



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 March 2009 through October 2009 are as follows:

Invoice from Receiver, Holland & Hart LLP	\$ 22,190.00
Invoice from Holland & Hart LLP	\$ 31,058.16
Total	\$ 53,248.16

5. The cumulative amounts invoiced in my first twenty-eighth reports are \$758,659.00 for my services rendered in my capacity as Receiver and \$5,763,549.56 by Holland & Hart LLP, in its capacity as counsel to the Receiver.

**Receiver's Activities.**

6. The Receiver has recovered \$1,155,308.46 in the period covered by this Report, as follows:

Reed Bouchey Settlement	\$44,500.00
Chyrel Stoner Settlement	\$45,000.00
Ralph Lezinski-Legacy Capital-EMM Settlement	\$1,000,000.00
Lancaster Rey/Alan Johnson Settlement	\$55,000.00
Bank Interest	\$308.46
Rod Read Settlement Installment Payments	\$10,500.00
Total	\$1,155,308.46

Total cash recoveries from the commencement of the receivership through October 31, 2009, are as follows:

MSA Controlled Bank and Securities Accounts	\$8,697,047.92
Sale <sup>1</sup> of Park City Home	143,925.73
MSA Insurance Commissions	170,322.69
Mortgage Payments/Payoffs (includes the sale of the Soda Springs, Idaho property for \$786,323.77)	2,818,891.15
Automobile Sales	51,250.00
Concilium Recovery	50,017.73
Rent and sale of Canyon Cove Home	162,359.43

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<sup>1</sup> 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.

Bank Interest	1,198,984.89
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)	2,058,424.80
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 San Francisco Property	439,632.49
Settlements (Taskey, Dowd, Drexler, Mahesekar, Ross, Cotten, Wood, White, Licopantis, Bermant, Read, Caribou Land Title – Milton Ward, Lloyds of London, Kang, Herbolich, Powers – Gough St., Lancaster Rey – Alan Johnson, Bouchey and Stoner)	4,553,955.45
<b>Total:</b>	<b>\$27,101,046.70</b>

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:

- Attempting to settle and litigating the claims of former Merrill Scott clients Greg and Portia Seely with regard to their claim against the Receivership, their claim to certain software 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 Receiver attempted to settle the Seely claims and engaged in mediation conducted by former Judge William Bohling. The settlement and mediation efforts were not successful and the matter was brought back to the Court for resolution. On September 17, 2009, the Court entered its order granting the Receiver's motion for summary judgment and disallowed the Seelys' claim against the Receivership of \$1,557,044.00 for royalty payments they paid to Lennox Squire and offset their remaining allowable claim with amounts owed as royalties for their continued use of the Lennox Squire software rights. The Court ordered that once the offset is applied the software rights would revert back to the Seelys. The Seelys have appealed the Court's ruling to the 10<sup>th</sup> Circuit Court of Appeals and the appeal is pending.
- Investigating and negotiating the settlement of several contested claims and Equity Managed Mortgage matters with Reed Bouchey, Alan Johnson and Chyrel and O.C. Stoner. 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 rejected those claims because they were incomplete and largely without merit and because

of a fraud perpetuated against the Receivership by Mr. Leszinski. In addition to overstating his claims by over \$3,000,000, Mr. Leszinski sold property in Atlanta, Georgia, that constituted security for his \$1,000,00.00 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 made a commercial foreclosure of the property and negotiated a settlement with the title insurer that was involved with the sale of Mr. Leszinski's property. The Receiver received a settlement payment of \$1,000,000 in exchange for the release of 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.
- Investigating the claim of Joseph Firmage regarding his payments to Merrill Scott, analyzing the issues with regard to the late filing of his claim, and participating in hearings to determine the proper treatment of his claim.
- Responding to requests by the U.S. Department of Justice regarding criminal prosecutions of Patrick Brody and David Ross.

### **Account Balances**

8. Funds received by the Receiver are on deposit with Wells Fargo Bank. As of October 31, 2009, the balance in the accounts was \$5,826,463.50. Copies of the account statements for the months covered by this report are attached as Exhibit C.

As the account titled Merrill Scott & Associates, David Broadbent, Receiver, Legacy Mortgage Account was no longer needed, the account was closed on September 15, 2009. The closing balance of \$357,304.29 was transferred to the general Merrill Scott account.

#### 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 6<sup>th</sup> day of November, 2009.

/s/ David K. Broadbent, Receiver  
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