

**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

SEVENTH 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 this **Seventh Interim Status Report** to update the Court on the activities of the Receiver occurring since June 21, 2013:

A. Claims Review and Allowance

On March 4, 2013, the Court entered its order approving the Receiver’s proposed claims allowance procedures (the “Claims Bar Date Order”) (Dkt. No. 234). In the Claims Bar Date Order, the Court established May 6, 2013 as the deadline for certain claimants to submit claims against the Receivership Entities (the “Claims Bar Date”). The Court also approved the procedures proposed by the Receiver regarding the allowance and disallowance of the filed claims. The approved Claims Procedures, among other things, defined a potential claimant’s

Ex. A

eligibility to submit a proof of claim and set forth the required contents and form of the proof of claim. Claimants specifically were instructed not to file Proof of Claim Forms for claims against any other entities, including but not limited to any special purpose vehicle entities. *See* Receiver's Notice of Claims Bar Date.

The Claims Bar Date Order, the Receiver's Notice of Claims Bar Date and the Proof of Claim Form¹ instructed potential claimants to provide documentation to support the claimant's proof of claim, including but not limited to, (i) copies of personal checks, cashier's checks, wire transfer advices, account statements and other documents evidencing the investment or payment of funds; (ii) copies of signed investment contracts or other written contracts or agreements made in connection with any investment in or with any Receivership Entity; (iii) a chronological accounting of all money received by the Claimant from any Receivership Entity or the Receiver, whether such payments are denominated as the return of principal, interest, commissions, finder's fees, sponsor payments or otherwise; (iv) copies of all documentation and records reflecting or regarding any withdrawals ever made by or payments received by the Claimant from any Receivership Entity or the Receiver; (v) copies of all agreements, promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements or other evidence of perfection of liens; and (vi) other documents evidencing the amount and basis of the Claim.

The Receiver received 226 separate proofs of claim from individuals and entities in response to the Court's Claims Bar Date Order and related notices. The claims were comprised

¹ The Receiver's Notice of Claims Bar Date and the Proof of Claim Form were approved by the Court in the Claims Bar Date Order.

of 207 investor claims, 2, creditor-investor claims, 3 former employee claims, 5 former management claims, 7 former service professional claims and 2 vendor claims.

Following the passage of the Claims Bar Date, the Receiver and her counsel reviewed the submitted claims and supporting documentation with the primary goal of identifying deficient and disallowable claims. Between July 1, 2013 and July 3, 2013, the Receiver issued 231 notices to the filed claimants, as follows:

Type of Notice Issued	Number
Notices of Determination, disallowing the asserted claim:	93
Notices of Determination, allowing the asserted claim:	2
Notices of Determination, disallowing the asserted claim in part:	5
Notices of Deficiency:	<u>131</u>
Total Notices Issued:	231

As part of the review of the filed claims, the Receiver and her counsel developed a claimant category-specific list of necessary documents (sub-sets of the categories of documents listed in the Claims Bar Date Order) that the Receiver required from claimants to fully review and process the claims. For each claimant who did not submit any one of the Receiver’s identified necessary documents, the Receiver issued such claimant a notice of deficiency.

In the notices of deficiency, the Receiver requested that the claimants provide the Receiver with all of the information and documents set forth in the Claims Bar Date Order and the related notices and forms, and to the extent such information or documents is not available, provide the Receiver with a statement explaining such unavailability.

Additionally, the Receiver highlighted the importance of certain documentation for the different categories of claimants. The Receiver requested that investor-claimants provide the Receiver with executed subscription and/or operating agreements, a chronological accounting of all money received by the claimant from any Receivership Entity or made by or on behalf of a

Receivership Entity, and evidence of the mode and value of the claimant's investment. The Receiver issued a notice of deficiency to each investor-claimant who did not provide the Receiver with an executed subscription or operating agreement, evidence of the mode and value of the investor's investment, and evidence (or an accounting) of money or property received by the investor from or on behalf of the Receivership Entities.²

For former employee, management and service professional claimants, the Receiver requested copies of all employment or other agreements with the Receivership Entities, a chronological accounting of all money received by the claimant from any Receivership Entity or made by or on behalf of a Receivership Entity, evidence of the source of the money or other property received by the claimant from or on behalf of any Receivership Entity, and evidence of the work the claimant performed for payment by any of the Receivership Entities (including but not limited to time records or other contemporaneous documentation of work performed). The Receiver issued a notice of deficiency to each employee, management or service professional claimant who did not provide the Receiver with all of the above-mentioned documents and evidence.

The Receiver recognizes that some claimants may not be able to provide the Receiver with all of the requested documentation. In accordance with the Claims Bar Date Order and related notices, the Receiver requested that claimants who do not have the requested documentation provide the Receiver with a statement explaining the unavailability of the requested documentation. *See* Claims Bar Date Order at p. 6 ("If supporting documentation is

² The Receiver issued Notices of Determination recommending allowance to two investor-claimants. These investor-claimants provided the Receiver with signed subscription and/or operating agreements for the Receivership Entity in which the claimant invested, copies of wire transfer advices and/or investment account statements showing the claimant's transfer(s) of funds to the Receivership Entity and the bank account that received the transfer(s), and an accounting of distributions received by the claimant along with information regarding the bank account from which the distribution originated and the reason for the distributions.

not available the Claimant must attach an explanation of why the documentation is unavailable.”).

The additional information that the Receiver requested through the notices of deficiency will assist the Receiver in, among other things: (i) determining whether to allow or disallow individual claims, (ii) understanding issues of priority of claims, (iii) understanding how monies were distributed through and from the various Receivership Entities, and (iv) developing a proposed plan of distribution.

The Receiver urges those claimants who received notices of deficiency to use the Claims Bar Date Order, the notice of deficiency, this Receivership Report and information posted on the Receivership website as guidance on the supplemental information and documentation required by the Receiver. The Receiver and her counsel are willing to address claimant-specific issues as necessary. However, the Receiver desires to avoid undue expense to the Receivership estates and will direct an inquiring claimant to the language of the notice of deficiency, the Claims Bar Date Order and the information available on the Receiver’s website to the extent such materials address the claimant’s questions.

B. Preliminary Report of Assets of and Liabilities Asserted Against the Receivership Entities

In the Order Appointing Receiver (Dkt. No. 16) (“Receivership Order”), the Court directed the Receiver to “[p]resent to this Court a report reflecting the existence and value of the assets of the Investment Entities and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Investment Entities.” Receivership Order p. 3.

Assets. The Receiver is attaching as Exhibit 1 hereto a redacted copy of the Schedule of Investments as of December 31, 2012 for each of ATP and MIC VII (collectively, the

“Investment Schedules”). *See* Investment Schedules, Exhibit 1.³ The Investment Schedules and the monies in the Receivership Entities’ accounts identified in the most recent Standardized Fund Accounting Report (*see* Exhibit A to the Receiver’s Fifth Interim Application for Allowance and Payment of Fees and Expenses Incurred by the Receiver, Retained Counsel and Other Professionals, filed June 19, 2013, at Dkt. No. 258) represent the current asset position of the Receivership Entities. The investments shown on the Investment Schedules are represented at a cost basis and reflect the Receiver’s understanding of the amounts invested in the portfolio concerns. The Receiver recognizes that the Investment Schedules are of limited utility in ascertaining an accurate valuation of the Receivership Entities’ interests in the portfolio concerns, due to, among other things, the evolution of the interests with each round of subsequent financing. The Receiver will update the Court on the Receivership Entities’ asset position in future Status Reports.

Asserted Liabilities. As part of the Receiver’s review of the claims filed pursuant to the Claims Bar Date Order, the Receiver compiled the following summary of liabilities asserted against the Receivership Entities:

³ The Receiver is filing the Investment Schedules in redacted form to protect the confidentiality of the portfolio concerns. The Receiver will file an unredacted copy of the Investment Schedules under seal with the Court and will file a motion with the Court requesting that the unredacted Investment Schedules remain under seal. Also, the unredacted Investment Schedules are available on the Receiver’s investor extranet site to those investors who have executed Non-Disclosure Agreements with the Receiver.

Receivership Entity(ies) Asserted Against	Asserted Dollar Amt
Acartha Group, LLC	\$ 29,377,016.34
Acartha Technology Partners, L.P.	\$ 227,434.55
MIC VII, LLC	\$ 13,745,134.47
Gryphon Investments III, LLC	\$ 507,912.15
More than one, but not all, of the Receivership Entities	\$ 5,697,227.61
All the Receivership Entities	<u>\$ 2,732,460.04</u>
Total	\$ 52,287,185.16⁴

(collectively, the “Asserted Liabilities”). Many of the filed claims asserted a percentage equity interest in one or more of the Receivership Entities in addition to or in place of a claimed dollar amount. This summary of Asserted Liabilities does not account for asserted percentage equity interests in the Receivership Entities. This summary also does not include any liabilities of the Receivership Entities incurred after the institution of the Receivership, including but not limited to professional fees and ongoing costs of administering the Receivership Entities and their related entities.

The Receiver does not believe that all the Asserted Liabilities are legal obligations of the Receivership Entities. As indicated above, the Receiver already has served ninety-three (93) claimants with Notices of Determination recommending disallowance of the claimants’ claims. The bulk of these were for claims asserted against a non- Receivership entity, and the Receiver will recommend disallowance of these claims for that reason. The Receiver will address her belief as to legal obligations of the Receivership Entities at a later point.

⁴ This figure includes claim amounts for all the filed claims, including those claims that the Receiver will recommend be disallowed.

C. Litigation Against Morriss Holdings, LLC

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 (Case No. 4:12-cv-01142-CEJ). The suit seeks \$6.8 million, together with interest and attorneys' fees. Counsel for Morriss Holdings was allowed to withdraw and Morriss Holdings failed to comply with a court directive to obtain counsel. On December 17, 2012, the Receiver moved for a default judgment against Morriss Holdings. The Court denied the motion for default on February 15, 2013. On June 18, 2013, the Receiver moved for reconsideration. On June 24, 2013, the Court granted the Receiver's motion for reconsideration, ordered that Morriss Holdings' answer be stricken, and directed the Clerk of the Court to enter a default judgment against Morriss Holdings. On July 1, 2013, the Clerk entered a default judgment against Morriss Holdings.

Conclusion

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

Dated: July 12, 2013

Respectfully submitted,

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

Acartha Technology Partners, LLC

Schedule of Investments

December 31, 2012

Company, Location, and Industry	Description of Securities	Cost ¹	Percent of Ownership Fully Diluted
██████████	159,722 Units	\$ 2,500,000	
██████████	Total ██████████	2,500,000	1.4%
██████████	Series D Convertible Note		
██████████	Total ██████████	0	0.0%
	<i>Cost cannot be determined based upon prior management records. Receiver has requested investor records from ██████████.</i>		
██████████	Common Stock		
██████████	96,828 shares converted from Series D and Series D-1	1,018,811	
	Total ██████████	1,018,811	1.2%
██████████	Series B Preferred Stock		
██████████	138,174 shares converted from Convertible Note		
	Interest accrues at a rate of 10%	251,306	
	Series A-4 Preferred Stock		
	438,652 shares	438,652	
	Series A-3 Preferred Stock		
	317,647 shares	317,647	
	Series A-2 Preferred Stock		
	400,000 shares	400,000	
	Series A-1 Preferred Stock		
	500,000 shares	500,000	
	Total ██████████	1,907,605	10.6%
██████████	Series D Preferred Stock		
██████████	4,699,456 shares	1,954,974	
	Total ██████████	1,954,974	0.3%
Total investments		\$ 7,381,390	

DISCLAIMER STATEMENT

Claire M. Schenk was appointed Receiver ("Receiver") for Acartha Group, LLC ("Acartha"), pursuant to the January 17, 2012 Order of the Honorable Carole E. Jackson, United States District Court for the Eastern District of Missouri. The attached schedule of investments was prepared by Segue Equity Partners based on available records and other information ("the historic data") transferred to the Receiver by Acartha's previous accountants, directors, officers, partners and employees ("prior management") following the date of the Receiver's appointment. Thus, the historic data, which were not available to the Receiver prior to the date of her appointment, were not created, compiled or maintained by the Receiver. The reliability and accuracy of the reporting of the financial and accounting matters and information in the attached schedule is based upon the accuracy and integrity of the historic data as provided to the Receiver by prior management.

¹ Cost is based upon prior management records of initial cost and does not reflect interest dividends, appreciation, or depreciation.

MIC VII, LLC

Schedule of Investments

December 31, 2012

Company, Location, and Industry	Description of Securities	Cost ¹	Percent of Ownership Fully Diluted
██████████	718,750 Units	\$ 6,000,000	
██████████	Total ██████████	6,000,000	6.3%
██████████ ²	Series A	500,000	
██████████	Total ██████████	500,000	0.0%
	<i>Write-off in prior years</i>		
██████████	Series D Convertible Note		
██████████	Total ██████████	0	0.0%
	<i>Cost cannot be determined based upon prior management records. Receiver has requested investor records from ██████████.</i>		
██████████	Common Stock		
██████████	258,150 shares converted from Series B and Series D-1	6,573,830	
	Total ██████████	6,573,830	3.2%
██████████ ²	Series A Preferred	1,506,904	
██████████	Total ██████████	1,506,904	0.0%
	<i>Write-off in prior years</i>		
Total investments		\$ 14,580,734	

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¹ Cost is based upon prior management records of initial cost and does not reflect interest dividends, appreciation, or depreciation.

² This investment was written off by management prior to 1/1/2012.