

David K. Broadbent, 0442  
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60 E. South Temple, Suite 2000  
Salt Lake City, Utah 84111-1031  
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2002 DEC 11 P 5:05

U.S. DISTRICT COURT  
DISTRICT OF UTAH

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UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

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SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

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

Defendants.

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**DECLARATION AND SIXTH  
REPORT OF RECEIVER**

Civil No. 2:02CV 0039C

Judge: Tena Campbell

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

1. This Declaration and Report of Receiver ("Declaration") is my sixth 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 two months of October and November, 2002 by the Receiver and by Holland & Hart LLP. In addition, I submit the most recent monthly bank statement (for the period through November

30, 2002) of the cash reserves of the Receivership estate, which are invested in an account at Wells Fargo Bank Northwest, N.A. (“Wells Fargo”).

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. I respectfully request that the Court enter the proposed Order provided that neither counsel for the Securities and Exchange Commission nor counsel for the Defendants state that they wish to be heard on the matters addressed in this Declaration and the proposed Order.

**Request for payment of fees and expenses.**

4. I attach hereto as Exhibits “A” and “B” true and correct copy of invoices for services rendered and expenses incurred for the months of October and November 2002, by me

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.

5. By agreement of the firm of Holland & Hart LLP, the hourly rates of the partners in the firm who have participated in the representation of the Receiver in this matter have been capped at \$235, even though the established hourly rates for such attorneys are in excess of the \$235 rate. The hourly rates of the firm's associates have also been lowered for their work on this matter.

In sum, the requested fees and expenses to be paid for the months of October and November, 2002, are as follows:

|   |              |
|---|--------------|
| Invoice from Receiver, Holland & Hart LLP | \$ 17,484.00 |
| Invoice from Holland & Hart LLP amount    | \$163,601.71 |
| Total                                     | \$181,085.71 |

6. The cumulative amounts invoiced in my first five reports are \$160,364.00 for my services rendered in my capacity as Receiver and \$1,093,064.88 by Holland & Hart LLP, in its capacity as counsel to the Receiver.

**Receiver's Activities.**

7. The following amounts have been recovered in the Receivership through November 30, 2002.

|                              |                |
|------------------------------|----------------|
| MSA Controlled Bank Accounts | \$3,569,749.14 |
| Sale of Park City Home       | 143,925.74     |
| MSA Insurance Commissions    | 127,867.77     |

|                                  |                       |
|----------------------------------|-----------------------|
| Mortgage Payments                | 68,056.50             |
| MSA Equipment/Furniture/Art Sale | 52,827.20             |
| Automobile Sales                 | 51,250.00             |
| Concilium Recovery               | 50,017.73             |
| Rent on Canyon Cove Home         | 12,500.00             |
| Bank Interest                    | 7,603.21              |
| MSA Lease Payments               | 6,346.11              |
| Kinjirushi USA                   | 72,961.12             |
| Miscellaneous                    | 2,484.05              |
| <b>Total:</b>                    | <b>\$4,165,588.57</b> |

8. The accompanying invoices detail the work of the Receiver and his counsel at Holland & Hart LLP on a wide variety of tasks. These fall under the following general categories:

**Marshalling Assets**

- Identifying and securing assets of Merrill Scott located in the United States and abroad. We have located bank accounts in the United States, Canada, the Cayman Islands, the Bahamas, Belize, Hong Kong, and other jurisdictions. We are negotiating with parties in the foreign jurisdictions to arrange for the recovery of assets held in the offshore jurisdictions, principally in the Bahamas, Belize, Dominica and the Cayman Islands. We have recently located investments in the Cayman Islands in the approximate amount of \$1,030,000.00, and have arranged for these amounts to be transferred to the Receiver within the next 90 days.

- Obtaining possession or control of two stock accounts with stock values of approximately \$1,800,000 in Canada and the United States. We are in the process of converting the account held by TD Evergreen Securities in Canada into cash for deposit into the Receivership account with Wells Fargo. The account in the United States is subject to margin loans, and we are reviewing possible actions to be taken with regard to the margin.
- Identifying, analyzing and managing other significant assets of Merrill Scott, including a portfolio of mortgage loans made by Merrill Scott, and a portfolio of leased assets in which Merrill Scott is the lessor.
- Arranging for the sale of real property, furnishings and art work in a home located in Park City, Utah. The Receiver completed the transaction, selling the furnished home for \$725,000, which resulted in the net recovery of \$143,925.73, after paying off the underlying debt, sales commission and closing costs. The sale of the Park City property was completed pursuant to confirmation by the Court.
- Arranging for the sale of art work owned by MSA. In November, the Receiver conducted an art auction, and has received payment for 8 pieces for a total of \$7,430.00. The Receiver is now reviewing options for selling the remaining art work.
- Foreclosing on the Legacy Capital, LLC deed of trust on approximately 400 acres in Brown's Canyon, Utah. The foreclosure was completed on October 16, 2002 for a credit bid of \$1,700,000.00. The Receiver is now working on the sale of the property.

- Obtaining and analyzing information about other real property included in the Receivership, including property located in Utah, Michigan, California, and Idaho, and working to convert certain of such holdings to cash.
- Tracking funds returned to Merrill Scott clients in the form of loans and other repatriation mechanisms.
- Working with computer specialists to recover information on the Merrill Scott computers that were seized by the FBI and the computers that were taken from Merrill Scott by its former officers and other employees.
- Coordinating with the Securities and Exchange Commission, Department of Justice and Internal Revenue Service regarding document production and review, identification of assets and claims, identification of potential witnesses and other information relating to potential Receivership claims and assets.
- Identifying and analyzing numerous court actions to which Merrill Scott is a party, in which the plaintiffs are seeking return of fees paid to Merrill Scott and the return of funds invested in Merrill Scott products. On June 18, 2002, this Court issued a Stay of Litigation with respect to these and similar actions.
- Dealing with claims from non-client creditors of Merrill Scott, including negotiating and reaching a preliminary agreement for a resolution of claims of LinkNet, Inc. against Merrill Scott in an amount in excess of \$600,000.
- Dealing with miscellaneous stock and other investments made by Merrill Scott, including an investment in Jotter Technologies, Incorporated. The receiver is

working with Jotter to liquidate certain stock holdings to satisfy an \$800,000 obligation owed to Merrill Scott.

- Maintaining contact with investors and clients of Merrill Scott and obtaining information about the investors and their participation with Merrill Scott and to providing ongoing information about the progress of the Receivership to Merrill Scott clients.
- On March 21, 2002, the Receiver filed a Complaint against CGI International Holdings, Inc.; Concilium Insurance Services, Inc.; Concilium Real Estate and Mortgage Services, Inc.; Concilium Planning Group, Inc.; Concilium Merchant Capital Group, Inc. (Collectively “Concilium”); Robert J. Hipple; Rod B. Read; Drew Roberts; Aaron A. Nilsen; and others. The Complaint alleges a scheme to divert the assets of MSA concocted by Hipple, former Chief Executive Officer of MSA, and carried out in part through International Planning Associates, Inc. (“IPA”) and Concilium. On March 26, 2002, a TRO was issued against Concilium, ordering an accounting examination of the books and records of Concilium. A Stipulated Order was entered on April 5, 2002 providing, among other things, that all funds in all identified Concilium bank accounts were to be transferred to the Receiver. Moreover, Concilium was required to deliver to the Receiver certain computer equipment and software and other assets which employees of Concilium had removed from the offices of Merrill Scott.

**Insurance Claims.**

9. The Receiver has filed a claim with Lloyds of London under the policy issued by Lloyds of London to Merrill Scott, Ltd. The claims were based on actions taken by Merrill Scott's officers, employees, and agents which led or may have led to losses incurred by Merrill Scott clients, as well as actions taken by employees and agents of Merrill Scott which led to losses suffered directly by Merrill Scott. The Receiver and his attorneys have been involved in extensive discussions and correspondence with Lloyds of London regarding the claims and coverage for the claims is either in dispute or under investigation by Lloyds of London and its attorneys. The Lloyds of London policy constitutes the largest contingent asset of the Receivership, and has a stated face amount of \$10,000,000.

**Plan of Distribution.**

10. The Receiver is currently identifying and categorizing claims related to the Receivership, including claims of investors, clients and creditors. This information has been collected through multiple sources, including mailings to MSA databases, cataloguing of bills and other claims received through the mail, contact with plaintiffs' counsel in pending litigation, telephone inquiries from MSA clients and submission of Investor Response Forms through the Receivership website.

In the past three months, the Receiver has spent significant time taking depositions of key witnesses, issuing subpoenas to locate critical information, and reviewing bank statements and other records to determine the location and original source of assets, as well as the potential claims against the pool of assets.

The Receiver is also assisting the Securities and Exchange Commission in its development of a proposed plan of distribution. This activity includes providing all information requested by the Securities and Exchange Commission related to the marshalling of assets and the identification, categorization and validation of claims. The Securities and Exchange Commission has expressed to the Receiver its desire to propose a plan of distribution sometime within the next few months.

**Wells Fargo Account Statement.**

11. I attach hereto as Exhibit "C" a true and correct copy of the monthly account statement of account number 576-2693405 in the name of the Receiver in Wells Fargo for the period ending November 30, 2002. As of that date, the account had a balance of \$ 2,639,370.26.

**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 by December 24, 2002, provided that neither counsel for the Securities and Exchange Commission or counsel for Defendants in this action state that they wish to be heard on the matters addressed in the Declaration and proposed Order.

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

Dated this 11th day of December, 2002.



David K. Broadbent, Receiver  
60 East South Temple, Suite 2000  
Salt Lake City, UT 84111  
(801) 595-7800

**CERTIFICATE OF SERVICE**

I certify that on the 11<sup>th</sup> of December, I served a copy of the foregoing document to the following by:

U.S. Mail, postage prepaid  
Hand Delivery  
Fax

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

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

Randall Mackey, Esq.  
Gifford W. Price, Esq.  
Mackey Price & Williams  
350 American Plaza II  
57 West 200 South  
Salt Lake City, UT 84101

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

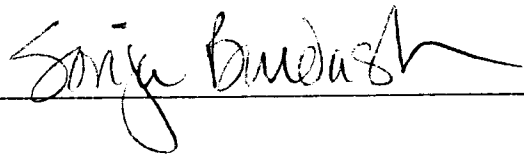
  
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Exhibit "C"

WELLS FARGO BANK NORTHWEST, N.A.  
P.O. BOX 6995  
PORTLAND, OR 97228-6995

Account Number: 576-2693405  
Statement End Date: 11/30/02

MERRILL SCOTT & ASSOCIATES LTD AND  
AFFILIATES  
DAVID BROADBENT, RECEIVER  
60 E SOUTH TEMPLE STE 2000  
SALT LAKE CITY UT 84111-1031

IF YOU HAVE ANY QUESTIONS ABOUT THIS STATEMENT OR YOUR ACCOUNTS,  
CALL: 800-225-5935 (1-800-CALL-WELLS).

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YOUR ACCOUNTS AT A GLANCE

| ACCOUNT<br>TYPE                           | ENDING<br>BALANCE |
|---|-------------------|
| BUSINESS DIVIDEND CHECKING<br>576-2693405 | 2,639,370.26      |

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Checking account and Wells Fargo Money Market Fund B  
summary  
Balance on 11/30 \$2,639,370.26  
Checking balance on 11/30 \$0.00  
Dividends earned this period \$501.62\*  
Dividends earned year to date \$9,381.25  
Minimum balance \$2,639,157.65  
Average balance \$2,672,884.16  
7-day current yield as of 11/30 .001637755%  
30-day current yield as of 11/30 .002268475%

NOT FDIC INSURED                      NO BANK GUARANTEE                      MAY LOSE VALUE

\*NOTE: The actual dividend amount will post to your account on the first  
business day of the following month and appear on your next statement.  
\*\*Capital Gains are automatically reinvested on the date of disbursement.

DEPOSITS AND DIVIDENDS -----

| DATE   | TRANSACTION DETAIL  | AMOUNT   |
|--------|---|----------|
| NOV 01 | DIVIDEND PAID/REINVESTED PRIOR MONTH<br>WELLS FARGO MONEY MARKET FUND B | 878.09   |
| NOV 12 | DEPOSIT   | 2,500.00 |
| NOV 12 | DEPOSIT   | 550.00   |

WITHDRAWALS AND DEBITS -----

| DATE   | TRANSACTION DETAIL  | AMOUNT  |
|--------|---|---------|
| NOV 05 | CLIENT ANALYSIS SRVC CHRG 021104 SVC<br>CHGE 1002 000005762693405 | - 42.93 |

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CONTINUED ON NEXT PAGE

MERRILL SCOTT & ASSOCIATES LTD AND  
AFFILIATES

PAGE 2 of 2

Account Number:

576-2693405

Statement End Date:

11/30/02

CHECKS PAID -----

| DATE   | AMOUNT     | DATE   | AMOUNT   |
|--------|------------|--------|----------|
| NOV 04 | 237,846.45 | NOV 14 | 50.00    |
| NOV 05 | 2,673.38   | NOV 27 | 2,787.39 |
| NOV 05 | 2,441.76   |        |          |

Money market fund sweep transactions

| Date   | Checking account | Market Fund   |
|--------|------------------|---------------|
| Nov 01 | \$878.09-        | \$878.09+     |
| Nov 01 | \$182.00-        | \$182.00+     |
| Nov 04 | \$235,406.45+    | \$235,406.45- |
| Nov 05 | \$5,158.07+      | \$5,158.07-   |
| Nov 13 | \$2,500.00-      | \$2,500.00+   |
| Nov 14 | \$500.00-        | \$500.00+     |
| Nov 27 | \$2,787.39+      | \$2,787.39-   |

+Denotes sweeps to the account

-Denotes sweeps from the account

Sweep transactions are settled in the Fund, and Fund shares are actually purchased and redeemed on the business day immediately following the day of the sweep shown above.

DAILY BALANCE SUMMARY -----

| DATE   | BALANCE      | DATE   | BALANCE      |
|--------|--------------|--------|--------------|
| OCT 31 | 2,881,284.08 | NOV 12 | 2,642,207.65 |
| NOV 01 | 2,882,162.17 | NOV 14 | 2,642,157.65 |
| NOV 04 | 2,644,315.72 | NOV 27 | 2,639,370.26 |
| NOV 05 | 2,639,157.65 |        |              |

Balances shown are each day's ending balances for the account overall, including both money in the bank account and money swept to the Money Market Fund.

INTEREST SUMMARY -----

YEAR TO DATE INTEREST AND BONUSES PAID 463.36

ACTIVITY CHARGE SUMMARY FOR THIS ACCOUNT-----

| ACTIVITY                       | VOLUME | PRICE   | CHARGE |
|--------------------------------|--------|---------|--------|
| ACCOUNT MAINTENANCE-CHEXSTOR   | 1.00   | 15.0000 | 15.00  |
| CREDITS POSTED                 | 2.00   | .2500   | 0.50   |
| DDA CHECKS PAID                | 5.00   | .1400   | 0.70   |
| MANAGED SWEEP ACCOUNT FEE      | 1.00   | 25.0000 | 25.00  |
| TOTAL NOVEMBER ACTIVITY CHARGE |        |         | 41.20* |

\*THIS CHARGE WILL BE POSTED TO YOUR ACCOUNT

FOR YOUR INTEREST

WELLS FARGO DOES PAYROLL. NOT ONLY DO WE OFFER NEXT DAY AVAILABILITY OF FUNDS, BUT ALSO A 90-DAY MONEY BACK GUARANTEE AND A BASIC BUSINESS CHECKING ACCOUNT FREE OF MONTHLY MAINTENANCE FEES WHEN IT IS USED TO FUND YOUR PAYROLL ACCOUNT. SIGN UP BETWEEN 11/1/02 AND 12/31/02 FOR FREE INSTALLATION (VALUE UP TO \$200). FIRST PAYROLL MUST BE PROCESSED BY 1/31/03. CALL 1-800-359-3557 EXTENSION 656 OR VISIT WELLSFARGOSPECIAL.COM AND ENTER KEYWORD PAYROLL2 FOR MORE INFORMATION.

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THANK YOU FOR BANKING WITH WELLS FARGO.