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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.)
)

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.)
)
)
)
)

**DECLARATION AND TWENTY-
SIXTH REPORT OF RECEIVER**

Civil No. 2:02CV-0039C

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-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 months of July 2007 through November 2007 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 counsel for the Defendants do not 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 five months of July 2007 through November 2007, are as follows:

Invoice from Receiver, Holland & Hart LLP	\$ 40,975.50
Invoice from Holland & Hart LLP	\$208,875.63
Total	\$249,851.13

5. The cumulative amounts invoiced in my first twenty-five reports are \$852,505.60 for my services rendered in my capacity as Receiver and \$5,134,683.43 by Holland & Hart LLP, in its capacity as counsel to the Receiver.

Receiver’s Activities.

6. The Receivership has recovered \$2,761,795.69 in the period covered by this Report, which sum is broken out as follows:

Return of Snow Christensen Martineau Retainer	\$ 6,221.35
TDWaterhouse Phoenix Overseas Advisors	\$ 24,200.34
Morgan Stanley	\$1,522,390.00
Korey Zweifel (Gough Street Condo Rent)	\$ 4,700.00
Bank Interest	\$182,232.86
Pater Loan Payoffs – Two Loans	\$171,424.80
Sale of the Richmond Street Property	\$148,626.34
Rod Read Settlement Installment Payments	\$2,000.00
Bermant Settlement	\$700,000.00
Total	\$2,761,795.69

Total cash recoveries from the commencement of the receivership through November 30, 2007 are \$23,179,423.45, and are broken out as follows:

MSA Controlled Bank and Securities Accounts	\$8,697,047.92
Sale of Park City Home	143,925.73
MSA Insurance Commissions	166,300.16
Mortgage Payments/Payoffs	1,982,567.38
Automobile Sales	51,250.00
Concilium Recovery	50,017.73
Rent and sale of Canyon Cove Home	162,359.43
Bank Interest	1,009,051.99
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
Settlements	3,102,243.89
Total:	\$23,179,423.45

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 the sale of Soda Springs, Idaho property. The property was acquired when the Receiver foreclosed on the property in 2005. The buyer failed to perform on a prior agreement for sale of the Property, and the Receiver is negotiating with the buyer regarding disposition of the earnest money deposit made by that buyer. The Receiver is now negotiating the terms of the sales agreement with another prospective purchaser.
- Negotiating for the sale of property on Richmond Street in Salt Lake City, Utah. The sale was concluded in August, 2007, and resulted in net proceeds to the receivership of \$146,626.34
- 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. (“CGI”), Robert J. Hipple and Rodney B. Read. Mr. Hipple filed an appeal of the judgment to the 10th Circuit Court of Appeals. The appeal was dismissed on procedural grounds and was re-filed by Mr. Hipple. The 10th Circuit recently remanded the case to the District Court for determination of whether Estate Planning Institute is an indispensable party in the Receiver’s action against CGI and Mr. Hipple. The Receiver has negotiated a settlement with Rodney B. Read for payment of \$100,000.00 in installments.
- The Receiver concluded his litigation against former Merrill Scott client T. Shelton Powers, MD, regarding ownership of a condominium in San Francisco, California, the Richmond Street property in Salt Lake City, Utah, and a lien filed against the Salt Lake property. The Court found that the assets in dispute are part of the receivership estate and declared the lien to be invalid. The Richmond Street property has been sold, and the condominium in San Francisco is now under contract for sale, with the closing expected to occur in December, 2007.
- The Receiver has also pursued litigation against former Merrill Scott client Richard Gerber, MD, regarding assets transferred to Merrill Scott by Dr. Gerber and other assets acquired by MSA at Dr. Gerber’s direction. Dr. Gerber asserted that the assets should not be included in the receivership estate. The Court ruled

that the assets are part of the Receivership, and Dr. Gerber appealed that ruling to the 10th Circuit. Dr. Gerber and the Receiver have settled his claims and obtained this Court's approval of the settlement. Under the settlement, Dr. Gerber recognized the Receiver's ownership of the contested properties, reduced the amount of Dr. Gerber's claim, and provided for the transfer of a home in San Diego, California to Ms. Lennar, who claimed an interest in the property, in exchange for a reduction by \$900,000.00 of amounts otherwise distributable to Dr. Gerber from the Receivership.

- 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, 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 obtained the Court's ruling regarding the claims of Mr. Jeffrey Bermant, a former Merrill Scott client. Mr. Bermant claimed that two loss of income policies that were issued by Gibraltar Permanent 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. Mr. Bermant appealed the Court's ruling to the 10th Circuit. Mr. Bermant and the Receiver have settled the matter. Under the settlement, Mr. Bermant agreed to pay to the Receiver of the sum of \$1,850,000.00. Mr. Bermant has paid the Receiver \$700,000.00 toward the settlement amount. In addition, the Receiver applied \$880,000.00 otherwise distributable to Mr. Bermant from the first interim distribution toward Mr. Bermant's remaining loan obligation.

Insurance Claims.

8. The Receiver filed a claim with Lloyds of London under the policy issued by Lloyds of London to Merrill Scott, Ltd. Lloyds of London has asserted that the policy is void because of misrepresentations and omissions made by Merrill Scott when it obtained the policy. Lloyds of London and the Receiver have been arbitrating the coverage issues and are currently negotiating the terms of a settlement.

Interim Distribution.

9. On October 30, 2007, this Court entered an Order approving the Receiver's proposed first interim distribution. The following schedule shows the amounts of the allowed claims, the sums distributed to the claimants, and the amounts otherwise distributable that were applied toward the EMM loan obligations of those claimants who had EMM loans from Merrill Scott.

Name	Allowed Claim	Proportionate Share	Reduction if Any	Check Amount
Jeffrey C. Bermant	\$2,000,000.00	\$880,000.00	\$880,000.00 applied to obligation under the settlement agreement	\$0
Eric Bliss	\$185,000.00	\$81,400.00		\$81,400.00
Reed M. Bouchey	\$185,000.00	\$81,400.00	\$81,400.00 applied toward outstanding loan	\$0
Daryl Buddemeyer	\$400,000.00	\$176,000.00		\$176,000.00
Alan D. Cohoon	\$1,670,576.00	\$735,053.44	\$639,585.40 applied toward outstanding loan	\$95,468.04
Mark Crosby	\$850,000.00	\$374,000.00	\$374,000.00 applied toward outstanding loan	\$0
Rick Delamarter	\$500,000.00	\$220,000.00		\$220,000.00
Dowd Foundation	\$800,000.00	\$352,000.00		\$352,000.00
Enterplex LP	\$124,000.00	\$54,560.00		\$54,560.00
Val and Jana Eylands Elyands Charitable Support Organization	\$694,839.00	\$305,729.16	\$110,150.68 loan to Eylands	\$195,578.48
Henry J. Freeman	\$1,000,000.00	\$440,000.00		\$440,000.00
Richard Gerber	\$5,076,139.00	\$2,233,501.16	\$900,001.16 per settlement agreement	\$1,333,500.00
William Harper	\$106,000.00	\$46,640.00		\$46,640.00
Christopher Harrison AntiGravity, Inc.	\$51,520.61	\$22,669.07		\$22,669.07

Name	Allowed Claim	Proportionate Share	Reduction if Any	Check Amount
HFZ Charitable Support Organization and Scott and Diana Haskins	\$823,460.33	\$362,322.65		\$218,979.74 to HFZ Charitable Support Organization; \$143,342.91 to Scott and Diana Haskins
Patrick and Janet Hayes Patrick and Janet Hayes Charitable Support Organization	\$1,198,750.00	\$527,450.00		\$527,450.00
Melton J. and Lorraine B. Horwitz	\$135,000.00	\$59,400.00		\$59,400.00
Don Kang	\$710,000.00	\$312,400.00	\$193,810.00 applied toward outstanding loan;	\$166,165.00 (includes return of \$47,575.00 overpaid on EMM)
Robert and Elizabeth Kelly	\$362,000.00	\$159,280.00	\$159,280.00 applied toward outstanding loan	\$0
Eric Kooba	\$176,000.00	\$77,440.00		\$77,440.00
Scott and Deborah Kyle and Scott and Deborah Kyle Support Organization	\$582,019.00	\$256,088.36		\$256,088.36
Douglas MacKinnon	\$1,756,000.00	\$772,640.00		\$772,640.00
Jeffrey Mowrey	\$310,000.00	\$136,400.00	\$136,400.00 applied toward outstanding loan	\$0
Thomas J. Mynar	\$67,663.09	\$29,771.76		\$29,771.76
Jeffrey Nourse	\$521,414.04	\$229,422.18		\$229,422.18

Name	Allowed Claim	Proportionate Share	Reduction if Any	Check Amount
Pacific Coast Venture Corporation	\$459,000.00	\$201,960.00		\$201,960.00
William J. Puetz	\$150,000.00	\$66,000.00		\$66,000.00
Mario E. and Elva G. Rapanotti Charitable Support Organization	\$150,000.00	\$66,000.00		\$66,000.00
Rapanotti Partners, Ltd, LLP	\$32,500.00	\$14,300.00		\$14,300.00
Jay R. Sharp, Jr.	\$290,000.00	\$127,600.00		\$127,600.00
Jay R. Sharp, Sr.	\$3,531,157.80	\$1,553,709.44	\$263,531.15 applied toward outstanding loan	\$1,290,178.29
Jeffrey Solla	\$610,000.00	\$268,400.00	\$268,400.00 applied toward outstanding loan	\$0
Chyrel E. Stoner	\$397,751.32	\$175,010.58	\$175,010.58 applied toward outstanding loan	\$0
Strokirk II Ltd.	\$410,000.00	\$180,400.00		\$180,400.00
Tolman Construction, Inc.	\$91,728.21	\$40,360.41		\$40,360.41
Valley Christian Schools	\$100,000.00	\$44,000.00		\$44,000.00
Jack Wells	\$175,000.00	\$77,000.00		\$77,000.00
Wendwell Construction, Inc.	\$210,000.00	\$92,400.00		\$92,400.00
Mark Wheeler	\$130,116.00	\$57,251.04		\$57,251.04
Michael G. & Cassandra S. Williams	\$116,350.00	\$51,194.00		\$51,194.00
Vance Yoakum	\$98,500.00	\$43,340.00		\$43,340.00
TOTAL	\$27,237,484.40	\$11,984,493.25	\$4,181,568.97	\$7,850,499.28

As of the October 4, 2007, hearing on the Receiver's Proposed Interim Distribution and Objections, several objections were outstanding. Of those objections, the claims of Alan Cohoon, Don Kang and Jay Sharp have been resolved, resulting in the payments and credits against outstanding EMM loan obligations for these individuals as outlined in the distribution schedule set forth above. The Receiver has also reached a settlement with Glenn Argenbright regarding his claim. Under the settlement agreement, which is subject to the Court's approval, the amount of Mr. Argenbright's allowed claim is \$164,958.87, and his proportionate share of the distribution is \$72,581.91. The distribution will be reduced by a credit toward Mr. Argenbright's lease obligation to MSA Leasing in the amount of \$55,000.00, resulting in a net payment to Mr. Argenbright in the amount of \$17,581.91.

Account Balances

10. Funds received by the Receiver are on deposit with Wells Fargo Bank. As of November 30, 2007, the balance in the accounts was \$8,370,185.43. 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 13 day of December, 2007.

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

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2007 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:

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