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U.S. DISTRICT COURT
DISTRICT OF UTAH

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Merrill Scott & Associates, Ltd., *et al.*

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
Plaintiff,)	MEMORANDUM OF POINTS AND
)	AUTHORITIES IN SUPPORT OF
v.)	MOTION TO STAY LITIGATION
)	
MERRILL SCOTT & ASSOCIATES,)	
LTD., <i>et al.</i> ,)	Civil No. 2:02CV 0039C
)	
Defendants.)	
)	Judge Tena Campbell
)	
)	
)	

David K. Broadbent (the "Receiver"), as Receiver for Merrill Scott & Associates Ltd.; Merrill Scott & Associates, Inc.; Phoenix Overseas Advisors, Ltd.; Gibraltar Permanente Assurance, Ltd., and each of their respective subsidiaries and related entities (collectively "MSA"), by and through counsel, Holland & Hart LLP, respectfully requests that this Court enter a stay of all pending and future litigation against MSA brought by or to be brought by any party, including, but not limited to, any former MSA

client or creditor. The Receiver requests a stay so that he may more effectively carry out his duties, as an officer of this Court, to “take control of Merrill Scott’s funds, assets and property wherever they may be situated” and to preserve and hold those funds and assets for the benefit of former MSA clients. *See* Stipulated Order Appointing Receiver § I.

STATEMENT OF FACTS

1. The Securities and Exchange Commission instituted this enforcement action on January 15, 2002. *See* Complaint for Temporary Restraining Order, Preliminary and Permanent Injunctions and Legal and Other Equitable Relief.
2. The Receiver was appointed by this Court on January 23, 2002. *See* Stipulated Order Appointing Receiver (the “Receivership Order”).
3. Under the Receivership Order, the Receiver is charged with the duty and responsibility to defend actions brought against MSA in order to conserve MSA funds, assets, and property. *See id.* § IV.
4. When the Receiver was appointed, MSA was a party to a number of pending lawsuits. In many of these lawsuits, MSA has been sued by allegedly unpaid third-party (non-investor) creditors.
5. The following is a list of the litigation presently pending against MSA of which the Receiver is aware. For some cases, the Receiver has no information beyond the name of the case.

- a. *Chris B. Anderson v. David Broadbent, Receiver Merrill Scott & Assoc., Inc.*, Case No. 018401300, is pending in the Third District Court in and for Salt Lake County, Sandy Department.
- b. *Rapanotti, et al. v. Merrill Scott & Associates, Ltd., et al.*, Case No. 2001CI15794, is pending in the 150th Judicial District Court in and for Bexar County, Texas.
- c. *Global Claim Services, Inc. v. Insuite, Inc.*, Civil No. 010904423, is pending in the Third Judicial District Court in and for Salt Lake County, State of Utah.
- d. *Sun International Resorts, Inc. v. Merrill Scott & Associates*, Case No. 00-018375, is pending in the 17th Judicial Circuit Court in and for Broward County, Florida.
- e. *Florida v. AiO Technologies, Inc.*, Case No. 00-4425-CA, is pending in the 20th Judicial Circuit in and for Collier County, Florida.
- f. *Siemens v. LinkNet*, is pending in the Third Judicial District Court in and for Salt Lake County, Sandy Department.
- g. *Howard v. LinkNet*, Case No. 2001-55234, is pending in the 234th Judicial District in and for Harris County, Texas.
- h. *MRI Sales Consultants v. Merrill Scott & Associates*, Case No. 020900288, is pending in the Third Judicial District Court in and for Salt Lake County, State of Utah.

- i. *Link Net, Inc., et al. v. Alex Jones, Ltd., et al.*, Civil No. 010907157, is pending in the Third Judicial District Court in and for Salt Lake County, State of Utah.
- j. *Bobon, Inc. dba Lorraine Press v. Merrill Scott & Associates*, Case No. 010911773, is pending in the Third Judicial District Court in and for Salt Lake County, State of Utah.
- k. *Nash & Edgerton, LLP v. Merrill Scott & Associates*, Case No. Y0042166, is pending in the California Superior Court, Los Angeles County, California.
- l. *Qualified Personnel, Inc. v. Merrill Scott & Associates, Inc.*, Case No. 010906964, is pending in the Third Judicial District Court in and for Salt Lake County, State of Utah.
- m. *CompHealth, Inc. v. Merrill Scott & Associates, Inc., et al.*, Case No. 020900169, is pending in the Third Judicial District Court in and for Salt Lake County, State of Utah.
- n. *Trevino v. Merrill Scott & Associates, Inc. et al.*, Case No. CV-802873, is pending in the Santa Clara Superior Court, Santa Clara County, California.
- o. *The Scott K. Canepa Charitable Supporting Organization, et al. v. Legacy Capital, L.L.C., et al.*, Case No. A447924, is pending in the Clark County, Nevada District Court.
- p. *Earnburn LLC v. Merrill Scott*

- q. *Industrial Service Repair v. Bourke*
 - r. *Phoenix Overseas Advisors v. McKenzie Finch et al.*
 - s. *Rogan dba Equipment Finance and Management v. Merrill Scott & Associates, Inc.*
 - t. *Ferganchick v. Merrill Scott & Associates, Inc.*
 - u. *Merrill Scott & Associates, Inc. v. Nygaard.*
 - v. *Merrill Scott & Associates, Inc. v. Newsome.*
6. In addition, the Receiver has been contacted by numerous allegedly unpaid third-party (non-investor) creditors who allege that they have potential claims against MSA.

ARGUMENT

The Receiver respectfully requests that this Court enter a stay of all pending and future litigation involving MSA until further Court order. This Court possesses broad power and discretion to determine appropriate relief in supervising an equity receivership established pursuant to a Securities and Exchange Commission enforcement action brought in the public interest. *See Securities & Exch. Comm'n v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372-73 (5th Cir. 1982) (citations omitted); *Securities & Exch. Comm'n v. Wencke (Wencke I)*, 622 F.2d 1363, 1371 (9th Cir. 1980). In determining appropriate relief, this Court possesses the power to “issue a variety of ‘ancillary relief’ measures,” *Wencke I*, 622 F.2d at 1369, including ordering a stay of all pending and future litigation against the entities in receivership that is binding even upon “persons not parties to the SEC action who have notice of the stay.” *Id.* at 1371;

see Securities & Exch. Comm'n v. Universal Fin., 760 F.2d 1034, 1038 (9th Cir. 1985) (discretion to determine whether stay should be lifted). Any action taken by this Court in supervising the receivership will not be overturned absent a clear showing of abuse. *See Safety Fin. Serv.*, 674 F.2d at 372-73.

This Court's power to issue the requested stay derives from the All-Writs Act, which gives federal courts power to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law," including the power to stay the prosecution of lawsuits. 28 U.S.C.A. § 1651(a); *see MLE Realty Assoc. v. Handler*, 192 F.3d 259, 261 (2nd Cir. 1999). The power to stay litigation involving MSA under the All-Writs Act is corollary to this Court's power to "impose a receivership free from interference in other court proceedings." *Wencke I*, 622 F.2d at 1372. That authority facilitates the "strong federal interest in insuring effective relief in SEC actions brought to enforce the securities laws." *Id.*

This Court has ordered that the Receiver "take control of Merrill Scott's funds, assets and property wherever they may be situated" and to preserve and hold those funds and assets until such time as this Court orders distribution. *See Stipulated Order Appointing Receiver* § I. The stay of pending and future litigation requested by the Receiver herein is appropriate because a relief from the demands of litigating the numerous cases in which MSA is involved would allow the Receiver "an opportunity to progress in his assigned tasks" under this Court's Receivership Order and would promote the "orderly administration by the Receiver of the Case." *Wencke I*, 622 F.2d at 1373. The Receiver has only recently been appointed and needs time "to organize

and understand the entities under his control.” *Universal Fin.*, 760 F.2d at 1038; *Securities & Exch. Comm’n v. Wencke (Wencke II)*, 742 F.2d 1230, 1231 (9th Cir. 1984). The prosecution or defense of a “multiplicity of actions in different forums” not only interferes with the Receiver’s responsibilities to organize and understand MSA and to locate its well-hidden assets, but also increases litigation costs, thereby diminishing the size of the receivership estate. *See Universal Fin.*, 760 F.2d at 1038. This is particularly true where several actions are on file in out-of-state courts, necessitating the retention of local counsel in those jurisdictions.

Accordingly, to eliminate the interference with the Receiver’s Court-appointed duties to maximize the receivership estate caused by his presently unavoidable involvement in numerous lawsuits brought in various jurisdictions, and to avoid dissipation of the receivership estate through unnecessary payment of attorney fees, this Court should exercise its discretion and its power under the All-Writs Act to enter a stay of all pending litigation, presently known (as set forth in the Statement of Facts) and unknown, as well as all future litigation involving MSA. *See Universal Fin.*, 760 F.2d at 1038. “The power of the district court to issue a stay, effective against all persons, of all proceedings against the receivership entities rests as much on its control over the property placed in receivership as on its jurisdiction over the parties to the securities action.” *Wencke I*, 622 F.2d at 1369. As a result, this Court’s stay is

effective in state court actions as well as actions filed in this Court's sister districts.

See id. at 1371-72.¹

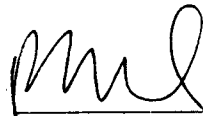
The Receiver has attached as Exhibit A a Proposed Form of Notice of Stay of Litigation to be filed in all currently pending actions and in all actions that may be filed in the future. In addition, the Receiver has filed concurrently herewith a proposed form of Stay of Litigation for the convenience of the Court.

CONCLUSION

For the reasons set forth above, the Receiver respectfully requests that this Court stay all pending and future litigation against MSA until further order of this Court.

Dated this 26 day of April, 2002

HOLLAND & HART LLP



Brent E. Johnson
James L. Barnett
Reha Deal

ATTORNEYS FOR DAVID K.
BROADBENT, AS RECEIVER FOR
MERRILL SCOTT & ASSOCIATES,
LTD., *ET AL.*

¹ It appears from the case law that this Court may enter a stay with or without notice to the parties to litigation against MSA who will be affected by it. *Compare MLE Realty*, 192 F.3d at 261 (noting that notice is necessary when court imposes stay *sua sponte*) with *Wencke I*, 622 F.2d at 1365 (granting stay without prior notice to parties).

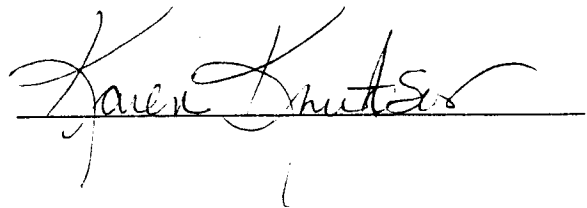
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 26 day of April, 2002, a true and correct copy of the foregoing document was served to the following by U.S. Mail:

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William B. McKean, Esq.
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Overseas Advisors Ltd.; Gibraltar Permanente Assurance Company, and/or any of their Subsidiaries or Affiliated Entities (collectively “MSA”) absent further order of the Court. Likewise, no related judgment may be entered or enforced against MSA in any action filed in any state or federal jurisdiction in the United States absent further order of the Court. Accordingly, the above-captioned action, as it relates to MSA, may not be prosecuted, and no valid judgment may be entered or enforced against MSA in respect of such action.

Dated this ____ day of _____, _____.

HOLLAND & HART LLP

Brent E. Johnson
James L. Barnett
Reha Deal

ATTORNEYS FOR DAVID K.
BROADBENT, AS RECEIVER FOR
MERRILL SCOTT & ASSOCIATES,
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