

1 MUNSCH HARDT KOPF & HARR, P.C.  
2 Dennis L. Roossien, Jr. (TX# 00784873)  
3 500 N. Akard Street, Suite 3800  
4 Dallas, Texas 75202-2790  
5 (214) 855-7500

6 MENNEMEIER, GLASSMAN & STROUD LLP  
7 Kenneth C. Mennemeier (SBN 113973)  
8 Stephen Lau (SBN 221051)  
9 980 9th Street, Suite 1700  
10 Sacramento, CA 95814  
11 E-mail: kcm@mgslaw.com

12 Attorneys for Examiner Steven A. Harr

13 UNITED STATES DISTRICT COURT  
14 EASTERN DISTRICT OF CALIFORNIA  
15 SACRAMENTO DIVISION

16 SECURITIES AND EXCHANGE  
17 COMMISSION,

18 Plaintiff,

19 v.

20 SECURE INVESTMENT SERVICES,  
21 INC., AMERICAN FINANCIAL  
22 SERVICES, INC., LYNDON GROUP,  
23 INC., DONALD F. NEUHAUS, and  
24 KIMBERLY A. SNOWDEN,

25 Defendants.

Case No. 2:07-cv-001724 GEB CMK

**EXAMINER'S STATEMENT AND  
BRIEF REGARDING MOTIONS  
TO ABANDON POLICIES**

Date: June 30, 2008  
Time: 10:00 a.m.  
Courtroom: 10

Date: July 28, 2008  
Time: 9:00 a.m.  
Courtroom: 10

26 TO THE HONORABLE UNITED STATES DISTRICT COURT:

27 Examiner Steven A. Harr ("Examiner") presents this Statement and Brief regarding the  
28 pending Motions to Abandon filed by the Receiver, respectfully stating:

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1 **Procedural Statement**

2 1. This submission concerns the Receiver's Motions to Abandon multiple owner  
3 insurance policies. The Court has set these Motions for hearing in two groups: the first set  
4 (Dkts. 155, 162, 168, 172, 176 and 180) on June 30, 2008 at 10:00 a.m. in Courtroom 10; and  
5 the second set (Dkts. 184 -190) on July 28, 2008 at 09:00 a.m. in Courtroom 10. This  
6 submission pertains to all of the Motions.

7 **Introduction**

8 2. The Examiner presents this submission in furtherance of his duty to speak to  
9 issues of concern to the investors, and to present the views of investors with which he has  
10 become familiar in carrying out his duties. The Receiver's requests to transfer ownership and  
11 subsequent motions for authorization to abandon certain policies have given rise to calls from  
12 many investors. The questions raised by these investors have prompted the Examiner to  
13 conduct his own analysis of a number of issues. The following summarizes those discussions  
14 and presents the views of various investors and the Examiner's own recommendations.

15 **Conflict of Investor Interests**

16 3. The investors who are impacted by the Receiver's Motions can be divided into  
17 four groups. The first group consists of the investors who paid money to the Defendants and  
18 received a book-entry interest in a particular policy that the Defendants continued to own (in  
19 other words, receivership owned policies). The other three groups consist of investors who  
20 paid money to the Defendants and received a direct ownership interest in a policy, meaning  
21 that their name is recorded at the insurance company as the owner of the policy (in other  
22 words, these are multi-owner policies). These three groups consist of those who are in favor of  
23 having the Receiver salvage those policies, those who are against having the receiver salvage  
24 those policies, and those with whom the receiver has been unable to communicate either  
25 because the investors cannot be located or because the investors are unable to understand the  
26 nature of the situation.

27 4. Each of these four groups have somewhat different interests. The first group  
28 has the most valuable policies, and those that can serve as collateral for the loan. This group of

1 investors has an interest in being treated separately from the other half of the investors. This  
2 group's policies can be salvaged either by sale or by a loan against the policies to pay  
3 premiums because the Receiver has the ability to sell or pledge these policies. Presently, this  
4 group's policies are serving as collateral for the loan that is allowing the Receiver to pay  
5 premiums on all of the policies. This group has an interest in not paying the premiums for  
6 policies that cannot be salvaged.

7 5. The second group consists of investors who own interests in multi-owner  
8 policies, but who wish for the Receiver to attempt to salvage these policies as well. These  
9 investors have signed documents transferring their percentage ownership to the policies. This  
10 group stands as innocent victims of the fraud who, by circumstance, hold ownership rights that  
11 are less valuable than those of the first group. These investors have an interest in being treated  
12 the same as the first group of investors. These investors also have an interest in persuading the  
13 third and fourth groups to join them because unless considerably more investors in the third  
14 and fourth groups join them, their collective shares of the subject policies are still not high  
15 enough to make their policies worth keeping.

16 6. The third group consists of investors who are situated the same as the second  
17 group, but who do not want the Receiver to attempt to salvage their policies. This group has an  
18 interest in proceeding separately and without the costs associated with the receivership. This  
19 group also has an interest in maintaining the status quo because if a multi-owner policy were to  
20 mature tomorrow, the death benefit would be paid directly to those owners. These investors  
21 would be paid roughly twice the value of their investment. Very likely, the funds that the  
22 receivership has advanced to this point would not be repaid, or at least not without substantial  
23 efforts to place a lien and/or to litigate with the insurance carriers and to collect sums from the  
24 individual investors. So, these investors have an interest in having the rest of the investors pay  
25 the premiums on their policies, and then collecting the death benefit. On the other hand, these  
26 investors also have an interest in not overplaying their hand, so to speak, because unless they  
27 really have an alternative means of paying the entire premiums on the policy, either through  
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1 personal funds or an alternative loan, then the abandonment of the policies will result in a total  
2 loss of their investment.

3 7. The fourth group consists of investors who are unable to communicate their  
4 views either because of limited address information or because they are unable to fully  
5 appreciate their financial position. In addition to having a mix of the interests of the second  
6 and third groups, this group has an interest in not losing the value of their investment simply  
7 due to a lack of communication.

### 8 **Investor Comments and Objections**

9 8. Although only one investor has filed a formal objection to the Motions, a large  
10 number of investors have spoken with the Examiner and/or his counsel concerning both the  
11 request of the Receiver to transfer ownership to the Receiver, and the pending Motions.

12 9. Generally speaking, investors favor transferring ownership to the Receiver. The  
13 vast majority of the conversations that have occurred have been the result of calls from  
14 investors who were attempting to determine whether or not to transfer their ownership to the  
15 Receiver. Generally speaking, after a relatively short discussion, investors expressed the view  
16 they very much prefer the Receiver's proposed corporate solution as opposed to attempting to  
17 proceed individually. Specifically, investors favor using a bank line of credit as long as  
18 possible, and, if necessary, salvaging the portfolio through a sale. These investors have no  
19 other alternative means of salvaging their investment and/or they view the Receiver as being as  
20 efficient as any other means of collective action. In other words, these investors fall into the  
21 second group.

22 10. The Examiner has also heard from some of the members of the third group.  
23 Within this group, there is also a relatively small, but vocal, contingent that does not trust the  
24 Receiver. These investors believe strongly that the life expectancies of the insureds are very  
25 short, and that even if premiums were paid over a period of ten years or more, the overall  
26 economic result would be positive. These investors believe that a transfer of ownership should  
27 not be made to the Receiver because of various objections to the receivership, such as the cost  
28 of the receivership and also the potential that the Receiver would sell the policies at the present

1 market value, which both the Examiner and the Receiver would likely estimate as considerably  
2 less than the amount invested originally in the scheme. It appears that there has been an active  
3 effort on the part of these investors to persuade other investors as to their point of view. There  
4 have been lengthy discussions with some of these investors. It does not appear that these  
5 investors have an alternative means of funding the premiums. One of the investors in this  
6 group has filed a formal objection that is of record. This objection further complains that there  
7 is not enough information available as to the potential life expectancy and similar due diligence  
8 information. These investors believe that the Receiver should expend further resources to  
9 determine the relative value of the subject policies. Since this information is not readily  
10 available to the Receiver, the Receiver has declined to expend further, essentially borrowed,  
11 money in order to provide additional information to this investor group. The position of the  
12 Receiver appears essentially to be that if it is a choice between something or nothing, the  
13 investors really do not need to know the precise value of their policies in order to make a  
14 decision, and the investors in the first and second groups have an interest in not seeing  
15 additional money spent on what would likely be expensive efforts to locate the insureds and  
16 persuade them to provide updated medical information. The Receiver is not in a superior  
17 position to obtain this information in many instances because of the nature of the contracts and  
18 documentation recovered from the Defendants.

19 11. With respect to the fourth group, the Receiver has made substantial efforts to  
20 contact these investors, and there remain some investors with whom there has been no contact.  
21 Additionally, there have been some conversations with investors who plainly do not understand  
22 the nature of their investment. Some of these investors have joined the second group. Some of  
23 these investors may not have responded at all.

24 **Examiner's Statement**

25 12. Having spoken with investors of various opinions and studied the matter  
26 extensively, the Examiner and his counsel are of the opinion that the collective approach being  
27 pursued by the Receiver is the only viable means of salvaging the policies. Having been  
28 directly involved in viaticals receiverships since 2003, the Examiner and his counsel are

1 familiar with the secondary market for insurance policies, both for what are called viaticals  
2 generally, and specifically for the subcategory known as "senior life settlements" or simply  
3 "life settlements." The senior life settlement market has been the subject of a number of  
4 schemes like that presented in this case where investors were told that the life settlements were  
5 backed by bonds that secured performance in the event of delayed maturity, or they were  
6 presented with unrealistic and unsound life expectancy projections. In view of these  
7 misrepresentations, it is not unusual for investors to pay as much as 50% of the face value of an  
8 insurance policy. In contrast, the insured likely sold the policy to the involved broker for  
9 perhaps 10% of its face value. Informed, sophisticated secondary purchasers of life settlement  
10 contracts typically pay between 10% and 30% of face value, depending on a number of factors.  
11 These factors include the ready availability of close communication with the insured, including  
12 access to medical records upon demand. Additionally, it is preferred that the ownership of the  
13 policy be in a trust or similar vehicle that allows for easy transfer of ownership, since insurance  
14 companies can be very difficult to deal with in the case of secondary owners of life settlements.  
15 At the very least, sophisticated purchasers require a transfer of the entire ownership so as to  
16 avoid the plight of owners such as those in group two described above.

17 13. In the case of the subject policies, there are a number of factors that diminish  
18 the value of these policies. First, a lender or secondary purchaser would expect to obtain full  
19 ownership. Second, the underlying contracts with the insureds and the nature of the records  
20 kept by the predecessor entities now in receivership are such that updated medical is not  
21 readily available. Third, in the absence of that information, more precise life expectancy  
22 information is not obtainable. All of these factors diminish the value of these policies.

23 14. A lender will only lend sums that are consistent with the value of the subject  
24 collateral. As a result, the borrowing ability of the Receiver is limited to the net value of the  
25 portfolio as a whole. If viewed on a policy-buy-policy basis, the Receiver's ability to borrow  
26 against the multi-owner policies is nil.

27 15. It may well be that the individual interest of the hold-out investors would dictate  
28 in favor of moving forward as a group. However, the Examiner has seen no evidence to

1 suggest that the hold-out investors are capable of organizing themselves in such a fashion.  
2 Under these circumstances, the Examiner anticipates that proceeding forward with only a  
3 partial interest in hand, the Receiver would essentially be borrowing against the good collateral  
4 in the portfolio to pay for a windfall for the non-participating investors.

5 16. The Examiner has considered whether or not the Court, given the broad powers  
6 of equity, would have authority to effect equitable relief that would assist the situation.  
7 Although the Examiner is of the opinion that the Court has the power to do so, it is unlikely  
8 that a lender would rest a loan upon such untested waters. This is particularly true in view of  
9 the adverse view of insurance carriers, who might well independently contest the action of the  
10 Court simply in an effort to hamstring the viatical/life settlement industry as a whole.

11 17. It may well be that a fair sale price is only roughly 10% of the face value  
12 involved in this case. Bearing in mind that annual premiums are often in the range of 5% of  
13 face, it is clear that even with 100% of the ownership of a policy, the Receiver's ability to lend  
14 money against the portfolio is limited. Without knowing with any certainty as to when a  
15 maturity might occur, the prospects of obtaining supplemental funds through a maturity is a  
16 rapidly evaporating hope as the premium debt increases. Hence, the salability of the assets  
17 comes increasingly to the fore.

18 18. In view of all of these considerations, the Examiner sees no alternative but to  
19 support the course of action proposed by the Receiver. The hold-out investors, whether  
20 intentionally or unintentionally, render the mulit-owner policies worthless. From the  
21 perspective, then, of maximizing the value of the estate, it does not make sense to take from the  
22 ability to salvage the better policies in order to further attempt to create a positive result for this  
23 minority of investors. The Court has the ability, in equity, to grant an equal share of the net  
24 salvaged amount to the investors who have offered to transfer their interests. If, on the other  
25 hand, the Court concludes that equitably various investors should not share in the net recovery,

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1 then the Court has the ability to even the playing field accordingly. But, it does not make sense  
2 to allow the third group to continue to extract an unfair advantage at the expense of the rest of  
3 the investors. Accordingly, the Examiner reluctantly supports the Motions.

4 Respectfully submitted,

5 MUNSCH HARDT KOPF & HARR, P.C.

6  
7 /s/ Dennis Roossien

8 Dennis L. Roossien, Jr.

9 MENNEMEIER, GLASSMAN & STROUD  
10 LLP

11  
12 /s/ Stephen Lau

13 Stephen Lau

14 COUNSEL FOR EXAMINER  
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