

BOUTIN GIBSON DI GIUSTO HODELL INC.

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**QUILLING, SELANDER, CUMMISKEY
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Attorneys for Michael J. Quilling
Receiver of Defendants Secure Investment Services, Inc.,
American Financial Services, Inc., and Lyndon Group, Inc.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

Case No. 2:07-cv-01724 GEB CMK

**RECEIVER’S NOTICE OF
RECEIVER’S FOURTH INTERIM
APPLICATION TO ALLOW AND
PAY ATTORNEY’S FEES AND
EXPENSES OF LOCAL COUNSEL**

Date: February 9, 2009

Time: 9:00 a.m.

Courtroom: 10

TO: THE PARTIES AND ALL COUNSEL OF RECORD:

On February 9, 2009, at 9:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Garland E. Burrell, Jr., at the U.S. District Court for the Eastern District of California, 501 I Street, Sacramento, California, Michael J. Quilling, the Receiver appointed in these proceedings, (“Receiver”), will apply to this Court for an Order allowing payment of attorney’s fees and expenses of Local Counsel.

1 The application will be based upon Receiver's Application and Brief in Support, the
2 papers on file in this matter and any testimony or argument received by the Court during the
3 hearing on the motion. A proposed order is submitted contemporaneously with this motion.

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5 Respectfully submitted,

6 BOUTIN GIBSON DI GIUSTO HODELL INC.
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8 Dated: December 31, 2008

9 By /s/ Maralee MacDonald
10 Maralee MacDonald
11 Attorneys for Receiver of Defendants
12 Secure Investment Services, Inc.,
13 American Financial Services, Inc., and
14 Lyndon Group, Inc.
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12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA
14 SACRAMENTO DIVISION

15 SECURITIES AND EXCHANGE COMMISSION,

16 Plaintiff,

17 v.

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

20 Defendants.
21

Case No. 2:07-cv-01724 GEB CMK

RECEIVER’S FOURTH INTERIM
APPLICATION TO ALLOW AND
PAY ATTORNEY’S FEES AND
EXPENSES OF LOCAL COUNSEL
AND BRIEF IN SUPPORT

Hearing Date: February 9, 2009
Time: 9:00 a.m.
Courtroom: 10

22 TO THE HONORABLE GARLAND E. BURRELL, JR., UNITED STATES DISTRICT
23 JUDGE:

24 Michael J. Quilling, Receiver, files this, his Fourth Interim Application to Allow and Pay
25 Attorneys’ Fees and Expenses of Local Counsel, and in support of such would respectfully show
26 the Court as follows:

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BACKGROUND

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2 1. On or about August 22, 2007, the Securities and Exchange Commission filed its
3 Complaint and request for appointment of a receiver. On October 31, 2007, the Court issued its
4 Order Appointing Receiver pursuant to which Michael J. Quilling was appointed to serve as
5 Receiver in this case.

6 2. Pursuant to the terms of the Order Appointing Receiver, the Receiver was
7 authorized to employ such attorneys as is necessary and proper in connection with the claims
8 process. Subsequent to his appointment, the Receiver employed the law firm of Boutin Gibson
9 Di Giusto Hodell Inc. ("BOUTIN") as his local counsel.

10 3. This Application seeks approval and payment of the fees and reimbursement of
11 expenses for BOUTIN for the time period from September 1, 2008 through December 31, 2008.

12 4. Pursuant to paragraph 17 of the Order Appointing Receiver and after obtaining
13 the consent of the SEC, the Receiver has paid BOUTIN 90% of their fees and 100% of their
14 expenses. The purpose of this Application is to request Court approval of all of the fees and
15 expenses and to allow payment of the 10% fee holdback.

16 5. During the period covered by this Application, the Receiver has incurred fees and
17 expenses with respect to BOUTIN as to these proceedings on a monthly basis as follows:

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Month	Fees	Expenses
September, 2008	\$1,218.00	0.0
October, 2008	\$3,248.00	0.0
November, 2008	\$ 754.00	\$10.22
December, 2008	\$3,770.00	0.0
TOTAL	\$8,990.00	10.22

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25 6. Exhibit "A," which is attached hereto and incorporated herein by reference for all
26 purposes conveys the following information for the time period of September 1, 2008 through
27 December 31, 2008: (a) the number of hours worked by each attorney and staff member on a
28 particular day; (b) the manner and type of work performed by each attorney and staff member;

1 (c) the customary billing rate for each person rendering service in this matter; and (d) the
2 monetary value assigned to each task performed by a given attorney and/or staff member. Each
3 of the invoices attached hereto as Exhibit "A" reflect aggregate expenses by category during a
4 given month.

5 **JOHNSON FACTORS**

6 7. In support of this request for allowance of compensation and reimbursement of
7 expenses, the Receiver and BOUTIN respectfully direct this Court's attention to those factors
8 generally considered by courts in awarding compensation to professionals for services performed
9 in connection with the administration of a receivership estate. As stated by the Fifth Circuit
10 Court of Appeals in *Migis v. Pearle Vision, Inc.*, 135 F.3d 1041, 1047 (5th Cir. 1998), "The
11 calculation of attorneys fees involves a well-established process. First, the court calculates a
12 'lodestar' fee by multiplying the reasonable number of hours expended on the case by the
13 reasonable hourly rates for the participating lawyers. [citation omitted.] The court then
14 considers whether the lodestar figure should be adjusted upward or downward depending on the
15 circumstances of the case. In making a lodestar adjustment the court should look at twelve
16 factors, known as the Johnson factors, after *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d
17 714 (5th Cir. 1974)." The Ninth Circuit has expressly adopted the Johnson factors in *Kerr v.*
18 *Screen Extras Guild, Inc.*, 526 F.2d 67 (9th Cir. 1975); *see also Quesada v. Thomason*, 850 F.2d
19 537, 539 (9th Cir. 1988). Those factors, as applied to the services rendered in this case by
20 BOUTIN, are addressed below.

21 (a) The Time and Labor Required. The Receiver and BOUTIN respectfully refer the
22 Court's attention to Exhibit "A" which details the involvement of BOUTIN's attorneys in this
23 case during the three month period covered by this Application during which a total of more than
24 18 hours of attorney and paraprofessional time have been expended.

25 (b) The Novelty and Difficulty of the Questions. Many of the tasks reflected in
26 Exhibit "A" involved factual and legal questions which were of substantial complexity.

1 (c) The Skill Requisite to Perform the Service. The Receiver believes that the
2 services performed in this case have required individuals with experience in the U.S. District
3 Court, Eastern District of California. BOUTIN has considerable experience in this district.

4 (d) The Preclusion of Other Employment Due to Acceptance of the Case. BOUTIN
5 has not declined any representation solely because of their services as local counsel for the
6 Receiver.

7 (e) The Customary Fee. The Receiver believes that the hourly rates sought herein are
8 commensurate with or lower than the rates charged by other practitioners of similar experience
9 levels in the Eastern District of California. During the course of these proceedings, the following
10 lawyers at BOUTIN have performed legal services on behalf of the Receiver with respect to
11 these proceedings: Chris Gibson (\$350.00 per hour), licensed in California since 1976; Maralee
12 MacDonald (\$290.00 per hour) licensed in California since 2000 (previously licensed in
13 Wyoming).

14 (f) Whether the Fee is Fixed or Contingent. BOUTIN's fees are fixed insofar as
15 monies exist by way of Receivership Assets from which to pay such fees. Payment of such fees,
16 however, is subject to Court approval.

17 (g) Time Limitations Imposed by the Client or Other Circumstances. The time
18 requirements during the period covered by this Application have been extreme at times, requiring
19 almost daily attention by the Receiver and his attorneys.

20 (h) The Amount Involved and the Results Obtained. This case involves 49 insurance
21 policies having a death benefit in excess of \$50 million. In excess of 600 investors invested
22 more than \$31 million to purchase fractionalized interests in the insurance policies. At the time
23 this case was filed, there was approximately \$400,000.00 of cash available to meet premium
24 obligations in excess of \$1.6 million per annum.

25 Since his appointment, the Receiver has closed all known bank accounts and has taken
26 possession of all known books and records. He has obtained accurate, current information
27 regarding each policy and has been able to pay premiums on the policies on a current basis. The
28 Receiver has also arranged for a \$3 million line of credit to be utilized to pay premiums and

1 other administrative expenses. The Receiver is investigating whether fraudulent transfer and
2 other recoveries may be possible. A website is maintained by the Receiver so as to update the
3 investors. Claim forms have been approved and mailed to all known investors. Approximately
4 508 claim forms have been received back from investors.

5 In short, a tremendous amount of progress has been made with respect to the case in a
6 relatively short period of time.

7 (i) The Experience, Reputation and Ability of the Attorneys. BOUTIN has several
8 attorneys who work exclusively in the practice of civil trial law. The practice of those attorneys
9 includes the representation of parties before this Court. The reputation of BOUTIN's attorneys
10 is recognized and respected in this community.

11 (j) The Undesirability of the Case. The representation of the Receiver incident to
12 this case has not been undesirable.

13 (k) The Nature and Length of the Professional Relationship with the Client.
14 BOUTIN did not represent the Receiver in these proceedings prior to being retained in these
15 proceedings.

16 (l) Awards in Similar Cases. BOUTIN believes that the fees requested in this case
17 are less than or equal to those which have been awarded in similar cases in this District.

18 WHEREFORE, the Receiver respectfully requests that the Court allow the requested
19 compensation for professional services and expenses rendered by BOUTIN and authorize the
20 Receiver to pay the 10% fee holdback of \$899.00, as per itemization in Exhibit "A" attached
21 hereto and for such other and further relief, general or special, at law or in equity, to which the
22 Receiver and BOUTIN may show themselves justly entitled.

23 BOUTIN GIBSON DI GIUSTO HODELL INC.

24
25 Dated: December 31, 2008

26 By /s/ Maralee MacDonald
27 Maralee MacDonald
28 Attorneys for Receiver of Defendants
Secure Investment Services, Inc.,
American Financial Services, Inc., and
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