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FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH
MAR 15 2002
BY MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,) **DECLARATION AND**
) **REPORT OF RECEIVER**
)
v.)
) Civil No. 2:02CV 0039C
)
MERRILL SCOTT & ASSOCIATES, LTD)
MERRILL SCOTT & ASSOCIATES, INC.)
PHOENIX OVERSEAS ADVISERS, LTD.)
GIBRALTAR PERMANENTE ASSURANCE, LTD.) Judge: Tena Campbell
PATRICK M. BRODY)
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 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 February 28, 2002 by the Receiver and by Holland & Hart LLP. In addition, I submit the most recent monthly accounting statement (for the period through February 28, 2002) of the cash reserves of the 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 March 25, 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" a 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.

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

Invoice from Receiver, Holland & Hart LLP	\$ 44,485.50
Invoice from Holland & Hart LLP amount	\$225,448.70
Total	\$269,934.20

Background

5. Merrill Scott consists of a conglomerate of entities, organized in several states as well as the Bahamas, Dominica, Hong Kong, Panama and other foreign jurisdictions. Attached to this report as Exhibit "C" is an organization chart which we have assembled identifying the principal Merrill Scott entities. This organizational chart does not include the client related entities, which number over 200.

6. The core business of Merrill Scott was providing aggressive tax and asset protection planning to its clients, whom it would attract through advertising campaigns in magazines targeted to the "ultra wealthy," such as *The Robb Report*, *Wealth Magazine*, and *The DuPont Registry*. Merrill Scott would also solicit clients through its own senior financial consultants, located in various parts of the country, and by direct mail campaigns directed to CPAs and other participants in the tax and financial community.

7. As a part of its business, Merrill Scott offered a variety of "products" both directly and through its affiliated companies, including:

- A. Loss of Income Insurance Policy;
- B. Voluntary Employee Benefit Association (“VEBA”);
- C. Foreign Variable Annuity;
- D. 501(c)(3) Support Organization;
- E. Mutual Funds;
- F. Mortgage Loans;
- G. Automobile Leasing;
- H. Market Linked Deposits - an extremely aggressive tax shelter based on foreign currency trading; and

I. “Decontrolled Environment” using foreign hybrid stock companies and International Business Corporations, purportedly to remove a client’s assets from the jurisdiction of the United States for tax and “asset protection” purposes.

8. A representative diagram showing an actual and typical arrangement of the various products and entities promoted by Merrill Scott to its clients is attached hereto as Exhibit “D”. As noted on the attached diagram, an important element of many of the plans provided by Merrill Scott was the ability of its clients to obtain, purportedly on a tax-free basis, a return of funds invested in one or more of the products, either in the form of a mortgage loan, through use of a debit card, or other mechanism.

9. Merrill Scott clients would typically pay a planning fee of between \$10,000 and \$30,000 for a plan which would present the various entities and financial products available to their client. If a client elected to implement the plan, an

implementation fee of between \$75,000 and \$300,000 would be charged. The fees were collected by Merrill Scott and more recently by Estate Planning Institute, which was controlled by Merrill Scott.

10. Merrill Scott also invested client funds in several emerging businesses. Our preliminary investigations of these investments indicate that many of them are of doubtful value, but that some have potential for recovery. Merrill Scott's investment in one of the companies is the subject of litigation currently pending in the State of California. My attorneys and I are working to determine the value and possible recovery strategies for these investments.

11. Although I have received limited co-operation from the defendants and former employees in my efforts to locate and obtain control of the assets of Merrill Scott, three factors have made this task even more formidable and costly than would otherwise be expected. First, the very nature of Merrill Scott's business was to create a legal and business environment, using a web of domestic and foreign entities, that obfuscated and masked ownership and control of its various entities and client-related entities, with the stated purpose of removing them from the scrutiny of the United States Government and potential creditors. The offshore nature of Merrill Scott's business has increased the amount of time necessary to trace assets, and the limited cooperation of defendants and former employees has raised the cost of the Receivership.

12. Second, a majority of Merrill Scott's files were obtained by the FBI and IRS and have been available only on a limited basis, inasmuch as the FBI's personnel

have had to dedicate almost all of their time to Olympic security until very recently. We have, however, cataloged the contents of approximately 100 boxes in the possession of the FBI and now that the Olympics are over expect to obtain greater access to those documents. We have also obtained and reviewed over fifty boxes of documents from Merrill Scott's former offices.

13. Finally, almost all of the former officers and employees of Merrill Scott left Merrill Scott immediately following the entry of the Court's Temporary Restraining Order ("TRO") and commenced operating a competing business now known as Concilium Group, Inc. The break-off group, lead by Robert J. Hipple, formerly CEO of Merrill Scott, Rod Read, its former Chief Operating Officer, and Drew Roberts, its former Chief Financial Officer, includes nearly all Merrill Scott's planning attorneys and accountants. They have continued to offer products and services similar to those which Merrill Scott offered to its clients and have maintained contact with the former clients of Merrill Scott. The former officers and employees, now doing business as Concilium, have appropriated contacts and materials, and have diverted funds from Merrill Scott to their own purposes. Members of the break-off group broke also into Merrill Scott's offices after the TRO was entered and removed several computers, software, business records, customer lists, client and other files. Some but not all of the computers have been returned to the Receiver. Notably, computers used by Robert Hipple and Rod Read have not yet been returned. The Receiver is unable at this point to determine what materials may have been removed from the computers that were

returned, although the Receiver has engaged computer technicians to recover files that had been removed.

Receiver's Activities:

14. 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:

- 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. Both stock accounts were the subject of heavy margin borrowing by Merrill Scott.
- Identifying other significant assets of Merrill Scott, including a large portfolio of mortgage loans made by Merrill Scott. These loans represent funds loaned to clients of Merrill Scott and in some cases to non-clients, typically secured by trust deeds or mortgages on real property. The borrowers and the property securing the loans are located in numerous states.
- Obtaining possession of a home in Park City, one luxury automobile, high-end office furniture and original art, and attempting to locate and recover an additional vehicle owned by Merrill Scott as well as other tangible 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. Where a voluntary extension will not be given, the Receiver will seek a stay from this Court of 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.
- Establishing contact with investors and clients of Merrill Scott and creating a web page and investor response form to obtain information about the investors and their participation with Merrill Scott and to provide ongoing information about the progress of the Receivership to Merrill Scott clients.
- Investigating the actions of the former Merrill Scott officers and employees who have appropriated assets of Merrill Scott and preparing appropriate actions with regard to such group.
- Taking control or possession of over 100 boxes of documents and records from 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 voluntary repatriation of assets held in the offshore jurisdictions, principally in the Bahamas, Belize and Dominica.
- Seeking to compile an accurate list of Merrill Scott clients with an accounting of all assets transferred by the clients to Merrill Scott.
- 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.

Wells Fargo Account Statement.

15. 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 February 28, 2002. As of that date, the account had a balance of \$3,576,429.74.

CONCLUSION

16. 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 March 25, 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.

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

Dated this 15th day of March, 2002.

A handwritten signature in black ink that reads "David K. Broadbent". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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 March 15, 2002, I served a copy of the foregoing document to the following by

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

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