

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Case No. 4:12-cv-00080-CEJ
BURTON DOUGLAS MORRISS, et al.,	)	
	)	
Defendants, and	)	
	)	
MORRISS HOLDINGS, LLC,	)	
	)	
Relief Defendant.	)	
	)	

**MOTION TO AMEND CLAIMS BAR DATE ORDER (DKT. NO. 234)  
TO EXTEND CERTAIN CLAIMS PROCEDURES DEADLINES AND OTHERWISE  
ESTABLISH SPECIFIC DATES FOR THE REMAINING CLAIMS PROCEDURES  
DEADLINES**

Receiver Claire M. Schenk, in her capacity as receiver (“Receiver”) for Acartha Group, LLC, Acartha Technology Partners, L.P., MIC VII, LLC, and Gryphon Investments III, LLC (collectively, the “Receivership Entities”), respectfully requests entry of an Order extending certain claims procedures deadlines set in the Court’s *Order on Motion to Establish Claims Bar Date, Approve Manner and Form of Notice of Claims Bar Date and Approve Process for Submitting Claims* entered March 4, 2013 (the “Claims Bar Date Order”) (Dkt. No. 234) and otherwise establishing specific dates for the remaining claims procedures deadlines. In support of her request, the Receiver states as follows:

1. On March 4, 2013, the Court entered the Claims Bar Date Order, approving the Receiver’s proposed claims submission, review and allowance procedures (the “Claims Procedures”). 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 “Bar Date”).

2. The Receiver provided notice of the Bar Date and the Claims Procedures by electronic mail or regular mail to known potential claimants, by publication on the Receiver's website and by publication in the St. Louis Post-Dispatch and the Star-Ledger (Newark). *See* Fifth Interim Status Report of Receiver (Dkt. No. 255).

3. As a result of the approval of the Claims Procedures and the Receiver's noticing of the Bar Date, the Receiver received 226 proofs of claim from investors, former employees, former management, service providers and vendors. *See id.* The Receiver received the majority of the claims just before or on the Bar Date. Specifically, the Receiver received 210 of the 226 filed claims within six (6) days of the Bar Date.

4. In addition to the Bar Date, the Claims Bar Date Order established a number of other deadlines for the Receiver and for potential claimants, including (a) a deadline by which the Receiver would issue either a Notice of Determination or Notice of Deficiency for each filed claim (*i.e.*, sixty days after the Bar Date); (b) a deadline by which claimants would respond to the Receiver's Notices of Deficiency (*i.e.*, sixty days after issuance of the Notices of Deficiency); and (c) a deadline by which the Receiver would issue Notices of Determination on all claims for which the Receiver previously issued Notices of Deficiency (*i.e.*, the later of (i) sixty days after the date of the Notice of Deficiency or (ii) sixty days after the date the Receiver receives the claimant's response to the Notice of Deficiency). Claims Bar Date Order ¶¶ 6(j), 6(l). The Claims Bar Date also established deadlines for objecting to the Receiver's determinations, both with the Receiver and before the Court. Claims Bar Date Order ¶¶ 6(m), 6(o), 6(p).

5. Between July 2, 2013 and July 3, 2013, the Receiver issued 231 Notices of Deficiency. *See* Seventh Interim Status Report of Receiver (Dkt. No. 264).

6. Pursuant to the Claims Bar Date Order, all claimants who received a Notice of Deficiency must provide the Receiver with supplemental information and/or documentation to substantiate their claim(s) on or before Tuesday, September 3, 2013, or risk disallowance of their claims. Claims Bar Date Order ¶ 6(j).

7. If a claimant provides the Receiver with supplemental information and/or documentation, the Receiver has sixty days from the date of receipt of such supplemental information and/or documentation to review the information and issue a Notice of Determination recommending allowance or disallowance of the claim. Claims Bar Date Order ¶ 6(l).

8. If, however, a claimant does not provide the Receiver with supplemental information and/or documentation or a statement explaining the unavailability of further information and/or documentation on or before September 3, 2013, the Receiver must provide the claimant with a Notice of Determination recommending allowance or disallowance of the claim on September 3, 2013 -- the *same day* by which claimants must respond with supplemental information on their claim(s). Claims Bar Date Order ¶ 6(l).

9. To date, the Receiver has received only five (5) responses to the issued Notices of Deficiency. The Receiver anticipates that she will receive additional supplemental responses as the September 3, 2013 deadline approaches. However, given that these claimants filed their proofs of claim with the Receiver on or days before the Bar Date, the Receiver may receive the majority of the supplemental responses from claimants on or right before the September 3, 2013 response deadline.

10. Under the aforementioned circumstances, the Receiver believes that the current deadlines do not afford the Receiver sufficient time to issue Notices of Determination on deficient claims. This is especially true considering that the Receiver may not know until late in

the day on September 3, 2013 whether or not particular claimants will supplement their claims, and yet, under the current deadlines, the Receiver is obligated to issue claimants Notices of Determination on September 3, 2013 if claimants fail to file any supplemental information on September 3, 2013.

11. The Receiver believes that the current deadlines may result in a waste of valuable Receivership resources. If the deadlines are not extended, the Receiver will spend time and resources preparing 205 Notices of Determination that may become superfluous if claimants provide supplemental information on or right before the response deadline.

12. The Receiver also proposes that the Court establish date-specific deadlines for the issuance of Notices of Determination on deficient claims, the deadline by which claimants must object to the Receiver's determinations, the time period during which the Receiver and claimants must resolve objections to issued Notices of Determination, and the deadlines by which claimants must file objections with the Court and the Receiver must respond to such Court-filed objections. The Receiver was not able to propose date-specific deadlines in her motion to establish the claims process, but can do so now, having the benefit of an established Bar Date and established date for claimants to provide supplemental responses on deficient claims. The Receiver believes that both the Receiver and claimants will benefit from having the clarity of date-specific deadlines going forward.

13. The Receiver also requests that the Court amend the Claims Bar Date Order to set date-specific deadlines for the filing of objections to issued Notices of Determination (both with the Receiver and with the Court) and also extend the time period within which the Receiver and claimants must attempt to resolve objections to the Receiver's Notices of Determination. Currently, claimants have thirty (30) days from the date of issuance of their Notice of

Determination to file an objection to the Receiver's determination. If a claimant timely objects, the time period during which the Receiver and the objecting claimant must attempt to resolve the objection is ninety (90) days, beginning on the date that the Notice of Determination subject to the objection was issued (the "Resolution Period"). In practice, however, this Resolution Period can be as short as sixty (60) days because the claimant may file an objection to a Notice of Determination at any time within thirty (30) days after the issuance of the Notice of Objection.

14. The Receiver believes that setting date-specific deadlines for the objections process will benefit both the Receiver and claimants for the reasons set forth above. Also, the Receiver believes that extending the Resolution Period will better enable the Receiver to respond to and resolve claimants' objections without the need for claimants to bring their objections to the Court. The Receiver further requests that the date-specific deadlines and the extended Resolution Period apply to the three (3) objections that have been filed with the Receiver.

15. Among other things, the proposed extensions will permit the Receiver to better take into consideration, and benefit from, recent events in this Receivership. On August 13, 2013, the Securities & Exchange Commission filed a notice of Defendant Morriss's consent to the entry of a judgment of permanent injunction and other relief (Dkt. No. 274). Also on August 13, 2013, the Court entered its order granting the permanent injunction (Dkt. No. 275). Matters pertaining to these recent filings may involve significant involvement by the Receiver and her counsel. Also, these developments may positively impact the Receiver's access to information that would assist the Receiver in reviewing and resolving the filed claims.

16. In consideration of the foregoing, the Receiver requests that the Court amend paragraph 6(l) of the Claims Bar Date Order to set a date-specific deadline of January 13, 2014 as the date by which the Receiver must issue Notices of Determination on deficient claims. The

proposed date would extend the time period for the Receiver's review of supplemental responses to deficient claims by seventy (70) days, in part to avoid the proposed deadline from falling on or right after a holiday.<sup>1</sup>

17. The Receiver further requests that the Court amend paragraph 6(m) of the Claims Bar Date Order to set a date-specific deadline of February 12, 2014 as the date by which claimants must file objections to the Receiver's determinations on deficient claims (such Notices of Determination having been issued on or before January 13, 2014). This proposed date does not alter the thirty-day time period previously established in the Claims Bar Date Order for claimants to file objections to Notices of Determination with the Receiver.

18. The Receiver further requests that the Court amend paragraph 6(o) of the Claims Bar Date Order to set a date-specific deadline of May 13, 2014 as the end of the Resolution Period for all claims for which the claimant filed an objection with the Receiver and also a date-specific deadline of June 12, 2014 as the deadline by which objecting claimants may file their objections to the Receiver's determinations with the Court. This proposed date extends the Resolution Period by thirty (30) days, but does not alter the thirty-day time period previously established in the Claims Bar Date Order for claimants to file objections to Notices of Determination with the Court.

19. Finally, the Receiver requests that the Court amend paragraph 6(p) of the Claims Bar Date Order to set a date-specific deadline of July 14, 2014 as the deadline by which the Receiver may file her responses to claimants' objections with the Court. This proposed date

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<sup>1</sup> Currently, the Receiver has sixty (60) days to review supplemental responses to deficient claims. An additional thirty (30) days would require the Receiver to issue notices of determination on or before the Monday after the Thanksgiving holiday (December 2, 2013). An additional sixty (60) days would require the Receiver to issue Notices of Determination on or before the day after New Year's Day (Thursday, January 2, 2014).

does not alter the thirty-day time period previously established in the Claims Bar Date Order for the Receiver to respond to objections to Notices of Determination filed with the Court.

20. This is the Receiver's first request for an extension of the deadlines and time periods established in the Claims Bar Date Order.

21. This motion is not adversarial in nature.

22. The Receiver will post this Motion on the Receivership website following filing with the Court.

WHEREFORE, the Receiver respectfully requests that:

(A) The Court enter an Order, substantially in the form of the proposed order attached hereto as Exhibit A,

(i) amending paragraph 6(l) of the Claims Bar Date Order to read as follows:

(l) Notice of Determination. The Receiver shall provide a written Notice of Determination to each Claimant that submits a Proof of Claim. For Proof of Claims Forms for which the Receiver does not issue a Notice of Deficiency as described above, the Receiver shall provide a Notice of Determination to such Claimants on or before the date that is sixty (60) days after the Bar Date. For Proof of Claim Forms for which the Receiver issues a Notice of Deficiency, the Receiver shall provide a Notice of Determination to such Claimants on or before January 13, 2014. Such Notice of Determination shall be substantially in the form attached to the Supplemental Memorandum as **Exhibit F** (the "Notice of Determination"). If the Receiver has disallowed the Claim in whole or in part, the Notice of Determination shall so state and include a statement setting forth the reasons for disallowing the Claim and the date of the Receiver's determination.

(ii) amending paragraph 6(m) of the Claims Bar Date Order to read as follows:

(m) Claimant Objections to Determinations. In order to object to the Receiver's determination of a Claim, the Claimant shall first serve, but not file with the Court, a written objection to the Receiver's determination in accordance with the instructions included with the Receiver's Notice of Determination. The objection shall be served on the

Receiver (a) in person, by courier, or by mail addressed to Acartha Group Receivership, 505 North 7th Street, Saint Louis, Missouri 63101, or (b) by electronic mail, as an attachment in portable document format (.pdf) to [acartha.receivership@thompsoncoburn.com](mailto:acartha.receivership@thompsoncoburn.com) within thirty (30) days of the date of the Receiver's Notice of Determination. For all claims for which the Receiver issues a Notice of Determination between September 3, 2013 and January 13, 2014, the objection shall be filed with the Receiver no later than February 12, 2014. The objection shall include: (i) the claim number; (ii) a detailed statement of the reasons for the Claimant's objection to the Receiver's determination; (iii) copies of any document or other writing upon which the Claimant relies; and (iv) mailing, phone, and email contact information for the Claimant. Objections not timely served shall be deemed waived and overruled without the need for further order of this Court or action by the Receiver.

(iii) amending paragraph 6(o) of the Claims Bar Date Order to read as follows:

(o) Filing of Objection with Court. If the Receiver and Claimant are unable to resolve an objection served upon the Receiver by May 13, 2014, the Claimant shall file the written objection to the Receiver's Notice of Determination with the Court in accordance with the instructions included with the Receiver's Notice of Determination. The objection shall be filed with the Court no earlier than May 13, 2014 and no later than June 12, 2014. The objection shall include: (i) the claim number; (ii) a detailed statement of the reasons for the Claimant's objection to the Receiver's Notice of Determination; (iii) copies of any document or other writing upon which the Claimant relies; (iv) mailing, phone, and email contact information for the Claimant; and (v) a certification that the Claimant has conferred in good faith with the Receiver in an effort to resolve the objection without the need for a ruling from the Court. Objections not timely filed with the Court shall be deemed waived and overruled without the need for further order of this Court or action by the Receiver.

(iv) amending paragraph 6(p) of the Claims Bar Date Order to read as follows:

(p) Court Ruling on Determinations and Objections. The Receiver may file a response to the Claimant's objection no later than July 14, 2014, and shall serve a copy of the response on the Claimant or Claimant's counsel. Following the filing of the Receiver's response to the Claimant's objection or, if the Receiver fails to file a response, the expiration of the response period provided herein, the Court shall consider and rule on the Claimant's objection to the Notice of Determination. Notwithstanding the procedures outlined herein, the Claimant and the Receiver may stipulate to informally resolve their dispute and may extend



by agreement without leave of Court the deadline for either party to file a motion to have the Court rule on the objection and determination.  
and

(B) providing for such other and further relief as is just and appropriate under the circumstances.

Respectfully Submitted,

THOMPSON COBURN LLP

Dated: August 14, 2013

By           /s / Kathleen E. Kraft          

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 14, 2013, 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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*Attorneys for Plaintiff*

I further certify that I served the foregoing document on the following via U.S. mail, postage prepaid:

Morriss Holdings, LLC  
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St. Louis, MO 63105

Morriss Holdings, LLC  
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/s/ Kathleen E. Kraft

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

SECURITIES AND EXCHANGE COMMISSION,	)	
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Plaintiff,	)	
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BURTON DOUGLAS MORRISS, <i>et al.</i> ,	)	
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Defendants, and	)	
	)	
MORRISS HOLDINGS, LLC,	)	
	)	
Relief Defendant.	)	
	)	

**ORDER**

This matter is before the Court on the *Motion to Amend Claims Bar Date Order (Dkt. No. 234) to Extend Certain Claims Procedures Deadlines and Otherwise Establish Specific Dates for the Remaining Claims Procedures Deadlines* (the “Motion”) filed by Claire M. Schenk, the court-appointed receiver (the “Receiver”) for Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, L.P. and Gryphon Investments III, LLC in this action.

Having fully considered the Motion, being duly advised as to the merits and for good cause shown,

**THE COURT DOES HEREBY ORDER THAT**

1. The Receiver’s Motion is granted in its entirety.
2. Paragraph 6(l) of the Court’s *Order on Motion to Establish Claims Bar Date, Approve Manner and Form of Notice of Claims Bar Date and Approve Process for Submitting Claims* entered March 4, 2013 (the “Claims Bar Date Order”) (Dkt. No. 234) is amended as follows:

**Ex. A**

(l) Notice of Determination. The Receiver shall provide a written Notice of Determination to each Claimant that submits a Proof of Claim. For Proof of Claims Forms for which the Receiver does not issue a Notice of Deficiency as described above, the Receiver shall provide a Notice of Determination to such Claimants on or before the date that is sixty (60) days after the Bar Date. For Proof of Claim Forms for which the Receiver issues a Notice of Deficiency, the Receiver shall provide a Notice of Determination to such Claimants on or before January 13, 2014. Such Notice of Determination shall be substantially in the form attached to the Supplemental Memorandum as **Exhibit F** (the “Notice of Determination”). If the Receiver has disallowed the Claim in whole or in part, the Notice of Determination shall so state and include a statement setting forth the reasons for disallowing the Claim and the date of the Receiver’s determination.

3. Paragraph 6(m) of the Claims Bar Date Order is amended as follows:

(m) Claimant Objections to Determinations. In order to object to the Receiver’s determination of a Claim, the Claimant shall first serve, but not file with the Court, a written objection to the Receiver’s determination in accordance with the instructions included with the Receiver’s Notice of Determination. The objection shall be served on the Receiver (a) in person, by courier, or by mail addressed to Acartha Group Receivership, 505 North 7th Street, Saint Louis, Missouri 63101, or (b) by electronic mail, as an attachment in portable document format (.pdf) to acartha.receivership@thompsoncoburn.com within thirty (30) days of the date of the Receiver’s Notice of Determination. For all claims for which the Receiver issues a Notice of Determination between September 3, 2013 and January 13, 2014, the objection shall be filed with the Receiver no later than February 12, 2014. The objection shall include: (i) the claim number; (ii) a detailed statement of the reasons for the Claimant’s objection to the Receiver’s determination; (iii) copies of any document or other writing upon which the Claimant relies; and (iv) mailing, phone, and email contact information for the Claimant. Objections not timely served shall be deemed waived and overruled without the need for further order of this Court or action by the Receiver.

4. Paragraph 6(o) of the Claims Bar Date Order is amended as follows:

(o) Filing of Objection with Court. If the Receiver and Claimant are unable to resolve an objection served upon the Receiver by May 13, 2014, the Claimant shall file the written objection to the Receiver’s Notice of Determination with the Court in accordance with the instructions included with the Receiver’s Notice of Determination. The objection shall be filed with the Court no earlier than May 13, 2014 and no later than June 12, 2014. The objection shall include: (i) the claim number;

(ii) a detailed statement of the reasons for the Claimant's objection to the Receiver's Notice of Determination; (iii) copies of any document or other writing upon which the Claimant relies; (iv) mailing, phone, and email contact information for the Claimant; and (v) a certification that the Claimant has conferred in good faith with the Receiver in an effort to resolve the objection without the need for a ruling from the Court. Objections not timely filed with the Court shall be deemed waived and overruled without the need for further order of this Court or action by the Receiver.

5. Paragraph 6(p) of the Claims Bar Date Order is amended as follows:

(p) Court Ruling on Determinations and Objections. The Receiver may file a response to the Claimant's objection no later than July 14, 2014, and shall serve a copy of the response on the Claimant or Claimant's counsel. Following the filing of the Receiver's response to the Claimant's objection or, if the Receiver fails to file a response, the expiration of the response period provided herein, the Court shall consider and rule on the Claimant's objection to the Notice of Determination. Notwithstanding the procedures outlined herein, the Claimant and the Receiver may stipulate to informally resolve their dispute and may extend by agreement without leave of Court the deadline for either party to file a motion to have the Court rule on the objection and determination.

6. All other term and provisions of the Claims Bar Date Order remain in full force and effect.

7. The extended period for the resolution of objections to Notices of Determination in amended paragraph 6(o) and the date-specific deadlines established in amended paragraphs 6(o) and 6(p) apply to all objections filed with the Receiver, including those objections filed prior to entry of this Order.

**SO ORDERED** this the \_\_\_\_ day of \_\_\_\_\_, 2013.

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THE HONORABLE CAROL E. JACKSON  
UNITED STATES DISTRICT JUDGE