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FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH
AUG 15 2006
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

RECEIVED
AUG 14 2006
OFFICE OF
JUDGE TENA CAMPBELL

SECURITIES AND EXCHANGE COMMISSION

Civil Action No.2:02 CV 0039 C

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,

**FINAL JUDGMENT AS TO
DEFENDANT DAVID E. ROSS, II**

Judge Tena Campbell

Defendants.

Magistrate David Nuffer

The Securities and Exchange Commission having filed a Complaint and
Defendant David E. Ross, II having entered a general appearance; consented to the
Court's jurisdiction over Defendant and the subject matter of this action; consented to
entry of this Final Judgment without admitting or denying the allegations of the
Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and
waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in

interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting violations of Section 206(1) and (2) of the Advisors Act [15 U.S.C. §§ 80b-6(1) and (2)] to use the mails or any means or instrumentality of interstate commerce, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud any client or prospective client; or,
- (b) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, Defendant shall pay disgorgement of \$1.00 together with a civil penalty in the amount of

\$120,000.00 pursuant to Section 20(d) of the Securities Act, section 21(d) of the Exchange Act and Section 209(e) of the Investment Advisers Act of 1940. Defendant shall satisfy this obligation by paying \$30,000 within ten business days to the Court-appointed Receiver, together with a cover letter identifying David E. Ross as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall pay the remaining amount to the Court-appointed Receiver according to the following schedule: (1) \$7,500, within 30 days of entry of this Final Judgment; (2) \$7,500, plus post-judgment interest pursuant to 28 U.S.C. § 1961, within 60 days of the entry of this Final Judgment; (3) \$7,500, plus post-judgment interest pursuant to 28 U.S.C. § 1961, within 90 days of the entry of this Final Judgment; (4) \$7,500, plus post-judgment interest pursuant to 28 U.S.C. § 1961, within 120 days of the entry of this Final Judgment; (5) \$7,500, plus post-judgment interest pursuant to 28 U.S.C. § 1961, within 150 days of the entry of this Final Judgment; (6) \$7,500, plus post-judgment interest pursuant to 28 U.S.C. § 1961, within 180 days of the entry of this Final Judgment; (7) \$7,500, plus post-judgment interest pursuant to 28 U.S.C. § 1961, within 210 days of the entry of this Final Judgment; (8) \$7,500, plus post-judgment interest pursuant to 28 U.S.C. § 1961, within 240 days of the entry of this Final Judgment; (9) \$7,500, plus post-judgment interest pursuant to 28 U.S.C. § 1961, within 270 days of the entry of this Final Judgment; (10) \$7,500, plus post-judgment interest pursuant to 28 U.S.C. § 1961, within 300 days of the entry of this Final Judgment; (11) \$7,500, plus post-judgment interest pursuant to 28 U.S.C. § 1961, within 330 days of the entry of this Final Judgment; and (12) \$7,501, plus post-judgment interest pursuant to 28 U.S.C. § 1961, within 360 days of

the entry of this Final Judgment. Defendant shall simultaneously transmit photocopies of such payments and letters to the Commission's counsel in this action. By making these payments, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

The Commission may by motion propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant is liable for payment of a Contempt Judgment. Upon the dismissal of Defendant's appeal from the Contempt Judgment (SEC v. David Ross, No. 04-04304, 10th Cir. 2004), the Commission shall file a motion requesting that the Court set aside the monetary portion of the Contempt Judgment.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

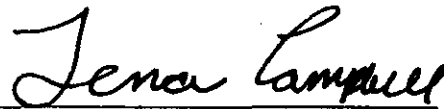
VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VIII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: August 15 2006



UNITED STATES DISTRICT JUDGE

Approved as to Form



Richard A. Van Wagoner
Snow, Christensen & Martineau
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Salt Lake City, Utah 84145
Attorney for David E. Ross