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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
11 SACRAMENTO DIVISION

13 SECURITIES AND EXCHANGE
COMMISSION,

14 Plaintiff,

15 v.

16 SECURE INVESTMENT SERVICES, INC.,
17 AMERICAN FINANCIAL SERVICES, INC.,
18 LYNDON GROUP, INC., DONALD F.
19 NEUHAUS, and KIMBERLY A. SNOWDEN,

20 Defendants.

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

**EXAMINER'S FIRST INTERIM
FEE APPLICATION**

Date: August 25, 2008
Time: 9:00 a.m.
Courtroom: 10

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24 TO THE HONORABLE UNITED STATES DISTRICT COURT:

25 Examiner Steven A. Harr ("Examiner") moves for an order directing payment of his
26 fees and expenses and that of his counsel herein, respectfully stating:

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1 **Introduction**

2 1. On December 3, 2007, the Court appointed the Examiner to work through
3 various investor issues that have arisen in this case as more specifically described in the
4 motion seeking his appointment (Dkts. 90-91).

5 2. Since that time, the Examiner and/or his counsel and staff have established
6 and periodically updated a website containing information and comments designed to inform
7 and to assist investors in evaluating various issues in the case, responded directly to many
8 investors on a variety of issues, corrected false and misleading information circulated by a
9 number of parties, evaluated possible alternative courses of action to those proposed by the
10 Receiver and discussed the relative merits of the Receiver's intended course of action, and
11 otherwise acted to represent the interests of the investors in this matter.

12 3. The Examiner now seeks compensation for those efforts.

13 **Facts**

14 4. This Application covers principally the period from the commencement of
15 activity in December 2007 through May 15, 2008.

16 5. As shown more fully on the billing statements attached hereto as Exhibit "A,"
17 the vast majority of the time taken to handle this matter has been spent talking to investors to
18 work through their comments, suggestions, questions, and concerns. The amount of time
19 taken has been directly proportional to the amount of time that investors have wished to spend
20 discussing these matters. Additionally, the extent of the Examiner's work in this case is
21 largely a function of the complexity of the issues and the level of misinformation being
22 introduced by certain parties.

23 6. Much of the time has been spent addressing the essential issue of how to
24 handle the difficulties posed to those investors involved in multiple owner policies. This issue
25 has arisen because long-term, third-party premium financing generally is not available for
26 multiple owner policies. As a result, the Receiver has asked this class of investors to modify
27 the ownership structure to conform to that of the other half of the portfolio, or, alternatively, the
28 investors in this class may choose to proceed separately. This is a difficult choice that

1 involves a consideration of many factors, and one that requires investors to appreciate the
 2 true facts of their situation in order to make an informed decision. In many cases, investors
 3 have had misimpressions as a result of the fraudulent or inaccurate statements of the
 4 Defendants, their own brokers, other promoters of the original scheme, or well-meaning but
 5 confused or misinformed investors and other third-parties. The Examiner and/or his counsel
 6 and staff have worked to provide accurate information and assistance to investors to allow
 7 them to appreciate their circumstances and to make informed decisions.

8 7. As shown on Exhibit "A," the total amount sought for this period is \$19,184.55.
 9 Specifically, the fees and expenses incurred are as follows:

Invoice	Date	Fees	Cost	Total
10191731	1/14/2008	2,305.00	0.00	2,305.00
10193208	2/19/2008	1,492.50	991.23	2,483.73
10194773	3/18/2008	5,658.00	52.07	5,710.07
10196406	4/17/2008	4,495.00	51.44	4,546.44
10198091	5/20/2008	4,100.50	38.81	4,139.31
		18,051.00	1,133.55	19,184.55

17 Consistent with the procedures established for professionals in the Order Appointing
 18 Receiver, these fees were incurred as was necessary and proper for the collection,
 19 preservation, maintenance, and operation of the Receivership Assets and Receivership
 20 Records.

21 Applicable Legal Standards

22 8. Although the present matter is an equitable receivership, analogous cases
 23 involving bankruptcy estates set forth an appropriate standard for evaluating applications for
 24 compensation. See Pennsylvania v. Delaware Valley Citizens Counsel for Clean Air, 478 U.S.
 25 546 (1986); Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974); Lindy
 26 Brothers Builders, Inc. v. Am. Radiator and Standard Sanitary Corp., 540 F.2d 102 (3rd Cir.
 27 1976); Copper Liquor, Inc. v. Adolph Coors Co., 624 F.2d 575 (5th Cir. 1980) ("Copper I") and
 28 Copper Liquor, Inc. v. Adolph Coors Co., 684 F.2d 1087 (5th Cir. 1982) ("Cooper II"); Hensley

1 v. Eckerhart, 461 U.S. 424, 103 S. Ct. 1933, 76 L.Ed.2d 40 (1983); In re Blum v. Stenson, 465
2 U.S. 886, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984); see also Meronk v. Arter & Hadden, LLP (In
3 re Meronk), 249 B.R. 208, 213 (9th Cir. BAP 2000), affd, 24 Fed. Appx. 737 (9th Cir. 2001)
4 (citing Burgess v. Klenske (In re Manoa Fin. Co.), 853 F.2d 687 (9th Cir. 1988)); In re
5 Buckridge, 367 B.R. 191 (Bankr. C.D. Cal. 2007) (citing Kerr v. Screen Extras Guild, Inc., 526
6 F.2d 67, 70 (9th Cir. 1975), cert. denied, 425 U.S. 951, 96 S.Ct. 1726, 48 L.Ed.2d 195 (1976)).

7 9. As shown in the above authorities, the Court is entitled to exercise its discretion
8 in taking into consideration a variety of factors, which are discussed below.

9 **Application of Legal Standards**

10 10. In similar fashion, Local Rule 54-293(c) lists the criteria to be considered for the
11 award of attorney's fees. The following addresses the application of certain of the factors
12 applicable to the circumstances of this case:

13 (1) Time and Labor Required. Attached as Exhibit "A" hereto are
14 statements setting forth the services rendered during the period covered by this
15 Application. The statements show that the time as set forth was actually expended in
16 carrying out the tasks detailed therein. The time expended and expenses incurred
17 were necessary, reasonable and appropriate under the circumstances of this case.

18 (2) The Novelty and Difficulty of the Issues. As explained in part above,
19 many of the issues raised in this case are novel and complex.

20 (3) The Skill Required to Perform the Service. A number of issues in this
21 case required a relatively high degree of skill and experience to address. The
22 Examiner and his counsel have directly relevant experience that has allowed them to
23 respond to this situation without incurring nearly as much time and expense as others
24 might under similar circumstances.

1 (4) The Preclusion of Other Employment Due to the Acceptance of the
2 Case. The Examiner has not declined any representation solely because of the
3 services rendered in this case.

4 (5) Customary Fee. The Examiner represents and would demonstrate that
5 the hourly rates charged are competitive and customary for the degree and skill of
6 expertise required in the performance of similar services rendered by other
7 experienced professionals in this District. Indeed, the rates were fixed and approved
8 at the time of his appointment (Dkt. 91).

9 (6) Whether the Fee is Fixed or Contingent. Although the professionals in
10 this matter are retained on the basis of a fixed hourly rate, the ability to compensate
11 these fees is subject to the limited and uncertain liquidity of the Receivership Estate,
12 as well as the potential for delays occasioned by the process of seeking approval by
13 this Court.

14 (7) Time Limitations. The Examiner and his counsel have been required to
15 respond promptly to investors. The Examiner has been unable to handle the volume
16 of inquiries personally at certain times and has therefore relied, in part, on his counsel
17 and staff for assistance.

18 (8) Amounts Involved and Results Obtained. This case involves in excess
19 of 600 investors who invested over \$31 million. Many have their life savings at stake.
20 As a result, the attention required to this matter in view of its seriousness is significant.
21 The results obtained by the Examiner are intangible, however, and difficult to measure.

22 (9) Counsel's Experience, Reputation and Ability. As noted above, the
23 Examiner and his counsel have directly relevant experience that has allowed them to
24 respond to this situation without incurring nearly as much time and expense as others
25 might under similar circumstances. The Examiner's counsel was not retained on the
26 basis of a particular reputation, although his counsel is regarded as good among those
27 familiar with securities enforcement receiverships.

28 (10) Undesirability. This matter is not undesirable.

1 (11) Nature and Length of Relationship. The Examiner retained the firm of
2 which he is a member.

3 (12) Awards in Similar Actions. This is a relatively modest application
4 compared to fees charged in similar cases for similar services. Mainly, this was
5 achieved because of the experience of the Examiner and his counsel in a related
6 action, and in other, similar actions.

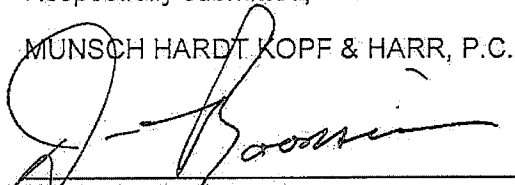
7 Conclusion

8 11. For the foregoing reasons, the Examiner requests approval and payment of
9 compensation for services rendered and reimbursement of actual and necessary out-of-
10 pocket expenses incurred as more fully set forth in the invoices attached as Exhibit "A."

11 Dated: July 9, 2008

12 Respectfully submitted,

13 MUNSCH HARDT KOPF & HARR, P.C.

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16 Dennis L. Rocssien, Jr.

17 MENNEMEIER, GLASSMAN & STROUD LLP

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19 _____
20 Kenneth C. Mennemeier

21 COUNSEL FOR EXAMINER
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