

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

SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:12-CV-80-CEJ
)	
BURTON DOUGLAS MORRISS, <i>et al.</i>)	
)	
Defendants.)	
)	

**JOINT MOTION FOR ORDER LIFTING STAY TO PERMIT PROSECUTION OF
COMPLAINT FOR INTERPLEADER OF INSURANCE POLICY PROCEEDS
AGAINST RECEIVER**

Claire M. Schenk (the “Receiver”), in her capacity as Receiver over Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, LP, and Gryphon Investments III, LLC (collectively, the “Acartha Entities”) and Federal Insurance Company (“Federal”) jointly request that this Court enter an order lifting the stay contained in the Order Appointing Receiver entered by the Court in this action [Doc. #16] to permit Federal to prosecute, and the Receiver to defend and otherwise fully participate on behalf of the Acartha Entities, including, but not limited to, the assertion and advancement of such claims that are in the interest of and for the enhancement of the Receivership Estate, in an interpleader action filed by Federal in this court with respect to the remaining limits of a \$3 million Venture Capital Asset Protection policy Federal issued to Acartha Group, LLC, *Federal Insurance Co. v. Schenk et al.*, No. 4:12-cv-2117-HEA (E.D. Mo.) (the “Interpleader Action”). In support of their motion, the Receiver and Federal represent as follows:

1. On January 17, 2012, this Court entered an Order Appointing Receiver appointing Claire M. Schenk as the Receiver over the Acartha Entities and each of their subsidiaries, successors and assigns (the “Receivership Order”) [Doc. # 16]. Paragraph 15 of the Receivership Order provides that “[d]uring the period of this receivership, all persons . . . with actual notice of this Order, are enjoined from . . . in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or which affect the property of [the Acartha Entities].”

2. Federal issued Venture Capital Asset Protection Policy No. 8207-6676 to Acartha Group, LLC for the Policy Period of December 1, 2010 to December 1, 2012 (the “Policy”). (A copy of the Policy (with the inadvertent omission of Endorsement No. 15, which extended the Policy Period from December 1, 2011 to December 1, 2012) is attached as Exhibit A to the complaint filed in the Interpleader Action, Case 4:12-cv-02117-HEA [Doc. #1-1].) The Policy has a \$3,000,000 Aggregate Limit of Liability, and payment of Defense Costs depletes the Aggregate Limit of Liability.

3. On February 16, 2012, defendant Burton Douglas Morriss moved this Court for an order confirming that Federal could advance defense costs on his behalf under the Policy notwithstanding any order of the Court freezing assets of the Acartha Entities. [Doc. #72]

4. By memorandum and order entered May 8, 2012, this Court found “that the proceeds of the Federal insurance policy are not part of the receivership estate” and ordered that Federal was “authorized to make payments under the [Policy] up to the policy’s limit of liability to or on behalf of defendant Morriss (or any Insured Persons or Organization as those terms are defined in the policy) for defense costs incurred in connection with this litigation.” [Doc. # 160 at 10-11]

5. To date, Federal has advanced \$1,112,097.44 on behalf of Morriss and other Insured Persons for defense costs incurred in connection with this litigation and a suit captioned *Nixon et al. v. Morriss et al.*, No. 11SL-CC04718, filed in Missouri state court. .

6. On November 13, 2012, Federal filed the Interpleader Action against the Receiver, certain Insured Persons, and their counsel as claimant-defendants, asking the Court to resolve the competing claims to the remaining Policy proceeds, discharge Federal from further liability with respect to the proceeds of the Policy, and enjoin all claimants from instituting or prosecuting any proceeding affecting the Policy proceeds until further order of the interpleader court. *See* Case 4:12-cv-02117-HEA, Doc. #1.

7. In conjunction with the filing of the Interpleader Action, Federal has deposited \$1,887,902.56 into the Court's registry. *See* Case 4:12-cv-02117-HEA, Doc. #11 & Receipt 4644032609.

8. The Receiver, on behalf of the Acartha Entities, has sought coverage from Federal under the Policy for certain legal fees and expenses incurred in connection with this litigation and the *Nixon* action. Federal has denied the Receiver's request for coverage, and the Receiver disputes Federal's coverage position.

9. In order to permit the Receiver to participate in and assert claims on behalf of the Acartha Entities along with the other Insured Persons and entities made party to the Interpleader Action (against whom the Interpleader Action may proceed because the litigation injunction contained in the Receivership Order does not apply to them), the Receiver and Federal jointly request that the Court lift the stay against the prosecution of actions against the Receiver for the limited purpose of permitting Federal to prosecute, and for the Receiver to defend and otherwise fully participate in, the Interpleader Action.

Therefore, for the foregoing reasons, the Receiver and Federal jointly respectfully request that the Court enter an order lifting the stay contained in the Receivership Order or any similar provision in any other order of this Court, so that Federal may prosecute, and the Receiver may defend against and otherwise fully participate in, the Interpleader Action, including, but not limited to, the assertion and advancement of such claims that are in the interest of and for the enhancement of the Receivership Estate. A form of proposed order is attached for the Court's consideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he 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 all attorneys of record, this the 14th day of February, 2013.

/s/ Brian A. Lamping