

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:12-cv-00080-CEJ
)	
BURTON DOUGLAS MORRISS, et al.,)	
)	
Defendants, and)	
)	
MORRISS HOLDINGS, LLC,)	
)	
Relief Defendant.)	

**SUPPLEMENT TO RECEIVER’S MEMORANDUM IN OPPOSITION TO
DEFENDANT BURTON DOUGLAS MORRISS’ MOTION FOR CONFIRMATION
THAT DEFENDANT MORRISS IS ENTITLED TO ADVANCEMENT OF
DEFENSE EXPENSES UNDER INSURANCE POLICY NOTWITHSTANDING
ORDER APPOINTING RECEIVER OR ASSET FREEZE ORDER**

INTRODUCTION

Defendant B. Douglas Morriss (“Morriss”) seeks this Court’s approval to use the proceeds of Acartha Group LLC’s insurance policy on his defense costs, reducing the \$3 million limit that would otherwise remain available to satisfy claims. The Receiver opposed Morriss’ motion. This filing supplements the Receiver’s previously filed memorandum based on a Rule 2004 Examination conducted on March 28, 2012 in the course of Morriss’ Chapter 7 bankruptcy proceedings. Morriss invoked his Fifth Amendment right against self-incrimination when refusing to answer a variety of questions, including those pertaining to insurance. The Court should draw adverse inferences against Morriss with respect to the arguments raised in the pending motion. Those inferences bolster the Receiver’s position and undercut Morriss’ request.

ARGUMENT

1. The Rule 2004 Examination

The motion and memorandum filed on behalf of Morris assume as correct a variety of facts relating to Morriss' entitlement to use policy proceeds for his defense costs without factual support. Morriss' filings also suggest that this Court should not exercise its equitable power and substantial discretion to treat the policy proceeds as an asset of the Receivership or subject to the Freeze Order because Morriss has not been judicially determined to have acted wrongfully.

On March 28, 2012, the parties in Morriss' Chapter 7 bankruptcy proceeding, *In Re Burton Douglas Morriss*, United States Bankruptcy Court, Eastern District of Missouri, Case No. 12-40164-659, conducted an under oath, Rule 2004 Examination of Morriss. As with his response to this Court's order to provide a sworn accounting, Morriss refused to answer any of the questions based on his invocation of the Fifth Amendment right against self-incrimination. A copy of the transcript is attached as Exhibit 1 hereto and incorporated by reference.

2. The Court Should Draw Adverse Inferences From Morriss' Refusal to Answer

In *Baxter v. Palmigiano*, 425 U.S. 308, 318-20, S.Ct. 1551, 1558-59, 47 L.Ed.2d 810 (1976), the United States Supreme Court held that an adverse inference may be drawn in a civil proceeding from a litigant's refusal to testify by reliance on the Fifth Amendment privilege. The Eighth Circuit has consistently followed the approach of drawing adverse inferences against a party to a civil cause that relies on Fifth Amendment silence. *E.g.*, *Koester v. American Republic Investments, Inc.* 11 F.3d 818, 823-24 (8th Cir. 1994); *Pagel, Inv. v. Securities and Exchange Commission*, 803 F.2d 942, 946-47 (8th Cir. 1986) (although silence alone cannot support an adverse determination, the fifth amendment "does not preclude the [negative] inference where the privilege is claimed by a party to a civil cause."); *Rosebud Sioux Tribe v. A & P Steel, Inc.*,

733 F.2d 509, 521-22 (8th Cir. 1984), *cert. denied*, 469 U.S. 1072, 105 S.Ct. 565, 83 L.Ed.2d 506 (1984).

3. Adverse Inferences

Adverse inferences should be drawn from Morriss' reliance on the Fifth Amendment in refusing to answer the questions presented during his Rule 2004 examination. The questions and Morriss' responses (or lack thereof) relating directly to insurance are:

Q. Sir, I'm going to ask you some questions related to directors and officers insurance policy. First, for the record, are you aware of the existence of a directors and officers liability policy numbered 8207-6676 that Acartha Group, LLC purchased from Federal Insurance Company?

A. I decline to answer that question on the basis of my Fifth Amendment privilege.

Q. Sir, do you claim to be an insured under the Acartha D&O policy?

A. I decline to answer that question on the basis of my Fifth Amendment privilege?

Q. Sir, do you claim or have you made claims under the Acartha D&O policy with respect to demands and lawsuits against you, including the SEC receivership complaint?

A. I decline to answer that question on the basis of my Fifth Amendment privilege.

Q. Sir, do you claim that you are entitled to coverage to satisfy defense costs with respect to demands and lawsuits made against you?

A. I decline to answer that question on the basis of my Fifth Amendment privilege.

Q. Sir, do you claim that the proceeds of that D&O policy are not an asset of the receiver?

A. I decline to answer that question on the basis of my Fifth Amendment privilege.

Q. Sir, is it your contention that your claims for the use of the Acartha D&O policy to satisfy defense fees and costs take priority over the use of the proceeds of that D&O policy for others?

A. I decline to answer that question on the basis of my Fifth Amendment privilege.

Q. Has it been or is it your contention that Federal Insurance Company should pay all of your defense costs under this D&O policy?

A. I decline to answer that question on the basis of my Fifth Amendment privilege.

Q. Sir, have you reached an agreement with Federal Insurance Company concerning the means in which Federal Insurance Company would satisfy your defense costs specifically with respect to the SEC proceedings, the receivership proceedings?

A. I decline to answer that question on the basis of my Fifth Amendment privilege.

Q. Has Federal Insurance claimed a reimbursement right from you for any proceeds paid on your behalf if there is a later determination there of [sic] no coverages?

A. I decline to answer that question on the basis of my Fifth Amendment privilege.

Q. Sir, is it true that you have no means to satisfy or secure a reimbursement obligation to Federal Insurance?

A. I decline to answer that question on the basis of my Fifth Amendment privilege.

(Exhibit 1, lines 10:4 to 12:8)

Drawing negative inferences from the responses: Morriss is not claiming a current right, much less a superior right, to use policy proceeds for his defense fees; Morriss does not contend that the proceeds of the insurance policy are outside the Receivership; and Morriss has no means to reimburse any proceeds used on his defense to replenish the limits if it turns out that he is not covered under the insurance policy.

Morriss similarly refused to answer questions concerning Morriss Holdings, LLC and his involvement with Morriss Holdings, LLC (Exhibit 1, lines 8:2 to 10:3). He refused to answer questions concerning the Receivership Entities, his transfer or use of assets from those entities, his communications with investors, and his connections with other entities, trusts, and accounts. (Exhibit 1, lines 12:9 to 17:12.) Morris refused to answer questions concerning: whether or not he transferred more than \$9.1 million of investor funds from the Acartha entities to himself and Morriss Holdings for personal use; and whether he agreed that he fraudulently obtained investor funds for his personal use. (Exhibit 1, lines 17: 21 to 18:22). The inferences drawn from these responses contrast Morriss' position that the equities do not weigh against Morriss' request.

CONCLUSION

Based on the foregoing as well as that set forth in the Receiver's original memorandum in opposition, the Receiver respectfully suggests that this Honorable Court deny Morriss the relief sought and grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

THOMPSON COBURN LLP

By /s/ Brian A. Lamping

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CERTIFICATE OF SERVICE

I hereby certify that on April 5, 12, I electronically filed the foregoing with the Clerk of the Court through the Court's CM/ECF system which will send a notice of electronic filing to the following:

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IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

IN RE:)
BURTON DOUGLAS MORRISS,) Case No.
) 12-40164-659
Debtor.)
) Chapter 7

EXAMINATION UNDER OATH UNDER RULE 2004 OF
BURTON DOUGLAS MORRISS

March 28, 2012

Sheryl A. Pautler, MO-CCR 871, IL-CSR 084-004585

(The proceedings began at 10:48 a.m.)

Exhibit
1

1	QUESTIONS BY:	PAGE NO.
2	Mr. Higgins	7
3	Mr. Tomlinson	21

4

5

INDEX OF EXHIBITS

6

EXAMINATION

PAGE MKD.

7

NO.

8

1 Court filing.

7

9

2 List of investment entities.

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11

12

13 (Whereupon the exhibits were attached to the original and
copies.)

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IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

IN RE:)
BURTON DOUGLAS MORRISS,) Case No.
) 12-40164-659
Debtor.)
) Chapter 7

EXAMINATION UNDER OATH UNDER RULE 2004 OF BURTON DOUGLAS MORRISS, produced, sworn, and examined on the 28th day of March, 2012, between the hours of ten o'clock in the forenoon and twelve o'clock noon of that day, at Thompson Coburn, One U.S. Bank Plaza, St. Louis, Missouri, before SHERYL A. PAUTLER, a Notary Public and Certified Court Reporter within and for the State of Missouri, in a certain cause now pending before the United States Bankruptcy Court for the Eastern District in the State of Missouri, wherein BURTON DOUGLAS MORRISS is the Debtor.

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A P P E A R A N C E S

Also Present:
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For The Goodman Group:
Mr. Nolan Lehmann by telephone

The Court Reporter:

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BURTON DOUGLAS MORRISS 3/28/2012

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1 IT IS HEREBY STIPULATED AND AGREED, by and
2 between counsel that the examination under oath of BURTON
3 DOUGLAS MORRISS may be taken in shorthand by Sheryl A.
4 Pautler, a notary public and shorthand reporter, and
5 afterwards transcribed into typewriting; and the signature
6 of the witness is expressly reserved.

7 * * * * *

8 BURTON DOUGLAS MORRISS,
9 of lawful age, being produced, sworn and examined
10 says:

11 (Whereupon the reporter marked Exhibit Nos. 1
12 and 2 for identification.)

13 [EXAMINATION]

14 QUESTIONS BY MR. HIGGINS:

15 **Q. Sir, could you state your name for the record,**
16 **please.**

17 A. Burton Douglas Morriss.

18 **Q. Mr. Morriss, my name is Steve Higgins. With**
19 **my firm, I represent the receiver Claire Schenk appointed**
20 **by the United States District Court in a matter brought by**
21 **the Securities and Exchange Commission. And in that**
22 **capacity, I'm going to be asking you questions today**
23 **relative to claims that the receiver might have in**
24 **bankruptcy. Do you understand that?**

25 A. I do.

1 Q. And do you understand that the receiver, I'll
2 just state for the record, is a party in interest and is a
3 creditor in the bankruptcy proceeding?

4 A. I do.

5 Q. Sir, I'm going to be making reference to
6 various entities in the course of this examination and
7 first I want to identify for the record the four entities
8 in receivership which I will refer to as the Acartha
9 entities. They are Acartha Group, LLC; MIC VII, LLC;
10 Acartha Technologies, LP; and Gryphon Investments III, LLC.
11 Collectively I'm going to be referring to these as the
12 Acartha entities; is that understood?

13 A. It is.

14 Q. Specifically when I make reference to Acartha
15 Group, I'm going to refer to it just for brevity, as
16 Acartha MIC VII, simply as MIC VII; Acartha Technology
17 Partners, LP, simply as ATP; and Gryphon Investments III,
18 LLC simply as Gryphon; is that understood?

19 A. It's understood.

20 Q. Sir, specifically, what is your relation to
21 Morriss Holdings, LLC?

22 A. I decline to answer that question on the basis
23 of my Fifth Amendment privilege.

24 Q. Mr. Morriss, what is the business purpose of
25 Morriss Holdings?

1 A. I decline to answer that question on the basis
2 of my Fifth Amendment privilege.

3 **Q. Sir, what individuals have an interest in**
4 **Morriss Holdings?**

5 A. I decline to answer that question on the basis
6 of my Fifth Amendment privilege.

7 **Q. Sir, would you identify for us how much money**
8 **in total was transferred from the Acartha entities to**
9 **Morriss Holdings?**

10 A. I decline to answer that question on the basis
11 of my Fifth Amendment privilege.

12 **Q. Sir, can you describe the operational**
13 **relationship between the Acartha entities and Morriss**
14 **Holdings?**

15 A. I decline to answer that question on the basis
16 of my Fifth Amendment privilege.

17 **Q. Sir, did the Acartha entities provide**
18 **financial support to Morriss Holdings?**

19 A. I decline to answer that question on the basis
20 of my Fifth Amendment privilege.

21 **Q. Mr. Morriss, did Morriss Holdings provide**
22 **operational support to the Acartha entities?**

23 A. I decline to answer that question on the basis
24 of my Fifth Amendment privilege.

25 **Q. Did Morriss Holding share computers, office**

1 staff, or office space with the Acartha entities?

2 A. I decline to answer that question on the basis
3 of my Fifth Amendment privilege.

4 Q. Sir, I'm going to ask you some questions
5 related to directors and officers insurance policy. First,
6 for the record, are you aware of the existence of a
7 directors and officers liability policy numbered 8207-6676
8 that Acartha Group, LLC purchased from Federal Insurance
9 Company?

10 A. I decline to answer that question on the basis
11 of my Fifth Amendment privilege.

12 Q. Sir, do you claim to be an insured under the
13 Acartha D & O policy?

14 A. I decline to answer that question on the basis
15 of my Fifth Amendment privilege.

16 Q. Sir, do you claim or have you made claims
17 under the Acartha D & O policy with respect to demands and
18 lawsuits against you, including the SEC receivership
19 complaint?

20 A. I decline to answer that question on the basis
21 of my Fifth Amendment privilege.

22 Q. Sir, do you claim that you are entitled to
23 coverage to satisfy defense costs with respect to demands
24 and lawsuits made against you?

25 A. I decline to answer that question on the basis

1 of my Fifth Amendment privilege.

2 Q. Sir, do you claim that the proceeds of that D
3 & O policy are not an asset of the receiver?

4 A. I decline to answer that question on the basis
5 of my Fifth Amendment privilege.

6 Q. Sir, is it your contention that your claims
7 for the use of the Acartha D & O policy to satisfy defense
8 fees and costs take priority over the use of the proceeds
9 of that D & O policy for others?

10 A. I decline to answer that question on the basis
11 of my Fifth Amendment privilege.

12 Q. Has it been or is it your contention that
13 Federal Insurance Companies should pay all of your defense
14 costs under this D & O policy?

15 A. I decline to answer that question on the basis
16 of my Fifth Amendment privilege.

17 Q. Sir, have you reached an agreement with
18 Federal Insurance Company concerning the means in which
19 Federal Insurance Company would satisfy your defense costs
20 specifically with respect to the SEC proceedings, the
21 receivership proceedings?

22 A. I decline to answer that question on the basis
23 of my Fifth Amendment privilege.

24 Q. Has Federal Insurance claimed a reimbursement
25 right from you for any proceeds paid on your behalf if

1 there is a later determination there of no coverages?

2 A. I decline to answer that question on the basis
3 of my Fifth Amendment privilege.

4 Q. Sir, is it true that you have no means to
5 satisfy or secure a reimbursement obligation to Federal
6 Insurance?

7 A. I decline to answer that question on the basis
8 of my Fifth Amendment privilege.

9 Q. Sir, I'm going to ask some questions related
10 to Grypon.

11 Sir, would you agree that Grypon raised
12 \$3.75 million from investors for the period from March 2008
13 through June 2009?

14 A. I decline to answer that question on the basis
15 of my Fifth Amendment privilege.

16 Q. Would you agree that of this sum, \$1.6 million
17 was transferred to Acartha?

18 A. I decline to answer that question on the basis
19 of my Fifth Amendment privilege.

20 Q. Would you agree that \$1.7 million of this sum
21 raised from investors was transferred to you personally and
22 to Morriss Holdings?

23 A. I decline to answer that question on the basis
24 of my Fifth Amendment privilege.

25 Q. Would you agree that \$305,000 of the sum

1 raised from investors was used to pay interest on a
2 personal line of credit at Wachovia?

3 A. I decline to answer that question on the basis
4 of my Fifth Amendment privilege.

5 Q. Would you agree that no investors were advised
6 of any of these transfers?

7 A. I decline to answer that question on the basis
8 of my Fifth Amendment privilege.

9 Q. Would you agree that the offering documents
10 and subscription agreements and partnership agreements did
11 not advise investors that you would use or transfer
12 investment funds for personal use?

13 A. I decline to answer that question on the basis
14 of my Fifth Amendment privilege.

15 Q. Sir, I'm now going to ask some questions about
16 ATP.

17 Would you agree that from September 2009
18 through August 2010, ATP received investor funds of nearly
19 \$6 million?

20 A. I decline to answer that question on the basis
21 of my Fifth Amendment privilege.

22 Q. Would you agree that in the same period, ATP
23 transferred \$1.4 million to you personally or to Morriss
24 Holdings?

25 A. I decline to answer that question on the basis

1 of my Fifth Amendment privilege.

2 Q. Would you agree that in January 2012, wire
3 transfers were made from a bank account held by ATP to two
4 law firms?

5 A. I decline to answer that question on the basis
6 of my Fifth Amendment privilege.

7 Q. Specifically for the record, would you agree
8 that the law firms and the amounts paid them were \$75,000
9 to Jacob's Partners and \$13,000 to Finger & Slanina?

10 A. I decline to answer that question on the basis
11 of my Fifth Amendment privilege.

12 Q. Sir, some questions about MIC VII.

13 Would you agree that you and Acartha recruited
14 new investors to MIC VII without the unanimous consent of
15 all of the MIC VII investors?

16 A. I decline to answer that question on the basis
17 of my Fifth Amendment privilege.

18 Q. Would you agree that you used \$2.5 million of
19 the amount that was so raised to satisfy a portion of a
20 personal loan?

21 A. I decline to answer that question on the basis
22 of my Fifth Amendment privilege.

23 Q. Sir, I have some general questions about other
24 investment entities that we have marked as examination
25 Exhibit 2. Your counsel has a copy of that.

1 For the record, you've been presented with
2 **Examination Exhibit 2. It's a list of various investment**
3 **entities. Do you have that exhibit in front of you?**

4 A. I do.

5 **Q. Specifically, do you agree that you controlled**
6 **each and every one of these other investment entities on**
7 **Exhibit 2?**

8 A. I decline to answer that question on the basis
9 of my Fifth Amendment privilege.

10 **Q. Sir, would you identify all of the bank**
11 **accounts held by each and all of these entities?**

12 A. I decline to answer that question on the basis
13 of my Fifth Amendment privilege.

14 **Q. Did you use funds from any of these entities**
15 **to pay down or pay off any personal loans or notes?**

16 A. I decline to answer that question on the basis
17 of my Fifth Amendment privilege.

18 **Q. Did you use funds from any of these entities**
19 **to make alimony payments to your ex-wife?**

20 A. I decline to answer that question on the basis
21 of my Fifth Amendment privilege.

22 **Q. Did you use the funds from any of these**
23 **entities to repay personal loans from any banks or other**
24 **lending institutions?**

25 A. I decline to answer that question on the basis

1 of my Fifth Amendment privilege.

2 Q. Mr. Morriss, you were asked some questions in
3 the prior proceeding about trusts. For the record, can you
4 identify all of the trusts in which you are current
5 beneficiary?

6 A. I decline to answer that question on the basis
7 of my Fifth Amendment privilege.

8 Q. Would you please identify all of the trusts in
9 which you are a trustee?

10 A. I decline to answer that question on the basis
11 of my Fifth Amendment privilege.

12 Q. Would you identify any trusts into which you
13 have transferred assets or funds of any of the Acartha
14 entities?

15 A. I decline to answer that question on the basis
16 of my Fifth Amendment privilege.

17 Q. Would you identify any trusts in which you
18 have transferred assets or funds of any of the other
19 investment entities that are set forth in Exhibit 2?

20 A. I decline to answer that question on the basis
21 of my Fifth Amendment privilege.

22 Q. Would you please describe what role, if any,
23 that you have in the Barbara Burton Morriss Revocable
24 Trust?

25 A. I decline to answer that question on the basis

1 of my Fifth Amendment privilege.

2 Q. Do you agree that various assets of that trust
3 were pledged as security for personal loans?

4 A. I decline to answer that question on the basis
5 of my Fifth Amendment privilege.

6 Q. Sir, what is Morriss Investments?

7 A. I decline to answer that question on the basis
8 of my Fifth Amendment privilege.

9 Q. Sir, what is the B. Douglas Morriss
10 Irrevocable Trust?

11 A. I decline to answer that question on the basis
12 of my Fifth Amendment privilege.

13 Q. All right. Sir, I have some general questions
14 about various of the Acartha entities and your involvement
15 in those entities.

16 First, would you agree that as of December 31,
17 2010, the total amount invested in the Acartha entities as
18 has been defined here exceeded \$87 million?

19 A. I decline to answer that question on the basis
20 of my Fifth Amendment privilege.

21 Q. Would you agree that from approximately 2005
22 through 2011, you transferred more than \$9.1 million of
23 investor funds from the Acartha entities to yourself and
24 Morriss Holdings for your personal use?

25 A. I decline to answer that question on the basis

1 of my Fifth Amendment privilege.

2 Q. Would you agree that you used fraudulently
3 obtained investor funds to satisfy personal loans, pay
4 alimony, and take vacations?

5 A. I decline to answer that question on the basis
6 of my Fifth Amendment privilege.

7 Q. Would you agree that through the Acartha
8 entities, as has been defined, you disguised these
9 fraudulent transfers as loans or as receivables?

10 A. I decline to answer that question on the basis
11 of my Fifth Amendment privilege.

12 Q. Would you agree you did this without the
13 knowledge or consent of investors?

14 A. I decline to answer that question on the basis
15 of my Fifth Amendment privilege.

16 Q. Would you agree that the offering documents
17 and the subscription agreements and limited partnership
18 agreements of the Acartha entities through which you
19 solicited investments did not warn or advise investors you
20 could or would transfer funds for your personal use?

21 A. I decline to answer that question on the basis
22 of my Fifth Amendment privilege.

23 Q. Mr. Morriss, would you identify everyone who
24 assisted you in making these transfers?

25 A. I decline to answer that question on the basis

1 of my Fifth Amendment privilege.

2 Q. Would you identify everyone who had knowledge
3 of these transfers?

4 A. I decline to answer that question on the basis
5 of my Fifth Amendment privilege.

6 Q. Specifically, did Dickson Brown assist you in
7 transferring any or all of the \$9 million from the Acartha
8 entities to yourself or Morriss Holdings?

9 A. I decline to answer that question on the basis
10 of my Fifth Amendment privilege.

11 Q. Based on your conversations and your
12 interactions with Dickson Brown, did you know what you were
13 doing?

14 A. I decline to answer that question on the basis
15 of my Fifth Amendment privilege.

16 Q. Specifically, did you tell him what you were
17 doing?

18 A. I decline to answer that question on the basis
19 of my Fifth Amendment privilege.

20 Q. Sir, I'm going to hand you what we've marked
21 Examination Exhibit No. 1. That is a court filing that
22 includes the service of process.

23 MR. KERTH: Go ahead, Steve.

24 Q. (By Mr. Higgins) Mr. Morriss, for the record,
25 Exhibit 1 is both the court filing, and starting with the

1 fifth page, is a subpoena for Rule 2004 Examination. I
2 direct your attention to the subpoena, not to the covering
3 documents. First, did you receive on or about March 11
4 this subpoena?

5 A. I decline to answer that question on the basis
6 of my Fifth Amendment privilege.

7 Q. I'll direct your attention to Exhibit A to the
8 subpoena which specifically directs you to produce at this
9 hearing documents and communications relating to seven
10 different examination topics.

11 Directing your attention to Exhibit A, to the
12 subpoena, specifically to the examination topics, did you
13 bring any documents relating to those topics to the
14 examination today?

15 MR. KERTH: Mr. Morriss is asserting his
16 privilege against self-incrimination. The act of producing
17 documents is testimonial in nature. And he declines to
18 produce any documents in connection with this subpoena on
19 the basis of his Fifth Amendment privilege.

20 MR. HIGGINS: I don't have any additional
21 questions.

22 MR. TOMLINSON: May I ask some?

23 MR. HIGGINS: Certainly.

24 [EXAMINATION]

25 QUESTIONS BY MR. TOMLINSON:

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1 Q. Mr. Morriss, my name is Hilton Tomlinson. I
2 represent Eric Sarasin. Do you know who he is?

3 A. I decline to answer that question on the basis
4 of my Fifth Amendment privilege.

5 Q. Would -- you were pulling money out of Acartha
6 Group in the fall of 2011 -- excuse me -- fall of 2010 at
7 the same time that you contacted Eric Sarasin concerning
8 the moneys that he loaned to Acartha Group; isn't that
9 correct?

10 A. I decline to answer that question on the basis
11 of my Fifth Amendment privilege.

12 Q. And Mr. Sarasin was originally going to make
13 this loan, he was to wire transfer this money to Reliance
14 Bank for the Librato Acquisition No. II; isn't that
15 correct?

16 A. I decline to answer that question on the basis
17 of my Fifth Amendment privilege.

18 Q. Do you have an interest in Librato Acquisition
19 II?

20 A. I decline to answer that question on the basis
21 of my Fifth Amendment privilege.

22 Q. And when he actually wired the money to --
23 from Switzerland to America, he wired it to a bank in
24 Pittsburgh, PNC. Are you familiar with that bank?

25 A. I decline to answer that question on the basis

1 of my Fifth Amendment privilege.

2 Q. How many bank accounts did Acartha Group have?

3 A. I decline to answer that question on the basis
4 of my Fifth Amendment privilege.

5 Q. How much money that Mr. Sarasin wired to
6 Acartha went to Librato Acquisition II?

7 A. I decline to answer that question on the basis
8 of my Fifth Amendment privilege.

9 Q. Why does Acartha Group have bank accounts in
10 Pittsburgh?

11 A. I decline to answer that question on the basis
12 of my Fifth Amendment privilege.

13 Q. Do you personally have loans at PNC?

14 A. I decline to answer that question on the basis
15 of my Fifth Amendment privilege.

16 Q. Does Acartha have any loans at PNC?

17 A. I decline to answer that question on the basis
18 of my Fifth Amendment privilege.

19 Q. Do you know who won the World Series last
20 year?

21 MR. KERTH: I'm going to object to that
22 question. It's outside the scope of examination and
23 beneath your dignity.

24 MR. TOMLINSON: That's all I have.

25 MR. HIGGINS: I don't have any other

1 questions.

2 MS. KELLY: Folks on the phone have any
3 questions?

4 MR. JAMES: This is Brian James with
5 Securities and Exchange Commission. I actually don't have
6 any questions. Can you hear me?

7 MS. KELLY: Yes.

8 MR. JAMES: I'm getting a little feedback. I
9 just want to put on the record I do not have any questions
10 because my role today is purely an observer role. But that
11 in no way...

12 MR. KERTH: Sir, that was a little garbled.

13 MR. JAMES: This is Brian James with
14 Securities and Exchange Commission. We do not have any
15 questions in part because we are purely participating today
16 as an observer in this matter, but I also wanted to put on
17 the record that in no way waives the entity's right to seek
18 discovery from Mr. Morriss in the district court action.

19 Was that better?

20 MR. KERTH: That was much better. Thank you.

21 MR. HIGGINS: In the event that Mr. Morriss
22 does produce documents pursuant to the subpoena, we would
23 like to continue this. And I would also like to move to
24 have incorporated by reference all of the questions and
25 answers in the prior 341 meeting and made part of this

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1 deposition as well. So this will be continued to a later
2 date in the event that there are documents produced.

3 MR. KERTH: That's fine.

4 MR. HIGGINS: Any other procedural questions
5 or points?

6 MS. SCHENK: Do we want to pick a date?

7 MR. KERTH: I don't know that it makes sense
8 to try and pick a date right now. We're agreeable this is
9 continued generally subject to your noticing up the
10 continuation or us or by agreement.

11 At this point, we're not closing the
12 transcript. I don't know. Are we at the point of
13 signature?

14 MR. HIGGINS: I would do it, yes.

15 MR. KERTH: We'll read.

16 MS. KELLY: We're going to leave it open to a
17 date by agreement, a mutually agreeable date?

18 MR. KERTH: A mutually agreeable date with the
19 understanding that you all have the right to go ahead and
20 notice it up at any point in time if for some reason we
21 can't come to an agreement.

22 Does anyone else have any further proceedings?

23 Let's go off record for a second.

24 (Whereupon there was an off-the record
25 discussion.)

1 MS. SCHENK: I just caught some conversation
2 about continuation as to documents. I just want to clarify
3 that the 2004 exam was continued for all purposes as to any
4 future questions or potentially -- in light of a potential,
5 as you indicated earlier, Mr. Kerth, a resolution of Fifth
6 Amendment issues and as to documents, so as for all
7 purposes.

8 MR. KERTH: That's fine.

9 (Whereupon signature was reserved.)

10 (Off the record at 11:12 a.m.)

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CERTIFICATE OF REPORTER

I, Sheryl A. Pautler, Certified Shorthand Reporter, Notary Public within and for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing examination under oath was duly sworn by me; the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this examination under oath was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Notary Public within and for
the State of Missouri

My commission expires April 10, 2013.