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FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH
MAY 07 2002
BY MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,) **DECLARATION AND**
) **SECOND REPORT OF**
v.) **RECEIVER**
)
MERRILL SCOTT & ASSOCIATES, LTD) Civil No. 2:02CV 0039C
MERRILL SCOTT & ASSOCIATES, INC.)
PHOENIX OVERSEAS ADVISORS, LTD.)
GIBRALTER PERMANENTE ASSURANCE, LTD.)
PATRICK M. BRODY) Judge: Tena Campbell
DAVID E. ROSS II and)
MICHAEL G. LICOPANTIS,)
)
Defendants.)

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

1. This Declaration and Report of Receiver ("Declaration") is my 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 rendered and expenses incurred through March 31, 2002 by the Receiver and by Holland & Hart LLP. In addition, I submit the most recent monthly accounting statement (for the period through March 31, 2002) of the cash reserves of he

receivership estate, which are invested in an account at Wells Fargo Bank Northwest, N.A. (“Wells Fargo”).

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 Advisers, 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 endorse the proposed Order by May 22, 2002, provided that neither counsel for the Securities and Exchange Commission nor counsel for the Defendants states 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 copy of invoices for services rendered and expenses incurred 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. I have redacted the descriptions of time entries that would have revealed attorney work product or attorney-client communications. An un-redacted version is available for the Court’s in camera review at the Court’s request.

5. The amounts charged by Holland & Hart LLP have been discounted by the sum of \$10,000 for the attorneys’ services and have been further discounted by over \$4,000 by eliminating the costs charged for electronic research. Further, by agreement of the firm of Holland and Hart LLP, the hourly rates of the partners in the firm who have participated in the representation of the Receiver in this matter have been capped at \$235, even though the established hourly rates for such attorneys are in excess of the \$235 rate.

In sum, the requested fees and expenses to be paid are as follows:

Invoice from Receiver, Holland & Hart LLP	\$ 33,111.50
Invoice from Holland & Hart LLP amount	\$241,410.15
Total	\$274,521.65

6. The Receiver further requests the Court's authorization to reimburse Holland & Hart LLP the sum of \$10,669.00, representing funds paid advanced by Holland & Hart LLP to Bailey's Moving and Storage with regard to packing and moving materials from Merrill Scott's corporate offices, as shown on Exhibit "C" attached hereto.

7. The amount invoiced in my first report was \$44,485.50 for services rendered and expenses incurred by me in my capacity as Receiver and \$225,448.70 by Holland & Hart LLP, in its capacity as counsel to the Receiver.

8. I attach hereto as Exhibits "D" true and correct copies of the invoices for services rendered and expenses incurred by PricewaterhouseCoopers in connection with its accounting examination of the books and records of CGI International Holdings, Inc. and affiliates. These invoices include detailed reports of the time spent working on this matter as well as expenses incurred. The requested fees and expenses to be paid to PricewaterhouseCoopers are \$59,316.20 through March 31, 2002

Receiver's Activities:

9. As the accompanying invoices detail, the work of the Receiver and his counsel at Holland & Hart LLP has involved a wide variety of tasks. These tasks include:

Marshalling Assets

- Identifying and securing assets of Merrill Scott located in the United States and abroad. We have located bank accounts in the United States,

Canada, the Bahamas, Belize, Hong Kong, and other jurisdictions, totaling over \$4,000,000.

- Obtaining possession or control of two stock accounts with stock values of approximately \$1,800,000 in Canada and the United States.
- Identifying, analyzing, and managing other significant assets of Merrill Scott, including a large portfolio of mortgage loans made by Merrill Scott, in an amount in excess of \$16,000,000 and a portfolio of leased assets (in which Merrill Scott is the lessor) of approximately \$9,500,000.
- Obtaining and arranging for the sale of equipment, furniture and other personal property, including a luxury automobile.
- Arranging for the sale of real property, furnishings, and art work in home located in Park City, Utah.
- Obtaining and analyzing information about other real property, including property located in Utah, Michigan, California property, and Idaho.
- Arranging for sale of artwork located at former MSA office space, Park City home, and Canyon Cove home.
- Taking control or possession of over 200 boxes of documents and records related to Merrill Scott, and evaluating the materials obtained.

- Tracking funds returned to Merrill Scott clients in the form of loans or other repatriation mechanisms.
- Negotiating with parties in the foreign jurisdictions to arrange for the recovery of assets held in the offshore jurisdictions, principally in the Bahamas, Belize and Dominica.
- Working with computer specialists to recover information on the Merrill Scott computers that were seized by the FBI and the computers that were taken from Merrill Scott by its former officers and other employees.
- Coordinating with personnel of 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.
- Identifying and analyzing numerous court actions to which Merrill Scott is a party, in which the plaintiffs are seeking return of fees paid to Merrill Scott and the return of funds invested in Merrill Scott products. The Receiver has sought to obtain a voluntary stay of these cases to permit him to investigate the claims and, in April, filed a motion seeking an Order from this Court staying such actions, believing that they can best be

dealt with along with the other claims that have been made and will be made against Merrill Scott.

- 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.
- On March 21, 2002, the Receiver filed a Complaint against CGI International Holdings, Inc.; Concilium Insurance Services, Inc.; Concilium Real Estate and Mortgage Services, Inc.; Concilium Planning Group, Inc.; Concilium Merchant Capital Group, Inc. (Collectively “Concilium”); Robert J. Hipple; Rod B. Read; Drew Roberts; Aaron A. Nilsen; and others. The Complaint alleges a scheme to divert the assets of MSA concocted by Hipple, former Chief Executive Officer of MSA, and carried out in part through International Planning Associates, Inc. (“IPA”) and Concilium. On March 26, 2002, a TRO was issued against Concilium, ordering an accounting examination of the books and records of Concilium.
- The results of the accounting examination are summarized in a report entitled “Expert Report of Gil A. Miller (PricewaterhouseCoopers)

Relating To An Accounting Examination of CGI International Holdings, Inc. and Its Subsidiaries (amended April 3, 2002).” A copy of the report will be posted on the Receiver’s website.

- After a Preliminary Injunction hearing held before Judge Tena Campbell on April 4, 2002, a Stipulated Order was entered on April 5, 2002 providing, among other things, that all funds in all identified Concilium bank accounts were to be transferred to the Receiver. Moreover, Concilium was required to deliver to the Receiver certain computer equipment and software and other assets which employees of Concilium had removed from the offices of Merrill Scott.

Wells Fargo Account Statement.

10. I attach hereto as Exhibit “E” a true and correct copy of the monthly account statement of account number 576-2693405 in the name of the Receiver in Wells Fargo for the period ending March 31, 2002. As of that date, the account had a balance of \$3,346,379.72.


CONCLUSION

6. 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 by May 22, 2002, provided that neither counsel for the Securities and Exchange

Commission or counsel for Defendants in this action state that they wish to be heard on the matters addressed in the Declaration and proposed Order.

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

Dated this 7th day of May, 2002.

A handwritten signature in black ink, reading "David K. Broadbent". The signature is written in a cursive style with a large initial "D".

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 May 7, 2002, I served a copy of the foregoing document to the following by

U.S. Mail, postage prepaid
Hand Delivery
Fax

Thomas M. Melton, Esq.
William B. McKean, Esq.
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