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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.)
)
)

(FILED UNDER SEAL)

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

Civil No. 2:02CV-0039C

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 twenty-third 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 five months of December 2005, January, February, March and April 2006 by the Receiver and by 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 months of December 2005, January, February, March and April 2006, 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 December 2005, January, February, March and April 2006, are as follows:

Invoice from Receiver, Holland & Hart LLP	\$ 39,205.50
Invoice from Holland & Hart LLP	\$309,314.96
Total	\$348,520.46

5. The cumulative amounts invoiced in my first twenty-two reports are \$688,791.10 for my services rendered in my capacity as Receiver and \$3,909,873.50 by Holland & Hart LLP, in its capacity as counsel to the Receiver.

Receiver's Activities.

7. The Receivership has recovered \$706,924.99 in the five months covered by this Report. Total cash recoveries through April 30, 2006 are \$14,082,143.37. In addition, on May 2, 2006, the Receiver obtained \$2,900,000.00 from the sale of the Jordanelle Note and on May 3, 2006, the Receiver obtained \$800,000.00 through settlement of the Dowd EMM claim. Cash recoveries through April 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	166,274.42
Mortgage Payments/Payoffs	1,862,496.55
Automobile Sales	51,250.00
Concilium Recovery	50,017.73
Rent and sale of Canyon Cove Home	162,359.43
Bank Interest	234,095.26
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	1,736,560.24
Brown's Canyon Earnest Money and Cozean Settlement/Jordanelle	891,664.70
Trop 15 Settlement	625,000.00
EMM	597,000.00
Sale of the West Bountiful Property	38,375.05
Settlements	69,205.39
Total:	\$14,082,143.37

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.

- Working with parties in foreign jurisdictions to arrange for the recovery of assets held in the Bahamas.
- Managing 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. The Receiver has also negotiated settlement of disputed loans with several Merrill Scott clients, and has reached settlement agreements with MSA clients Taskey and LaMarque, 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.
- Foreclosing the Legacy Capital, LLC Deed of Trust on undeveloped land in Wasatch County, Utah, located close to the Jordanelle Reservoir. During the period covered by this report the Receiver negotiated with a third party for the sale of the Receiver's interest in the Note and Deed of Trust for \$3,200,000.00, and the Court approved the transaction. On May 2, 2006, the Receiver received \$2,900,000.00, in exchange for his interest in the Note, and in addition to the \$40,000.00 in extension payments.

- Obtaining and managing real property included in the Receivership, including property located in Utah and Idaho.
- Tracking funds returned to Merrill Scott clients in the form of loans and other repatriation mechanisms.
- 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 to 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 under its complaint filed March 21, 2002. Mr. Hipple has 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 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.
- On April 5, 2005, the Receiver completed his foreclosure of a deed of trust held by Legacy Capital on property in the state of Idaho. The property was purchased

by the Receiver through a credit bid in the amount of \$560,000.00. The statutory redemption period has now expired. The Receiver is now attempting to sell the property, and is seeking a deficiency judgment against the maker of the note, Jan R. Christensen, Trustee of T.M.S. a Trust. The Receiver has received offers to sell the property for \$550,000, and is negotiating directly with two interested parties for the sale of the property.

- The Receiver has commenced litigation against Shelton D. Powers regarding ownership of a condominium in San Francisco, California and a single-family residence in Salt Lake City, Utah.

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. 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 proceeding with the arbitration. In September and October, 2005, the

Receiver took depositions in London, England of representatives of the lead underwriter for the Lloyd's policy and of Cooper Gay & Co., the placement agent for the policy. The Receiver also filed a complaint against Cooper Gay & Co. related to its involvement in the placement of the policy.

Plan of Distribution.

10. On August 2, 2004, this Court entered an Order approving the claims procedures. This procedure includes 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 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.

Settlement of Litigation and Dowd Claims.

11. During the period covered by this report, the Receiver settled the litigation pending between the Receiver and Rio de Caballos and Curt and Kathy Woods which dealt with ownership of Rio de Caballos, LC, a Nevada limited liability company. The result of the settlement was a waiver of all claims brought by those plaintiffs against the Receivership, and resulted in the payment to the Receiver of cash in the amount of \$40,000.00.

12. During the period covered by this Report the Receiver negotiated the settlement of claims made by John Dowd, Tina Dowd, Sylvan DePaul Services, LLC, and Dowd Marketing, Inc. (collectively, the "Dowd Parties") against the receivership estate and the

12. During the period covered by this Report the Receiver negotiated the settlement of claims made by John Dowd, Tina Dowd, Sylvan DePaul Services, LLC, and Dowd Marketing, Inc. (collectively, the "Dowd Parties") against the receivership estate and the Receiver's claims against those parties for amounts loaned to them by a Merrill Scott entity, Legacy Capital. The settlement resulted in the waiver of claims made by the Dowd Parties against the receivership estate and the payment to the Receiver of \$800,000 in satisfaction of the Dowd Parties' mortgage obligations to Legacy Capital. The payment was received in May, 2006.

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 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 _____ May 2006.

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

Receiver's claims against those parties for amounts loaned to them by a Merrill Scott entity, Legacy Capital. The settlement resulted in the waiver of claims made by the Dowd Parties against the receivership estate and the payment to the Receiver of \$800,000 in satisfaction of the Dowd Parties' mortgage obligations to Legacy Capital. The payment was received in May, 2006.

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 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 31st May 2006.



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 5/31/2006, 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

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10 Exchange Place, Eleventh Floor
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Randall Mackey, Esq.
Gifford W. Price, Esq.
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Mackey Price & Thompson
350 American Plaza II
57 West 200 South
Salt Lake City, UT 84101

I hereby certify that on May 31, 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:

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


