



GRANTED

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

)	
IN RE IOXUS, INC.)	C.A. No. 2020-1098-JRS
)	

[PROPOSED] ORDER APPOINTING RECEIVER

This ____ day of _____, 2021, the Verified Petition for the Appointment of a Receiver for Ioxus, Inc. (the “Petition”) and the Unopposed Motion to Grant Petition Appointing Receiver for Ioxus, Inc. (the “Motion”) having been presented by Ares Capital Corporation (“Petitioner”) and having been considered by the Court, for good cause shown,

IT IS HEREBY ORDERED THAT:

1. Christopher P. Simon of the law firm of Cross & Simon LLC is hereby appointed as receiver (the “Receiver”) of and for Ioxus, Inc. (“Ioxus”) pursuant to Section 291 of the Delaware General Corporation Law (the “DGCL”) until discharged from such duties by order of this Court. The Receiver shall, within ten (10) days of the entry of this Order, file in this Court a written acceptance of this appointment. The Receiver shall serve at the pleasure of this Court, and the provisions of this Order shall remain in effect pending further order of this Court.

2. As receiver for Ioxus, the Receiver shall take charge of Ioxus’s assets, and shall have the full power and authority to do all acts that might be done by Ioxus that the Receiver may determine to be necessary or appropriate for the final

settlement of the unfinished business of Ioxus and winding up of its affairs, including making a final distribution of the Remaining Company Assets (as defined in the Petition) in accordance with applicable law. The authority granted herein to the Receiver shall be interpreted broadly so that the Receiver has full power and authority to act in Ioxus's name in all administrative and judicial proceedings. Without limiting the foregoing, the Receiver shall have discretion to determine whether the affairs of Ioxus should be wound up, and payment or provision for Ioxus's liabilities and obligations made, in accordance with (i) Section 280 and 281 of the DGCL, (ii) Section 281(b) of the DGCL, or (iii) such other manner as may be approved by the Court.

3. Pursuant to Chancery Rule 4(d)(7), the Court finds that service of process on the Company is adequate by reason of service on the Delaware Secretary of State pursuant to 10 *Del. C.* § 3111 and 8 *Del. C.* § 321(b).

4. Rules 149, 151, 152, and 158 through 167 of this Court shall not be applicable in this proceeding. In lieu thereof, the Receiver shall file quarterly reports with the Court summarizing his activities as receiver. When the Receiver has completed the process required to distribute Ioxus's assets in accordance with this Order, the Receiver shall file a final report prior to this Court's discharge of the Receiver from his duties as receiver.

5. The Receiver is authorized to apply at any time and from time-to-time to the Court for further or special instructions with respect to any matter concerning his duties and responsibilities as receiver and the liquidation of Ioxus and the winding up of its affairs. The Receiver may submit a request to this Court to modify the terms of this Order, including by seeking supplemental authority under this Order.

6. The Receiver shall not have power to cause Ioxus to engage in business or in any other activities beyond those necessary or desirable for the administration and orderly liquidation of Ioxus, the winding up of its affairs, the payment, performance, provision for or discharge of Ioxus's liabilities and expenses, and the distribution of any remaining assets of Ioxus in accordance with applicable law.

7. Subject to Paragraph 8 and excluding expenses payable to third parties in the ordinary course of business of an amount not to exceed \$500, the Receiver shall not distribute, pay out or transfer, or agree to distribute, pay out or transfer, any funds or other assets of Ioxus to any creditor or stockholder without further order of the Court. The Receiver shall seek approval from the Court for any such proposed distributions, pay outs or transfers at such time and in such manner as he deems appropriate in accordance with the DGCL and the terms of this Order.

8. The Receiver's powers under Section 291 may be exercised in whole or in part by agents and representatives so authorized by the Receiver. Subject to

the approval by this Court in accordance with this Paragraph 8, the Receiver shall be compensated at his customary hourly rate and for expenses reasonably incurred by him in the discharge of his duties. The Receiver is authorized to retain, in the name of Ioxus, such financial professionals, legal counsel and other professional advisors as he deems appropriate for the efficient administration of Ioxus's routine affairs in connection with its liquidation and winding up and for advising him with respect to the performance of his duties and responsibilities as receiver. Without limiting the foregoing, the Receiver is authorized to utilize the services of professionals from the law firm of Cross & Simon LLC and may use attorneys from Cross & Simon LLC as legal counsel. In the event that any potential or actual conflict of interest arises with respect to any engagement of Cross & Simon LLC by a third party that may have an adverse interest to Petitioner or Ioxus, the Receiver shall retain special conflicts counsel with respect to any such matters in accordance with this Paragraph 8. All advisors and professionals retained by the Receiver shall submit invoices to the Receiver for services provided on a monthly basis. The receiver's compensation and reimbursement and expenses and those of Cross & Simon, LLC shall be paid first from the Remaining Company Assets (as defined in the Petition), and if insufficient to cover all allowed fees and expenses of the receiver, shall then be drawn from the Receiver Fund. Within ten (10) days after entry of this Order, Petitioner shall deposit the amount of \$35,000 in the IOLTA

account maintained by Cross & Simon, LLC which shall constitute the Receiver Fund. The Receiver Fund shall be held in an IOLTA account maintained by Cross & Simon, LLC. The Receiver and Cross & Simon, LLC shall submit statements to the Court for payment for services and expenses, which state the total amount of time spent and the type of services and work performed during such time. Expenses shall be itemized. Each payment to the Receiver and to Cross & Simon, LLC shall be approved by the Court prior to disbursement. Payment of the fees and expenses of the Receiver and any retained advisors and professionals approved by this Court in accordance with the foregoing shall have priority over all other obligations, payments and distributions of Ioxus, but the aggregate fees and expenses of the Receiver shall not exceed the amount of the Remaining Company Assets and the Receiver Fund (as defined in the Petition).

9. The Receiver shall be entitled to all protection, limitation from liability and immunity available at law or in equity to a court-appointed receiver, including, without limitation, to the maximum extent of any protection, limitation from liability and immunity provided by the indemnification provisions of applicable law. Without limiting the foregoing, (i) the Receiver shall be entitled to be indemnified out of the assets of Ioxus, to the maximum extent that a director of a Delaware corporation could be indemnified under the provisions of Section 145 of the DGCL, for all reasonable expenses (including attorneys' fees), judgments, fines, and

amounts paid in settlement actually and reasonably incurred by the Receiver in connection with any threatened, pending, or completed action, suit, or proceeding to which the Receiver is or was made a party, or is or was threatened to be made a party, by reason of the fact that the Receiver is or was serving in such capacity or otherwise arising by reason of or in connection with the Receiver's serving as receiver for Ioxus (an "Indemnifiable Proceeding"), and (ii) the Receiver shall be entitled to the advancement of reasonable expenses, including attorneys' fees, incurred by the Receiver prior to final determination of any Indemnifiable Proceeding, subject to the repayment of any such amount if it shall be ultimately determined by this Court that the Receiver is not entitled to indemnification in connection with such proceeding under applicable Delaware law.

10. The obligation of the Receiver to cause Ioxus to pay or discharge any of Ioxus's liabilities or expenses shall be solely the obligation of the Receiver in his capacity as such to cause Ioxus to pay or discharge such liabilities and expenses from and to the extent of the assets of Ioxus, and no recourse under or upon Ioxus's liabilities and assets shall be had against the Receiver personally or in any capacity other than his capacity as Receiver.

11. The Receiver shall not be liable to any stockholder or claimant of Ioxus except for his own gross negligence or willful misconduct, and the Receiver shall not be liable for any act or omission of any agent, advisor, consultant or employee

of Ioxus, unless the Receiver acted with gross negligence or willful misconduct in the selection or retention of such agent, advisor, consultant or employee on behalf of Ioxus.

12. No person shall commence any action against the Receiver in his capacity as such or by reason of any action or failure to act of the Receiver in his capacity as such unless such action is commenced in the Court of Chancery of the State of Delaware, and this Court shall have granted permission to commence such action. The Receiver shall be subject to the jurisdiction of this Court for purposes of any proceedings or actions that may arise out of his service as receiver for Ioxus.

SO ORDERED this ____ day of _____, 2021.

The Honorable Joseph R. Slights III

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: Joseph Slights

**File & Serve
Transaction ID:** 66298742

Current Date: Feb 05, 2021

Case Number: 2020-1098-JRS

Case Name: In Re Ioxus, Inc.

Court Authorizer: Joseph Slights

/s/ Judge Joseph Slights