

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
v.)
)
BURTON DOUGLAS MORRISS,)
ACARTHA GROUP, LLC,)
MIC VII, LLC,)
ACARTHA TECHNOLOGY PARTNERS, LP, and)
GRYPHON INVESTMENTS III, LLC,)
)
Defendants, and)
)
MORRISS HOLDINGS, LLC,)
)
Relief Defendant.)
_____)

Case No. 4:12-CV-00080-CEJ

**RECEIVER’S MOTION FOR ENTRY OF AN ORDER
APPROVING AND CONFIRMING THE RECEIVER’S
EIGHTEENTH INTERIM STATUS REPORT**

By Order entered January 17, 2012, the Court appointed Claire M. Schenk as receiver (the “Receiver”) over Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, LP, and Gryphon Investments III, LLC (collectively, the “Receivership Entities”).

The Receiver herein moves this Court to approve and confirm the Eighteenth Interim Status Report of Receiver—filed as Exhibit A to this Motion—and every act and transaction reported in the Eighteenth Interim Status Report.

This motion is administrative and not adversarial in nature.

Respectfully Submitted,

THOMPSON COBURN LLP

Dated: May 3, 2016

By /s/ Kathleen E. Kraft
Stephen B. Higgins, #25728MO
Brian A. Lamping, #61054MO
One US Bank Plaza
St. Louis, Missouri 63101
Phone: (314) 552-6000
Fax: (314) 552-7000
shiggins@thompsoncoburn.com
blamping@thompsoncoburn.com

Kathleen E. Kraft, #58601MO
1909 K Street, NW, Suite 600
Washington, DC 20006
Phone: (202) 585-6922
Fax: (202) 508-1035
kkraft@thompsoncoburn.com

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2016, 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:

John R. Ashcroft, Esq.
Ashcroft Hanaway LLC
222 South Central Ave., Suite 110
St. Louis, Missouri 63105
Counsel for Defendant Burton Douglas Morriss

Robert K. Levenson
Brian T. James
Securities and Exchange Commission
801 Bricknell Avenue, Suite 1800
Miami, Florida 33131
Attorneys for Plaintiff

/s/ Kathleen E. Kraft

EXHIBIT A

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

SECURITIES AND EXCHANGE COMMISSION,)	
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Plaintiff,)	
v.)	
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BURTON DOUGLAS MORRISS,)	
ACARTHA GROUP, LLC,)	
MIC VII, LLC,)	Case No. 4:12-CV-00080-CEJ
ACARTHA TECHNOLOGY PARTNERS, LP, and)	
GRYPHON INVESTMENTS III, LLC,)	
)	
Defendants, and)	
)	
MORRISS HOLDINGS, LLC,)	
)	
Relief Defendant.)	
)	

EIGHTEENTH INTERIM STATUS REPORT OF RECEIVER

Claire M. Schenk (the “Receiver”), the receiver for defendants Acartha Group, LLC (“Acartha Group”), Acartha Technology Partners, LP (“ATP”), MIC VII, LLC (“MIC VII”), and Gryphon Investments III, LLC (“Gryphon Investments”) (collectively, the “Receivership Entities”), submits this **Eighteenth Interim Status Report** to update the Court on the activities of the Receiver occurring since February 8, 2016:

A. Unopposed Administrative Filings

Two unopposed administrative matters remain pending with the Court.

Sixteenth Interim Fee Application. The Receiver filed the *Sixteenth Interim Application for Allowance and Payment of Fees and Expenses Incurred by the Receiver, Retained Counsel, and Other Professionals* (“Sixteenth Fee Application”) on February 9, 2016 (ECF No. 445). In the Sixteenth Fee Application, the Receiver seeks approval of and authority to pay professional fees incurred and expenses advanced for the period of October 1, 2015 to December 31, 2015.

The Receiver's Fee Application is supported by matters described in the Receiver's *Seventeenth Interim Status Report* (ECF No. 441). There were no objections to the filing, and the Receiver filed her Notice of No Objection on February 24, 2016 (ECF No. 453). The Receiver awaits the determination of the Court so that vendors may be paid.

Seventeenth Interim Status Report. On February 8, 2016, the Receiver filed her motion requesting approval and confirmation of the activities described in the *Seventeenth Interim Status Report of Receiver* (ECF No. 441). The Receiver's motion remains pending.

B. Analysis of Affirmative Legal Claims and Related Proceedings

Pursuant to paragraph 2 of the Order Appointing Receiver (ECF No. 16; "Receivership Order"), the Receiver is directed to investigate the manner in which the affairs of the Receivership Entities were conducted and to institute such actions and legal proceedings for the benefit and on behalf of the Receivership Entities, as the Receiver deems necessary against those individuals and entities that the Receiver may claim have directly or indirectly misappropriated or transferred monies. As authorized by paragraph 6 of the Receivership Order, the Receiver may defend, compromise, or settle legal actions in which the Receivership Entities are parties, with authorization of the Court. In keeping with the directives of the Court, the Receiver has pursued the following litigative matters during this reporting period.

1. John Wehrle, Gryphon Investments II, LLC, and Cirqit.Com, Inc.

As described in previous reports, the Receiver, on behalf of Gryphon III, filed suit against John Wehrle, Gryphon Investments II LLC ("Gryphon II"), and Cirqit.Com, Inc. ("Cirqit") (collectively referred to as the "Wehrle defendants") alleging that \$3.425 million of funds raised from eleven Gryphon III investors were fraudulently and improperly comingled with the funds of Gryphon II and transferred to the Wehrle defendants and others ("Wehrle Litigation") (*see* ECF

No. 416). In an effort to avoid the time, expense, and risk associated with the Wehrle Litigation, the Receiver engaged in successful settlement negotiations culminating in the execution of a settlement agreement by all parties to the Wehrle Litigation (the “Settlement Agreement”).

Having finalized the Settlement Agreement, the Receiver prepared a motion and memorandum seeking Court approval of the settlement, which included a sale of Receivership interests in Cirqit (ECF Nos. 428, 429, & 433). As stated in the Receiver’s filing, the Settlement Agreement provided that: the Receivership estate will receive a cash payment of \$125,000; Wehrle will provide a signed and sworn financial statement; a consent judgment of \$875,000 will be entered against Wehrle; Cirqit stock will be retitled in the name of Gryphon III; and the Wehrle defendants will use their best efforts to assist the Receiver to redeem the Receivership’s interests in Cirqit for the planned purchase price of \$1,489,201 (*see* ECF No. 429-2). The Court granted the Receiver’s motion on January 22, 2016 (ECF No. 435).

Since submission of the last Receiver’s Report, the Receiver continued to engage in efforts to effectuate the Settlement Agreement and in keeping with the deadlines set by the Settlement Agreement and Judge Sippel in the Wehrle Litigation. The Cirqit stock has been retitled in the name of Gryphon III, but finalization of the remaining terms of the Settlement Agreement await completion of a transaction by a third party which has not yet occurred, as described below.

The Receiver’s sale of its interest in Cirqit is dependent upon final redemption of Cirqit’s investment in LogicSource, Inc. (“LogicSource”); this event has not yet occurred. Specifically, the Settlement Agreement requires that the shareholders of LogicSource—Cirqit’s sole portfolio holding—approve the redemption of the shares in Cirqit (the “Shares”) that are held by the

Receivership at the price agreed to under the Settlement Agreement and as approved by the Receivership Court on January 22, 2016 (*see* Exhibit A to ECF No. 84).

LogicSource is not under the control of the Wehrle defendants or the Receiver (*see* Exhibit A to ECF No. 84, at ¶ 5). Only when LogicSource has redeemed the Shares will Cirqit be able to redeem the Receiver's interests pursuant to the Settlement Agreement. *Id.* Once the redemption process has occurred, the parties to the Wehrle Litigation can file the Consent Judgment (*see* Exhibit A to ECF No. 84, at ¶¶ 3, 5 and "Consent Judgment" attached thereto) and Wehrle's payment will become due.

While Cirqit has approved the redemption of the Receiver's investment interest in Cirqit, the CEO of LogicSource advised the parties that a financial transaction critical to the future of LogicSource has yet to occur. The parties and their counsel recently participated in a lengthy telephone conference with officers of LogicSource, who advised in detail as to the nature of the financial transaction that must occur before LogicSource can address redemption of shares held by Cirqit in which the Receiver has an interest. The officers of LogicSource indicated that it was highly unlikely such redemption could occur before March 22, 2016.

Since March 22, 2016 was the deadline set by Judge Sippel for final disposition of the Wehrle Litigation, the parties submitted a joint motion to extend this deadline. Judge Sipple granted the motion and entered an order extending the deadline for dismissal of the proceeding until June 21, 2016 (Wehrle Litigation, 4:15-cv-00464-RWS, ECF No. 89). The Receiver will diligently monitor these events and exercise her best efforts to facilitate effectuation of the Settlement Agreement before June 21, 2016.

In previous status reports and as part of the Receiver's motion for approval of the Settlement Agreement, the Receiver advised the Court that John Wehrle, Chairman of the Cirqit

Board of Directors, was a defendant in a criminal proceeding, having been indicted for tax evasion and misstatements pertaining to his income. On January 19, 2016, John Wehrle plead guilty to Count I of an information stating that he presented a false Promissory Note to the Internal Revenue Service (representing that the document was executed on January 1, 2010, even though Wehrle was aware that the document was executed on or about June 23, 2011). The government and Wehrle have accepted the Presentence Investigation Report and sentencing was recently reset from Wednesday, April 20, 2016 at 10:00 a.m. to Thursday, May 12, 2016 at 10:00 a.m.

B. Claims and Distribution Process

1. Librato Distributions

As reported in the Sixteenth and Seventeenth Interim Status Report, on October 14, 2015, the Receiver filed a motion with the Court seeking authority for the distribution of the Librato funds reported in the Fourteenth Interim Status Report (*see* ECF Nos. 413, 414, 416). The Receiver’s motion pertained to three of the special purposes vehicles (“SPVs”), which are not part of the Receivership estate but are managed by the Receivership entity, Acartha Group. As a result of the sale described in the Receiver’s motion, funds (gross proceeds) were received as follows:

Evergrid Acquisition, LLC	\$16,270.84
Evergrid/MIC VII, LLC	\$87,404.75
Librato Acquisition II, LLC	\$752,306.99
ATP ¹	\$164,662.33
MIC VII	\$438,998.08

¹ The funds received by ATP and MIC VII as a result of the sale described in the Receiver’s October 14, 2015 Motion are not the subject of the relief requested in that motion. The Receiver’s motion pertains only to the funds received by the Librato SPVs. The Receiver anticipates that the funds received by ATP and MIC VII (both gross proceeds and escrowed proceeds) will be disbursed in connection with a plan of distribution approved by the Court.

The Court granted the Receiver's motion for authority to distribute the proceeds on November 9, 2015 (ECF No. 423), and the Receiver made distributions as follows: a total of \$708,240 was distributed to the 46 members of Librato Acquisition II; and a total of \$60,361 was distributed to the 18 members of Evergrid/MIC VII. The bulk of these distributions occurred on December 15, 2015. However, a few of the distributions were made in later weeks due to "bounce backs" as the result of incorrect information provided to the Receiver and/or continuing efforts to locate the necessary transfer information for the wire transfers.

Based upon the information currently available to the Receiver, there will be additional disbursements to the SPVs following receipt of the funds currently held in escrow. The Receiver has not been advised of any significant claims against those funds. As of March 31, 2016, the escrowed amounts potentially available for distribution to the members of the three SPVs totalled approximately \$111,500. When these funds become available for distribution,² they will be disbursed pursuant to the authority granted in the Court's order (*see* ECF No. 423).

*2. Claim Objections, Distributions, and Wind Up*³

Objection of Blink Marketing. Blink Marketing Group, LLC (Claimant No. 227) ("Blink") objected to the Receiver's recommendation of disallowance of a portion of Blink's

² Monthly statements and updates are regularly provided to the Receiver by the escrow agent, SRS Acquiom ("SRS"). The SRS statement provided to the Receiver for the period ending March 31, 2016, indicates that the release of the escrowed funds is planned for July 29, 2016. However, SRS requests that it be allowed up to fifteen business days after the date shown to receive the listed proceeds.

³ The Receiver has described the Claims Process in detail in preceding reports and will not repeat those details herein (*see* Receiver's Ninth, Tenth, Eleventh, and Twelfth Interim Status Reports, ECF Nos. 315-1, 328-1, 338-1, and 358-1).

claim (ECF No. 390).⁴ The Receiver responded to Blink's objection (ECF Nos. 397), and Blink supplemented its objection as directed by this Court (ECF No. 454; *see* ECF No. 446). On April 14, 2016, the Court entered its order sustaining Blink's objection. (ECF No. 455). As a result, per the Court's order, the additional portion of Blink's claim for \$37,500 will be allowed with the precise amount of the payment, if any, to be decided by the Court following a review of the Receiver's proposed plan of distribution.

Objection of Hany Teylouni. The objection of Hany Teylouni (former management), Claim No. 20 remains pending (*see* ECF No. 337). Upon the request and direction of the Court, the Receiver submitted a second supplemental filing to the Court on February 22, 2016, in order to provide the requested information and to explain why the Receiver's earlier filings did not delve into certain confidential matters (ECF No. 448). Mr. Teylouni's objection has been fully briefed and awaits decision by the Court.

Distributions and Wind Up. As noted in prior reports, the Receiver intends to prepare and propose to the Court a plan of distribution for funds to be disbursed to allowed claimants of the Receivership Entities. The Receiver intends to seek approval of her recommendations for allowance and disallowance of all filed claims through the proposed distribution plan. In preparation for submission of the proposed distribution plan, the Receiver is working closely with her accounting and legal advisors to consider potential tax and other legal obligations that may impact the availability of funds for distribution. Also, the Receiver is exploring relatively near-term liquidation opportunities, as well as other options (*i.e.*, a liquidating trust), for certain assets still held by the Receivership Estate. These assets include interests in Tervela, Inc.

⁴ Blink filed a claim for (i) the provision of presentation materials and (ii) monies due under an alleged contract for website redesign work. The Receiver recommended disallowance of the latter portion of Blink's claim, on various grounds.

(“Tervela”), Clearbrook, and Cirqit (which is subject to the Settlement Agreement), and the Morriss Holdings judgment.

C. Business Operations

As directed by the Court, the Receiver continues to oversee the holdings of the Receivership Entities in the remaining portfolio company investments. On April 8, 2016, the Receiver participated in a board call with Tervela management following her review of an updated report regarding operations and financials provided by Tervela. The Receiver also has reviewed other updates by management of Cirqit and LogicSource and from Clearbrook Global Advisors, LLC (“Clearbrook”), including information pertaining to financials and operations. The Receiver worked with her accountants to analyze this information and handled compliance matters pertaining to potential tax claims and liability.⁵ Additionally and in addition to the Cirqit/LogicSource sale,⁶ the Receiver discussed a sale opportunity pertaining to Clearbrook. She sought the advice of the Receivership valuation consultant, Ed Morris, of CliftonLarsonAllen (“CLA”) regarding this potential opportunity and is currently waiting to receive his written report. When the written report is received, and so long as the advice provided by Mr. Morris supports the sale opportunity, the Receiver will file a motion with the Court seeking approval of the sale.

⁵ As explained *infra*, additional information is available to the investors on a secure site and subject to execution of an NDA. The specifics pertaining to the information discussed herein is considered confidential by the Receivership portfolio concerns.

⁶ The sale of the Receivership interests in Cirqit is outlined above.

D. Tax Matters

The Receiver renewed the Receivership's engagement of CLA. *See* Exhibit 1. The terms of the engagement are similar to those of the prior year.⁷

During this reporting period, the Receiver worked with CLA and Segue Partners ("Segue") to begin preparations for all necessary filings for the 2015 tax year. Extensions were obtained on or before Friday, April 15, 2016, and payments made, as necessary, to secure extensions. Investors are advised that K-1s will be provided within the coming months. In recent weeks, the Receiver has also been organizing information for payment of the annual taxes due to Delaware by June 1.

Near the end of the last reporting period, the Receiver reviewed and authorized payments to CT Corporation ("CT"), the registered agent for seventeen of the various active entities managed by the Receiver, including Acartha Group; Acartha Merchant Partners, LLC; ATP; Clearbrook Acquisition; Clearbrook Acquisition Capital; Evergrid Acquisition; Evergrid MIC VII; Gryphon Investments III; Integrien Acquisition Capital II; Librato Acquisition II; Librato Capital II; MIC VII; Tervela Acquisition II; Tervela Acquisition III; Tervela Acquisition; Tervela Capital II; and Tervela Capital III. For those entities where distributions and activity have been completed and final returns filed, CT's services were discontinued and payment of Delaware franchise taxes will cease (as the entities are inactive). Recently, the Receiver made payments to CT to secure its resignation for two of the inactive entities for which final tax filings were made, *i.e.*, Integrien Acquisition II, LLC and Integrien Capital II, LLC. By letter dated April 15, 2016, CT confirmed to the Receiver that it would file a certificate of resignation with

⁷ CLA was engaged, subject to Court approval, to prepare returns beginning with the 2011 tax year. CLA also has prepared returns for 2012 through 2014.

the Secretary of the State of Delaware within thirty days of its letter. The certificate of formation of these companies will then be canceled.

E. Administrative Matters

SFAR. An updated copy of the Standardized Fund Accounting Report (“SFAR”) will be submitted along with the Receiver’s Seventeenth Interim Fee Application (for the first quarter of 2016, covering January through March). This report reflects known and current bank balances for the Receivership Entities and the accounts of the SPVs, which are managed by the Receiver. It also reflects expenses and payments during the first quarter of 2016. A final and fully detailed report will be submitted to the Court at the conclusion of the Receivership.

Interim Applications for Fees and Expenses. Payment of fees and expenses to the service professionals providing assistance to the Receiver are current through the Receiver’s Fifteenth Interim Fee Application. As explained at the outset of this Report, the Receiver is awaiting Court approval of the Sixteenth Fee Application.

As detailed in each interim Fee Application, the Receiver has sought approval of submitted professional fees and expenses and authority to pay eighty percent of professional fees (pursuant to an agreement with the SEC for a twenty percent holdback) and one hundred percent of expenses. Recently, with the consent of the SEC and pursuant to the Court’s order entered January 20, 2016, the Receiver paid fifty percent of the then-outstanding amount of the holdback to the attorneys and professionals who have assisted the Receivership since its inception (*see* ECF No. 434).

Receivership and Secure Investor Websites. The Receiver continues to update the general website hosted by Thompson Coburn LLP (which is linked to the website for the District Court for the Eastern District of Missouri). Additionally, the Receiver continues to post

documents on the extranet sites created for the investors. Access to the extranet sites is allowed subject to receipt of a nondisclosure agreement (“NDA”) by the investors. Each site is periodically updated with information pertinent to business operations, *e.g.*, slide decks or presentations, and transactional documents involving additional financings or other significant events. During this reporting period, information pertaining to both Tervela and Clearbrook has been added. The Receiver encourages claimants, investors, and other interested parties to visit the websites that are available to them so that they will have a current understanding of Receivership operations and to avoid unnecessary expense through repeated individualized communications with the Receiver and her counsel.

Conclusion

The Receiver will continue to update this report on a periodic basis to summarize relevant Receivership activities.

Dated: May 3, 2016

Respectfully submitted,

/s/ Claire M. Schenk
Claire M. Schenk, Receiver

EXHIBIT 1

Claire M. Schenk
P 314.552.6152
acantha.receivership@
thompsoncoburn.com

April 13, 2016

VIA ELECTRONIC & FIRST CLASS MAIL

Marion Hecht
Principal, Fraud & Forensic Investigations, Receivership & Litigation
CliftonLarsonAllen LLP
4250 North Fairfax Drive, Suite 1020
Arlington, VA 22203

Re: *Securities and Exchange Commission v. Burton Douglas Morriss, et al.*
No. 4:12-cv-00080-CEJ

Dear Marion:

This letter will serve to supplement and amend the fully executed June 26, 2012 engagement letter pertaining to services to be rendered by CliftonLarsonAllen LLP (“CLA”) in the above-referenced matter (“the Engagement Letter”) and as stated in the amended engagement letter of April 10, 2014 (the “Amended Engagement Letter”). CLA fees for the preparation of the 2015 returns for the various Receivership and related entities will remain fixed at, and not to exceed, \$3,000 for each entity filing. CLA will continue to bill at the lower rate of either actual or not to exceed in keeping with the Engagement Letter. All other terms of the engagement will remain unchanged.

Thanks once again for your assistance.

Best regards,

Thompson Coburn LLP



By
Claire M. Schenk

CONFIRMATION

I agree to provide services under the terms of this Engagement Letter.

Accepted:


Marion Hecht, CPA
Principal
CliftonLarsonAllen LLP

Dated: April 15, 2016

**UNITED STATES DISTRICT COURT
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Case No. 4:12-CV-00080-CEJ

ORDER

Upon the Receiver’s Motion for Entry of an Order Approving and Confirming the Eighteenth Interim Status Report of Receiver, filed by Claire M. Schenk, the court-appointed receiver (the “Receiver”) for Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, LP and Gryphon Investments III, LLC in this action; and

Having fully considered the Motion and the Eighteenth Interim Status Report and being duly advised as to the merits,

THE COURT DOES HEREBY ORDER THAT

1. The Receiver's Motion is granted in its entirety; and

2. The Eighteenth Interim Status Report of Receiver for the period February 9, 2016 through May 2, 2016, and every act and transaction reported therein, are hereby approved and confirmed.

SO ORDERED this _____ day of _____ 2016.

THE HONORABLE CAROL E. JACKSON
UNITED STATES DISTRICT COURT JUDGE