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Accountant for David K. Broadbent as Receiver for
Merrill Scott & Associates, Ltd., *et al.*

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

DAVID K. BROADBENT as RECEIVER for
MERRILL SCOTT & ASSOCIATES, LTD.;
MERRILL SCOTT & ASSOCIATES, INC.;
PHOENIX OVERSEAS ADVISORS, LTD.;
GIBRALTER PERMANENTE
ASSURANCE, LTD.; and each of their
Respective SUBSIDIARIES and
AFFILIATED ENTITIES,

Plaintiffs,

v.

CGI INTERNATIONAL HOLDINGS, INC.,
A Delaware Corporation; CONCILIUM
INSURANCE SERVICES, INC., a Utah
Corporation; CONCILIUM REAL ESTATE
AND MORTGAGE SERVICES, INC., a Utah
Corporation; CONCILIUM PLANNING
GROUP, INC., a Utah Corporation;
CONCILIUM MERCHANT CAPITAL
GROUP, INC., a Utah Corporation;
ROBERT J. HIPPLE; ROD B. READ; DREW
ROBERTS; AARON A. NILSEN; DELL W.
GAILEY; MELANIE DECKER; PERRY A.
BSHARAH; and Does 1-100, inclusive,

Defendants.

**EXPERT REPORT OF GIL A.
MILLER RELATING TO AN
ACCOUNTING EXAMINATION
OF CGI INTERNATIONAL
HOLDINGS, INC. AND ITS
SUBSIDIARIES**

(Amended April 3, 2002)

I. INTRODUCTION

Amended¹

On March 26, 2002, The Honorable Judge Tena Campbell signed a Temporary Restraining Order Against Defendants CGI International Holdings, Inc.; Concilium Insurance Services, Inc.; Concilium Real Estate and Mortgage Services, Inc.; Concilium Planning Group, Inc.; and Concilium Merchant Capital Group, Inc. Pursuant to this Order, I conducted an accounting examination of CGI International Holdings, Inc. and its subsidiaries (collectively "Concilium").

Much of my examination, which began on March 26, 2002, was conducted in the offices of Concilium. My staff and I have reviewed various files, books, accounts, documents, correspondence, memoranda, notes, computer files, computer databases, bank statements, financial institution records, ledgers, wiring records, and other accounting records. Additionally, my staff or I have interviewed nine Concilium employees². My opinions are based on my review and analysis of these records and the discussions I have had with Concilium employees. Not all of the records available have been completely reviewed. Therefore, I reserve the right to supplement, update or otherwise modify this report at a later date based on additional documents or information.

I have been retained to perform an accounting examination on behalf of the Receiver. Litigation services engagements performed by Certified Public Accountants are considered consulting services by the American Institute of Certified Public Accountants. Statements on Standards for Consulting Services (SSCS) are, therefore, applicable. I have attempted to comply with these relevant standards.

II. OPINIONS TO BE EXPRESSED, WITH THE BASES AND REASONS THEREFORE

Opinion 1: Of Concilium's sources of cash deposited into their bank accounts totalling \$587,000, approximately \$417,000 is associated with client fees and commissions that originate prior to Concilium's formation on January 24, 2002.

Opinion 2: Amounts paid directly to Concilium vendors by Anglo Projects, totalling approximately \$135,000, originate from client fees and commissions prior to Concilium's formation on January 24, 2002.

¹ On April 3, 2002, Wells Fargo Bank provided subpoenaed information that clarified the payee and payor information on two transactions previously classified as "unknown." The results of these changes are highlighted in this amended version. Boyce Lowery also provided new information not contained in the original report.

² The following Concilium employees were interviewed: Robert Hipple, Rod Read, Drew Roberts, Melanie Decker, Boyce Lowery, Charlene Smith, Brad Parkin, Les Katz and Dell Gailey.

Bases and Reasons for Opinions 1 and 2

CGI International Holdings, Inc. is a Delaware Corporation formed on January 24, 2002. This report focuses primarily on the ultimate cash sources and uses of Concilium since that date. In order to fully determine these cash sources and uses, it was necessary to understand and analyze not only the books and records of Concilium, but also those of its funding sources.

To assist in understanding this cash flow, I have prepared illustrations 1a, 1b, and 1c, which are found at Tab 1. These illustrations describe the variations of cash flow that have occurred over the last several months.

Illustration 1a

Illustration 1a identifies the flow of cash prior to the formation of Concilium (January 24, 2002). This illustration demonstrates that client fees and commissions were first deposited into either a Deutsche Bank ("DB") account or Estate Planning Institute ("EPI"). Portions of the client funds deposited into DB were then transferred to EPI. Subsequently, EPI funds were transferred into International Planning Associates ("IPA").

Illustration 1b

During the course of my interview with former Merrill Scott & Associates ("MSA") officers, Robert Hipple ("Hipple") and Rod Read ("Read"), they admitted to "intentionally diverting" client fees and commissions in excess of \$924,000, that had been deposited in DB, to three newly created, secret EPI bank accounts at Wells Fargo Bank. Likewise, in excess of \$93,000 **\$194,000** of client fees and commissions were diverted directly to the EPI Wells Fargo accounts.

According to Read, both he and Hipple spoke specifically about not disclosing the accounts to Melanie Decker, the controller that accounted for client fees and commissions. In my interview with Ms. Decker, she confirmed that she did not know of the accounts nor account for their activity. Deposit sources of **\$122,149 \$20,899** into the EPI Wells Fargo accounts have not yet been accounted for. Hipple and Read were the authorized check signers on the Wells Fargo EPI accounts.

In December 2001, client fees and commissions in excess of \$479,000 were similarly secretly diverted from the DB account to a new Bahamian bank account in the name of Anglo Projects ("Anglo"). It appears that at least two Anglo accounts were in use. One account would receive DB funds, while another account would make disbursements. Hipple and Read were the authorized check signers on the Anglo bank account. Similarly, Ms. Decker did not account for this bank account. It should be noted that Ms. Decker did account for all other known EPI and IPA bank accounts.

From October 17, 2001 through January 14, 2002, approximately \$1,138,000 was transferred out of the EPI Wells Fargo accounts to Ken Garff Mercedes (\$23,000), IPA (\$110,000), MSA (\$653,000 ~~\$980,000~~), and unknown payees (~~\$351,000~~ ~~\$24,000~~). When I asked Hipple for any type of accounting for the EPI Wells Fargo accounts, he responded that he thought "either Melanie or I kept a listing of the [activity]." During this interview with Hipple, I stepped out to ask Ms. Decker if she knew of any such listing. She again responded that she had made no accounting of these accounts. When I returned to the Hipple interview with Ms. Decker's response, Hipple claimed the listing might be in his office or on his computer. A thorough review of both disclosed no such listing.

From January 10, 2002, through March 4, 2002, approximately \$479,000 was transferred out of the Anglo bank account to Concilium and its vendors (\$129,000), a retainer to iCapital Corporation (\$50,000), and IPA (\$300,000). iCapital is an investment banker entity and was retained for consulting services associated with an intended reverse merger with Precom Technology, Inc. It should be noted that portions of the \$479,000 were paid by Anglo prior to Concilium's formation on January 24, 2002. These include the \$72,000 for prepaid rent, \$6,000 in other operating expenses, and the \$50,000 iCapital retainer.

Further explanation of the \$129,000 transferred from Anglo to Concilium and its vendors is warranted. Of the \$129,000, Anglo paid approximately \$72,000 to Concilium's future landlord for first and last month's rent. An additional \$13,000 was paid to other Concilium vendors. The remaining \$44,000 was a direct transfer to Concilium's bank account.

In summary, approximately \$1.5 ~~\$1.6~~ million of client fees and commissions were diverted into the secret EPI Wells Fargo and Anglo accounts.

Illustration 1c

Illustration 1c illustrates cash flow subsequent to the Concilium incorporation on January 24, 2002. From January 25, 2002, through March 22, 2002, \$587,000 was deposited into the Concilium accounts from the following sources: Anglo (\$44,000), client fees (\$25,000), IPA (\$208,000), Boyce Lowery (\$300,000) and miscellaneous sources (\$10,000).

Boyce Lowery ("Lowery"). On April 1, 2002, I interviewed Lowery to understand the nature of his cash infusions into Concilium. Lowery has been in the insurance business for 26 years and was recruited by MSA in June 2000 to lead the MSA Insurance division. Lowery is a licensed insurance agent in 49 states. Lowery's employment arrangement with MSA consisted of an annual salary of \$250,000 plus 5% of MSA Insurance profits. In turn, Lowery would turn over insurance commissions he received relating to MSA to MSA Insurance. In June 2001 Lowery told MSA officer, Pat Brody ("Brody"), that he would be leaving the employ of MSA.

Lowery agreed to a transition period after June 2001 and, after discussions with Hipple, decided to stay on as the leader of MSA Insurance. Lowery continued to receive his annual salary of \$250,000 and continued to turn over insurance commissions he received. After January 24, 2002, Lowery became an employee of Concilium and his employment arrangement has remained the same as it was prior to January 24, 2002.

From accounting records and through interview with Lowery, I determined that he made two cash infusions to Concilium. The first cash infusion was on March 4, 2002, in the amount of \$100,000. However, Concilium returned \$10,000 of this infusion as a "fee" on the same day. An unsigned promissory note in the amount of \$100,000 was located in the offices of Concilium (Tab 2).

The second loan was received March 14, 2002, in the amount of \$200,000. Boyce Lowery explained that the majority of these funds (approximately \$165,000) came from La Fayette Insurance Co., representing an advance on a commission for a client deal (Richard Knop) originating prior to January 24, 2002. The remaining funds (approximately \$35,000) came from "another business relationship." An unsigned promissory note in the amount of \$220,000 was located in the offices of Concilium (Tab 3). The \$20,000 difference between the amount advanced and the note represents a loan origination fee.

During my interview with Lowery, I also asked him if he had provided an estimate of insurance commissions to IPA officers in early January, suggesting that \$1 million of commissions were still projected to be received. Lowery said that he had provided the estimate, but that conditions had changed since that time and actual commissions received would be much less. He estimated that the loss of two clients alone had resulted in lost commissions of approximately \$370,000. However, he did estimate that commissions still forthcoming from actual clients are estimated to be approximately ~~\$300,000~~ \$400,000. When asked if any of these specific clients were new clients since January 24, 2002 (Concilium's incorporation), he said no.

IPA. The officers of Concilium claim the \$208,000 transferred from IPA to Concilium was a loan. Of the \$208,000 transferred, only \$147,325 is documented with an unsigned promissory note (Tab 4). Repeated attempts to obtain a signed promissory note were not successful. It should also be noted that while the alleged note calls for monthly payments of \$2,749 beginning February 24, 2002, neither the February 24 nor March 24 payments have been made. Drew Roberts, Concilium CFO, has represented to us that the remaining \$61,000 is a draw on a line of credit. Concilium's in-house counsel, Aaron Nilsen, represented to me that no such line of credit was ever drafted. Neither Hipple nor Read was aware of the existence of a line of credit.

In summary, of Concilium's sources of cash deposited into their bank accounts totalling \$587,000, approximately \$417,000 is associated with client fees and commissions that originate prior to Concilium's formation on January 24, 2002. The \$417,000 is made up of \$44,000 from Anglo, \$165,000 from Boyce Lowery, and \$208,000 from IPA. In addition, Concilium vendors were paid approximately \$135,000 by Anglo on Concilium's behalf.

For each of the entities described above, I have prepared separate illustrations and detailed listings describing the sources and uses of cash. These illustrations and listings are included for Concilium (Tab 5), IPA (Tab 6), EPI (Tab 7), EPI Wells Fargo accounts (Tab 8), and Anglo (Tab 9).

Opinion 3: Assuming an MSA/IPA acquisition transaction occurred, MSA assets, MSA liabilities and client fee and commission revenues (\$2.35 million) were transferred to IPA without adequate consideration (-\$151,704).

Bases and Reasons for Opinion 3

In mid-October, MSA officers Hipple and Brody allegedly entered into an acquisition agreement between MSA and IPA. While I have seen various versions of the agreement, I have not been able to locate an executed agreement. However, the latest version I received on April 1, 2002, from Drew Roberts, Concilium CFO, was an unexecuted version with schedules of assets to be acquired and liabilities to be assumed by IPA (Tab 10).

According to the affidavit of Russell C. Skousen, "numerous activities critical to the accomplishment of the Proposed Asset Transfer and the Proposed Reverse Merger remained unfinished as of January 15, 2002 [Page 3, Paragraph 6]. In addition, according to the affidavit of Brody, "at no time did I ever execute, approve, or authorize the sale, transfer or asset purchase of MSA Inc.'s assets or the MSA affiliates' assets to IPA" [Page 3, Paragraph 5].

Melanie Decker, the IPA controller, also confirmed that she had seen numerous versions of the liabilities IPA was to assume, because "Bob Hipple and Pat Brody continued to disagree" as to which liabilities should be on the list. It is interesting to note that while Brody, MSA's Managing Director, and Hipple were the ones attempting to determine liabilities to include in an agreement, the unexecuted version of the agreement provided to me on April 1, 2002, includes Rod Read (MSA Vice President) as the signing authority on behalf on MSA.

During my examination, nearly all Concilium records and files were at my disposal. The exception being certain records considered privileged by Concilium in-house counsel, Aaron Nilsen. When I asked Mr. Nilsen, on April 1,

2002, if he had an executed version of an agreement in his files, he said no. I told him I had been through the files and records of the entire office and had not found an executed version. When I asked him if it was then safe to assume that an executed version was not in the building, he agreed that was a safe assumption.

However, assuming an MSA/IPA acquisition transaction occurred, the agreement at Tab 10 dictates that in return for:

- 1) the assumption of debt totalling \$106,769, and
- 2) 15,000 shares of IPA Common Capital Stock,

IPA was to receive the following:

- 1) computer hardware, furniture, and telephone assets,
- 2) "...relating to the Personal Advisors' Business of MSA ... all future income, work in process, material agreements, employment agreements and confidentiality and non-disclosure agreements, strategic plans and relationships...", and
- 3) the sum of the gross receipts of client fees processed by EPI / IPA.

The actual consideration given and received was different than what was expressed in this agreement. The actual amount of debt assumed and paid by IPA was \$14,816 (Tab 11). MSA also paid certain debts, such as payroll and rent, on behalf of IPA. These debts were not fully repaid by IPA. As of January 24, 2002, MSA had paid \$720,500 on behalf of IPA, but had received only \$554,000 in reimbursement from IPA (Tab 12). Therefore, the actual consideration received by MSA relating to payables and intercompany debt is a net negative \$151,704 ($\$14,816 + \$553,939 - \$720,459$).

I have seen no evidence demonstrating that the 15,000 shares of IPA Common Capital Stock were ever issued to MSA. In addition, it should be noted that there is no mention in the Tab 10 agreement of how many IPA shares are currently outstanding. Therefore, I cannot determine from the agreement what percentage of total outstanding IPA shares is represented by the 15,000 shares discussed in the agreement.

Whether the \$175,563 was ever received is in dispute since the Receiver has claimed ownership in these assets on behalf of MSA.

The client fees and commissions received since October 15, 2001, total approximately \$2.35 million (Tab 13). The vast majority of these clients were contacted by MSA personnel prior to October 15, 2001 (Tab 14). **In summary, MSA received a negative benefit of \$151,704 and gave up \$2.3 million of revenues.**

III. DATA AND OTHER INFORMATION CONSIDERED IN FORMING THESE OPINIONS

I relied on the following documents in forming my opinions:

1. Various bank statements under the names of the following entities:
 - a. EPI
 - b. IPA
 - c. Concilium
2. Wire transfers notices for Deutsche Bank
3. Wire transfers for Anglo Projects
4. MSA Prospect 2000 client database
5. Promissory notes between Boyce Lowery and Concilium
6. Promissory note between IPA and Concilium
7. Draft of Asset Acquisition Agreement between MSA and IPA
8. Quickbooks accounting files for MSA, IPA, EPI and Concilium
9. Various correspondence, minutes, and notes

IV. QUALIFICATIONS INCLUDING PUBLICATIONS AND OTHER TESTIMONY

I am currently the Director of Litigation and Bankruptcy Services for the Salt Lake City office of PricewaterhouseCoopers, L.L.P. I have been with PricewaterhouseCoopers since 1988. Prior to joining PricewaterhouseCoopers, I was a manager in the litigation and bankruptcy practice in the Salt Lake City office of KPMG Peat Marwick (1984-1988). I hold Masters and Bachelors degrees in Accounting from Brigham Young University (1984-85). I am a Certified Public Accountant, Certified Insolvency and Reorganization Advisor, and a Certified Fraud Examiner. I am a member of the American Institute of Certified Public Accountants, the Utah Association of Certified Public Accountants, the Association of Certified Fraud Examiners, and the Association of Insolvency and Restructuring Advisors. I also serve as a member of the Commercial Panel of the American Arbitration Association.

I have testified in deposition and/or trial as an expert on the following cases in the past four years:

Tasch vs. Professional Staff Management, Inc.
S. Spence Clark vs. Casas Adobe, et al.
In re: Brown Trouts, Inc.
Clifford Urie vs. Kelly Jensen/Scott Wood
In re: Systems Communications, Inc.
In re: DES, Inc.
David G. Cade vs. Zions Bank
Crown Energy Corporation vs. MCN Energy Group

V. COMPENSATION PAID FOR MY SERVICES

My rate for this case is \$220 per hour, plus reimbursement of out-of-pocket expenses. My work on this case is anticipated to be ongoing. I have also directed and reviewed work on the assignments prepared by staff at PricewaterhouseCoopers. The rates for professionals who have provided services on this case have ranged from \$95 to \$220 per hour.

Respectfully submitted,



Gil A. Miller, CPA, CFE
PricewaterhouseCoopers, L.L.P