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FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

OCT 16 2003

MARKUS B. ZIMMER, CLERK
BY _____
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

SECURITIES AND EXCHANGE)
COMMISSION,)

Plaintiff,)

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.)

**DECLARATION AND ELEVENTH
REPORT OF RECEIVER**

Civil No. 2:02CV-0039C

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.)

Judge Tena Campbell

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

1. This Declaration and Report of Receiver (“Declaration”) is my eleventh 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 two months of August and September, 2003 by the Receiver and by Holland & Hart LLP. In addition, I submit the most recent monthly bank statements (for the period through September 30, 2003) of the cash reserves of the Receivership estate, which are invested in two accounts 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 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 and September, 2003, 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. By agreement of the firm of Holland & 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 \$250, even though the established hourly rates for such attorneys are in excess of the \$250 rate. The hourly rates of the firm's associates have also been lowered for their work on this matter.

In sum, the requested fees and expenses to be paid for the months of August and September, 2003, are as follows:

Invoice from Receiver, Holland & Hart LLP	\$183,526.76
Invoice from Holland & Hart LLP	\$ 26,600.00
Total	\$210,126.76

6. The cumulative amounts invoiced in my first ten reports are \$234,873.00 for my services rendered in my capacity as Receiver and \$2,126,212.78 by Holland & Hart LLP, in its capacity as counsel to the Receiver.

Receiver's Activities.

7. The Receivership has recovered \$11,702.58 in the two months covered by this Report. Total cash recoveries through September 30, 2003 are \$8,627,204.96, broken down as follows:

MSA Controlled Bank Accounts	\$6,599,459.22
Sale of Park City Home	143,925.73
MSA Insurance Commissions	166,193.80
Mortgage Payments/Payoffs	1,375,048.23
Automobile Sales	51,250.00
Concilium Recovery (in addition to insurance commissions)	50,017.73
Rent on Canyon Cove Home	35,000.00
Bank Interest	14,852.50
MSA Lease Payments	26,278.34
Kinjirushi USA	93,791.95
MSA Equipment/Furniture/Art Sale/Misc	71,387.46
Total:	\$8,627,204.96

8. The accompanying invoices detail the work of the Receiver and his counsel at Holland & Hart LLP on a wide variety of tasks. These fall under the following general categories:

Marshalling Assets.

- Identifying and securing assets of Merrill Scott located in the United States and abroad. In addition to the ongoing efforts described below, in the last four months we have undertaken a substantial effort to uncover “hidden” assets. Merrill

Scott's business was to assist clients in complex strategies for shielding assets and income from the IRS and creditors, and the Receiver has received only limited cooperation from former Merrill Scott employees and clients in locating assets. The Receiver and the SEC also recently became aware that some of these hidden assets are now being converted by former Merrill Scott employees and/or clients. The SEC recently filed contempt motions against Patrick M. Brody and David E. Ross, II detailing the movement of hundreds of thousands of dollars that occurred after the appointment of the Receiver. Accordingly, the Receiver is undertaking a page-by-page review of all Merrill Scott documents to locate previously undisclosed bank accounts, brokerage accounts, stock certificates, promissory notes, mortgages and other assets. As of the date of this report, the newly uncovered potential assets include six loans totaling approximately \$1.3 million, 683 bank and brokerage accounts, and 15 stock certificates. This time consuming and expensive process is necessitated by Merrill Scott's poor record keeping as well as the apparent unwillingness of Merrill Scott's former employees and clients to disclose such information. The Receiver is confident that this process will continue to yield additional assets for the Receivership estate.

- We have analyzed over 170 bank and brokerage accounts at more than 25 banks and brokerage firms in seven countries (not including the newly uncovered assets described above). We have worked with these banks and brokerages to freeze funds and transfer them to the Receiver as appropriate. We have located bank and brokerage accounts in the United States, Canada, the Cayman Islands, the

Bahamas, Belize, Hong Kong, and other jurisdictions. We are continuing to work with parties in foreign jurisdictions to arrange for the recovery of assets held in the offshore jurisdictions, principally in the Bahamas, Belize and Dominica.

- Obtaining possession of stock accounts held by TD Waterhouse, resulting in receipt of \$826,417.39 on March 14, 2003. The United States accounts were subject to margin loans, and we are reviewing possible actions to be taken with regard to the margin. We have also requested that funds held by TD USA be liquidated and delivered to the Receiver.
- Identifying, analyzing and managing other significant 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. We have sent demands for payment on these loans and leases, and payments are now coming in at a faster rate. We will undertake foreclosure and other actions as necessary to collect these amounts.
- Arranging for the sale of real property, furnishings and art work in a home located in Park City, Utah. The Receiver completed the transaction, selling the furnished home for \$725,000, which resulted in the net recovery of \$143,925.73, after paying off the underlying debt, sales commission and closing costs. The sale of the Park City property was completed pursuant to confirmation by the Court.
- Arranging for the sale of artwork owned by MSA. In November 2002, the Receiver conducted an art auction, and has received payment for several of the

pieces of art. The Receiver is now reviewing options for selling the remaining artwork.

- Foreclosing on the Legacy Capital, LLC deed of trust on approximately 400 acres in Brown's Canyon, Utah. The foreclosure was completed on October 16, 2002 for a credit bid of \$1,750,000.00. The Receiver has received an offer for the property of \$1,750,000.00 and has received approval from this Court for the sale, which is now pending. The closing date has been extended.
- Obtaining and analyzing information about other real property included in the Receivership, including property located in Utah, Michigan, California, and Idaho, and working to convert certain of such holdings to cash.
- Tracking funds returned to Merrill Scott clients in the form of loans and other repatriation mechanisms.
- 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 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. On June 18, 2002, this Court issued a Stay of Litigation with respect to these and similar actions.

- Dealing with claims from non-client creditors of Merrill Scott.
- Dealing with miscellaneous stock and other investments made by Merrill Scott, including an investment in Jotter Technologies, Incorporated. The Receiver has filed a lawsuit against Jotter and another party to recover an \$800,000 obligation owed to 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. 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 that employees of Concilium had removed from the offices of Merrill Scott.

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. The Lloyds of London policy constitutes the largest contingent asset of the Receivership.

Plan of Distribution.

10. The Receiver is currently identifying and categorizing claims related to the Receivership, including claims of investors, clients and creditors. This information has been collected through multiple sources, including mailings to MSA databases, cataloguing of bills and other claims received through the mail, contact with plaintiffs' counsel in pending litigation, telephone inquiries from MSA clients and submission of Investor Response Forms through the Receivership website.

In the past several months, the Receiver has spent significant time taking depositions of key witnesses, issuing subpoenas to locate critical information, and reviewing bank statements

and other records to determine the location and original source of assets, as well as the potential claims against the pool of assets.

The Receiver is working with the Securities and Exchange Commission to propose a claims procedure for the Court's approval. The procedure will include proposed claims forms for investors and creditors, a proposed bar date, a proposed mailing and publication procedure, as well as other relevant items. This process has been complicated because of the nature of MSA's business—tax avoidance techniques and “asset protection” plans for clients—both of which include, in many cases, complex arrangements to transfer and/or hide the location and ownership of assets. To date, the Receiver believes that only about 25% of those who may have claims have submitted preliminary claims forms. A final procedure, with a set bar date for claims, will enable the gathering of additional information as to the claims against the Receivership estate as well as information relevant to an equitable plan of distribution.

The Receiver is also assisting the Securities and Exchange Commission in its development of a proposed plan of distribution. This activity includes providing all information requested by the Securities and Exchange Commission related to the marshalling of assets and the identification, categorization and validation of claims.

Wells Fargo Account Statement.

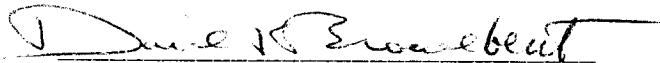
11. I attach hereto as Exhibit “C” true and correct copies of the monthly account statements of account numbers 576-2693405 and 390-9325726 in the name of the Receiver in Wells Fargo for the period ending September 30, 2003. As of that date, the accounts had balances of \$4,741,005.16 and \$1,066,070.67, respectively.

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 by October 30, 2003 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 16th day of October, 2003.



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 16th day of October, 2003, I served a copy of the foregoing document to the following by:

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

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