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

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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-  
FOURTH REPORT OF RECEIVER**

Civil No. 2:02CV-0039C

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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

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

1. This Declaration and Report of Receiver (“Declaration”) is my twenty-fourth 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 May through November, 2006 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. 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 period covered by this Declaration, 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.

In sum, the requested fees and expenses to be paid for the months of May through November, 2006, are as follows:

Invoice from Receiver, Holland & Hart LLP	\$ 71,379.50
Invoice from Holland & Hart LLP	\$586,370.67
Total	\$657,750.17

5. The cumulative amounts invoiced in my first twenty-three reports are \$727,996.60 for my services rendered in my capacity as Receiver and \$4,219,188.46 by Holland & Hart LLP, in its capacity as counsel to the Receiver.

**Receiver's Activities.**

7. The Receivership has recovered \$5,172,550.01 in the seven months covered by this Report. Total cash recoveries through November 30, 2006 are \$19,254,693.38. Cash recoveries from the inception of the receivership through November 30, 2006, are broken out as follows:

MSA Controlled Bank and Securities Accounts	\$7,144,236.23
Sale of Park City Home	143,925.73

MSA Insurance Commissions	166,300.16
Mortgage Payments/Payoffs	1,977,867.38
Automobile Sales	51,250.00
Concilium Recovery	50,017.73
Rent and sale of Canyon Cove Home	162,359.43
Bank Interest	487,672.25
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
<del>Trop-15 Settlement</del>	<del>625,000.00</del>
EMM (Equity Managed Mortgage)	597,000.00
Sale of the West Bountiful Property	38,375.05
Sale of Redwood Road Property	84,723.45
Settlements	1,866,456.39
<b>Total:</b>	<b>\$19,254,693.38</b>

8. 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:

**Marshalling and Consolidating Assets.**

- The Receiver has negotiated settlement of disputed EMM loans with several Merrill Scott clients, and has reached settlement agreements with MSA clients Dowd, Mahisikar and KDK Forging, Cotten, Serlin, White and Wood whereby amounts were paid to the Receiver and the clients' claims for any remaining distribution from the Receivership were waived in exchange for release of the disputed mortgages and deeds of trust, as follows:

MSA Claimant	Claims Released	Payment Received or To Be Made
Dowd	\$ 236,000	\$ 800,000 (paid)
Mahisekar and KDK Forging	713,788	50,000 (paid)
Cotten	751,970	104,102 (paid)
Serlin	3,554,695	290,000
White	1,540,689	569,684
D. Wood	1,727,000	575,000
<b>TOTAL</b>	<b>\$8,524,142</b>	<b>\$2,388,786</b>

- Negotiating for the sale of the Soda Springs, Idaho property. The property was acquired by the Receiver through a credit bid in the amount of \$560,000.00 when the Receiver foreclosed on the property in 2005. The Receiver has accepted an offer to sell the property for \$840,000, and is negotiating the terms of the sales agreement with the proposed purchaser. The \$840,000 sales price was achieved as the result of a private auction conducted by the Receiver over the course of

several weeks. Once the sales agreement is signed the Receiver will file an application for approval of the sale with the Court.

- Negotiating for the sale of property on Redwood Road in Salt Lake City, Utah. The sale was concluded in August, 2006, and resulted in net proceeds to the receivership of \$84,723.45.
- 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.
- Maintaining contact with investors and clients of Merrill Scott and obtaining information about the investors and their participation with Merrill Scott and providing ongoing information about the progress of the Receivership to Merrill Scott clients.
- The Receiver obtained a judgment against CGI International Holdings, Inc., Robert J. Hipple and Rodney B. Read. Mr. Hipple filed an appeal of the judgment to the 10th Circuit Court of Appeals, and the Receiver engaged in mediation required under the Rules of the 10th Circuit Court of Appeals and in other procedural matters related to the appeal. The appeal was dismissed on procedural grounds and the Receiver is now working to obtain a final judgment or dismissal of all parties so that the matter can be considered final for all purposes. The Receiver has also been engaged in negotiations with Rodney B. Read for

settlement of the amount of the judgment entered against Mr. Reed, based upon Mr. Reed's ability to pay.

- The Receiver has pursued litigation against former Merrill Scott client T. Shelton Powers, MD, regarding ownership of a condominium in San Francisco, California and a single-family residence in Salt Lake City, Utah. The Receiver believes the assets in dispute are properly included in the receivership estate, and Dr. Powers asserts that they are not. Dr. Powers executed a deed to the property, purportedly on behalf of Mira Vista, LLC, a Nevada limited liability company established by Merrill Scott, to himself after the receivership was established and after the Court's order freezing the assets of Merrill Scott had been entered. Immediately following the transfer Dr. Powers obtained a loan from an unrelated third party by pledging the property as collateral. An evidentiary hearing on the matter was held in November, 2006.
- The Receiver has pursued litigation against former Merrill Scott client Richard Gerber, MD, regarding assets sold to Merrill Scott by Dr. Gerber and assets acquired by MSA in connection with Dr. Gerber's involvement with Merrill Scott. Dr. Gerber asserts that the assets should not be included in the receivership estate, and the Receiver believes that they should be. The Receiver and Dr. Gerber have submitted memoranda to the Court, and Dr. Gerber's counsel has been given the opportunity to file a supplemental brief.
- The Receiver has been involved in litigation with 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, 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. The Receiver and the Seelys have submitted memoranda to the Court, participated in an evidentiary hearing regarding the matter. Shortly after the hearing began, the Court determined that the hearing should be suspended until a third party, Jeremy Thorne, who may have rights in the intellectual property and marketing rights in dispute, was given the opportunity to participate in the litigation should he choose to do so.

- The Receiver has also been engaged in litigation with Mr. Jeffrey Bermant, a former Merrill Scott client. Mr. Bermant claims that two loss of income policies that were issued by Gibraltar Permanent to two companies with which he was affiliated should be cancelled or rescinded and that the \$1,500,000 loan that he obtained from Legacy Capital, LLC, a Merrill Scott affiliate, should be likewise cancelled or subject to an offset against the premium amount he seeks to have returned from the loss of income policies. On December 12, 2006, the Court entered an order denying Mr. Bermant's motion for summary judgment and granted the receiver's motion for summary judgment.

- **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. 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. 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. Lloyds of London and the Receiver are arbitrating the coverage issues in the United States. Discovery is ongoing and a hearing date has been set for December of 2007, which was the earliest date the arbitration panel and Lloyds could make available. The Receiver also filed a complaint against Cooper Gay & Co. related to its involvement in the placement of the policy. The complaint against Cooper Gay has been dismissed, without prejudice, as premature..

**Plan of Distribution.**

10. On August 2, 2004, this Court entered an Order approving the claims procedures. This procedure included claims forms for investors and creditors, a bar date of November 1, 2004 (November 8, 2004 for certain specified claimants), mailing and publication procedures, as well as other relevant items. The Receiver has received and evaluated claims from 119 individual claimants.

The Receiver has assisted the Securities and Exchange Commission in its development of a proposed plan of distribution. This activity included providing all information requested by the

Securities and Exchange Commission related to the marshalling of assets and the identification, categorization and validation of claims.

**Account Balances** Funds received by the Receiver are on deposit with Wells Fargo Bank. As of November 30, 2006, the balance in the accounts was \$12,585,951.27. 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. Inasmuch as the Receiver has concluded the evidentiary hearings in this matter, I expect the fees and costs to decrease on an ongoing basis.

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

Dated this 20th day of December, 2006.

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

## CERTIFICATE OF SERVICE

I hereby certify that on December 20th, 2006 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.  
Securities and Exchange Commission  
Salt Lake District Office  
15 West South Temple, Suite 1800  
Salt Lake City, UT 84101

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.  
Russell C. Skousen, Esq.  
Mackey Price & Thompson  
350 American Plaza II  
57 West 200 South  
Salt Lake City, UT 84101

I hereby certify that on December 20th, 2006, I have mailed or served the document or paper to the following non CM/ECF participants in the manner (mail, hand-delivery, etc.) indicated by the non-participants name:

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Rodney G. Snow, Esq. (Via U.S. Mail – first class postage pre-paid)  
Clyde, Snow, Sessions & Swenson  
201 South Main, Suite 1300  
Salt Lake City, UT 84111

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/s/ Lynette H. Sharp