

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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

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

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

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

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

This motion is administrative and not adversarial in nature.

Respectfully Submitted,

THOMPSON COBURN LLP

Dated: February 3, 2017

By /s / Kathleen E. Kraft

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CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2017, I electronically filed the foregoing with the Clerk of the Court through the Court's CM/ECF system which will send a notice of electronic filing to the following:

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 /s/ Kathleen E. Kraft

EXHIBIT A

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
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SECURITIES AND EXCHANGE COMMISSION,)	
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Plaintiff,)	
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BURTON DOUGLAS MORRISS,)	
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ACARTHA TECHNOLOGY PARTNERS, LP, and)	
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)	
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)	
MORRISS HOLDINGS, LLC,)	
)	
Relief Defendant.)	
)	

TWENTY-FIRST INTERIM STATUS REPORT OF RECEIVER

Claire M. Schenk (the “Receiver”), the receiver for defendants Acartha Group, LLC (“Acartha Group”), Acartha Technology Partners, LP (“ATP”), MIC VII, LLC (“MIC VII”), and Gryphon Investments III, LLC (“Gryphon Investments”) (collectively, the “Receivership Entities”), submits this **Twenty-First Interim Status Report** to update the Court on the activities of the Receiver occurring since November 2, 2016:

A. Distributions and Wind Up

As noted in prior reports, the Receiver has been substantially engaged in the process of reviewing and analyzing the authority and facts to prepare a proposed plan of distribution for submission to the Court. Upon Court approval of the plan, funds held in the receivership estate will be paid to allowed claimants of the Receivership Entities. The Receiver will seek approval of her recommendations for all allowed claims through the proposed distribution plan. In preparation for submission of the proposed distribution plan, the Receiver continued to develop

information pertinent to the plan of distribution and to meet with her accounting and legal advisors. Planning sessions were held on December 1 and 21, 2016; January 4, 19, and 24, 2017; and February 2, 2017. Before and after each of these planning sessions, the Receiver and her counsel reviewed relevant authority and investigated facts pertinent to the classification and treatment of various claimants. In addition, the Receiver's accountants have continually updated and refined the draft economic analysis pertinent to the Receivership Entities and claimants.

During the planning sessions, the Receiver and her advisors examined the various distribution methodologies pertinent to the claimants' potential recoveries and refined the allocation of income and expenses as among the various Receivership entities. As progress has been made with the analysis of income and expense allocation, the planning sessions have increasingly focused upon the results of the various distribution methodologies as to allowed claimants falling within the proposed classes of claimants. The Receiver has reviewed the straight *pro rata*, net-investment, and rising-tide distribution methodologies while continuing to analyze issues involving intercompany entries and the handling of tax matters. The current financial analysis prepared by the Receiver's accountants will be updated when the review of information relevant to the year 2016 has been completed and incorporated into the plan. Although this work is typically completed by early March in anticipation of various tax filings, the Receiver has requested that the completion of this work be handled by the Receiver's accountants on an expedited basis. This will allow the Receiver to move forward with proposal of the plan to the Court.

Additionally and as part of the planning sessions, the Receiver continues to focus upon wind up of the Receivership Entities and those entities managed by Acartha Group. Discussions and research include consideration of the numerous intercompany transactions currently on the

books of the Receivership Entities. The Receiver and her advisors have been considering and evaluating the likely prospect of debt cancellation as part of the wind-down process as well as the related tax considerations pertinent to the Receivership Entities.

B. Liquidation Activity and Distributions

1. *Clearbrook Acquisition*

On November 2, 2016, the Court approved the Receiver's unopposed motion to use proceeds to satisfy the obligations of Clearbrook Acquisition, LLC ("Acquisition"). Pursuant to the Court's Order, the Receiver was authorized to pay fees, payables, and expenses of Acquisition in accordance with the distribution schedule submitted to the Court. Following receipt of the Order, the Receiver made payment as authorized by the Court.

Following the court-approved payout of funds held by Acquisition, the account was brought to a zero balance and closed. At this point, Acquisition no longer serves a business purpose. Therefore, consistent with the Court-approved treatment of other special-purpose vehicles formerly managed by Acartha, the Receiver will: work with her accountants to prepare a final tax filing; request CT Corporation to resign; cease payment of Delaware taxes; and allow cancellation of the certificate of formation of this inactive entity. The Receiver will follow a similar process with respect to Clearbrook Acquisition Capital, LLC.

2. *Librato Distributions*

As reported in the *Sixteenth* and *Seventeenth Interim Status Reports*, on October 14, 2015, the Receiver filed a motion with the Court seeking authority for the distribution of the Librato funds reported in the *Fourteenth Interim Status Report* (see ECF Nos. 413, 414, 416). The Receiver's motion pertained to three of the special-purpose vehicles ("SPVs"), which are not part of the Receivership estate but are managed by a Receivership Entity, Acartha Group, *i.e.*,

Evergrid Acquisition, LLC; Evergrid/MIC VII, LLC; and Librato Acquisition II, LLC. As a result of the sale described in the Receiver's motion, gross proceeds were received and were followed by a distribution of the bulk of the escrow funds as described in the Receiver's *Twentieth Interim Status Report* (as well as prior interim status reports). Pursuant to the Court Order allowing the Receiver to proceed with distributions (ECF No. 423), and as previously reported, there have been two rounds of distributions to the investors within the SPVs.

In the process of closing out the SRS Acquiom ("SRS") escrow account, SRS made a small final distribution of funds on September 29, 2016. These additional sums were deposited into the accounts, as listed below:

Evergrid Acquisition, LLC	\$76.35
Evergrid/MIC VII, LLC	\$410.59
Librato Acquisition II, LLC	\$3,530.59
ATP	\$772.77
MIC VII	\$2,060.23

On October 18, 2016, SRS provided the Receiver with a Post-Closing Statement for the Period ending September 30, 2016. This statement reflected a zero balance for each of the Receivership and Receivership-managed entities. Following the Receiver's completion of a review of the estimated fees and expenses allowed by the Court as compared to actual accrued fees and expenses to date and a review of potentially relevant intercompany entries, the Receiver will determine whether it is economically feasible to make small additional distributions to investors in Evergrid/MIC VII and Librato Acquisition II.

Funds were not distributed to the members of Evergrid Acquisition because the available proceeds did not exceed the reserve for expenses. Following the payment of expenses, the Evergrid Acquisition bank account is now at a zero balance, and this entity no longer serves a business purpose. Therefore, consistent with other SPVs formerly managed by Acartha, and as

reported and approved by the Court, the Receiver will work with her accountants to prepare a final tax filing, she will request CT Corporation to resign, payment of Delaware taxes will cease, and the certificate of formation of these inactive entities will be canceled. The funds received and held by ATP and MIC VII as a result of the distributions will be disbursed following the approval of a plan of distribution by the Court.

C. Claims Process and Objections

The claims process has been described in detail in preceding reports (*see Ninth, Tenth, Eleventh, and Twelfth Interim Status Reports*, ECF Nos. 315-1, 328-1, 338-1, and 358-1) and will not be repeated herein.

The Receiver described the status of the objections in this matter in preceding reports. There is one pending objection under consideration by the Court, that of Hany Teylouni (*see* ECF No. 456-1). There have been no other developments pertinent to objections during this reporting period.

D. Business Operations

As directed by the Court, the Receiver continues to oversee the remaining unliquidated holdings of the Receivership Entities in several investments. (*i.e.*, Tervela, Cirqit and Exigy). The Receiver participated in Tervela board calls on October 21, 2016 and January 13, 2017. These calls included a discussion of Tervela's most recent quarterly reports, operations, financials, and funding. Cirqit's most recent updates were provided to the Receiver on November 14 and December 14, 2016. These summaries pertain to Cirqit's holdings in LogicSource. They provide information pertaining to LogicSource performance and financial projections. The information pertaining to these companies has been posted to the secure

investor website for review by the appropriate investors. The Receiver will keep the interested investors updated through the extranet site and direct contact, as appropriate.¹

E. Tax Matters and Corporate Compliance

The Receiver has been providing the necessary information to Segue Partners, LLC on an ongoing basis so that the books and records for each of the Receivership Entities and the SPVs may be closed for the year 2016. This will allow the Receiver to take care of tax filings in a timely and appropriate manner. Form 1099s, due on or before January 31, 2017, have been provided to the appropriate parties.

On November 8, 2016, the Receiver sent a letter to CliftonLarsonAllen LLP (“CLA”) to renew the engagement with CLA for the handling of tax and other accounting services. This letter is incorporated herein by reference and attached hereto as Exhibit A. There were no changes in the terms of the previous understanding with CLA. The Receiver received invoices from CT Corporation for this year and made payment for those entities that remain active. As described earlier in this report, the Receiver is working towards discontinuation of activity for those SPVs that no longer serve a purpose, including Clearbrook Acquisition, Clearbrook Acquisition Capital, and Evergrid Acquisition.

F. Administrative Matters

1. *SFAR*

An updated copy of the Standardized Fund Accounting Report (“SFAR”) will be submitted along with the *Receiver’s Twentieth Interim Fee Application* for the fourth quarter of 2016, covering October through December. The SFAR reflects known and current bank balances

¹ As explained *infra*, information is available to the investors on secure sites and subject to execution of a non-disclosure agreement. The specifics pertaining to the information discussed therein is considered confidential by the Receivership portfolio concerns.

for the Receivership Entities and the accounts of the SPVs, which are managed by the Receiver. It also reflects expenses and payments during the fourth quarter of 2016. A final and fully detailed report will be submitted to the Court at the conclusion of the Receivership.

2. *Interim Applications for Fees and Expenses*

Payment of fees and expenses to the service professionals providing assistance to the Receiver are current in keeping with the Court's approval of the last *Fee Application*. As of the date of the filing of this report, there were no pending *Fee Applications*, and payments were made to the Receiver and her professionals through September 30, 2016 (with the exception of funds subject to the holdback).

3. *Receivership and Secure Investor Websites*

The Receiver continues to update the general website hosted by Thompson Coburn LLP (which is linked to the website for the District Court for the Eastern District of Missouri). Documents are available at: <http://www.thompsoncoburn.com/acartha>. Additionally, the Receiver continues to post documents on the extranet sites created for the investors. Access to the extranet sites is allowed subject to receipt of a non-disclosure agreement ("NDA") by the investors. Each site is periodically updated with information pertinent to business operations, e.g., slide decks or presentations, and transactional documents involving additional financings or other significant events. During this reporting period, information pertaining to Tervela and Cirqit has been added. The Receiver encourages claimants, investors, and other interested parties to visit the websites that are available to them so that they will have a current understanding of Receivership operations and to avoid unnecessary expense through repeated individualized communications with the Receiver and her advisors.

Conclusion

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

Dated: February 3, 2017

Respectfully submitted,

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

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

ORDER

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

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

THE COURT DOES HEREBY ORDER THAT

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

2. The Twenty-First Interim Status Report of Receiver for the period from November 2, 2016 through February 3, 2017, and every act and transaction reported therein, are hereby approved and confirmed.

SO ORDERED this _____ day of _____ 2017.

THE HONORABLE CAROL E. JACKSON
UNITED STATES DISTRICT COURT JUDGE