UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

CASE NO. 12-CV-80-CEJ

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.

PLAINTIFF'S RESPONSE AND MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT MORRISS' MOTION FOR CONFIRMATION THAT HE IS ENTITLED TO ADVANCEMENT OF DEFENSE EXPENSES UNDER INSURANCE POLICY NOTWITHSTANDING ORDER APPOINTING RECEIVER OR ASSET FREEZE

I. INTRODUCTION

Not content with defrauding investors out of more than $9 million to maintain his lavish lifestyle – which included a private airplane, multi-million dollar homes, and an exotic hunting trip to Africa – Burton Douglas Morriss, now wants to take the proceeds of one of the few assets remaining that could benefit his victims to pay his attorneys' fees. Morriss seeks the proceeds of a $3 million liability insurance policy that belongs to the entities he left in financial disarray and should be used to reimburse defrauded investors. Just as importantly, the law, equities, and facts of this case demonstrate the Court should deny Morriss' motion. The insurance proceeds should

remain protected by this Court's Asset Freeze Order until the Receiver has the opportunity to analyze and assert her competing rights and interests under the policy so as to maximize returns to defrauded investors.

Contrary to Morriss' claims, Acartha Group's liability insurance policy and its proceeds are property of the Receivership and subject to the Court's Asset Freeze Order. Under applicable law, the Court should lift the asset freeze and allow insurance policy proceeds to pay Morriss' attorneys' fees only upon a showing it would benefit defrauded investors. Morriss has not met, and cannot, meet that burden. First, it is well-settled law that those accused of fraud, either civil or criminal, have no right to obtain attorneys' fees from frozen funds. Second, the insurance policy specifically excludes coverage for the claims alleged in the Commission's Complaint against Morriss, meaning he has no right to any insurance proceeds. Third, lifting the freeze would harm the Receivership estate and the very investors that Morriss defrauded because it will reduce the amount of proceeds available for the estate to reimburse investors. Fourth, the insurance proceeds are one of the few means currently available to the Receiver to reimburse Morriss' victims. Last, and particularly appalling, are Morriss' representations that he will not comply with Court orders or his discovery obligations until his attorneys receive payment. The Court should not reward such dilatory tactics.

II. FACTUAL BACKGROUND

A. The Asset Freeze

The Commission filed this action against Morriss, Acartha Group, LLC; MIC VII, LLC; Acartha Technology Partners, LP ("ATP"); and Gryphon Investments III, LLC (collectively, the "Investment Entities") and Relief Defendant Morriss Holdings, LLC, alleging, among other things, that Morriss defrauded investors in the Investment Entities by transferring more than $9

million in investor funds to himself and Morriss Holdings in violation of the anti-fraud provisions of the federal securities laws. (DE 1, ¶¶ 1, 19-28, 37-40, 44). Morriss misappropriated the investors' funds at a time when the Investment Entities' financial condition was deteriorating. (DE 18, Ex. 21). Indeed, Morriss' diversion of investor funds was a major cause of the Investment Entities' demise. (DE 18, Ex. 22 at 93, lns. 7-11). Morriss used these funds for personal expenses, including alimony payments, interest payments for personal loans and mortgages, and expensive vacations, including a hunting trip to Africa. (DE 18, Ex. 3 at 280-281; Ex. 10 at 71-72).

On January 17, 2012, the Court entered orders appointing a Receiver over the Investment Entities and freezing all of the assets of the Investment Entities and Morriss Holdings. Order Appointing Receiver (DE 16); Asset Freeze Order and Other Emergency Relief (DE 17). The Court entered the orders after concluding the Commission had demonstrated "a *prima facie* case of securities laws violations by *the Defendants*." *Id.* at 2 (emphasis added). The Court also found "good cause to believe that unless immediately restrained and enjoined by Order of this Court, *the Defendants* will continue to dissipate, conceal or transfer from the jurisdiction of this Court assets which could be subject to an Order of Disgorgement." *Id.* (emphasis added). The Order specifically restrained all individuals and entities except the Receiver from, among other things, transferring or receiving assets or property of the Investment Entities and Morriss Holdings. *Id.* at 2-3. The Order also required all Defendants and Morriss Holdings to provide sworn accountings of their assets, funds, or other properties under their possession or control. *Id.* at 4.

B. Morriss' Failure To Disclose Assets

Morriss has refused to provide any details of his assets as both the Bankruptcy Court and this Court have required. On January 9, 2012, Morriss filed his bankruptcy petition in the Eastern District of Missouri. (*See* DE 6 at Ex. 33). Morriss did not file with the Bankruptcy Court schedules and statements of his assets and liabilities as Bankruptcy Code Section 521 mandates. Indeed, on two occasions, Morriss, claiming he needed more time to compile his financial records, requested additional time to file the required schedules and statements detailing his assets and liabilities. (*In re Morriss*, Case No. 12-40164, DE 17 & 24 (Bankr. E.D. Mo. Jan. 23 & Feb. 2, 2012), attached as composite Ex. A). Morriss, however, ultimately refused to produce the required schedules and statements, citing his Fifth Amendment privilege against self-incrimination. (*In re Morriss*, Case No. 12-40164, DE 44, ¶11 (Bankr. E.D. Mo. Feb. 9. 2012), attached as Ex. B).

Due to Morriss' failure to disclose his assets and concerns Morriss was dissipating assets – including an oil painting, his firearm collection, and a home listed at $4.3 million owned by a trust he created – both the U.S. Trustee and the Receiver filed motions with the Bankruptcy Court to modify his petition, dismiss the case, and/or appoint an independent trustee. (*In re Morriss*, Case No. 12-40164, DE 22, 30 (Bankr. E.D. Mo. Jan. 31, 2012), attached as Exs. C & D). As a result, on February 13, 2012, the Bankruptcy Court converted Morriss' case to Chapter 7 and ordered the appointment of an independent trustee over his bankruptcy estate. (*In re Morriss*, Case No. 12-40164, DE 49 (Bankr. E.D. Mo. Feb. 13, 2012), attached as Ex. E).

Similarly, on February 27, 2012, after requesting two extensions to produce a sworn accounting of his assets, Morriss advised the Court he would not do so, also citing his Fifth

Amendment privilege against self incrimination. (DE 80). As a result, the Commission does not know the extent of Morriss' assets.

At present, the Receivership estate holds few liquid assets. Indeed, bank records indicate Investment Entities' bank accounts were drained to *de minimis* amounts just prior to the Court appointed the Receiver. (DE 50, ¶4). For example, on December 1, 2011, ATP had an account balance of $273,497, but by January 18, 2012, the balance was only $397. (*Id.*)

C. The Insurance Policy

Against this backdrop, Morriss seeks a ruling from this Court that the Asset Freeze Order does not enjoin Federal Insurance Company from paying Morriss' defense costs under the Acartha Group's Venture Capital Asset Protection Policy (the "Insurance Policy").

1. *The Insurance Policy Covers the Investment Entities*

The Insurance Policy provides defense and indemnity coverage for the Investment Entities directly,[1] and to their directors and officers, for loss based upon errors, misstatements, omissions, or breach of duty during the policy period. The policy is a "claims made" policy that will insure covered claims reported to the insurer until December 1, 2012.[2]

The policy covers claims against the Investment Entities as well as claims against directors and officers of the Investment Entities. Clause 1 covers loss for the wrongful acts of the officers and directors. Clause 5 covers loss the Investment Entities incur. (DE 73, Ex. A at § 1 & Endorsement 1). The policy defines loss to include the amount that any insured person or

[1] The policy provides coverage for the "Organization," which includes the general partner or managing general partner of the private equity funds enumerated in the policy, which include ATP and MIC VII. (*Id.* at Item 2 & § 32). Acartha Group and Gryphon Investments are also covered because they are the general partners/managing members of ATP and MIC VII. (*See* DE 18 at Ex. 1; Ex. 4 at BDM-0000009-0000428; Ex. 8 at BDM-0000009-0000428; Ex. 3 at 315-318. *See also* DE 73, Ex. B at 4-5).

[2] Endorsement 15 of the Insurance Policy, not included in Morriss' exhibits, extends to policy period until December 1, 2012. (DE 81 at Ex. 1).

organization "becomes legally obligated to pay on account of any covered claim, including, but not limited to, damages, judgments, settlements, prejudgment and post-judgment interest and defense costs." (*Id.* at § 32).

2. *The Insurance Policy Bars Coverage For Claims Made Against Morriss*

In his motion, Morriss does not advise the Court the Insurance Policy contains several exclusions from coverage, two of which may ultimately deny coverage for Morriss in this case. Specifically, Insurance Policy Section 8(h) excludes coverage for "(i) the committing in fact of any deliberately fraudulent act or omission or any willful violation of any statute or regulation … or (ii) . . . having gained in fact any profit, remuneration or advantage to which such Insured was not legally entitled." (DE 73, Ex A at § 7 & Endorsement 13). The exclusions take effect upon a judgment or other final adjudication that the insured committed the fraudulent act, or, with respect to (h)(ii), upon presentation of any written statement or document by any insured demonstrating gain in profit or remuneration without legal right. (*Id.*) The Commission's Complaint alleges Morriss purposefully defrauded investors of more than $9 million, and that his conduct violated the anti-fraud provisions of the federal securities laws. Moreover, in obtaining the Asset Freeze Order, we presented documentary evidence, including Morriss' own sworn statements and other documents, demonstrating Morriss intentionally diverted $9 million of investor funds to which he was not entitled for his personal use. (*See, e.g.*, DE 6; DE 18 at Exs. 2, 3, 10, 13, 18, 21-24). Consequently, the Insurance Policy likely excludes Morriss' claims for coverage.[3] In fact, the evidence the Commission has already presented to the Court, including Morriss' and other Investment Entity officers' sworn statements and documents, is sufficient to

[3] Contrary to Morriss' argument, these are not mere allegations. The Court evaluated the evidence and concluded the Commission had demonstrated a *prima facie* case that Morriss violated the securities laws and misappropriated more than $9 million in investor funds. *See* Jan. 27, 2012 Asset Freeze Order and Other Relief, DE 59.

exclude his claims at this time pursuant to exclusion (h)(ii). (*See* DE 73, Ex. A at Endorsement 13).

III. MEMORANDUM OF LAW

A. The Insurance Proceeds Are Property Of The Investment Entities And Subject To The Asset Freeze

As an initial matter, the insurance policy is an asset of the Investment Entities and therefore, subject to the Court's January 27, 2012 Asset Freeze Order and Other Emergency Relief. Morriss does not dispute that the insurance policy is an asset of the Investment Entities. Nor could he, given the Investment Entities paid and continue to pay the policy's premiums and it provides liability coverage for each of the Investment Entities. *See generally, In re Petters Co., Inc.*, 419 B.R. 369, 375 (Bankr. D. Minn. 2009) ("[i]t is long-established in this Circuit that the ownership interest of a corporation in a D & O liability insurance policy becomes property of the bankruptcy estate when the company files for relief under Chapter 11") (citing *In re Titan Energy, Inc.*, 837 F.2d 325, 329 (8th Cir. 1988)). Rather, Morriss contends the Insurance Policy *proceeds* are not entity assets, even though the entities have direct coverage rights as insureds, because the directors and officers have superior coverage rights under the policy. The fact that the Investment Entities and Morriss must directly compete with each other for the limited policy proceeds does not somehow remove the proceeds from the scope of the Asset Freeze Order.

As the Insurance Policy covers the Investment Entities, policy proceeds are assets of the Investment Entities. Indeed, in the bankruptcy context "virtually every court to have considered the issue has concluded that the policies -- and clearly the proceeds of those policies -- are part of debtor's bankruptcy estate, irrespective of whether those policies also provide liability coverage for the debtor's directors and officers." *Matter of Vitek, Inc.*, 51 F.3d 530, 535 (5th Cir. 1995) (citations omitted). *See also In re Allied Digital Tech. Corp.*, 306 B.R. 505, 511 (Bankr. D. Del.

2004) ("When a liability insurance provides direct coverage to the debtor [company] as well as the directors and officers, the general rule is that since the insurance proceeds may be payable to the [company] debtor they are property of the debtor's estate."); *In re Sacred Heart Hosp. of Norristown*, 182 B.R. 413, 420 (Bankr. E.D. Pa. 1995) (same). Consequently, the proceeds of the Insurance Policy are subject to the Court's Asset Freeze Order.

As the proceeds of the Insurance Policy are assets of the Investment Entities and therefore subject to the asset freeze, the Court must determine whether Morriss has demonstrated proper cause to modify the freeze. The answer is no.

B. Asset Freeze Modification For Attorneys' Fees – Legal Standard

In considering requests to use frozen funds for attorneys' fees, courts typically and properly place investors' interests over those of defendants. *See generally, In re Krause*, 349 B.R. 272, 283 (Bankr. D. Kan. 2006) ("[T]he Court's research uncovered a number of non-bankruptcy cases in which judges considered the use of frozen assets for attorneys fees. Cases allowing such use are far-between while those denying are legion."). Indeed, "[t]o succeed on a motion to modify freeze to permit payment of attorneys' fees and other expenses, defendant 'must establish that such a modification is in the interest of defrauded investors.'" *SEC v. Credit Bancorp Ltd.*, No. 99 Civ. 11395, 2010 WL 768944, at *4 (S.D.N.Y. Mar. 8, 2010) (quoting *SEC v. Grossman*, 887 F. Supp. 649, 661 (S.D.N.Y. 1995), *aff'd sub. nom. SEC v. Estate of Hirshberq*, 101 F.3d 109 (2d Cir. 1996)). Courts require a defendant to establish that the frozen assets exceed possible disgorgement, and in many cases penalties, before releasing any funds. *See, e.g., SEC v. Bremont*, 954 F. Supp. 726, 733 (S.D.N.Y. 1997) ("until such time as the Court can determine whether the frozen assets exceed the SEC's request for damages, defendants will not be permitted to use any of the frozen assets").

In *SEC v. Comcoa Ltd.*, 887 F. Supp. 1521 (S.D. Fla. 1995), the court refused to modify an asset freeze to allow payment of legal fees, noting courts have dissalowed the use of frozen funds for those fees even in civil forfeiture and criminal cases. *Id.* at 1524 (citing cases). The district court observed that "in all of [those] cases, the courts have essentially held that a defendant has no right to spend another's money for services rendered by an attorney, even if those funds are the only way that the defendant will be able to retain counsel of his choice." *Id.* *See also SEC v. Quinn*, 997 F.2d 287, 289 (7th Cir. 1993) ("just as a bank robber cannot use the loot to wage the best defense money can buy, so a swindler in securities markets cannot use the victims' assets to hire counsel who will help him retain the gleanings of crime"); *SEC v. Lauer*, 445 F. Supp. 2d 1362, 1369 (S.D. Fla. 2006) (denying defendant's motion to lift asset freeze for attorney's fees and noting that frozen funds need not be related to fraud to be subject to the freeze); *SEC v. Roor*, No. 99 Civ. 3372(JSM), 1999 WL 553823 at *2 (S.D.N.Y. Jul. 29, 1999) (defendant "may not use income derived from alleged violations of the securities laws to pay for legal counsel"); *SEC v. Coates*, No. 94 Civ. 5361, 1994 WL 455558 at *3 (S.D.N.Y. Aug. 23, 1994) ("defendant is not entitled to foot his legal bill with funds that are tainted by his fraud").

Of particular note in *Lauer* and *Roor* is the fact that the courts refused to release even funds not directly attributable to the fraud to pay attorneys' fees. The *Roor* court explained that "while money borrowed against the equity in [defendant's] home may not be the proceeds of fraud, there exists a likelihood that [defendant] will soon have significant personal liabilities to the government and to the victims of a fraud he is alleged to have perpetrated." *Roor*, 1999 WL 553823 at *3. *See also Lauer*, 445 F. Supp. 2d at 1369. In other words, the mere fact that the insurance proceeds have not been "tainted" by Morriss' fraud does not make them available for his defense.

Following that same logic, courts have refused to modify an asset freeze to permit the use of insurance proceeds subject to the freeze for a defendant's attorneys' fees. For example, in *SEC v. Credit Bancorp Ltd.*, the court denied defendant's request to lift the asset freeze "for paying his attorneys' fees using funds paid by the Insurers to the Receiver [and his former employer] as part of their settlement." 2010 WL 768944, at *3. The *Credit Bancorp* court explained the purpose of the asset freeze was to assure the defendant's payment and disgorgement of civil penalties and that because "[n]either civil nor criminal defendant have the right to use frozen investor funds to pay their counsel," the defendant's wish to retain counsel of his choice did not trump the interest of compensating victims. *Id.* (citing *Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 321 F.3d 878, 882 n.4 (9th Cir. 2003) (dicta); *CSC Holdings, Inc. v. Redisi*, 309 F.3d 988, 996 (7th Cir. 2002); *United States ex rel Rahman v. Oncology Assocs., P.C.*, 198 F.3d 489, 501–02 (4th Cir. 1999); *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 626 (1989)). Similarly, Morriss should not be allowed to use frozen insurance proceeds for his own attorneys' fees at the expense of the investors he defrauded.

C. Modifying the Asset Freeze Order Would Harm Defrauded Investors

The Court should also deny Morriss' motion because modifying the Asset Freeze Order to permit advancement of Morriss' attorneys' fees and expenses would not be in the best interests of investors. In fact, it would directly harm Morriss' victims by precluding the availability of insurance proceeds to defend the Investment Entities against subsequent claims, or reimburse investors for their losses due to Morriss' fraudulent activities. The equities here balance heavily in favor of the defrauded investors, and not Morriss, who stole more than $9 million from them.

First, Morriss has no countervailing Sixth Amendment right to the counsel of his choice, let alone the release of the Investment Entities' assets to cover his attorneys' fees. As a matter of law, there is no right to counsel in a civil lawsuit. *Lassiter v. Dept. of Soc. Services*, 452 U.S. 18, 25-27 (1981). Moreover, the Supreme Court held in *Caplin & Drysdale*, 491 U.S. at 626, that the Sixth Amendment right to counsel is not implicated when a district court refuses to release funds forfeited under the criminal drug forfeiture statute to allow a *criminal* defendant to pay attorney's fees. Consequently, neither civil nor criminal defendants have the right to use frozen assets to pay their counsel. *See Credit Bancorp*, 2010 WL 768944, at *3 (citations omitted). *See also Comcoa Ltd.*, 887 F. Supp. at 1524 ("In imposing a freeze of assets there is no requirement that the court exempt sufficient assets for the payments of legal fees.").[4]

Second, as discussed above, the Insurance Policy specifically excludes recovery for the claims for which Morriss seeks the advancement of attorneys' fees. Section 8(h) of the Insurance Policy specifically excludes coverage of claims related to intentional fraud and misappropriation. As described in Endorsement 13, written statements of the defendant suggesting such activities is sufficient to deny any coverage. Not only has the Court already held there is sufficient evidence of a *prima facie* case that Morriss defrauded and stole from investors, but as discussed in detail in our *ex parte* emergency motion for asset freeze order and other

[4] Morriss' reliance on *United States v. Stein*, 541 F.3d 130 (2d Cir. 2008), is severely misguided. In *Stein*, the Second Circuit affirmed a district court's determination that in a criminal investigation, the U.S. Attorney's Office improperly and unjustifiably interfered with the indemnification of rights of employees by pressuring the company not to pay its employee's legal fees if the employees declined to cooperate during a criminal investigation of both the employees and the company. *Id.* at 143-44. *Stein* involved a criminal investigation, and courts have declined to extend *Stein's* holding beyond the unique circumstances of the case. *See, e.g., United States v. Emor*, 794 F. Supp. 2d 143, 147 (D.D.C. 2011); *SEC v. Dunn*, 587 F. Supp. 2d 486, 513 (S.D.N.Y. 2008). In stark contrast, in this civil enforcement matter, the Commission is not pressuring any other defendant to withhold attorneys' fees from Morriss. Rather, the Commission is merely seeking to comply with its statutory mandate to protect fraud victims by finding and preserving assets to disgorge ill-gotten gains and repay Morriss' victims.

relief, Morriss' own sworn testimony demonstrates his involvement in the fraud. Consequently, Morriss has no right to *any* insurance proceeds.

Third, lifting the asset freeze to permit Morriss to obtain Insurance Policy proceeds would exhaust the policy and leave the Investment Entities and its defrauded investors without liability coverage. It would also prevent the Receiver from obtaining the proceeds for the benefit of investors. The Insurance Policy is a "wasting" policy, meaning that once Federal issues $3 million in proceeds, the policy is extinguished, regardless of whether there are subsequent outstanding claims. If the Court grants Morriss' motion, he will quickly exhaust Insurance Policy proceeds, given Morriss requests not only attorneys' fees – which include $555 per hour for Ms. Hanaway – but accounting experts as well. (DE 73 at 1). Setting aside the significant hourly rates of counsel, Morriss' request for proceeds for an accounting expert to advise him of *his own assets* should give the Court pause. Morriss does not need an expert to advise him of what he owns – especially, now that he has refused to provide a sworn accounting.

Indeed, the Court should preserve the proceeds of the Insurance Policy to protect the investors Morriss defrauded. As discussed above, the Insurance Policy provides liability coverage to the Investment Entities until December 1, 2012. The Investment Entities may very well be the subject of claims by others relating to the fraud Morriss perpetrated. Morriss' misappropriation of more than $9 million of investor funds has severely impacted the Investment Entities' viability and cash flow. As a result, if Morriss exhausts the Insurance Policy proceeds, payment for the defense of any claims made against the Investment Entities would have to come from the very same investors from whom Morriss stole. The unjust result of the situation is irrefutable.

Similarly, the Investment Entities should also be able to collect the proceeds of the Insurance Policy for the benefit of defrauded investors. The policy permits court-appointed trustees to bring claims against other insured parties. (DE 73, Ex. A at Endorsement 9). Thus, the Receiver may recover the Insurance Policy proceeds for investors by raising and settling claims against former officers, who failed in their fiduciary duty to investors. The Receiver has instituted such claims against Acartha Group's former Chief Administrative Officer Dixon Brown and Morriss. (DE 81 at Exs. 5-6). If Morriss uses the proceeds for his own attorneys' fees, however, there will be no funds left to distribute to the very investors he defrauded. That is not in the best interest of defrauded investors, and the Court should not let that happen. *See Comcoa*, 887 F. Supp. at 1524; *Quinn*, 997 F.2d at 289; *Lauer*, 445 F. Supp. 2d at 1369; *Roor*, 1999 WL 553823 at *2.

Fourth, Morriss' refusal to disclose his assets weighs in favor of denying him access to the insurance proceeds. As discussed above, Morriss refused to provide an accounting of his assets and has failed to comply with Bankruptcy Court orders. Indeed, based on Morriss' actions, the Bankruptcy Court converted his case to Chapter 7 so an independent trustee could evaluate Morriss' assets and determine whether he improperly dissipated assets or funds without Bankruptcy Court approval. Consequently, whether Morriss has assets to pay for attorneys' fees or reimburse the Insurance Policy any improper advancement of attorneys' fees is unknown to all except Morriss himself. Moreover, his actions suggest the likelihood of his ability to satisfy a disgorgement judgment is doubtful. In short, the interests of the defrauded investors would be harmed by releasing the Insurance Policy Proceeds for his benefit. These proceeds should remain in the possession of the Receiver so they can be used for the benefit of the defrauded investors.

Fifth, the Court should not reward Morriss' refusal to comply with the Court's orders and his discovery obligations until his counsel receives payment. In a February 8, 2012 letter to the Receiver, Morriss' counsel advised "until this issue of [insurance policy coverage of] payment for defense costs is resolved, we have suspended our efforts to inventory documents located at Morriss Holdings." (Feb. 8, 2012 Ltr., attached as Ex. F). Counsel's refusal to separate and deliver documents that are property of the Investment Entities to the Receiver is in direct violation of the Court's Order Appointing Receiver. Order Appointing Receiver, DE 16, ¶10. Morriss' Counsel also advised the Commission it would have difficulties meeting Morriss' discovery obligations until it received payment. (*See* Feb. 6, 2012 Email from Morriss' Counsel to the Commission, attached as Ex. G). In his motion, Morriss also declares that unless he receives Insurance Policy proceeds he will not comply with Court-mandated discovery. (DE 73 at 6). Lack of funds to pay attorneys' fees does not exempt parties from complying with Court orders. *See, e.g., Technical Chem. Co. v. IG-LO Prod. Corp.*, 812 F.2d 222, 224 (5th Cir. 1987); *Herstgaard v. Cherryden, LLC*, No. 1:07CV02-MP/AK, 2009 WL 2191862, at *3 (N.D. Fla. Jul, 22, 2009). While the Commission is sympathetic to Morriss' counsel's desire to be compensated, conditioning compliance with Court orders on the receipt of attorneys' fees is improper. The Court should not reward such behavior by permitting Morriss to use defrauded investor assets to comply with Court orders.

In short, Morriss' request for Insurance Policy proceeds runs contrary to the Court's asset freeze order, the law, and the equities. His request is yet another attempt to grab money from the same investors he defrauded. The Insurance Policy proceeds should remain as an asset of the Investment Entities under the Receiver's control to ensure proceeds are available to defend any subsequent claims and compensate defrauded investors.

D. Case Law Cited By Morriss Does Not Support His Request

1. Receivership Jurisprudence Does Not Support Morriss' Request

In defense of his position, Morriss relies on *SEC v. Stanford Int'l Bank, Ltd.*, No. 3:09-CV-298-N, 2009 U.S. Dist. LEXIS 124377 (N.D. Tex. Oct. 9, 2009). Morriss' reliance is misplaced. Indeed, *Stanford* holds that courts should only release D&O insurance proceeds for attorneys' fees if the receivership estate and/or defrauded investors would not be negatively impacted. *Id.* at 21. That is not the case here. In *Stanford*, the district court, using its "broad powers and wide discretion," determined that under the circumstances of that case, the equities favored allowing certain officers and directors (not the lead defendant Allen Stanford) to use the Stanford entities' D&O insurance policy proceeds for attorneys' fees. *Id.* at 16. Noting that it had previously denied the lead defendant's request to unfreeze $10 million in assets to pay attorneys' fees, the *Stanford* court explained that it would permit other defendants to use the D&O insurance policy proceeds because doing so would not likely impact the receivership estate. *Id.* at 16, 20. Specifically, the *Stanford* court explained that the Receivership estate would not be affected because the insurance company was "adamant that it will not" cover the entities under the receiver's control. *Id.* at 20.

The circumstances in *Stanford* differ significantly from the case at hand. First, in this case there is a much greater risk of draining policy proceeds because there is only one policy, while in *Stanford*, the receivership entities had multiple layers of insurance. *Id.* at 13. Second, the insurance provider in *Stanford* advised that it would not defend any claims made against the entities or pay a claim into the receivership. *Id.* at 20. In contrast, in its letter to the Receiver, Federal advised it *would* cover claims made against the Investment Entities. (DE 73, Ex. B at 4-5). Third, due to Morriss' fraud, the Investment entities have very limited liquid assets available

to compensate investors, while in *Stanford*, the Court noted that there was at least $10 million in assets for which it declined to unfreeze to pay defendants' attorneys' fees. U.S. Dist. LEXIS 124377, at *19. Indeed, if confronted with the matter at hand, in which the interests of defrauded investors would be significantly harmed by the release of insurance proceeds to the defendant, the *Stanford* court would have reached a different conclusion.

Moreover, Morriss' argument that if the Court does not grant the relief Morriss seeks, all D&O policies would become worthless misses the mark. As explained, Morriss could not have any expectation the Insurance Policy would cover his fraudulent activities, particularly because the policy explicitly excludes such coverage. Moreover, both bankruptcy courts and district courts, through their inherent equity powers, have the authority to determine the distribution of liability insurance proceeds. *See, e.g., In re Mila, Inc.*, 423 B.R. 537, 543 (B.A.P. 9th Cir. 2010); *Stanford Int'l Bank, Ltd.*, 2009 U.S. Dist. LEXIS 124377, at *17 (citations omitted).

2. *Bankruptcy Jurisprudence Does Not Support Morriss' Request*

In his motion, Morriss also relies heavily on bankruptcy law to support his argument for advancement of attorneys' fees from the Insurance Policy. Morriss' reliance, however, is misplaced. As an initial matter, there is a key distinction between bankruptcy and this proceeding – namely, claims against a debtor entity are typically discharged in bankruptcy. Thus a debtor entity's need for policy proceeds is less pronounced than the Investment Entities here because, unlike bankruptcy debtors, the entities have no discharge benefit and will have to defend against claims.

Moreover, bankruptcy courts follow the general principal "when there is coverage for the directors and officers and the debtor, the proceeds will be property of the estate *if depletion of the proceeds would have an adverse effect* on the estate to the extent the policy actually protects the

estate's other assets from diminution." *Allied Digital Tech. Corp.*, 306 B.R. at 512 (emphasis added). When conducting this analysis, bankruptcy courts balance the equities with an eye towards preserving the bankruptcy estate's interests in the insurance policy's proceeds. *See In re Beach First Nat. Bancshares, Inc.*, 451 B.R. 406, 409 (Bankr. D.S.C. 2011) (citation omitted); *Mila, Inc.*, 423 B.R. at 543.[5]

Indeed, in the bankruptcy cases which Morriss relies, the bankruptcy courts lifted the automatic stay to permit officers and directors to receive insurance policy proceeds only after determining sufficient proceeds existed to cover both the debtor-company and officer's interests and/or the debtor-company had no further need for coverage. For example, in *In re Downey Fin. Corp.* 428 B.R. 595, 609 (Bankr. D. Del. 2010), the bankruptcy court lifted the automatic stay[6] to permit the release of insurance proceeds to the debtor's former officer after concluding it "is difficult to see how lifting the stay in this case would result in any great prejudice to the Debtor," because the "Policy provides coverage for up to $10 million, while the Insureds are requesting stay relief to collect only $880,000 in defense costs."[7]

Similarly, in other cases cited by Morriss, bankruptcy courts lifted the automatic stay only after concluding: (1) the insurance policy proceeds would not be exhausted by doing so, (2) the debtor had no need for the proceeds, or (3) the debtor had no actual right to the proceeds. *See, e.g., In re First Central Fin. Corp.*, 238 B.R. 9, 17 (E.D.N.Y 1999) (permitting release of

[5] Morriss' reliance on *Mila* is misplaced because the policy at issue did not provide entity coverage, as is the case here. *Id.* at 544.

[6] One significant difference between the policy here and the one in *Downey*, is the inclusion of specific language dictating that bankruptcy would not alter the priority of payment scheme; the Insurance Policy here does not include such a provision. *Id.*

[7] While the bankruptcy court also reviewed debtor's rights of recovery under the policy, its main focus related to the balance of equities and whether the debtor would be harmed though lifting the automatic stay.

policy proceeds for directors and officers because "estate is in no need of protection" due to passage of 18 months without claim raised against it); *In re Enron Corp.*, No. 01-16034 (AJG), 2002 WL 1008240 (Bankr. S.D.N.Y. Apr. 11, 2002) (Apr. 11, 2002 Tr. DE 73 at Ex. D at 15) (releasing policy proceeds for directors and officers because entity-debtor was still covered by separate fiduciary policy); *In re World Health Alternatives*, 369 B.R. 805, 811 (denying motion for preliminary injunction to block settlement that would exhaust proceeds because likelihood of recovering any proceeds by debtor minimal); *In re Laminate Kingdom, LLC*, No. 07-10279-BKC-AJC, 2008 WL 1766637, at *3 (holding that "the depletion of proceeds to pay the Costs of Defense does not diminish the protection afforded the estate's assets under the terms of the policy").[8]

In contrast, as described above, the Investment Entities have a significant interest in the Insurance Policy proceeds, which would be seriously harmed if the Court permits Morriss to use those proceeds to pay his attorneys' fees. Indeed, the Insurance Policy has an aggregate $3 million limit, and, as demonstrated by Morriss' counsel's fees listings, if Morriss uses insurance proceeds to pay attorneys' fees, the policy will be extinguished in short order. These proceeds constitute one of the few liquid assets in the Investment Entities' possession, given the dissipation of their bank accounts as discussed above. As a result, if Morriss uses insurance proceeds for attorneys' fees, the Investment Entities will be left uninsured and with few available means to reimburse Morriss' victims.

[8] Moreover, in cases where the bankruptcy courts have lifted the automatic stay for directors and officers, they have done so with prophylactic measures in place – such as proceed caps and stringent reporting requirements – to ensure proceeds were not completely dissipated by directors and officers. *See Petters*, 419 B.R. at 380 (setting aside 25% of aggregate coverage to ensure availability of funds for debtor); *Laminate Kingdom*, 2008 WL 1766637, at *5 (conditioning payment of attorneys' fees upon court approval of monthly fee applications); *Beach First Nat. Bancshares*, 451 B.R. at 412 (warning proceed recipients that "unreasonable or unnecessary" disbursement of proceeds may be subject to disgorgement).

Contrary to Morriss' argument, the priority of payment provision in the Insurance Policy does not alter this analysis. The provision does not affect the Investment Entities' right to policy proceeds, instead, it merely provides for the order of payment under certain circumstances. It advises in event of "Loss for which payment is due," for competing claims, those claims made by a director or officer are satisfied first. (DE 73, Ex. A at Endorsement 11). That is not the situation here. The Insurance Policy likely excludes Morriss' claims, and therefore, his request for the advancement of attorneys' fees should not trump the Receiver's right to recover. If the Insurance Policy advances Morriss' attorneys' fees, investors would suffer irreparable harm because once Morriss depletes the proceeds, the money is gone. Federal has no means to recoup those funds upon a later determination by Federal that Morriss' claims are excluded. In other words, if the Court permits Morriss to extinguish the policy, there will be no proceeds left to reimburse defrauded investors. The Court should not permit Morriss to once again harm the same investors he defrauded.

IV. CONCLUSION

For the forgoing reasons, the Commission respectfully requests that the Court deny Morriss' motion.

Respectfully submitted,

March 2, 2012

By: s/ Adam L. Schwartz

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CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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Kevin Carnie, Esq.
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Counsel for Relief Defendant Morriss Holdings, LLC

s/Adam L. Schwartz
Adam L. Schwartz

SO ORDERED

Jan 25, 2012

Kathy A. Surratt-States

KATHY A. SURRATT-STATES
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:	)	Chapter 11
	)	
BURTON DOUGLAS MORRISS,	)	Case No.: 12-40164
	)	
Debtor.	)	
	)	

MOTION FOR EXTENSION OF TIME TO FILE SCHEDULES, STATEMENT OF FINANCIAL AFFAIRS, STATEMENT OF CURRENT MONTHLY INCOME AND STATISTICAL SUMMARY OF CERTAIN LIABILITIES

Burton Douglas Morriss, the Debtor and Debtor in Possession in the above-captioned case (the "Debtor"), by his undersigned counsel, hereby respectfully moves this Court for entry of an order, under Rule 1007(a) and (c) of the Federal Rules of Bankruptcy Procedure and L.B.R. 1007-1, extending the deadline by which the Debtor must files his Schedules, Statement of Financial Affairs, Statement of Current Monthly Income and Statistical Summary of Certain Liabilities (collectively, the "Schedules and Statements") by four days to January 27, 2012. In support hereof, the Debtor represents as follows:

1. The Debtor filed his voluntary petition for relief under chapter 11 of title 11 of the United States Code on January 9, 2012.

2. The deadline to file the Schedules and Statements is today, January 23, 2012.

3. The Debtor seeks to extend the deadline to file the Schedules and Statements by four days to January 27, 2012.

4. The § 341 meeting of creditors is scheduled for February 7, 2012 at 1:30 p.m.

5. The requested extension will not necessitate a rescheduling of the 341 meeting because the 341 meeting will be more than ten (10) days from the extended deadline.

EXHIBIT
A

6. In addition, today, the Debtor sent documents to the Office of the United States Trustee that were requested at the Initial Debtor Interview, including, but not limited to, bank statements, tax return and insurance information.

7. The Debtor has made no prior request to extend the deadline to file his Schedules and Statements.

8. The Debtor will serve this Motion on those entities who would be on a Master Service List if such a list existed in this case and will file a Certificate of Service evidencing such service.

9. Debtor and his counsel have been working diligently to complete the Schedules and Statements. However, on January 17, 2012, the Securities and Exchange Commission commenced litigation against the Debtor and other entities in the United States District Court for the Eastern District of Missouri. Over the past several days, the Debtor has had to devote a substantial amount of his time and energy to obtaining counsel to defend him in said litigation and working with said counsel to defend the litigation, including defending the Debtor's deposition which was scheduled for tomorrow. As a result, the Debtor has not been able to complete his Schedules and Statements within the initial 14-day period and requires additional time to do so.

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10. Pursuant to L.B.R. 9050-1(E), in lieu of a separate proposed order, this Motion contains an Endorsed Order block that states "So Ordered" along with a date and signature line for the Judge.

WHEREFORE, the Debtor respectfully requests that the Court enter an order **GRANTING** the relief requested in the Motion.

Dated: January 23, 2012

LANE LAW FIRM, LLC,
Attorney for Debtor

By: /s/ Les L. Lane
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208 N. Rolla St.
Rolla, MO 65401
Telephone: (573) 426-5251
Facsimile: (573) 426-5540
Email: lanelaw@fidnet.com

So Ordered, this ____ day of January, 2012.

The Honorable Kathy Surratt-States, United States Bankruptcy Judge for the Eastern District of Missouri

SO ORDERED
IN PART
Deadline extended to:
February 9, 2012.

Feb 02, 2012
Kathy A. Surratt-States
KATHY A. SURRATT-STATES
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:	)	Chapter 11
	)	
BURTON DOUGLAS MORRISS,	)	Case No.: 12-40164
	)	
Debtor.	)	
	)	

DEBTOR'S SECOND REQUEST FOR EXTENSION OF TIME TO FILE SCHEDULES, STATEMENT OF FINANCIAL AFFAIRS, STATEMENT OF CURRENT MONTHLY INCOME AND STATISTICAL SUMMARY OF CERTAIN LIABILITIES

Burton Douglas Morriss, the Debtor and Debtor in Possession in the above-captioned case (the "Debtor"), by his undersigned counsel, hereby respectfully moves this Court for entry of an order, under Rule 1007(a) and (c) of the Federal Rules of Bankruptcy Procedure and L.B.R. 1007-1, extending the deadline by which the Debtor must file his Schedules, Statement of Financial Affairs, Statement of Current Monthly Income and Statistical Summary of Certain Liabilities (collectively, the "Schedules and Statements") by thirty-one (31) days to February 27, 2012. In support hereof, the Debtor represents as follows:

1. The Debtor filed his voluntary petition for relief under chapter 11 of title 11 of the United States Code on January 9, 2012.

2. This is the Debtor's second request to extend the deadline to file the Schedules and Statements. On January 26, 2012, the Court entered an Order extending the deadline by four (4) days to January 27, 2012.

3. By this Motion, the Debtor seeks to extend the deadline to file the Schedules and Statements by an additional thirty-one (31) days to February 27, 2012.

4. The § 341 meeting of creditors is currently scheduled for February 7, 2012 at 1:30 p.m. The Office of the United States Trustee has indicated that it will proceed with the 341 meeting as scheduled, but will not conclude the meeting until the Debtor has filed the Schedules and Statements.

5. The Debtor previously sent documents to the Office of the United States Trustee that were requested at the Initial Debtor Interview, including, but not limited to, bank statements, tax return and insurance information.

6. The Debtor will serve this Motion on those entities who would be on a Master Service List if such a list existed in this case and will file a Certificate of Service evidencing such service.

7. Debtor and his counsel have been working diligently to complete the Schedules and Statements. However, only a week after the Debtor filed his petition, the Securities and Exchange Commission filed a Complaint for Injunctive and Other Relief against the Debtor and other entities in the United States District Court for the Eastern District of Missouri (*Securities and Exchange Commission vs. Burton Douglas Morriss, Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, L.P., and Gryphon Investments III, LLC)* (the "SEC Litigation").

8. On January 17, 2012, the District Court entered a temporary order granting the SEC's *ex parte* emergency motion for the appointment of a receiver and asset freeze with respect to the entity defendants in the SEC Litigation (the "Receiver Order"). Since the commencement of the SEC Litigation, the Debtor has had to devote the majority of his time and energy to dealing with the SEC Litigation. Specifically, on January 18, 2012, the Debtor and his undersigned counsel met with the court appointed receiver, Claire M. Schenk, (the "Receiver") at the Debtor's office for the purpose of assisting the Receiver in identifying documents and other

assets that the Receiver was entitled to take possession of pursuant to the Receiver Order. The Debtor spent the following days continuing to address issues related to the Receiver Order and attempting to secure counsel to defend him in the SEC Litigation and related matters.

9. In that regard, on or about January 20, 2012, the Ashcroft Law Firm was engaged to represent the Debtor in the SEC Litigation. As set forth in the Affidavit of Catherine Hanaway in Support of this motion (the "Hanaway Affidavit"), attached hereto as Exhibit "A", the Debtor has spent a substantial amount of his time during the past week working with the Ashcroft Law Firm to prepare his defense and attend depositions and hearings scheduled in the SEC Litigation. Further, it is likely that a considerable amount of the Debtor's time over the next several weeks will continue to be spent dealing with the SEC Litigation.

10. As a result of the foregoing, the Debtor has not been able to spend the time and effort needed to complete his Schedules and Statements within the current deadline and requires additional time to do so.

11. The Debtor submits that good cause exists to extend the deadline to file Schedules and Statement by an additional thirty-one (31) day period to February 27, 2012.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

12. Pursuant to L.B.R. 9050-1(E), in lieu of a separate proposed order, the Debtor will submit an Endorsed Order to the Court.

WHEREFORE, the Debtor requests that the Court enter an order **GRANTING** the relief requested in the Motion.

Dated: January 27, 2012

LANE LAW FIRM, LLC,
Attorney for Debtor

By: /s/ Les L. Lane

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Email: lanelaw@fidnet.com

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:	)	Chapter 11
	)	
BURTON DOUGLAS MORRISS,	)	Case No.: 12-40164
	)	
Debtor.	)	Judge Kathy A. Surratt-States
	)	

STATEMENT CONCERNING DEBTOR'S SCHEDULES AND STATEMENT OF FINANCIAL AFFAIRS

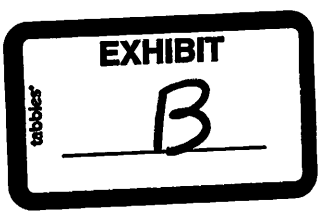
Burton Douglas Morriss, the Debtor and Debtor in Possession in the above-captioned case (the "Debtor"), by his undersigned counsel, hereby submits this Statement (the "Statement") Concerning Debtor's Schedules and Statement of Financial Affairs (the "Schedules and Statements"), filed herewith, in order to provide the Court additional information regarding Debtor's responses set forth in the in the Schedules and Statements.

1. The Debtor filed his voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") on January 9, 2012 (the "Petition Date"). Since that time, the Debtor has remained in possession and control of his assets pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. Prior to the Petition Date, the Debtor was a Defendant in litigation[1] commenced by certain investors in funds operated by various entities affiliated with the Debtor.

3. Prior to the Petition Date, the Debtor was also the subject of an investigation by the Securities and Exchange Commission (the "SEC"). Prior to the Petition Date, however, there was no indication that the SEC was preparing an immediate civil action against the Debtor.

[1] *Ron Nixon, as Co-Trustee of the Bailey Quin Daniel 1991 Trust, Wilmington Trust Company, as Co-Trustee of the Bailey Quin Daniel 1991 Trust, JBG Interest, LLC and HEG Interests, LLC vs. B. Douglas Morriss, MIC, VII, LLC and Acaratha Group, LLC*; Case No. 11SL-CC04718 (pending in the Circuit Court for St. Louis County).



Indeed, the SEC never issued a "Wells Notice" to the Debtor. Further, there was absolutely no indication that a criminal investigation would be forthcoming.

4. The Debtor commenced this chapter 11 proceeding to obtain protection under the Bankruptcy Code, obtain some breathing room to formulate a plan of reorganization and ultimately pay back his creditors in accordance with that plan. In that regard, both prior to and in the days following the Petition Date, the Debtor was working diligently toward preparing his Schedules and Statements and contemplating possible means for funding a plan of reorganization.

5. However, the goal of a successful reorganization was brought to an abrupt halt only days after the Petition Date when the SEC commenced civil litigation[2] against him that it alleges is not subject to the automatic stay, the SEC got a receiver appointed on an *ex parte* basis in that litigation, the Receiver and her entourage showed up at the Debtor's office to take property and files, and the Debtor learned that the Office of the United States Attorney had opened a criminal investigation against him. Rather than obtain the breathing room he sought and needed by commencing this proceeding, the Debtor has been smothered since seeking protection under the Bankruptcy Code and has had little time or ability to focus on reorganization efforts.

6. On or about January 20, 2012, the Ashcroft Law Firm, LLC was engaged to represent the Debtor in connection with the SEC Litigation, criminal investigation and related proceedings. Since learning of the ongoing criminal investigation, the Debtor's primary focus has, by necessity, been defending the SEC Litigation and what appears to be an ongoing criminal

[2] *Securities and Exchange Commission vs. Burton Douglas Morriss, Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, L.P., and Gryphon Investments III, LLC);* Case No. 4:12-cv-80-CEJ, (E.D. Mo.) (the "SEC Litigation"). On January 17, 2012, the District Court entered a temporary order granting the SEC's *ex parte* emergency motion for the appointment of a receiver and asset freeze with respect to the entity defendants in the SEC Litigation. Claire Shenk was appointed as the receiver (the "Receiver").

investigation. Accordingly, as the Court will see in the Schedules and Statements, the Debtor has, on the advice of counsel, respectfully refused to provide responses to the Schedules and Statements on the ground that they may tend to incriminate him. Therefore, the Debtor has asserted his rights against self-incrimination under the Fifth Amendment to the United States Constitution.

7. The Debtor is desirous of fulfilling his duties under the Bankruptcy Code and Rules, including providing complete and accurate responses to the Schedules and Statements. To that end, the Ashcroft Law Firm has submitted a letter to the United States Attorney's Office for the Eastern District of Missouri requesting that, pursuant to § 344 of the Bankruptcy Code, the Debtor be granted immunity for the testimony and information he provides in the bankruptcy case. In light of the ongoing criminal investigation, unless and until such immunity is granted, the Debtor has little choice but to assert his Fifth Amendment rights.

8. The Debtor's Schedules and Statements were initially due on January 23rd. On January 26, 2012, the Court entered an Order, on motion of the Debtor, extending the deadline by four (4) days to January 27, 2012. On January 27th, the Debtor filed a second request for a continuance, which the Court granted in part, by extending the deadline to February 9, 2012. In his requests for extensions of time, the Debtor indicated that he had been working on preparing his Schedules and Statements but that he needed additional time to complete his Schedules and Statements. The statements made in those motions were true. Debtor and counsel have done a substantial amount of work toward trying to prepare accurate Schedules and Statements, but, as discussed below, a forensic accountant is needed to verify the accuracy of the information sought in the Schedules and Statements. At the time the requests for extensions were filed, the Debtor intended to file completed Schedules and Statements in accordance with the Bankruptcy Rules

and Orders of this Court. The decision to assert the Fifth Amendment Privilege was made only recently. In light of the ongoing criminal investigation and the high level of scrutiny this case is receiving, the Debtor cannot risk filing the Schedules and Statements unless and until he can be certain that they are true and complete. Debtor and counsel believe that any error or omission in his Schedules and Statements, even if inadvertent, and no matter how minor, will be used against him by the SEC, the Receiver and the United States Attorney.

9. The Debtor's efforts to complete his Schedules and Statements have been further impeded by the Receiver. Because of the asset freeze in the SEC Litigation, Federal Insurance Company ("Chubb") has tried to reach agreement with the Receiver on a stipulated order authorizing payment of Debtor's defense costs[3]. The Receiver has not agreed to stipulate to such an order. If agreement cannot be reached, Debtor intends to file a motion with the District Court for the advance of defense costs, including a forensic accountant, pursuant to the insurance policy notwithstanding the asset freeze order. The forensic accountant is needed insofar as the Debtor's financial and business transactions for the past many years are both numerous and complex. The Receiver, however, has objected to payment of any defense costs, including an accountant, from the insurance proceeds. Further, the Receiver has requested that the Debtor agree to some form of pledge agreement to insure reimbursement of insurance proceeds in the event a no coverage determination is made. This is tantamount to the Receiver asking the Debtor to commit a fraud insofar as any such pledge by the Debtor would be in violation of the Bankruptcy Code.

10. As the Court is aware, on January 31, 2012, the United States Trustee filed a motion to convert the Debtor's case to a chapter 7 proceeding or dismiss the Debtor's chapter 11

[3] Chubb is the insurer under a pre-petition director's and officer's liability policy (the "D&O Policy") maintained by Acartha Group, LLC and, under which, the Debtor is a covered person.

case (the "Motion to Dismiss"). The Debtor has consented to dismissal of this case. As the Court is also aware, the Debtor requested an immediate dismissal of this case under § 105(a) of the Bankruptcy Code and L.B.R. 1017-1(B), which request was denied. In short order, the Debtor will be filing a motion to dismiss this case for cause under section 1112(b) of the Bankruptcy Code.

11. Inasmuch as the Debtor has sought dismissal of this case and will continue to seek dismissal of this case, the Debtor submits that the filing of Schedules and Statements would "compel" the Debtor to be a witness against himself. That is clearly prohibited by the Fifth Amendment. *See In re Kaufman,* 35 B.R. 26, 27 (Bankr. D. Haw. 1983). In *Kaufman*, the court when faced with a similar case, stated that:

> [T]o require Debtor to prepare in writing a list of creditors, a schedule of assets and liabilities and a statement of financial affairs may result in information that may be used against Debtor in a criminal action. The Debtor would then be compelled to be a witness against himself. This is prohibited by the Fifth Amendment. The Court thus finds that the Debtor cannot be compelled to comply with Sec. 521(1), if he invokes the 5th Amendment and Debtor has here invoked said privilege.

Id.

12. Accordingly, The debtor has respectfully declined to answer the questions contained in the Schedules and Statements on the grounds that there is a pending criminal investigation against him and his answer may tend to incriminate him. Therefore, the Debtor hereby asserts his rights under the Fifth Amendment to the United States Constitution to not answer the questions contained in the Schedules and Statements.

Dated: February 9, 2012

Respectfully submitted,

LANE LAW FIRM, LLC,
Attorney for Debtor

By: /s/ Les L. Lane

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on February 9, 2012, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all counsel of record.

/s/ Les L. Lane

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:	)	
	)	
Burton Douglas Morriss	)	Case No. 12-40164-659
	)	Chapter 11
Debtor.	)	
	)	Judge Kathy A. Surratt-States
	)	
	)	Hearing Date: March 5, 2012
	)	Hearing Time: 10:00 a.m.

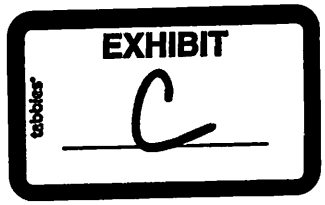
MOTION OF THE UNITED STATES TRUSTEE TO CONVERT DEBTOR'S CHAPTER 11 PROCEEDING TO A CHAPTER 7 PROCEEDING OR DISMISS CHAPTER 11 CASE

Comes Now Nancy J. Gargula, the United States Trustee for the Eastern District of Missouri (hereinafter referred to as the "U.S. Trustee"), by her attorney Martha M. Dahm, and, pursuant to Section 1112 of the Bankruptcy Code, 11 U.S.C. §§101 et. seq. (hereinafter referred to as the "Code"), moves this Court for entry of an order converting the Chapter 11 case of Burton Douglas Morriss, (hereinafter referred to as the "Debtor") to a case under Chapter 7 of the Code, or, Dismiss the Chapter 11 Case. In support thereof, the U.S. Trustee states as follows:

1. This is a core proceeding concerning the administration of the estate pursuant to 28 U.S.C. § 157(b)(2)(A) which this Court may hear and determine pursuant to Rule 9.01(B)(1) of the United States District Court for the Eastern District of Missouri.

2. The Debtor commenced this case on January 9, 2012, by filing his voluntary petition for relief under Chapter 11 of the Code, and has remained in possession and control of his assets pursuant to Sections 1107 and 1108 as debtor-in-possession.

3. On January 23, 2012, Debtor filed a Motion for Extension of time to File Schedules, Statement of Financial Affairs, Statement of Current Monthly Income and Statistical Summary of Certain



Liabilities(hereinafter referred to as the "Schedules and Statements").

4. On January 26, 2012, an order was entered granting the Debtor's Motion for Extension of Time granting the Debtor until January 27, 2012, to file the Schedules and Statements.

5. On January 27, 2012, Debtor filed his Second Motion for Extension of time to file the Schedules and Statements. Debtor's Second Motion requests an additional thirty-one days (until February 27, 2012) in which to file the Schedules and Statements. Debtor alleges in this Motion that the Securities and Exchange Commission commenced litigation against the Debtor and other entities in the United States District Court for the Eastern District of Missouri (Securities and Exchange Commission vs. Burton Douglas Morriss, Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, L.P. and Gryphon Investments III, LLC) (the "SEC Litigation") on or about January 17, 2012; and that on January 20, 2012, the Ashcroft Law Firm was engaged to represent the Debtor in the SEC Litigation.

6. The first meeting of creditors in this case is scheduled for February 7, 2012. Notice has been issued to all creditors. Debtor has failed to file the required Schedules and Statements. The Debtor is required pursuant to Section 521(1) of the Code, to file a schedule of assets and liabilities; a schedule of current income and current expenditures; and statement of financial affairs. Further, *Fed. R. Bankr. P. 1007(c)* requires these documents to be filed with the petition or within 14 days of the order of relief unless an extension of time is granted by the Court. Without these documents it is impossible to monitor the Debtor's bankruptcy case. *Tradex Corp. V. Morse*, 339 B.R. 823 (D. Mass. 2006).

7. Debtor's counsel in this case, Mr. Leslie L. Lane, has failed to file his application for employment in this matter pursuant to Section 327 of the Bankruptcy Code.

8. Pursuant to the affidavit of Catherine Hanaway submitted in this matter and attached to the Debtor's Second Request for Extension of Time to File Schedules and Statements she and her firm was engaged to represent the Debtor in SEC Litigation and related matters on or about January 20, 2012.

Counsel has not been properly employed by the Bankruptcy Court under Section 327 of the Code.

9. On January 13, 2012, the U.S. Trustee's Office held an initial debtor interview. At the meeting the Debtor appeared and Mr. Lane appeared on behalf of the Debtor. At the meeting the Debtor stated that he has a controlling interest in several entities. Debtor has failed to provide further information regarding these entities. Debtor also stated that his major assets are a contract list; a 401(k) plan; and an oil painting. The painting is apparently at Conrad Gallery and the Gallery is attempting to sell the painting. Debtor has not requested Court authority to sell this painting in violation of Section 363 of the Bankruptcy Code.

10. It further appears that a home located at 3 Saint Andrew Drive, St. Louis, Mo. 63124, owned by BDM, an irrevocable trust created by the Debtor in 2000 in currently listed for sale at $4,345,000. Again, without further information regarding the Debtor's interest in this entity it is impossible to determine the estate's obligations and responsibilities regarding this real estate listing.

11. The Debtor has sought to avail himself of the benefits conferred by the Code, but has failed to fulfill the duties required by the Code. Continuation of this case under Chapter 11 will only serve to delay and prejudice the creditors. The U.S. Trustee's Office has little information regarding this case to properly monitor and supervise the administration of this case.

12. Based on the foregoing the U.S. Trustee believes that due cause exists to convert this case to a Chapter 7 or in the alternative dismiss this case pursuant to Section 1112(b) of the Code.

WHEREFORE, the United States Trustee prays for an order converting this case to a Chapter 7 of the Code, or, in the alterative, dismissing this case, for cause and for such other relief as this Court deems just.

Respectfully submitted,

Nancy J. Gargula
UNITED STATES TRUSTEE

By:_/s/Martha M. Dahm_____
Martha M. Dahm, Mo. Bar #35410
Attorney for the U.S. Trustee
111 S. 10th Street, Suite 6353
St. Louis, MO 63102
(314) 539-2976

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2012, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon all counsel of record.

/s/ Martha Dahm

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

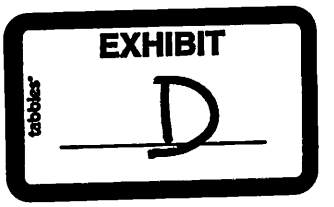
In re:	) **Case No. 12-40164-659**
	) **Chapter 11**
BURTON DOUGLAS MORRISS,	)
	) **Judge Kathy A. Surratt-States**
	)
Debtor.	)
	)
	)

MOTION FOR APPOINTMENT OF TRUSTEE, OR ALTERNATIVELY, FOR CONVERSION OF CASE

COME NOW Acartha Group, LLC, Acartha Technology Partners, L.P., MIC VII, LLC, and Gryphon Investments III, LLC (collectively, the "Receivership Entities"), by and through Claire M. Schenk as Receiver ("Receiver"), a creditor and party in interest, and with the assistance of counsel Thompson Coburn LLP, move this Court for an order pursuant to 11 U.S.C. §§ 1104(a), 1112(b) and Federal Rule of Bankruptcy Procedure 2007.1, appointing a trustee in this case, preferably in Debtor's Chapter 11 proceeding, or alternatively, converting this case so that a trustee may assume responsibility for this case under Chapter 7 of the Code. In support of this Motion For Appointment of Trustee, or Alternatively for Conversion of Case (the "Motion"), the Receivership Entities state:

1. On January 9, 2012 (the "Petition Date"), only days before the filing of the SEC Case more particularly described below, Burton Douglas Morriss, debtor and debtor-in-possession in the above captioned case ("Debtor"), filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Eastern District of Missouri, thereby securing the shelter of this forum accordingly.

2. Prior to the relief being granted in the SEC Case as more particularly described below, Debtor served as the chief executive officer and chairman of Acartha Group, LLC's board of directors, the managing member of MIC VII. Debtor also served as a manager of Gryphon Investments III, LLC, the general partner of Acartha Technology Partners, L.P. Debtor also served as the chairman and controlling member of Morriss Holdings, LLC and a member of its board of directors.



The SEC Receivership Proceeding

3. On January 17, 2012, the United States Securities and Exchange Commission (the "SEC") filed its *Complaint for Injunctive and Other Relief* (the "Complaint") against Debtor, Acartha Group, LLC, Acartha Technology Partners, L.P., MIC VII, LLC, Gryphon Investments III, LLC and Morriss Holdings, LLC (collectively, the "SEC Defendants") in the United States District Court for the Eastern District of Missouri (the "Missouri District Court"), Case No. 4:12-cv-00080-CEJ (the "SEC Case"). *See* Complaint (SEC Case, Dkt. No. 1).

4. Papers filed by the SEC in the SEC Case allege, among other things, that:

- From 2005 until the present, Debtor, through the Receivership Entities, defrauded investors by transferring more than $9 million in investor funds to himself and a related company, Morriss Holdings, LLC.
- Debtor and the Receivership Entities made these transfers without disclosing to or seeking approval of investors.
- The transfers resulted not only in the misappropriation of investors' money, but the dilution of their shares of the Receivership Entities' investments.
- Approximately 97 investors invested at least $88 million in Acartha Group, a private equity fund management company Debtor controlled, and the funds and other entities it managed, namely MIC VII, Acartha Technology Partners, and Gryphon Investments.
- Those investments are now at risk as both Acartha Group and the investment entities controlled by Debtor are facing a financial shortfall.

5. Relief sought in the SEC Case included the immediate appointment of a receiver for the Receivership Entities to: (a) administer and manage the business affairs, funds, assets, choses in action and other property of the Receivership Entities, (b) act as sole and exclusive managing member or partner of the Receivership Entities, (c) maintain sole authority to administer any and all bankruptcy cases in the manner determined to be in the best interests of the Receivership Entities' estate, (d) marshal and safeguard all of the assets of the Receivership Entities, and (e) take whatever actions are necessary for the protection of investors. *See* Emergency Motion for Appointment of Receiver and Memorandum of Law in Support (SEC Case, Dkt. No. 3), attached hereto as **Group Exhibit A** and incorporated herein, and Exhibits to Motion (SEC Case, Dkt. No. 4).

6. The SEC additionally sought to immediately freeze the assets of the Receivership Entities and for certain other emergency relief. *See Ex Parte* Emergency Motion for Asset Freeze and Other Relief and Memorandum of Law in Support (SEC Case, Dkt. No. 6), attached hereto as **Group Exhibit B** and incorporated herein, and other declarations and exhibits filed in support thereof (SEC Case, Dkt. No. 18).

7. On January 17, 2012, the Missouri District Court granted (a) the SEC's emergency motion for the appointment of a receiver pursuant to its Order Appointing Receiver (the "Receivership Order"); and (b) the SEC's emergency motion to freeze assets, pursuant to a certain Asset Freeze Order and Other Emergency Relief (as modified by the Missouri District Court's supplemental Order entered January 19, 2012, the "Initial Asset Freeze Order").

8. On January 27, 2012, after a hearing, the Missouri District Court entered a final asset freeze order, by which the SEC obtained an order freezing the Receivership Entities' and Morriss Holdings, LLC's assets, an order requiring sworn accountings, and an order prohibiting the destruction of documents (the "Final Asset Freeze Order"). **Debtor is not subject to the asset freeze imposed under the Final Asset Freeze Order.**

9. Pursuant to the Receivership Order, the Missouri District Court appointed the Receiver as receiver for the Receivership Entities. **However, the Receiver was not appointed as receiver for Debtor.**

10. Among other things, the Receivership Order authorizes the Receiver to operate and manage the businesses and financial affairs of the Receivership Entities and directs that the Receiver succeeds to all rights and powers of managing member and/or managing partner of the Receivership Entities, with sole and exclusive authority to take all actions necessary in such capacity. *See* Receivership Order (SEC Case, Dkt. No. 16), attached hereto as **Exhibit C** and incorporated herein.

Debtor's Bankruptcy Case

11. Debtor elected to be a debtor-in-possession in this Case and to thereby be shielded from recourse by his creditors while nevertheless continuing to enjoy the opportunity to operate his affairs in the "ordinary course". In exchange for the privileges afforded to him at the expense of creditors and other parties in interest, Debtor has numerous obligations as a debtor-in-possession, which he is failing to fulfill in accordance with Bankruptcy Code

12. Among other things, Debtor:

- Has not filed his Schedules and Statements, although having delayed revealing his ultimate intention not to provide these disclosure papers by seeking multiple extensions of the deadline to do so;
- Has not sought to have his counsel approved by the Court pursuant to Section 327 of the Bankruptcy Code;
- Upon information and belief, has listed for sale, or has caused to be listed for sale, a home located at 3 Saint Andrews Drive, Saint Louis, Missouri 63124 (at a sales price of $4.345 million) that is owned by BDM, an irrevocable trust created by Debtor in 2000;
- Upon information and belief, owns one or more valuable paintings, one of which is listed for sale at Conrad Gallery;
- Upon information and belief, has not, himself or through his attorney, responded to reasonable requests from the U.S. Trustee's office;
- Upon information and belief, sold his gun collection, worth more than $200,000, for substantially less than fair market value; and
- Upon information and belief, may be depleting bank accounts and otherwise moving assets in contravention of the Bankruptcy Code.

13. That Debtor may be transferring, selling or otherwise disposing of assets in contravention of the Bankruptcy Code and against the best interests of Debtor's creditors is a serious and legitimate concern.

14. The Office of the U.S. Trustee has similarly voiced concern respecting Debtor's course of dealing in this Case as noted in its Motion to Convert Debtor's Chapter 11 Proceeding to a Chapter 7 Proceeding or Dismiss Chapter 11 Case (the "Motion to Convert"), filed January 31, 2012.

15. The first meeting of creditors in this Case is set for Tuesday, February 7, 2012, at 1:30 p.m.

16. On February 3, 2012, Debtor filed a response to the Motion to Convert, requesting that the Court immediately dismiss his Chapter 11 case for his calculated failure to file schedules and statements, or alternatively, suspend all proceedings in the case, including the first meeting of creditors, until the Court considers the relief requested in the Motion to Convert.

17. During the week of January 30, 2012, undersigned counsel placed a call to Debtor's counsel to discuss the status of the case. Debtor's counsel did not return the phone call, but sent an e-mail indicating that Debtor filed his consent to the U.S. Trustee's request for dismissal of the Case. Since that time, Debtor's counsel has filed a pleading with the Court requesting to withdraw from representation of Debtor. Upon information and belief, neither Debtor nor his counsel plan to appear at the first meeting of creditors, despite filing pleadings suggesting an intention to file schedules and statements and to ultimately present at the first meeting.

18. Debtor's actions in this case evidence a blatant disregard for and an abuse of the system. Debtor sought refuge in bankruptcy by voluntarily filing for Chapter 11, and now seeks to exit it by manufacturing a basis for dismissal to avoid making a full disclosure of assets and liabilities and to otherwise avoid acting in the best interest of creditors in accordance with his fiduciary duties as a debtor in possession.

19. Debtor is not currently subject to the terms of the asset freeze or the receivership in place in the SEC Case and thus a dismissal of this case permits Debtor to buy more time to render himself and his assets out of the reach of creditors.

20. Under the circumstances, it is appropriate that a trustee be appointed to assume Debtor's duties in this case. Movants' position is that the appointment of a trustee in this chapter 11 proceeding is the proper course at this early stage of the case to enable greater flexibility in responding to matters as they may develop. However, conversion of this case so that a trustee may assume responsibility for this case under Chapter 7 of the Code is an alternative also proposed for consideration. The relief requested is necessary to enable the identification, and to prevent the dissipation, of assets and assure an adequate and orderly administration of this case. Under no circumstances should this case be dismissed so that Debtor

is permitted to conveniently breeze in and out of this forum with abandon at the expense of those who allege significant wrongdoing and injury as outlined in the SEC Case pleadings.

Bases for Relief Requested

21. This Court has jurisdiction to hear and determine this matter pursuant to 28 U.S.C. § 1334, 28 U.S.C. §§ 157(a) and 157(b)(1), 11 U.S.C. §§ 1104(a), 1112(b), and Federal Rule of Bankruptcy Procedure 2007.1. This is a "core" proceeding which this Court has jurisdiction to hear and determine pursuant to 28 U.S.C. §§ 157(b)(1) and 157(b)(2)(A).

22. Section 1104(a) provides:

> At any time after the commencement of a case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee--
>
> > (1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or
> >
> > (2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

11 U.S.C. § 1104(a).

23. Grounds exist for appointment of a trustee under both Section 1104(a)(1) and (a)(2).

24. As more fully described in the SEC Case, Debtor is alleged to have committed, and may continue to commit, various acts of fraud. As alleged in the SEC Case, between 2005 and 2011, Debtor, using the Receivership Entities, fraudulently transferred approximately $9.1 million of investor funds to himself and his family's holding company, Morriss Holdings, LLC, for his personal use.

25. Among other things alleged, Debtor used the fraudulently obtained investor funds to satisfy personal loans, pay alimony, and take expensive vacations.

26. Since filing for bankruptcy, Debtor's actions and inactions indicate that he is not capable to act as debtor-in-possession in this case. Among other things, Debtor (i) has not filed his statements and schedules, (ii) has indicated that he will not appear for his first meeting of creditors, (iii) is, upon information and belief, attempting to sell assets and dissipate funds, which actions are questionably

outside of the ordinary course of business, and (iv) has even consented to the dismissal of this case, thereby affording creditors and parties-in-interest no opportunity to examine Debtor's assets and liabilities or question Debtor at a meeting of creditors. Debtor's actions thus far give the Receivership Entities no confidence that Debtor will manage his case adequately and appropriately.

27. Debtor's actions in and out of bankruptcy constitute good cause for appointing a trustee in this case.

28. Moreover, for the reasons stated above, appointment of a trustee will be in the best interests of creditors. With a trustee in place, creditors can obtain information about Debtor's assets and liabilities and feel confident that Debtor's assets will not be further mismanaged or dissipated.

29. Alternatively, the Receivership Entities request that the Court convert this case to one under Chapter 7 of the Code pursuant to 11 U.S.C. § 1112(b).

30. Section 1112 provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 ... unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

31. For the same reasons, conversion to Chapter 7 may be necessary in this case and "cause" exists for such relief. Among other things, (i) Debtor has given no indication that he will be able to manage his estate adequately, fairly and with the best interests of his creditors in mind, *see* 11 U.S.C. § 1112(b)(4)(B); (ii) if Debtor is dissipating assets, there exists the real possibility of a substantial or continuing loss to or diminution of the estate, *see* 11 U.S.C. § 1112(b)(4)(A); and (iii) Debtor has failed to observe his obligations under the Code, including the filing of his schedules and statements, *see* 11 U.S.C. §§ 1112(b)(4)(F), (G), and (H).

32. For all the reasons stated above, the Receivership Entities submit that presently, a dismissal of Debtor's bankruptcy case would do harm to creditors and other parties in interest. At this time, bankruptcy is the best forum to maintain the status quo and enable creditors and parties in interest to investigate and determine what assets exist to satisfy the Debtor's liabilities.

33. It is, however, imperative that this Court remove Debtor from control over his assets and their administration and place a trustee at the helm. The Receivership Entities' first preference is the appointment of a Chapter 11 trustee, as the Receivership Entities and other creditors and parties in interest do not have enough information at this time to determine how best to approach Debtor's case and desire to retain flexibility to respond appropriately as more information becomes available. The Receivership Entities request that the Court give a Chapter 11 trustee and the Receivership Entities a chance to determine whether Debtor's affairs are best administered via a Chapter 11, a Chapter 7 or some other proceeding.

WHEREFORE, the Receivership Entities respectfully request the Court enter an Order:

A. Appointing a trustee to assume control and management of this case pursuant to 11 U.S.C. § 1104(a); or alternatively, converting this case to a case under Chapter 7 of the Bankruptcy Code pursuant to 11 U.S.C. § 1112(b) so that a trustee may assume management of the estate;

B. Rejecting Debtor's request to dismiss the case; and

C. Providing for such other and further relief as the Court deems just and proper.

Respectfully submitted,

THOMPSON COBURN LLP

By*/s/ Cheryl A. Kelly*

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Attorney for the Receivership Entities, acting by and through Claire M. Schenk, Receiver

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:	) **Case No. 12-40164-659**
	) **Chapter 11**
BURTON DOUGLAS MORRISS,	)
	) **Judge Kathy A. Surratt-States**
	)
Debtor.	)
	)
	)

EXHIBIT SUMMARY

Pursuant to Local Rules 9040, the following exhibits are referenced in support of the **MOTION FOR APPOINTMENT OF TRUSTEE, OR ALTERNATIVELY, FOR CONVERSION OF CASE.** Copies of these exhibits will be provided as required by the Local Rules:

1. Emergency Motion for Appointment of Receiver and Memorandum of Law in Support (SEC Case, Dkt. No. 3) (**Group Exhibit A**)
2. *Ex Parte* Emergency Motion for Asset Freeze and Other Relief and Memorandum of Law in Support (SEC Case, Dkt. No. 6) (**Group Exhibit B**)
3. Receivership Order (SEC Case, Dkt. No. 16) (**Exhibit C**)

Respectfully submitted,

THOMPSON COBURN LLP

By */s/ Cheryl A. Kelly*

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Attorney for the Receivership Entities, acting by and through Claire M. Schenk, Receiver

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Re:	)	
	)	
BURTON DOUGLAS MORRISS,	)	Case No. 12-40164-659
	)	Chapter 11
	)	
Debtors.	)	

ORDER

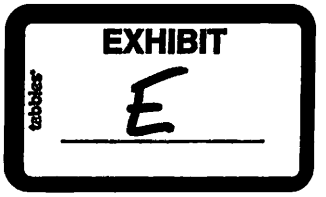
The matter before the Court is the Motion for Appointment of Trustee or Alternatively For Conversion of Case filed by Receiver, Claire M. Schenk on behalf of Acartha Group, LLC, Acartha Technology Partners, L.P., MIC VII, LLC and Gryphon Investments III, LLC. On February 13, 2012, Debtor filed Debtor's Objection to Motion For Appointment of Trustee and Consent to Conversion of Case. The matter was set for hearing and heard on February 13, 2012. Upon consideration of the record as a whole,

IT IS ORDERED THAT the Motion for Appointment of Trustee or Alternatively For Conversion of Case is **GRANTED IN PART** in that this case is converted; and that an Order for Relief under Chapter 7 is entered as of February 13, 2012; and that all other pending requests in this Chapter 11 case are denied without prejudice; and

IT FURTHER ORDERED THAT a Chapter 7 Trustee is to be appointed by the United States Trustee; and

IT IS FURTHER ORDERED THAT if not already filed, Debtor shall file a verified Chapter 7 Matrix, and counsel for the Debtor shall file a Rule 2016(b) Attorney Compensation Disclosure Statement for the Chapter 7 case **on or before (7) days after the date of this Order.**

IT IS FURTHER ORDERED THAT Debtor is to forthwith turn over to the Chapter 7 Trustee all records and property of the estate under their custody and control as required by Bankruptcy Rule 1019(5); and that within (30) days of the date of this Order, Debtor is to file an accounting of all receipts and distributions made, together with a schedule of unpaid debts incurred after the commencement of the Chapter 11 case, as required by Bankruptcy Rule 1019; and that not later than **fourteen (14) days**



after the date of this Order, the Debtor shall file Chapter 7 statements and schedules required by the Bankruptcy Rules.

Kathy A. Surratt-States

KATHY A. SURRATT-STATES
United States Bankruptcy Judge

DATED: February 13, 2012
St. Louis, Missouri

Copies to:

All Creditors and Parties in Interest

ASHCROFT HANAWAY

February 8, 2012

SENT VIA EMAIL & REGULAR MAIL
Claire M. Schenk
Thompson Coburn LLP
One US Bank Plaza
St. Louis, MO 63101-1693

Re: *SEC v. Morriss, et al.*, Case No. 4:12-cv-80-CEJ

Dear Ms. Schenk,

This letter will respond to your correspondence with my client, Doug Morriss, dated February 3, 2012 (the "February 3rd Letter"). This letter will further memorialize our telephone conversation of Monday, February 6, 2012, regarding such letter.

Prior to our retention, as you note in your letter, Mr. Morriss voluntarily met with you and Mr. Higgins, and you and your team inspected the offices of Morriss Holdings, L.L.C., located at 7820 Maryland Ave., Clayton, Missouri, and secured documents belonging to Acartha Group, L.L.C., Acartha Technology Partners, L.P., MIC VII, L.L.C., and Gryphon Investments III, LLC (collectively, the "Receivership Entities"). As we first discussed after the Show Cause Hearing on January 27, 2012, since January 24, 2012, Ashcroft, Hanaway, L.L.C. has been and is aggressively inventorying documents at that same location. Our efforts to segregate documents belonging to the Receivership Entities have resulted in discovery of two boxes of documents that were located in a file cabinet that was shown to you during your inspection but could not be unlocked. The lock on that cabinet was broken subsequently and those documents were delivered to you on January 27, 2012.

As we discussed on the phone on Monday, our efforts to segregate documents for the purpose of producing them to you does not constitute "disturbing" the documents as referenced in your February 3rd Letter. We have since discovered certain other documents, not easily identifiable and mixed in with documents belonging to non-Receivership Entities, belonging to the Receivership Entities at the offices of Morriss Holdings. Those documents fill approximately one banker's box, and we will send them to you as soon as we receive instruction from you on the manner in which you would like them delivered.

Subsequently, your correspondence to us in a letter dated February 6, 2012 (the "February 6th Letter") explained that you will not consent to release Federal Insurance Company to pay Mr. Morriss' defenses costs as provided for in Acartha Group, L.L.C.'s D & O liability policy. Since receiving the February 6th Letter, and until this issue of payment for defense costs is resolved, we have suspended our efforts to inventory documents located at Morriss Holdings.

EXHIBIT
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Addressing the additional points in your February 3rd Letter with respect to preservation of the assets of the Receivership Entities, to the best of our knowledge, the status quo has been maintained. We certainly agree that you have sole and exclusive authority to manage the businesses and financial affairs of the Receivership Entities. To that end, you also have assumed responsibility for any losses suffered during your management, including, but not limited to, any diminution of value of the assets as a result of failure to meet capital calls; failure to preserve the preferences held in the portfolio companies held by the Receivership Entities; failure to appropriately value the assets and/or hasty liquidation of the assets at less than their true value.

To date, Mr. Morriss has resigned from the Boards of Directors of Tervela and Librato, and we have been informed that a resolution was passed by cirqit.com to replace Mr. Morriss on the Board of Directors of Logic Source. If there are other Boards of Directors on which you believe Mr. Morriss serves as a representative of any of the Receivership Entities, please inform us of such, and we will promptly assess whether his service is as a representative of the Receivership Entities.

Mr. Morriss and our firm are making every effort to comply with the Asset Freeze Order and your requests pursuant to the Order appointing you as the Receiver. Please continue to inform us of your requests in that regard.

Sincerely,

Catherine L. Hanaway

Catherine L. Hanaway

-----Original Message-----
From: Ottolini, Lisa [mailto:lottolini@ashcroftlawfirm.com]
Sent: Monday, February 06, 2012 4:57 PM
To: Schwartz, Adam
Cc: mbartle@gbmglaw.com
Subject: New Development

Adam,

I've attached a letter from the Receiver that we received today objecting to payment of our fees and expenses from the Chubb policy for your information. Obviously, we will not be able to contract with a data vendor, accountant, or move forward with document accumulation until this issue is resolved. I will keep in touch with any developments.

Lisa

Lisa Ottolini
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(314) 754-9955 (fax)
lottolini@ashcroftlawfirm.com | http://www.ashcroftlawfirm.com/

EXHIBIT
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communicated by email. In the event you want future communications to be sent in a different method, please contact me immediately.

THOMPSON COBURN LLP

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February 6, 2012

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VIA ELECTRONIC & REGULAR MAIL

Catherine Hanaway, Esq.
The Ashcroft Law Firm, LLC
222 South Central Ave., Suite 110
St. Louis, MO 63105

Re: *SEC v. Morriss, et al.*, Case 4:12-cv-80-CEJ
(Response to Proposed Stipulation Regarding Insurance Proceeds)

Dear Catherine:

We received your email last Thursday attaching a proposed stipulation that would permit Federal Insurance Company ("Chubb") to advance Douglas Morriss's defense costs against Acartha's D&O liability policy. We have reviewed the materials provided and note that the draft stipulation recognizes that the Court not only appointed a Receiver with full control over company assets, but entered an Asset Freeze Order intended to restrain direct or indirect depletion of any assets that may ultimately inure to the benefit of investors.

While we are certainly sympathetic to your need to get paid by your client (and have been in similar circumstances ourselves), we oppose anything that would deplete the proceeds of the D&O policy. Indeed, the depletion of insurance proceeds to fund your client's defense expenses is particularly objectionable in light of the fact that it was his conduct that put the Acartha entities where they are now. Stated another way, committing funds available under Acartha's D&O liability policy would enable your client to defend himself against claims of depleting company assets. That, in my opinion, would be directly contrary to the best interests of the Receivership estate, and directly contrary to the interests of the investors whose investments have been placed at serious risk.

If there are additional materials that you would like us to review, please send those to my attention.

Very truly yours,

Thompson Coburn LLP

By
Stephen B. Higgins

SH/msd

cc: Claire Schenk, Receiver