

David K. Broadbent, 0442
Richard D. Clayton, 0678
HOLLAND & HART LLP
60 E. South Temple, Suite 2000
Salt Lake City, Utah 84111-1031
(801) 595-7800

FILED
RECEIVED
2004 AUG -2 P 3:50
JUL 15 2004
DISTRICT COURT
OFFICE OF
JUDGE TENA CAMPBELL
DEPUTY CLERK

RECEIVED CLERK

2004 JUL 15 P 12:17

U.S. DISTRICT COURT
DISTRICT OF UTAH

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

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.

**ORDER APPROVING RECEIVER'S
MOTION ESTABLISHING CLAIMS
PROCEDURES AND ESTABLISHING
A CLAIMS BAR DATE**

Civil No. 2:02 CV ²⁹0230

Judge Tena Campbell

THIS MATTER having come without hearing before the undersigned United States District Court Judge for the Central District of Utah upon the Motion of the Receiver to approve claims procedure and to establish a claims bar date. Due and proper notice of the Motion have been given to all parties and no objections have been filed hereto. The Court, having reviewed the Motion and all pleadings before it, finds that good and sufficient cause exists for the relief requested in the Motion and that the procedures, mechanisms and deadlines set forth in the Motion will assist in the

304

administration and distribution of receivership assets to legitimate Claimants of the Receivership estate.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Receiver's Motion shall be, and is hereby approved in all respects.
2. The Receiver shall be, and hereby is, authorized to establish and implement the formal claims procedures more particularly set forth herein and in the Motion.
3. The 90th day after the execution of this Order, at 5:00p.m. prevailing Mountain Standard Time ("Claims Bar Date") is set as the last date and time by which Claimants may assert claims against the receivership estate. The Claims Bar Date shall be enforceable, notwithstanding any otherwise applicable law that could govern the timing of the assertion of a Claims Form (defined hereinafter) against the receivership estate. The Claims Bar Date shall serve as the bar date after which any investor, party or potential Claimant shall be estopped from forever asserting claims against the receivership estate.
4. Every Claimant seeking funds from the receivership estates must complete a Claims Form and submit a Claims Form to the Receiver at his business address in Salt Lake City, Utah, pursuant to the instructions more particularly contained herein and in the Notice. Each Claims Form must be complete, signed under penalty of perjury, and must include appropriate documentary evidence in support of the claim. A signed original Claims Form shall be required; fax and electronic copies shall not be accepted.

5. Every Claimant having already submitted a preliminary investor response form or other claims information to the Receiver is required to submit a NEW Claims Form to the Receiver by the Claims Bar Date in the manner set forth herein and in the Notice with appropriate documentary evidence in support of his or her claim.

6. The Claims Forms must be actually received by the Receiver, at the following address, by no later than 5:00 P.M prevailing Mountain Standard Time, on the Claims Bar Date as set forth in the Motion:

David K. Broadbent, Receiver
Holland & Hart LLP
60 East South Temple, Suite 2000
Salt Lake City, Utah 84111
(801) 595-7800

A Claims Form shall be deemed received only when actually received by the Receiver. Claims Forms must be completed in English and stated in lawful currency of the United States (to the extent known and determinable). Any Claimant who wishes to receive an acknowledgment that his or her claims form has been received by the Receiver must provide an additional copy of the Claims Form and a self-addressed, prepaid stamped envelope.

7. Upon the expiration of the Claims Bar Date, based on the Claims Forms and the documentary evidence supporting same, the Receiver shall verify the information contained in the Claims Forms for each individual Claimant and the amount of money invested by each Claimant.

8. Should a Claimant who has filed a Claims Form either not be entitled to a disbursement, or the information supplied by the Claimant is insufficient to make a disbursement, the Claimant shall be notified of same by an explanatory letter.

9. If any funds cannot be delivered to Claimant based upon the information available, or if funds are unclaimed and/or returned to the Receiver, the Receiver shall hold them for future disposition upon further order of this Court.

10. These claims procedures shall not impose any liability upon the Receiver, the professionals retained by the Receiver, or the receivership estate.

11. Unless otherwise specifically ordered by this Court, any Claimant who is required to, but does not, timely file a Claims Form in compliance with the procedures and deadline established by this Court (i) shall be forever barred from participating in the Receivership estate and receiving distributions from the receivership assets, and (ii) shall no longer be entitled to receive further mailings in or notices regarding this case.

12. The Receiver shall mail the Notice and the Claims Forms to all Claimants for whom the Receiver has been provided complete contact information and to all defendants or other parties who have appeared of record herein. The Receiver, however, shall be relieved of any obligation to mail such documents to potential claimants for which (i) there is no complete mailing address; or (ii) the address is known to be inaccurate or defective, and the Receiver is authorized to notify such potential Claimants by publication, as set forth herein. With respect to envelopes that are returned as undeliverable following the mailing of the Notice and Claims Form, the Receiver shall re-mail such envelopes to the forwarding address set forth on such

envelopes, if any. The Receiver may also provide the Notice to any other potential Claimants whom the Receiver may be able to contact, but the Receiver is hereby relieved of any affirmative obligation to do so. Rather, the Receiver is authorized to notify any such potential Claimant by publication, as set forth herein below.

13. Within twenty (20) days of the date of entry of an Order approving the procedures and deadline proposed in the Motion, the Receiver shall cause the Notice to be published in substantially the form attached to the Motion as Exhibit "A", once in The Wall Street Journal and USA Today. The Receiver shall thereafter file an affidavit of publication with this Court.

14. The Claims Form in substantially the form attached to the Motion as Exhibit "B" is hereby approved and shall be utilized by the Receiver as set forth in the Motion and this Order.


15. The Receiver shall post notice of the Claims Bar Date, the Notice, and the Claims Form on the Receiver's website on the Internet, located at www.merrillscott.com.

16. All potential claimants shall have an affirmative duty to review the Notice served on them via publication and, if necessary, to file a Claims Form. Claimants may not rely on their agents and/or attorneys to meet the proposed deadline or to satisfy the other proposed obligations to be required of Claimants with respect to the filing of Claims Forms herein by the Claims Bar Date.

17. After approval of this Motion by this Court, Claimants and parties in interest may obtain additional copies of the Notice and Claims Form by contacting the

Receiver's office, Attn: Inga Regenass, at Holland & Hart LLP, 60 East South Temple, Suite 2000, Salt Lake City, UT 84111, telephone number (801) 595-7834 or email: iregenass@hollandhart.com, and requesting same, or by visiting the Receiver's website at www.merrillscott.com for updated information on the claims process.

SIGNED this 2 day of August, 2004.


The Honorable Tena Campbell
United States District Court Judge

CERTIFICATE OF MAILING

I certify that on July 15, 2004 I served a copy of the foregoing document to the following by

U.S. Mail, postage prepaid
Hand Delivery
Fax

John T. Caine
Richards, Caine & Allen, P.C.
2568 Washington Boulevard
Ogden, UT 84401

Max D. Wheeler, Esq.
Robert J. Shelby, Esq.
Snow, Christensen & Martineau
10 Exchange Place, Eleventh Floor
P.O. Box 45000
Salt Lake City, UT 84145-5000
Attorneys for David E. Ross, II

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

Rodney G. Snow, Esq.
Clyde, Snow, Sessions & Swenson
201 South Main, Suite 1300
Salt Lake City, UT 84111
Attorneys for Michael G. Licopantis

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

Kristopher A. Kuehn, Esq.
Warden Triplett Grier
9401 Indian Creek Parkway, Suite 1100,
Overland Park, Kansas 66210
Attorneys for Certain Underwriters at
Lloyds, London

Nicholas E. Hales, Esq.
Mark J. Griffin, Esq.
Woodbury & Kesler
265 East 100 South, Suite 300
Salt Lake City, Utah 84111

Steven A. Sinkin
Sinkin & Baretto, PLLC
105 West Woodlawn Avenue
San Antonio, Texas 78212-3457
Attorneys for James P. Landis

Peter W. Billings, Jr., Esq.
Fabian & Clendenin
P.O. Box 510210
Salt Lake City, UT 84151
Attorneys for Certain Underwriters at
Lloyds, London

Lyzzette H. Sharp

3203284_1.DOC

alt

United States District Court
for the
District of Utah
August 3, 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 & OSTLER
57 W 200 S STE 350
SALT LAKE CITY, UT 84101-1655
EMAIL

Mr. Thomas M Melton, Esq.
SECURITIES AND EXCHANGE COMMISSION
15 W SOUTH TEMPLE STE 1800
SALT LAKE CITY, UT 84101
EMAIL

Richard G. Cook, Esq.
COOK & CO PLLC
2425 CATALINA DR
SALT LAKE CITY, UT 84121

Mary C. Gordon, Esq.
MANNING CURTIS BRADSHAW & BEDNAR LLC
THIRD FLOOR NEWHOUSE BLDG
10 EXCHANGE PL
SALT LAKE CITY, UT 84111
EMAIL