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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff and Intervention Defendant,)

V.)

MERRILL SCOTT & ASSOCIATES, LTD.;)
MERRILL SCOTT & ASSOCIATES, INC.;)
PHOENIX OVERSEAS ADVISERS, LTD.;)
GIBRALTAR PERMANENTE ASSURANCE,)
LTD.; PATRICK M. BRODY; DAVID E. ROSS)
II and MICHAEL G. LICOPANTIS,)
)
Defendants.)

DAVID K. BROADBENT, ESQ., as RECEIVER)
for MERRILL SCOTT & ASSOCIATES, LTD.;)
MERRILL SCOTT & ASSOCIATES, INC.;)
PHOENIX OVERSEAS ADVISERS, LTD.;)
GIBRALTAR PERMANENTE ASSURANCE,)
LTD.; and each of their respective)
SUBSIDIARIES and AFFILIATED ENTITIES,)
)
Third-Party Plaintiff,)

V.)

CERTAIN UNDERWRITERS AT LLOYDS,)
LONDON; and JAMES P. LANDIS,)
)
Third-Party Defendants.)

**DECLARATION AND TWENTY-
SEVENTH REPORT OF RECEIVER**

Civil No. 2:02CV-0039C

Judge Tena Campbell
Magistrate Judge David Nuffer

Exhibits Filed Under Seal Subject to
Order Entered December 19, 2005

DAVID K. BROADBENT, pursuant to 28 U.S.C. § 1746, declares as follows:

1. This Declaration and Report of Receiver (“Declaration”) is my twenty-seventh report as Receiver and is submitted for the purpose of apprising the Court of my work as Receiver and for the further purpose of seeking approval of the payment of fees and expenses for services incurred for the months of December 2007 through July 2008 by the Receiver and by the Receiver’s counsel, Holland & Hart LLP.

2. On January 23, 2002, this Court entered its Stipulated Order Appointing Receiver in this action, appointing me the Receiver for Merrill Scott & Associates, Ltd., Merrill Scott & Associates, Inc. and Phoenix Overseas Advisors, Ltd., and all subsidiaries and affiliated entities (collectively “Merrill Scott”). Section II (I) of the Order Appointing Receiver provides:

The costs, fees and expenses of the Receiver incurred in connection with the performance of his duties described herein, including the costs and expenses of those persons who may be engaged or employed by the Receiver to assist him in carrying out his duties and obligations hereunder shall be paid out of the proceeds or other assets of Merrill Scott, or any and all assets under the control of the Receiver pursuant to this Order. All applications for costs, fees and expenses for services rendered in connection with the Receiver shall be made by application setting forth in reasonable detail the nature of the services and shall be heard by the Court.

3. I submit with this declaration a proposed Order for the Court’s endorsement authorizing payment of the fees and expenses as more fully detailed below and in the accompanying statements.

Request for payment of fees and expenses.

4. I attach hereto as Exhibits “A” and “B” true and correct copies of invoices for services rendered and expenses incurred for the period covered by this Declaration, in my

capacity as Receiver and by Holland & Hart LLP, in its capacity as counsel to the Receiver. These invoices include detailed reports of the time spent working on this matter as well as the detail concerning the particular expenses incurred.

In sum, the requested fees and expenses to be paid for the eight months of December 2007 through July 2008, are as follows:

Invoice from Receiver, Holland & Hart LLP	\$ 45,017.00
Invoice from Holland & Hart LLP	\$ 171,954.68
Total	\$ 216,971.68

5. The cumulative amounts invoiced in my first twenty-six reports are \$893,481.10 for my services rendered in my capacity as Receiver and \$5,343,559.06 by Holland & Hart LLP, in its capacity as counsel to the Receiver.

Receiver's Activities.

6. The Receivership has recovered \$1,862,380.37 in the period covered by this Report, which sum is broken out as follows:

Sale of the Mira Vista San Francisco Condo	\$439,632.49
Bank Interest	\$147,536.48
Rod Read Settlement Installment Payments	\$ 8,000.00
Earnest Money Settlement – Soda Springs	\$ 50,000.00
Lloyds of London Insurance Settlement	\$500,000.00
Insurance Commissions	\$ 3,999.84
Robert EMM Herbolich Settlement	\$ 24,592.95
Don Kang EMM Settlement	\$671,118.61
Powers/Mira Vista Rent Settlement	\$ 17,500.00
Total	\$1,862,380.37

Total cash recoveries from the commencement of the receivership through July 31, 2008 are \$25,041,803.82, and are detailed as follows:

MSA Controlled Bank and Securities Accounts	\$8,697,047.92
Sale ¹ of Park City Home	143,925.73
MSA Insurance Commissions	170,300.00
Mortgage Payments/Payoffs	1,982,567.38
Automobile Sales	51,250.00
Concilium Recovery	50,017.73
Rent and sale of Canyon Cove Home	162,359.43
Bank Interest	1,156,588.47
MSA Lease Payments	36,278.34
Kinjirushi USA	156,874.35
MSA Equipment/Furniture/Art Sale/Misc	116,529.95
Investment Recovery, including payment of Jotter Technologies Note and sale of Ocean Powers Technology Stock	1,758,162.24
Brown's Canyon Earnest Money and Cozean Settlement/Jordanelle	3,791,664.70
Trop 15 Settlement	625,000.00
EMM (Equity Managed Mortgage)	1,058,424.80
Sale of the West Bountiful Property	38,375.05
Sale of Redwood Road Property	84,723.45
Sale of the Richmond Street Property	148,626.34

¹ Where sale proceeds are listed the amount set forth represents the net sales proceeds after subtracting sales commissions, closing costs and amounts paid to any prior lien holders.

Sale of Mira Vista Street Property	439,632.49
Settlements	4,373,455.45
Total:	\$25,041,803.82

7. The accompanying invoices detail the work of the Receiver and his counsel at Holland & Hart LLP on a wide variety of tasks. During the period covered by this report these matters fall under the following general categories:

- Negotiating for the sale of Soda Springs, Idaho property. The property was acquired when the Receiver foreclosed on a Legacy Capital mortgage in 2005. The Receiver entered into a sales agreement for the sale of the property with Mr. Ward, who then defaulted under the sales agreement. The Receiver obtained \$50,000 in earnest money through negotiations and settlement with Mr. Ward. The Receiver located a replacement buyer and has entered into an agreement to sell the property to that buyer for the sum of \$840,000. A hearing is currently scheduled for the approval of that sale.
- Negotiating for the sale of the Mira Vista condominium in San Francisco following litigation with Dr. Powers, and obtaining rent from Dr. Powers for the period in which he occupied the condominium and rented it to others. The sale of the condominium resulted in net payment to the Receiver of \$439,632.49.
- Dealing with the appeal filed by Robert Hipple of the judgment entered against him in the CGI International Holdings, Inc., Robert J. Hipple and Rodney B. Read litigation. The Receiver negotiated a settlement with Rodney B. Read for

payment of \$100,000.00 in installments. Mr. Hipple filed an appeal of the judgment to the 10th Circuit Court of Appeals. The appeal was dismissed on procedural grounds and was re-filed by Mr. Hipple. The 10th Circuit remanded the case to the District Court for determination of whether Estate Planning Institute is an indispensable party in the Receiver's action against CGI and Mr. Hipple. While that matter was pending, Mr. Hipple filed bankruptcy and the Receiver has taken no further action against him.

- Litigating and attempting to settle the claims of former Merrill Scott clients Greg and Portia Seely, with regard to the rights to certain intellectual property and marketing rights conveyed to Lennox Squire, a Merrill Scott entity, and payments due to Merrill Scott as a part of the Seelys' involvement with Merrill Scott. The Seelys assert that the assets should not be included in the receivership estate, and the Receiver believes that they should be. A third party, Jeremy Thorne, who claims rights in the intellectual property and marketing rights in dispute, has been added as a party to the dispute. The Receiver has attempted to settle the Seely claims and engaged in mediation conducted by former Judge William Bohling. The settlement and mediation efforts have not been successful, and the matter will be brought back to the Court for resolution.
- Resolving the Receiver's claims against certain Lloyds of London underwriters under the policy they issued to Merrill Scott, Ltd. The underwriters claimed that the policy was void because of material misrepresentations and omissions made by Merrill Scott when it obtained the policy and asserted other defenses to the

Receiver's claims under the policy. After conducting and participating in extensive discovery, the Receiver concluded that the defendants' claims had substantial merit and sought to settle the matter. Under the terms of the settlement the Lloyds of London underwriters paid the Receiver \$500,000.

- Investigating and negotiating the settlement of several contested claims and Equity Managed Mortgage matters with Glenn Argenbright, Duane and Geraldine Asp, Darrell Blegen, Alan Cahoon, Richard Gerber, and Jon McBride. The Receiver's motions to approve the McBride and Bowen settlements are pending before the Court. Upon receipt of a signed settlement agreement from Mr. Blegen (the form of which has been agreed to by the parties), the Receiver will file a motion for approval of the Blegen settlement with the Court.
- Investigating the claims filed by Ralf Leszinski and his related entities Labbie Holdings and the Leszinski Family Support Organization. The Receiver and has rejected those claims inasmuch as the claims were incomplete and largely without merit and because of a fraud perpetuated against the Receivership by Mr. Leszinski. In addition to overstating his claims by over \$3,000,000, Mr. Leszinski sold his home in Atlanta, Georgia, which constituted security for his EMM loan from Legacy Capital, and diverted the loan proceeds that were payable to Legacy Capital to an entity by the same name that he created.
- Responding to a motion filed by Brad Tirpak and his corporation, Access Telecom, that challenged the treatment of his claim under the Plan of Distribution and the Receiver's first interim distribution.

- Assisting in the preparation and review of federal and state (Utah and California) tax returns for the Receivership. Returns have been filed for the years 2002 through 2007.
- Analyzing claims and preparing to make a second interim distribution. On August 26, 2008, the Court approved the Receiver's proposed Second Interim Distribution in the amount of \$6,455,236.12.

Account Balances

8. Funds received by the Receiver are on deposit with Wells Fargo Bank. As of July 31, 2008, the balance in the accounts was \$9,691,801.07. Copies of the account statements for the months covered by this report are attached as Exhibit C.

CONCLUSION

I respectfully request that this application for fees and expenses be granted in all respects and the accompanying proposed Order be endorsed by this Court. The Securities and Exchange Commission has reviewed this Declaration with the Receiver and has no objection to the payment of the fees and expenses requested herein.

I declare under penalty of perjury the foregoing is true and correct.

Dated this 8 day of September, 2008.

/s/ David K. Broadbent, Receiver
David K. Broadbent, Receiver
60 East South Temple, Suite 2000
Salt Lake City, UT 84111
(801) 799-5800

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2008 I electronically filed the foregoing with the Clerk of Court using CM/ECF system which will send notification of such filing to the following e-mail addresses:

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William B. McKean, Esq.
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/s/ David K. Broadbent