

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  
THIRTEENTH 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 for entry of an order approving and confirming the Thirteenth Interim Status Report of Receiver, filed simultaneously herewith as Exhibit A to this Motion.

This motion is administrative and not adversarial in nature.

Respectfully Submitted,

THOMPSON COBURN LLP

Dated: February 4, 2015

By           /s / Kathleen E. Kraft

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 4, 2015, 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:

John R. Ashcroft, Esq.  
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*Counsel for Defendant Burton Douglas Morriss*

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*Attorneys for Plaintiff*

/s/ Kathleen E. Kraft

**EXHIBIT A**

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

SECURITIES AND EXCHANGE COMMISSION, )  
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 Plaintiff, )  
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 Relief Defendant. )  
 \_\_\_\_\_ )

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

**THIRTEENTH 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 **Thirteenth Interim Status Report** to update the Court on the activities of the Receiver occurring since December 4, 2014:

**A. Analysis of Affirmative Legal Claims and Related Proceedings**

Pursuant to paragraph 2 of the Order Appointing Receiver (Dkt. No. 16 “Receivership Order”), the Receiver is directed to investigate the manner in which the affairs of the investment entities were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Entities as the Receiver deems necessary against those individuals and entities which the Receiver may claim have directly or indirectly misappropriated or transferred monies. As authorized by paragraph 6 of the Receivership Order, the Receiver may defend,

compromise or settle legal actions in which the Receivership Entities are parties, with authorization of the Court. In keeping with the directives of the Court, the Receiver has developed the following matters during this reporting period.

1. *The UHY Parties*

In keeping with the above described authorities, the Receiver continued to work with her retained counsel, Spencer Fane Britt & Browne LLP, to pursue Receivership claims involving UHY, Patrick Stark, and Brian Peterson (collectively, the “UHY Parties”). As previously reported on October 6, 2014, the Honorable Wayne R. Anderson (Ret.) presided over a mediation proceeding which included the UHY Parties, the Receiver, and counsel. Although the matter did not resolve on that day, the parties agreed to continue their discussions and attempts to resolve their dispute. Judge Anderson continued to facilitate the settlement discussions of the parties over the following weeks.

Finally, after numerous offers were exchanged between the parties, in an effort to bring this matter to a final conclusion, Judge Anderson made a settlement recommendation for resolution of matters between the UHY Parties and the Receiver. This recommendation was based upon Judge Anderson’s thorough review and consideration of the Receiver’s and the UHY Parties’ legal arguments and documentation submitted to him for review before, during, and following the October 6, 2014 mediation. As a result, the Receiver and the UHY Parties agreed to accept this recommendation, subject to execution of appropriate settlement documentation and the approval of the Receivership Court. The Receiver and the UHY Parties are now engaged in the preparation of settlement documentation and working towards a submission for the consideration of the Court.

2. *John Wehrle*

On January 7, 2015, an indictment was returned against John Wehrle. The indictment states that Mr. Wehrle was a founder and managing partner of venture capital companies, including Gryphon Investments II, LLC and Gryphon Holdings II, LLP (the “Gryphon entities”). It notes that as a managing partner, he raised funds and managed portfolio company investments, private equity funds, and co-investment vehicles. According to the indictment, funds from the corporate account of the Gryphon entities were withdrawn by John Wehrle and deposited into his personal bank account. The indictment further states that these monies were not reported on Mr. Wehrle’s tax return. Additionally, the indictment states that Mr. Wehrle claimed that the distributions were loans and that he created and backdated documents in response to inquiries by the Internal Revenue Service.

Based upon these allegations, the grand jury returned a four-count indictment charging that John Wehrle knowingly and willfully attempted to evade payment of income taxes for years 2008 and 2010 and that for those same years he submitted returns which underreported his income. On January 26, 2015, John Wehrle pled not guilty to the indictment and asked for additional time to review discovery and assess whether pretrial motions were appropriate.

As previously reported, the Receiver has executed a series of tolling agreements with Mr. Wehrle. Mr. Wehrle has been advised that the Receiver plans to pursue claims pertaining to the Receivership Entities and the Gryphon entities. During this reporting period, the Receiver continued to review, evaluate, and pursue these claims. The Receiver will continue to develop these matters until an appropriate result has been obtained.

**B. Claims Process**

The Receiver has described the Claims Process in detail in preceding reports (*see* Receiver's Ninth, Tenth, Eleventh, and Twelfth Interim Status Reports, Dkt. Nos. 315-1, 328-1, 338-1, and 358-1). During this reporting period, the Receiver issued a Notice of Determination as to Claimant No. 227, allowing the claim in part and denying the claim in part. Therefore, as of the date of this Report, the Receiver's actions on the filed claims are as follows:

<i>Treatment</i>	<i>No. of Claims</i>
Recommend allowance of claim (at least in part)	119
Recommend disallowance of entire claim	108
<b>Total Claims Submitted</b>	<b>227</b>

Two claim objections remain outstanding: (1) Hany Teylouni (former management), Claim No. 20 (*see* Dkt. No. 337); and (2) UHY Advisors MO, Inc. (former professional), Claim No. 16 (*see* Dkt. No. 332). Mr. Teylouni's objection has been briefed and awaits decision by the Court. Subject to approval of the Court, the Receiver anticipates that UHY's claim objection will be handled as part of the proposed settlement between the Receiver and the UHY Parties.

A number of claimants have inquired about the likelihood of a recovery through an eventual distribution plan to be proposed by the Receiver. The Receiver has previously indicated that asserted liabilities against the Receivership Entities exceeded \$55 million. *See* Eleventh Interim Status Report (Dkt. No. 338-1). This amount is far in excess of the amount that the Receiver anticipates will be available for distribution; therefore, it is unlikely that the claims of all claimants will be satisfied. The Receiver has researched and considered various plans of distribution, and continues to do so, but through this filing reminds all claimants that the ultimate method of distribution will be determined by the Court. Because recoveries for the Receivership Entities are likely to continue for the near term, the Receiver has not yet proposed a plan of distribution to the Court.

**C. Business Operations and Administrative Matters**

As directed by the Court, the Receiver continued to oversee the holdings of the Receivership Entities in the remaining portfolio company investments. The Receiver participated in board and shareholder calls involving the portfolio concerns, reviewed periodic updates by management as to financials and operations involving the portfolio entities, analyzed information and organized investor calls, and handled compliance matters pertaining to potential tax claims and liability. Exploration of liquidation and sale opportunities continued during this reporting period.

During this reporting period, one of the Receivership portfolio companies, Librato, negotiated and executed a merger agreement with Austin-based SolarWinds, Inc. (“SolarWinds”). The publicly reported sales price is \$40 million. SolarWinds provides software to help IT departments manage their networks and purchased Librato so that it could continue to develop its platform capabilities and build out its marketing and sales efforts of its business focused upon cloud monitoring. A copy of the press release issued by SolarWinds is attached hereto as Exhibit A-1. According to Librato, the cumulative holdings of the Receivership Entities and related special purpose vehicles are 858,337, or approximately 4% of the total shares on a fully diluted basis, which is estimated to result in gross sale proceeds per Acartha share (including amounts subject to an indemnification escrow) of a little under \$1.90.

Reportedly, these shares are held by two of the Receivership Entities (ATP and MIC VII), as well as three related special purpose vehicles, EverGrid Acquisition, LLC, Evergrid/MIC VII, LLC, and Librato Acquisition, II, LLC. Confirmation of these holdings and matters pertaining to the required amount of the retained escrow and the actual amounts of the impending distributions are unfolding at the time of the filing of this report. Any and all

distributions will be made subject to the approval of the Receivership Court. The Receiver anticipates that the distributions allocated to the Receivership Entities will be a part of the claims distribution process to be determined by the Court while potential distributions to the related special purpose vehicles referenced above will be made subject to approval by the Court and following the Receiver's motion and memorandum.

**D. Tax Matters**

During this reporting period, the Receiver worked closely with the Receiver's accountants to finalize 1099 forms for the 2014 tax year so that Receivership vendors would receive the required information in a timely manner and so that the related IRS filings would also be prepared and completed. Matters pertaining to the IRS filing and submission of the 1099s was completed on or before January 31, 2015. An engagement letter for preparation of the 2014 Receivership returns was agreed to and executed, subject to approval of the Court. This letter is attached hereto as Exhibit A-2. Additionally, the Receiver has begun reviewing various filings to be made by CT Corporation on behalf of the Receivership and related entities. As previously reported, most of these state filings were delinquent at the beginning of the Receivership, however, the filings are now current.

**F. Update in Proceedings Involving Burton Douglas Morriss**

**(1) Criminal Matter**

Pursuant to the plea agreement described in earlier reports, the Receiver is informed that Burton Douglas Morriss remains incarcerated.



**(2) Personal Bankruptcy of Burton Douglas Morriss**

The deadline for objections to discharge was scheduled to occur on January 31, 2015. As a result, a motion to extend the discharge deadline was filed by the Receiver and other parties. The motion was granted by the Court, and the new deadline is June 3, 2015.

As previously reported, on November 10, 2014, the first Section 341 meeting of creditors was held, but not completed. Mr. Morriss participated by phone from prison; however, the meeting was ended by prison officials who stated that the allotted time had elapsed. While the Receiver's counsel attempted to question Mr. Morriss, his attorney objected, claiming a lack of standing. As the Receiver has reported, Mr. Morriss has objected to the claim of the Receiver, taking the position that the claims of the Receiver are redundant of the SEC judgment. Another 341 meeting of the creditors was held on December 9, 2014, but again was not completed. The next 341 meeting has not yet been scheduled but will likely be held in early to mid-March.

**G. Administrative Matters**

An updated copy of the Standardized Fund Accounting Report ("SFAR") is being submitted along with the Receiver's Twelfth Interim Fee Application (for the fourth quarter of this year, covering October through December). This report reflects known and current bank balances for the Receivership Entities and the accounts otherwise subject to the control of the Receiver. It also shows expenses and payments during this quarter. A final and fully detailed report will be submitted to the Court at the conclusion of the Receivership.

The Receiver has continuously updated the general website hosted by Thompson Coburn LLP (which is linked to the website for the District Court for the Eastern District of Missouri). Additionally, she has continued to post documents on the extranet sites created for the investors. Access to the extranet sites is allowed subject to receipt of a nondisclosure agreement 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. Claimants, investors, and other interested parties are encouraged by the Receiver to visit the sites 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 counsel.

**Conclusion**

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

Dated: February 4, 2015

Respectfully submitted,

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



## Press Release

### SolarWinds Expands Its Cloud Monitoring and Management Footprint With Acquisition of Librato

#### **Addition of Cloud-Based Monitoring and Analytics Platform Will Allow SolarWinds to Extend Application Performance Management Capabilities to Cloud Infrastructure Like AWS, Heroku, and Others**

AUSTIN, TX and SAN FRANCISCO, CA -- (Marketwired) -- 01/29/15 -- SolarWinds (NYSE: SWI), a leading provider of powerful and affordable [IT performance management](#) solutions, today announced the acquisition of Librato, a San Francisco-based [Cloud monitoring](#) company, for a cash purchase price of \$40 million. This addition to the SolarWinds® family, on the heels of the Pingdom® acquisition in 2014, represents the latest step in the company's efforts to offer solutions to monitor and manage Cloud-based applications and infrastructure. This new technology platform will enable the Company, in the future, to extend and connect performance management capabilities from on-premise IT infrastructure to modern, Cloud-based application environments.

- In the rapidly emerging Cloud era, complex technologies, along with dynamic infrastructure and application architectures, are creating new challenges in developing and managing the availability of business-critical applications.
- SolarWinds' overall vision is to help IT Pros, DevOps managers, developers, website and web application owners to manage the performance of all things IT in a hybrid world, ensuring a seamless experience for all end-users.
- Librato currently enables full-stack performance monitoring of infrastructure and applications on public clouds such as AWS and Heroku, or in a company's own data centers using a rich set of OSS data collection agents and instrumentation libraries for a variety of technologies and languages such as StatsD, collectd, Rails, Ruby, Python, Node.js and Java.
- Librato also offers the unique ability to monitor and alert on unlimited metrics from hundreds of sources with second precision, correlate and analyze them to produce actionable results.
- Through the strength of its product offering, Librato has earned the trust of some of the leading Internet-based brands, such as Airbnb, Stitch Fix, MOZ, NextDoor and Heroku.
- SolarWinds' Pingdom is dedicated to making the web faster and more reliable by enabling monitoring, alerting and troubleshooting of websites and web applications, regardless of size, where they are in the world, and what device they use.
- SolarWinds plans to bring these companies, Pingdom and Librato, under a new brand, SolarWinds Cloud.
- The new brand will be dedicated to providing a unique and complete solution designed to provide visibility from the "outside in" (Web Performance Management) and the "inside out" (Cloud Infrastructure Management).

"As we evaluate the growth of the business-critical application, we see three 'horizons' of application deployment that require robust performance management -- on-premise IT, IT as a Service, and IT in the Cloud," said Kevin Thompson, president and CEO, SolarWinds. "We expect that the requirement to manage existing on-premise infrastructure will continue, but will now be coupled with the need to manage the performance of infrastructure and applications either fully or partially deployed in private and public clouds. As more and more businesses move aspects of their environments to Cloud-based deployment models, we believe we are the right company, with the right product set, to help manage infrastructure performance."

"When we started talking with SolarWinds, it became clear that we share a common vision," said Fred van den Bosch, CEO and co-founder of Librato. "We have built one of the industry's most powerful hosted monitoring platforms with the flexibility to adapt to any use case. This creates a unique opportunity with SolarWinds' extensive range of infrastructure management products. By joining forces, we expect to be able to continue our journey at an accelerated pace."

"We look forward to having the Librato® team and technology as a part of our organization, as we expand into the Cloud monitoring and management space. And, we will continue to give users the ability to solve a specific management problem or use a combination of

integrated products to get a top to bottom view of the application environment and the supporting infrastructure whether on-premise or in the Cloud," continued Thompson.

For more information on Librato, its turnkey integrations and collection agents, visit [www.librato.com](http://www.librato.com).

For more information on SolarWinds, visit [www.solarwinds.com](http://www.solarwinds.com).

### **Forward-Looking Statements**

This press release contains "forward-looking" statements, which are subject to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, including statements regarding SolarWinds' expectations that managing existing on-premise infrastructure will continue to be required but will now be coupled with the need to manage the performance of infrastructure and applications either fully or partially deployed in private and public clouds, the ability of the combined entity to accelerate and SolarWinds ability to integrate the acquisition and products successfully. These forward-looking statements are based on management's beliefs and assumptions and on information currently available to management. Forward-looking statements include all statements that are not historical facts and may be identified by terms such as "will," "continues," "believes," "expects" or similar expressions and the negatives of those terms. Forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, the following: (a) the inability to generate significant volumes of sales leads from Internet search engines, marketing campaigns and traffic to our websites; (b) the inability to expand our sales operations effectively; (c) the inability to increase sales to existing customers and to attract new customers; (d) SolarWinds' ability to successfully identify, complete, and integrate acquisitions; (e) the possibility that general economic conditions or uncertainty cause information technology spending to be reduced or purchasing decisions to be delayed; and (f) such other risks and uncertainties described more fully in documents filed with or furnished to the Securities and Exchange Commission, including the Form 10-K for the year ended December 31, 2013 filed on February 14, 2014. All information provided in this release is as of the date hereof and SolarWinds undertakes no duty to update this information except as required by law.

### **About SolarWinds**

SolarWinds (NYSE: SWI) provides powerful and affordable IT management software to customers worldwide from Fortune 500 enterprises to small businesses. In all of our market areas, our approach is consistent. We focus exclusively on IT Pros and strive to eliminate the complexity that they have been forced to accept from traditional enterprise software vendors. SolarWinds delivers on this commitment with *unexpected simplicity* through products that are easy to find, buy, use and maintain while providing the power to address any IT management problem on any scale. Our solutions are rooted in our deep connection to our user base, which interacts in our [thwack](#)<sup>®</sup> online community to solve problems, share technology and best practices, and directly participate in our product development process. Learn more today at <http://www.solarwinds.com>.

*SolarWinds, SolarWinds & Design, Pingdom, thwack and Librato are the exclusive property of SolarWinds Worldwide, LLC or its affiliates. All other company and product names mentioned are used only for identification purposes and may be or are intellectual property of their respective companies.*

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Source: SolarWinds



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P 314.552.6152  
acantha.receivership@  
thompsoncoburn.com

January 20, 2015

**VIA ELECTRONIC & FIRST CLASS MAIL**

Marion Hecht  
Principal, Fraud & Forensic Investigations, Receivership & Litigation  
CliftonLarsonAllen LLP  
4250 North Fairfax Drive, Suite 1020  
Arlington, VA 22203

Re: *Securities and Exchange Commission v. Burton Douglas Morriss, et al.*  
No. 4:12-cv-00080-CEJ

Dear Marion:

This letter will serve to supplement and amend the fully executed June 26, 2012 engagement letter pertaining to services to be rendered by CliftonLarsonAllen LLP ("CLA") in the above-referenced matter ("the Engagement Letter") and as stated in the amended engagement letter of April 10, 2014 (the "Amended Engagement Letter"). CLA fees for the preparation of the 2014 returns for the various Receivership and related entities will remain fixed at, and not to exceed, \$3,000 for each entity filing. CLA will continue to bill at the lower rate of either actual or not to exceed in keeping with the Engagement Letter.

Hourly rates for other matters as approved will be subject to the terms of the Amended Engagement Letter. Hourly rates are to be billed as set out in Attachment A, which became effective January 1, 2014, subject to such approvals as may be required. We understand that preliminary work on the 2014 tax returns was started on October 1, 2014.

Thanks once again for your assistance.

Best regards,

Thompson Coburn LLP

A handwritten signature in cursive script that reads 'Claire M. Schenk'.

By  
Claire M. Schenk

CMS/kja

Enclosure


January 20, 2015  
Page 2

**CONFIRMATION**

I agree to provide services under the terms of this Engagement Letter.

Accepted:

Dated:

  
\_\_\_\_\_  
Marion Hecht, CPA  
Principal  
CliftonLarsonAllen LLP

1/21/15

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

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Plaintiff,	)	
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v.	)	
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MIC VII, LLC,	)	
ACARTHA TECHNOLOGY PARTNERS, LP, and	)	
GRYPHON INVESTMENTS III, LLC,	)	
	)	
Defendants, and	)	
	)	
MORRISS HOLDINGS, LLC,	)	
	)	
Relief Defendant.	)	
	)	
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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 Thirteenth 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 Thirteenth 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 Thirteenth Interim Status Report of Receiver for the period December 5, 2014 through February 4, 2015, and every act and transaction reported therein, are hereby approved and confirmed.

**SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_ 2015

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THE HONORABLE CAROL E. JACKSON  
UNITED STATES DISTRICT COURT JUDGE