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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE	)	
COMMISSION,	)	2:07-cv-1724-GEB-CMK
	)	
Plaintiff,	)	
	)	
v.	)	<u>ORDER</u>
	)	
SECURE INVESTMENT SERVICES, INC.;	)	
AMERICAN FINANCIAL SERVICES, INC.;	)	
LYNDON GROUP, INC.; KIMBERLY	)	
SNOWDEN; and LINDA NEUHAUS, as	)	
Administrator and Personal	)	
Representative of the Estate of	)	
Donald F. Neuhaus,	)	
	)	
Defendants.*	)	
_____	)	

Evidentiary hearings were held in this action June 30, 2008 and July 28, 2008, on Michael J. Quilling's thirteen motions to abandon life insurance policies on which Mr. Quilling, the appointed Receiver for Secure Investment Services, Inc., American Financial Services, Inc. and Lyndon Group, Inc. (collectively, "the estate"),

\* The docket indicates that Linda Neuhaus is now deceased. (Statement of Fact of Death, July 8, 2008, Dkt. No. 217.) Since a new administrator for Donald Neuhaus's estate has not yet been appointed, the caption has not been amended to reflect Linda Neuhaus's death.

1 has paid 100% of the premiums since being appointed Receiver, even  
2 though the estate does not have 100% interest in the policies.

3 I. Background

4 Plaintiff Securities and Exchange Commission sought and  
5 received appointment of Mr. Quilling as the Receiver in this civil  
6 enforcement action, in which Plaintiff alleges Defendants engaged in a  
7 fraudulent scheme involving the sale to investors of interests in life  
8 insurance policies on the lives of other individuals.

9 Twenty-four policies are wholly owned by the estate, and the  
10 Receiver estimates there are potentially 660 claims which could be  
11 filed against these policies by investors who were sold interests in  
12 the policies, but the exact amount will not be known until claims are  
13 filed and processed. When the Receiver was appointed there were a  
14 total of twenty-seven wholly owned policies, but three of these  
15 policies have matured since the Receiver's appointment (meaning the  
16 insured died and the estate received or is in the process of receiving  
17 the life insurance proceeds).

18 There are an additional twenty-two policies which have  
19 multiple fractional owners; the estate is among the owners. The  
20 Receiver testified that there are between 200 and 500 different  
21 investors who potentially have claims against those twenty-two  
22 policies. In the pending motions the Receiver seeks to abandon the  
23 estate's interest in thirteen of these twenty-two policies so that he  
24 is authorized to discontinue paying the premiums on the abandoned  
25 policies.

26 II. Policies Sought to be Abandoned at June 30 Evidentiary Hearing

27 One of the policies the Receiver seeks to abandon is the  
28 BIE-F&L policy. Forty people and entities have fractional ownership

1 interests in that policy. The estate owns 1.25% of that policy, and  
2 has been paying 100% of the premiums for that policy since August  
3 2007, paying \$124,800 in premiums. The face value on that policy is  
4 \$4 million. The amount of premiums needed to keep the policy in force  
5 is \$41,000 per quarter. The current death benefit available should  
6 both insureds die would be \$4,032,444. This is what is called a  
7 second to die policy; it insures both the husband and the wife, and  
8 they both must die before a death benefit is paid. The amount of  
9 anticipated death benefit for the estate was \$50,506.76 when the  
10 premiums were paid. The Receiver testified the amount he has already  
11 spent on premiums is almost three times what the policy is worth to  
12 the estate.

13 To try to resolve this premium expenditure problem, the  
14 Receiver started sending letters in February to other investors in the  
15 policy in which he asked them to consider transferring their ownership  
16 interests to the estate, so that the estate would acquire sufficient  
17 ownership interest to justify continued payment of premiums to keep  
18 the policy from lapsing or to provide the estate with enough ownership  
19 interest for the Receiver to be in a position to sell the policy.  
20 Such transferees could be given claims against the estate. Some  
21 investors agreed to the transfer, and the total ownership interest the  
22 estate had in the policy sometime before the hearing was 56.6%, which  
23 equals a death benefit of approximately \$2,282,000.

24 The Receiver also proposes to abandon the KIL-D Policy.  
25 There are approximately twenty-three owners of the policy. At the  
26 time the Receiver was appointed the estate owned 4% of the policy.  
27 The quarterly premium was about \$12,784; the estate has paid \$41,700  
28 in premiums to keep the policy from lapsing. The face value on that

1 policy is \$925,000. The current death benefit available to the estate  
2 if the insured died would be \$37,053.88. The Receiver made the same  
3 offer to the investors referenced above to resolve the payment of  
4 premium problem, and the estate's ownership percentage increased to  
5 64.45%, which equals a death benefit of approximately \$596,000.

6 The Receiver also proposes to abandon the SHO-I(1) Policy.  
7 There are approximately twenty-three owners of the policy. At the  
8 time the Receiver was appointed the estate owned 4.49% of the policy.  
9 So far the estate has paid about \$64,000 in premiums. The planned  
10 premium payment per quarter is \$18,750, which is \$76,800 a year. The  
11 face value on that policy is \$1.5 million. The current death benefit  
12 available to the estate if insured died would be \$67,470. The  
13 Receiver made the same offer to the investors referenced above to  
14 resolve this estate payment of premium problem, and the estate's  
15 ownership percentage increased to 42.913%, which equals a death  
16 benefit of approximately \$643,695.

17 The Receiver also proposes to abandon the SLE-K(1) Policy.  
18 There are approximately fourteen owners of the policy. At the time  
19 the Receiver was appointed the estate owned 0.97% of the policy. So  
20 far the estate has paid about \$44,837 in premiums. The face value on  
21 that policy is \$666,666. The current death benefit available to the  
22 estate if insured died would be \$6,500. The premium payment per  
23 quarter is just less than \$8,000. The Receiver made the same offer to  
24 the investors referenced above to resolve this estate payment of  
25 premium, following which the estate's ownership percentage increased  
26 to 63.25% of the policy, which equals a death benefit of approximately  
27 \$421,000.

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1           The Receiver also proposes to abandon the SLE-K(2) Policy.  
2 There are eight owners of the policy. At the time the Receiver was  
3 appointed the estate owned 0.1% of the policy. So far the estate has  
4 paid about \$22,500 in premiums. The face value on that policy is  
5 \$666,666. The death benefit available to the estate if insured died  
6 would be \$695.73. The premium is \$33,260 a year. The Receiver made  
7 the same offer to the investors referenced above to resolve this  
8 estate payment of premium problem, following which the estate's  
9 ownership percentage increased to 10.63% of the policy, which equals a  
10 death benefit of approximately \$70,893.

11           The Receiver also proposes to abandon the SLE-K(3) Policy.  
12 There are fourteen owners of the policy. At the time the Receiver was  
13 appointed the estate owned 2.6% of the policy. So far the estate has  
14 paid about \$54,000 in premiums. The face value on that policy is \$1  
15 million. The death benefit available to the estate if insured died  
16 would be \$26,000. The premium is \$58,000 a year. The Receiver made  
17 the same offer to the investors referenced above to resolve this  
18 estate payment of premium problem, following which the estate's  
19 ownership percentage increased to 46.11% of the policy, which equals a  
20 death benefit of approximately \$461,194.

21       III. Policies Sought to be Abandoned at July 28 Evidentiary Hearing

22           The Receiver also proposes to abandon the ARM-A Policy.  
23 There are four owners of the policy. At the time the Receiver was  
24 appointed the estate owned 55.8% of the policy. So far the estate has  
25 paid about \$76,000 in premiums. The face value on that policy is  
26 \$250,000. The death benefit available to the estate if insured died  
27 would be \$139,500. The premium is approximately \$80,000 a year. The  
28 Receiver made the same offer to the investors referenced above to

1 resolve this estate payment of premium problem, following which the  
2 estate's ownership percentage increased to 70.8% of the policy, which  
3 equals a death benefit of approximately \$177,000.

4           The Receiver also proposes to abandon the BAU-R&L(1) Policy.  
5 There are twelve owners of the policy. At the time the Receiver was  
6 appointed the estate owned 1.2% of the policy. So far the estate has  
7 paid about \$32,250 in premiums. The face value on that policy is \$1  
8 million, but the policy's value has been reduced to \$617,545 due to a  
9 loan debt. The death benefit available to the estate if insured died  
10 would be \$7,248. The premium is \$129,000 a year. The Receiver made  
11 the same offer to the investors referenced above to resolve this  
12 estate payment of premium problem, following which the estate's  
13 ownership percentage increased to 21.53% of the policy, which equals a  
14 death benefit of approximately \$132,957.

15           The Receiver also proposes to abandon the BER-E&B(1) Policy.  
16 There are twelve owners of the policy. At the time the Receiver was  
17 appointed the estate owned 8.83% of the policy. So far the estate has  
18 paid about \$43,500 in premiums. The face value on that policy is  
19 \$458,770. The death benefit available to the estate if insured died  
20 would be \$40,545. The premium is \$27,384 a year. The Receiver made  
21 the same offer to the investors referenced above to resolve this  
22 estate payment of premium problem, following which the estate's  
23 ownership percentage increased to 40.69% of the policy, which equals a  
24 death benefit of approximately \$186,673.

25           The Receiver also proposes to abandon the BER-E&B(2) Policy.  
26 There are four owners of the policy. At the time the Receiver was  
27 appointed the estate owned 5.7% of the policy. So far the estate has  
28 paid about \$39,652 in premiums. The face value on that policy is

1 \$447,019. The death benefit available to the estate if insured died  
2 would be \$25,490. The premium is \$23,160 a year. The Receiver made  
3 the same offer to the investors referenced above to resolve this  
4 estate payment of premium problem, following which the estate's  
5 ownership percentage increased to 49.44% of the policy, which equals a  
6 death benefit of approximately \$221,006.

7 The Receiver also proposes to abandon the FOW-S(1) Policy.  
8 There are twenty-four owners of the policy. At the time the Receiver  
9 was appointed the estate owned 5.68% of the policy. So far the estate  
10 has paid about \$52,800 in premiums. The face value on that policy is  
11 \$1.5 million. The death benefit available to the estate if insured  
12 died would be \$85,327. The premium is \$40,920 a year. The Receiver  
13 made the same offer to the investors referenced above to resolve this  
14 estate payment of premium problem, following which the estate's  
15 ownership percentage increased to 74.83% of the policy, which equals a  
16 death benefit of approximately \$1.1 million.

17 The Receiver also proposes to abandon the QUI-W(1) Policy.  
18 There are twelve owners of the policy. At the time the Receiver was  
19 appointed the estate owned 4.3% of the policy. So far the estate has  
20 paid about \$21,835 in premiums. The face value on that policy is  
21 \$500,000. The death benefit available to the estate if insured died  
22 would be \$21,527. The premium is approximately \$60,000 a year. The  
23 Receiver made the same offer to the investors referenced above to  
24 resolve this estate payment of premium problem, following which the  
25 estate's ownership percentage increased to 66.65% of the policy, which  
26 equals a death benefit of approximately \$333,250.

27 Lastly, the Receiver proposes to abandon the QUI-W(2)  
28 Policy. There are twelve owners of the policy. At the time the

1 Receiver was appointed the estate owned 3.89% of the policy. So far  
2 the estate has paid about \$21,835 in premiums. The face value on that  
3 policy is \$500,000. The death benefit available to the estate if  
4 insured died would be \$19,482. The premium is approximately \$60,000 a  
5 year. The Receiver made the same offer to the investors referenced  
6 above to resolve this estate payment of premium problem, following  
7 which the estate's ownership percentage increased to 71.38% of the  
8 policy, which equals a death benefit of approximately \$356,900.

9 IV. The Receiver's Position

10 The Receiver testified he cannot sell the estate's  
11 fractional ownership interest in a policy since "there is no market  
12 for partial interest in a policy outside of entities such as the ones  
13 for whom [he] was appointed as Receiver for fractional interests." He  
14 explained "you can't control the policy [and] you're at the mercy of  
15 the other investors to pay their share of the premiums." To date the  
16 Receiver has paid the premiums for the policies with money borrowed  
17 using credit secured by the estate's wholly owned life insurance  
18 policies, or money received when three of the wholly owned life  
19 insurance policies matured.

20 The Receiver believes he faces three options:

21 (1) Keep the status quo. The Receiver believes this option  
22 is not preferable because it entails the Receiver continuing to pay  
23 the costly premiums on these policies even though the estate's share  
24 of the eventual payout would not come close to reimbursing the estate  
25 for the premiums.

26 (2) Charge the investors for their share of the premiums.  
27 The Receiver believes this option would not succeed because many  
28

1 investors have informed him they cannot afford to pay their share of  
2 the premiums.

3 (3) Abandon the estate's interest in these policies and stop  
4 paying the premiums on these policies. The Receiver believes this is  
5 the only financially viable option.

6 V. The Examiner's Position

7 An Examiner, Steven A. Harr, was appointed in this case to  
8 voice the collective interest of investors with respect to the  
9 Receiver's actions. The Examiner filed a statement concerning the  
10 pending motions stating "the Examiner sees no alternative but to  
11 support the course of action proposed by the Receiver" since "the  
12 hold-out investors" who did not transfer their ownership interests to  
13 the Receiver "render the . . . policies worthless" and "[f]rom the  
14 perspective . . . of maximizing the value of the estate, it does not  
15 make sense to take from the ability to salvage the [wholly owned]  
16 policies in order to further attempt to create a positive result for  
17 this minority of investors." (Examiner's Statement ¶ 18.)

18 VI. The Investors' Positions

19 Several of the investors in the policies at issue propose  
20 alternatives to abandoning the policies, the thrust of which is keep  
21 the policies afloat until the policies mature.

22 Some investors propose that the Receiver continue to pay the  
23 premiums until the policies mature and once the policies mature, the  
24 estate should receive payment for the substantial amount of the  
25 policies the Receiver now controls. The Receiver could then use this  
26 insurance payment to cover expenses and repay the loan, with the  
27 remainder being distributed to the investors. However, the problem  
28 with this is that the estate would be forced to shoulder the costs of

1 paying the expenses and premiums, while the investors who held out and  
2 did not transfer their shares to the Receiver would benefit from a  
3 windfall.

4           Some investors propose that the Receiver continue to pay the  
5 premiums until the policies mature, and that once the policies mature,  
6 the Receiver interpose himself between the insurance company and the  
7 investors to collect the entire insurance payment. Then the Receiver  
8 could repay the loan and expenses from the entire death benefits  
9 payout, and distribute the rest of the benefits to all of the  
10 investors in that policy pro rata based on their respective ownership  
11 interest. However, the problem with this proposal is that the  
12 Receiver appears to lack the authority to interpose himself when the  
13 policy matures in order to collect the entire insurance payment  
14 directly from the insurance company. Instead, the Receiver would be  
15 forced to collect the money from each investor individually in order  
16 to reimburse the estate, which could entail further lawsuits and more  
17 expenses to the estate. Further, this option would require the  
18 Receiver to remain in place for an indeterminate amount of time.

19           Lastly, Defendant Kimberly Snowden filed an objection after  
20 the hearing in which she argues:

21           Because the Receiver is in possession of the  
22 information concerning the date on which the  
23 Receiver needs to make the next payment on each  
24 policy, . . . [any order granting the motions]  
25 should be drafted in such a way as to authorize  
26 the Receiver to abandon the policy on a date  
27 certain before the Receiver is required to expend  
28 additional funds to pay premiums. [Authorizing  
the Receiver simply to abandon the policy "at his  
discretion" fails to provide enough notice to each  
of the investors who may wish to cooperate with  
the Receiver before his abandonment of the policy  
. . . .

1 (Snowden's Objection to Proposed Order, Dkt. No. 220.) Issuing an  
2 order directing the Receiver to determine the exact date he may be  
3 forced to abandon each policy and to inform the affected investors may  
4 benefit these investors; however, such an order would force the  
5 Receiver to incur additional expenses to the detriment of the estate  
6 which includes investors who have no interest in the policies at  
7 issue. Further, the affected investors have been given sufficient  
8 notice that the Receiver's abandonment of the policies is imminent.  
9 The letter the Receiver sent to investors stated that "[i]f some of  
10 the [investors] indicate that they are not willing to [transfer their  
11 interests to the estate], [the Receiver] may very well abandon the  
12 policy and quit paying premiums, in which event partial owners . . .  
13 will have to find a way to pay the premiums [on their own]." (Mot.  
14 for Authorization to Abandon the SLE-K(1) Policy, Exh. 2.) The  
15 Receiver's letter also stated that if investors "have any questions at  
16 all, please call [him] and [he] will be happy to discuss the matter"  
17 and provides a telephone number. (Id.) Moreover, the Receiver served  
18 copies of his motions on each affected investor. Thus, the expense to  
19 the estate of obtaining an order directing the Receiver to take  
20 further action to notify the investors about the abandonment is not  
21 justified since the investors have already received sufficient notice  
22 and may contact the Receiver to obtain additional information about  
23 the Receiver's activities.

#### 24 VII. Conclusion

25 It is evident from the record that the estate should not  
26 continue bearing the premium expenses required to keep the thirteen  
27 policies from lapsing, and that the Receiver should be authorized to  
28 discontinue paying the premiums for these policies. Equity does not

1 favor having the estate investors who have a minimal chance of  
2 receiving any benefit from paying the premiums to continue paying  
3 them.

4 For the foregoing reasons,

5 1. the Receiver's motion is granted and the Receiver is  
6 authorized to abandon, at his discretion, at such time as the estate  
7 is required to expend additional funds to pay premiums, the estate's  
8 interest in the life insurance policy number B10090477L in the face  
9 amount of \$4,000,000.00 issued by American General Life, referred to  
10 in Receiver's motion as the BIE-F&L Policy;

11 2. the Receiver's motion is granted and the Receiver is  
12 authorized to abandon, at his discretion, at such time as the estate  
13 is required to expend additional funds to pay premiums, the estate's  
14 interest in the life insurance policy number 7087159 in the face  
15 amount of \$1,500,000.00 issued by Lincoln National Life Ins. Co.,  
16 referred to in Receiver's motion as the SHO-I(1) Policy;

17 3. the Receiver's motion is granted and the Receiver is  
18 authorized to abandon, at his discretion, at such time as the estate  
19 is required to expend additional funds to pay premiums, the estate's  
20 interest in the life insurance policy number 92252406 in the face  
21 amount of \$925,000.00 issued by Transamerica Occidental, referred to  
22 in Receiver's motion as the KIL-D Policy;

23 4. the Receiver's motion is granted and the Receiver is  
24 authorized to abandon, at his discretion, at such time as the estate  
25 is required to expend additional funds to pay premiums, the estate's  
26 interest in the life insurance policy number UL00256941 in the face  
27 amount of \$666,666.00 issued by John Hancock Mutual Life, referred to  
28 in Receiver's motion as the SLE-K(1) Policy;

1 5. the Receiver's motion is granted and the Receiver is  
2 authorized to abandon, at his discretion, at such time as the estate  
3 is required to expend additional funds to pay premiums, the estate's  
4 interest in the life insurance policy number UL00257151 in the face  
5 amount of \$666,666.00 issued by John Hancock Mutual Life, referred to  
6 in Receiver's motion as the SLE-K(2) Policy;

7 6. the Receiver's motion is granted and the Receiver is  
8 authorized, at his discretion, at such time as the estate is required  
9 to expend additional funds to pay premiums, to abandon the estate's  
10 interest in the life insurance policy number 6278282845 in the face  
11 amount of \$1,000,000.00 issued by New York Life, referred to in  
12 Receiver's motion as the SLE-K(3) Policy;

13 7. the Receiver's motion is granted and the Receiver is  
14 authorized, at his discretion, at such time as the estate is required  
15 to expend additional funds to pay premiums, to abandon the estate's  
16 interest in the life insurance policy number E00071834 in the face  
17 amount of \$250,000.00 issued by Protective Life Insurance Company,  
18 referred to in Receiver's motion as the ARM-A Policy;

19 8. the Receiver's motion is granted and the Receiver is  
20 authorized, at his discretion, at such time as the estate is required  
21 to expend additional funds to pay premiums, to abandon the estate's  
22 interest in the life insurance policy number 1A2259108-0 in the face  
23 amount of \$1,000,000.00 (with a current death benefit of \$617,545.30)  
24 issued by Pacific Life Insurance Company, referred to in Receiver's  
25 motion as the BAU-R&L(1) Policy;

26 9. the Receiver's motion is granted and the Receiver is  
27 authorized, at his discretion, at such time as the estate is required  
28 to expend additional funds to pay premiums, to abandon the estate's

1 interest in the life insurance policy number L051178300 in the face  
2 amount of \$458,770.00 issued by Allmerica Financial, referred to in  
3 Receiver's motion as the BER-E&B(1) Policy;

4 10. the Receiver's motion is granted and the Receiver is  
5 authorized, at his discretion, at such time as the estate is required  
6 to expend additional funds to pay premiums, to abandon the estate's  
7 interest in the life insurance policy number L053968800 in the face  
8 amount of \$447,019.00 issued by Allmerica Financial, referred to in  
9 Receiver's motion as the BER-E&B(2) Policy;

10 11. the Receiver's motion is granted and the Receiver is  
11 authorized, at his discretion, at such time as the estate is required  
12 to expend additional funds to pay premiums, to abandon the estate's  
13 interest in the life insurance policy number 600008818 in the face  
14 amount of \$1,500,000.00 issued by Southland Life Ins. Co., referred to  
15 in Receiver's motion as the FOW-S(1) Policy;

16 12. the Receiver's motion is granted and the Receiver is  
17 authorized, at his discretion, at such time as the estate is required  
18 to expend additional funds to pay premiums, to abandon the estate's  
19 interest in the life insurance policy number BU1060089 in the face  
20 amount of \$500,000.00 issued by Mutual of Omaha, referred to in  
21 Receiver's motion as the QUI-W(1) Policy; and

22 13. the Receiver's motion is granted and the Receiver is  
23 authorized, at his discretion, at such time as the estate is required  
24 to expend additional funds to pay premiums, to abandon the estate's  
25 interest in the life insurance policy number BU1063056 in the face

26 ///

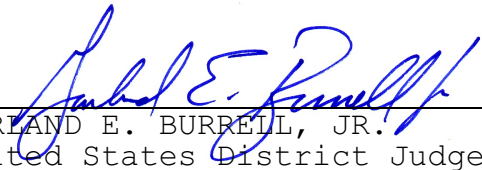
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1 amount of \$500,000.00 issued by Mutual of Omaha, referred to in  
2 Receiver's motion as the QUI-W(2) Policy.

3 IT IS SO ORDERED.

4 Dated: July 28, 2008

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8 GARLAND E. BURRELL, JR.  
9 United States District Judge  
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