

**IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

<b>In re:</b>	) <b>Case No. 12-40164-659</b>
	) <b>Chapter 7</b>
	)
<b>BURTON DOUGLAS MORRISS,</b>	)
	) <b>Judge Kathy A. Surratt-States</b>
	)
<b>Debtor.</b>	) <b>Hearing Date: April 23, 2012</b>
	) <b>Hearing Time: 10:00 a.m.</b>
	) <b>Hearing Location: Courtroom 7 North</b>
	)

**MOTION OF RECEIVERSHIP ENTITIES FOR ORDER EXTENDING  
THE DEADLINE FOR OBJECTING TO DISCHARGE AND DISCHARGEABILITY**

COME NOW Acartha Group, LLC (“Acartha Group”), Acartha Technology Partners, L.P., MIC VII, LLC, and Gryphon Investments III, LLC (collectively, the “Receivership Entities”), by and through Claire M. Schenk as Receiver (“Receiver”), creditors and parties in interest, and with the assistance of counsel Thompson Coburn LLP, seek an order from this Court extending the deadline for objecting to the dischargeability of indebtedness. In support of this Motion (this “Motion”), the Receivership Entities state:

**Background on Debtor’s Case and SEC Case Resulting in Appointment of Receiver**

1. On January 9, 2012 (the “Petition Date”), Burton Douglas Morriss (“Debtor”), filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Eastern District of Missouri commencing this proceeding (the “Case”)

2. Until the appointment of the Receiver in the SEC Case as more particularly described below, Debtor served as the chief executive officer and chairman of Acartha Group’s board of directors, the managing member of MIC VII, LLC. Debtor also served as a manager of Gryphon Investments III, LLC, the general partner of Acartha Technology Partners, L.P. Debtor additionally served as the chairman and controlling member of Morriss Holdings, LLC and a member of its board of directors. Debtor may have an interest as an owner or manager of any number of other entities. Further as more particularly described below, Debtor’s financial status is not well-known or understood at this time.

3. On January 17, 2012, the United States Securities and Exchange Commission (the “SEC”) filed its *Complaint for Injunctive and Other Relief* (the “Complaint”) against Debtor, Acartha Group, LLC, Acartha Technology Partners, L.P., MIC VII, LLC, Gryphon Investments III, LLC and Morriss Holdings, LLC (collectively, the “SEC Defendants”) in the United States District Court for the Eastern District of Missouri (the “Missouri District Court”), Case No. 4:12-cv-00080-CEJ (the “SEC Case”). *See* Complaint (SEC Case, Dkt. No. 1).

4. Papers filed by the SEC in the SEC Case allege, among other things, that:

- From 2005 until the present, Debtor, through the Receivership Entities, defrauded investors by transferring more than \$9 million in investor funds to himself and a related company, Morriss Holdings, LLC.
- Debtor and the Receivership Entities made these transfers without disclosing to or seeking approval of investors.
- The transfers resulted not only in the misappropriation of investors’ money, but the dilution of their shares of the Receivership Entities’ investments.
- Approximately 97 investors invested at least \$88 million in Acartha Group, a private equity fund management company Debtor controlled, and the funds and other entities it managed, namely MIC VII, Acartha Technology Partners, and Gryphon Investments.
- Those investments are now at risk as both Acartha Group and the investment entities controlled by Debtor are facing a financial shortfall.

5. Relief sought in the SEC Case included the immediate appointment of a receiver for the Receivership Entities to: (a) administer and manage the business affairs, funds, assets, choses in action and other property of the Receivership Entities, (b) act as sole and exclusive managing member or partner of the Receivership Entities, (c) maintain sole authority to administer any and all bankruptcy cases in the manner determined to be in the best interests of the Receivership Entities’ estate, (d) marshal and safeguard all of the assets of the Receivership Entities, and (e) take whatever actions are necessary for the protection of investors.

6. The SEC additionally sought to immediately freeze the assets of the Receivership Entities and for certain other emergency relief.

7. On January 17, 2012, the Missouri District Court granted (a) the SEC's emergency motion for the appointment of a receiver pursuant to its Order Appointing Receiver (the "Receivership Order"); and (b) the SEC's emergency motion to freeze assets, pursuant to a certain Asset Freeze Order and Other Emergency Relief (as modified by the Missouri District Court's supplemental Order entered January 19, 2012, the "Initial Asset Freeze Order").

8. On January 27, 2012, after a hearing, the Missouri District Court entered a final asset freeze order, by which the SEC obtained an order freezing the Receivership Entities' and Morriss Holdings, LLC's assets, an order requiring sworn accountings, and an order prohibiting the destruction of documents (the "Final Asset Freeze Order").

9. Pursuant to the Receivership Order, the Missouri District Court appointed the Receiver as receiver for the Receivership Entities. The Receiver was not appointed a receiver over Debtor under the Receivership Order.

10. Among other things, the Receivership Order authorizes the Receiver to operate and manage the businesses and financial affairs of the Receivership Entities and directs that the Receiver succeeds to all rights and powers of managing member and/or managing partner of the Receivership Entities, with sole and exclusive authority to take all actions necessary in such capacity.

11. As more fully described in the SEC Case, Debtor is alleged to have committed, and may continue to commit, various acts of fraud. As alleged in the SEC Case, between 2005 and 2011, Debtor, using the Receivership Entities, fraudulently transferred approximately \$9.1 million of investor funds to himself and his family's holding company, Morriss Holdings, LLC, for his personal use.

12. Among other things alleged, Debtor used the fraudulently obtained investor funds to satisfy personal loans, pay alimony, and take expensive vacations.

13. During the pendency of his Chapter 11 proceeding, Debtor did not perform the responsibilities of a Debtor as required under the Bankruptcy Code and related Rules. Among other things, Debtor (i) did not timely file statements and schedules, (ii) did not appear for the first meeting of

creditors as initially scheduled in this case for February 7, 2012, and (iii) did not respond to various requests to provide information to the Office of the U.S Trustee.

14. As a result of Debtor's handling of his Chapter 11 proceeding, on or about February 6, 2012, the Receivership Entities acting through the Receiver filed with this Court an emergency Motion seeking the appointment of a Trustee in Debtor's Chapter 11 case, or alternatively, the conversion of the Debtor's Chapter 11 case to one under Chapter 7 (the "Motion for Trustee"). The Receivership Entities additionally filed an emergency Motion seeking an order authorizing an examination of the Debtor and the production of documents as provided under Rule 2004 (the "Motion for 2004 Exam and Production").

15. This Court heard the Motion for Trustee and the Motion for 2004 Exam and Production on an expedited basis on February 13, 2012. Following appropriate notice and the opportunity to be heard by counsel to Debtor, the Office of the U.S. Trustee and other creditors and parties in interest attending the proceedings, this Court entered an Order on February 13, 2012 granting the Motion for Trustee with respect to the alternative relief thereby sought, converted Debtor's case to one under Chapter 7, and appointed Charles W. Riske as Chapter 7 Trustee (the "Trustee"). The Court granted the request for a 2004 examination and the production of documents, but continued the hearing on the Motion for 2004 Exam and Production to March 5, 2012, to set a date for the examination once the date for the Chapter 7 Trustee's meeting of creditors was set following the entry of the order for conversion of the Case.

16. The Trustee's meeting of creditors was set for March 8, 2012 at 10:00 a.m. at the Eagleton Courthouse at conference room customarily used for such meetings by the office of the U.S. Trustee.

17. At the continued hearing for the Motion for 2004 Exam and Production held on March 5, 2012, neither Debtor nor counsel appeared and the Court set the examination for March 28, 2012 at 10:00 a.m. at the offices of counsel to the Receivership Entities.

18. Debtor failed to appear at the meeting of creditors set for March 8. Debtor's counsel of record, Les Lane appeared at the meeting, as did counsel to the Receivership Entities. The Trustee

continued meeting of creditors with the consent of Debtor's counsel to March 28, 2012, at 10:00 a.m. at the offices of counsel to the Receivership Entities. Debtor's counsel agreed that the 2004 exam and production could occur immediately following the 341 meeting.

19. On March 11, 2012, Debtor was personally served with, among other things, a subpoena commanding his production of documents in accordance with Bankruptcy Rule 2004. Proof of service of this subpoena is on file in this Case with the Court.

20. Debtor appeared at the March 28 meeting of creditors and 2004 examination, with counsel Peter Kerth; However, he did not produce any documentation in response to the subpoena, nor did he respond to any questions. Debtor asserted his Fifth Amendment privilege against self-incrimination as the basis for not producing any documentation or responding to any questions presented at the Section 341 meeting and 2004 examination.

#### **Basis for Relief Requested**

21. With the conversion of the Debtor's case to one under Chapter 7, the deadline for objecting to discharge under Section 727 of the Bankruptcy Code and dischargeability under Section 523 of the Bankruptcy Code was established as May 7, 2012.

22. Pursuant to Bankruptcy Rules 4004 (b) , 4007(c) and 9006(b), this Court may upon the Motion of a creditor or party in interest filed prior to the deadline for objecting to discharge and dischargeability, extend such deadline for cause shown.

23. Debtor's financial picture and those of his various businesses are complex. The Receiver and Trustee were only recently appointed and have not had sufficient opportunity or cooperation from Debtor to evaluate their respective rights, interests and remedies under the circumstances.

24. Evidence suggests the Receivership Entities hold claims against Debtor that are non-dischargeable. Further, the Trustee is in the process of investigating Debtor's activities (without any assistance from Debtor). This investigation may uncover evidence supporting a denial of a discharge entirely. Creditors and other parties in interest have not had sufficient time or opportunity given the complicated nature of this matter and Debtor's lack of assistance to determine their rights and remedies.

**WHEREFORE**, the Receivership Entities respectfully request the Court enter an Order:

- A. Extending the deadlines to object to discharge and dischargeability to at least February 8, 2013 (preserving the opportunity to pursue further extensions of such deadline); and
- B. Providing for such other and further relief as the Court deems just and proper.

Respectfully submitted,

THOMPSON COBURN LLP

By /s/ Cheryl A. Kelly  
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Attorney for the Receivership Entities, acting by and through Claire M. Schenk, Receiver



**IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

**In re:** ) **Case No. 12-40164-659**  
 ) **Chapter 11**  
**BURTON DOUGLAS MORRISS,** )  
 ) **Judge Kathy A. Surratt-States**  
 )  
 ) **Hearing Time: April 23, 2012; 10:00 a.m.**  
**Debtor.** ) **Location: Courtroom 7-North**

On March 28, 2012, Acartha Group, LLC, Acartha Technology Partners, L.P., MIC VII, LLC, and Gryphon Investments III, LLC (the "Receivership Entities") by and through Claire M. Schenk, as Receiver ("Receiver"), filed their Motion for Order Extending the Deadline for Objecting to Discharge and Dischargeability (the "Motion").

**PLEASE TAKE NOTICE** that the Court will hear the Motion on **April 23, 2012 at 10:00 a.m. (CST) at the Thomas F. Eagleton U.S. Courthouse, 111 S. Tenth St., Floor 7 – North Courtroom, St. Louis, Missouri.**

**PLEASE TAKE FURTHER NOTICE** that **any response to the Motion must be filed and served as provided in E.D. Mo. L.B.R. 9013 by April 16, 2012.** Failure to file a timely response may result in the Court granting the relief requested prior to the hearing date.

Respectfully submitted,

THOMPSON COBURN LLP

By/s/ Cheryl A. Kelly

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Attorney for the Receivership Entities, acting by and through Claire M. Schenk, Receiver



**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that a true and accurate copy of the Notice of Hearing on Motion for Order Extending the Time to Object to Discharge and Dischargeability was served on all parties receiving service through the Court's CM/ECF system on the 29th day of March, 2012, and by regular mail on the following parties:

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*/s/ Cheryl A. Kelly*

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