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**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.)

**DECLARATION AND
THIRTEENTH REPORT OF
RECEIVER**

Civil No. 2:02CV-0039C

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 LLOYDS,)
LONDON; and JAMES P. LANDIS,)
)
Third-Party Defendants.)

Judge Tena Campbell
Magistrate Judge David Nuffer

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

1. This Declaration and Report of Receiver (“Declaration”) is my thirteenth 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 December 2003 and January 2004 by the Receiver and by Holland & Hart LLP. In addition, I submit the most recent monthly bank statements (for the period through January 31, 2004) of the cash reserves of the Receivership estate, which are invested in two accounts 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 copies of invoices for services rendered and expenses incurred for the months of December 2003 and January 2004, 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 \$275, even though the established hourly rates for such attorneys are in excess of the \$275 rate.

In sum, the requested fees and expenses to be paid for the months of December 2003 and January 2004, are as follows:

Invoice from Receiver, Holland & Hart LLP	\$ 15,950.00
Invoice from Holland & Hart LLP	\$ 157,923.23
Total	\$ 173,873.23

6. The cumulative amounts invoiced in my first twelve reports are \$278,073.00 for my services rendered in my capacity as Receiver and \$2,487,113.09 by Holland & Hart LLP, in its capacity as counsel to the Receiver.

Receiver's Activities.

7. The Receivership has recovered \$163,962.81 in the two months covered by this Report. Total cash recoveries through January 31, 2004 are \$10,405,004.72, broken down as follows:

MSA Controlled Bank and Securities Accounts	\$7,141,810.23
Sale of Park City Home	143,925.73
MSA Insurance Commissions	166,193.80
Mortgage Payments/Payoffs	1,571,143.39
Automobile Sales	51,250.00
Concilium Recovery (in addition to insurance commissions)	50,017.73
Rent and sale of Canyon Cove Home	162,359.43
Bank Interest	16,933.06
MSA Lease Payments	26,278.34
Kinjirushi USA	121,205.55
MSA Equipment/Furniture/Art Sale/Misc	93,887.46
Investment Recovery	825,000.00
Brown's Canyon Earnest Money	35,000.00
Total:	\$10,405,004.72

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.

- Working with parties in foreign jurisdictions to arrange for the recovery of assets held in the offshore jurisdictions, principally in the Bahamas, Belize and Dominica.
- Obtaining possession of stock accounts held by TD Evergreen (formerly TD Waterhouse), resulting in receipt of \$542,238.81 in November, 2003.
- 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.
- 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 \$1,750,000.00. The Receiver had a contract for the sale of property for \$1,750,000.00 and had received approval from this Court for the sale. The Buyers failed to close as required under the contract and forfeited earnest money of \$35,000 to the Receiver. The Receiver is continuing his efforts to sell 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.
- Negotiating for the sale of Mr. Brody's former residence in Salt Lake City. The Receiver sold the home for \$675,000, providing a net recovery after commissions, costs of sale and the payment of the first mortgage of \$127,359.43.

- 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.
- Dealing with miscellaneous stock and other investments made by Merrill Scott, including a loan to Jotter Technologies, Incorporated. The Receiver settled the Jotter lawsuit in November, 2003 for \$825,000, recovering all of the principal and a substantial portion of the interest.
- 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 that employees of Concilium had removed from the offices of Merrill Scott. We have filed a motion for summary judgment, which is pending before this Court.

Insurance Claims.

9. The Receiver has previously filed a claim with Lloyds of London under the policy issued by Lloyds of London to Merrill Scott, Ltd. On March 28, 2003, the Receiver filed a Third-Party Complaint against Lloyds as part of this action, the filing of which was consented to by the Securities and Exchange Commission. The claims are 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 Lloyds of London policy constitutes the largest contingent asset of the Receivership. Lloyds of London has responded to the Receiver's complaint by alleging, among other defenses, that the Receiver is obligated to arbitrate coverage issues under the policy in London, England. The Receiver disputes this assertion. Lloyds of London and the Receiver have agreed to arbitrate coverage issues in the United States, and are negotiating an arbitration agreement to govern the arbitration proceedings.

Plan of Distribution.

10. The Receiver is working with the Securities and Exchange Commission to propose a claims procedure for the Court's approval. The procedure will include proposed claims forms for investors and creditors, a proposed bar date, a proposed mailing and publication procedure, as well as other relevant items.

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.

Wells Fargo Account Statement.

11. I attach hereto as Exhibit "C" true and correct copies of the monthly account statements of account numbers 576-2693405 and 390-9325726 in the name of the Receiver in Wells Fargo for the period ending January 31, 2004. As of that date, the accounts had balances of \$5,212,485.63 and \$1,891,359.45, respectively.

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 February 29, 2004 provided that neither counsel for the Securities and Exchange Commission nor 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 18th day of February, 2004.



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 18th day of February, 2004 I served a copy of the foregoing

document to the following by:

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

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