

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

NINTH 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 **Ninth Interim Status Report** to update the Court on the activities of the Receiver occurring since October 31, 2013:

A. Claims Process

On March 4, 2013, the Court entered its order approving the Receiver’s proposed claims allowance procedures (the “Claims Bar Date Order”) (Dkt. No. 234). The Claims Bar Date Order set forth a date by which potential claimants would file claims with the Receiver and subsequent deadlines by which the Receiver would respond to claimants, seek additional information from claimants and resolve objections to the Receiver’s determinations on filed

Ex. A

claims. On August 22, 2013, the Court entered an order (Dkt. No. 278) amending certain claims deadlines as follows:

Action	Deadline
Deadline for Issuing Notices of Determination on Deficient Claims	January 13, 2014
Deadline for Claimants to File Objections to Determinations Issued Between September 3, 2013 and January 13, 2014	February 12, 2014
Resolution Period for Filed Objections	February 12, 2014 - May 13, 2014
Period During Which Claimant May File Objection with Court	May 13, 2014 - June 12, 2014
Deadline for Receiver to Respond to Claimant's Objection Filed with Court	July 14, 2014

All claimants who received a Notice of Deficiency were required to provide the Receiver with supplemental documentation and/or information to substantiate their claims on or before September 3, 2013. The Receiver received 119 supplemental claim responses. During this reporting period, the Receiver worked with her professionals to review the supplemental responses, analyze claimant documentation alongside documentation from the Receivership's records regarding the claim, and communicate with claimants on areas of continued information deficiencies.

On January 13, 2014, the Receiver issued notices of determination for 131 claims as follows:

Treatment	No. of Claims
Recommend allowance of claim	71
Recommend disallowance of claim for lack of sufficient information	52
Recommend disallowance of claim	8

TOTAL: 131

With regard to each of the claims disallowed for lack of sufficient information, the Receiver communicated with the claimant regarding what additional information the Receiver needed to reach a recommendation on the claim. As of February 12, 2014, the Receiver received additional supplemental information from the majority of claimants who were issued notices of disallowance for lack of sufficient information, and as such, was able to re-issue notices of determination on those claims as follows:

Treatment	No. of Claims
Recommend allowance of claim	43
Recommend disallowance of claim	5
TOTAL:	48

The remaining four claims are being treated as follows:

Treatment	No. of Claims
Recommendation of disallowance for lack of sufficient information is permanent due to failure of claimant to contact Receiver with additional information to substantiate claim or file objection to notice of determination	2
Receiver is reconsidering recommendation of disallowance based on supplemental information provided by claimant and/or communications with claimant's representatives regarding future provision of supplemental information	2
TOTAL:	4

The deadline for claimants to file objections to the Receiver's notices of determination issued between September 3, 2013 and January 13, 2014 expired on February 12, 2014. As of February 12, 2014, the Receiver received two (2) objections to notices of determination issued on or before January 13, 2014. The Receiver has received one more objection to a notice of determination that the Receiver reissued following the receipt of supplemental information from

the claimant. The Receiver and her professionals are working with claimants to resolve objections to claim determinations.

B. Update to Preliminary Report of Liabilities Asserted Against the Receivership Entities

In the Order Appointing Receiver (Dkt. No. 16), the Court directed the Receiver to “[p]resent to this Court a report reflecting the existence and value of the assets of the Investment Entities and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Investment Entities.” In the Seventh Interim Status Report (Dkt. No. 264-1), the Receiver filed her preliminary report of the Receivership Entities’ assets and liabilities. At the time of the Seventh Interim Report, the Receiver reported the asserted liabilities against the Receivership Entities as follows:

<u>Receivership Entity(ies) Asserted Against</u>	<u>Asserted Dollar Amount</u>
Acartha Group, LLC	\$29,377,016.34
Acartha Technology Partners, L.P.	\$227,434.55
MIC VII, LLC	\$13,745,134.47
Gryphon Investments III, LLC	\$507,912.15
More than one, but not all, Receivership Entities	\$5,697,227.61
All Receivership Entities	\$2,732,460.04
Total	\$52,287,185.16

Due to the continuation of the claims process. the Receiver’s disallowance of claims, and the Receiver’s receipt of additional information from claimants regarding the nature and amount of their claims, the Receiver is filing this update to her initial report of liabilities asserted against the Receivership Entities. As of March 4, 2014, the asserted liabilities against the Receivership Entities are as follows:

<u>Receivership Entity(ies) Asserted Against</u>	<u>Asserted Dollar Amount</u>
Acartha Group, LLC	\$30,193,391.54
Acartha Technology Partners, L.P.	\$7,161,948.26

MIC VII, LLC	\$23,650,334.76
Gryphon Investments III, LLC	\$1,602,266.40
Multiple Receivership Entities	\$3,117,056.64
Total	\$65,724,997.60

The amounts listed above include seven (7) disallowed claims for which the objection period has not run. The seven disallowed claims assert a total amount of \$22,498,615.18 against the Receivership Entities. This summary does not include any liabilities of the Receivership Entities incurred after the institution of the Receivership (*i.e.*, professional fees and ongoing costs of administering the Receivership Entities and their related entities).

Despite the Receiver's disallowance of claims, the updated asserted liabilities figure is larger than the previous figure due to additional information received from claimants. The figures reported in the Receiver's Seventh Interim Status Report did not account for asserted percentage equity interests provided without a corresponding dollar value of the claim. In supplemental claim filings and through the Receiver's review of the Receivership's records, the Receiver was able to assign dollar values to those claims previously asserted as percentage equity interests in one or more of the Receivership Entities. The current reported figures account for all information provided by claimants after July 2013 to date.

C. Proposed Sale of Equity in Pollen, Inc.

Subject to the approval of the Court, the Receiver negotiated a sale of the preferred and common shares of Pollen, Inc. As part of the negotiation process, the Receiver requested and reviewed records and data pertinent to Pollen's historic, current, and projected finances and operations. In order to determine whether or not to recommend the sale of the Receivership's interest in Pollen, the Receiver relied upon the input of a retained expert. The Receiver's expert evaluated this information in the preparation of his detailed report and concluded that the sale

was reasonable. The Receiver submitted the report for the consideration of the Court and as support for the Receiver's November 14, 2013 sale motion. As the Receiver informed the Court, the sale of the Receivership's preferred and common shares of Pollen, Inc. will benefit the Receivership estate by providing funds for a distribution to creditors, investors, and other claimants and a source of funding for the continued operation of the Receivership. Although potential intervenor, Mike McDaniel, sought to delay the Receiver's proposed sale of the Receivership's preferred and common shares of Pollen, Inc., his motion was denied by the Court on February 14, 2014. The Receiver's motion is pending before the Court.¹

D. Withdrawal from Management of ASFI

During this review period, the Receiver worked with counsel for the investors in Acartha Specialty Finance Investment, LLC ("ASFI") to finalize the arrangement allowing the Receiver's withdrawal from management of ASFI. As the Receiver reported in the Eighth Interim Status Report, the Receiver determined that it was in the best interest of the Receivership estate for the Receiver to disengage and withdraw as managing member of ASFI (Dkt. No. 286). The Receiver based her determination on a number of considerations, including but not limited to (i) the lack of discernable financial benefit to the Receivership estate from continuing as managing member of ASFI, (ii) the savings (time and expense) to the Receivership estate of not having to manage ASFI, and (iii) the avoidance of any potential confusion regarding other responsibilities associated with service as the managing member. *See* Eighth Interim Status Report (Dkt. No. 286-1 at 6). The Receiver's arrangement with the ASFI investors included a recovery by the

¹ The Receiver filed her motion on November 14, 2013 (Dkt. Nos. 293, 294). On November 27, 2013, the Receiver filed a supplemental memorandum requesting that the Court hold the Receiver's motion in abeyance pending a further filing by the Receiver (Dkt. No. 299). The Receiver withdrew her request for the Court to hold the motion in abeyance on January 30, 2014 (Dkt. No. 309). Apart from the pleadings filed by Mike McDaniel (which were denied by the Court on February 14, 2014), no interested parties have filed objections to the Receiver's motion.

Receiver of funds previously expended by the Receivership in connection with the management of ASFI.

E. Integrien Acquisition, LLC and Integrien Acquisition II, LLC

On June 25, 2013, the Court entered its order (Dkt. No. 262) on the Receiver's Motion for Authorization to Distribute Funds Held By Integrien Acquisition, LLC (IA) and Integrien Acquisition II, LLC (IAII) (the "Integrien Motion"). The Court's Order authorized, but did not direct, the Receiver to distribute the First Escrow Funds and Final Escrow Funds (as those terms are defined in the Integrien Motion) in accordance with the Schedule of Proposed Distribution attached to the O'Shaughnessy Declaration (the "Schedule"). The Court's Order also approved the Receiver's reservation for and payment of fees and expenses for the related entities.

As previously reported in the Seventh Interim Status Report, in accordance with the Schedule, the Receiver distributed the First Escrow Funds and Final Escrow Funds to the investors in IA and IAI and received confirmation of the various wire transfers on or around July 29, 2013 (Dkt. No. 264-1). Since that time, the Receiver worked closely with the Receivership's accountants to update and finalize expenses. As a result, the Receiver has made the final and remaining distributions in keeping with the Schedule. The Receiver will work closely with her accountants to complete the necessary and final tax returns for these entities.

F. Update in Proceedings Involving Burton Douglas Morriss

(1) Criminal Matter

On August 26, 2013, Morriss entered a guilty plea in a criminal matter, United States of America v. Burton Douglas Morriss, 4:13-CR-341-RWS. On December 19, 2013, a judgment was entered against Morriss. In the judgment, Morriss was sentenced to 60 months' imprisonment followed by supervised release for a term of three years. The Court also directed

Morriss to pay criminal monetary penalties in the amount of \$5,559,386.00 (restitution) to the Internal Revenue Service.

(2) SEC Civil Action

On February 24, 2014, the SEC moved the Court for entry of a final judgment against Defendant Burton Douglas Morriss (“Morriss”) (Dkt. No. 312). On February 26, 2014, the Court entered its final judgment against Morriss (Dkt. No. 314). The Court found Morriss liable for “disgorgement of \$9.1 million, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest of \$416,090.71.” The Court ordered Morriss to satisfy his obligation by paying \$9,516,090.71 within fourteen (14) days after entry of the final judgment. Also on February 24, 2014, the SEC voluntarily dismissed its claims for disgorgement, prejudgment interest, and civil penalties against the Receivership Entities and against Relief Defendant Morriss Holdings, LLC.

(3) Personal Bankruptcy

On January 3, 2014, the Receiver filed her Fourth Motion to extend the time period allowed for discharge and dischargeability in Defendant Morriss’s personal bankruptcy, Case No. 4:12-bk-40164. On January 28, 2014, the Receiver’s Motion was granted and an extension was granted until August 8, 2014 to object to discharge or dischargeability. Also, the Meeting of Creditors previously scheduled for February 14, 2014 was continued. To date, the requisite schedules of assets and liabilities have not been filed by Morriss.

G. Document Collection and Analysis

The Receiver continues to seek documents that will assist her in carrying out her duties and which are subject to the turnover provision of the Receivership Order. Additionally, the Receiver continues to organize and analyze this documents production. Following the Receiver's request to turn over records compiled during the course of Morriss' defense of the civil and criminal matters against him, Morriss and his counsel have produced an extensive number of additional documents. Following a preliminary analysis, the Receiver was informed that the total records in the MODUS database apparently exceed the number of records previously acquired by the Receiver. The Receiver is working to determine the extent of the duplication between the Receiver's current database of documents and the MODUS database provided by Morriss.

An additional turnover of records was recently made by former counsel for the Receivership Entities, Armstrong Teasdale. The review of this information is ongoing.

H. Business Operations and Administrative Matters

As in previous reporting periods, the Receiver has continued to monitor and participate in matters involving the portfolio investments held by the Receivership Entities. This activity includes periodic review of updates provided to the Receiver regarding operations and financial matters and participation as an observer in Board meetings. The financing needs of the portfolio concerns are a continuing concern and the Receiver has continued to facilitate contact with investors as appropriate.

The Receiver has worked with its tax accounting firm, Clifton Larson Allen, to update and renew the engagement previously submitted for the approval of the Court to ensure that state, local, and federal tax requirements and handled in a timely and appropriate manner. Form 1099s were recently filed and submitted to Receivership vendors. Additionally, the Receiver has

been working with the Receivership's accountants to make sure that trial balances and other details for the year ending 2013 are finalized and in order for the upcoming tax filings and related K-1s for the investors.

Conclusion

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

Dated: March 10, 2014

Respectfully submitted,

 /s/ Claire M. Schenk

Claire M. Schenk, Receiver