

BOUTIN GIBSON DI GIUSTO HODELL INC.

Chris Gibson, SBN 073353
Maralee MacDonald, SBN 208699
555 Capitol Mall, Suite 1500
Sacramento, CA 95814-4603
(916) 321-4444

**QUILLING, SELANDER, CUMMISKEY
& LOWNDS, P.C.**

Michael J. Quilling (Tex. Bar No. 16432300) – Admitted Pro Hac Vice
D. Dee Raibourn, III (Tex. Bar No. 24009495) – Admitted Pro Hac Vice
Brent J. Rodine (Tex. Bar No. 24048770) – Admitted Pro Hac Vice
2001 Bryan Street, Suite 1800
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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 FIFTH INTERIM
APPLICATION TO ALLOW AND
PAY ATTORNEY’S FEES AND
EXPENSES OF LOCAL COUNSEL**

Date: May 18, 2009

Time: 9:00 a.m.

Courtroom: 10

TO: THE PARTIES AND ALL COUNSEL OF RECORD:

On May 18, 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.
4

5 Respectfully submitted,

6 BOUTIN GIBSON DI GIUSTO HODELL INC.
7

8 Dated: April 16, 2009

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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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

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

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

Hearing Date: May 18, 2009

Time: 9:00 a.m.

Courtroom: 10

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

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

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BACKGROUND

1
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 January 1, 2009 through March 31, 2009.

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:

18

19 Month	Fees	Expenses
20 January, 2009	2,340.00	0
21 February, 2009	1,462.50	0
22 March, 2009	1,755.00	0
23 TOTAL	5,557.50	0

24 6. Exhibit "A," which is attached hereto and incorporated herein by reference for all
25 purposes conveys the following information for the time period of January 1, 2009 through
26 March 31, 2009: (a) the number of hours worked by each attorney and staff member on a
27 particular day; (b) the manner and type of work performed by each attorney and staff member;
28 (c) the customary billing rate for each person rendering service in this matter; and (d) the

1 monetary value assigned to each task performed by a given attorney and/or staff member. Each
2 of the invoices attached hereto as Exhibit "A" reflect aggregate expenses by category during a
3 given month.

4 **JOHNSON FACTORS**

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

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

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

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

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

4 (e) The Customary Fee. The Receiver believes that the hourly rates sought herein are
5 commensurate with or lower than the rates charged by other practitioners of similar experience
6 levels in the Eastern District of California. During the course of these proceedings, the following
7 lawyers at BOUTIN have performed legal services on behalf of the Receiver with respect to
8 these proceedings: Chris Gibson (\$400.00 per hour), licensed in California since 1976; Maralee
9 MacDonald (\$325.00 per hour) licensed in California since 2000 (previously licensed in
10 Wyoming).

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

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

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

22 Since his appointment, the Receiver has closed all known bank accounts and has taken
23 possession of all known books and records. He has obtained accurate, current information
24 regarding each policy and has been able to pay premiums on the policies on a current basis. The
25 Receiver has also arranged for a \$3 million line of credit to be utilized to pay premiums and
26 other administrative expenses. The Receiver is investigating whether fraudulent transfer and
27 other recoveries may be possible. A website is maintained by the Receiver so as to update the
28

1 investors. Claim forms have been approved and mailed to all known investors. Approximately
2 508 claim forms have been received back from investors.

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

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

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

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

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

16 WHEREFORE, the Receiver respectfully requests that the Court allow the requested
17 compensation for professional services and expenses rendered by BOUTIN and authorize the
18 Receiver to pay the 10% fee holdback of \$555.75, as per itemization in Exhibit "A" attached
19 hereto and for such other and further relief, general or special, at law or in equity, to which the
20 Receiver and BOUTIN may show themselves justly entitled.

21 BOUTIN GIBSON DI GIUSTO HODELL INC.

22
23 Dated: April 16, 2009

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

EXHIBIT A

Remittance Address

Boutin Gibson Di Giusto Hodell Inc.
 555 Capitol Mall, Suite 1500
 Sacramento, CA 95814

Michael J. Quilling
 Quilling, Selander, Cummiskey & Lownds, P.C.
 2001 Bryan Tower, Suite 1800
 Dallas, TX 75201

Date 04/03/2009
 Invoice 33273
 Attorney MacDonald, Maralee

Re: Receivership

FOR PROFESSIONAL SERVICES RENDERED

03/02/2009	MM	Receive email from M. Quilling regarding ancillary action; review case management conference and docket for ancillary answer.	0.40 hrs	130.00
03/03/2009	MM	Receive and review K. Snowden's motion to stay civil action pending criminal determination; receive withdrawal of firm representing K. Snowden; receive and review SEC's reply for summary judgment; receive G. Harvey's reply in support of motion for limited intervention.	0.70 hrs	227.50
03/04/2009	MM	Receive and review minute order on SEC's motion for summary judgment; receive and review K. Snowden's amended motion to stay civil action.	0.30 hrs	97.50
03/05/2009	MM	Follow up with M. Quilling regarding Kimball suit.	0.10 hrs	32.50
03/06/2009	MM	Receive and review Examiner's third application for fees and attorney's fees.	0.20 hrs	65.00

03/09/2009	MM	Attend hearing on G. Harvey motion for limited intervention; telephone conference with M. Quilling regarding potential motions and next steps; prepare statement of non-opposition to examiner's third fee application.	2.30 hrs	747.50
03/11/2009	MM	Receive Court Order denying K. Snowden's request for continuance.	0.10 hrs	32.50
03/16/2009	MM	Review notes on E. Kimball lawsuit; call attorney for E. Kimball, Michael Henderson.	0.30 hrs	97.50
03/17/2009	MM	Follow up call to attorney M. Henderson regarding e. Kimball claim.	0.10 hrs	32.50
03/18/2009	MM	Telephone conference with M. Henderson regarding Kimball claim; update receiver regarding Kimball claim.	0.50 hrs	162.50
03/25/2009	MM	Receive court order approving examiner's fee applications.	0.10 hrs	32.50
03/26/2009	MM	Receive and review order denying motion fo G. Harvey to intervene.	0.20 hrs	65.00
03/30/2009	MM	Receive email from M. Quilling regarding proposed motion schedule.	0.10 hrs	32.50
Total fees for this matter			5.40 hrs.	\$1,755.00
MacDonald, Maralee			5.40 hrs.	325 /hr. \$1,755.00

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 555 Capitol Mall, Suite 1500
 Sacramento, CA 95814

Michael J. Quilling
 Quilling, Selander, Cummiskey & Lownds, P.C.
 2001 Bryan Tower, Suite 1800
 Dallas, TX 75201

Date 03/04/2009
 Invoice 32869
 Attorney MacDonald, Maralee

Re: Receivership

FOR PROFESSIONAL SERVICES RENDERED

02/04/2009	MM	Review, revise and supplement third motion to transfer interest of policy to receiver and supporting papers; finalize and file same with Court; receive motion for summary judgment by SEC and supporting documents; receive and review orders of the Court allowing receiver's fourth interim fee applications.	0.70 hrs	227.50
02/05/2009	MM	Receive letter from L. Halley to S. Tomasky filed with the Court.	0.10 hrs	32.50
02/09/2009	MM	Receive email from B. Rodine regarding additional insurer requirements on E. Jeremias; receive email from M Quilling regarding same.	0.20 hrs	65.00
02/10/2009	MM	Review and analyze Motion to Intervene by G. Harvey; briefly review and analyze SEC's motion for summary judgment; email M. Quilling regarding current and anticipated motion status.	0.70 hrs	227.50

02/11/2009	MM	Telephone M. Quilling regarding next steps; prepare stipulation regarding G. Harvey motion to intervene.	0.80 hrs	260.00
02/12/2009	MM	Receive email message from John Yun of the SEC regarding proposed stipulation on G. Harvey motion; receive email from C. Morris regarding investor letter; review memo regarding investor inquiry phone call and email M. Quilling regarding same.	0.40 hrs	130.00
02/13/2009	MM	Receive email from M. Quilling regarding investor telephone inquiry; review stipulation regarding G. Harvey motion for limited intervention; prepare request to counsel regarding stipulation.	0.30 hrs	97.50
02/17/2009	MM	Review emails from B. Rodine regarding upcoming motions and surrounding issues; receive emails regarding signature authorization and stipulation; receive and review email from T. Eme regarding opposition of SEC; email M. Quilling regarding status and next steps.	0.70 hrs	227.50
02/18/2009	MM	Receive email from J. Yun regarding G. Harvey motion; receive email from J. Norine regarding potential stipulation regarding bank facility increase; receive emails from M. Quilling; receive examiner's statement of non-opposition to receiver's second motion to transfer interests.	0.50 hrs	162.50
02/19/2009	MM	Telephone conference with M. Quilling regarding stipulated motion and order; revise motion for purposes of stipulation and order; email all counsel regarding request for stipulation regarding increase of bank facility; receive email from J. Yun of SEC regarding same.	0.80 hrs	260.00
02/20/2009	MM	Receive and review emails from J. Norine and K. Mennemeier regarding stipulation on bank financing; exchange emails with M. Quilling regarding bank financing status; receive email from J. Yun regarding bank financing status; finalize stipulation and order on bank financing increase; receive and review SEC's opposition to motion by Harvey to intervene and supporting papers; receive	1.50 hrs	487.50

		letters to investors on BOT-M policy.		
02/25/2009	MM	Receive and review letter to Baugh investors.	0.10 hrs	32.50
02/26/2009	MM	Receive and review Order on increased bank facility.	0.10 hrs	32.50
02/27/2009	MM	Receive and review court orders on receiver's second and third motions for transfer of interest; review upcoming hearing schedule.	0.30 hrs	97.50
		Total fees for this matter	<u>7.20 hrs.</u>	<u>\$2,340.00</u>
MacDonald, Maralee			7.20 hrs.	325 /hr. \$2,340.00

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Sacramento, CA 95814

Michael J. Quilling
Quilling, Selander, Cummiskey & Lownds, P.C.
2001 Bryan Tower, Suite 1800
Dallas, TX 75201

Date 02/04/2009
Invoice 32404
Attorney MacDonald, Maralee

Re: Receivership

FOR PROFESSIONAL SERVICES RENDERED

01/02/2009	MM	Receive email from M. Quilling regarding fee applications.	0.10 hrs	32.50
01/06/2009	MM	Receive email from C. Morris regarding compliance of L. Halley with court order; receive and review orders compelling M. Chips re KIL-D policy and re QUI-W(2); receive and review order compelling J. Catania re QUI-W(1) policy; receive and review order compelling J and A Catania regarding SLE-K(1) policy; receive and review order compelling P. Pappas re SLE-K(2) policy.	0.60 hrs	195.00
01/08/2009	MM	Receive email update from C. Morris regarding status of Jer-E(4) policy reinstatement; email C. Morris and B. Rodine regarding upcoming hearing on motion to compel E. Jeremias.	0.20 hrs	65.00
01/12/2009	MM	Receive email from B. Rodine regarding current status of reinstatement of Jer-E(4)	0.60 hrs	195.00

		policy; telephone conference with B. Rodine regarding next steps; attend continued hearing on our motion to compel E. Jeremias; email M. Quilling regarding hearing results; receive and review Minute Order from the Court regarding motion to compel E. Jeremias.		
01/13/2009	MM	Receive Examiner's statements of non-opposition to Receiver's fourth interim fee application and fourth interim application of local counsel.	0.10 hrs	32.50
01/14/2009	MM	Email M. Quilling regarding inquiry received on International Fidelity Ltd; follow up with M. Sargent regarding same.	0.20 hrs	65.00
01/15/2009	MM	Receive and review Examiner's reply in support of second interim fee application.	0.10 hrs	32.50
01/20/2009	MM	Receive court order granting examiner's fee application and attorney fees application.	0.10 hrs	32.50
01/22/2009	MM	Receive email from B. Rodine regarding second motion to compel; email M. Quilling regarding hearing and anticipated motions; review revise and supplement second points and authorities to compel insurers to transfer interest; prepare notice of motion and motion to compel insurers to transfer.	1.00 hrs	325.00
01/23/2009	MM	Receive and review Notice of Court's Order Settling Long Halley's portion of the case.	0.10 hrs	32.50
01/26/2009	MM	Review and finalize second motion to compel insurers to transfer interest and supporting papers; email M. Quilling regarding motion to compel E. Jeremias and current reinstatement status; receive and review notice of court's order re L. Halley; receive email from B. Rodine regarding motion to compel E. Jeremias; prepare notice o withdrawal of motion to E. Jeremias to execute reinstatement papers.	0.70 hrs	227.50
01/27/2009	MM	Exchange emails with M. Quilling regarding potential hearing dates on upcoming motions; finalize and file second motion to compel insurers to transfer interest; prepare and file notice of withdrawal of motion to compel E. Jeremias.	0.50 hrs	162.50
01/28/2009	MM	Finalize and file reply memoranda in support	0.20 hrs	65.00

of local counsel fee application and receiver's
fee application.

	Total fees for this matter		<u>4.50 hrs.</u>	<u>\$1,462.50</u>
MacDonald, Maralee		4.50 hrs.	325 /hr.	\$1,462.50