

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, <i>et al.</i> ,)	
)	
Defendants, and)	
)	
MORRISS HOLDINGS, LLC,)	
)	
Relief Defendant.)	
)	

RECEIVER’S MOTION TO APPROVE PLAN OF DISTRIBUTION, APPROVE SCHEDULE OF CLAIMS, AUTHORIZE DISTRIBUTIONS OF RECEIVERSHIP ASSETS, AND APPROVE PARTIAL PAYMENT OF HOLDBACK AMOUNT PERTAINING TO LEGAL AND PROFESSIONAL SERVICES RENDERED BY THE RECEIVER, RETAINED COUNSEL, AND OTHER PROFESSIONALS

Receiver Claire M. Schenk (“Receiver”) hereby respectfully moves the Court for an Order (a) approving the Receiver’s determinations on the allowance and disallowance of filed claims against the Receivership estate, (b) authorizing the Receiver’s allocation of assets and expenses between the four Receivership Entities in keeping with the method for allocation proposed by the Receiver and the schedules prepared by Timothy S. O’Shaughnessy, CPA, Partner, CliftonLarsonAllen, LLP, (c) approving the Receiver’s determinations on claim classification and priority, (d) approving the Receiver’s method of distribution to allowed claimants, (e) authorizing the Receiver to make one or more distributions of Receivership assets in keeping with the schedules prepared by Timothy S. O’Shaughnessy, CPA, (f) approving the Receiver’s request for allowance and payment of 80 percent of the legal and professional fee holdback incurred and remaining unpaid as of December 31, 2016, and authorizing payment of

same, and (g) providing for such other and further relief is necessary in connection therewith.

The Receiver relies on the *Memorandum of Law in Support of Receiver's Motion to Approve Plan of Distribution, Approve Schedule of Claims, Authorize Distributions of Receivership Assets, and Approve Partial Payment of Holdback Amount Pertaining to Legal and Professional Services Rendered by the Receiver, Retained Counsel, and Other Professionals* and accompanying exhibits to support her request, which Memorandum is being contemporaneously filed herewith.

Dated: April 20, 2017

Respectfully Submitted,

THOMPSON COBURN LLP

By /s/ Kathleen E. Kraft

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CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2017, 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 all counsel of record receiving electronic service.

I further certify that I served the foregoing document and its attachments via electronic mail on all Interested Parties (as defined in the accompanying Memorandum) and added the document and its attachments to the Receivership website.

/s/ Kathleen E. Kraft

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

[PROPOSED] ORDER

This matter is before the Court on the *Motion to Approve Plan of Distribution, Approve Schedule of Claims, Authorize First Interim Distribution of Receivership Assets, and Approve Partial Payment of Holdback Amount Pertaining to Legal and Professional Services Rendered by the Receiver, Retained Counsel, and Other Professionals* and memorandum in support thereof (ECF Nos. 515, 516; the “Motion”), 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 (collectively, the “Receivership Entities”).

On April 20, 2017, the Receiver filed the Motion. In summary, the Motion seeks Court approval of: (i) the Receiver’s determinations of allowance and/or disallowance on filed claims, (ii) the Receiver’s methodology for allocation of assets and expenses between the Receivership Entities, (iii) the Receiver’s determinations regarding classification and priority of allowed claims, (iv) the Receiver’s methodology for distribution of Receivership assets to allowed

claimants, and (v) the Receiver's request for allowance and payment of 80 percent of the legal and professional fees of the Receiver, her counsel, and her professionals incurred and remaining unpaid as of December 31, 2016.

Having fully considered the Motion, any oppositions thereto, and being duly advised as to the merits, the Court finds that there is good cause to grant the Motion. The actions to be taken by the Receiver in connection with the proposed Distribution Plan are reasonable and within the Receiver's sound business discretion, are fair and equitable under the particular circumstances of this case, and are in the best interests of the Receivership estate and the allowed claimants of the Receivership Entities.

The Court also finds that interested parties were afforded adequate notice and an opportunity to be heard in a meaningful manner on the relief requested in Motion. The Receiver electronically served all persons and entities who filed claims with the Receiver, included in the service communication to the persons and entities the time limits for filing objections to motions under the Court's local rules, and posted a copy of the filed Motion on the Receivership website. The procedure for objections to motions under this Court's local rules were available to interested parties as a means to object and be heard.

NOW THEREFORE, THE COURT DOES HEREBY ORDER THAT

1. MOTION.

The Receiver's Motion is granted in its entirety and objections, if any, are overruled.

2. ALLOWANCE OF CLAIMS.

The Receiver's recommendations on claim allowance and disallowance and the claim amounts as set forth in the Schedule of Allowed Claims and Schedule of Disallowed Claims, attached hereto as **Exhibit A-1** and **Exhibit A-2**, are approved [*excepting only Claim No. 20*

filed by Hany Teylouni. The allowance or disallowance of Mr. Teylouni's claim will be decided by the Court pursuant to an order on the briefings filed by the parties in connection with Mr. Teylouni's objection to the Receiver's recommendation of disallowance of Claim No. 20.] All claims listed on the Schedule of Allowed Claims shall be referred to herein as "Allowed Claims." Holders of such Allowed Claims shall be referred to as Allowed Claimants.

3. APPROVAL OF THE RECEIVER'S DISTRIBUTION PLAN.

The Receiver's Distribution Plan, as set forth in the memorandum in support of the Motion, the Declaration of Timothy O'Shaughnessy, and the schedules attached thereto (which schedules are attached hereto as **Exhibit B-1, Exhibit B-2, Exhibit B-3, and Exhibit B-4** [*currently Attachments 1-4 of Exhibit B to Receiver's Motion*]), is approved. In particular, but without limiting the proposals set forth in the Distribution Plan:

A. Allocation of Assets.

The Receiver's methodology for the allocation of assets of the Receivership Estate between the Receivership Entities is approved. Where an asset or recovery can be linked to a harm particular to a single Receivership Entity or an investment or portfolio interest held by one or more, but not all, Receivership Entities, the Receiver shall allocate that asset or recovery to the particular Receivership Entity(ies) involved. Where an asset or recovery cannot be linked to a harm particular to a single Receivership Entity or an investment or portfolio interest held by one or more, but not all, Receivership Entities, but instead resulted from a jointly-held asset or a recovery sought for the benefit of the entire Estate ("Shared Assets"), the Receiver shall allocate that asset or recovery between the Receivership Entities in proportion to the size of the initial cash investment in each of the Receivership Entities.

Pursuant to this methodology, the Receiver shall allocate the Shared Assets between the Receivership Entities as follows: 2.67 percent to Acartha Group, LLC; 13.66 percent to MIC VII, LLC; 81.70 percent to Acartha Technology Partners, L.P.; and 1.97 percent to Gryphon Investments III, LLC. The Receiver is authorized to take all actions necessary for effectuation of the allocations approved herein.

B. Allocation of Receivership Expenses.

The Receiver's methodology for the allocation of expenses of the Receivership Estate between the Receivership Entities is approved. The Receiver shall allocate all Receivership expenses between the four Receivership Entities in proportion to the size of the initial cash investment in each of the Receivership Entities.

Pursuant to this methodology, the Receiver shall allocate the Receivership expenses between the Receivership Entities as follows: 2.67 percent to Acartha Group, LLC; 13.66 percent to MIC VII, LLC; 81.70 percent to Acartha Technology Partners, L.P.; and 1.97 percent to Gryphon Investments III, LLC. The Receiver is authorized to take all actions necessary for effectuation of the allocations approved herein.

C. Claim Classification and Priority.

The Receiver's proposal for the classification and priority treatment of Allowed Claims is approved. The Allowed Claims shall be divided into four main classes: (1) Cash Investors (Classes 1-A, 1-B, 1-C, and 1-D), (2) Exchange-Loss Investors (Class 2-A), (3) Unsecured Creditors (Classes 3-A and 3-B), and (4) Professional and Employee Claims (Classes 4-A, 4-B, 4-C, and 4-D). The Receiver's proposed classification of individual claims, as set forth in **Exhibit A-1** and **Exhibit A-2**, is approved. The Classes shall be prioritized in descending order. Allowed Claimants in Classes 1-A through 1-D (Cash Investors) shall receive the highest priority

to Receivership assets. The remaining classes (Class 2, Class 3, and Class 4) will follow in second, third, and fourth priority, respectively.

The foregoing classification and priority treatment of Allowed Claims is fair and equitable under the circumstances of this case. Allowed Claimants are grouped with other similarly situated Allowed Claimants into one of four categories determined by the Allowed Claimant's (1) status as an investor, trade creditor, or former employee or professional and (2) for investors, the method of contribution (cash or exchange). Allowed Claimants within each of the Class categories will receive the same treatment. Further, the Receiver's differing treatment of the cash investors and the exchange-loss investors in Acartha Group, LLC is reasonable and equitable based upon the manner in which the two groups of investors participated in Acartha Group, LLC. The Receiver's prioritization of the claims of the cash investors is also fair and equitable because the Receiver was appointed in connection with the SEC's civil enforcement action against the Receivership Defendants. The SEC's allegations in its enforcement action against Burton Douglas Morriss resulted in the entry of a Judgment of Permanent Injunction and Other Relief as to Morriss on August 13, 2013 (ECF No. 275), which precluded Morriss from arguing that he did not violate the federal securities laws as alleged in the *SEC Complaint* in connection with an SEC motion for disgorgement and/or civil penalty and determined, for purposes of such a motion, that the allegations in the *SEC Complaint* shall be accepted as and deemed true by the Court. On February 26, 2014, the Court entered its Final Judgment as to Morriss (ECF No. 314), in which the Court ordered that Morriss disgorge \$9.1 million, representing profits gained as result of the conduct alleged in the *SEC Complaint*, along with prejudgment interest of \$416,090.71.

As alleged by the SEC, Morriss's fraudulent conduct was directed toward the investors. Investors were not informed that Morriss would be taking invested monies and using them for personal purposes. Also, as alleged by the SEC, Morriss circumvented the requirements of the MIC VII operating documents to allow new investors into MIC VII, then effectively used the new investor funds to satisfy a personal loan. As such, affording cash investors the highest priority ensures that those investors benefit the most from the assets recovered by the Receiver.

D. Distribution Methodology.

The Receiver's proposed methodology for distributing the assets of the Receivership is approved. The Receiver shall distribute the assets of the Receivership Estate to Allowed Claimants using the rising tide pro rata method of distribution. In accordance with the calculations performed by the Receivership's accountant, the Receiver shall distribute the available assets to Allowed Claimants in Classes 1-A through 1-D on an increasing basis, devoting available assets to those Allowed Claimants who lost the greatest percentage of their investment until they reach parity with other Allowed Claimants who lost a smaller percentage of their investment. *See Exhibits B-1, B-2, B-3, and B-4.* Furthermore, in calculating the distributions to Allowed Claimants, the Receiver shall rely on the pre-Receivership investment and distribution amounts provided to the Receiver through the claims filing and bar date process, except where it is necessary for the Receiver to resolve discrepancies in pre-Receivership investment or distribution amounts by relying on Receivership records. The initial investment and pre-Receivership distributions amounts for each Allowed Claim are set forth in **Exhibits B-1, B-2, B-3, and B-4**. Because the assets of the Receivership Estate are insufficient to fully satisfy Allowed Claims in Class 1, the Receiver need not determine pro rata participation percentages for allowed claimants in Classes 2 through 4.

Implementation of the foregoing methodology (rising tide pro rata) is fair, equitable, and reasonable under the circumstances of this case. First, distributing assets pro rata is a fair and equitable method of distribution where, as here, the assets to be distributed are insufficient to fully satisfy the outstanding claims against the estate. Second, as between the various methods of pro rata distribution, the rising tide method is most equitable for this case. Distribution using the rising tide methodology will most equitably distribute the available assets to those Class 1 Allowed Claimants who benefited the least from pre-Receivership distributions and will equalize, to the greatest extent possible, the total recoveries (pre- and post-Receivership) of each Allowed Claimant on an entity-by-entity basis. By using rising tide, the Receiver is able to reduce the amount of variation in each Class 1 Allowed Claimant's total percentage recovery—thereby equalizing the recoveries of all Allowed Claimants in Class 1 to the greatest extent possible.

E. Distribution(s) of Liquid Assets.

The Receiver is authorized to make one or more distributions of Receivership assets to Allowed Claimants in Class 1 in accordance with the claim classification, priority, and distribution methodology approved herein. The Receiver shall make a first interim distribution to Allowed Claimants in Class 1 of approximately 80 percent of the Receivership assets as expeditiously as possible. Future distributions shall be made in accordance with the claim classification, priority, and distribution methodology approved herein. The Receiver is authorized to take any and all actions necessary to effectuate the first interim distribution and all subsequent distributions to Allowed Claimants.

4. PAYMENT OF PORTION OF HOLDBACK EXPENSES.

The Receiver’s request for allowance and authorization to pay 80 percent of the legal and professional fee holdback incurred and remaining unpaid as of December 31, 2016 is approved. The following fees are allowed and the Receiver is authorized to make the following payments out of the assets of the Receivership estate:

Thompson Coburn LLP	\$221,902.66
Segue Equity Group, LLC	\$11,827.43
CliftonLarsonAllen LLP	\$20,270.46
Pepper Hamilton LLP	\$453.14
FTL Capital	\$2,387.20
Total	\$256,840.85

5. AUTHORIZATION TO TAKE STEPS NECESSARY FOR RECEIVERSHIP WIND-UP.

In addition to the authorities described above, the Court further authorizes the Receiver to take all necessary steps to achieve a winding up of the Receivership’s assets and estate. These actions may include, but are not limited to, taking such actions to effectuate future distribution(s) of Receivership assets to Allowed Claimants in accordance with claim classification, priority, and distribution methodology approved herein, resolving the intercompany entries between Receivership Entities through debt cancellation during calendar year 2017, reporting a “theft loss” allocated to Allowed Claimants in Class 1 and 2 as described in the Receiver’s memorandum, and distributing and assigning any unliquidated assets of the Receivership Entities to the Allowed Claimants in those Entities in proportion to the respective interests held by such Allowed Claimants prior to or as part of the wind up of this proceeding.

SO ORDERED this _____ day of _____ 2017.

THE HONORABLE CAROL E. JACKSON
UNITED STATES DISTRICT COURT JUDGE