

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
TWENTY-SECOND 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 to approve and confirm the Twenty-Second Interim Status Report of Receiver—filed as Exhibit A to this Motion—and every act and transaction reported in the Twenty-Second Interim Status Report.

This motion is administrative and not adversarial in nature.

Respectfully Submitted,

THOMPSON COBURN LLP

Dated: May 2, 2017

By /s/ Kathleen E. Kraft
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CERTIFICATE OF SERVICE

I hereby certify that on May 2, 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 the following:

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Counsel for Defendant Burton Douglas Morriss

Robert K. Levenson
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Securities and Exchange Commission
801 Bricknell Avenue, Suite 1800
Miami, Florida 33131
Attorneys for Plaintiff

/s/ Kathleen E. Kraft

O'Shaughnessy has provided tax and accounting advice to the Receivership and managed entities since his engagement was approved by the Court in June of 2012. He has also prepared various distribution schedules that have been submitted to and approved by the Court.

For purposes of the distribution plan now pending before the Court, Mr. O'Shaughnessy began by preparing an income and expense analysis, dividing monies into separate pools depending on whether they were general-pool or asset-specific funds. Asset-specific funds were assigned to the Receivership Entity that held the original asset. General-pool funds and expenses were shared and allocated based upon the size of the original cash investment of the Class I (cash investors) in each Receivership Entity. Subject to the foregoing, income and expenses were divided and assigned to each entity in proportion to the amount of the sums initially invested into each entity.

As directed by the Receiver, Mr. O'Shaughnessy analyzed three different distribution methodologies, including ownership pro rata (which relied upon ownership percentages of each investor-claimant), net investment pro rata (which tabulated the total money each investor lost) and rising tide pro rata (assets are distributed on an increasing basis, devoting available assets to those investors who lost the greatest percentage of their investment until they reach parity with other investors who lost a smaller percentage of their investment). The latter-two methods take into account pre-receivership recoveries, while the ownership pro rata method does not consider the receipt of such funds. As part of his analysis, Mr. O'Shaughnessy compared the results obtained under each distribution methodology for the allowed claimants (cash investors) and for each Receivership Entity.

Based upon the results of Mr. O'Shaughnessy's analysis, which demonstrated that the rising tide methodology resulted in the most equitable distribution because it resulted in the least

disparate result in terms of overall recoveries for the various claimants, the Receiver recommended a plan of distribution based upon the rising-tide methodology. Also, as stated in 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* (Dkt. No. 516) ("Memorandum"), the rising tide methodology had strong support under the authority relevant to this type of matter.

The plan of distribution rests upon the Receiver's claims determination process, which has been described in previous Receivership Reports and is described in detail in the Memorandum. (*See id.* at 9-13.) As stated in the Memorandum, the Receiver proposed dividing the Allowed Claimants into four classes (cash investors, exchange investors, unsecured creditors, and professionals and employees (insiders)). The Allowed Claims of cash investors were elevated above those of the other Allowed Claimants based upon the facts and circumstances presented here and in keeping with the weight of SEC precedent and authority. If an event of liquidity does not present prior to wind up of this proceeding, to the extent feasible, the Receiver proposes to distribute and assign the 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.

Also, as part of the planning process, the Receiver, her counsel, and Mr. O'Shaughnessy considered the treatment of issues pertinent to Claimants, including intercompany entries and federal income tax considerations. As part of the recent submission, investors were advised that each Receivership Entity intends to report a "theft loss" allocated to the Allowed Claimants in Classes 1 and 2 (consisting of cash and non-cash investors), as described in the Receiver's

Memorandum. This “theft loss” will be shown on the final K-1s issued to each such Allowed Claimant for the 2017 reporting year. Additionally, given the apparent un-collectability of the debts held by the various Receivership and managed entities, as reflected in many intercompany entries, the Receiver anticipates significant debt forgiveness and cancellation of various receivables currently reflected on the books during calendar year 2017, which will be reflected in the issuance of future K-1s to be issued to the investors.

In the final portion of the Memorandum, the Receiver requested payment of a portion of the administrative expenses that remained unpaid pursuant to the Receiver’s holdback agreement with the SEC. This request was supported by the substantial recoveries and savings described in the Memorandum and is in keeping with the applicable authority outlined therein.

The Memorandum and the motion that it supported were served upon Interested Parties and published on the Receiver’s website. The Receiver suggested to the Court that the procedure for objections to motions under the Court’s local rules were sufficient to protect the Interested Parties’ rights to be heard in the case. As of the date of the filing of this Report, no objections to the Receiver’s plan of distribution have been filed with the Court. After receiving several informal inquiries post-filing, the Receiver notified the Court, via a notice filed April 28, 2017, that she intends to supplement the Memorandum’s distribution schedules to address the inquiries.

B. Business Operations

As directed by the Court, the Receiver continues to oversee the remaining unliquidated holdings of the Receivership Entities in several investments, including Tervela, Inc. (“Tervela”); Cirqit.Com, Inc. (“Cirqit”); and Exigy. The Receiver participated in the most recent Tervela board call, which was held on Friday, April 7, 2017. The call included a discussion of Tervela’s most recent quarterly report, operations, financials, and the timing and future needs for funding.

A summary of this information was posted to the secure investor extranet site. The most recent board call followed a number of earlier communications with Tervela to discuss funding issues.

Cirquit's most recent updates are those provided to the Receiver on November 14 and December 14, 2016 and were referenced in the previous Receivership Report. (*See* Dkt. No. 506.) The Receiver understands from Cirquit that the next update on the interests Cirquit holds in LogicSource will most likely be provided following meetings with management of LogicSource in the May or June time frame. The previous summaries have provided information pertaining to LogicSource performance and financial projections and were posted to the secure investor extranet site for review by the appropriate investors. The Receiver will keep the interested investors updated through the extranet site and direct contact, as appropriate.¹

C. Tax Matters and Corporate Compliance

The Receiver has provided the necessary information to Segue Partners, LLC for the tax year 2016 to close the books and records for each of the Receivership Entities and the special-purpose vehicles ("SPVs") for the year 2016. All of this information was provided to CLA for purposes of the upcoming tax filings. The Receiver's accountants with CLA have filed extensions for the filing deadlines for each of the Receivership Entities and the SPVs. Tax filings and K-1s will be prepared in the coming months, and tax payments will be made to the state of Delaware for activity entities prior to June 1. The Receiver has confirmed CT Corporation's resignation as registered agent from the following inactive entities: Clearbrook Acquisition, LLC, Clearbrook Acquisition Capital, LLC and Evergrid Acquisition, LLC. At the request of the Receiver, CLA will prepare final tax returns for these entities.

¹ As explained *infra*, information is available to the investors on secure sites and subject to execution of a non-disclosure agreement. The specifics pertaining to the information discussed therein is considered confidential by the Receivership portfolio concerns.

D. Administrative Matters

1. *SFAR*

An updated copy of the Standardized Fund Accounting Report (“SFAR”) will be submitted along with the *Receiver’s Twentieth First Interim Fee Application* for the first quarter of 2017, covering January through March. The SFAR reflects known and current bank balances for the Receivership Entities and the accounts of the SPVs, which are managed by the Receiver. It also reflects expenses and payments during the first quarter of 2017. A final and fully detailed SFAR will be submitted to the Court at the conclusion of the Receivership.

2. *Interim Applications for Fees and Expenses*

Payment of fees and expenses to the service professionals providing assistance to the Receiver are current in keeping with the Court’s approval of the last Fee Application. As of the date of the filing of this report, there were no pending Fee Applications, and payments were made to the Receiver and her professionals through December 31, 2016 (with the exception of funds subject to the holdback).

3. *Receivership and Secure Investor Websites*

The Receiver continues to update the general website hosted by Thompson Coburn LLP (which is linked to the website for the District Court for the Eastern District of Missouri). Documents are available at: <http://www.thompsoncoburn.com/acartha>. Additionally, the Receiver continues to post documents on the extranet sites created for the investors. Access to the extranet sites is allowed subject to receipt of a non-disclosure agreement (“NDA”) 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. During this reporting period, information pertaining to Tervela has been

added. The Receiver encourages claimants, investors, and other interested parties to visit the websites 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 advisors.

Conclusion

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

Dated: May 2, 2017

Respectfully submitted,

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

**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,)
 ACARTHA GROUP, LLC,)
 MIC VII, LLC,)
 ACARTHA TECHNOLOGY PARTNERS, LP, and)
 GRYPHON INVESTMENTS III, LLC,)
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 Defendants, and)
)
 MORRISS HOLDINGS, LLC,)
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 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 Twenty-Second 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 Twenty-Second 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 Twenty-Second Interim Status Report of Receiver for the period from February 4, 2017 through May 2, 2017, and every act and transaction reported therein, are hereby approved and confirmed.

SO ORDERED this _____ day of _____ 2017.

THE HONORABLE CAROL E. JACKSON
UNITED STATES DISTRICT COURT JUDGE