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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-
SECOND REPORT OF RECEIVER**

Civil No. 2:02CV-0039C

Judge Tena Campbell
Magistrate Judge David Snuffer

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

1. This Declaration and Report of Receiver (“Declaration”) is my twenty-second 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 three months of August, September, October, and November, 2005 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 August, September, October and November 2005, 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.

5. The hourly rates of the partners in the firm who have participated in the representation of the Receiver in this matter have been set at \$285, even though the established hourly rates for such attorneys are in excess of the \$285 rate.

In sum, the requested fees and expenses to be paid for the months of August, September, October and November 2005, are as follows:

Invoice from Receiver, Holland & Hart LLP	\$247,877.85
Invoice from Holland & Hart LLP	\$ 36,423.00
Total	\$284,300.85

6. The cumulative amounts invoiced in my first twenty-one reports are \$440,913.25 for my services rendered in my capacity as Receiver and \$3,873,450.50 by Holland & Hart LLP, in its capacity as counsel to the Receiver.

Receiver's Activities.

7. The Receivership has recovered \$68,050.29 in the four months covered by this Report. Total cash recoveries through November 30, 2005 are \$13,381,071.28, broken down 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	1,859,084.95
Automobile Sales	51,250.00
Concilium Recovery (in addition to insurance commissions)	50,017.73
Rent and sale of Canyon Cove Home	162,359.43
Bank Interest	136,684.77
MSA Lease Payments	36,278.34
Kinjirushi USA	156,874.35
MSA Equipment/Furniture/Art Sale/Misc	104,529.95
Investment Recovery, including payment of Jotter Technologies Note and sale of Ocean Powers Technology Stock	1,635,310.24
Brown's Canyon Earnest Money and Cozean Settlement	551,664.70
Trop 15 Settlement	625,000.00
EMM	450,000.00
Sale of the West Bountiful Property	38,375.05
Settlements	69,205.39
Total:	\$13,381,071.28

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. The Receiver is owed in excess of \$3,000,000.00 under the Deed of Trust.
- 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.

- Dealing with claims from non-client creditors of Merrill Scott.
- 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 has been involved 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. The Receiver expects the settlement to finalized soon.
- 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 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 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

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 will result in the payment to the Receiver of cash in the amount of \$40,000.00.

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 19th day of December 2005.



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

CERTIFICATE OF SERVICE

I certify that on the 19th day of December, 2005, I served a copy of the foregoing document to the following by:

- U.S. Mail, first class postage prepaid
- Hand Delivery
- Fax

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