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

SECURITIES AND EXCHANGE)
COMMISSION,)

Plaintiff and Intervention Defendant,)

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 TWENTY-
EIGHTH 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

Exhibits Filed Under Seal Subject to
Order Entered December 19, 2005

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

1. This Declaration and Report of Receiver (“Declaration”) is my twenty-eighth 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 months of August 2008 through February 2009 by the Receiver and by the Receiver’s counsel, Holland & Hart LLP.

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.

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 period covered by this Declaration, 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.

In sum, the requested fees and expenses to be paid for the months of August 2008 through February 2009, are as follows:

| | |
|---|--------------|
| Invoice from Receiver, Holland & Hart LLP | \$ 26,950.00 |
| Invoice from Holland & Hart LLP | \$ 56,435.09 |
| Total | \$ 83,385.09 |

5. The cumulative amounts invoiced in my first twenty-seventh reports are \$731,709.00 for my services rendered in my capacity as Receiver and \$5,735,934.29 by Holland & Hart LLP, in its capacity as counsel to the Receiver.

Receiver's Activities.

6. The Receivership has recovered \$903,934.42 in the period covered by this Report, which sum is broken out as follows:

| | |
|--|--------------|
| MSA Insurance Commissions | \$22.69 |
| Shelton Powers Settlement/Gough Street | \$17,500.00 |
| Sale of Soda Springs, Idaho property | \$836,323.77 |
| Bank Interest | \$ 42,087.96 |
| Rod Read Settlement Installment Payments | \$ 8,000.00 |
| Total | \$903,934.42 |

Total cash recoveries from the commencement of the receivership through February 28, 2009, are \$25,945,738.24 and are detailed as follows:

| | |
|---|----------------|
| MSA Controlled Bank and Securities Accounts | \$8,697,047.92 |
|---|----------------|

| | |
|--|--------------|
| Sale ¹ of Park City Home | 143,925.73 |
| MSA Insurance Commissions | 170,322.69 |
| Mortgage Payments/Payoffs | 2,818,891.15 |
| Automobile Sales | 51,250.00 |
| Concilium Recovery | 50,017.73 |
| Rent and sale of Canyon Cove Home | 162,359.43 |
| Bank Interest | 1,198,676.43 |
| MSA Lease Payments | 36,278.34 |
| Kinjirushi USA | 156,874.35 |
| MSA Equipment/Furniture/Art Sale/Misc | 116,529.95 |
| Investment Recovery, including payment of Jotter Technologies Note and sale of Ocean Powers Technology Stock | 1,758,162.24 |
| Brown's Canyon Earnest Money and Cozean Settlement/Jordanelle | 3,791,664.70 |
| Trop 15 Settlement | 625,000.00 |
| EMM (Equity Managed Mortgage) | 1,058,424.80 |
| Sale of the West Bountiful Property | 38,375.05 |
| Sale of Redwood Road Property | 84,723.45 |
| Sale of the Richmond Street Property | 148,626.34 |
| Sale of Mira Vista Street Property | 439,632.49 |

¹ Where sale proceeds are listed the amount set forth represents the net sales proceeds after subtracting sales commissions, closing costs and amounts paid to any prior lien holders.

| | |
|---------------|------------------------|
| Settlements | 4,398,955.45 |
| Total: | \$25,945,738.24 |

7. The accompanying invoices detail the work of the Receiver and his counsel at Holland & Hart LLP on a wide variety of tasks. During the period covered by this report these matters fall under the following general categories:

- Negotiating for and closing the sale of Soda Springs, Idaho property. The property was acquired when the Receiver foreclosed on a Legacy Capital mortgage in 2005. The Receiver entered into a sales agreement for the sale of the property with Mr. Ward, who then defaulted under the sales agreement. The Receiver obtained \$50,000 in earnest money through negotiations and settlement with Mr. Ward. The Receiver located a replacement buyer and has sold the property to that buyer for the sum of \$840,000.00, resulting in a net payment, after commissions and expenses of sale, of \$786,323.77.
- Litigating and attempting to settle the claims of former Merrill Scott clients Greg and Portia Seely, with regard to the rights to certain intellectual property and marketing rights conveyed to Lennox Squire, a Merrill Scott entity, and payments due to Merrill Scott as a part of the Seelys' involvement with Merrill Scott. The Seelys assert that the assets should not be included in the receivership estate, and the Receiver believes that they should be. A third party, Jeremy Thorne, who claims rights in the intellectual property and marketing rights in dispute, has been added as a party to the dispute. The Receiver has attempted to settle the Seely

claims and engaged in mediation conducted by former Judge William Bohling. The settlement and mediation efforts have not been successful and the matter will be brought back to the Court for resolution.

- Investigating and negotiating the settlement of several contested claims and Equity Managed Mortgage matters with Duane and Geraldine Asp, Darrell Blegen, Alan Cahoon, and Jon McBride. The Court approved settlements with these parties that resulted in a reduction of their claims and payments of their loans.
- Investigating the claims filed by Ralf Leszinski and his related entities Labbie Holdings and the Leszinski Family Support Organization. The Receiver has rejected those claims inasmuch as the claims were incomplete and largely without merit and because of a fraud perpetrated against the Receivership by Mr. Leszinski. In addition to overstating his claims by over \$3,000,000, Mr. Leszinski sold his property in Atlanta, Georgia, which constituted security for his EMM loan from Legacy Capital, and diverted the loan proceeds that were payable to Legacy Capital to an entity by the same name that he created. The Receiver has negotiated a settlement with the title insurer who was involved with the sale of Mr. Leszinski's property. Under the settlement the Receiver is to receive \$1,000,000, and the Receiver will release the Legacy Capital lien against the property.

- Assisting in the preparation and review of federal and state (Utah and California) tax returns for the Receivership. Returns have been filed for the years 2002 through 2008.
- Analyzing claims and making a second interim distribution in the amount of \$6,455,236.12 following the Court's approval of the distribution on August 26, 2008. The distributions were made as follows:

| Name | Allowed Claim | Proportionate Share of Distribution | Reduction if Any | Check Amount |
|---|---------------------------------------|-------------------------------------|---|---------------------------|
| Glenn Argenbright | \$164,958.87 per settlement agreement | \$32,991.77 | | \$32,991.77 |
| Duane and Geraldine Asp and related entities | \$833,320.95 per settlement agreement | \$166,664.19 | | \$166,664.19 |
| Jeffrey C. Bermant | \$2,000,000.00 | \$400,000.00 | \$270,000.00 applied to EMM obligation under settlement agreement | \$130,000.00 |
| Darrell Blegen | \$2,600,416.36 | \$520,083.27 | \$246,238.44 applied to EMM obligation under settlement agreement | \$273,844.83 |
| Eric Bliss | \$185,000.00 | \$37,000.00 | | \$37,000.00 |
| Reed M. Bouchey | \$185,000.00 | \$37,000.00 | \$37,000.00 applied toward outstanding EMM loan | \$0 |
| Jeffrey and Lisa Bowen and affiliates and the | \$1,440,000.00 | \$288,000.00 | | \$377,798.31 ² |

² Includes \$89,798.31 from First Interim Distribution.

| Name | Allowed Claim | Proportionate Share of Distribution | Reduction if Any | Check Amount |
|---|----------------|-------------------------------------|--|---|
| Jeffrey & Lisa Bowen charitable Supporting Organization | | | | |
| Daryl Buddemeyer | \$400,000.00 | \$80,000.00 | | \$80,000.00 |
| Alan D. Cohoon | \$1,670,576.00 | \$334,115.20 | | \$334,115.20 |
| Mark Crosby | \$850,000.00 | \$170,000.00 | \$170,000.00 applied toward outstanding loan | \$0 |
| Rick Delamarter | \$500,000.00 | \$100,000.00 | | \$100,000.00 |
| Dowd Foundation | \$800,000.00 | \$160,000.00 | | \$160,000.00 |
| Enterplex LP | \$124,000.00 | \$24,800.00 | | \$24,800.00 |
| Val and Jana Eylands Elyands Charitable Support Organization | \$694,839.00 | \$138,967.80 | | \$138,967.80 |
| Henry J. Freeman | \$1,000,000.00 | \$200,000.00 | | \$200,000.00 |
| Richard Gerber | \$5,076,139.00 | \$1,015,227.80 | | \$1,015,227.80 |
| William Harper | \$106,000.00 | \$21,200.00 | | \$21,200.00 |
| Christopher Harrison AntiGravity, Inc. | \$51,520.61 | \$10,304.12 | | \$10,304.13 |
| HFZ Charitable Support Organization and Scott and Diana Haskins | \$823,460.55 | \$164,692.12 | | \$99,536.25 to HFZ Charitable Support Organization; \$65,155.87 to Scott and Diana Haskins |
| Patrick and Janet Hayes Patrick and Janet Hayes Charitable Support Organization | \$1,198,750.00 | \$239,750.00 | | \$239,750.00 |

| Name | Allowed Claim | Proportionate Share of Distribution | Reduction if Any | Check Amount |
|--|----------------|-------------------------------------|---|--------------|
| Melton J. and Lorraine B. Horwitz | \$135,000.00 | \$27,000.00 | | \$27,000.00 |
| Don Kang | \$710,000.00 | \$142,000.00 | | \$142,000.00 |
| Robert and Elizabeth Kelly | \$362,000.00 | \$72,400.00 | \$72,400.00 applied toward outstanding loan | \$0 |
| Eric Kooba | \$176,000.00 | \$35,200.00 | | \$35,200.00 |
| Scott and Deborah Kyle and Scott and Deborah Kyle Support Organization | \$582,019.00 | \$116,403.80 | | \$116,403.36 |
| Douglas MacKinnon | \$1,756,000.00 | \$351,200.00 | | \$351,200.00 |
| Jeffrey Mowrey | \$310,000.00 | \$62,000.00 | \$62,000.00 applied toward outstanding EMM loan | \$0 |
| Thomas J. Mynar | \$67,663.09 | \$13,532.62 | | \$13,532.62 |
| Jeffrey Nourse | \$521,414.04 | \$104,282.81 | \$222.00 deducted for wire and attorney fees in facilitating wire | \$104,060.81 |
| Pacific Coast Venture Corporation | \$459,000.00 | \$91,800.00 | | \$91,800.00 |
| William J. Puetz | \$150,000.00 | \$30,000.00 | | \$30,000.00 |
| Mario E. and Elva G. Rapanotti Charitable Support Organization | \$150,000.00 | \$30,000.00 | | \$30,000.00 |
| Rapanotti Partners, Ltd, LLP | \$32,500.00 | \$6,500.00 | | \$6,500.00 |
| Jay R. Sharp, Jr. | \$290,000.00 | \$58,000.00 | | \$58,000.00 |

| Name | Allowed Claim | Proportionate Share of Distribution | Reduction if Any | Check Amount |
|------------------------------------|------------------------|-------------------------------------|--|--|
| Jay R. Sharp, Sr. | \$3,531,157.80 | \$706,231.56 | | \$409,402.44 Fidelity Investments FBO Jay Sharp #636259403 \$296,829.12 Fidelity Investments FBO Jay Sharp #636248177 |
| Jeffrey Solla | \$610,000.00 | \$122,000.00 | \$122,000.00 applied toward outstanding EMM loan | \$0 |
| Chyrel E. Stoner | \$397,751.32 | \$79,550.26 | \$79,550.26 applied toward outstanding EMM loan | \$0 |
| Stokirk II Ltd. | \$410,000.00 | \$82,000.00 | | \$82,000.00 |
| Tolman Construction, Inc. | \$91,728.21 | \$18,345.64 | | \$18,345.64 |
| Valley Christian Schools | \$100,000.00 | \$20,000.00 | | \$20,000.00 |
| Jack Wells | \$175,000.00 | \$35,000.00 | | \$35,000.00 |
| Wendwell Construction, Inc. | \$210,000.00 | \$42,000.00 | | \$42,000.00 |
| Mark Wheeler | \$130,116.00 | \$26,023.20 | | \$26,023.20 |
| Michael G. & Cassandra S. Williams | \$116,350.00 | \$23,270.00 | | \$23,270.00 |
| Vance Yoakum | \$98,500.00 | \$19,700.00 | | \$19,700.00 |
| TOTAL | \$32,276,180.80 | \$6,455,236.16 | \$1,149,209.01 | \$5,485,623.34 |

Account Balances

8. Funds received by the Receiver are on deposit with Wells Fargo Bank. As of February 28, 2009, the balance in the accounts was \$4,760,478.61. Copies of the account statements for the months covered by this report are attached as Exhibit C.

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. The Securities and Exchange Commission has reviewed this Declaration with the Receiver and has no objection to the payment of the fees and expenses requested herein.

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

Dated this 26th day of March, 2009.

/s/ David K. Broadbent, Receiver
David K. Broadbent, Receiver
60 East South Temple, Suite 2000
Salt Lake City, UT 84111
(801) 799-5800

David K. Broadbent, 0442
Katherine N. Hansen, 9573
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff and Intervention Defendant,)

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

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,)

Judge Tena Campbell
Magistrate Judge David Nuffer

V.)

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

Whereas by this Court's January 23, 2002 Order Appointing Receiver, the Court appointed David K. Broadbent as Receiver for defendants Merrill Scott & Associates, Ltd., Merrill Scott & Associates, Inc. and Phoenix Overseas Advisors, Ltd., and all subsidiaries and affiliated entities (collectively "Merrill Scott");

WHEREAS, the Receiver, by Declaration and Twenty-Eighth Report of Receiver filed March 26, 2009, seeks permission to pay the reasonable fees and expenses of the Receiver and Holland & Hart LLP as permitted under Section II(i) of the Order Appointing Receiver, it is hereby

ORDERED that the Declaration and Twenty-Eighth Report of Receiver filed March 26, 2009, is hereby accepted and approved; and it is further

ORDERED that the Receiver may, pursuant to the Order Appointing Receiver, pay from the assets of Merrill Scott or the Receivership Estate: \$83,385.09 consisting of:

- A. the invoice of the Receiver dated March 23, 2009, for fees and expenses incurred in August 2008 through February 2009, in the amount of \$26,950.00; and
- B. the invoice of Holland & Hart LLP dated March 23, 2009, for fees and expenses incurred in August 2008 through February 2009, in the amount of \$56,435.09.

Dated March ____, 2009.

The Honorable Judge Tena Campbell
United States District Court for the
District Of Utah

CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2009 I electronically filed the foregoing with the Clerk of Court using CM/ECF system which will send notification of such filing to the following e-mail addresses:

Thomas M. Melton, Esq.
William B. McKean, Esq.
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/s/ David K. Broadbent