?
 14 MR. BORJA: No, sir.
 15 THE COURT: All right. Sir, you can stand
 16 down. Watch your step.
 17 MR. MELCHIOR: Your Honor, the State would
 18 call Teresa Simmons Bordinat.
 19 THE COURT: Come right up, Ms. Bordinat.
 20 Watch your step. If you will raise your right
 21 hand, ma'am.
 22 Thereupon:
 23 TERESA SIMMONS BORDINAT,
 24 was called as a witness, having been duly sworn, was
 25 examined and testified as follows:

Page 28

1 THE COURT: Come right up here carefully. 28
 2 Have a seat in the witness box, please.
 3 DIRECT EXAMINATION
 4 BY MR. MELCHIOR:
 5 Q Ms. Bordinat, where do you reside?
 6 THE COURT: It would be good to have her
 7 name for the record first.
 8 MR. MELCHIOR: I'm sorry.
 9 THE WITNESS: Teresa Simmons Bordinat.
 10 BY MR. MELCHIOR:
 11 Q And where do you reside, ma'am?
 12 A Lake Mary, Florida.
 13 THE COURT: Where?
 14 THE WITNESS: I'm sorry?
 15 THE COURT: I couldn't hear you.
 16 THE WITNESS: Lake Mary, Florida.
 17 BY MR. MELCHIOR:
 18 Q And what is your relation to Tri-Med
 19 Associates?
 20 A I'm sorry, sir. Under the circumstances
 21 I'm required to take the Fifth Amendment on your
 22 questions.
 23 MR. MELCHIOR: May I approach, your Honor?
 24 THE COURT: Yes.
 25

Page 29

1 BY MR. MELCHIOR: 29
 2 Q I'm showing you what's been marked as
 3 Exhibit 8.
 4 Do you recognize that document?
 5 A I'm sorry, sir. Under the circumstances
 6 I'm required to take the Fifth Amendment on your
 7 questions.
 8 Q Are you aware if that document was
 9 discussed during a deposition I took with you on
 10 October 17th?
 11 A I'm sorry, sir. Under the circumstances
 12 I'm required to take the Fifth Amendment on your
 13 questions.
 14 MR. MELCHIOR: Your Honor, we would move
 15 as self-authenticating evidence Ms. Bordinat's
 16 deposition on October 17th.
 17 THE COURT: Which number is that?
 18 MR. MELCHIOR: That is Number 12, your
 19 Honor. I'm sorry.
 20 THE COURT: All right. The court has what
 21 purports to be a sworn deposition of this
 22 witness taken on October 17th, and it would be
 23 a statement of a party opponent. As the court
 24 has noted, it's admissible as an exception to
 25 the hearsay rule and it will be received.

Page 30

1 BY MR. MELCHIOR: 30

2 Q Ms. Bordinat, I previously showed you

3 Exhibit 8.

4 Is that a copy of the Tri-Med Associates

5 web site in March 2014?

6 A I'm sorry, sir. I'm required to take the

7 Fifth Amendment on your questions. I decline.

8 Q Did I inquire about that document with you

9 during your deposition?

10 A I'm sorry, sir. I'm required to take the

11 Fifth Amendment.

12 Q Does that document identify on the face of

13 it that Tri-Med Associates is the marketing arm of

14 Tri-Med Corporation?

15 A I'm sorry, sir. I must decline and take

16 the Fifth Amendment.

17 Q On the bottom of Page 2 in the small

18 lettering does it not reflect that Tri-Med

19 Associates is selling securities to use the term

20 "securities" in that statement, in that

21 advertisement?

22 A I'm sorry, sir. I must decline to answer

23 and take the Fifth Amendment.

24 MR. MELCHIOR: Your Honor, we would move

25 Exhibit 7 into evidence. I'm sorry. Exhibit 8

Page 31

1 into evidence. There is a copy of a web site. 31

2 THE COURT: So the basis for receiving it

3 would be what?

4 MR. MELCHIOR: It is relevant. We have

5 attempted to authenticate it through

6 Ms. Bordinat. She's taken the Fifth. I would

7 think there is a presumption that it's valid if

8 she has denied its existence. It's not being

9 offered for the truth of the matter asserted.

10 It's not hearsay.

11 THE COURT: It is hearsay for sure. It's

12 an out of court -- I believe it's a

13 representation of something on the Internet.

14 Maybe I'm wrong, but that's probably the most

15 often joked about thing about the Internet, and

16 that's everything you read on the Internet is

17 true.

18 Okay. So the court has no way of knowing

19 really where it came from, what it is. It's

20 just a piece of paper with something on it

21 here. I guess someone could go on and

22 represent themselves to be you and say that

23 you've quit the practice of law and absconded

24 and you're a child abuser and everything else.

25 That wouldn't make it admissible evidence in

Page 32

1 some case against you. 32

2 So, perhaps it's admissible in some other

3 fashion, but I understand it's being offered to

4 prove the relationship between the parties as

5 represented in the document, so I don't think I

6 can receive it at this time.

7 MR. MELCHIOR: Yes, your Honor. We will

8 address that with other witnesses.

9 THE COURT: Okay.

10 BY MR. MELCHIOR:

11 Q Ms. Bordinat, I'm showing you a marketing

12 agreement which has been marked as Exhibit 9.

13 Do you recognize that marketing agreement?

14 Can you take a look at it.

15 A I'm sorry, sir. Under the circumstances

16 you know I must take the Fifth Amendment. Thank

17 you.

18 MR. MELCHIOR: Can I approach, your Honor?

19 THE COURT: You may.

20 BY MR. MELCHIOR:

21 Q I show you what's marked as Exhibit 10.

22 Can you take a look at that.

23 THE COURT: Let me stop you for just a

24 minute because I pulled up Exhibit 12 and there

25 are some attachments. I'm not sure if these

Page 33

1 are the attachments. Could you take a look at 33

2 this and see if these are the attachments to

3 the deposition. The very first one is the

4 Exhibit 8.

5 MR. MELCHIOR: It is.

6 THE COURT: So those were attached to the

7 deposition?

8 MR. MELCHIOR: Yes, sir.

9 THE COURT: Well, let me go back then.

10 I'm assuming that there was some questions

11 asked in the deposition about this document.

12 MR. MELCHIOR: Yes, sir. I asked if she

13 recognized it. She took the Fifth.

14 THE COURT: In the depo?

15 MR. MELCHIOR: Yes, sir.

16 THE COURT: Okay. I was going to say if

17 she identified it at that time in the depo then

18 it would be admissible. It's only being

19 admitted as an attachment to the deposition for

20 the purposes of understanding the questions and

21 responses in the deposition. All right.

22 BY MR. MELCHIOR:

23 Q Let me show you what's been marked as

24 Exhibit 11.

25 MR. MELCHIOR: If I may approach, your

Page 34

1 Honor? 34

2 THE COURT: Yes.

3 BY MR. MELCHIOR:

4 Q Do you recognize that document?

5 A I'm sorry, sir. Under the circumstances I

6 must take the Fifth Amendment. Thank you.

7 Q Isn't that a composite of ads that were

8 run by Tri-Med Corporation through Tri-Med

9 Associates?

10 A I'm sorry, sir. Under the circumstances I

11 must take the Fifth Amendment.

12 MR. MELCHIOR: Your Honor, we would at

13 this time move Exhibit 12, which is Teresa

14 Simmons Bordinat's deposition dated

15 October 17th, 2014, into evidence.

16 THE COURT: I thought I already received

17 that. It is in. It's received.

18 MR. MELCHIOR: I have no additional

19 questions of Ms. Bordinat.

20 THE COURT: Any of the other parties wish

21 to inquire?

22 MR. LIROT: No, thank you, Judge.

23 THE COURT: You can stand down, ma'am.

24 THE WITNESS: Thank you.

25 MR. MELCHIOR: The State would call Bill

Page 35

1 Schifino, Jr. 35

2 Thereupon:

3 WILLIAM J. SCHIFINO, JR.,

4 was called as a witness, having been duly sworn, was

5 examined and testified as follows:

6 MR. MELCHIOR: Your Honor, before moving

7 on to subsequent questions of Mr. Schifino, the

8 State has marked Exhibit 13 which is a depo of

9 Defendant Eric Ager. We would move that into

10 evidence.

11 THE COURT: Received.

12 MR. MELCHIOR: And, additionally,

13 Exhibit 14, which is a deposition of Defendant

14 Irwin Ager. We would move that into evidence.

15 THE COURT: Hearing no objection, that's

16 received too.

17 MR. MELCHIOR: May I approach the witness,

18 your Honor?

19 THE COURT: Yes.

20 MR. MELCHIOR: I need some of these

21 exhibits back from you or maybe just hold on to

22 them.

23 THE WITNESS: I'll do whatever you want.

24 DIRECT EXAMINATION

25

Page 36

1 BY MR. MELCHIOR: 36

2 Q Please state your name, sir.

3 A Bill Schifino. My formal name is William

4 Joseph Schifino.

5 Q And how are you employed?

6 A I'm an attorney.

7 Q And where do you work?

8 A I presently am the managing partner to the

9 Tampa office of the Burr & Forman firm.

10 Q Have you worked there always?

11 A No, sir. I started my own firm in 1991,

12 Williams, Schifino, Mangione & Steady. It was my

13 own firm until 2012.

14 Q Are you familiar with the name John

15 Schifino?

16 A I am familiar with the name and I'm

17 familiar with the attorney. He's my brother.

18 Q And where does he work?

19 A He has worked with me at Williams,

20 Schifino since, I believe, 1996, 1997 and we are

21 presently law partners at Burr & Forman.

22 Q Have you ever heard the name Tri-Med

23 Corporation before?

24 A Yes, I have.

25 Q And what was the context of learning about

Page 37

1 that name? 37

2 A I was asked at one point in time whether I

3 had any familiarity with that entity.

4 Q Do you have familiarity with that entity?

5 A I did not.

6 Q Who asked you, do you recall?

7 A I believe it may have been either Mr. Burt

8 Wiand or someone in his office.

9 Q Burt Wiand, the receiver.

10 Are you familiar with he's the receiver in

11 this action?

12 A I'm not certain of his locale.

13 MR. MELCHIOR: May I approach, your Honor?

14 THE COURT: You may.

15 BY MR. MELCHIOR:

16 Q Let me show you what's been marked as

17 Exhibit 17.

18 Do you recognize that document?

19 A I do.

20 Q What is that?

21 A That is an affidavit that I prepared and

22 signed.

23 Q I'm going to have some questions about

24 that affidavit.

25 Were you asked by Mr. Wiand or one of his

Page 38

1 associates to inquire whether John Schifino or the 38
 2 firm Williams, Schifino had ever represented Tri-Med
 3 Corporation or any of the other individual
 4 Defendants in this action?
 5 A I was asked to investigate whether or not
 6 John Schifino or myself or anyone with either the
 7 Williams, Schifino firm or the Burr & Forman firm
 8 had ever performed legal services for that
 9 particular entity and certain named individuals. So
 10 I then conducted a firm-wide search to investigate
 11 whether or not in fact we had.
 12 Q And what was the results of your inquiry?
 13 A We had never.
 14 Q Okay. I ask you to take a look at what's
 15 been marked as Plaintiff's Exhibit Number 9 in front
 16 of you there. It's a thick document with what looks
 17 like a business card on the front of it.
 18 A Eric Ager, Tri-Med Associates. I see it.
 19 Q Yes, sir.
 20 If I could get you to flip to I believe it
 21 is Page 6 of this document. I believe it's titled
 22 "Legal Principles of Tri-Med Corporation."
 23 A I see that.
 24 Q Do you see the name there toward the
 25 bottom, securities attorney John A. Schifino,

Page 39

1 Williams, Schifino P.A.? 39
 2 A I see that.
 3 Q Are you familiar with this document?
 4 A Not this specific document, no.
 5 Q All right. Has John Schifino and
 6 Williams, Schifino, P.A., your former firm, ever
 7 represented Tri-Med Corporation?
 8 A Well, my brother John Schifino is an
 9 environmental lawyer and a litigator. He has never
 10 practiced in the securities field in his career.
 11 My brother John Schifino at some point in
 12 time somehow came into possession either of this
 13 document or some information that his name was being
 14 used and he immediately reached out to Mr. Stephen
 15 Marlowe who we know and informed Mr. Marlowe to
 16 immediately ensure that his name was removed.
 17 Q Is it your testimony that the use of this
 18 representation that securities attorney John
 19 Schifino of the Williams, Schifino firm was
 20 authorized by your brother?
 21 A Mr. Schifino is not a securities attorney.
 22 This was unauthorized. He never did any work for
 23 this entity or the individuals we were asked about.
 24 He has never done securities work of any kind.
 25 Q Okay. And how about you or your father;

Page 40

1 have you been able to inquire whether or not William 40
 2 Schifino, your father -- are you able to say whether
 3 either of you have ever done any work for Tri-Med?
 4 A We conducted an exhaustive search of all
 5 of our records from William Schifino and from Burr &
 6 Forman. When I say "exhaustive," I mean I had
 7 personnel at my direction spend hours upon hours
 8 searching computer records to ensure that there had
 9 never been a file opened up or we had never done any
 10 work for this entity or the individuals I was asked
 11 about. I've also spoken to my father to confirm in
 12 fact that he had not. I know for an absolute
 13 certainty I have not.
 14 MR. MELCHIOR: May I approach, your Honor?
 15 THE COURT: Sure.
 16 BY MR. MELCHIOR:
 17 Q Let me show you what's been marked as
 18 Exhibit 15. Let me first direct your attention to
 19 Page 2. I would like to direct your attention to
 20 item Number 6 at the very bottom of the page. Could
 21 you read that. Just read that to yourself and see
 22 if that refreshes your recollection whether you ever
 23 did work for William on behalf of Tri-Med
 24 Corporation.
 25 A I've read Paragraph 6.

Page 41

1 What's your question? 41
 2 Q My question is whether that refreshes your
 3 memory as to whether you've ever done work for
 4 Tri-Med Corporation?
 5 A My answer remains the same. I have never
 6 done work for this entity.
 7 Q Okay. Let me direct your attention to
 8 Page 1 of that document under another item Number 6.
 9 Would you read that.
 10 Does that refresh your memory?
 11 A No, it does not refresh my memory.
 12 Q It provides Bill Schifino is telling us
 13 that it's two weeks' process two weeks ago. This is
 14 some reference to work.
 15 Are you saying that you did not do any
 16 work for Tri-Med Corporation?
 17 A That's what I'm telling you, yes. That's
 18 my testimony.
 19 Q Let me provide you with Exhibit 16.
 20 Do you recognize that document?
 21 A I've just skimmed it, but I don't
 22 recognize it.
 23 Q I direct your attention to the fifth
 24 paragraph that begins "I paid Tim and Ken" and if
 25 you would go to the fourth line there is a sentence

Page 42

1 that begins "I paid Bill Schifino \$16,500 to do 42
 2 nothing but waste our time and now I'm paying Stoel
 3 Rives to do the job Bill Schifino didn't do."
 4 Does that refresh your memory as to doing
 5 work for Tri-Med Corporation?
 6 A It does not.
 7 MR. MELCHIOR: Okay. No additional
 8 questions, your Honor.
 9 THE COURT: All right. Any other party
 10 wish to question the witness?
 11 All right. Mr. Schifino, you're free to
 12 go. Stand down.
 13 THE WITNESS: Thank you, your Honor.
 14 MR. MELCHIOR: The Plaintiff would call
 15 Connie Smekens.
 16 THE COURT: Good morning, Ms. Smekens.
 17 Thereupon:
 18 CONNIE SMEKENS,
 19 was called as a witness, having been duly sworn, was
 20 examined and testified as follows:
 21 THE COURT: Just for housekeeping purposes
 22 while she's getting her seat, no exhibits that
 23 were discussed with the last witness were
 24 received and I do not actually see those in
 25 this box of materials that I have here. So you

Page 43

1 can come back to that later, I guess. 43
 2 MR. MELCHIOR: Yes, your Honor.
 3 THE COURT: Do you want to state your name
 4 for the record, ma'am.
 5 THE WITNESS: Connie Smekens.
 6 THE COURT: How do you spell that?
 7 THE WITNESS: S-m-e-k-e-n-s. The first
 8 name is C-o-n-n-i-e.
 9 DIRECT EXAMINATION
 10 BY MR. MELCHIOR:
 11 Q And how are you employed, Ms. Smekens?
 12 A I'm Chief Operating Officer with Broad and
 13 Cassel.
 14 Q Who is Broad and Cassel?
 15 A It's a law firm. It's state wide. Nine
 16 offices.
 17 Q And where do you work for Broad and
 18 Cassel?
 19 A I'm based out of the Orlando office.
 20 Q Do you have a Tampa office?
 21 A Yes, we do.
 22 Q Do you have a Fort Lauderdale office?
 23 A Yes.
 24 Q Let me show you, if you may, Exhibit 9 in
 25 front of you.

Page 44

1 A Yes. 44
 2 Q If I can direct your attention to about
 3 the seventh page.
 4 A Yes.
 5 Q Are you familiar with that document which
 6 purports to be a letter dated October 24th, 2011?
 7 A I'm familiar with the document as it's
 8 attached to an affidavit.
 9 Q And how did you become familiar with that
 10 document?
 11 A It was sent to Matt Thompson who is an
 12 attorney in our Boca office who forwarded it to my
 13 attention.
 14 Q You mentioned Matt Thompson. The last
 15 page of this letter, which is, I believe, Page 7, is
 16 that the name you were referring to the signature
 17 line there of Matt Thompson?
 18 A Yes.
 19 Q Let me show you what's been marked as
 20 Exhibit 18.
 21 MR. MELCHIOR: If I may approach, your
 22 Honor?
 23 THE COURT: Yes.
 24 BY MR. MELCHIOR:
 25 Q Do you recognize that document?

Page 45

1 A Yes. 45
 2 Q What is that?
 3 A This is the affidavit of Matthew Thompson
 4 that was prepared and signed and then forwarded to
 5 me for recordkeeping.
 6 Q Have you had the opportunity to inquire
 7 whether Broad and Cassel represents Tri-Med
 8 Corporation currently?
 9 A Yes.
 10 Q You have?
 11 A Yes. I did an exhaustive search of our
 12 accounting system, inquired of our attorneys and our
 13 document management system. We have never
 14 represented Tri-Med.
 15 Q And how about the additional Defendants
 16 named in the proceeding?
 17 I'll be happy to read them out to you. I
 18 believe I previously provided you a document that
 19 had all their names, but I'll be happy to. Tri-Med
 20 Corporation, Tri-Med Associates, Inc., Jeremy
 21 Anderson, Anthony Nicholas, III, and Jr., Eric
 22 Ager --
 23 THE COURT: Slow down. You're killing the
 24 court reporter.
 25 MR. MELCHIOR: Eric Ager, Irwin Ager,

Page 46

1 Teresa Simmons Bordinat -- 46
 2 THE WITNESS: I did an exhaustive search
 3 of each of those names.
 4 BY MR. MELCHIOR:
 5 Q And were you able to find any indication
 6 that Broad and Cassel provided legal services?
 7 A No.
 8 Q Did you have the opportunity to search
 9 your legal records and find the Matt Thompson
 10 affidavit?
 11 A Yes.
 12 Q Was that maintained as a business record
 13 by Broad and Cassel?
 14 A Yes.
 15 Q Was it prepared in the normal course of
 16 their business by a person with knowledge and is it
 17 maintained in the normal course of your business as
 18 a regular document?
 19 A Yes.
 20 Q I believe you have the affidavit there in
 21 front of you.
 22 A Yes.
 23 MR. MELCHIOR: Your Honor, is that marked
 24 Exhibit 18?
 25 THE COURT: Yes.

Page 47

1 MR. MELCHIOR: We would move 18 into 47
 2 evidence.
 3 THE COURT: Okay. I don't have a copy of
 4 it. Do you know where that would be? Is that
 5 the original? All right. This will be
 6 received at this time.
 7 MR. MELCHIOR: Your Honor, do you have
 8 Exhibits 19 forward? I have a duplicate copy
 9 here that I could provide to you.
 10 BY MR. MELCHIOR:
 11 Q Ms. Smekens, I would direct your attention
 12 back to the letter that's contained in Exhibit 18 on
 13 Page 3.
 14 A I gave my copy to the judge.
 15 THE COURT: Here's 18.
 16 THE WITNESS: Thank you.
 17 BY MR. MELCHIOR:
 18 Q Do you recognize your firm's letterhead on
 19 that letter?
 20 A That is not our firm's letterhead.
 21 Q What is inaccurate about that firm
 22 letterhead?
 23 A The logo is inaccurate and the whole style
 24 of the letterhead is inaccurate.
 25 Q How are you familiar with the firm's

Page 48

1 letterhead in such detail? 48
 2 A I rolled it out in 1992.
 3 Q You personally?
 4 A Yes.
 5 Q As of October 24th, 2011, this is not the
 6 exact letterhead that you all were utilizing?
 7 A That is correct.
 8 Q One last question.
 9 This letter which is attached there to
 10 your Exhibit 18, do you understand that additional
 11 letter that's attached, which is -- I think this is
 12 a duplicate. You can take a look at both of those,
 13 but I think the pagination is only different on the
 14 printout.
 15 Do you recognize either of those letters
 16 to be legitimate letters of the Broad and Cassel law
 17 firm?
 18 A No, they are not legitimate letterhead.
 19 MR. MELCHIOR: We have no other questions
 20 of this witness.
 21 THE COURT: All right. Any questions from
 22 any other party?
 23 Hearing none, you can step down. If you
 24 will hand me that exhibit that I received. I'm
 25 sorry to make you go through that. Watch your

Page 49

1 step. 49
 2 Call your next witness, please.
 3 MR. MELCHIOR: The state would call Roy
 4 Gonzaque.
 5 THE COURT: Please come forward, sir, and
 6 take a seat in the witness chair. Raise your
 7 right hand, sir.
 8 Thereupon:
 9 ROY GONZAQUE,
 10 was called as a witness, having been duly sworn, was
 11 examined and testified as follows:
 12 DIRECT EXAMINATION
 13 BY MR. MELCHIOR:
 14 Q What is your name, sir?
 15 A Roy Gonzaque, G-o-n-z-a-q-u-e.
 16 Q And how are you employed?
 17 A I'm a Site Investigator for Bank of
 18 America Corporation Fraud Investigation Group. The
 19 Global Financial Crimes Corruption Compliance
 20 Department.
 21 Q Where do you physically work?
 22 A 390 North Orange Avenue, Orlando, Florida.
 23 Q And what is your region that you oversee
 24 if you oversee a region relative to the description
 25 you gave us about your position?

Page 50

1 A Florida, Georgia. Basically the east 50
 2 coast states.
 3 Q Can you tell us a little bit about your
 4 background?
 5 A I've been working for Bank of America
 6 Investigation Group for 24 years. Prior to that I
 7 was a Detective for the Los Angeles Police
 8 Department for 21 years. I am a Certified Fraud
 9 Examiner and Accredited Certified Fraud Examiner.
 10 Q What do you do in your rollover, just
 11 generally speaking?
 12 A Basically a lot of different duties, but
 13 basically my job is to protect the assets of Bank of
 14 America customers.
 15 Q And were you working in that capacity in
 16 2012?
 17 A Yes, I was.
 18 Q Have you ever heard the name Tri-Med
 19 Corporation before?
 20 A Yes, I have.
 21 Q How did the name Tri-Med Corporation -- I
 22 take it you don't know all the Bank of America
 23 customers?
 24 A No, I don't.
 25 Q So how did Tri-Med Corporation come to

Page 51

1 your attention? 51
 2 A I received a call from the Office of
 3 Financial Regulations regarding a subpoena that they
 4 served on the bank for documentation. They were
 5 requesting clarification on some information.
 6 Q Are you aware the Office of Financial
 7 Regulation had issued subpoenas for Bank of America
 8 for bank records?
 9 A Yes.
 10 Q Did you become aware of those?
 11 A Yes.
 12 Q Let me show you what's marked as
 13 Exhibit 19.
 14 MR. MELCHIOR: If I may approach, your
 15 Honor?
 16 THE COURT: You may.
 17 MR. MELCHIOR: Do you need a duplicate
 18 copy of 19?
 19 THE COURT: Not at this point. Perhaps
 20 I'll need one to review, but I do not have one
 21 here. I certainly need one if it's received in
 22 evidence.
 23 BY MR. MELCHIOR:
 24 Q Mr. Gonzague, do you recognize this
 25 document?

Page 52

1 A Yes, I do. 52
 2 Q What is that?
 3 A This is a copy of the e-mails that were
 4 sent to me by the investigator of Lisa Seabrooks and
 5 attached is a document that she was requesting
 6 clarification on. It's from Tri-Med Corporation and
 7 it's titled "Monthly Income Agreement/Receipt."
 8 Q Did you have an opportunity back then in
 9 September of 2012 to review that document?
 10 A Yes, I did.
 11 Q Did anything come to your attention that
 12 gave you concern?
 13 A Yes, it did. There is a paragraph here
 14 that indicates that this agreement is backed by a
 15 Bank of America letter of credit.
 16 Q And what did you do after seeing that
 17 reference to Bank of America line of credit?
 18 A I checked the Tri-Med accounts for any
 19 type of loan agreements, letters of credit or any
 20 other type of agreement as far as a loan goes and I
 21 could find none.
 22 Q Were you able to find out if Tri-Med
 23 Corporation had any accounts with Bank of America?
 24 A Yes.
 25 MR. MELCHIOR: Your Honor, before I

Page 53

1 proceed, I have a duplicated copy of 19. 53
 2 THE COURT: Okay. Thank you.
 3 BY MR. MELCHIOR:
 4 Q Were you able to determine how many
 5 accounts Tri-Med Corporation had?
 6 A Yes. They had 15 accounts.
 7 Q Were they all in the name Tri-Med
 8 Corporation?
 9 A Yes.
 10 Q Was there any other, like how about
 11 Tri-Med Associates?
 12 A Tri-Med Associates had one account, but
 13 was under a different tax identification number.
 14 Q Okay. Back to what we'll mark as
 15 Exhibit 19.
 16 What specifically concerns you?
 17 A Well, the document is fabricated.
 18 Q What leads you to that conclusion?
 19 A It indicated here that this agreement was
 20 backed by basically Bank of America.
 21 Q Are you referring to the reference to line
 22 of credit?
 23 A Yes.
 24 Q What reference to line of credit are you
 25 referring to?

Page 54

1 A The Bank of America letter of credit. 54

2 Q If I could maybe direct your attention to

3 Page 2 under the topic "second risk," and it reads

4 "settlement cases may on rare occasions be settled

5 for less than what is owed on letter of protection."

6 Could you read the next line starting with

7 "remedy."

8 A "Remedy. Tri-Med Corporation will then

9 execute the Bank of America line of credit and pay

10 the investor the difference within 72 hours."

11 Q And additionally under third risk there is

12 a remedy that also referenced a Bank of America

13 letter of credit?

14 A Yes. A remedy in the event Tri-Med

15 corporation agrees to immediately execute the Bank

16 of America letter of credit and repay the investor

17 the entire principle within 72 hours. This will

18 absolutely ensure the ability of the law to proceed

19 without disruption by outside influences at all

20 times.

21 Q Upon receiving and reading that document,

22 did that give you concern?

23 A Yes, it did.

24 Q Why is that?

25 A Well, because it's placing Bank of America

Page 55

1 in jeopardy. 55

2 Q And why is that?

3 A Well, this document states that they have

4 a letter of credit with Bank of America which they

5 did not. Anybody receiving this letter of credit

6 are assuming that they did and, for whatever reason,

7 if something goes wrong with the corporation,

8 they're going to be going to Bank of America for

9 reimbursement.

10 Q Based on that wording, did you conclude

11 that if in fact Tri-Med Corporation was using this

12 in their monthly income agreements that that was a

13 concern for the bank?

14 A Yes, it was.

15 Q So what did you do?

16 A I closed the accounts down.

17 Q How many accounts did you close?

18 A All of the accounts under the Tri-Med

19 Corporation tax identification number and the

20 Tri-Med Associates tax identification number.

21 Q Did you have any subsequent dealings with

22 Tri-Med Corporation?

23 A Yes. Prior to signature the continued

24 accounts in foreclosure I placed freezes on them and

25 subsequently I received a phone call from

Page 56

1 Mr. Anthony Nicholas, Jr., and Mr. Jeremy Anderson. 56

2 Q Those are Defendants in this action; are

3 you aware of that?

4 A Yes.

5 Q What was the substance of the phone call?

6 A Well, they wanted to know why I was

7 shutting their accounts down.

8 Q And what did you tell them?

9 A I explained because of this fabricated

10 document that they had issued.

11 Q Did they mention the existence of any

12 other line of credit?

13 A No.

14 Q Did they attempt to persuade you to leave

15 the accounts open?

16 A Yes, they did. They informed me that it

17 was just a misprint on the document which they were

18 going to correct shortly.

19 Q Given your background, did you make any

20 conclusions relative to being a misprint?

21 A I thought definitely it was not a

22 misprint.

23 Q Why would you think that?

24 A Well, obviously they have lawyers.

25 THE COURT: He doesn't need to explain to

Page 57

1 the court why it didn't appear to be a 57

2 misprint.

3 MR. MELCHIOR: Okay.

4 Thank you. I have no further questions of

5 this witness.

6 THE COURT: Any additional questions for

7 the witness?

8 Very well, sir. You can stand down.

9 THE WITNESS: Thank you, your Honor.

10 THE COURT: Is Exhibit 19 being offered at

11 this time?

12 MR. MELCHIOR: Yes, sir.

13 THE COURT: That will be received.

14 Call your next witness.

15 MR. MELCHIOR: The State would call Burton

16 Wiand, receiver.

17 Thereupon:

18 BURTON W. WIAND,

19 was called as a witness, having been duly sworn, was

20 examined and testified as follows:

21 THE COURT: The record will reflect he's

22 raised his right hand and was sworn.

23 DIRECT EXAMINATION

24 BY MR. MELCHIOR:

25 Q Would you state your name, sir.

Page 58

1 A My name is Burton Wiand. 58

2 Q And how are you employed?

3 A I'm an attorney with the firm of Wiand,

4 Guerra, King in Tampa.

5 Q And how long have you been an attorney?

6 A I was admitted to the Bar initially in

7 1971.

8 Q And how have you been employed since that

9 time?

10 A Initially I was with the Division of

11 Enforcement of United States Securities & Exchange

12 Commission in Washington D.C. and I served there for

13 almost 14 years.

14 Q And what was your role with them?

15 A I initially was a staff attorney

16 conducting investigations and then I was a Senior

17 Counsel or a Special Counsel and then I became a

18 Senior Counsel. I was Branch Chief and oversaw all

19 criminal reference cases from the Commission and

20 conducted also special proceedings in general

21 investigations.

22 Then I was a Senior Counsel in the

23 Division of Enforcement and finally was the

24 Assistant Chief Counsel and was the Senior Litigator

25 for the Division of Enforcement.

Page 59

1 Q In that work did you deal with securities 59

2 fraud cases?

3 A I dealt with them regularly.

4 Q And how about registration issues of

5 securities, part of that type of work as well?

6 A I dealt with them then and I have in the

7 30 years since then.

8 Q Okay. So, when you left the SEC, tell us

9 about your background, please.

10 A I initially left the SEC and joined the

11 firm of Macfarlane, Ferguson, Allison & Kelly and

12 began to develop a financial services practice

13 involving regulatory defense and some securities

14 work.

15 I continued there for four years and then

16 I worked for and became a partner of Fowler, White.

17 I was there for 20 years.

18 Then in November or October of five years

19 ago the financial services group that I worked with

20 and I formed a new firm, and that was Wiand, Guerra,

21 King. Throughout that period of time our focus has

22 been on securities matters, financial services,

23 regulatory defense and such matters.

24 Also, in recent years, say the last 10, I

25 have served as a receiver on behalf of the

Page 60

1 Securities & Exchange Commission appointed by 60

2 federal courts on behalf of the Federal Trade

3 Commission appointed by federal courts, and I was

4 appointed at the suggestion of OFR in this matter by

5 Judge Rondolino. I've also done other similar

6 things for the OFR on occasion in the past.

7 Q Through your roles as a receiver, were you

8 appointed in a receivership in Sarasota that has

9 gained some notoriety?

10 A There was a Ponzi scheme run by a fellow

11 named Arthur Nadel down there that was recorded to

12 be a 400 million dollar Ponzi scheme, but I have

13 been the receiver in that and we have been working

14 on that for five years or something like that. It's

15 been a very extensive project.

16 Q In your role as receiver in these various

17 receiverships that you've been appointed for, what

18 is your role when you're appointed as a receiver?

19 A The essence of my role is I'm appointed by

20 the court in order to take over the business

21 activities that an agency believes were improperly

22 conducted and then I'm tagged with marshaling the

23 assets and accounting for them, investigating where

24 the assets of the company are seeking out and

25 pursuing claims on behalf of the entities against

Page 61

1 people who might have breached duties to the entity 61

2 or have obligations to the entities.

3 Also as a part of that I will conduct a

4 claims procedure whereby I will propose to the court

5 a method which I've claimed from other creditors of

6 the entity and then present my recommendations to

7 the court as to how those are to be dealt with and

8 then receive claims and distribute money to people

9 who are entitled to it. It's a fairly involved

10 procedure and it takes some time.

11 Q Mr. Wiand, were you appointed as receiver

12 in this matter March 5th or 6th, 2014, this Tri-Med

13 matter?

14 A I was.

15 Q What was the initial steps that you took

16 when you were appointed receiver?

17 A Well, the initial thing that we did was to

18 identify -- I met with OFR and learned about the

19 matter a little bit prior and as we were beginning

20 this, and then we immediately began to move forward

21 to attempt to secure the assets of Tri-Med; that

22 means the bank accounts, the officers, any assets

23 that we believe exist anywhere we reach out and

24 secure those as the court order requires me to do

25 and also evidence information that's important to

Page 62

1 secure. 62

2 In this instance the court order also

3 froze certain assets, so we notified financial

4 institutions with regard to the court's order to

5 ensure those assets were frozen promptly.

6 Q Do you happen to know approximately how

7 many liquid dollars of assets were frozen?

8 A It is a little less than \$5,000,000. I

9 think the Tri-Med bank accounts had approximately

10 4.7, something like that. There were other assets

11 that were frozen.

12 Q Pursuant to that order, have you engaged

13 in an accounting or a forensic accounting?

14 A I have.

15 Q And who was that firm?

16 A That's Yip & Associates. The principal

17 there who has worked on it is Maria Yip.

18 Q Is she here today?

19 A She is.

20 Q Is that OFR's request to appear for the

21 hearing that you're aware of?

22 A Yes. In this situation the people that

23 operate this business kept a dearth of records and

24 it's very important to get to the bottom of what's

25 occurring in this situation. I think that she will

Page 63

1 tell you, but it was necessary to almost recreate 63

2 the records from bank records and various other

3 documentation that we gathered because this company

4 did not have the normal system of accounting that

5 you would generally find in a legitimate business.

6 Q So, when you're initially appointed

7 receiver, can you explain the steps that were took

8 in this particular case to, I guess, take possession

9 of varying types of records like electronic records,

10 paper records?

11 A Well, we utilized a company in Clearwater

12 that has the clever name E-Hounds who are

13 information technology experts and computer experts.

14 We go out and gather the computers and all of that

15 kind of information we can and E-Hounds helps us in

16 doing that. They secure that information. They do

17 what's called mirroring the documentation off the

18 computers. They retain the hard drives and things

19 of that nature for evidence and they build us a body

20 of data so that it can be searched and reviewed as

21 we proceed in reviewing the business records of what

22 took place with respect to an entity such as this.

23 Q Okay. Are you aware were you able to

24 literally take possession of electronic data later

25 that you gave to E-Hounds?

Page 64

1 A Absolutely. Absolutely. 64

2 Q And where is that maintained today?

3 A I think it's probably maintained on

4 servers. I'm not sure whether E-Hounds maintains

5 them, but I think they're on drives.

6 Q Have you yourself or people working at

7 your direction had the opportunity to review those

8 electronic records?

9 A There is a great mass of those records,

10 but they, for the most part, have been reviewed in

11 substance to determine what was there. I would say

12 there is probably some records that came from third

13 parties that maybe have not been reviewed, but, in

14 essence, those records have been reviewed.

15 Q As a receiver, is it a routine practice to

16 have to hire counsel?

17 A It is.

18 Q And in this case you hired counsel?

19 A I hired pursuant to advice that was

20 provided to the court lawyers in my firm to

21 represent. In connection with that, I also hired

22 bankruptcy counsel that was necessary because of

23 some of the issues that were raised. I think we

24 have also hired counsel in, I think, Minnesota with

25 respect to some issues that existed there.

Page 65

1 It is routine for a receiver to hire 65

2 counsel, and I tried to utilize counsel and others

3 in order to conduct the efforts on behalf of the

4 receivership and manage the project myself.

5 Q Is it a routine practice to obtain an

6 entity for which you're receiver overall of their

7 bank records?

8 A That is something that we routinely do.

9 Q And how do you go about doing that?

10 A We subpoenaed every financial institution

11 that we can determine has had any contact with this

12 entity or the individuals involved. I think in this

13 instance total there was something other than

14 financial institutions, but we issued 50 subpoenas

15 to gather information.

16 Q You heard Mr. Gonzaque from Bank of

17 American testify earlier.

18 Did you subpoena Bank of America records?

19 A Absolutely.

20 Q Okay. In your work as receiver, you

21 mentioned earlier that you at least in the Nadel

22 matter contemplate whether there are claims that can

23 be made on behalf of the receivership?

24 A Correct.

25 Q Is that something you did in this case?

Page 66

1 A At this point in time, you know, I always 66
 2 have my eyes open with respect to that, but at this
 3 point in time, because we are sitting under a
 4 temporary injunction, actually focusing and bringing
 5 those claims is something that I think this case
 6 needs to go forward a little bit further before I do
 7 think that, but certainly we have examined where
 8 potential liability lies with respect to this both
 9 including the perpetrator of the scheme and those
 10 who participated in the business venture with them
 11 and facilitated their activities.

12 Q But, based on your review of the documents
 13 and your other investigative work, what are some of
 14 the key indicators that lead you to believe there
 15 may be additional liability for parties in this
 16 matter?

17 A Some of the activities that were engaged
 18 in by professionals who provided services to these
 19 entities, it would appear that they should have been
 20 much more vigilant in their conduct of what they
 21 were doing and they facilitated the fraud.

22 In addition, I would think with respect to
 23 the individuals who have been involved in
 24 perpetrating the operations of Tri-Med, they will
 25 have individual liability. So those are all things

Page 67

1 that we will analyze to see, and you do two things. 67
 2 One, you analyze whether the claim is a valid claim,
 3 you have a potential valid claim, and then you have
 4 to analyze whether or not it is or it's a viable
 5 claim to seek it because you don't want to be
 6 bringing claims against instances where you're not
 7 going to collect anything.

8 Q Okay. Did you have an opportunity to
 9 actually look at the underlying documents that were
 10 associated with the monthly agreements?

11 A I have looked at some of those documents.
 12 Every one of them, no, but certainly I have looked
 13 at the underlying basic documents that were involved
 14 in the carrying out of the operations of Tri-Med.

15 Q Were there any concerns that came to mind
 16 when you reviewed the documents relative to how they
 17 were marketed?

18 A Well, there were a number of different
 19 things that concerned me about that. One of them is
 20 the gross nature of the misrepresentations that were
 21 made in connection with the literature, the sales
 22 literature, that we recovered as compared to what
 23 the operations of the company were.

24 It also appeared that these were obviously
 25 investment contracts or certificates of indebtedness

Page 68

1 or other kinds of obligations that are traditionally 68
 2 determined to be securities and that with respect to
 3 this, the way this scheme was conducted, there was a
 4 requirement in general that these securities be
 5 registered with the state and/or the federal
 6 government. That did not occur and clearly it
 7 should have.

8 Q Okay. Are you familiar with what was
 9 previously marked -- I would have to go back in my
 10 record here quickly, but I believe it was either
 11 Exhibit 3 or 4 before you there.

12 Exhibit 3, if you would, can you take a
 13 look at that.

14 Sorry. That might be a big mess up there.

15 A I'm getting down to three, yes.

16 Q Do you recognize that document?

17 A I do. This was a record recovered from
 18 the business records of Tri-Med Corporation and it
 19 was advice that they had received from their
 20 attorneys.

21 Q And have you read that letter?

22 A Certainly some time ago I absolutely read
 23 it.

24 Q Are you aware that that letter concluded
 25 that these in fact were securities, that the monthly

Page 69

1 income agreement program was a security? 69
 2 A It concluded that. It also suggested that
 3 it would be necessary in some form to have a
 4 rescission offer for the investors with respect to
 5 this.

6 Q And a rescission offer.
 7 What's a rescission offer?

8 A There is a procedure that occurs where
 9 violations of the securities laws have occurred or
 10 other problems with offerings of investments that
 11 the offer of those investments are required to offer
 12 the people who purchased the investments their money
 13 back and they are sort of doing what's known as a
 14 securities transaction. They have to do in
 15 connection with that. They have to ensure that
 16 those individuals are provided with complete and
 17 accurate information with respect to the company and
 18 the sale, the investments as a sales transaction,
 19 yet the rescission is also a sales transaction.

20 So, in either one of those transactions,
 21 both federal and state law requires that complete
 22 and accurate material information relating to the
 23 company's authorization individuals' use of
 24 proceeds, all of those kind of things, need to be
 25 provided to investors.

Page 70

1 Q Is that something that court's and 70
 2 attorneys all refer to as full and fair disclosure?
 3 A I think it is. Particularly in the state
 4 arena with respect to any kind of private placement.
 5 It specifically talked about providing full and fair
 6 disclosure, and in the rules there is a description
 7 of what categories of information that would be
 8 required to be provided in order to accomplish that,
 9 and it's quite extensive.
 10 Q Just generally can you touch on some of
 11 the topics of what would be required of full and
 12 fair disclosure.
 13 A Well, you need to give the background of
 14 the individuals who are the promoters who are the
 15 operators of the business.
 16 Q Did Tri-Med review their documents; did
 17 they give the background of their operators in their
 18 disclosures?
 19 A I don't think there was any significant
 20 information at all and significant information that
 21 was not disclosed. I mean, Mr. Anderson who I
 22 thought was the primary person was subject of an
 23 arrest warrant for grand theft from the State of
 24 Florida. That was something that should have been
 25 disclosed to these individuals.

Page 71

1 Q And how about bankruptcies? 71
 2 A Bankruptcies are something that is
 3 routinely required and thought of or held in the
 4 securities industry to be material, and anyone
 5 selling securities who would be an officer of a
 6 company that's issuing securities would be required
 7 to disclose any prior bankruptcies.
 8 Q Okay. And, for example, you saw Anthony
 9 Nicholas, III, here today earlier. Would his
 10 background, age, qualifications have been
 11 necessitated to be disclosed in a full and fair
 12 disclosure?
 13 A I think all of the Defendants in this case
 14 from my review of business operations at Tri-Med
 15 were principals of that. Even their sales
 16 operations officers through the operations of the
 17 business and the background of any of those people
 18 should have been disclosed to the investors.
 19 Q Is there a distinction between it's given
 20 your background in the securities area; is there a
 21 distinction between disclosures that are made in a
 22 private placement versus disclosures that are made
 23 when an offering is registered?
 24 A I think there may be some distinctions,
 25 but generally the thought is that the information

Page 72

1 needs to be a broad plea of information and include 72
 2 various different categories that relate and are
 3 material to the investment.
 4 Under the securities, the federal
 5 securities laws, there is a regulation called SK
 6 that will take and list all of those categories that
 7 would need to be provided. That would include, as I
 8 said, the background of the officers and directors.
 9 It would include financial information with respect
 10 to the companies. It would include major contracts.
 11 It would include the history of the company's
 12 operations and what it was doing, major obligations.
 13 All of those kind of things would be required.
 14 The State of Florida has, I think 517.061,
 15 I think, is the rule. It has a list also. They're
 16 not precisely the same, but they're similar and they
 17 cover the same areas of information, and essentially
 18 it is things that are generally known to be
 19 material, i.e., important to an investor about an
 20 investment and it's not a voluntary kind of thing.
 21 If you're going to sell a security, the law requires
 22 you to provide all of that information to the
 23 potential investor.
 24 THE COURT: Counsel, in the broad scope
 25 and nature of the injunction in the requested

Page 73

1 relief it doesn't suggest to the court that 73
 2 materiality of these nondisclosures. I mean,
 3 we would be freezing accounts because of
 4 principles in a company failed to disclose a
 5 bankruptcy, right?
 6 MR. MELCHIOR: Yes, sir.
 7 THE COURT: So perhaps, unless you deem
 8 it's entirely necessary, we can move on to more
 9 significant concerns here.
 10 MR. MELCHIOR: Okay.
 11 BY MR. MELCHIOR:
 12 Q You mentioned some gross
 13 misrepresentations earlier in your testimony. You
 14 used that term.
 15 What were you referring to?
 16 A Well, I think there are some really basic
 17 things here. One, all the investors were told that
 18 their investment was guaranteed by or backed by a
 19 major insurance company. That was untrue. The
 20 nature of the obligation might or might not have
 21 involved an insurance company and it must -- the
 22 backing would have been if a particular personal
 23 injury action was successful and the insurance
 24 company determined to make a settlement, maybe a
 25 source of funds would have been from an insurance

Page 74

1 settlement, but there was no obligation between an 74
 2 insurance company to pay the debts or to pay the
 3 information to these individuals of any kind.
 4 With respect to the individuals, they were
 5 supposedly to receive assignments or let's call them
 6 letters of protection which was the kind of
 7 financial instrument that supposedly backed the
 8 certificates of information that they received. I
 9 think half of these things were not assignable with
 10 respect to --
 11 Q I'm sorry. Let me ask you some basics
 12 about the program.
 13 To your understanding, what were investors
 14 to receive for their investments?
 15 A They receive a certificate of income that
 16 indicated they would receive an amount of income on
 17 a monthly basis and then the principle would repay
 18 upon a future event. That would be that something
 19 that purportedly backed this letter was a letter of
 20 protection. That was a document issued by a lawyer
 21 to a medical facility with respect to receivables
 22 that the medical facility had generated on behalf of
 23 the lawyer's client. Then if the lawsuit was
 24 successful or if the settlement was successful and
 25 money came back to settle those receivables, then

Page 75

1 the receivables would be negotiated in some amount 75
 2 and hopefully there would be a portion of that that
 3 would go to an investor, that was the essential
 4 theory of this business, but indeed that was not
 5 what was being done.
 6 I mean, some of that occurred, but not
 7 much of it. They said that \$17,000,000 raised was
 8 going to buy these receivables. I think the number
 9 that was utilized to buy receivables is well under
 10 \$5,000,000. Much of the entities that generated the
 11 receivables were entities that were created through
 12 an associate of Mr. Anderson, a Dr. Angona
 13 (phonetic), that are in bankruptcy.
 14 Much of the money was used for loans to
 15 create different kinds of entities. The money,
 16 instead of being used to buy receivables, was used
 17 to invest in real estate that was apparently used
 18 for real estate speculation. There was money
 19 invested in a public company in Houston. I mean,
 20 the specifics of this information are things that
 21 Ms. Yip can give you, but the proceeds of this
 22 investment were not used for what these people were
 23 told, plus the potential return off of these
 24 investments was dramatically less than the amount of
 25 the receivables that had actually been assigned.

Page 76

1 I've learned through these things that the 76
 2 best hope of recovery on these things is 50 percent
 3 or 55 percent, something of that nature, and that
 4 would be if there is recovery, and that's certainly
 5 not a surety in my experience. That's not assured.
 6 In addition, a number of the entities that
 7 were related have gone into bankruptcy, so there is
 8 going to be difficulty collecting anything.
 9 We also found that some of these documents
 10 were forged. Some of them have been previously
 11 signed to other lenders. There is significant
 12 problems with all of this.
 13 Q So, back to your original. I think you
 14 testified that there was some marketing materials
 15 that set back by insurance.
 16 Have you ever seen marketing materials
 17 like that or ads?
 18 A Absolutely. Absolutely.
 19 Q So is it your testimony that these
 20 investments weren't necessarily backed by insurance
 21 companies?
 22 A No.
 23 THE COURT: Well, the question was, is it
 24 your testimony that and you said "no."
 25 THE WITNESS: It is my testimony -- thank

Page 77

1 you, Judge. It is my testimony that there is 77
 2 no direct obligation of any insurance company
 3 to satisfy any of these obligations to
 4 investors.
 5 BY MR. MELCHIOR:
 6 Q Earlier I believe you referenced that some
 7 letters of protections you have learned are not tied
 8 to underlying medical receivables, but instead to
 9 area.
 10 What other things might they be tied to?
 11 A I think that there is reasons. There is
 12 real estate. I think one of the individual's homes
 13 was actually supposedly backing some of these
 14 things. There was a document that was utilized
 15 within the business of the company that was called
 16 an assignment tracker where they listed out -- they
 17 had purportedly assigned these securities to the
 18 individual obligation and it listed many of these
 19 things as having some assignment of medical
 20 receivables or letters of protection. Many of them
 21 don't have anything.
 22 Q I show you what the been marked as Exhibit
 23 Number 25.
 24 A I have that in my hand, sir.
 25 Q Mr. Wiand, what is that document; do you

Page 78

1 recognize it? 78

2 A This was a document that was utilized

3 within the business to purportedly keep track of

4 assignments of medical receivables or letters of

5 protection to purportedly back up the investors or

6 the obligations to the investors.

7 Q Okay. In your role are you the records

8 custodian as well for --

9 A I'm Tri-Med right now.

10 Q You're Tri-Med Corporation?

11 A Yes.

12 Q But, as your role as receiver, do you also

13 act in the role of records custodian when you take

14 collection of these?

15 A Absolutely. Through the activities that

16 we've engaged in, we have custody of all of the

17 business records that we're aware of of Tri-Med that

18 were utilized in connection with that business.

19 Q And I take it Exhibit 25 is one of those

20 records?

21 A Absolutely.

22 Q You rely on it to go about your work?

23 A It is a business record that was regularly

24 utilized in connection with the conduct of that

25 business.

Page 79

1 Q Okay. 79

2 THE COURT: Stop so I can understand this.

3 Is this data in the same form as it was

4 when it was retrieved from the possession of

5 the Defendants or is this a summary of data

6 organized in the fashion by the receiver?

7 THE WITNESS: No. I believe 25 is the way

8 it came, Judge.

9 THE COURT: Okay.

10 BY MR. MELCHIOR:

11 Q If I can direct your attention way down.

12 THE COURT: We've been at it for about an

13 hour and a half now. We're going to take a

14 comfort break for our court reporter. All

15 concerned, we'll take a five-minute recess and

16 then we'll reconvene.

17 (Whereupon, there was a break in the

18 proceedings.)

19 THE COURT: Continue with the testimony of

20 the witness.

21 BY MR. MELCHIOR:

22 Q Mr. Wiand, I was asking you about what's

23 called an assignment tracker, Exhibit 25.

24 A Yes, sir.

25 Q And you were relating that it was in the

Page 80

1 records and it was, I believe, your testimony that 80

2 it was your understanding this was taken -- this

3 isn't an active document. It's a historical

4 document that was found in the records of Tri-Med

5 Corporation?

6 A Right.

7 MR. MELCHIOR: The State would move

8 Exhibit 25 -- well, the State would -- your

9 Honor, let me show Mr. Wiand a copy of what's

10 been marked as Exhibit 26. I believe you have

11 it.

12 THE COURT: I do.

13 BY MR. MELCHIOR:

14 Q Mr. Wiand, if you notice on Exhibit 25

15 versus Exhibit 26 there are two commas missing

16 that's not apparent to the naked eye.

17 A Yes.

18 Q But in Exhibit 25 there is a column called

19 "customer assigned," which is about the fifth column

20 over and is also --

21 THE COURT: Is this deleted for HIPAA

22 reasons?

23 MR. MELCHIOR: Yes, sir. Particularly

24 patient name is a later column.

25 THE COURT: So you're offering 26 as a

Page 81

1 redacted version of 25? 81

2 MR. MELCHIOR: Yes, sir.

3 THE COURT: That will be received.

4 BY MR. MELCHIOR:

5 Q Mr. Wiand, in this document does it

6 purport to identify what medical providers are there

7 in that column, the far one on the right-hand side?

8 A It does.

9 Q And are you familiar with that some

10 medical providers listed are in fact referenced to

11 street addresses like Taiuga (phonetic) or other

12 similar names for properties in Hillsborough and

13 Pinellas County?

14 A Yes. Woodridge Parkway. 4202 Bay Club.

15 Q So are you aware if Tri-Med provided

16 letters of protection that in theory were tied not

17 to medical receivables but to property, to investors

18 who were, for example, listed on these pages; are

19 you aware of that?

20 A They did. And they also, I think,

21 indicated that where it was a piece of real estate

22 that it would refer to an insurance company when

23 there was no involvement in an insurance company of

24 any kind with it.

25 Q Period?

Page 82

1 A Yeah. 82

2 Q Has your staff, the people you have

3 working on this case, been able to explore that in

4 more detail?

5 A I'm sure my staff, but also Yip &

6 Associates has done that extensively.

7 Q Are you aware if anyone has found multiple

8 instances where there really isn't a medical

9 receivable that's referenced on a letter of

10 protection that truly ties back to a patient bill?

11 A I'm sure that has occurred. I think, as

12 I've said before, I think instances where they just

13 they don't exist at all, they're fraudulent, they're

14 forged and we also have instances where some of the

15 receivables have been signed multiply. It's a

16 myriad of problems.

17 Q If you would be so kind as to flip to the

18 very last page of either Exhibit 25 or 26. I think

19 they're identical except for those missing columns.

20 There are some total values there referenced across

21 the bottom of the page and you see for a total value

22 it doesn't represent twenty million eight hundred

23 some odd thousand dollars. Okay?

24 A Okay. That would be the purported total

25 value. Yes, sir. I see that.

Page 83

1 Q What Tri-Med is indicating -- well, I take 83

2 it the next item is purchase price of 6.5 million I

3 take it that's what they paid. Is that what you

4 believe that to represent, what at least they

5 maintain?

6 A That's what this document says. If that's

7 a question, the underlying investigative work will

8 demonstrate that that number is not accurate.

9 Q That your forensic accountant has reached

10 conclusions that are consistent with your testimony?

11 A Yes, sir.

12 MR. MELCHIOR: I believe Exhibit 26 has

13 been received, your Honor.

14 Is that correct?

15 THE COURT: It's received.

16 BY MR. MELCHIOR:

17 Q Mr. Wiand, I have a couple of documents

18 that were previously offered to the witnesses.

19 They're marked Number 3 and Number 4.

20 A Yes. Three is the attorney memorandum

21 that was part of the business records that we

22 uncovered in the business records of Tri-Med from

23 the Stoel Rives firm.

24 MR. MELCHIOR: We've moved that into

25 evidence?

Page 84

1 THE COURT: What's the identification 84

2 number?

3 THE WITNESS: Three, Judge.

4 THE COURT: Three.

5 MR. MELCHIOR: Attorney/client privileged

6 letter.

7 THE WITNESS: Right.

8 THE COURT: Okay. That will be received.

9 BY MR. MELCHIOR:

10 Q And Mr. Wiand, there is an Exhibit 4 there

11 as well.

12 A Okay. I see this is more e-mail

13 communications that were taken from the business

14 records of Tri-Med relating to the attorney's views

15 with respect to their activities. And that's

16 Number 4.

17 Q Do you mind reading that sentence after

18 "however"?

19 A "However" -- this is dated 12/4/2013.

20 "However, you still have all the problems

21 outlined in our memo and our recommendation remains

22 that you shouldn't sell securities through broker

23 dealers or otherwise unless you are doing everything

24 we recommend in our memo to comply with the

25 securities laws. For your reference I have attached

Page 85

1 a copy of the memo that we provided to you last year 85

2 regarding our recommendations for sales."

3 Q Thank you.

4 Was that found in the records you took

5 possession of?

6 A Absolutely.

7 MR. MELCHIOR: We would move Exhibit 4

8 into evidence, your Honor.

9 THE COURT: Okay. Exhibit 4 will be

10 received. As I understand, three was attached

11 to four?

12 THE WITNESS: Yes, sir.

13 THE COURT: Okay.

14 MR. MELCHIOR: May I approach, your Honor?

15 THE COURT: Yes.

16 BY MR. MELCHIOR:

17 Q I'm showing you what's been marked as

18 Exhibit 20.

19 MR. MELCHIOR: Your Honor, I have another

20 duplicate.

21 THE COURT: All right. I do not have 20.

22 MR. MELCHIOR: Here is 20 and 21.

23 BY MR. MELCHIOR:

24 Q Mr. Wiand, have you ever seen Exhibit 20

25 before?

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1 A It's another record that came out of the 86
 2 business records of Tri-Med.
 3 Q Are you familiar with what the
 4 significance of this letter is?
 5 A In the sales documentation that was
 6 utilized, there were representations with respect to
 7 various medical providers of some names you would
 8 have heard of as being where these receivables were
 9 coming from, and this letter lists a number of them
 10 that have been represented to investors as being
 11 providers.
 12 This is a letter from the attorney for all
 13 those health providers saying essentially that's not
 14 true, don't do it anymore and don't try to take
 15 advantage of us in your sales effort.
 16 Q Okay. May I ask you to look at Exhibit 9
 17 which I believe is there on the desk.
 18 A Okay. I have Exhibit 9 in front of me.
 19 Q Okay. Do you mind --
 20 A This is also records that we took out of
 21 the offices of Tri-Med that was books that were
 22 utilized in connection with sales efforts. There
 23 was more than one of them, but they were --
 24 Q These agents?
 25 A I'm trying to think. It was in a binder

Page 87

1 and this was documents that were collected together 87
 2 that were utilized. I've heard some people refer to
 3 it as a pitch book, but it contained all the various
 4 sales documentation that was utilized, including the
 5 contracts, et cetera, or drafts of them.
 6 Q Can I get you to flip to Page 3 and Page 4
 7 that identifies participating hospitals.
 8 A Correct.
 9 Q And previously you were talking about
 10 Exhibit 20 which was a letter from a law firm
 11 directed to Tri-Med telling them not to hold
 12 themselves out reference to hospitals.
 13 Aren't some of the hospitals identified in
 14 Exhibit 20 listed in the marketing materials found
 15 in Exhibit 9?
 16 A The majority of them.
 17 MR. MELCHIOR: Okay. We would move
 18 Exhibit 20 into evidence.
 19 THE COURT: That's received.
 20 Can I ask you a question. In conjunction
 21 with Exhibit 26, which purports to list a
 22 number of medical providers connected with what
 23 would purportedly be letters of protection as
 24 the asset, did you all investigate whether
 25 there were letters of protection issued by the

Page 88

1 medical providers? 88
 2 THE WITNESS: Judge, I think we have been
 3 through all of that, but I think the specifics
 4 I believe Ms. Yip can testify a little bit.
 5 She's someone who is better --
 6 THE COURT: In relation to that question?
 7 THE WITNESS: And also with respect to
 8 some of the places where it has addresses and
 9 things listed down there, there will be one of
 10 these certificates issued to an investor saying
 11 there is a letter of protection that indeed
 12 there is not.
 13 THE COURT: Have you ever found a hospital
 14 issue a letter of protection or be a party to a
 15 letter of protection that's actually a
 16 contract, but be a party to the contract of a
 17 letter of protection; have you ever found that?
 18 THE WITNESS: There are some, you know,
 19 like medical clinics.
 20 THE COURT: Right. But I'm talking about
 21 hospitals.
 22 THE WITNESS: The hospitals, no.
 23 THE COURT: Okay. In my experience of
 24 being a lawyer for 40 years and a judge for 25,
 25 I've never seen a hospital treat a patient

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1 based upon an agreement with an attorney called 89
 2 letter of protection.
 3 BY MR. MELCHIOR:
 4 Q Mr. Wiand, in that regard the underlying
 5 hospital isn't issuing it. Is it accurate to say at
 6 least in this case the underlying hospital isn't
 7 issuing the letter of protection, it's the PI
 8 attorney who issues the letter of protection to the
 9 hospital or the medical provider to facilitate their
 10 client getting service?
 11 A Absolutely.
 12 THE COURT: Yeah. The point of the letter
 13 of protection is that the service provider,
 14 medical provider, doctor, clinic, whatever,
 15 will agree to continue to provide services
 16 based upon the promise that the attorney, if a
 17 recovery is there, for the recovery to go to
 18 the medical provider.
 19 So that's my observation, although some
 20 doctors will agree to treat for free
 21 essentially with the hope of being paid out of
 22 some future recovery. I've never seen a
 23 hospital treat a patient on the basis that they
 24 have some promise from an attorney that they
 25 may receive some recovery. That would seem

Page 90

1 very remarkable to me. 90

2 BY MR. MELCHIOR:

3 Q Mr. Wiand, I was asking you to look at

4 Exhibit 9 regarding those medical hospitals that

5 were listed.

6 A I'm back to nine.

7 Q I believe if you flip to the next page or

8 a couple of pages further is the legal principles of

9 Tri-Med.

10 I don't know if you were in court earlier

11 when there was some testimony about John Schifino,

12 but that letter was also contained in Exhibit 9; is

13 that the case?

14 I'm sorry. This representation of legal

15 principles of Tri-Med Corporation, is that found in

16 your record, Number 9?

17 A Yes, sir.

18 Q And --

19 A All these documents were.

20 Q So the next page, the Broad and Cassel

21 fictitious letter that we heard testimony about with

22 the fake letterhead and the alleged forged

23 signature, that's in these materials as well,

24 marketing materials?

25 A Yes, sir.

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1 MR. MELCHIOR: Your Honor, we would move 91

2 Exhibit 9 into evidence.

3 THE COURT: Okay. That will be received.

4 MR. MELCHIOR: May I approach, your Honor?

5 THE COURT: Yes.

6 BY MR. MELCHIOR:

7 Q Let me show you what's been marked as

8 Exhibit 21.

9 A Okay. I've got 21.

10 Q Now, do you recognize that Exhibit 21; do

11 you recognize that document?

12 A I do. The first page of it is included in

13 nine, but, yes, I do recognize this document as

14 something that was recovered from the records of the

15 firm.

16 MR. MELCHIOR: I direct the court's

17 attention to the exhibit I just referred to. I

18 just handed to Mr. Wiand at least on one page

19 that follows the opinion letter that's in

20 Exhibit 9.

21 BY MR. MELCHIOR:

22 Q Mr. Wiand, in your role as the receiver,

23 have you had the opportunity to inquire whether such

24 a letter of credit exists?

25 A We have exhausted fairly significant

Page 92

1 efforts to determine whether or not. We haven't 92

2 been able to determine there is a letter of credit.

3 We can't determine there is a company with respect

4 to this letter.

5 Q Okay.

6 A At any rate, with respect to all of the

7 information that's on here, if you try to verify

8 anything with them, you won't find anybody there.

9 Q So, in your role of receiver, if there was

10 a \$500,000 letter of credit, you would be out

11 searching for that pretty aggressively; isn't that

12 the case?

13 A That's the reason we look for it.

14 Q And the Defendants in this matter, they

15 haven't presented you, based on the order of the

16 court to produce, all, you know, monies and assets

17 of the corporation; they haven't provided you

18 anything additional that would suggest that the

19 Miller Gold letter of credit is in fact legitimate?

20 A I don't believe there is any other

21 documents relating to this other than this letter.

22 Q Okay. In Exhibit 9 if you would flip to

23 the next page which is a letter under the letterhead

24 Marlowe McNabb.

25 A Yes, sir.

Page 93

1 Q Who is Marlowe McNabb? 93

2 A Marlowe McNabb is a law firm that

3 undertook to act as an escrow agent and receive all

4 of the investments of the investors and then

5 disburse them upon assignment of the letters of

6 protection.

7 Q I guess this has already been admitted

8 into evidence, but has this letter been found in

9 other places within your records as receiver?

10 A Yes, sir.

11 Q Okay. And would you mind reading the

12 outline Number 4?

13 A "All funds received by and through Tri-Med

14 from investors will be deposited into a Marlowe

15 McNabb trust account established for this purpose."

16 Q It doesn't talk about a percentage of

17 investors fund, does it?

18 A No, sir.

19 Q Are you aware if Marlowe McNabb in fact

20 received all investors' funds?

21 A I believe \$17,000,000 or thereabouts were

22 raised. 2.7 million was deposited with Marlowe

23 McNabb.

24 Q And what was Marlowe McNabb to do with the

25 money it received; are you aware of that?

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1 A My understanding is that the money was to 94
 2 be held there to assure that the investors receive
 3 their security interest and then receive money from
 4 the letters of protection.
 5 Q And the 2.7 million, is that all that
 6 Marlowe, McNabb utilized to buy letters of credit to
 7 buy accounts receivable?
 8 A Verified by Ms. Yip, but I believe that's
 9 numbered.
 10 Q Now, Mr. Wiand, if you will flip to the
 11 next two pages of Exhibit 9. The second page at the
 12 beginning, the Tri-Med Corporation, the monthly
 13 income agreement.
 14 Does that reference the Bank of America
 15 letter of credit on the top there, Page 2 of 3
 16 settlements?
 17 This was previously discussed with the
 18 testimony of Mr. Gonzaque?
 19 A Right.
 20 Q Is that the same type of wording that
 21 Mr. Gonzaque talked about from the specific
 22 investors contractor?
 23 A Yes. And I think these form documents
 24 were common throughout the actual investor documents
 25 that were prepared and submitted in connection with

Page 95

1 the investments. 95
 2 Q Okay. Now, Mr. Wiand, I'd like to show
 3 you what's been marked as Exhibit 22.
 4 MR. MELCHIOR: May I approach?
 5 THE COURT: Yes. I think I have that.
 6 MR. MELCHIOR: I think you must have the
 7 court's copy.
 8 THE COURT: No. I have one.
 9 Did you move 21 in, the Miller Gold letter?
 10 MR. MELCHIOR: No, I have not, your Honor.
 11 I would move to have the court receive
 12 Exhibit 21, the Miller Gold letter.
 13 THE COURT: All right. I'll do that.
 14 BY MR. MELCHIOR:
 15 Q Mr. Wiand, do you recognize Exhibit 22?
 16 A I do, sir.
 17 Q What is that?
 18 A This is an investor file that was taken
 19 from the records of Tri-Med from their Palm Harbor
 20 offices when we seized them.
 21 Q And in those offices have you become aware
 22 that they have essentially a file for every
 23 investor?
 24 A I believe that's the case. I mean, I
 25 can't tell you every investor, but they have

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1 investor files there and this is one of them. 96
 2 Q In those files I take it a copy of their
 3 letter of protection is typically contained, a copy
 4 of the application document.
 5 Let me just ask you to flip to their
 6 Bates' stamp 1960.
 7 Are you familiar if that's the application
 8 form or that's the actual monthly income form?
 9 It's 1960. It's only a few pages in.
 10 A Yeah. This is, as I said, throughout
 11 those files. The documents we looked at in
 12 Exhibit 9 was what I called the pitch book. These
 13 were the documents that were then commonly included
 14 in the investor files.
 15 Q If you might flip to 1968.
 16 A All right, sir. I'm there.
 17 Q And what is that document?
 18 A This would be the assignment of interest
 19 or the evidence of the investment that was given to
 20 the investor after the time that their investment
 21 was made.
 22 Q So, based on your investigation, were
 23 these assignments of interest effective in conveying
 24 an accounts receivable to the investor?
 25 A No, sir.

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1 Q Why not? 97
 2 A I don't think the legal chain with respect
 3 to the title of these receivables or whatever was
 4 completed. Indeed much of them, over 50 percent of
 5 them, were not assignable.
 6 Q So, in this hypothetical, could this
 7 customer, if this was still outstanding today, take
 8 this assignment of interest and go marching back to
 9 the hospital and say to the doctor who assigned it
 10 or I'm sorry to the PI attorney who assigned it and
 11 say pay me my money?
 12 A I don't think there would be any legal
 13 obligation to have that happen.
 14 Q In fact, weren't some of the underlying
 15 letters of protection -- didn't they on their face
 16 provide explicitly that they couldn't be assigned?
 17 A Absolutely. That's what I was mentioning
 18 before.
 19 Q And I take it some of those you found in
 20 your records for taking up with Tri-Med?
 21 A Yes. We found that and also on occasion
 22 and very limited occasion some of these receivables
 23 or these cases have been resolved after the -- after
 24 I became receiver and that situation is one wherein
 25 most cases the attorney wants to negotiate the

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1 amount of the receivable down dramatically, and one 98
 2 of the arguments that they have used is there is no
 3 right to anything under this because they're not
 4 assigned.
 5 MR. MELCHIOR: Your Honor, this Exhibit 22
 6 contains confidential information. I intend to
 7 offer it in evidence. I would ask perhaps if
 8 the court could make some opportunity for me to
 9 provide a redacted version within seven days or
 10 ten days.
 11 THE COURT: That's fine. It will be
 12 received in its redacted form later.
 13 MR. MELCHIOR: Thank you, your Honor.
 14 BY MR. MELCHIOR:
 15 Q Mr. Wiand, I see a number of investors out
 16 in the audience today.
 17 Have you had a chance to talk with any of
 18 them?
 19 A Today, no. On occasion I've had
 20 opportunity to talk to or a number of the investors
 21 have inquired of me or people who work for me about
 22 what's going on and have tried to -- I've tried to
 23 respond to them as often as I can, so I have
 24 conversations with a number of investors.
 25 Q Let me show you what's been marked as

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1 Exhibit 23. I'm going to hand you 24 now as well. 99
 2 These are investor files of two investors who happen
 3 to be in the audience today who the state intends to
 4 call as a witness.
 5 Are you familiar with Exhibit 23?
 6 A Exhibits 23 and 24 are both additional
 7 investor files that were taken from the Palm Harbor
 8 offices of Tri-Med and their business records.
 9 MR. MELCHIOR: The Plaintiff OFR would
 10 move for entry and receipt in evidence of
 11 Exhibits 23 and 24.
 12 THE COURT: Okay. Those will be received.
 13 BY MR. MELCHIOR:
 14 Q Mr. Wiand, we've talked about some of the
 15 gross misrepresentations and the offer documents.
 16 We've talked about some of the registration issues.
 17 I'd like to ask you some questions about the overall
 18 business model that appears to have been utilized by
 19 Tri-Med Corporation.
 20 Have you been able to form any opinions
 21 regarding their business model?
 22 A Well, it would appear that the business
 23 model was a promotional scheme to generate, you
 24 know, investments from various investors through
 25 providing information to justify why that was

Page 100

1 happening. With respect to what was purported to be 100
 2 occurring, it was not and likely couldn't -- with
 3 respect to being able to carry out that business
 4 model and raising money from investors in the way
 5 that it was done, that is something that legally
 6 could not have been done.
 7 Q And why could it not have legally been
 8 done?
 9 A Well, because it would have required
 10 registration and disclosure of the underlying
 11 information that was going on in the scheme, plus
 12 financial statements as to what was occurring.
 13 There was no exemption available from registration
 14 in the method that was utilized in order to do this
 15 and, if you would provide information with respect
 16 to what was actually being done, you couldn't have
 17 sold this to anybody because I believe with respect
 18 to the first investments that were being sold -- if
 19 I recall correctly, they were utilized to purchase a
 20 car from Mr. Anderson, rent a home and do some other
 21 things of that nature and they were used for
 22 personal purposes, which clearly if you told
 23 investors what was actually going on you wouldn't
 24 have been raising any money and if you told them
 25 that these purported guarantees or security

Page 101

1 interests that they thought they were buying were 101
 2 not valid and that insurance companies really didn't
 3 back it, this wouldn't have ever happened.
 4 Q Have you found any evidence that any of
 5 the individual Defendants contributed capital to
 6 start a venture?
 7 A I don't have any knowledge of that.
 8 Ms. Yip is the person to tell you that. Not me.
 9 Q Have you in your inquiry seen any type of
 10 suggestion that Tri-Med Corporation attempted at the
 11 front end -- instead of raising capital through
 12 individual investors like the ones in the courtroom
 13 have, have you seen any end case that they just went
 14 to a bank and tried to get a backing loan to start
 15 their business?
 16 A I see no evidence of that.
 17 Q How about did they go to a venture capital
 18 person?
 19 A Not that I know of.
 20 Q In your experience, are banks and venture
 21 capital folks more educated relative to risk taking?
 22 A They are sophisticated in doing due
 23 diligence in connection with ventures such as this
 24 nature. Something that I think that retirees are
 25 not.

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1 Q Okay. Based on your discussions with any 102
 2 of the retirees who you've actually had contact
 3 with, have you learned that they did any type of due
 4 diligence themselves?
 5 A The most comment that has been made
 6 frequently is "I guess I didn't look deeply enough
 7 into this and they certainly fooled me."
 8 MR. MELCHIOR: I don't have any additional
 9 questions.
 10 THE COURT: All right. Any
 11 cross-examination for the witness?
 12 MR. MELCHIOR: Your Honor, has 22 and
 13 23 -- I'm sorry.
 14 THE COURT: I have 23 and 24 were the most
 15 recently discussed and received exhibits.
 16 Exhibit 22 is provisionally received and the
 17 actual receipt will be 10 days to redact it.
 18 MR. MELCHIOR: Your Honor, Exhibits 23 and
 19 24 also have confidential information.
 20 THE COURT: Okay. They will be considered
 21 in camera, of course, by the court. The full
 22 submission of the record will be the redacted
 23 versions.
 24 MR. NICHOLAS, JR.: Your Honor, can I make
 25 one thing clear? Yesterday we had a mutual

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1 agreement about Mr. Borja's, Attorney Borja's, 103
 2 termination and now he feels like he's fired
 3 and he's not doing anything for us. I just
 4 want to put that on the record. He's not
 5 responding to anything in our defense.
 6 THE COURT: Okay. That's a little
 7 different than what you said originally. You
 8 said you were shocked and surprised that you
 9 were not represented by counsel.
 10 MR. NICHOLAS, JR.: Before in our case he
 11 wasn't going to do it, he's going that way, and
 12 later on that evening we decide mutually to
 13 terminate him, but he considers he was fired.
 14 I thought it was a mutual agreement.
 15 THE COURT: Well, there was a third party
 16 not considered and that's the court, right?
 17 MR. NICHOLAS, JR.: Yes, sir.
 18 THE COURT: So maybe you all are having a
 19 bit of a disagreement. He's moved to withdraw.
 20 The court did not grant that because the court
 21 perceived that you would be objecting to
 22 proceeding with the proceedings today. So your
 23 shout out from the back of the courtroom is
 24 noted on the record.
 25 MR. HILOFF: Can I question the witness?

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1 THE COURT: And you are who? 104
 2 MR. HILOFF: I am in support of my mother,
 3 an investor.
 4 THE COURT: You're not a party to the case
 5 and you're not an attorney, so I don't
 6 really see how it would be that you would be
 7 examining the witness.
 8 MR. HILOFF: I would like to know who is
 9 paying his bill.
 10 THE COURT: Just for the record, sir, your
 11 name is?
 12 MR. HILOFF: Jethro Hiloff (phonetic). My
 13 mother, Joy, I'm in support of her.
 14 THE COURT: So, as I understand it, your
 15 mother might be a purported victim, someone who
 16 has invested in this plan?
 17 MR. HILOFF: Yes.
 18 THE COURT: This is not an open forum for
 19 investors to make inquiry on the court record.
 20 That doesn't mean that you can't contact him
 21 and ask him questions about it.
 22 MR. HILOFF: I wouldn't get the same
 23 broadcast answer that everybody is doing with
 24 you in this courtroom. He wouldn't copy his
 25 letter to us, so we all --

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1 THE COURT: So the court understands your 105
 2 question, your question is really --
 3 MR. HILOFF: Who is paying him?
 4 THE COURT: I'll see if counsel for the
 5 State wants to inquire so that everybody can
 6 understand.
 7 Counsel, would you like to inquire of the
 8 witness as to that which is a very pertinent
 9 and relevant question for all those folks here.
 10 THE WITNESS: I'll be happy to respond to
 11 it.
 12 BY MR. MELCHIOR:
 13 Q Mr. Wiand, in cases where you are
 14 appointed receiver, who appoints you?
 15 A Generally the appointment is at the
 16 suggestion of a regulatory agency or sometimes it's
 17 a party to a litigation, but the actual appointment
 18 is done by the court, and my job is working for the
 19 court in attempt to marshal and distribute the
 20 assets with respect to how the receiver and the
 21 people who work with me are compensated.
 22 I would assume if you look on the web site
 23 you will see that we've already filed a motion for
 24 fees. Those fees will be paid for out of the assets
 25 we collect, and that process will go on. The

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1 attorneys will present fee motions to the judge and 106
 2 he will review them and make determinations to our
 3 payment. That's the way the process works.
 4 Q So you can't go out and spend that money
 5 paying yourself today for your previous activities
 6 in this case, can you?
 7 A I don't.
 8 Q Have you?
 9 A And it would be improper. That will not
 10 occur.
 11 Q Have you received a penny yet in this
 12 case?
 13 A No, sir.
 14 Q Have you filed a request for fees in this
 15 case?
 16 A We have one motion pending, yes.
 17 Q And is that hung up given the nature of
 18 this motion to dissolve?
 19 A Judge Rondolino indicated that he would
 20 like to have that delayed until such time as there
 21 was further determination with respect to some
 22 motions. So it is on hold at the moment. I think
 23 it's set for later today, though.
 24 Q And one other question I suspect that the
 25 investors would like raised is why you haven't

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1 disbursed money to them so far. 107
 2 Do you have the individual capacity,
 3 authority to disburse money to the individual
 4 investors?
 5 A In general, no. I mean, the way the
 6 process will work is that we will distribute to all
 7 of the investors, other creditors of these
 8 companies, and we will also publish in the paper a
 9 notification that we are conducting a claims process
 10 and the judge will approve that as to when we go
 11 about that.
 12 Then each of the individuals will have the
 13 opportunity to submit evidence or information with
 14 respect to how much of a claim they have against
 15 Tri-Med and what other entities were involved in
 16 this.
 17 I will then take it and review those
 18 claims and make a recommendation as to whether or
 19 what classes -- generally we do classes of claims.
 20 It's probably investors first and then general
 21 creditors, things of that nature, and then make a
 22 recommendation to Judge Rondolino as to what the
 23 order and approval of those claims could be and then
 24 with respect to the individual claims they will be
 25 approved or I will object to the claim and, as an

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1 indication, some of that might be if some of the 108
 2 people who are Defendants in this case would make a
 3 claim for assets, I would object to that and, if
 4 there are other claims I believe that are
 5 inappropriate, I object to testimony to make sure
 6 that the innocent investors and creditors are the
 7 ones who are entitled to receive whatever proceeds
 8 we collect.
 9 Q Okay. At the end of that process is it
 10 only upon the court's approval of the whole process
 11 and evaluation of what a meritorious claim is that
 12 then you're given authority as directed by the court
 13 as to how much to pay given creditors?
 14 A In general there will be a list of
 15 approved claims which will be a total amount. We
 16 don't know where it will be of X, and then as money
 17 becomes available and I can distribute it, I will
 18 distribute it pro rata based upon the value of the
 19 claims until we have checked as much of the money as
 20 we can and I have distributed all that money to the
 21 victims.
 22 Q Okay. Just another kind of question I
 23 suspect is being wanted to be asked.
 24 Do you just take the pot of money that you
 25 have today by virtue of seizing those bank accounts;

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1 is that the only money that can potentially be 109
 2 distributed through your process upon order of the
 3 court; is that the limited pool, or is there
 4 possibly more?
 5 A No. That's one of my tasks in doing this
 6 is to review all of the different entities,
 7 professionals and third parties who were involved
 8 with Tri-Med and determine whether or not in
 9 connection with their activities they have breached
 10 any duties or engaged in any wrong doing and whether
 11 there is any obligation of them to come forth with
 12 money to reimburse what they call the receivership
 13 estate. So there is more money to distribute.
 14 An example. With respect to the Nadel
 15 receivership that I'm presently involved in, I think
 16 we started that with \$600,000 and that was all that
 17 was in all the bank accounts. We had \$135,000,000
 18 worth of claims and we have distributed 47 percent
 19 of that primarily from recoveries from financial
 20 institutions and things of that nature.
 21 Q Let me just give you a -- not a
 22 hypothetical, but based on the evidence in this
 23 case.
 24 Isn't it a fact that, for example, Anthony
 25 Nicholas, III, who testified earlier today, did

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1 receive about \$2,000 a week for periods during the 110
 2 course of the three years?
 3 A In conjunction with the forensic
 4 accountant, we will go through the distributions,
 5 every dime that went out of this place, and see if
 6 there is any viable basis to try to recover it. If
 7 we can recover it, we will attempt to do that.
 8 That's my job.
 9 MR. MELCHIOR: Okay. Thank you.
 10 THE COURT: All right. You can stand
 11 down.
 12 Thank you.
 13 Yes, sir.
 14 MR. NICHOLAS, JR.: One question. At this
 15 point what is your fee at this point in your
 16 investigation; there is a motion you have right
 17 now on getting paid what?
 18 THE WITNESS: The motion for my personal
 19 fees is \$12,000. I think the total motion for
 20 everybody that has worked on this is about
 21 \$115,000, something of that nature.
 22 MR. MELCHIOR: I would call Investigator
 23 Art Gordon.
 24 THE COURT: Have a seat here.
 25 Thereupon:

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1 ARTHUR GORDON, 111
 2 was called as a witness, having been duly sworn, was
 3 examined and testified as follows:
 4 DIRECT EXAMINATION
 5 BY MR. MELCHIOR:
 6 Q Would you please state your name, sir.
 7 A Arthur Gordon, G-o-r-d-o-n.
 8 Q And how are you employed?
 9 A I'm employed with the Florida Office of
 10 Financial Regulation.
 11 Q How long have you worked for the Office of
 12 Financial Regulation?
 13 A October of 2013.
 14 Q Prior to that time, how were you employed?
 15 A I was employed with the Orange County
 16 Sheriff's Office. I retired as a Lieutenant. I
 17 served from 1989 until 2012. Prior to that I served
 18 with the Florida Highway Patrol as a State Trooper
 19 from 1986 to 1989. Prior to that I served with the
 20 Broward County Sheriff's Office as a detention
 21 deputy from 1984 to 1986. Prior to that I served in
 22 the United States Coast Guard Reserve.
 23 Q In your prior work history, have you been
 24 trained in conducting investigations?
 25 A Yes, I have.

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1 Q What type of training have you received? 112
 2 A I've received field training. I've
 3 received formal training in seminars, in courses,
 4 web-based courses, informal training.
 5 Q Okay. Have you utilized that training in
 6 your work for the Office of Financial Regulation?
 7 A Yes, I have.
 8 Q Were you assigned to investigate Tri-Med
 9 Corporation?
 10 A Yes, I was.
 11 Q When was that?
 12 A I was assigned the case in December of
 13 2013.
 14 Q And did you take it over for somebody
 15 else?
 16 A Yes, I did.
 17 Q Any reason why you took it over?
 18 A My manager assigned me the case in
 19 December of 2013.
 20 Q What did you do in the course of your
 21 investigation beginning in 2013?
 22 A One of the first things I did was obtain
 23 the documents from the investigator that had the
 24 case before me, Investigator Seabrooks. I collected
 25 those documents and then I went about the process of

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1 going through the documents, organizing them in a 113
 2 fashion that I could use and then I made
 3 recommendations to my managers to how I wish to
 4 proceed and some of the tasks I wanted to get done
 5 throughout, collecting the data and bringing things
 6 together as far as organizing it.
 7 Q Did you participate in the investigation
 8 through the time of the injunction?
 9 A Yes, I did.
 10 Q Have you participated doing additional
 11 work since that time?
 12 A Yes, I have.
 13 MR. MELCHIOR: If I may approach?
 14 THE COURT: You may.
 15 BY MR. MELCHIOR:
 16 Q Let me show you what's been marked as
 17 Exhibit 28.
 18 Do you recognize those documents?
 19 A Yes, I do.
 20 Q What are those?
 21 A These are certificates that were issued by
 22 Holly Hinson for the Division of Securities. They
 23 were requests that I made. It was to research the
 24 Defendant Tri-Med along with the corporation with
 25 the Florida Office of Financial Regulations to see

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1 if any of the persons were registered to conduct 114
 2 business pursuant to Chapter 517.
 3 Q According to those certificates, I believe
 4 you will find one there for each of the Defendants
 5 named in your packet.
 6 It was discovered by the Office of
 7 Financial Regulations that they were in fact
 8 registered either to issue securities or to act as
 9 broker dealers or to act as independent, let's call
 10 it, associated persons on behalf of a broker; is
 11 that what those certificates indicated?
 12 A Yes. Ms. Hinson who conducted the search
 13 searched the databases of the Office of Financial
 14 Regulation and found that the parties that are
 15 listed in the Tri-Med Corporation, the case
 16 receivership, were not registered to do business
 17 pursuant to Chapter 517.
 18 MR. MELCHIOR: We would move Exhibit 28
 19 into evidence.
 20 THE COURT: The court will receive it.
 21 MR. MELCHIOR: If I may approach?
 22 THE COURT: Yes.
 23 BY MR. MELCHIOR:
 24 Q Exhibit 29.
 25 Do you recognize that document?

Page 115

1 A Yes, I do. 115
 2 MR. MELCHIOR: Your Honor, do you need a
 3 copy?
 4 THE COURT: I have 29.
 5 BY MR. MELCHIOR:
 6 Q What is that document?
 7 A This is a document that I found that the
 8 receiver provided me as the images from the
 9 computers that were seized from the Tri-Med
 10 Corporation receivership and those images that were
 11 received out of this document was found the computer
 12 that was for Tony Nicholas, Jr.
 13 Q Okay. Are you familiar with whether
 14 representatives of Tri-Med Corporation ever met with
 15 the State before your involvement in the case?
 16 A Yes. Prior to my taking the lead on the
 17 case, and I believe it was March or May of 2012,
 18 Investor Seabrooks requested to send a letter to
 19 Jeremy Anderson requesting that he make himself
 20 available for questioning on the Tri-Med matter.
 21 Subsequently, Tony Nicholas, Jr., and
 22 Attorney Brian Stayton met with Investigator
 23 Seabrooks and Investigator DeFabio of the Florida
 24 Office of Financial Regulation, Orlando Regional
 25 Office.

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1 Q Have you had the opportunity to interview 116
 2 Mr. Stayton regarding this?
 3 A Yes, I have.
 4 Q Regarding that meeting?
 5 A Yes.
 6 Q Was he in possession of this document as
 7 well?
 8 A Yes.
 9 Q Did he provide a copy of it to you?
 10 A He had a copy of the document.
 11 Q Okay. Were there any records or summaries
 12 of the interview between Mr. Stayton, Tony, I mean
 13 Anthony Nicholas, Jr., and the initial investigator?
 14 A Yes. Investigator DeFabio prepared a
 15 memorandum of interview.
 16 Q Okay. In this document do you know who
 17 the Tony that it's referring to is?
 18 A Tony Nicholas, Jr.
 19 Q Does this document purport to give him
 20 talking points as to what to tell and not tell the
 21 OFR during that initial meeting?
 22 A That is correct.
 23 Q Have you been able to in your
 24 investigation determine whether this outline was
 25 followed?

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1 A It appears so. Based on the memorandum of 117
 2 interview that was done by Investigator DeFabio, it
 3 appears that the representations that were in this
 4 document were given to Investigator Seabrooks and
 5 DeFabio in their interview.
 6 Q Underneath the second heading there it
 7 says, "Things we should talk about. We are using
 8 attorneys to handle funds once we get them. We are
 9 using a CPA to audit."
 10 Number 2.
 11 In the course of your investigation, have
 12 you ever found any CPA audit of the Tri-Med
 13 Corporation related activities?
 14 A I have not.
 15 Q How about Number 5?
 16 "We started with our own investment, which
 17 is used to make monthly interest payments to
 18 investors once we get them."
 19 Have you been able to determine what this
 20 purports to say their initial investment is, what
 21 was being used to pay monthly investors their
 22 interest payment each month?
 23 A It's my recollection that when we began
 24 our analysis we looked at the Bank of America
 25 account when it was first opened. They did have

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1 money. They placed approximately \$60 to open the 118
 2 account.
 3 MR. MELCHIOR: The State would offer
 4 Exhibit 29 into evidence.
 5 MR. NICHOLAS, JR.: Judge, I would like to
 6 object to this. All this is just hearsay.
 7 THE COURT: Okay. Do you know there is a
 8 hearsay exception to that?
 9 MR. NICHOLAS, JR.: No, I don't.
 10 THE COURT: Well, there is. The court's
 11 receiving it at this time. The objection is
 12 noted.
 13 BY MR. MELCHIOR:
 14 Q Mr. Gordon, let me show you what's been
 15 marked as Exhibit 32.
 16 MR. MELCHIOR: May I approach, your Honor?
 17 THE COURT: You may.
 18 BY MR. MELCHIOR:
 19 Q Mr. Gordon, what's Exhibit 32?
 20 A This is some work that was done while I
 21 was going through the assignment tracker which
 22 Mr. Wiand outlined previously. I went through some
 23 of the certificates of assignments that were listed
 24 in the assignment tracker and then I went back and I
 25 found -- it's an involved process, but essentially

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1 they have in their system what is called a CA 119
 2 tracker is what they refer to.
 3 Q Was that a different type of document than
 4 the assignment tracker?
 5 A Yes.
 6 THE COURT: What's the exhibit number?
 7 THE WITNESS: This is 32, your Honor.
 8 THE COURT: Thank you. I have it.
 9 MR. MELCHIOR: Your Honor, are you in
 10 possession of a copy?
 11 THE COURT: I have a copy.
 12 BY MR. MELCHIOR:
 13 Q So these appear to be affidavits from
 14 people in Minnesota.
 15 Why are you up in Minnesota asking
 16 questions up there?
 17 A Well, the way that they have it broken
 18 down is there is a folder for certificates of
 19 assignment which would be the purported letters of
 20 protection. They have them listed numerically on
 21 the assignment tracker. They have broken it down by
 22 the investor. So you have to cross reference the
 23 documents.
 24 So, looking at the assignment tracker, I
 25 saw some disbursements that were made to a person by

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1 the name of Tyler Chambers. I've spoken to a 120
 2 gentleman by the name of Tyler Chambers who is a
 3 sales representative of Delta Medical which seems
 4 odd that he would be a patient. So I thought that
 5 was odd and I saw, you know, different things, so I
 6 decided to go into the CA's.
 7 Q The CA's?
 8 A Yes. The Certificates of Assignment, the
 9 folder that was named "Certificates of Assignment."
 10 Once I obtained those, I found the
 11 documents on the purported letters of protection and
 12 then I went out and I contacted the law firms which
 13 were in Minnesota and I asked the law firms to
 14 review the documents to see if they had actually
 15 presented a letter of protection to Tri-Med
 16 Corporation and to research their records. This was
 17 the result of that work.
 18 Q Okay. So, if I'm following your
 19 testimony, on Exhibit 26, the assignment tracker,
 20 there is a certificate number. Is that what you
 21 would go back to to actually look at what you said,
 22 CA?
 23 A Yeah. I have a copy of it here. Yeah.
 24 Q Essentially you would look at that and you
 25 would look at the assignment tracker to see who they

Page 121

1 have identified as the medical provider? 121
 2 A Correct. Correct. What I was trying to
 3 do or what I wanted to find out -- my question was
 4 were these authentic letters of protection or were
 5 these shams, were they a sham.
 6 So my whole goal was to just simply say is
 7 this an authentic letter and, if it was, then I
 8 would document that in my records.
 9 Q Okay. This packet here, Number 32, are
 10 these affidavits that you've received from parties
 11 in connection with your investigation of that
 12 specific issue?
 13 A Yes.
 14 Q Okay. How many affidavits are contained
 15 in this composite exhibit?
 16 A There are nine different affidavits.
 17 Q And generally do the affidavits have a
 18 similar theme?
 19 A Yes. The affidavits are from the
 20 attorney. They have researched their records and
 21 they indicate that they have never represented the
 22 individual that's been represented in the letter of
 23 protection.
 24 Q So do the attorneys sign the letter of
 25 protection?

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1 A There is a representation that the 122
 2 attorney had signed the letter of protection, but
 3 the affidavits, each attorney that responded to my
 4 inquiry responds slightly differently. They address
 5 it in different things. But the general sense is
 6 that the letter of protection that was extended
 7 wasn't extended from the law firm.
 8 Q So in some instances they say we don't
 9 know who that client who has that underlying medical
 10 receivable is?
 11 A Correct.
 12 Q Any other examples or is that the
 13 general --
 14 A Well, if we look at -- you could look on
 15 the first page, for example, Jason R. Wanooka
 16 (phonetic). He indicates in Line 4 of his affidavit
 17 that it appears to be his firm's letterhead, but it
 18 wasn't generated by his office. Then he goes on to
 19 say if his office generated the letter.
 20 "My typed name below the signature would
 21 contain my middle initial. Additionally, that is
 22 not my signature on either of the letters and I do
 23 not recognize the handwriting. Lastly, I do not now
 24 or, to the best of my knowledge, did I ever have a
 25 client by the name of in this case Lasondra

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1 Washington. 123
 2 MR. MELCHIOR: Your Honor, the Plaintiff
 3 would offer Exhibit 32 into evidence.
 4 THE COURT: Okay. Exhibit 32 is received.
 5 BY MR. MELCHIOR:
 6 Q Mr. Gordon, let me show you what's been
 7 marked as Exhibit 31.
 8 What is that document?
 9 A This is a document that I received from
 10 the receiver who had the business records of the
 11 Tri-Med Corporation.
 12 Q And what does it purport to relate to;
 13 what's the topic of the substance of this
 14 communication?
 15 A This is dated -- well, there is a series
 16 of them, but it begins on July 9th, 2013, where
 17 Mr. Marlowe has had --
 18 Q Well, let me just ask you. If you go to
 19 the bottom of the string, which is on Page 2, you
 20 started to refer to the e-mail of July 9th of 2013
 21 and its subject Stephen Marlowe from --
 22 A This is by Irwin Ager.
 23 Q Irwinageraol.com.
 24 Do you know that to be one of the
 25 Defendants?

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1 A Yes. 124
 2 Q And directed it to Jeremy at Tri-Med
 3 Corporation?
 4 A Yes.
 5 Q Do you know who that is?
 6 A That's Jeremy.
 7 Q And it's copied to --
 8 A That would be Eric Ager.
 9 Q And the subject was Steve Marlowe.
 10 Who is Steve Marlowe?
 11 A Steve Marlowe was the attorney that
 12 handled the escrow for the investor payments.
 13 Q And you mind reading the narrative there?
 14 A Yes.
 15 "Jeremy. I just called Steve Marlowe to
 16 ask if we could take his name off any information to
 17 prospects that are considering investing in the
 18 Tri-Med product."
 19 Steve said, "Jeremy told me that he does
 20 not receive money from investors, so the question to
 21 him was not even relevant."
 22 He then said, "I called Jeremy to clarify
 23 the situation. I did not call him to upset anything
 24 other than asking him if we should not tell people
 25 that he is holding funds in a trust account to be

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1 invested and ultimately paying healthcare providers. 125
 2 I just wanted to give you a heads up for his call.
 3 Irwin."
 4 Q Did you subsequently interview Steve
 5 Marlowe?
 6 A I did.
 7 Q Do you understand what his role was in
 8 purported -- did you hear earlier testimony about
 9 the Marlowe engagement letter that on Line 4
 10 indicated all funds will be received, all investor
 11 funds will be held by Marlowe, something to that
 12 effect. I can pull out the document if you want to
 13 refresh your memory.
 14 A All right. My interview with Mr. Marlowe,
 15 the way that he explained his role to me, was that
 16 he was to take in the investor funds from the
 17 Tri-Med Corporation and his job was to look at a
 18 letter of protection and see if it could be assigned
 19 and then, if it could, then he would issue a check
 20 for it.
 21 Mr. Marlowe said that if he discovered
 22 that in the letter of protection that there was a
 23 condition or clause in the letter of protection that
 24 said it was not transferable, then he would advise
 25 Tri-Med that that particular LLP couldn't be

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1 purchased. 126

2 Q Okay. Let me just direct you to Page 1.

3 I know this is a string here. Without wasting too

4 much of the court's time here, if I could direct you

5 to the second e-mail on the first page. It appears

6 to be from by Irwin again.

7 Is that one of the Defendants?

8 A Yes.

9 Q And then it's to Jeremy at Tri-Med

10 Corporation.

11 To your knowledge, is that Defendant

12 Jeremy Anderson?

13 A Yes.

14 Q And it's regarding Steve Marlowe.

15 Then below that in another e-mail it looks

16 like that one is being forwarded. It says in a

17 message dated July 10th, 2013, "Jeremy at Tri-Med

18 Corporation writes Irwin."

19 Could you read the second paragraph.

20 Well, why don't you read the first

21 paragraph.

22 A "Irwin. First and foremost you need to

23 quit watching shows like American Greed. I asked

24 Eric if he thinks he could raise \$700,000 because we

25 came up on a chance to buy out a large Level I

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1 orthopedic group that does LOP surgeries at a 127

2 substantially discounted price. If you didn't raise

3 it, no big deal. It wasn't for any other reason, so

4 get that out of your mind."

5 Q The next paragraph, does that relate to

6 Mr. Marlowe?

7 A Yes.

8 Q Okay. Could you read that for us.

9 THE COURT: I say this almost every day to

10 lawyers who get up here and want to have the

11 witness read a document to the judge. I mean,

12 pardon me. The judge can read. So, unless

13 there is a specific question that requires a

14 witness to explain something in a document,

15 it's just, you know, superfluous to have

16 witnesses read things in evidence.

17 MR. MELCHIOR: Then the State of Florida

18 would enter 31 in evidence.

19 THE COURT: All right. Exhibit 31 is

20 received.

21 MR. MELCHIOR: No other questions.

22 THE COURT: All right, sir. You can stand

23 down.

24 What else do we have? We're going to have

25 to take a lunch of break, I'm assuming, since

Page 128

1 there seems to be a lot more to this case. 128

2 MR. MELCHIOR: The State intends to call

3 Maria Yip, the forensic accountant, and then

4 call a securities law expert. We do have

5 Mr. Marlowe. We might be able to go through

6 him in 10 minutes here, your Honor.

7 THE COURT: Okay. Let's take a brief

8 witness then, and Mr. Marlowe might be the one.

9 Thereupon:

10 STEPHEN MARLOWE,

11 was called as a witness, having been duly sworn, was

12 examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MELCHIOR:

15 Q Mr. Marlowe, I'm showing you --

16 MR. MELCHIOR: May I approach, your Honor?

17 THE COURT: You may.

18 BY MR. MELCHIOR:

19 Q I'm showing you what's been marked as

20 Exhibit 34. If you would take a moment and kind of

21 flip through those pages.

22 A Okay.

23 Q Mr. Marlowe, do you recognize these

24 documents?

25 A Yes.

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1 Q And what are they? 129

2 A Well, the first is --

3 Q I'll sorry. Let me ask you some

4 background questions. I'm sorry.

5 Your name, please.

6 A Stephen Marlowe.

7 Q And how are you employed?

8 A I'm an attorney with Marlowe, McNabb.

9 Q And what's your relationship to Tri-Med

10 Corporation?

11 A I was asked to set up and use an escrow

12 account in connection with their business, that I

13 would receive the funds. My job really was to

14 verify that there were proper assignments and that

15 the letters of credit -- I'm sorry -- the letters of

16 protection were worded correctly, that they would be

17 able to be used to recover those funds.

18 Q Did you in fact receive monies from

19 Tri-Med Corporation?

20 A Yes, I did.

21 Q How much did you receive?

22 A About 2.7 million dollars, as I recall.

23 Q Is that a copy of your escrow account?

24 A Yes.

25 Q It's attached to Exhibit 34?

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1 A Yes. 130

2 Q Is there anything confidential in those

3 documents that need to be redacted?

4 A Well, it looks like they have been

5 redacted.

6 Q Okay. Anything additional?

7 A No. It's really just numbers at that

8 point.

9 Q Okay. Again, how much did you receive

10 from Tri-Med Corporation?

11 A Approximately 2.7 million dollars.

12 Q And how much did you disburse?

13 A Well, I disbursed all of it. To be

14 accurate, I disbursed a considerable amount to

15 medical providers and then when there was some funds

16 left in the account when the receiver was appointed

17 the receiver requested that I turn over the funds to

18 him and, of course, I did.

19 Q Okay. Did you get paid for doing that

20 work?

21 A Yes.

22 Q How much did you get paid?

23 A I don't remember, but it was not very

24 much. I think I was charging two or three tenths of

25 an hour to do a review.

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1 Q Under \$20,000, \$50,000? 131

2 A Probably maybe less than 20.

3 Q When you conveyed these checks was your

4 understanding they were going to medical providers

5 to buy underlying accounts receivable?

6 A Yeah. I had an assignment. I had a

7 letter of protection and then we issued a check

8 based on that.

9 MR. MELCHIOR: Okay. The State would

10 offer Exhibit 34 in evidence.

11 THE COURT: Okay. Proceed.

12 BY MR. MELCHIOR:

13 Q Okay. Let me show you what's been marked

14 as Exhibit 34A.

15 MR. MELCHIOR: If I may approach?

16 THE COURT: You may.

17 BY MR. MELCHIOR:

18 Q Are you familiar with that document?

19 A Yes. It's an affidavit that I prepared.

20 Q And do you remember the substance of the

21 affidavit?

22 A Yes. I was presented with a copy of an

23 e-mail. I think Mr. Gordon provided it to me. That

24 at least seemed to be or purportedly was from me and

25 I reviewed it and determined rather quickly that it

Page 132

1 was not an e-mail that I had generated. 132

2 Q Okay. Is that Exhibit A to the exhibit?

3 A That's correct.

4 Q And it purports that you transferred from

5 Tri-Med \$9,000,000 and you've written various checks

6 to medical providers, 6.5 million dollars; is that

7 right?

8 A Yes. I didn't authorize this and that's

9 not true.

10 Q You just testified it was two point

11 something.

12 A Exactly right.

13 Q Okay. Was that your e-mail address on the

14 document?

15 A No. They have used an e-mail address that

16 is at marlowemcnabbpa.com. We've never used that

17 designation. It's always been marlowemcnabb.com.

18 So somebody developed an e-mail address by adding

19 the pa to it.

20 MR. MELCHIOR: The Plaintiff would move

21 34A into evidence.

22 THE COURT: Okay. I'll receive that.

23 MR. MELCHIOR: No other questions of this

24 witness, your Honor.

25 THE COURT: Okay. I have some questions

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1 of the witness. 133

2 Do I understand that the Exhibit 34

3 represents the entirety of the actual

4 transactions that you were involved in wherein

5 you acted as an escrow agent for the receipt of

6 payments that were to be disbursed in

7 connection with accounts receivable and LOP's?

8 THE WITNESS: That's correct. Yes.

9 THE COURT: And did you actually have the

10 accounts receivable or the assignment of the

11 accounts receivable in each one of these cases?

12 THE WITNESS: Absolutely. Every single

13 one.

14 THE COURT: All right. And were there

15 some cases where you had an LOP or were all of

16 these cases an LOP?

17 MR. MELCHIOR: Every one of them had an

18 LOP.

19 THE COURT: Did you have any cases where

20 there was just an LOP?

21 THE WITNESS: No.

22 THE COURT: Okay. That wouldn't be worth

23 anything, would it?

24 THE WITNESS: No. Of course not.

25 THE COURT: Without the underlying doubt.

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1 THE WITNESS: It's a combination had to be 134
 2 probably signed, looked at the assignment and
 3 make sure it was properly signed and executed.
 4 Sometimes there would be multiple LOP's, so I
 5 would have to go group those out and make sure
 6 that for each one that was listed that I had an
 7 LOP. Sometimes there wasn't.
 8 THE COURT: The LOP is essentially a type
 9 of a guarantee overlying the underlying account
 10 receivable, correct?
 11 THE WITNESS: That's correct. And
 12 sometimes there would be an LOP that was not
 13 assignable by its terms, and those would be
 14 rejected. I wouldn't pay on those.
 15 THE COURT: And who were you paying?
 16 THE WITNESS: To the medical providers
 17 that were assigning the LOP's. We wrote the
 18 check to them directly.
 19 THE COURT: So none of these funds were
 20 going to anyone other than the original
 21 provider?
 22 THE WITNESS: That's correct.
 23 THE COURT: So there were no assignments
 24 of those underlying debts that you were
 25 holding?

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1 THE WITNESS: The medical provider would 135
 2 execute an assignment.
 3 THE COURT: Oh, okay.
 4 THE WITNESS: And that would be provided
 5 to me.
 6 THE COURT: So you weren't paying to the
 7 medical provider, you were paying the assignee
 8 of the original medical provider?
 9 THE WITNESS: No. I was paying the
 10 original medical providers that would assign
 11 that LOP to Tri-Med. All right. And then they
 12 needed to be paid for the agreed price for that
 13 assignment. So, once I verified the
 14 documentation, I would write a check to the
 15 medical provider to pay him for that
 16 assignment.
 17 THE COURT: Okay. And those funds that
 18 were used to pay the medical provider, where do
 19 those come from?
 20 THE WITNESS: They came from Tri-Med.
 21 THE COURT: Likewise, your payment for
 22 doing this service came from Tri-Med?
 23 THE WITNESS: Yes. I billed it
 24 separately. It didn't come from the funds that
 25 were given to me in connection with these

Page 136

1 payments. 136
 2 THE COURT: And you had no idea where the
 3 funds were coming from; in other words, whether
 4 they were the result of a recovery, connected
 5 with that claim from the law firm?
 6 THE WITNESS: No. All I received were
 7 basically wire transfers directly from Tri-Med.
 8 THE COURT: Okay. I don't have any
 9 further questions. You can go ahead and stand
 10 down.
 11 We'll go ahead and take our lunch recess
 12 and we'll reconvene at about five minutes after
 13 one.
 14 (Whereupon, there was a break in the
 15 proceedings.)
 16 THE COURT: All right. Everybody can be
 17 seated.
 18 We can continue then with the Plaintiff's
 19 case.
 20 MR. MELCHIOR: The Plaintiff calls Brian
 21 Stayton.
 22 Thereupon:
 23 BRIAN STAYTON,
 24 was called as a witness, having been duly sworn, was
 25 examined and testified as follows:

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1 DIRECT EXAMINATION 137
 2 BY MR. MELCHIOR:
 3 Q State your name, please, sir.
 4 A Brian Stayton.
 5 Q And how are you employed, Mr. Stayton?
 6 A I'm a solo practitioner.
 7 Q What practice?
 8 A I'm certified in construction law.
 9 Q Are you an attorney?
 10 A Yes, sir.
 11 Q Okay. How long have you been an attorney?
 12 A Twenty-five years.
 13 Q And where do you practice your legal work?
 14 A I've been in Valrico since 2010.
 15 Q And --
 16 A That's in Hillsborough County, by the way.
 17 Q Okay. Do you know Anthony Nicholas, Jr.?
 18 A Yes, sir.
 19 Q How do you know Anthony Nicholas, Jr.?
 20 A Back before 2010 I represented his
 21 company. He was a contractor and a developer. I
 22 had actually represented him in a three-day
 23 arbitration before Judge Crockett Farnell.
 24 Q When you say "contractor," residential,
 25 commercial or what type of contractor?

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1 A He had built a series of condominiums or 138
 2 town homes. I was involved in the litigation with
 3 one of the purchasers of one of the units.
 4 Q To your knowledge, is he a successful
 5 contractor.
 6 A He built good buildings, but the crash of
 7 2007, 2008 hit him hard.
 8 Q Did you represent him in 2008, 2009 with
 9 respect to plunging property values?
 10 A No. In that particular case that we
 11 arbitrated, he had a signed contract with a
 12 purchaser, and the purchaser backed out when the
 13 prices plummeted and he wanted his deposit back. So
 14 it was arbitration over the deposit.
 15 Q Did you continue to represent him in 2009,
 16 2010 and 2011?
 17 A There wasn't a whole lot of activity, but
 18 I've continued to represent him, yes.
 19 Q Okay. Aside from private corporation
 20 matters, do you have any representation of him
 21 currently in any other respect?
 22 A He was in foreclosure in his house, and I
 23 was his attorney of record. I believe he took
 24 bankruptcy, so that ended my representation. He was
 25 also sued by the banks that had loaned him money for

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1 this particular development. I did not defend him 139
 2 in that, but I got involved in some of the aid- and
 3 execution-type process afterwards.
 4 Q When did you first hear the name "Tri-Med
 5 Corporation"?
 6 A I couldn't tell you when exactly. It was
 7 in 2011, I believe. I had not seen much of
 8 Mr. Nicholas in several months. He wanted me to
 9 have a meeting with him and he would call his
 10 partner to discuss this arrangement.
 11 Q Okay. And are you aware if he was in
 12 foreclosure or in that other related litigation at
 13 the time you first got together with him about this
 14 other business opportunity?
 15 A I couldn't tell you offhand. He probably
 16 was, but I would have to look at some of the
 17 pleadings to tell you.
 18 Q Okay.
 19 A I don't know.
 20 Q Was there a meeting that occurred?
 21 A Yes. We had a meeting at International
 22 Mall.
 23 Q Who was "we"?
 24 A Myself, Tony Nicholas, Jr., not the III,
 25 and Jeremy Anderson were there. We met at the food

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1 court. 140
 2 Q And had you ever met Jeremy Anderson
 3 before?
 4 A No.
 5 Q And have you met him since?
 6 A I've spoken with him on the phone several
 7 times in meetings.
 8 Q Several -- okay. I'm sorry.
 9 A Telephones and e-mails. I've only seen
 10 him in person that one time.
 11 Q Just generally speaking, have you spoken
 12 to him on the phone five times, a hundred times?
 13 I'm just trying to get a general sense.
 14 A Somewhere between five and twenty.
 15 Q How about e-mails; how many e-mails have
 16 you had from him?
 17 A Probably more than that. Not to 100, but,
 18 I mean, 30, 40. I don't know.
 19 Q What was the topic of the first meeting?
 20 A They discussed the Tri-Med arrangement
 21 that we've been hearing all morning or all day
 22 about. It was the conceptual stage at that point
 23 and they wanted to know what I thought about it and
 24 whether I could help them.
 25 Q So the name Tri-Med wasn't tossed around?

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1 A I couldn't tell you whether or not they 141
 2 had a name for it at that point. I don't remember.
 3 Q Well, I mean, following that meeting did
 4 you continue your involvement?
 5 A I didn't hear from him for quite some
 6 time. I told him I'm not a corporate lawyer, I
 7 don't do a lot of corporate formation work, it
 8 wasn't my area. In fact, I think I told him to go
 9 back to Steve Marlowe.
 10 Q What's your relationship with Mr. Marlowe?
 11 A He and I were partners for five years.
 12 His firm, I see his letterhead right here, for four
 13 years was called Marlowe, McNabb and Stayton before
 14 I left in 2010. I practiced with him from 2005
 15 through 2010.
 16 Q Did you ever learn if he went back to
 17 Mr. Marlowe on your suggestion?
 18 A I know at some point, like Steve Marlowe
 19 has testified, yeah, he's been involved.
 20 Q Did there come a time when you formally
 21 were engaged by Tri-Med Corporation to represent
 22 them?
 23 A Yes.
 24 Q Do you remember when that was?
 25 A Not specifically, no.

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1 MR. MELCHIOR: May I approach, your Honor? 142

2 THE COURT: You may.

3 BY MR. MELCHIOR:

4 Q Can I show you what's been marked as

5 Exhibit 35. That's a packet of documents.

6 Do you recognize the first page there?

7 A Yes. This is a letter from Lisa

8 Seabrooks, the Financial Crimes Investigator with

9 the Bureau of Financial Investigations coming from

10 the Financial Services Commission dated March 5,

11 2012.

12 Q Okay. Were you involved in March of 2012?

13 A The meeting that I referenced in the food

14 court happened before this. I probably hadn't heard

15 from Jeremy Anderson or Tony Nicholas for a couple

16 of months, but then this letter -- I got this letter

17 eventually, shortly thereafter.

18 Q Well, let me just ask you to flip to

19 Page 4. I believe there is a letter there on your

20 letterhead April 30th, 2012.

21 A Yes.

22 Q Is that right?

23 A Yes.

24 Q Between March the 5th, the first letter,

25 and April the 30th, did you become engaged to

Page 143

1 represent Tri-Med Corporation? 143

2 A If I wasn't already. I may have been

3 engaged before March 5. That was my only

4 equivocation. But certainly in between, yes.

5 Q I take it this letter outlines your scope

6 of representation, is that right, Pages 1 and 2

7 there?

8 A Yes.

9 Q Did there come a point in time when you

10 went to the Office of Financial Regulations with

11 Anthony Nicholas, Jr., in response to that first

12 letter of March the 5th?

13 A Yes.

14 Q Okay. Who did you meet there; do you

15 recall?

16 A I assume it was Lisa Seabrooks and I

17 remember one other woman. I don't remember her

18 name. And Tony and I.

19 Q If you would look at Page 2 and 3, do you

20 recognize that document?

21 A Yes.

22 Q What is that?

23 A Jeremy Anderson had e-mailed this to

24 myself and to Tony and I don't know who all others,

25 if anybody. This was how we were supposed to handle

Page 144

1 the meeting that was set up with the Financial 144

2 Services Commission.

3 Q Let me direct your attention to -- there

4 is a lot of paragraphs here, but the third from the

5 bottom.

6 "We are telling prospective investors we

7 need their investment for two years."

8 Then it goes on to say, "Payments from our

9 own" -- "the two-year interest payments come from

10 our own investment funds."

11 Did you know whether in fact that was

12 true?

13 A I assumed it was true.

14 Q Okay. Did you ever learn that that was

15 not true?

16 A From this morning.

17 Q Okay. So did you go to the Office of

18 Financial Regulation armed with what you thought was

19 the truth?

20 A Yes.

21 Q Did you relate that to the Office of

22 Financial Regulation?

23 A As an attorney, it was Mr. Nicholas mostly

24 doing -- it was his company. I was there

25 representing him, but these were the points we were

Page 145

1 trying to get across. 145

2 Q If you can recall, do you remember who did

3 most of the talking that day on behalf of Tri-Med

4 Corporation?

5 A It was give and take. It was a

6 conversation more than an interview or a deposition.

7 Q I mean, between you and Tony, Nicholas,

8 Jr., Anthony Nicholas, Jr., was he silent or were

9 you the one or was it an equal?

10 A Like I say, it was give and take.

11 Q Okay. If you will flip to the second page

12 there is a fourth paragraph down. Again, I believe

13 this letter is from Jeremy Anderson.

14 It says, "If they ask who I am, be vague,

15 don't use my middle name, since it's different on

16 the corporation registration."

17 Did that raise any concerns with you?

18 A No.

19 Q Were you vague about his middle name?

20 A I don't recall it ever being asked or came

21 up at all.

22 Q Okay.

23 A I certainly wouldn't have lied. If I had

24 known there was a problem about his middle name, I

25 would have told him the truth, but I don't recall

Page 146

1 any question about Jeremy Anderson at the meeting. 146

2 Q Two paragraphs down from that it says, "We

3 can't say anything about how much we've raised or

4 that it's from ads."

5 Were you aware that Tri-Med Corporation

6 had ran ads?

7 A Yeah. As I understand, that was the

8 problem. Also included in this packet, Exhibit 35,

9 is the Broad and Cassel letter, and I've had a copy

10 of it. I had read that letter and it looked to me

11 to be a well-reasoned letter. I'm not a securities

12 lawyer by any means, but my understanding was that

13 it said that they were okay with the federal laws,

14 but they weren't. He accepted. Any state

15 securities or blue sky issues from that letter or

16 from maybe the conversation with Lisa Seabrooks, I

17 was understanding that the biggest problem they had

18 encountered at that point is they had run some

19 advertisements. That's what made what they were

20 doing wrong.

21 Q Is it correct to say that Jeremy

22 encouraged you all to play down the use of ads in

23 that discussion?

24 A It wasn't just Jeremy. It was Tony and

25 Nicholas as well. It was my understanding that the

Page 147

1 two of them were running Tri-Med, but they had never 147

2 authorized advertisements. Some of the other

3 salesmen or employees, or I don't know whom, had ran

4 the ads without their permission or approval, and

5 that's what we were trying to get across that it was

6 more of a rogue in an unintentional inadvertent

7 advertisement that brought us into that

8 investigation.

9 Q Okay. You weren't familiar with the fact

10 that the ads that we introduced earlier today said

11 something to the effect that the investments were

12 backed by major insurance companies?

13 A I don't think I've ever seen the ad. To

14 this day I still don't think I've ever seen the ad.

15 Q Have you ever been able to form an opinion

16 as an attorney whether the Tri-Med investors'

17 participations in the monthly income agreement

18 investment was in fact backed up by a major

19 insurance company or companies?

20 A Only from what I heard today. Number one,

21 I've never seen this employment agreement that

22 you're talking about. That was never funneled

23 through me. I have no idea what it says, but I

24 think that would be a misrepresentation. The

25 insurance was there to pay for the eventual

Page 148

1 settlements of the letters of protection. They 148

2 certainly weren't backing anything.

3 Q Back to the Broad and Cassel letter.

4 Do you remember how you received that

5 letter?

6 A I'm pretty sure it was e-mailed to me from

7 somebody.

8 Q Anthony Nicholas, Jr., or Jeremy --

9 A Or Jeremy. I don't remember which.

10 Q Did you ever discuss the Broad and Cassel

11 letter with them?

12 A Yeah. Since I've met with Mr. Gordon, I

13 went through and looked at my time sheets, which you

14 should have. I thought I had a telephone conference

15 that I participated in with Jeremy and Anthony. I

16 thought Steve Marlowe was on the line as well and

17 that we had this lawyer.

18 Q Matt Thompson you're referring, the

19 signatory --

20 A The Broad and Cassel lawyer.

21 Q -- on the fake letter.

22 A I thought he was on that conference call,

23 and that's what I told the investigator. When I

24 looked at my time records, I tried -- whenever I

25 bill a time conference I try to put the attendees,

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1 and it may not have been the lawyer. It may have 149

2 been the CPA named Gurn (phonetic). I never met

3 him, but he was on the phone, and we were talking

4 about how do we make sure that this is done

5 properly.

6 Q I see your engagement letter there, April

7 the 30th, or your explanatory letter that's four

8 pages in there.

9 Did you ever do work on behalf of Tri-Med

10 Corporation?

11 A Yes, sir.

12 Q Can you explain that to us; what was your

13 role?

14 A Sure. We were on the tail end. So, after

15 the investment money had been kept with Steve

16 Marlowe and Marlowe McNabb, after a case had been

17 settled and funds were coming from one of these

18 letters of protection, that money would come back

19 through my trust account.

20 Also, as detailed in the letter, I was

21 signing the certificates themselves which were

22 telling the investors we've got your money and we're

23 going to use it for these particular losses or these

24 cases.

25 Q You were doing that as to -- that's not a

Page 150

1 back end -- if I understand what you're saying, 150
 2 that's not a back end --
 3 A I was doing both.
 4 Q Okay.
 5 A Anthony would come to my office and he
 6 would have some of these certificates and I would
 7 sign them.
 8 Q Anthony, Jr., or Anthony, III?
 9 A Well, 75 to 90 percent of the time it was
 10 just Jr. Sometimes --
 11 Q Was that the fellow who was standing in
 12 the back of the room and a couple of times spoke
 13 out?
 14 A Yes.
 15 Q Okay.
 16 A Junior or the III, he showed up a couple
 17 times, three, four, I'm not sure.
 18 Q Showed up at your office?
 19 A Yes, sir.
 20 Q For what purpose?
 21 A They would hand me the certificates so I
 22 could sign them to show that the money had been
 23 received and was being allocated to this particular
 24 case. So that was part of the front end. Like my
 25 letter says, my more significant involvement comes

Page 151

1 detailed. We would take the money as it came back 151
 2 and we would cut checks that would return the
 3 investors' money or distribute it where it's
 4 supposed to go.
 5 Q Okay. Are you aware of just an
 6 approximation of the total length, the number of
 7 months that you acted in that role?
 8 A Generally I think we started this -- my
 9 letter is April 30th. It probably started in May or
 10 June thereafter of 2012, and I believe by December
 11 of 2012, so approximately seven months, we said we
 12 couldn't go forward anymore, didn't want to be
 13 involved.
 14 Q Why did you not want to be involved?
 15 A There were three problems. The first, my
 16 wife and I, we work together, and she handles the
 17 finances. She hated this. She absolutely hated
 18 when Anthony Nicholas would show up and we would
 19 have to stop everything, this is not our area of
 20 practice, and handle this accounting moras.
 21 Q He would show up with a bunch of checks?
 22 A There would be 10 to 20 checks and he
 23 would want 10 to 20 checks cut. We would have to
 24 track by them certificate number and investor number
 25 and we were trying to double-check his math to make

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1 sure that it was to the penny because it's coming 152
 2 out of my trust account.
 3 Q Did you serve a role in confirming that
 4 the investors had released an interest in the LOP's?
 5 A We matched up the payments to the amount
 6 that was on the certificate.
 7 Q So Tony Nicholas would bring you checks.
 8 Who were they payable to?
 9 A Often times to my trust account.
 10 Q Okay.
 11 A Probably most of the time. There were
 12 some rogue checks that didn't really fit in. I got
 13 some written out to me personally.
 14 Q All right. And then, as I follow this,
 15 you would deposit that and then you would send out
 16 checks to the investor?
 17 A The next week after those checks had
 18 cleared, he would come back with more certificates
 19 at the front end and then we would have to go back
 20 to what we had done the week before or two weeks
 21 before and cut checks to disburse the money back
 22 out.
 23 Q All right.
 24 A Because the intersection was so hard to
 25 follow, that was the second reason why we got out of

Page 153

1 it. 153
 2 The third reason we had to quit is because
 3 Bank of America called us once.
 4 Q What did they say?
 5 A My wife took the call, so I can't tell you
 6 exactly, but it was under a nature of why are you
 7 involved and what are you doing.
 8 Q Okay. Do you have Bank of America
 9 accounts?
 10 A No.
 11 Q Did that concern you enough, the three
 12 issues there, to terminate your relationship?
 13 A So in the fall I started telling Anthony
 14 when he would come in that this wasn't working out
 15 for us anymore.
 16 Q Fall of --
 17 A 2012.
 18 Q Okay. Thank you.
 19 A I think it was one of my Christmas
 20 presents to my wife. In December of 2012 I said
 21 "we're done, we're not doing it anymore."
 22 Q Is it correct to say -- so it was just a
 23 number of months somewhere around March, April to
 24 the end of '12 and you were done?
 25 A Correct. It took two or three more months

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1 afterwards to try to balance everything and return 154
 2 ever penny that wasn't ours appropriately.
 3 The other reason we got out is, after Bank
 4 of America called my office, my wife called LOMS,
 5 Law Office Management Section of the Florida Bar and
 6 said what do we do, how do we get out of here, how
 7 do we do it properly.
 8 It was their advice to 1099 the investors.
 9 The certificates that we had had their social
 10 security number on them. So we sent out 1099's to
 11 make sure that was all properly reported, and then
 12 when we refunded all the money that we kept, what we
 13 still had, we wrote it in dual checks. So it was to
 14 Tri-Med and the investor because we weren't going to
 15 make a decision of who owned it.
 16 Q Okay.
 17 A Tri-Med had brought it to us, but it
 18 wasn't our money, it's going back out.
 19 Q When you issued those 1099's as just an
 20 example, if an investor had received a \$30,000
 21 check, did you issue him a 1099 for \$30,000 of
 22 income?
 23 A Yes.
 24 Q Was there a debate about the
 25 appropriateness of that between you and Anthony with

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1 Jeremy Anderson? 155
 2 A They were frustrated, but I told them I
 3 didn't care. I don't know if I'd call it debate.
 4 They wanted to know why, why we were stirring the
 5 pot, ruffling the feathers, putting all these people
 6 on notice and bringing in the IRS, and our response
 7 was, yeah, but nobody is coming back to my firm and
 8 attaching a lien on all that money as my income. It
 9 came in, it went out.
 10 MR. MELCHIOR: I have no other questions
 11 of this witness.
 12 THE COURT: I'm a little bit concerned
 13 here because I don't really understand who you
 14 were holding the money in trust for.
 15 What was your understanding?
 16 THE WITNESS: We were disbursing the money
 17 to reflect the settlements. So we got a couple
 18 letters from law firms saying okay --
 19 THE COURT: So you were purportedly
 20 holding the money in trust for the investor?
 21 THE WITNESS: Pending the settlement and
 22 the resolution of the case. We were on the
 23 tail end trying to do the accounting to make
 24 sure it matched up so that the investor got
 25 back what they were supposed to get back. No

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1 more, no less. 156
 2 THE COURT: You were receiving checks from
 3 who?
 4 THE WITNESS: Well, at the beginning of
 5 the relationship it was a variety. It was a
 6 lot of investor money. I don't recall. In the
 7 middle they had acquired, and I think there was
 8 one e-mail that was read to you, and it said
 9 that there was --
 10 THE COURT: So you receive a check from an
 11 investor and the reason that you would receive
 12 it and put it in your trust account was so that
 13 you could then pay that money to an investor?
 14 THE WITNESS: So we could match it up to
 15 the certificate so we knew that it was the
 16 right account.
 17 THE COURT: Let's just say there is two
 18 certificates. You have the certificates,
 19 right, and this represents what, that someone
 20 has paid money -- let's just say there is a
 21 \$20,000 certificate and a \$30,000 certificate.
 22 So you have these certificates. You don't have
 23 any money yet or do you?
 24 THE WITNESS: We would have \$50,000 that
 25 matched up to that certificate.

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1 THE COURT: Okay. And the \$50,000 would 157
 2 somehow match this so there would be two
 3 separate checks so --
 4 THE WITNESS: Well, one certificate could
 5 be on 10 separate cases, and that was part of
 6 our problem, your Honor. So they would settle
 7 one of these cases and the lawyer would say,
 8 okay, here's the medical portion of it and
 9 we've recovered \$50,000.
 10 THE COURT: So you would actually get a
 11 check from the law firm?
 12 THE WITNESS: Correct. Correct.
 13 THE COURT: And they would send the check
 14 directly to you.
 15 THE WITNESS: And then we would have to
 16 figure out which certificates that matched up
 17 to because we had patients' names on those
 18 certificates or we were tracking it by patient
 19 name.
 20 THE COURT: Okay. Then you say there were
 21 other monies coming in. I mean, you first said
 22 that there was money from investors. That's
 23 what got my interest.
 24 So you're receiving money from investors
 25 to pay an investment as opposed to receiving

Page 158

1 money from a lawyer who goes to the pay off the 158
 2 accounts receivable.
 3 THE WITNESS: In the middle of this they
 4 acquired that one big accounts receivable from
 5 a practice. Probably half the money we got
 6 came directed from that particular practice.
 7 What I understood was they had all these
 8 insurance bills. So these insurance checks
 9 were coming in for small amounts, \$100, \$500,
 10 all of them, and we would get 15 of those,
 11 that's an approximation, and that was from one
 12 particular accounts receivable that they had
 13 purchased at a discount and we would have to
 14 figure out how to disburse it appropriately.
 15 It was such a mess. That's why we called
 16 LOMS to make sure we were doing it correctly.
 17 One thing he hasn't asked me is how much money
 18 went through my hands. We had about \$400,000
 19 in my trust, we paid out \$300,000 and we
 20 returned about \$100,000.
 21 THE COURT: Returned it to who, the
 22 lawyers?
 23 THE WITNESS: To Tri-Med and their new
 24 lawyer that was my replacement, Langford White.
 25 THE COURT: All right.

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1 MR. MELCHIOR: The bank would call Maria 159
 2 Yip.
 3 THE COURT: I don't recall. Did you move
 4 35 in?
 5 MR. MELCHIOR: I'm sorry, your Honor. We
 6 would move 35 in.
 7 THE COURT: Okay. That will be received.
 8 MR. PATRICK: Your Honor, may it please
 9 the court. My name is Tim Patrick. I'm an
 10 attorney and I came merely as an observer
 11 today. Based upon Mr. Borja's relationship,
 12 termination with Tri-Med and his motion to
 13 withdraw, Tri-Med is asking you to allow me a
 14 limited appearance on their behalf today and
 15 have Mr. Borja relieved of his
 16 responsibilities.
 17 THE COURT: Okay. So you're prepared to
 18 step in and be their counsel today on a limited
 19 appearance for this hearing only?
 20 MR. PATRICK: Yes, your Honor.
 21 THE COURT: Mr. Borja, we're ready to turn
 22 the reins over to new substitute counsel.
 23 MR. MELCHIOR: Your Honor, before
 24 Mr. Borja leaves, I think I'm obligated to tell
 25 the court that Mr. Patrick was a direct

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1 participant in this scheme, for lack of a 160
 2 better word. In fact, it's our understanding
 3 that he evaluated the medical receivables.
 4 Given his role as a potential witness or real
 5 life witness, we object to his acting as now
 6 the corporate counsel at the last moment.
 7 THE COURT: Well, I understand you're
 8 making some anticipatory objection of his
 9 representation merely on the fact that he might
 10 become a witness. I think the only relevant
 11 thing that I need to know right now is he's a
 12 licensed member of the Florida Bar in good
 13 standing, and he's been hired for the limited
 14 purposes of representing these folks here. Let
 15 me just make sure.
 16 Who is it that has requested you to --
 17 MR. PATRICK: Tri-Med and Jeremy Anderson
 18 have requested me.
 19 THE COURT: Okay.
 20 MR. PATRICK: Judge, I did not receive a
 21 subpoena for today. I am a former employee of
 22 Tri-Med, but I've never even talked about these
 23 gentlemen and I don't have a subpoena as a
 24 witness.
 25 THE COURT: All right. Well, if that's

Page 161

1 so, you're not representing all of the 161
 2 Defendants that Mr. Borja represents then?
 3 MR. PATRICK: Um -- also correct.
 4 THE COURT: Um doesn't help me.
 5 MR. PATRICK: I apologize.
 6 THE COURT: Okay.
 7 MR. PATRICK: I wasn't really prepared for
 8 this today, your Honor. I do apologize. I
 9 will also be representing Mr. Anthony Nicholas
 10 and Mr. Anthony Nicholas, Jr.
 11 THE COURT: Okay. Those are all your
 12 clients, Mr. Borja?
 13 MR. BORJA: Yes, Judge.
 14 THE COURT: And do you represent anyone
 15 else?
 16 MR. BORJA: No, Judge.
 17 THE COURT: So your clients have not only
 18 told you they would prefer you not to continue
 19 to represent them, they have retained somebody
 20 else to carry the ball for the remainder of the
 21 hearing.
 22 Somebody is jumping up like toast popping
 23 out of a toaster over here.
 24 MR. MORELLO: Mr. Patrick was served with
 25 a document subpoena a number of months ago. I

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1 just want to reiterate what Mr. Melchior said. 162
 2 THE COURT: Okay. Perhaps you could cite
 3 the rule for me which would prevent him from
 4 representing a client because you served a
 5 subpoena on him for documents.
 6 MR. MORELLO: Well, he's a material
 7 witness to the operation of Tri-Med's scheme,
 8 your Honor.
 9 THE COURT: As I understand it, he wasn't
 10 being called as a witness today.
 11 MR. MORELLO: Not for today. Not for
 12 purposes of this today, but he's a material
 13 witness.
 14 THE COURT: Maybe. I've heard that he's
 15 making a limited appearance for the purposes of
 16 this hearing today. If we have another hearing
 17 and he's still around and he's filed a notice
 18 of appearance and at that time it appears that
 19 he will have a conflict because of that, we'll
 20 discuss it, but these anticipatory concerns and
 21 efforts to block him are to no avail. He's got
 22 absolutely every right to come in and represent
 23 these folks at his own peril.
 24 Mr. Borja, you are free to go.
 25 MR. BORJA: All right. Thank you, your

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1 Honor. 163
 2 THE COURT: I don't know if you have any
 3 materials that you and your clients want to
 4 agree to turn over to their new temporary
 5 lawyer.
 6 MR. MORELLO: Your Honor, if I may. I
 7 would lodge one more objection for the record.
 8 The receiver has an ongoing objection to anyone
 9 representing on the record that they represent
 10 Tri-Med Corporation because, as your Honor
 11 knows, the receiver has been appointed
 12 exclusively to represent the interest of
 13 Tri-Med Corporation.
 14 THE COURT: Okay. That's noted.
 15 We can give them a couple minutes.
 16 We'll just be at ease for a few minutes
 17 while they exchange documents.
 18 (Discussion off the record.)
 19 THE COURT: Come right up.
 20 Thereupon:
 21 MARIA YIP,
 22 was called as a witness, having been duly sworn, was
 23 examined and testified as follows:
 24 DIRECT EXAMINATION
 25

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1 BY MR. MELCHIOR: 164
 2 Q Would you please state your name.
 3 A Yes. Maria M. Yip, Y-i-p.
 4 Q And where do you reside?
 5 A In Miami, Florida.
 6 Q Do you have a profession?
 7 A Yes. I'm a CPA. I'm also a certified
 8 fraud examiner and certified in insolvency and
 9 restructuring.
 10 Q Have you been engaged by the receivership
 11 to perform forensic accounting work in this case?
 12 A I have.
 13 Q Have you ever been qualified as an expert
 14 in the area of forensic accounting?
 15 A I have.
 16 Q On how many occasions?
 17 A At least half a dozen times, if not more.
 18 Q Can you give us some of your background?
 19 MR. MELCHIOR: I would tender this witness
 20 as an expert or I can further inquire if you
 21 all -- maybe you would stipulate as to her
 22 expertise.
 23 MR. PATRICK: Maybe just the basics, a
 24 couple things about her experience.
 25 MR. MELCHIOR: I would be happy to.

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1 BY MR. MELCHIOR: 165
 2 Q Where did you go to school?
 3 A I went to school at Florida International
 4 University.
 5 Q And what type of degrees do you hold?
 6 A Bachelors of Accounting.
 7 Q And where have you worked?
 8 A Over the past 21 years I started my career
 9 at Price, Waterhouse. I then worked for Arthur
 10 Anderson until 2002. I also worked at Grand
 11 Thornton, another large accounting firm. I was a
 12 partner at that firm and headed up their forensic
 13 accounting group for the state of Florida. I've now
 14 had my own firm for the past six years by the name
 15 of "Yip Associates," and we have approximately 15
 16 people in our Miami and Boca offices.
 17 Q Have you acted as a professional
 18 organization; are you actively a professional
 19 organization?
 20 A Most of my activities are with respect to
 21 forensic accounting. I would tell you that a good
 22 portion of my time is also dedicated -- I serve as a
 23 panel member of the bankruptcy trustee down in the
 24 southern district of Florida.
 25 So much of my time is dedicated, a good

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1 portion I should say, to serving as a bankruptcy trustee and working on cases similar to this in which there is the need to trace funds to determine the solvency of a company, determine whether or not there is indications that the company or that the operation was a Ponzi scheme. Cases involving the calculation of economic damages.

2 So that pretty much makes up the bulk of the work that we do. I'm mostly involved with the Bankruptcy Bar Association. I have a very limited practice of law that I'm permitted as a trustee and I'm associated with, for instance, the South Florida Chapter of Certified Fraud Examiners, I sit on that Board, things along those lines.

3 Q So you have a law degree; are you a member of the Florida Bar?

4 A No, I'm not. As a bankruptcy trustee, we're permitted to file our own pleadings to the extent that I think that it's a prudent thing to do on behalf of the estate on relatively what I would describe as simple legal matters.

5 MR. MELCHIOR: All right. I would tender Ms. Yip as an expert in the area of forensic accounting such that she could have performed a forensic accounting on the money flows in

Page 167

1 Tri-Med Corporation. 167

2 THE COURT: Proceed.

3 BY MR. MELCHIOR:

4 Q Were you engaged by Mr. Wiand in this matter?

5 A I was engaged by his firm. That's correct.

6 Q Have you had the opportunity to review documents; can you generally tell us what you have reviewed?

7 A Yes. The primary documents were bank records, as you might imagine. There were 38 bank accounts that were associated with what I'll call the receivership entities, Tri-Med, Tri-Med Associates, TMFL. Also the bank accounts associated with the -- we've been hearing from the attorneys this morning that had trust accounts, so we also reviewed those accounts.

8 We reviewed some of the personal accounts primarily in an effort to piece both ends of a transaction. We also reviewed Wellness Works and Spine Injury Physicians. Those are two entities that are now bankrupt, but we wanted to understand what transactions went through those entities.

9 So, all in all, upwards of 38 accounts.

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1 We've looked at the bank statements, the cancelled checks, the wire transfer, documentation that was there. We also looked at investor files. We looked at many of the LOP's that we've been talking about today. Those have different forms, but we looked at those. We looked at assignments. Again, not from a legal perspective, but looking at them to trace the investors, what monies they had put in.

2 We did an analysis of how much money, at least through the bank accounts that we know about today, how much was received from investors, which is about, I think, 17.6 million dollars.

3 Q 17.6.

4 I see you looking down.

5 Did you prepare a report in this regard?

6 A I did.

7 Q Let me show you what's been marked as Exhibit 27.

8 Is that a copy of the report that you were glancing down at?

9 A Yes.

10 Q Do you have a sense of how many actual transactions you had to look at to come to this conclusion; did you reach conclusions, first of all?

11 A Yes. I did reach conclusions, and I would

Page 169

1 say that we've looked at in excess of 12,000 banking transactions. 169

2 Q You mentioned 17.6 million.

3 Can you explain just generally to the court what happened to the 17.6 million dollars?

4 A Yes. In general we've had approximately 3.8 million dollars of the 17.6 that was actually used to purchase medical accounts receivables, we had 2.3 million that was disbursed to investors either for interest or the return of their principle and approximately six and a half million that went to different entities and individuals for the benefit of the Tri-Med insiders.

5 Q What was the period of time of the bank account activity and investor activity that you reviewed?

6 A November 16th, 2011, through the time of the preliminary injunction, March 5th, 2014.

7 Q What was the earliest investment that you saw in these records?

8 A Let me refer to my report here.

9 The first investment I have is November 16th, and that was a \$90,000 investment that was made.

10 Q Are you familiar with the actual use of

Page 170

1 that initial \$90,000? 170

2 A Yes. What I did was I traced what

3 happened with that individual's money once it came

4 in and what happened with it during the next 21

5 days.

6 At Paragraph 37 of the report I lay out

7 where the monies went. \$22,000 -- well, let me tell

8 you more globally.

9 Almost \$52,000 immediately went to --

10 \$22,000 of it went to Mr. Anderson directly, \$7,200

11 was used to pay his rent at the Ivy, which is a very

12 high-end residence in Minneapolis, another \$800 or

13 so were used for ATM's at the Ivy, some money went

14 to a BMW dealership in Lakeland, some money was

15 spent, \$330 was spent for tickets to an event of

16 some type, \$6,000 went to Nicholas, III, is how I've

17 been referring to separate Anthony Nicholas, III,

18 from Anthony Nicholas, Jr. So \$6,000 went to

19 Anthony Nicholas, III, and \$13,500 went to Tri-Med

20 Associates.

21 So obviously one thing that's missing

22 there is that none of the monies that I described

23 went to buy any accounts receivable. I should have

24 started with that as my point.

25 Q You tracked this first \$90,000.

Page 171

1 Was there capital in any of the 171

2 accounts --

3 THE COURT: Let me stop because that was

4 an important concern of mine.

5 You say that your analysis demonstrated

6 this 17.6 million came in from investors and

7 now you just said none of the money from

8 investors was ever used to purchase an account

9 receivable?

10 THE WITNESS: No, your Honor. What I was

11 saying is that none of the monies that I just

12 described in the investor Number 1 \$90,000 had

13 at that point been used to purchase any

14 accounts receivable.

15 THE COURT: Okay. I recall you saying 3.8

16 million was used to actually purchase from the

17 investor's money.

18 THE WITNESS: That is correct.

19 THE COURT: Okay.

20 THE WITNESS: That's correct.

21 BY MR. MELCHIOR:

22 Q Before we talk more about what the money

23 was actually used for, did you review the account

24 documents or account records as to what purportedly

25 was to be for the funds?

Page 172

1 A Yes, I did. 172

2 Q Did you find that the subsequent use was

3 consistent with what the Board had used as related

4 in those documents?

5 A No.

6 Q What was inconsistent?

7 A Well, inconsistent is that the documents,

8 to the best of my knowledge, that I believe the

9 investors received are documents that reflect that a

10 medical accounts receivable is going to be purchased

11 and, as I mentioned earlier, only 3.8 of the 17.6

12 million that these investors put into these entities

13 or into Tri-Med, it's only that portion that was

14 actually used to buy accounts receivables.

15 You made reference earlier this morning to

16 the asset tracker, this document that Tri-Med

17 maintained, and that document tracks things like

18 homes, things like loans made to VISM as an example,

19 which is a company that I'm not sure if it ever did

20 any software creation or what the company was

21 supposed to do, but it's a company that's now

22 bankrupt and filed for bankruptcy in January or

23 February of this year, if I'm not mistaken.

24 In any event, that money that Tri-Med lent

25 or gave to VISM is being reflected as collateral and

Page 173

1 back up for the loans of investors. That 173

2 information is not at all on any of the documents

3 they received. In fact, some of the certificates

4 that I saw associated with VISM reflect an insurance

5 company. That insurance company has nothing to do

6 with -- it's just fake.

7 Q Now, based on the 17.6 million that came

8 in, which was your testimony, how much of that 17.6

9 million was subsequently divided into an attorney

10 trust account?

11 A It was \$2,780,000, more or less. I

12 believe we heard from the attorney who had received

13 that money as well.

14 Q Mr. Marlowe?

15 A That's correct.

16 Q I'm going to ask you about revenues.

17 When was their first revenues, or did they

18 have revenues?

19 I believe there is a chart on Page 21 that

20 might help you.

21 A The chart on Page 21 is a table that's

22 reflecting -- remember, it mentioned earlier that

23 approximately three million dollars had been paid

24 out to investors in the way of what they called

25 profit distributions. I'm calling them interest.

Page 174

1 But profit distributions or their principle back. 174
 2 That chart shows you that by March 14th -- I'm
 3 sorry -- March 2014 Tri-Med had paid out to
 4 investors 1.196 million in what we referred to as
 5 profit distributions, or they referred to it as
 6 that, as well as 1.1 million dollars in the way of
 7 repayments to investors.
 8 There were some, as I mentioned earlier,
 9 approximately three million dollars that was used to
 10 buy actual accounts receivables. I don't know if I
 11 have that number handy to provide to you on what
 12 revenues they made on the few investments they made.
 13 Q Well, are you aware of how Tri-Med was
 14 able to pay the profit distributions?
 15 A Yes. They paid the profit distributions
 16 from the monies of other investors.
 17 Q Have you considered the solvency of
 18 Tri-Med?
 19 A Yes. I've looked at Tri-Med and analyzed
 20 both their cash, the accounts receivable that they
 21 really did buy. I've looked at other things that
 22 they had that did not relate to medical receivables
 23 such as real estate that they had. I also looked at
 24 the obligations that they had to investors to pay
 25 them back their principle.

Page 175

1 Based on that analysis, and that's at 175
 2 Paragraph 65, you see that there was a shortfall of
 3 2.8 million dollars. I'm going to say that's very
 4 conservative in the sense that there are accounts
 5 receivable that I'm giving value to at their full
 6 face value to give Tri-Med every benefit of the
 7 doubt, and it is not realistic that they're going to
 8 collect full value.
 9 The receiver himself testified earlier
 10 today that on some of the settlements that have come
 11 in the attorneys want to negotiate down on how much
 12 they're actually going to pay. But, for purposes of
 13 this analysis so far, I gave them that benefit of
 14 the doubt.
 15 Q I direct your attention to Page 11 of your
 16 report.
 17 A Yes.
 18 Q Do you know when Tri-Med received its
 19 first settlement of an LOP?
 20 A Yes. That was in July. July of 2012.
 21 Q Are you aware, if I can ask you a specific
 22 dollar amount, if sales continued from November of
 23 2011 through July of 2012?
 24 A You mean the sales of --
 25 Q I'm sorry. Sales of the monthly income

Page 176

1 agreement. 176
 2 A Yes. Money continued to be coming in
 3 during that period. On Page 11 at Paragraph 40 it
 4 reflects the first monies that came in from a
 5 settlement, and that was \$25,600 in July of 2012.
 6 THE COURT: Do you know where that went?
 7 So here we have a direct settlement of a
 8 lawsuit. So those monies pursuant to the LOP
 9 were paid from a law firm to Tri-Med or one of
 10 these lawyers or some trust fund or to a
 11 client?
 12 MR. MELCHIOR: I would have to look at the
 13 master to tell you, but we do have that
 14 information.
 15 BY MR. MELCHIOR:
 16 Q Well, to your understanding, how was
 17 Tri-Med making monthly interest payments to the
 18 investors during that period?
 19 A From monies it was taking in from other
 20 investors. That's what I said earlier.
 21 Q I had asked you whether you were able to
 22 form an opinion or maybe I haven't asked you.
 23 Were you able to form an opinion whether
 24 Tri-Med was solvent from inception?
 25 A It was never solvent. It had obligations

Page 177

1 and, again, being very conservative on my numbers, 177
 2 by "conservative" meaning giving the benefit of the
 3 doubt to Tri-Med, I did not include the -- you can
 4 call it interest, you can call it profit
 5 distributions, but I did not include what was owed
 6 to the victims other than their principle.
 7 Okay. The number would be much higher
 8 than being in the red by 2.8 million if I had
 9 included the interest that they had promised to the
 10 victims.
 11 Q You mentioned 2.8 million, and I see on
 12 Page 16 under Paragraph 65 there is a table
 13 illustration that I believe concludes with 2.8
 14 million.
 15 Could you describe what that table
 16 purports to represent.
 17 A Yes. What that table is, to your earlier
 18 question of solvency, is it reflects the assets that
 19 Tri-Med had and it reflects the liabilities that
 20 Tri-Med had. There are two columns with numbers in
 21 them. Those two columns to the far right are my
 22 numbers, and that's what these things on the best
 23 day possible these things could possibly be worth.
 24 The column on the left, which has what's
 25 called "investor accounting," that information came

Page 178

1 from -- it's actually sitting here, if I may. It 178
 2 just happens to be sticking out. It's Plaintiff's
 3 Exhibit Number 2. My understanding is that document
 4 is a document that Mr. Anderson had provided I don't
 5 know if to the court or to the OFR in the past, but
 6 that's where those numbers are coming from.
 7 Q So in your analysis have you compared
 8 what's represented on Exhibit 2 to your own
 9 conclusions?
 10 A I did. That's what that comparison is.
 11 On Page 16 and 17 of the report, it continues on to
 12 18, it describes, which I'm happy to describe, but
 13 it describes each one of these categories.
 14 In other words, the cash on hand, the cash
 15 number that I used -- and, by the way, it's
 16 important to note this is all based on as of
 17 March 5th, 2014, okay, so that we know what time
 18 frame we're talking about.
 19 The cash on hand that I used is the cash
 20 that the receiver was able to recover. That's how
 21 much cash there was on that date. There is no
 22 indication where Mr. Anderson got his number. Okay.
 23 So I used the right number, which is how much money
 24 there was on hand that day.
 25 On the accounts receivable, again there is

Page 179

1 no indication of where he got his numbers. We had a 179
 2 very large trunk that came from a company called
 3 Florida Surgical Consultants. I looked at those. I
 4 looked at the returns that were supposed to be
 5 provided. I assumed that there was no negotiating
 6 down, and this is assuming the absolute best day.
 7 Q The face value of the LOP?
 8 A Not the face value. The value that -- the
 9 way this program was supposed to work is that the --
 10 in essence the money that would be coming back to
 11 Tri-Med was going to be 185 percent of the money
 12 borrowed.
 13 So, as an example, on \$10,000 of a
 14 receivable, the doctor -- I'll just call him the
 15 doctor, the medical service provider, will receive,
 16 let's say, 30 percent or \$3,000.
 17 Okay. Once the doctor continued doing his
 18 services, et cetera, once the lawsuit was settled,
 19 okay, the doctor was supposed to have received or
 20 Tri-Med -- pardon me -- was supposed to receive that
 21 amount plus that loan plus 85 percent.
 22 So it's a little bit of complicated math,
 23 but, in any event, I calculated or used the number
 24 that maximized the most that could have come back to
 25 Tri-Med.

Page 180

1 Then there are other people or doctors 180
 2 that were not Florida Surgical Consultants, and for
 3 those, since I didn't see any agreements -- for
 4 Florida Surgical Consultants I had agreements that
 5 showed me the 85 percent. Okay. For these other
 6 physicians I didn't have agreements, so I just used
 7 the full face value and assumed for purposes of this
 8 analysis that all of that money was coming back.
 9 I can tell you sitting here today that's
 10 not realistic that every dollar would come back, but
 11 I wanted to just to demonstrate that even on a best
 12 day that would be the situation.
 13 The non-medical receivables, again, I
 14 don't know where he got his number. In our number
 15 it includes both VISM, which I don't know if that
 16 was mentioned earlier this morning or not, but that
 17 was monies that Tri-Med loaned to this company
 18 that's now bankrupt. I reviewed the bankruptcy
 19 schedules. It shows it has assets of \$9,240, so
 20 that's what I used there. It also includes real
 21 estate. I want to say it's five homes. I can't
 22 remember exactly, but I believe it's five homes.
 23 So we looked up the value by the property
 24 appraiser's report of each one of those five homes,
 25 and it was roughly just over \$510,000. So that's

Page 181

1 the value I used. 181
 2 By contrast, in Mr. Anderson's report for
 3 those same five properties, he listed them as a
 4 million five. I don't know what he based it on.
 5 It's just a number he used.
 6 Q You calculated 513 instead?
 7 A It's 510, something along those lines. It
 8 was the sum of the property appraiser's report. So,
 9 even if that number is a little bit low, it's
 10 certainly not a million dollar difference.
 11 Similarly with the outstanding loans, you
 12 know, I've seen this note associated with Spinal
 13 Management, an SPM note. I don't know why
 14 Mr. Anderson didn't include it, but I view it that
 15 it could be an obligation, so I put it there.
 16 The next category is investor
 17 contributions. There isn't detail from
 18 Mr. Anderson, but I have a sheet, Exhibit 10, that
 19 shows the 17.6 million dollars that was raised.
 20 He indicates that Mr. Anderson reflects
 21 that there is interest that's owed to the investors.
 22 My experience with Ponzi schemes and other
 23 fraudulent types of investment schemes is that the
 24 interest associated with them is not considered a
 25 liability. The funds are really part of an ill

Page 182

1 gotten. I refer to them as ill-gotten gain that's 182
 2 part of the fraudulent scheme. So the treatment
 3 from a forensic accounting perspective is to not
 4 give value to those to that interest or that profit
 5 being due later.
 6 Again, it's conservative because I
 7 included it at zero and it's still insolvent by
 8 almost three million dollars, assuming that they
 9 collected on every single receivable in the best
 10 possible scenario.
 11 Q In your analysis did you see significant
 12 sums of money being diverted or paid to what
 13 appeared to be non Tri-Med Corporation investment --
 14 A Types of expenses?
 15 Q Yes.
 16 A Yes. I mentioned early on that there was
 17 about six and a half million dollars that I traced
 18 to funds that were for the benefit of Tri-Med
 19 insiders. An example of that is Mr. Anderson was
 20 living at this building I mentioned earlier called
 21 the Ivy. I think it's in downtown Minneapolis.
 22 So the rent, which I want to say may be
 23 around \$3,000 or \$4,000 a month, is being paid by
 24 Tri-Med for his apartment. The same building has a
 25 spa, which, not that I believe everything on the

Page 183

1 Internet, but the looks of the spa looks quite 183
 2 luxurious. There are thousands of dollars being
 3 spent at the spa also at the cost of being taken
 4 from the Tri-Med investor money.
 5 Q Directly from Tri-Med's accounts?
 6 A Yes. There is salaries that are being
 7 paid to -- and I think the gentleman was on the
 8 stand earlier this morning, Anthony Nicholas, III,
 9 payments to him. There are also payments for a
 10 grocery store. I forget the name of it. It might
 11 be Burleys or something along those lines. It's a
 12 grocery store also in Minneapolis. It appears that
 13 the groceries are also being purchased by Tri-Med.
 14 Whole Foods which we have in our area, tickets to
 15 the hockey team. I forget the name. I'm not a big
 16 hockey fan, so I don't know the name of the team,
 17 but that sort of thing.
 18 Q Okay. Have you been able to form an
 19 opinion just generally; was there an inherent defect
 20 in their model?
 21 A The business model was purportedly to
 22 purchase, at least that's what they told the
 23 investors, medical accounts receivables. What is
 24 very obvious to me is that out of almost, you know,
 25 18 million dollars, only three million dollars is

Page 184

1 actually spent to do what you're saying that you're 184
 2 going to do. So I think that's the inherent problem
 3 with what happened here and instead the monies went
 4 for other uses.
 5 Q Have you been able to form an opinion
 6 whether the -- well, first of all, are you familiar
 7 with the term "Ponzi scheme"?
 8 A Yes.
 9 Q What is it?
 10 A Well, a Ponzi scheme is --
 11 MR. PATRICK: Your Honor, I'm going to
 12 object. It's my understanding that the Ponzi
 13 scheme allegations have been deleted or omitted
 14 from the current complaint in this action.
 15 They were originally pled and they have since
 16 been deleted.
 17 THE COURT: Well, I don't know that that's
 18 a reason to have the witness not explain the
 19 Ponzi scheme when the testimony and evidence
 20 received is essentially that of a Ponzi scheme
 21 regardless of what the pleadings are. So I'll
 22 permit it. I already know what it is, but, for
 23 the record, go ahead.
 24 THE WITNESS: For the record just briefly
 25 to not take the court's time, it is an

Page 185

1 investment scheme in which there is a purported 185
 2 purpose in raising the funds and those funds,
 3 that story so to speak, is told to the
 4 investors. The investors put their money in
 5 thinking that something is going to be done
 6 with that. What in fact happens is that that
 7 purpose is not accomplished, it is not done,
 8 whatever the stated purpose of that particular
 9 scheme is, and rather than doing that, the
 10 funds are used generally for personal purposes
 11 and we have just covered some examples of that.
 12 Most importantly, the reason that it goes
 13 on for a while is that as new investors are
 14 putting money in thinking the same thing as the
 15 old investor, what's happening with their money
 16 is that it's truly being used to pay one of the
 17 earlier investors their profits and then if
 18 they want redemptions or to get their principle
 19 back they are paid with the monies of another
 20 victim that also was unaware of what's
 21 happening.
 22 So eventually there are not enough new
 23 people to bring into the process and the Ponzi
 24 scheme collapses. That's the general concept.
 25

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1 BY MR. MELCHIOR: 186

2 Q Did you form an opinion whether a Ponzi

3 scheme was being operated by Tri-Med Corporation?

4 A Yes.

5 Q And what is that opinion?

6 A The general basis of that is that there

7 were grossly insufficient funds to sustain the

8 expenditures of this company and, other than monies

9 coming in from new victims, the first victims would

10 not have gotten their profits and those that got

11 principle would not have received those principle

12 payments. That is the only reason that anybody got

13 money is that someone came in later and put money

14 in.

15 Q The nature of the Ponzi scheme you're

16 describing, would that have started from the first

17 day they began all the way to the receivership or

18 when essentially -- can you identify a point in time

19 when a Ponzi begins?

20 A Yes. In this instance I can because of

21 the fact that we went through the example of that

22 first investor and that gentleman put in \$90,000.

23 \$52,000 of that is gone, spent on things, and there

24 is not an investment bought for sometime later.

25 That man received \$600 in profit, what was called a

Page 187

1 profit distribution, you can call it interest. That 187

2 \$600 payment that that gentleman received came from

3 another investor because there was nothing that

4 could have generated that profit. The business did

5 not generate that profit.

6 So, other than some other person having

7 put money in, which they did, of course they did not

8 realize it was to pay the profit of the first

9 investor, he would not have been able to get that

10 first payment. So this one was so clear from the

11 beginning.

12 Q And that was for the whole period of

13 operations?

14 A Yes.

15 MR. MELCHIOR: Your Honor, the State of

16 Florida would move in Exhibit 27; however, we

17 realized inadvertently it printed some -- there

18 was some confidential customer information that

19 was reflected in it that was redacted in some

20 urgency. So we would ask that the court

21 receive 27 subject to the State providing a

22 redacted version along with the other three

23 documents.

24 THE COURT: Okay. That would be 22, 23

25 and 24?

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1 MR. MELCHIOR: Yes, sir. 188

2 THE COURT: All right. Any objection?

3 MR. PATRICK: No objection.

4 THE COURT: All right. That will be

5 included as a conditional receipt.

6 MR. MELCHIOR: I have no other direct.

7 (End of Volume I)

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Page 189

1 IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT 189

2 IN AND FOR PINELLAS COUNTY, FLORIDA

3 CIVIL DIVISION

4 CASE NO.: 2012-001695-CI

5 -----X

6 STATE OF FLORIDA, :

7 OFFICE OF FINANCIAL REGULATION, :

8 Plaintiff, :

9 vs. :

10 TRI-MED CORPORATION, :

11 TRI-MED ASSOCIATES, INC., :

12 JEREMY ANDERSON, :

13 ANTHONY N. NICHOLAS, III, :

14 ERIC AGER, IRWIN AGER, :

15 TERESA SIMMONS BORDINAT, a/k/a : :

16 TERESA SIMMONS and : :

17 ANTHONY N. NICHOLAS, JR., : :

18 Defendants. : :

19 -----X

20 BEFORE: The Honorable Anthony Rondolino

21 Circuit Judge

22 PLACE: 545 1st Avenue North

23 St. Petersburg, Florida

24 DATE: October 22, 2014

25 TIME: 9:00 a.m. to 3:40 p.m.

REPORTED BY: Katherine A. Lyle
Court Reporter

-----X

HEARING

-----X

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 25 * * * * *

1 PROCEEDINGS 192
 2 THE COURT: Do you have any questions for
 3 the witness?
 4 MR. PATRICK: Briefly, your Honor.
 5 CROSS-EXAMINATION
 6 BY MR. PATRICK:
 7 Q Ma'am, would it be correct that up to the
 8 point that this receivership began that the Tri-Med
 9 investors were receiving regular interest payments?
 10 A Yes.
 11 Q You were here for earlier testimony,
 12 correct?
 13 A Yes, sir.
 14 Q At present I believe Mr. Wiand testified
 15 there is almost \$5,000,000 left in the accounts?
 16 A I believe it's approximately 4.6.
 17 Q Okay. If that money is distributed to the
 18 investors, do you have a specific figure or do you
 19 have an opinion as to whether or not that amount
 20 will sufficiently reimburse the majority of the
 21 investors for Tri-Med?
 22 A It will not. It will not even be close.
 23 Q In your review and analysis do you
 24 specifically speak to any investors or review any
 25 investor affidavits?

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 25 * * * * *

1 A I remember reviewing affidavits. Give me 193
 2 one moment because I want to clarify in my mind
 3 whether these were the affidavits of the medical
 4 providers who said they were never providing
 5 service. Yes. I also reviewed, and it's at
 6 Exhibit 5 of my report, the affidavits of a number
 7 of investors. The names are redacted.
 8 Q Since that time, have you had the
 9 opportunity to speak to any of those investors?
 10 A Not so far.
 11 Q Going back to the business model, the
 12 medical receivables, you spoke of that Tri-Med --
 13 are you aware that this kind of purchase amount of
 14 the account receivables, the range of that
 15 discounted account?
 16 A At least as it relates to Florida
 17 Surgical, I believe it's the one that I saw an
 18 agreement, and that was what I mentioned earlier,
 19 the 30 percent and then this was a discounted
 20 amount.
 21 Q And then when the case settled what is
 22 your understanding of the targeted collection rate?
 23 A It was supposed to be somewhere in the
 24 85-percent range. Assuming that Tri-Med, which you
 25 didn't -- but assuming that Tri-Med had invested and

Page 194

1 bought these receivables, that was at least what the 194
 2 contract said was supposed to happen.
 3 Q Okay. You heard testimony from
 4 Mr. Marlowe earlier this morning?
 5 A Yes, sir.
 6 Q Okay. From his testimony the monies were
 7 actually being paid out to the medical providers,
 8 correct?
 9 A Small. Sure. Yes. There were some
 10 monies that went to medical providers.
 11 Q Did you say that the target rate was 85
 12 percent or was it 185 percent on the collection
 13 rate?
 14 A It should have been -- I believe it's 185
 15 percent.
 16 Q In these cases you reviewed and the
 17 settlements you reviewed did it appear that,
 18 according to that business model, Tri-Med was being
 19 successful in collecting that targeted amount and
 20 disbursing and collecting that targeted amount?
 21 A I reviewed just some of them again to try
 22 to understand the flow of the money, and in some
 23 instances I did see that it was in the 70-percent
 24 range, something along those lines.
 25 Q So Tri-Med accomplishing its goals in that

Page 195

1 regard generally? 195
 2 A In the few receivables it bought, I did
 3 see that it had some settlements.
 4 Q In terms of your analysis, did you make
 5 any attempts to speak to anybody at Florida Surgery
 6 Consultants?
 7 A Not thus far. The task at hand initially,
 8 it's not unusual, in a receivership is to first
 9 understand what happened, how much money is there,
 10 what happened with the money, who does the money
 11 belong to, who are the victims, how much did they
 12 put in, that sort of thing. So that's just so that
 13 you know that's the stage that I'm at.
 14 Q As part of your analysis, you didn't
 15 attempt to determine what any of these alleged
 16 victims, these investors, actually wanted in terms
 17 of how they thought there was a plan to recover
 18 their monies.
 19 Did you intend to speak to anybody of
 20 them?
 21 A I'm sorry. I didn't understand your
 22 question.
 23 Q You mentioned that the investors, the
 24 victims and so forth. As part of your analysis, did
 25 you make any attempt to determine what it is that

Page 196

1 they want? 196
 2 A My assumption is that they put money in,
 3 that they expected to get their money back as it was
 4 stated on all the documents and that they expected
 5 to get the profit distribution. So at this point I
 6 am assuming that they wanted what they agreed to in
 7 their contract. That's the assumption I've made so
 8 far.
 9 Q But, in fact, isn't it true that the
 10 majority of the investors from Tri-Med were pleased
 11 with the arrangement, were pleased with the payments
 12 they were getting?
 13 A I don't know if they were pleased. I
 14 don't know if they would be pleased if they knew
 15 that they got the money from the gentleman who's
 16 possibly sitting next to them on the bench. I
 17 assume they did not know what was happening.
 18 THE COURT: Are we talking about what the
 19 investors would be hoping or happy to get now
 20 as opposed to what their contract was? I'm not
 21 really understanding the purpose of the
 22 question for me to understand it.
 23 I like to operate in the word of
 24 hyperbole. What I'm hearing is, is what he's
 25 saying it's like if you come to a robbery trial

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1 and you say well, you know, the guy ran off 197
 2 with your purse and there was \$400. Would you
 3 be happy if you got 200 back. Well, yeah. I'd
 4 be very happy. I mean, what does that have to
 5 do with whether there is a robbery trial or --
 6 see what I mean. I'm not concluding your
 7 clients are guilty of robbery or any of that by
 8 that analogy. I'm just trying to deposit for
 9 you what a purported victim would like to
 10 salvage from the fraud has, you know, nothing
 11 to do with the decision about which the court
 12 is faced with.
 13 MR. PATRICK: I understand, Judge.
 14 THE COURT: Okay.
 15 MR. PATRICK: I'll try to get the timing
 16 more geared prior to the receivership, prior to
 17 the beginning, but I understand.
 18 THE COURT: I mean, was that an attempt to
 19 say although they entered into some sort of a
 20 contract they were willing to accept less than
 21 they had agreed to because that baffles me too.
 22 Do you see what I'm saying?
 23 MR. PATRICK: I do, your Honor.
 24 THE COURT: Okay. I mean, if you can ask
 25 more questions that will straighten it out,

Page 198

1 I'll be glad to hear it, but I don't want to 198
 2 travel down the road to hear some needless
 3 settlement negotiations.
 4 This is not to denigrate the folks out
 5 there that might feel like they have lost all
 6 their money and would be overjoyed if they got
 7 10 percent back. I don't really even know what
 8 the other side feels like, but today is not the
 9 function of the court to determine restitution
 10 or feelings of the parties or anything of that
 11 nature. We're still in the initial stages of
 12 determining very specific matters for this
 13 hearing.
 14 MR. PATRICK: Thank you, your Honor. I
 15 have no further questions.
 16 THE COURT: Okay. I'm a little bit
 17 confused and you're going to have to help me
 18 out. I am not understanding this 85 percent or
 19 185 percent number.
 20 I will tell you what I'm operating under.
 21 I'm operating under the assumption that there
 22 is a medical bill that is outstanding and we'll
 23 call that 100 percent. Okay. That is the
 24 amount of the account receivable.
 25 It may be that this, like any other

Page 199

1 medical bill, would be sold, any other account 199
 2 receivable. Someone is not going to pay you
 3 typically 100-percent value. Somebody who
 4 wants to buy that account receivable might pay,
 5 say, 30 percent on it.
 6 Where does the 185 percent come in; where
 7 is that from?
 8 THE WITNESS: Sure. The example that I
 9 used of the \$10,000.
 10 THE COURT: \$10,000 represents the face
 11 value of the account receivable not discounted.
 12 THE WITNESS: Correct.
 13 THE COURT: Okay.
 14 THE WITNESS: In that particular instance
 15 you would be looking at 30 percent initially.
 16 That's what's being paid to the doctor. Okay.
 17 So they sold a \$10,000 receivable for \$3,000.
 18 THE COURT: So that would actually be
 19 Tri-Med who would be buying it for --
 20 THE WITNESS: 30 percent.
 21 THE COURT: -- 30 percent. And then they
 22 might be selling that account receivable, as it
 23 were, to the customer for a different amount,
 24 or is it the same amount?
 25 THE WITNESS: Well, it's a different

Page 200

1 amount. Okay. What is supposed to happen is 200
 2 that to the extent that there is a lawsuit, a
 3 settlement, and then monies are received from
 4 that -- this is a letter of protection from
 5 that personal injury attorney.
 6 There is a reason we've been referring to
 7 it as 185 percent. Tri-Med is to get 185
 8 percent of what it paid out, 185 percent of the
 9 \$3,000. That's assuming that the case settles,
 10 that the proceeds from it -- that the attorney
 11 does not try to renegotiate down based on
 12 whatever recovery the attorney had in the
 13 lawsuit.
 14 THE COURT: Okay.
 15 THE WITNESS: Makes more sense?
 16 THE COURT: Yeah. I understand. To make
 17 it in much simpler terms of concrete, a \$10,000
 18 outstanding account receivable is purchased for
 19 \$3,000. It's settled for \$6,000, which is a
 20 40-percent reduction from the result of the law
 21 firm, but it's a 200-percent recovery of the
 22 original \$3,000 investment.
 23 THE WITNESS: Correct. In that instance
 24 Tri-Med would end up with approximately \$5,600
 25 to my quick math in my head.

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1 THE COURT: I guess the important thing 201
 2 would be whether there is a difference in the
 3 amount that Tri-Med pays for the account
 4 receivable and the amount the investor pays for
 5 the account receivable.
 6 In other words, if the account receivable
 7 is \$10,000, Tri-Med says oh, we're buying the
 8 account receivable at a discounted rate, you
 9 can get on it for 50 cents on the dollars. If
 10 you pay us \$5,000, we'll pay you interest;
 11 although they have purchased it in my
 12 hypothetical for \$3,000. So they automatically
 13 have a \$2,000 front-end profit built in there
 14 if there is any recovery at all. And there
 15 could be no recovery at all on some of these.
 16 THE WITNESS: Correct.
 17 THE COURT: Okay. All right. You can
 18 stand down.
 19 Thank you.
 20 THE WITNESS: Thank you.
 21 THE COURT: Call your next witness.
 22 MR. MELCHIOR: The Plaintiff would call
 23 [REDACTED]
 24 Thereupon:
 25 [REDACTED]

Page 202

1 was called as a witness, having been duly sworn, was 202
2 examined and testified as follows:
3 DIRECT EXAMINATION
4 BY MR. MELCHIOR:
5 Q Good afternoon.
6 Would you state your name, please.
7 A [REDACTED]
8 Q And where do you reside?
9 A I live in Archer, Florida.
10 Q Archer, Florida.
11 Is that up by Gainesville?
12 A Yes.
13 Q Have you lived in Florida since 2011 at
14 least?
15 A Oh, yes.
16 Q Okay. Have you heard the name "Tri-Med
17 Corporation" before?
18 A No, sir. Not until now.
19 Q Okay. Have you invested in what you later
20 learned to be Tri-Med Corporation?
21 A Yes, sir.
22 Q How much did you invest?
23 A \$60,000.
24 Q \$60,000?
25 A (Indicates affirmatively).

Page 203

1 Q And when did you invest? 203
2 A It was June the 13th.
3 Q Pardon?
4 A June the 13th, 2013.
5 Q Did you make a one-time investment of
6 \$60,000?
7 A Twice.
8 Q Two \$30,000 investments?
9 A Well, no. The first time it was \$25,000
10 and then my husband invested \$15,000.
11 Q \$15,000?
12 A And then the next time it made \$60,000 all
13 together.
14 Q So did your investment roll over, in other
15 words, or did it get paid off?
16 A Well, I was getting the interest on it
17 every month. They automatically put it in my
18 account.
19 Q Okay. How did you come to learn about the
20 investment?
21 A My insurance agent. She had been my agent
22 for several years and I trusted her. I thought it
23 was through the insurance company or I wouldn't have
24 done it. I thought, you know, that you could trust
25 someone she had worked for all those years. I

Page 204

1 thought that was who it was through, and I still 204
2 don't know how she has gone about getting into it.
3 Q Okay. Have you been in the courtroom most
4 of the day today?
5 A Yes, sir.
6 Q Did you hear talk of these medical
7 accounts receivable; did you hear talk of letters of
8 protection; did you hear those terms today?
9 A I've heard everything that was said in
10 here, yes, sir.
11 Q Okay. In connection with your purchase,
12 though, did you ever hear those terms talked about
13 by your insurance agent?
14 A No. I just asked her would it be safe and
15 she assured me it would and then she had someone by
16 the name of Eric call me.
17 Q Eric?
18 A Yeah. And he assured me that it was safe.
19 Q What was your expected return on these
20 monies?
21 A Well, it was -- I can't give you the exact
22 amount right now. I left my papers in the car. It
23 amounted to \$303 a month.
24 Q Where had you had your money before you
25 put it in these --

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1 A It was in the bank and it wasn't drawing 205
2 any interest, so she told me about how much interest
3 I could draw if I would invest it in Tri-Med. So
4 the first time we gave her money. Then she came
5 back the second time in October, I believe it was,
6 the 3rd, and she offered us a higher interest rate
7 if we would invest more money, which we did.
8 Q Did you have a reason to believe it was
9 less safe than your CD, more safe, equally safe as
10 your CD?
11 A No. I thought it was safe because I had
12 known her for a long time and I thought the company
13 she worked for was reliable and I just took it for
14 granted. She didn't say that's who it was, but I
15 just took it for granted it was through her somewhat
16 and that's where she worked.
17 MR. MELCHIOR: Thank you. I don't have
18 any other questions.
19 THE COURT: Any questions for the lady?
20 MR. PATRICK: I don't.
21 THE COURT: All right, ma'am. Thank you.
22 Watch your step standing down. There is a step
23 there.
24 MR. MELCHIOR: The Plaintiff calls [REDACTED]
25 [REDACTED]

Page 206

1 Thereupon: 206
 2 [REDACTED]
 3 was called as a witness, having been duly sworn, was
 4 examined and testified as follows:
 5 DIRECT EXAMINATION
 6 BY MR. MELCHIOR:
 7 Q Good afternoon.
 8 Would you state your name, please.
 9 A [REDACTED]
 10 Q And where do you reside, [REDACTED]?
 11 A Brooksville.
 12 Q Have you lived in Brooksville for a long
 13 time?
 14 A Twenty-six years.
 15 Q Were you there living in Brooksville in
 16 2011 when you learned about an investment that you
 17 later participated in?
 18 A Yes, sir.
 19 Q Okay. Did you ever invest in Tri-Med
 20 Corporation, their monthly income agreements?
 21 A Yes.
 22 Q When did you do that?
 23 A The first time, I think, was in February
 24 of '12.
 25 Q Do you recall how much you invested?

Page 207

1 A I think \$70,000 the first time. 207
 2 Q And how about did you have subsequent
 3 investments?
 4 A Yes, sir.
 5 Q How much today do you have invested in
 6 Tri-Med Corporation?
 7 A \$295,000.
 8 Q And who was the salesperson who dealt with
 9 it who brought this to your attention to begin with;
 10 how did you learn about it?
 11 A I learned about it through the newspaper,
 12 the Tampa Tribune, and then I called the number.
 13 They would pay 8 percent. So I called the number
 14 and they sent Eric Ager out.
 15 THE COURT: Did you say there was an
 16 advertisement?
 17 THE WITNESS: Yeah. In the paper. The
 18 Tampa Tribune.
 19 BY MR. MELCHIOR:
 20 Q Do you recall whether that advertisement
 21 mentioned backed by insurance?
 22 A I don't recall that, but he told me when
 23 he come and talked to me it was backed by insurance.
 24 Q Did you later learn whether that was Eric
 25 Ager?

Page 208

1 A Yes. 208
 2 Q Oh. It is Eric Ager?
 3 A Yes.
 4 Q Did you ever go to their offices, the
 5 Tri-Med offices?
 6 A No, sir.
 7 Q How many times did you personally meet
 8 with Eric Ager?
 9 A I think three.
 10 Q And ultimately you came to invest
 11 \$270,000?
 12 A \$295,000.
 13 Q \$295,000?
 14 A Yes.
 15 Q Were you in the courtroom earlier today?
 16 A Yes, sir.
 17 Q Did you hear this discussion about letters
 18 of protection and medical receivables?
 19 A Yes. I've got those.
 20 Q Pardon me?
 21 A I have those.
 22 Q You have the letters of assignments to
 23 you --
 24 A Yes.
 25 Q -- the purported assignments to you, I

Page 209

1 take it? 209
 2 A Yes.
 3 Q At the time Eric Ager explained this to
 4 you, did he explain to you that you were buying an
 5 income agreement that was to have security provided
 6 by an assignment of a medical account receivable
 7 letter of protection?
 8 A Yes.
 9 Q Okay. He explained that to you?
 10 A Yes. A letter of protection was from the
 11 Bank of America.
 12 Q Okay. How did he describe the risk as to
 13 how risky it was?
 14 A There wasn't no risk to it is the way he
 15 described it.
 16 Q Did you liquidate any CD's to purchase
 17 this?
 18 A Yes. I liquidated all I had.
 19 Q You liquidated --
 20 A All that I had.
 21 Q All the CD's that you had?
 22 A Yes.
 23 MR. MELCHIOR: Thank you.
 24 I have no other questions.
 25 THE COURT: Okay. Do you have any inquiry

Page 210

1 for the witness? 210

2 MR. PATRICK: No, your Honor.

3 THE COURT: I'm looking at what's -- I

4 can't identify the Bates' stamp number on

5 Exhibit 23. It appears to be 00253, I think it

6 is. Maybe it's 353. It purports to be a

7 letter to you, sir, on April 25th, 2012, from

8 Jeremy J. Anderson.

9 It says, "As always your investing funds

10 have been placed in an FDIC insured trust

11 account under the control and direction of

12 Marlowe McNabb, P.A."

13 THE WITNESS: Yes.

14 THE COURT: Did you get the letter saying

15 that for your \$65,000?

16 THE WITNESS: Yes, sir.

17 THE COURT: All right. I don't have any

18 further questions.

19 You can stand down.

20 Thank you.

21 MR. MELCHIOR: The State would call Philip

22 Snyderburn.

23 Thereupon:

24 PHILIP SNYDERBURN,

25 was called as a witness, having been duly sworn, was

Page 211

1 examined and testified as follows: 211

2 DIRECT EXAMINATION

3 BY MR. MELCHIOR:

4 Q Good afternoon.

5 Would you please state your name.

6 A Philip Snyderburn.

7 Q And where do you reside, Mr. Snyderburn?

8 A My office is in Maitland, Florida, which

9 is a suburb of Orlando.

10 Q Are you being called today, if you're

11 aware, as a securities law expert?

12 A Yes, sir.

13 Q Let me show you what's marked as

14 Exhibit 33.

15 Is that your CV and your resume and your

16 background?

17 A Yes, sir. I have a copy of that.

18 MR. MELCHIOR: I have one right in my

19 hand.

20 THE COURT: I've got it.

21 BY MR. MELCHIOR:

22 Q Could you tell us about your educational

23 background?

24 A Yes, sir. I attended Florida State

25 University 1968 to 1972. I received a Bachelor of

Page 212

1 Arts in Political Science. I attended Stetson 212

2 College of Law from '72 to '75. When I graduated

3 from Stetson, I went to work in Tallahassee with the

4 office of the controller as it was known at that

5 time. It's now part of OFR. I worked there as a

6 financial examiner. I worked as an assistant

7 general counsel and also headed up a law enforcement

8 assistance administration grant that was to

9 prosecute securities related for white crime

10 violations within the state of Florida.

11 I then became the director of the Division

12 of Securities. I served in that position for

13 approximately two years. I had a staff of about 48

14 people and we were responsible for registering the

15 various broker dealers throughout the state of

16 Florida enforcing Florida's Blue Sky Statute and

17 also handling registration statements when

18 securities had to be registered.

19 When I left that position in 1980 I went

20 into private practice.

21 THE COURT: It might speed things up if

22 this was admitted. Do you have any objection

23 to the admission of the CV?

24 MR. PATRICK: No, sir.

25 THE COURT: All right. Exhibit 33 is

Page 213

1 received. 213

2 MR. MELCHIOR: May I tender Mr. Snyderburn

3 as a securities law expert?

4 THE COURT: You can proceed.

5 MR. PATRICK: No objection.

6 BY MR. MELCHIOR:

7 Q Mr. Snyderburn, you mentioned Chapter 517.

8 Can you just generally explain the purpose of

9 Chapter 517 to the court.

10 A Yes. As a general rule, what's called a

11 Blue Sky Statute, the Federal Securities Regulation,

12 really doesn't come into play until the great

13 depression. Prior to that states enacted what are

14 called Blue Sky Statutes.

15 The purpose of those statutes was because

16 people were running around selling investments that

17 had no more substance than the blue sky above. The

18 various legislatures concluded that it would be

19 appropriate that when people are offering

20 investments that they bring it through some type of

21 a vetting process, which is the registration

22 process.

23 They also concluded that the people who

24 were selling the investment needed to be registered

25 so that they could be licensed, they could be tested

Page 214

1 and so on. Then, as a side aspect of this 214
 2 regulatory scheme, they also said that the
 3 particular investment would have to be vetted in the
 4 sense of a disclosure document identifying the risk,
 5 the use of proceeds, the personnel that were
 6 involved and so forth.
 7 More importantly, the laws also said
 8 whether it was registered or not registered, you can
 9 have exempt transactions. Not every stock has to be
 10 registered.
 11 If you and I wanted to form a company and
 12 it was just the two of us, issue some shares to you,
 13 shares to me, private transaction, it doesn't have
 14 to be registered. Once we start reaching out to a
 15 lot of people and it becomes what's called a more
 16 public offering, you go through the registration
 17 process.
 18 The hallmark of those transactions is that
 19 no matter what happens you're obligated to tell the
 20 truth. There cannot be any material omissions of
 21 facts, there can't be misrepresentation and
 22 obviously you can't engage in fraud. And then there
 23 are significant penalties both civilly and
 24 criminally within that regulatory structure. The
 25 concept is, it's for the protection of the investing

Page 215

1 public. 215
 2 Q Are there also like federal laws in this
 3 area?
 4 A The federal laws basically -- it's a
 5 paralegal universe. To a certain extent this day
 6 and age now the federal laws handle most of the
 7 registration aspects from a security standpoint and
 8 the states are left now to basically what I call
 9 more enforcement responsibilities. They do regulate
 10 the broker dealer community and investment advisors.
 11 Q Okay. Have you reviewed materials in this
 12 particular case?
 13 A Yes, sir.
 14 Q Would you tell the court what you've
 15 reviewed.
 16 A I don't think the judge wants me to talk
 17 that long. It is a stack -- I have a stack over
 18 here. It's about this high. They're all the
 19 documents that you sent me. Many of the documents
 20 that you have referenced today.
 21 I've been here all day. I've listened to
 22 all of the witnesses that have testified. I've
 23 reviewed Mr. Wiand's two affidavits with all of his
 24 exhibits which included the complaints, the
 25 marketing materials that were involved, the various

Page 216

1 letters that were supposedly sent by the law firms 216
 2 that have been authorized, and then I've also spent,
 3 I believe, an hour or so with you and your
 4 investigator going over those same materials also.
 5 Q Did you hear the financial testimony
 6 today?
 7 A Yes, I did.
 8 Q Okay. Based on all this information, have
 9 you been able to form any opinions regarding
 10 compliance with Chapter 517?
 11 A Well, at the outset, it's my opinion that
 12 the investment opportunity that was being offered to
 13 the various investors, including the two investors I
 14 heard testify today, that clearly that is a security
 15 as that is defined under Chapter 517 and, as
 16 Mr. Wiand had referenced, you could look at it as
 17 being an instrument that's indebtedness, although
 18 it's clearly an investment contract. It's an
 19 investment of money in a common enterprise, profits
 20 to come from the efforts of others.
 21 Q Is that the famous Howey case?
 22 A That's the Howey case, but if you
 23 generally look at any type of a security it has
 24 those characteristics. It's always investment of
 25 money, common enterprise, profits will come from the

Page 217

1 efforts of others. 217
 2 Q Okay.
 3 A In this particular case the profits would
 4 be generated by the efforts of the principals in
 5 Tri-Med by in supposedly handling these medical
 6 receivables so that they in turn could pay these
 7 interest rates back to the investors.
 8 Q In light of the documents that you have
 9 reviewed and in light of what you've learned about
 10 the marketing efforts, have you been able to form an
 11 opinion whether the offering of the Tri-Med monthly
 12 income agreements needed to be registered with the
 13 State of Florida?
 14 A Yes. I saw earlier that that was
 15 introduced through the investigator, which is fairly
 16 common. A search of the divisions or OFR's records
 17 to determine if these instruments had ever been
 18 registered. Those certificates were showing there
 19 had been no registration of the instruments or the
 20 individuals that had sold those.
 21 Under the provisions of Chapter 517,
 22 notably 517.07, securities are required to be
 23 registered. If they're not registered, it's a
 24 violation of that statute unless they're exempt.
 25 I've also reviewed the exemptions that, in

Page 218

1 my opinion, there is no exemption for the sale of 218
 2 these securities.
 3 In addition to that, there were securities
 4 sold by individuals. Section 517.12 requires those
 5 individuals to be registered. Certificates
 6 demonstrated they were not registered. In my
 7 opinion, the persons who were selling or causing the
 8 securities to be sold would have violated that
 9 statute also.
 10 Q Under the customs and standards of the
 11 securities industry, was there full and fair
 12 disclosure of all material facts to the investors?
 13 A No. It was pretty clear today from the
 14 evidence that I heard that the entity and its
 15 principals went to great lengths to fabricate or
 16 create a facade of legitimacy when offering these
 17 investments to the public, and that started when I
 18 heard the Bank of America examiner state that when
 19 he questioned the principals at Tri-Med as to why
 20 they said about this line of credit for \$500,000
 21 that it was a typo, which is candidly quite
 22 laughable.
 23 Additionally, I was very disturbed to find
 24 out that people would actually go in and borrow the
 25 stationary and make representations that lawyers had

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1 opined that these securities transactions were legal 219
 2 when in fact those documents clearly had been
 3 totally falsified.
 4 I was also somewhat astounded to find out
 5 that they were also listing providers who they said
 6 what they were selling these instruments to or these
 7 receivables were being purchased from, and it turns
 8 out that the people on that list or those entities
 9 had nothing to do with the transaction.
 10 They also obviously stretched the truth a
 11 great deal by trying to suggest that these were safe
 12 investments. They're clearly not safe investments.
 13 They seemed to bolster that fact by suggesting that
 14 somehow or another these were insured investments so
 15 that they would be somewhat guaranteed.
 16 Then they sort of parlayed that into
 17 another system of saying and, by the way, these
 18 funds will be held in an attorney's trust account,
 19 which, again, would give someone, an investor, you
 20 know, a sense that something was going to be okay
 21 because an attorney theoretically wouldn't be
 22 handling one of these in their trust account if
 23 there was something wrong with it. So, as I said,
 24 my opinion is that these people went to great
 25 lengths to create this fraud.

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1 Then, at the tail end of what I heard from 220
 2 the forensic accountant, and I've represented people
 3 in Ponzi schemes, I've prosecuted people in Ponzi
 4 schemes, this was a Ponzi scheme, and that's all it
 5 was.
 6 So if it had gone through the registration
 7 process and this had been vetted appropriately, the
 8 disclosures to the two people who I heard testimony
 9 would have said the following:
 10 80 percent of your money is not going to
 11 be invested in medical receivables, it's going into
 12 our pockets. We don't make enough money to pay you
 13 the money back, so we've got to lure new investors
 14 in to pay you back. These are not secured by
 15 anything whatsoever, but it's going to let us live a
 16 very comfortable lifestyle and, by the way, it's
 17 loaded with risk. Do you still want to invest.
 18 At that point with those kind of
 19 disclosures no one would have put ten cents into
 20 this deal.
 21 MR. MELCHIOR: I think that finishes my
 22 line of questions.
 23 THE COURT: Okay. Any cross-examination?
 24 MR. PATRICK: No, your Honor.
 25 THE COURT: All right. Thank you, sir.

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1 You can stand down. 221
 2 THE WITNESS: Yes, sir.
 3 THE COURT: Anything else from the State?
 4 MR. MELCHIOR: No, your Honor. We would
 5 rest in this hearing.
 6 THE COURT: All right. Anything from any
 7 of the Defendants?
 8 Are you going to rest on the Defendant's
 9 previous testimony?
 10 MR. PATRICK: Your Honor, I believe
 11 Tri-Med did have some pending motions today.
 12 Being as I am not in possession of them based
 13 on the situation with Mr. Borja and the
 14 conflict between him and the Defendants, we
 15 would request a time in the future so that
 16 Tri-Med can secure --
 17 THE COURT: Okay. All pending motions
 18 filed by the Defendants, those will be
 19 rescheduled at a further date.
 20 MR. PATRICK: Yes.
 21 THE COURT: Okay.
 22 MR. PATRICK: Your Honor, I believe that
 23 one of the investors had a pending motion. I
 24 don't know what his position on that was, but
 25 I'm not representing him. Mr. McClellon.

Page 222

1 THE COURT: Is there someone that has a 222
 2 motion here that's not even a party to the
 3 case?
 4 MR. MELCHIOR: Your Honor, I can represent
 5 that Mr. McClellon is in the audience here. He
 6 introduced himself to me earlier. He had filed
 7 some type of motion through a bankruptcy
 8 attorney in Tampa named Stanton.
 9 THE COURT: What is it, a motion to
 10 intervene or something?
 11 MR. MELCHIOR: Bob Wall. Mr. Wall has
 12 withdrawn. There is more history to this
 13 circumstance. The movant is pro se now. There
 14 are some depositions that have been set. We're
 15 trying to determine just what his motivation
 16 was because once the attorney backed out it
 17 became questionable whether it's an end run
 18 possibly by the Defendants.
 19 THE COURT: Okay. Well, he's not actually
 20 a party to the case, but I'll hear from him
 21 briefly about what he perceives his position
 22 is. Is he here?
 23 MR. MCCLELLON: Yes, sir.
 24 THE COURT: Okay. Come right up to the
 25 podium, sir.

Page 223

1 MR. MCCLELLON: Up here? 223
 2 THE COURT: Yeah. Right there.
 3 There has been some sort of a motion
 4 filed. I'm not sure if it was actually
 5 scheduled for hearing today.
 6 MR. MCCLELLON: Well, that's the notice I
 7 received that it was scheduled for hearing
 8 today.
 9 THE COURT: Oh. Your motion?
 10 MR. MCCLELLON: Yes, sir.
 11 THE COURT: And what motion is that?
 12 MR. MCCLELLON: Let's see. It was
 13 granting an involuntary bankruptcy petition
 14 which would remove the receiver possibly. I
 15 received a notice that it would be held today.
 16 Also, yesterday I received --
 17 THE COURT: Let me stop you for a minute
 18 because you're not actually a party in this
 19 lawsuit, right?
 20 MR. MCCLELLON: No, sir. I'm not a
 21 Defendant.
 22 THE COURT: So ordinarily what happens --
 23 you know, I've been a judge for 25 years. I
 24 mentioned that earlier. Here in circuit court
 25 what we do is we have people who have disputes

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1 and usually it's brought before the court by 224
 2 way of one of the parties files a lawsuit and
 3 it has to be -- not unlike today, it's a
 4 situation where somebody is claiming that
 5 somebody owes them lots of money. It's got to
 6 be even more than \$15,000, that somebody says
 7 you owe me more than \$15,000 for it to get in
 8 the circuit court, otherwise it's down in
 9 county court or small claims court.
 10 Okay. So almost all of the cases that I
 11 have involve somebody saying gee, that person
 12 or that company owes me money. It could be
 13 because of a contract dispute or a loan like a
 14 mortgage foreclosure or a car accident case.
 15 These are halls of justice where we hear
 16 people's claims for money in almost every
 17 occasion, so I'm very used to that. We have a
 18 whole set of rules that govern that, right?
 19 MR. MCCLELLON: Right.
 20 THE COURT: You understand that.
 21 So it's not just anybody that wants some
 22 money they walk down to the courthouse and say
 23 judge, would you order somebody to pay me some
 24 money. No. We have formal pleadings that have
 25 to be filed. We have filing fees that have to

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1 be paid in order for somebody to raise a 225
 2 pleading.
 3 So what happens is -- I hope I'm not
 4 talking down to you, but I'm speaking to you
 5 and I'm also speaking to some of the other
 6 folks who are here kind of in your same shoes
 7 and have been contacting my office and
 8 contacting the State. They're concerned. I
 9 understand that. I'm not trying to demean it.
 10 So the setting is, citizens make claims
 11 because they believe someone owes them money.
 12 The setting is, you pay a filing fee and then
 13 if you file a document and serve it on the
 14 other side they become a Defendant or
 15 Defendants. Those two people are before the
 16 court for the court to hear about their
 17 disputes as to the appropriateness of the
 18 complaint, preliminarily, discovery and then we
 19 have a whole procedure by which we go through
 20 the question to pay money to whether that
 21 person is entitled to it and whether there
 22 would be a judgment.
 23 Do you follow me?
 24 MR. MCCLELLON: Yes, sir.
 25 THE COURT: Okay. So, in that context, we

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1 only hear from the people who are actually 226
 2 parties to the case. We don't have somebody
 3 else jump up in court during, you know -- let's
 4 just say it's a car accident case and Mr. Smith
 5 claims that Mr. Jones ran into him and caused
 6 \$20,000 of damage to his Mercedes.
 7 We don't sit here in the middle of the
 8 case and we're in front of the jury and another
 9 guy pops up in the audience and says hey, I
 10 would like to talk to the jury too because, you
 11 know what, he also hit my car and he owes me
 12 another \$15,000. See. No. We wouldn't do it
 13 that way.
 14 We might consider it if there was a motion
 15 filed by him, a complaint filed by him to
 16 consolidate those two cases, have them both
 17 heard at the same time, a motion to intervene,
 18 et cetera, et cetera.
 19 So the reason I'm going through this
 20 rather long exposition is, although you have an
 21 interest in the case, you may perhaps even have
 22 the capability of filing some sort of a claim
 23 here in federal court or wherever against
 24 somebody that somebody owes you some money, but
 25 I can't just have people just come in and say

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1 oh, I would like to be heard on the litigation 227
 2 between the State of Florida and the Defendants
 3 over here because I perceive that I have a dog
 4 in the fight.
 5 So, unless you have a motion to intervene
 6 or you have some order from a federal judge or
 7 someone that blocks me from proceeding with the
 8 litigation here, you know, I'm not in a legal
 9 position to have you walk up and just start
 10 expressing your concerns and interest in --
 11 MR. MCCLELLON: Well, yesterday I received
 12 at 12:21 the following:
 13 An amendment. A notice of hearing. Down
 14 there it says -- let me get my spyglass out so
 15 I can read it.
 16 "Receiver's amended motion for authorized
 17 public sale of medical equipment and memorandum
 18 of law. Receiver's motion to compel and
 19 request for sanctions against Robert McClellon,
 20 motion to compel and request for sanctions
 21 against William Parkhurst (phonetic) and
 22 response in opposition to non party, Robert
 23 McClellon motion for protective order."
 24 That was all that happened today.
 25 THE COURT: Are those scheduled for

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1 hearing? 228
 2 MR. MORELLO: Yes, your Honor. If I may
 3 provide some background.
 4 THE COURT: All right.
 5 MR. MORELLO: As your Honor was referring
 6 to before, when Mr. McClellon was represented
 7 by counsel, his counsel filed a motion for
 8 relief from the injunction. That was set by
 9 former counsel for today.
 10 THE COURT: Was Mr. McClellon enjoined?
 11 MR. MORELLO: The order appointing the
 12 receiver enjoins someone from interfering or
 13 taking any action that would interfere with the
 14 receivership and the receivership property. So
 15 that precludes anyone other than the receiver
 16 from filing a bankruptcy petition on behalf of
 17 the receivership entities.
 18 THE COURT: On behalf of the entities.
 19 MR. MORELLO: That's correct.
 20 So that was set by Mr. Wall, former
 21 counsel for Mr. McClellon, for today.
 22 We understood that the true people behind
 23 the motion and the efforts to try to divest the
 24 court and the receiver of the power of the
 25 entities in place entities in bankruptcy were

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1 some of the Defendants, so we sought to take 229
 2 the deposition of Mr. McClellon and also of
 3 Mr. Parkhurst who the investors received a
 4 letter with Mr. McClellon's name on it.
 5 It's our understanding it was sent out
 6 probably by Mr. Anderson or one of the other
 7 Defendants and the investors were told that
 8 bankruptcy would be a fantastic thing for them
 9 and that Mr. Parkhurst would take the company
 10 in bankruptcy and reorganize it and run it and
 11 try to make money for the investors.
 12 So we noticed the depositions of
 13 Mr. McClellon and Mr. Parkhurst and neither of
 14 them showed.
 15 THE COURT: Sir, I guess you're acting as
 16 your own lawyer now.
 17 MR. MCCLELLON: Yeah.
 18 THE COURT: I welcome people who want to
 19 try and represent themselves. It's not quite
 20 the same as being your own doctor and doing
 21 your own appendectomy, but sometimes the
 22 results can be about as disastrous.
 23 We don't have a separate set of rules for
 24 people who have never read the Rules of Civil
 25 Procedure. We don't have a different evidence

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1 code, so when you come into court you're 230
 2 welcome to do so, and some people are forced
 3 because they don't have the money to hire
 4 anybody, but I just want you to understand all
 5 the rules of evidence that apply to these guys
 6 with suits on and have bar cards apply to you.
 7 So, if you're representing yourself, you're
 8 doing so at your own risk.
 9 I perceive from what I've heard in this
 10 case that the State of Florida has taken up the
 11 cause of citizens who they believe are harmed
 12 by the activities of the Defendants. I haven't
 13 made a determination in any document today that
 14 that's the case, but I'm just telling you it
 15 looked like the State of Florida is doing this
 16 to protect certain citizens.
 17 It doesn't look like the citizens,
 18 including yourself, have done much to go out
 19 and avail themselves of a legal way to get
 20 their money back. Okay. Maybe there was
 21 something that you could have done
 22 individually.
 23 This goes back to what I said before.
 24 People have claims all the time. I want my
 25 money back from somebody. You can call them on

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1 the phone. If they give it back to you, good. 231
 2 If that doesn't happen, you may have to hire a
 3 lawyer or file a lawsuit and maybe have the
 4 court enter an order, but right now you've got
 5 a bunch of lawyers who are attempting to do
 6 something with regard to obtaining the funds,
 7 and I think the ultimate question is the State
 8 of Florida is not going to be able to take all
 9 this money and use it for the State of Florida.
 10 Am I correct?
 11 MR. MELCHIOR: Yes, sir.
 12 THE COURT: Is there going to be some
 13 attempt to marshal the assets through the
 14 receiver and pay the recoverable assets if
 15 you're successful in your state claim to the
 16 victims, it's not the general forum; is that
 17 right?
 18 MR. MELCHIOR: Yes, sir.
 19 THE COURT: Okay. I would suggest --
 20 there appears to be some confusion about your
 21 role. They thought that maybe somebody was
 22 putting you up to something here and it might
 23 have even been somebody using your name in
 24 order to steer this case in a little bit
 25 different direction, get it over to the

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1 bankruptcy court or something and take it out 232
 2 of the purview of the receiver.
 3 So I don't think we're going to take up
 4 any of the motions today that the Plaintiff has
 5 directed to you. Apparently they were seeking
 6 to have the court do something with regard to
 7 you, but I think what they would like to do is
 8 talk with you about the circumstances of what
 9 you would like to have occur.
 10 Am I correct?
 11 MR. MORELLO: Absolutely, your Honor.
 12 THE COURT: They said they wanted to
 13 depose you I think as a precursor to that. Do
 14 you know what a deposition is? That's where
 15 you're sworn to tell the truth and whatnot.
 16 You need to have a deposition before you even
 17 chat with him about --
 18 MR. MORELLO: Well, we're happy to have
 19 discussions off the record. We found out about
 20 this a week before today's hearing, so we had
 21 to make sure --
 22 THE COURT: Well, they do what lawyers do,
 23 fire out motions and say the court's going to
 24 do this and drag you into court and everything.
 25 Probably the easier thing to do is, they

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1 seem to be willing to talk with you about your 233
 2 concerns. They're already sort of representing
 3 you, your interest, because they're proceeding
 4 in this case for the interest of those who have
 5 had their money taken away, which you say
 6 you're one of those people.
 7 MR. MCCLELLON: Yes, sir.
 8 THE COURT: Do you have an objection to
 9 not hearing your motions today, putting this
 10 off and maybe we'll hear them later if need be
 11 and in the meantime you can avail yourself of
 12 talking to the lawyers that are actually
 13 working on this case that are here in court,
 14 you've seen they put quite a bit of effort into
 15 it, or do you want to just go forward today and
 16 make your legal argument?
 17 MR. MCCLELLON: That's fine.
 18 THE COURT: Okay. We're going to table
 19 all those. They're not dismissed. We'll just
 20 table those. If you want to come forward later
 21 if you're unsatisfied with your efforts to
 22 communicate with the attorneys for the State,
 23 think they're not acting on your behalf, you
 24 know, that's fine. Then we'll deal with it
 25 step by step in a legal fashion.

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1 MR. MCCLELLON: Thank you, sir. 234
 2 THE COURT: Okay.
 3 MR. MCCLELLON: Thank you for your time.
 4 THE COURT: I might say this as to the
 5 other folks. There was a comment made from the
 6 evidence earlier like well, what did investor
 7 so and so -- was investor so and so happy with
 8 it. We just can't pick out one or two or ten
 9 people out of all the investors and say gee,
 10 does this resolution meet your needs and decide
 11 the case. That's not how things are done in
 12 court. We have to do it in a step-by-step
 13 process with deference to the Plaintiff and
 14 with deference to the Defense. They have
 15 rights here too.
 16 So we'll try and do it in an orderly
 17 fashion so that we only have to do it one time
 18 and we don't have to have the appellate court
 19 reverse us and say you did it all wrong, you
 20 got to do it all over again.
 21 So I understand the Plaintiff has rested,
 22 the defense has rested, they're not wishing to
 23 call any witnesses or present any further
 24 evidence.
 25 What is the Plaintiff's request at this

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1 time with regard to the evidence, or do you 235
 2 want to go on to additional motions before we
 3 resolve this?
 4 MR. MELCHIOR: Well, the Plaintiff
 5 requests that you find there is no basis for
 6 the motion to dissolve, issue an order saying
 7 the State has met its burden, which was to
 8 establish a prima facie case. I'd be happy to
 9 draft an order kind of summarizing the evidence
 10 if the court would like that.
 11 THE COURT: Although there is a lot of
 12 evidence and the court hasn't had an
 13 opportunity to read every page of the evidence,
 14 let me hear from the defense at this stage.
 15 MR. PATRICK: Your Honor, obviously with
 16 Mr. Borja's situation today Tri-Med and the
 17 rest of the defense have been greatly
 18 prejudiced. As you know, Mr. Borja did not
 19 make one objection. I notice the court heard
 20 much hearsay evidence without any objections.
 21 I believe, based upon that, all the Defendants
 22 were prejudiced even at the this --
 23 THE COURT: Wait a minute. Let's go over
 24 the Defendants who were prejudiced by
 25 testifying. How did they testify to every

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1 single question other than what their name was. 236
 2 Were you here for that; were you here when the
 3 Defendants took the Fifth so that they wouldn't
 4 incriminate themselves in a criminal
 5 proceeding?
 6 MR. PATRICK: Yes.
 7 THE COURT: Now, I know that that is not
 8 tantamount to the entry of a default judgment
 9 or admission based upon those, but there is
 10 certainly a presumption that attaches.
 11 With reference to the concerns that you
 12 say your clients have about the introduction of
 13 hearsay evidence. Let's go over that because
 14 there were some objections to hearsay. As a
 15 matter of fact, if you were here in the initial
 16 stages, the court expressed some concerns about
 17 the evidence and on its own looked for the
 18 foundation with regard to the introduction of
 19 the evidence.
 20 The primary evidence in this case that's
 21 actually used and considered by the experts and
 22 is of considerable importance to the court is
 23 evidence gathered from your clients and appear
 24 to be statements against their interest. So
 25 these are statements of a party opponent which

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1 are admissible under the hearsay rule. There 237
 2 are other documents here which are not offered
 3 for the truth of the matter asserted.
 4 So the fact that there are letters
 5 included -- I guess the best example would be a
 6 letter included saying you're -- I think I just
 7 referenced it. The letter from Tri-Med to
 8 [REDACTED] says he received -- this is a
 9 statement of a party opponent, but more
 10 importantly it's not even hearsay. Although
 11 it's an out-of-court statement, it's not
 12 offered for the truth of the matter asserted.
 13 It's actually offered to show that there was
 14 fraud. So it's not offered to show that there
 15 was indeed FDIC insured accounts. So that's
 16 not hearsay.
 17 So, I mean, these are just some examples.
 18 If you want to focus specifically on evidence
 19 that you say the court should not consider at
 20 this stage, even though likely the court can
 21 consider evidence in support of an injunction
 22 that includes hearsay, I'm glad to hear you on
 23 that. Let's perfect our record.
 24 MR. PATRICK: All I'm saying is the State
 25 has taken the majority of the day with their

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1 motions. The Defendants do have rebuttal 238
 2 evidence, rebuttal witnesses, to present to the
 3 court in opposition.
 4 THE COURT: This would be a good time for
 5 it. We're set for hearing, right?
 6 MR. PATRICK: Well, Judge, we had actually
 7 thought Mr. Borja was in a position to do that.
 8 Obviously based upon the --
 9 THE COURT: Maybe you would like to make a
 10 proffer who these witnesses are and what they
 11 would be saying and the influence it would have
 12 on the court. What would that be? Fortunately
 13 you're not handicapped by not knowing about the
 14 whole thing because what has been indicated
 15 here is you're pretty familiar with the
 16 circumstances.
 17 MR. PATRICK: Your Honor, I believe
 18 Mr. Parkhurst would be a witness that we would
 19 call to testify.
 20 THE COURT: Who is Mr. Parkhurst?
 21 MR. PATRICK: I'm sorry?
 22 THE COURT: Who is Mr. Parkhurst?
 23 MR. PATRICK: He's the gentleman you heard
 24 of, Mr. William Parkhurst, that the State just
 25 spoke of regarding -- there was a potential

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1 plan for him to come in and try to do a 239
 2 reorganization if the court were going to allow
 3 that.
 4 THE COURT: Why in the world would the
 5 court allow a reorganization of an entity that
 6 was designed to steal people's money? I mean,
 7 if the evidence as accepted is un rebutted,
 8 Mr. Parkhurst coming in and saying what we
 9 would like to do is come in and get a chance to
 10 salvage something out of this, that doesn't
 11 really make any sense in terms of whether the
 12 relief requested today would be granted. Maybe
 13 someone could come up with a plan that would
 14 viably create some income from the assets that
 15 are left behind if they weren't returned to the
 16 folks who actually paid money.
 17 Is there another witness that you'd say
 18 well, we would plan on doing this, but we were
 19 just unprepared to bring him in today?
 20 MR. PATRICK: Judge, I don't know what
 21 Mr. Borja had planned before coming in here
 22 today. Obviously when he came in he felt he
 23 was fired or at the very least terminated. I
 24 have not even seen any of these documents until
 25 I made my limited appearance, so I'm really not

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1 in a position to respond. I do apologize. 240
 2 THE COURT: No. I'm not trying to beat
 3 you up. I'm trying to determine what your
 4 reasonable position is. I understand the shoes
 5 that you're standing in; however, from a casual
 6 observer here, I must note it did not seem
 7 entirely unreasonable for the Defendants to
 8 assert the Fifth.
 9 I'm going to be very candid with you. I
 10 actually considered before the Defendant said
 11 anything when he was coming up -- the very
 12 first witness I considered whether I ought to
 13 advise him of his Fifth Amendment right, but
 14 since he was represented by counsel I assumed
 15 that he had been advised and apparently he had.
 16 The whole series of introduction of
 17 evidence and testimony in this case is highly
 18 suggestive of numerous criminal offenses that
 19 they might be fearful of from tax evasion to
 20 securities violations to fraud and theft, et
 21 cetera, et cetera.
 22 So it doesn't seem unreasonable that he
 23 sat there, Mr. Borja sat there, without
 24 interposing objections or asking his clients
 25 some questions or presenting some further

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1 witnesses. 241
 2 I also point out it seems as though there
 3 was -- wasn't there another witness who
 4 testified who was not represented by Mr. Borja
 5 who took the Fifth?
 6 MR. KAGAN: Yes, your Honor.
 7 THE COURT: So here we have someone who is
 8 not complaining about their lawyer who has a
 9 lawyer sitting here and that lawyer did exactly
 10 the same things in today's hearing as Mr. Borja
 11 did.
 12 So the record is not completely
 13 dispositive of the fact that Mr. Borja was
 14 acting contrary to the best interest of his
 15 clients under all of the circumstances.
 16 I guess, you know, you might have another
 17 strategic plan for your clients. That's why
 18 I'm trying to determine what witnesses would we
 19 be hearing that would dispute the -- oh, these
 20 are all records that were from somebody else,
 21 you know, they weren't really from Tri-Med.
 22 Just conjure up something for me in a
 23 world of hypothetical possibilities. What
 24 could be presented that would undermine the
 25 proofs presented here?

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1 MR. PATRICK: Judge, all we're asking is 242
 2 for that opportunity to do that before you once
 3 Tri-Med secures new counsel.
 4 THE COURT: Okay. Well, see, that is
 5 tantamount to obtaining a postponement of the
 6 hearing that has been scheduled for a long
 7 time. I understand your position. I
 8 understand why you're doing it. That's why the
 9 court denied the immediate withdrawal of
 10 Mr. Borja. We cannot do that to the detriment
 11 of the other side in these circumstances, but
 12 you've made whatever record you feel is
 13 necessary.
 14 I'm going to grant the relief requested by
 15 the Plaintiff. The evidence is clear and
 16 convincing and reaches a very high level that
 17 this was a fraudulent scheme to steal people's
 18 money so that the court is confident in its
 19 ruling today.
 20 What else do we need to address? There
 21 are many, many motions and very little time.
 22 MR. MORELLO: I think the only pending --
 23 with the Plaintiffs having agreed not to hear
 24 their pending motions, the receiver has two
 25 motions. One is a motion for the award of fees

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1 for the initial period from March 5th, 2014, 243
 2 through March 31st, 2014, which is the initial
 3 month of the receivership. This is a motion
 4 that was filed back when your Honor decided to
 5 defer ruling on that motion.
 6 THE COURT: We could have dealt with it
 7 then, but in an abundance of caution the court
 8 postponed it and now we've heard additional
 9 evidence.
 10 Does anyone wish to be heard on that?
 11 MR. MELCHIOR: We have reviewed the fees
 12 and we have no objection.
 13 THE COURT: Okay. Do you wish to present
 14 any evidence or testimony in support of that?
 15 MR. MORELLO: Your Honor, the testimony
 16 earlier of Mr. Wiand setting forth his
 17 qualifications, setting forth all the efforts
 18 taken by the receivership and the results that
 19 have been achieved today plays a clear record
 20 for the court. Receivers are entitled to
 21 compensation once they're appointed.
 22 THE COURT: Absolutely.
 23 MR. MORELLO: The only thing left to
 24 determine is a reasonable amount of
 25 compensation.

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1 We have submitted as Exhibit M to our 244
 2 motion the affidavit of Mr. Schifino who
 3 actually was on the stand earlier today who
 4 testified in his affidavit that all fees that
 5 have been requested are reasonable for the
 6 efforts that have been taken and that the rates
 7 charged by the receiver as professionals are
 8 actually below --
 9 THE COURT: I've reviewed that, and I
 10 think it's appropriate. I'm going to grant
 11 that relief; however, I'm going to say this.
 12 I'm very sensitive to the concerns of those who
 13 are called victims of the demonstrated
 14 fraudulent conduct. It's certainly apparent
 15 that there is not a likelihood that they're
 16 going to receive much in the way of funds.
 17 I'll be very, very candid that the
 18 testimony of the CPA was weighted very, very
 19 heavily in favor of the benefit of the doubt
 20 regarding the value of accounts receivable. It
 21 may turn out that the estimates of money that
 22 is available to be disbursed is very much
 23 higher than it ends up being.
 24 I would like to make sure if there is an
 25 ultimate decision in favor of the State and a

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1 disbursal of assets, and I say that because 245
 2 there has not been yet at this time an ultimate
 3 determination of that and I'm not here to
 4 prejudge what the evidence might be, there may
 5 be something that comes up from the other side
 6 that shows a different circumstance, different
 7 light on this case, but if we do get down the
 8 road and I'm looking down the road to what
 9 could possibly happen, I would like to minimize
 10 the expenses to these folks.
 11 So I note that at the very beginning at
 12 the outset of this case there was an
 13 announcement that several of the Defendants
 14 entered into an agreement with the Plaintiff.
 15 It may very well be with new counsel on this
 16 case that there are additional agreements that
 17 can be reached in this civil action that deals
 18 with the claims of the State and perhaps the
 19 ultimate disposition of the assets which have
 20 been frozen and might be recovered.
 21 With that in mind, with that as a
 22 possibility, we could certainly hope to lessen
 23 the additional expenses of further
 24 investigative costs and whatnot with our
 25 receiver and his team of experts.

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1 So, without actually ordering all work 246
 2 stopped, I'm not going to do that because you
 3 have to proceed diligently on behalf of the
 4 State of Florida and the receiver has to
 5 marshal the assets, but I would like to keep
 6 that in mind and encourage the State and the
 7 defense to get together without undue delay
 8 because every day that goes by there are
 9 essentially going to be less and less funds at
 10 the end of the day.
 11 I'm hoping, counsel, that you will be able
 12 to consult with your clients. I don't know.
 13 Maybe the State has some ability to negotiate
 14 with your clients in a fashion similar to those
 15 Defendants that were already resolved. I see
 16 that as an avenue for saving and possibly
 17 securing the best possible disposition under
 18 these terrible circumstances if indeed the
 19 folks are going to be getting money back in the
 20 future.
 21 Do you understand what I'm saying?
 22 MR. MORELLO: Absolutely, your Honor.
 23 THE COURT: Do you agree to that counsel,
 24 to work towards that possibility? I'm not
 25 forcing you to mediation at this point, but

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1 there really is not an advantage if ultimately 247
 2 at the end of the day your clients are going to
 3 have some responsibility visited upon them.
 4 Their responsibility would certainly be
 5 lessened not only by the actual reduction of a
 6 loss, the increase of the amount recovered for
 7 them, but by their cooperation it might be
 8 something that might be considered by the court
 9 in the future if and when there are other
 10 proceedings, whether they be criminal or civil
 11 proceedings. So I think that other Defendants
 12 have taken a wise course in that regard. So
 13 I'm going to encourage that. I'm going to
 14 reduce the expenses on this side.
 15 Now, there is a secondary benefit that it
 16 reduces my workload if you all resolve it.
 17 That's not of a great concern to me.
 18 Is there something else?
 19 MR. MORELLO: There is one other
 20 administrative housekeeping matter related to
 21 the receiver asking permission to sell a piece
 22 of equipment. Mr. Lamont will help me with the
 23 information.
 24 MR. LAMONT: Michael Lamont on behalf of
 25 the receiver.

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1 We filed a motion on behalf of the 248
 2 receiver to be able to authorize a public sale
 3 of medical equipment. The principals of
 4 Tri-Med here used approximately \$79,000 in
 5 investor money. They purchased a medical
 6 imaging device which is known as a C arm. They
 7 took that device and gave it to Wellness Works,
 8 which is one of the clinics that we heard about
 9 today, that is in bankruptcy.
 10 So what the receiver here is seeking is
 11 the authority to be able to sell that equipment
 12 of Wellness Works who is in bankruptcy,
 13 knowledges that it's ours and that we own it.
 14 So we would like to --
 15 THE COURT: Okay. You're representing
 16 Wellness Works is not staking a claim against
 17 it and there is no bankruptcy hold on that
 18 property as being a potential asset of the
 19 estate, the bankruptcy estate of Wellness?
 20 MR. LAMONT: That's correct, your Honor,
 21 because it's owned by Tri-Med, not as to a
 22 bankruptcy. That's already been resolved
 23 through bankruptcy. We're here just to seek
 24 approval to be able to sell that asset.
 25 THE COURT: Okay. Not to liquidate the

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1 funds, but to convert the asset to cash? 249
 2 MR. LAMONT: That's correct.
 3 THE COURT: All right.
 4 MR. LAMONT: We have certain procedures.
 5 We've gotten some estimates. Unfortunately it
 6 was purchased for \$79,000. It is significantly
 7 depreciated. It's kind of like a car.
 8 THE COURT: To be a commercially
 9 reasonable sale. That's authorized.
 10 MR. LAMONT: Thank you, your Honor.
 11 THE COURT: Is there any objection to
 12 that? I don't know what you could possibly
 13 object to. Tri-Med is really not in the
 14 business of scanning or using medical
 15 equipment, so it would seem at some point they
 16 would want to convert that to cash anyway and
 17 the longer it sits there in this -- usually
 18 that's not an appreciating asset.
 19 MR. LAMONT: No. It's depreciating every
 20 day.
 21 THE COURT: So what's the Defense's
 22 position on that; is it okay to sell it and
 23 preserve those assets perhaps ultimately for
 24 the use of --
 25 MR. PATRICK: Yes, your Honor. We have no

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1 objection. 250
 2 THE COURT: Okay.
 3 MR. LAMONT: Thank you, your Honor.
 4 MR. WIAND: Your Honor, can I ask you a
 5 question?
 6 THE COURT: Yes, sir.
 7 MR. WIAND: As we're proceeding, I want
 8 you to understand that it is my procedure to
 9 try to make this as expeditious and as
 10 inexpensive as possible, and I do a lot of
 11 things in order to do that.
 12 One of things that is coming on before me
 13 now is some of these receivables are starting
 14 to come in. Lawyers are calling up and wanting
 15 to negotiate them. I'm getting situations
 16 where a lawyer will say, you know, the
 17 receivable is \$30,000, I got a settlement of
 18 \$40,000 and I've got to pay the lawyer and
 19 there is other medical providers and
 20 everything, so we would like you to accept
 21 6,000 bucks.
 22 What my concern is, is that these things,
 23 I think, will start happening more often and I
 24 would like to figure out how the court would
 25 like me to do that. I mean, it seems to me to

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1 authority to use your good judgment in that 252
 2 regard, understanding that your position is a
 3 little bit different with regard to -- you have
 4 at least in some of these cases a letter of
 5 protection.
 6 If there is a medical provider that
 7 doesn't have a letter of protection and there
 8 is a medical provider that has a letter of
 9 production, the lawyer is on the hook if the
 10 medical provider is not paid. That's what that
 11 is. That's an attorney contract, which the
 12 attorney is on the hook to pay that amount out
 13 of the recovery. So govern yourself
 14 accordingly, I guess.
 15 MR. WIAND: Well, I've been real stiff on
 16 this with these people.
 17 THE COURT: Okay.
 18 MR. WIAND: I'm finding out that this
 19 business is one where these folks pay
 20 20/30 percent for the receivable and they
 21 anticipate they're going to get back 45 or
 22 60 percent off of the face amount of the
 23 receivable.
 24 THE COURT: It's possible they could get
 25 100 percent.

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1 be a significant waste of time every time I do 251
 2 this to send in a motion for you on a UMC
 3 calendar or something of that nature.
 4 Would it be acceptable if we would propose
 5 some range of authority for me to resolve
 6 those?
 7 THE COURT: Let me just suggest to you
 8 that if indeed there is a letter of protection,
 9 that means that the lawyer has promised the
 10 medical provider for whatever promises the
 11 medical provider has made that the payment of
 12 their medical bills will be made from the
 13 recovery in the case.
 14 So it's a little bit of a conflict to come
 15 in and then attempt to have the medical
 16 provider reduce their bill based upon the fact
 17 other than a pro rata reduction.
 18 If, for example, there is \$100,000 of
 19 outstanding medical bills that have to be paid
 20 and recovery in the case is \$40,000 after fees
 21 and expenses, then there is no reason, I would
 22 think, for the receiver to approve a reduction
 23 less than a pro rata 40-percent reduction.
 24 MR. WIAND: Right.
 25 THE COURT: So I think you have full

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1 MR. WIAND: I've done that. I've been 253
 2 doing good. I mean, I'm working hard at it.
 3 THE COURT: My intent is not to chastise
 4 you or praise you, either one, and it's
 5 certainly not to give legal advice regarding
 6 that. It's just simply to express to you that
 7 I do think you have to use your best judgment
 8 in that regard; however, I think that you may
 9 be in a different position compared to other
 10 medical providers that these individual lawyers
 11 are asking you about with regard to splitting
 12 up the money since you have a letter of
 13 protection from a lawyer.
 14 I don't want to have you file a motion to
 15 do a determination in every circuit court case
 16 about that because that will just be more and
 17 more expensive, more legal fees.
 18 MR. WIAND: That was my concern.
 19 THE COURT: There are diminishing returns
 20 that are associated with that. So you have all
 21 the authority the court has already given you
 22 to use your judgment, which the court is
 23 relying upon to recover the maximum amount
 24 that's reasonably available. All right?
 25 MR. WIAND: Very good. Thank you, sir.

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1 THE COURT: Okay. 254
 2 MR. MELCHIOR: One housekeeping matter. I
 3 request that I have until Friday to get back
 4 over here with the redacted versions of those
 5 four documents, four exhibits.
 6 THE COURT: Sure. I was giving you 10
 7 days. That's what you originally asked for.
 8 MR. MELCHIOR: Okay.
 9 THE COURT: There is no need to rush. You
 10 can actually take these. I've got them. You
 11 can mark those out.
 12 We hear an awful lot about a letter of
 13 protection in our automobile accident cases,
 14 and I can tell you from experience in trying
 15 close to 200 civil jury trials, probably
 16 40 percent of which are automobile accident
 17 cases, the vast majority of automobile accident
 18 cases that go to trial result in what is
 19 essentially a defense verdict.
 20 Most of those cases I hear testimony that
 21 there is a letter of protection and that the
 22 doctor who is on the witness stand has treated
 23 the patient and sometimes rendered services
 24 that are ridiculously expensive because they're
 25 treating on a letter of production, in other

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1 words the services of a regular doctor was 255
 2 being paid by an insurance company or paid by
 3 cash.
 4 It would be \$3,000 for a procedure and a
 5 doctor who is performing services on the basis
 6 of a letter of protection might charge \$50,000
 7 for those procedures, and the reason is that
 8 they know that if the end of the day comes if
 9 they have been treating a patient who doesn't
 10 have insurance and doesn't have money to pay
 11 them in hopes that they will get paid out of
 12 the verdict and the verdict is zero, the doctor
 13 is not going to get anything out of the
 14 verdict.
 15 I've never actually heard a doctor testify
 16 that they have collected any money from any
 17 patients who continue to owe them money after
 18 the patient has lost their lawsuit.
 19 So that's a long and drawn out way of
 20 saying letters of protection are often issued
 21 in cases where the party owing the money to the
 22 physician has no insurance and no capability of
 23 paying it, so the outcome rests completely and
 24 totally on the jury verdict.
 25 The only money that can be asked for in

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1 front of a jury are the actual charges. We all 256
 2 know how the system operates, too. So, if
 3 there is a verdict from a jury of \$100,000 just
 4 for medical bills and the lawyer takes half of
 5 that as his fee, there is not enough money to
 6 pay half of the medical bills, much less leave
 7 anything for the client.
 8 So, having said all of that, this is
 9 simply to acknowledge that the value of these
 10 accounts receivable even with letters of
 11 protection, may be more so with letters of
 12 protection, is extremely speculative.
 13 Thank you all for a well presented and
 14 very unusual circumstance. I'll remain
 15 available for further hearings on this case.
 16 Let's try and move this case without undue
 17 delay.
 18 Court is in recess.
 19 THE BAILIFF: Court is adjourned.
 20 (Whereupon, the hearing was concluded.)
 21
 22
 23
 24
 25 * * * * *

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1 CERTIFICATE OF REPORTER 257
 2 STATE OF FLORIDA)
 3 COUNTY OF PINELLAS)
 4 I, KATHERINE A. LYLE, Deputy Official Court
 5 Reporter, in and for the Sixth Judicial
 6 Circuit, State of Florida.
 7 DO HEREBY CERTIFY that the foregoing
 8 proceedings were had at the time and place set
 9 forth in the caption thereof; that I was
 10 authorized to and did stenographically report
 11 the said proceedings and that the foregoing
 12 pages, numbered 1 through 257, inclusive, is a
 13 true and correct transcription of said
 14 stenographic report.
 15 IN WITNESS WHEREOF, I have hereunto affixed my
 16 official signature and seal of office this 3rd
 17 day of November, 2014, at Clearwater, Pinellas
 18 County, Florida.
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 23
 24
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 KATHERINE A. LYLE
 Court Reporter