

**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

FOURTH INTERIM STATUS REPORT OF RECEIVER

Claire M. Schenk (the “Receiver”), the Receiver for Defendants Acartha Group, LLC (“Acartha Group”), Acartha Technology Partners, LP (“ATP”), MCI VII, LLC (“MCI VII”), and Gryphon Investments III, LLC (“Gryphon Investments”) (collectively, the “Receivership Entities”), submits her Fourth Interim Status Report relative to acts and transactions undertaken since the submission of her Third Interim Status Report on August 14, 2012.

I. BACKGROUND OF THE RECEIVERSHIP

Acartha Group is a Delaware limited liability company incorporated in February 2003, with its principal place of business in Clayton, Missouri. Prior to the creation of this Receivership, it also maintained an office in East Brunswick, New Jersey. Acartha Group was established as a private equity fund management company. Acartha Group is the managing member of MIC VII and also manages Gryphon Investments.

Ex. A

MIC VII is a Delaware limited liability company incorporated in March 2005, with its principal place of business in Clayton, Missouri. MCI VII is a private equity fund formed to invest in early to mid-stage companies primarily in the financial and technology sectors.

ATP is a Delaware Limited Partnership organized in April 2008, with its principal place of business in Clayton, Missouri. ATP is a private equity fund formed for the same purpose as MIC VII.

Gryphon Investments is a Delaware limited liability company incorporated in February 2003, with its principal place of business in Clayton, Missouri. Gryphon Investments is the general partner of ATP.

On January 17, 2012, the United States District Court for the Eastern District of Missouri (the "Court") appointed the Receiver as receiver for the Receivership Entities. The Receiver's authority, duties and obligations are set forth in the Order Appointing Receiver entered January 17, 2012 (Dkt. No. 16) (the "Receivership Order"). The overall function of the Receiver as set out in the Receivership Order is to administer and manage the business affairs and assets of the Receivership Entities, act as the managing member or partner of the Receivership Entities, marshal and safeguard all of the assets of the Receivership Entities and take such actions as are necessary to protect investors. In furtherance of these objectives and following her appointment, the Receiver took the actions outlined in the First through Third Interim Status Reports and continued her efforts as outlined below.

II. OPERATION OF THE RECEIVERSHIP

A. General Operations

During this reporting period, the Receiver continued her attempts to preserve the value of the Receivership Entities' existing portfolio investments by staying attentive to the status of the

portfolio investments and their needs for follow-on financing, including the potential impact upon the interests held in those concerns by the Receivership Entities. The Receiver has been preparing an analysis of a potential investor distribution in anticipation of a submission to the Court regarding funds held in the accounts of Integrien Acquisition, LLC and Integrien Acquisition II, LLC, two non-Receivership entities which are managed by Acartha Group. Additionally, the Receiver has been attempting to restore corporate registered agent status to active entities and to resolve outstanding tax issues. The Receiver has also begun the process of preparing for the filing of tax returns for 2012.

Claims Bar Date procedures were submitted by the Receiver for the approval of the Court. Currently, the Receiver is preparing her response to questions voiced by the Court. The Receiver continues to actively participate in the bankruptcy of Burton Douglas Morriss, the ongoing litigation, and the pursuit of Receivership claims. A substantial number of additional documents were acquired by the Receiver from a variety of sources. An overview of these matters is provided within this report.

B. Acquisition of Receivership Records and Related Searches

In this reporting period, counsel to the Receiver and technology support technicians from Thompson Coburn obtained from the SEC and from attorneys for Burton Douglas Morriss more than 500,000 additional e-files relating to the Receivership Entities. Additionally, files from Acartha Group's cloud-based document collaboration system have been collected, adding another 140,000 e-files relating to the Receivership Entities. After these files were integrated into the existing Acartha and Receivership databases, the data was sorted and analyzed for content. The data was then re-examined utilizing the same search criteria as employed

previously. At this point, the Receiver has taken custody of more than 1.3 million e-files and 82 boxes of paper records.

C. Claims and Litigation

On June 25, 2012, the Receiver filed a lawsuit against Morriss Holdings in this Court to enforce a note securing advances from the Receivership Entities to Morriss Holdings. The suit seeks \$6.8 million, together with interest and attorney's fees. Counsel for Morriss Holdings has been allowed to withdraw and Morriss Holdings has failed to comply with a court directive to obtain counsel. The Receiver will continue to pursue a judgment for the funds owed by Morriss Holdings.

On November 13, 2012, Federal Insurance Company filed an interpleader action in the Eastern District of Missouri (Cause 4:12-cv-02117-HEA) against the Receiver and a number of individuals and law firms making claims against the D&O liability policy purchased by the Receivership Entities. A scheduling order has not been entered in the case. A number of defendants appeared through counsel and waived personal service, but have yet to file responsive pleadings. At least one defendant answered recently. Not all defendants have been served in the action. The Receiver along with counsel for Chubb filed a joint motion with the Receivership Court seeking a lifting of the stay imposed in the Receivership Order to permit the Receiver's participation in the interpleader action. The Receiver will engage in this action on behalf of the Receivership Entities following the entry of an order by the Court.

On August 13, 2012, the Receiver submitted a Proof of Loss form to Maryland Casualty Company as part of the claim submitted under the Commercial Crime Coverage Form of Acartha Group's insurance policy. As a result, a payment was made in the amount of \$10,000 to Acartha Group. The Receiver submitted an appeal through the internal process established by Maryland

Casualty Company regarding the amount of the payment and discussions pertaining to this matter are ongoing.

While a scheduling order has not yet been entered in the Receivership case itself, the parties have engaged in active discovery. As of the date of this Report, the Receiver, through counsel, has conducted and/or participated in the depositions of seven individuals, including Burton Douglas Morriss. An additional five depositions have or will be scheduled in the near future.

The Receiver has also continued to investigate the litigation filed in state court, *Nixon, et al. v. Burton Douglas Morriss, et al.*, Case No. 11SL-CC04718 (Circuit Court for St. Louis County, Missouri) (the “State Court Litigation”). As previously reported, claims have been asserted by the Receiver against the defendant, Burton Douglas Morriss, and a former executive of the Receivership Entities, Dixon Brown. These claims seek a recovery of the \$9.1 million transferred from the Receivership Entities.

The Receiver has continued to participate in Burton Douglas Morriss’s bankruptcy case, pending in the Eastern District of Missouri. During this reporting period, the Receiver filed claims in Mr. Morriss’s bankruptcy proceeding for each Receivership Entity in the amount of \$9.1 million and moved to continue the deadline for objections to the discharge of claims against Mr. Morriss while continuing to monitor the developments and filings in the bankruptcy proceeding.

The Receiver has executed tolling agreements with certain individuals affiliated with the Receivership Entities, based upon a preliminary investigation revealing the possibility of potential claims against these individuals.

D. Tax Matters

Working closely with CliftonLarsonAllen (“CLA”) and based upon the due diligence efforts described in the Third Interim Status Report, the Receiver assisted in the preparation and filing of the requisite tax returns for the Receivership Entities along with those entities managed by a Receivership Entity. Eighteen returns were filed and K-1s were provided to the investors for the following entities: Morris Administration d/b/a Acartha Group Funding; Acartha Group, LLC; Acartha Merchant Partners; Acartha Special Situations Funding; Acartha Specialty Finance Investment; Acartha Technology Partners, LP; Clearbrook Acquisition; Evergrid Acquisition; Evergrid MIC VII; Gryphon Investments III, LLC; Integrien Acquisition Capital II, LLC; Integrien Acquisition II, LLC; Integrien Acquisitions, LLC; Librato Acquisition II, LLC; MIC VII, LLC; Tervela Acquisition II, LLC; Tervela Acquisition III, LLC; and Tervela Acquisition, LLC.

Additionally, CLA has also been assisting the Receiver in attempts to interpret and resolve a series of tax notices involving tax matters inherited by the Receiver and which involve claims for back due taxes. Attempts at resolution of these tax matters, which involve various jurisdictions including New York and Connecticut, are ongoing. Additionally, the Receiver has requested that CLA assist with the preparation of tax returns for 2012. Given CLA’s prior experience from the earlier tax filings and based upon CLA’s qualifications as stated in the Third Interim Report, the Receiver believes that this is the most prudent and economical course to follow. An executed amended engagement letter is attached hereto as Exhibit A-1.

E. Corporate Compliance

In her review of correspondence received since the inception of the Receivership, the Receiver has discovered that, in most instances, the Receivership Entities and the entities

managed by the Receivership Entities were overdue in payments to registered agents as is typically required for active corporate entities. While attempting to restore active status, the Receiver discovered that these same entities, for the most part, owed past due taxes to the state of Delaware through 2011. Active registered agent status has now been secured for those entities listed on Exhibit A-2 to this Report. The Receiver is currently investigating the status of several other entities which appear to require similar attention. These matters will also be resolved when the Receiver has located and reviewed the relevant corporate governance documents.

F. Claims Bar Date Procedures

The Receiver has prepared and submitted Claims Bar Date Procedures for the approval of the Court. Currently, the Receiver is addressing several concerns noted by the Court and will file a supplemental submission on or before March 1, 2013. As part of this process, the Receiver will address the sufficiency of the claims which are submitted. At a later point in the proceeding, approved claims will be categorized into a recommended order of priority and the Receiver will submit an order of proposed distribution for the approval of the Court.

As noted in the Claims Bar Date papers, this formal process applies only to the four Receivership Entities. Matters pertaining to the Special Purpose Vehicles (“SPVs”) or other entities managed by Acartha Group, will be resolved outside of this process. Currently, the Receiver is engaged in obtaining information so that she may submit a motion to the Court seeking a distribution of the funds currently held in the accounts of Integrien Acquisition, LLC and Integrien Acquisition II, LLC. No distributions have been made to investors since the distribution from the Reliance Bank account of Acartha Special Situations Funding, LLC.¹

¹ Following the approval of the Court, the total amount of \$146,023.78 (less wire transfer fees) was returned to ten investors.

G. Business Operations

As has been previously reported, the Receivership Entities' existing investments include illiquid interests in: Librato, Inc. (cloud management services); Tervela, Inc. (data transfer services); Pollenware (cash flow optimization services); Clearbrook (asset allocation advice services); and Cirqit, which holds an interest in Logic Source (print/paper procurement processing and outsourcing). These companies are not yet revenue positive and have tended to require additional venture capital investments or other financing to maintain their existence and to fuel their growth. For these and other reasons, including various restrictions within the documentation, the interests are generally not immediately saleable. The process of monitoring and facilitating the capital calls and financing needs of these portfolio companies continues to be one of the central challenges of Receivership operations.

Given that the Receivership Entities are not in a position to respond directly to the financing needs of these companies or to raise funds from new investors, the Receiver, where appropriate, has facilitated contacts with existing investors so that these investors have the option of follow-on investments. As a general matter, continued investments may help to minimize or avoid the dilutive impact which results from the injection of capital from new investors seeking to claim significant interests in the portfolio companies. Responding to the funding needs of the Receivership Entities' portfolio companies involves: communications with investors to keep them updated and to supply pertinent documentation; analysis of participation rights and calculation of share allocations; arranging and facilitating investor calls directly with the portfolio entities so that each investor may complete his or her own due diligence; and a legal review of deal documentation and the Receivership Entities' rights, *e.g.*, whether consent should be granted as to various transaction or alternatively blocking rights exercised as appropriate. The

Receiver has not undertaken a formal valuation process at this point because of the fluctuating value of these interests and in light of the significant expense of the process. Because former management's earlier valuations are dated, the Receiver, upon the advice of her accountants, will likely record the value of the Receivership Entities' investments at cost for the present time.

To facilitate the flow of information to investors, the Receiver has continued to update the secure investor extranet websites. Interested investors are allowed access following contact with the Receiver's investment fund manager and execution of a nondisclosure agreement ("NDA"). The Receiver has continued to update the Receivership's general website as well, which is available to the general public.

H. Receiver's Accounting

The Receiver's Standardized Fund Accounting Reports ("SFAR") for the period of time covered by this Report are attached hereto as Exhibits A-3 and A-4. Exhibit A-3 was attached to the Receiver's Third Fee Application and Exhibit A-4 will be attached to the Receiver's Fourth Fee Application, which will be submitted in the coming weeks. No Fee Applications are currently pending before the Court and service professionals have been compensated and expenses reimbursed as allowed by the Court.

VIII. CONCLUSION

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

Dated: March 1, 2013

Respectfully submitted,

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