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2004 MAR -3 P 5:00
DISTRICT OF UTAH

John P. Harrington (5242)
Richard D. Clayton (0678)
Jennifer L. Lange (8470)
HOLLAND & HART LLP
60 E. South Temple, Suite 2000
Salt Lake City, Utah 84111-1031
Telephone: (801) 595-7800
Facsimile: (801)364-9124

Peter W. Billings, U.S. Esq. (0530)
Joan M. Andrews, Esq. (7809)
BY: JK
FABIAN & CLENDENIN
215 S. State Street, Suite 1200
Salt Lake City, UT 84111
Telephone: (801) 531-8900
Facsimile: (801) 596-2814

Randy Paar (*Pro Hac Vice*)
John P. Winsbro (*Pro Hac Vice*)
DICKSTEIN SHAPIRO MORIN & OSHINSKY
1177 Avenue of the Americas
New York, NY 10036-2714
Telephone: (212) 835-1400

Kristopher A. Kuehn (*Pro Hac Vice*)
Kathryn A. Lewis (*Pro Hac Vice*)
WARDEN TRIPLETT GRIER
9401 Indian Creek Parkway, Suite 1100
Overland Park, KS 66210
Telephone: (913) 491-3000
Facsimile: (913) 491-2979

*Attorneys for David K. Broadbent, Esq., as
Receiver for Merrill Scott & Associates,
Ltd., Merrill Scott & Associates, Inc.,
Phoenix Overseas Advisers, Ltd.; Gibraltar
Permanente Assurance Ltd.; and their
Subsidiaries and Affiliated Entities*

*Attorneys for Defendant Certain
Underwriters at Lloyds, London*

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

ORDER

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

JOINT STIPULATION AND
MOTION TO STAY PROCEEDINGS

Civil No. 2:02CV-0039C

Judge Tena Campbell

So ordered

3-9-2004

Tena Campbell

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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 LLOYD'S,)
LONDON; and JAMES P. LANDIS,)
Third-Party Defendants.)

Third-Party Plaintiff David K. Broadbent (the "Receiver"), as Receiver for Merrill Scott & Associates, Inc., Phoenix Overseas Advisers, Ltd., Gibraltar Permanente Assurance, Ltd., and their subsidiaries and affiliated entities ("Merrill Scott"), by and through their counsel of record, Holland & Hart LLP, and Defendant Certain Underwriters at Lloyds, London (the "Underwriters"), by and through their counsel of record, Fabian & Clendenin and Warden Triplett Grier, hereby file their Joint Stipulation and move this Court to stay all proceedings before the Court for the purposes of the Receiver and the Underwriters to resolve their disputes and claims

pursuant to the Utah Uniform Arbitration Act, §§ 78-31a-101, *et seq.*, Utah Code Ann. In support of their Motion to stay all proceedings, the Receiver and the Underwriters jointly stipulate as follows:

1. On or about March 28, 2003, the Receiver commenced the above-captioned action by filing his Third-Party Complaint seeking pursuant to 28 U.S.C. § 2201 a declaration of the parties' rights, duties and obligations under the pertinent insurance policies that provide Professional Indemnity, fidelity, and Directors' and Officers' liability insurance for Merrill Scott and its officers and directors. The Receiver also named as a Third-Party Defendant James P. Landis, a former Director of Financial Planning of Merrill Scott. The Underwriters issued to Merrill Scott Policy 738/UU055450T(71555) for the period September 1, 1999 to August 31, 2000 and Policy 738/UU055450U(94856/94857) for the period September 1, 2000 to January 31, 2002 (collectively referred to as the "Policies").

2. On or about May 30, 2003, the Underwriters filed their Answer wherein the Underwriters asserted, *inter alia*, the Court's power under 28 U.S.C. § 2201 is limited by the valid, enforceable arbitration clause in the Policies. On or about August 8, 2003, Third-Party Defendant James P. Landis filed his Original Answer.

3. On or about June 18, 2003, the Receiver filed with this Court his Motion to Strike the Underwriter's Third Affirmative Defense ("Motion to Strike") pertaining to the Underwriters' assertion of arbitration as an affirmative defense to the Receiver's Complaint. The Underwriters opposed the Receiver's Motion to Strike and then filed

on June 27, 2003 their Motion to Compel Arbitration pursuant to 9 U.S.C. § 1 *et seq.* and to Stay Proceedings pursuant to 9 U.S.C. § 3 (“Motion to Compel Arbitration”). The Receiver filed on July 23, 2003 his opposition to the Underwriters’ Motion to Compel Arbitration.

4. As a settlement and compromise of their respective claims arising from the Receiver’s Motion to Strike and the Underwriters’ Motion to Compel Arbitration, the Receiver and the Underwriters have agreed to resolve all of their claims, disputes, duties, obligations, and causes of action arising from or related to the Policies (including, but not limited to, potential claims and/or defenses of avoidance or rescission and duty to defend or to indemnify) through arbitration. Third-party Defendant Landis has been presented with the terms and conditions of the proposed arbitration, and Landis initially indicated his willingness to stipulate to the arbitration. However, Landis has recently indicated his unwillingness to agree to the proposed arbitration and has refused to execute this Joint Stipulation and Motion to Stay Proceedings. Due to the unwillingness of Landis to subscribe to the proposed arbitration and the need to resolve the dispute between the Receiver and the Underwriters, this Joint Stipulation and Motion to Stay Proceedings is hereby filed.

5. The Receiver and the Underwriters stipulate that the arbitration will be conducted pursuant to the Utah Uniform Arbitration Act, §§ 78-31a-101, *et seq.*, Utah Code Ann. (the “Utah Arbitration Act”). The Receiver and the Underwriters jointly

stipulate and agree to the following additional terms and conditions governing the resolution of their claims and causes of action arising from or related to the Policies: Unless the Receiver and the Underwriters agree upon a single arbitrator, the number of arbitrators shall be three. One of the three arbitrators shall be designated by the Receiver, and one of the three arbitrators shall be designated by the Underwriters. The Receiver and the Underwriters shall each designate an arbitrator within forty-five days of the Court's entry of the order permitting the arbitration of the disputes between the parties. Nominations for the third arbitrator shall be exchanged by the parties within sixty (60) days of the entry of the Court's order permitting the arbitration of this matter. The third arbitrator shall be a retired or inactive federal or state court judge residing in the United States or Canada proposed by any party. The Receiver and the Underwriters must agree to the designation of the third arbitrator. In the event the Receiver and the Underwriters shall be unable to agree on the designation of the third arbitrator within ninety (90) days of the Court's order permitting the arbitration of this matter, the choice of the third arbitrator shall be submitted to this Court for a designation of the third arbitrator.

Notwithstanding the provisions of § 78-31a-118(3), Utah Code Ann., the arbitrators shall permit all reasonable discovery (including, but not limited to, the issuance of subpoenas) requested by the parties to be conducted in accordance with the Federal Rules of Civil Procedure. After a good faith effort by each party to resolve any discovery disputes, such discovery disputes shall be submitted to the arbitrators and

shall be ruled upon by the arbitrators in accordance with the Federal Rules of Civil Procedure.

The admissibility of any evidence submitted by the parties shall be ruled upon by the arbitrators in accordance with the Federal Rules of Evidence.

If there is a dispute as to the issue of the law applicable to the Policies and the disputes arising therefrom (the "Choice of Law Issue"), the Choice of Law Issue will be submitted to the arbitrators. If requested by any party, the Choice of Law Issue shall be determined by the arbitrators prior to the adjudication of other substantive disputes submitted by the parties.

The presentation of evidence, testimony and oral arguments shall take place before the arbitrators in Salt Lake City, Utah unless the parties mutually agree that presentation to the arbitrators should take place elsewhere. Agreement to conduct the presentation to the arbitrators in a location other than in Salt Lake City, Utah shall not be unreasonably withheld.

Underwriters shall be responsible for all fees and expenses associated with the arbitrator they have designated and the Receiver shall be responsible for all fees and expenses associated with the arbitrator he has designated. The fees and expenses associated with the third arbitrator designated by both parties shall be evenly paid by the Receiver and the Underwriters.

6. It is the express intent of the Receiver and the Underwriters that all claims, disputes, duties, obligations and causes of action arising from or related to the

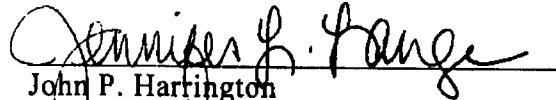
Policies will be submitted to the arbitrators and that the arbitrators issue written findings of fact, conclusions of law and order, including a time duration for compliance once the arbitration award is final. It is the intention of the parties that this U.S. District Court have and retain jurisdiction of this matter until such time as a final order of the arbitrators is entered. In the event a final written order or award of the arbitrators is issued and any party files a motion requesting an order confirming, directing a rehearing, vacating without directing a rehearing, modifying, correcting or otherwise affecting or altering the final order or award of the arbitrators, such motion shall be filed and determined by this U.S. District in accordance with the Utah Uniform Arbitration Act, §§ 78-31a-101, *et seq.*, Utah Code Ann.

WHEREFORE, the Receiver and the Underwriters move this Court to stay all proceedings before this Court to allow the parties to proceed under the Utah Arbitration Act until such time as a final order is entered by the arbitrators.

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DATED this 2nd day of March, 2004.

HOLLAND & HART LLP



John P. Harrington

Richard D. Clayton

Jennifer L. Lange

Attorneys for David K. Broadbent, Esq.

as Receiver for Merrill Scott &

Associates, Ltd., et. al.

DATED this 3rd day of March, 2004.



Kristopher A. Kuehn

Kathryn A. Lewis

WARDEN TRIPLETT GRIER

Peter W. Billings, Jr.

Joan M. Andrews

FABIAN & CLENDENIN

Attorneys for Defendant Certain

Underwriters at Lloyds, London

CERTIFICATE OF SERVICE

I, the undersigned, declare:

I am a citizen of the United States of America, am over the age of eighteen (18) years, and not a party to the within action. I am an employee of Holland & Hart LLP, and my business address is 60 East South Temple, Suite 2000, Salt Lake City, Utah, 84111-1031.

Pursuant to Rule 54(b) U.R.C.P., I hereby certify that on March ^{3rd}____, 2004, I caused a true and correct copy of the foregoing document(s) to be served on the parties involved, listed below, addressed as follows:

- U.S. Mail, postage prepaid
- Hand Delivery
- Fax

Thomas M. Melton, Esq.
William B. McKean, Esq.
SECURITIES & EXCHANGE COMMISSION
Salt Lake District Office
50 South Main, Suite 500
Salt Lake City, UT 84144
*Attorneys for the Securities and
Exchange Commission*

Max D. Wheeler, Esq.
Robert J. Shelby, Esq.
SNOW, CHRISTENSEN & MARTINEAU
P.O. Box 45000
Salt Lake City, UT 84145-5000
Attorneys for David E. Ross, II

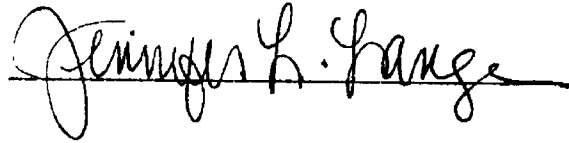
Randall Mackey, Esq.
Gifford W. Price, Esq.
Russell C. Skousen, Esq.
MACKEY PRICE & THOMPSON
350 American Plaza II
57 West 200 South
Salt Lake City, UT 84101
Attorneys for Patrick M. Brody

Rodney G. Snow, Esq.
CLYDE, SNOW, SESSIONS & SWENSON
201 South Main, Suite 1300
Salt Lake City, UT 84111
Attorneys for Michael G. Licopantis

Steven A. Sinkin, Esq.
SINKIN & BARRETTO, PLLC
105 West Woodlawn Avenue
San Antonio, TX 78212-3457
Attorneys for James P. Landis

Peter W. Billings, Jr., Esq.
Joan M. Andrews, Esq.
FABIAN & CLENDENIN
215 S. State Street, Suite 1200
Salt Lake City, UT 84111

Kristopher A. Kuehn, Esq.
Kathryn A. Lewis, Esq.
WARDEN TRIPLETT GRIER
9401 Indian Creek Parkway, Suite 1100
Overland Park, KS 66210
*Attorneys for Defendant Certain
Underwriters at Lloyds, London*

A handwritten signature in black ink, appearing to read "James P. Landis", written over a horizontal line.

alt

United States District Court
for the
District of Utah
March 10, 2004

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-00039

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

James P. Landis
105 W WOODLAWN
SAN ANTONIO, TX 78212

Mr. Peter W. Billings Jr, Esq.
FABIAN & CLENDENIN
215 S STATE STE 1200
PO BOX 510210
SALT LAKE CITY, UT 84151
EMAIL

Kristopher A. Kuehn, Esq.
WARDEN TRIPLETT GRIER
9401 INDIAN CREEK PKWY STE 1100
OVERLAND PARK, KS 66210
EMAIL

Mr. Richard D Burbidge, Esq.
BURBIDGE & MITCHELL
215 S ST ST STE 920
SALT LAKE CITY, UT 84111
EMAIL

Mark A. Solomon, Esq.
LIONEL SAWYER & COLLINS
300 S FOURTH STE 1700
LAS VEGAS, NV 89101

Mark J. Griffin, Esq.
WOODBURY & KESLER
265 E 100 S STE 300
SALT LAKE CITY, UT 84111
EMAIL

Brent E. Johnson, Esq.
HOLLAND & HART
60 E SOUTH TEMPLE STE 2000
SALT LAKE CITY, UT 84111-1031
EMAIL

Randy Paar, Esq.
DICKSTEIN SHAPIRO MORIN & OSHINSKY
1177 AVENUE OF THE AMERICAS
NEW YORK, NY 10036-2714

Mr. Max D Wheeler, Esq.
SNOW CHRISTENSEN & MARTINEAU
10 EXCHANGE PLACE
PO BOX 45000
SALT LAKE CITY, UT 84145-5000
EMAIL

Mr. Randall A Mackey, Esq.
MACKEY PRICE & THOMPSON
57 W 200 S STE 350
SALT LAKE CITY, UT 84101-1655
EMAIL

Mr. Thomas M Melton, Esq.
SECURITIES AND EXCHANGE COMMISSION
50 S MAIN STE 500
SALT LAKE CITY, UT 84144-0402
EMAIL