

BOUTIN GIBSON DI GIUSTO HODELL INC.

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

Hearing Date: August 17, 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 Sixth 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

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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 April 1, 2009 through June 30, 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

Month	Fees	Expenses
April, 2009	\$ 4,160.00	0
May, 2009	5,265.00	0
June, 2009	1,592.50	0
TOTAL	\$ 11,017.50	0

23

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 April 1, 2009 through June
26 30, 2009: (a) the number of hours worked by each attorney and staff member on a particular
27 day; (b) the manner and type of work performed by each attorney and staff member; (c) the
28 customary billing rate for each person rendering service in this matter; and (d) the monetary

1 value assigned to each task performed by a given attorney and/or staff member. Each of the
2 invoices attached hereto as Exhibit "A" reflect aggregate expenses by category during a given
3 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 35 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 \$1,101.75, 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: July 13, 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

Client 020971
Matter 00001
Date 07/02/2009
Invoice 34493
Attorney MacDonald, Maralee

Re: Receivership

FOR PROFESSIONAL SERVICES RENDERED

06/01/2009	MM	Review email from J. Greiner; consider timing of additional motions.	0.20 hrs	65.00
06/02/2009	MM	Receive order approving fifth interim application regarding local counsel fees; review memorandum regarding E. Jeremias call; email M. Quilling regarding same.	0.30 hrs	97.50
06/04/2009	MM	Receive and finalize motion to compel payment of premium share regarding KIL-D and supporting papers.	0.30 hrs	97.50
06/05/2009	MM	Exchange email with B. Rodine; supplement and finalize motion to compel Wing to transfer BOT-M interest.	0.60 hrs	195.00
06/08/2009	MM	Review and finalize six reply briefs; exchange emails with C. Morris regarding same; leave detailed voice message for J. Yun at SEC regarding status report.	1.00 hrs	325.00
06/09/2009	MM	Receive email from C. Morris regarding JER-E(4) policy; review, revise and	0.80 hrs	260.00

		supplement reply in support of motion to compel Jeremias; finalize and file replies in support of six motions; receive call from J. Yun; email M. Quilling regarding next steps.		
06/12/2009	MM	Receive email from C. Morris regarding BOT-M policy interest; review and finalize withdrawal of motion to compel Wings regarding BOT-M; receive email from M. Quilling.	0.30 hrs	97.50
06/15/2009	MM	Receive status report from SEC; email M. Quilling regarding response to B. Wilson.	0.20 hrs	65.00
06/16/2009	MM	Receive call from C. Morris regarding motion to compel Wong regarding KIL-D; receive email from M. Quilling.	0.20 hrs	65.00
06/17/2009	MM	Receive email from C. Morris regarding motion to compel Elling regarding DAM-A.	0.10 hrs	32.50
06/19/2009	MM	Exchange emails with M. Quilling regarding call from B. Wilson; receive and review court orders regarding motions scheduled for hearing on June 22.	0.60 hrs	195.00
06/22/2009	MM	Review email from B. Rodine regarding production to criminal defense counsel.	0.20 hrs	65.00
06/29/2009	MM	Receive minute order from Court.	0.10 hrs	32.50
		Total fees for this matter	<u>4.90 hrs.</u>	<u>\$1,592.50</u>
MacDonald, Maralee			4.90 hrs.	325 /hr. \$1,592.50

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Sacramento, CA 95814

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

Client 020971
Matter 00001
Date 06/02/2009
Invoice 34095
Attorney MacDonald, Maralee

Re: Receivership

FOR PROFESSIONAL SERVICES RENDERED

05/04/2009	MM	Exchange email with C. Morris regarding status of investor communications and motions to compel premiums; receiver letter to investors regarding DAM-A&J policy; determine additional course of action regarding motion to compel M. Parkinson regarding KEU-P policy; email M. Quilling regarding same; receive and review statement of non-opposition by SEC regarding motions for May 18 hearing; receive and review K. Snowden's statement of non-opposition.	1.70 hrs	552.50
05/06/2009	MM	Exchange email with C. Morris regarding replies on three motions to compel premium payment; exchange email with B. Rodine regarding insurer position on motion to compel payment of death benefits; review revise and supplement replies in support of fifth interim application regarding receivers	3.30 hrs	1072.50

fees, attorney's fees and local counsel fees; review revise and supplement reply in support of motion to compel payment of death benefit; review revise and supplement reply on motions to compel premium payment on SLE-K(2) policy; review revise and supplement reply on two motions to compel premium payment on BOT-M policy; review revise and supplement reply on three motions to compel premium payment on BAU-R&L policy; review revise and supplement reply on motions to compel premium payment on KEU-P policy; prepare withdrawal of motion to compel premium payment from M. Parkinson on KEU-P policy; review revise and supplement reply on four motions to compel premium payment on SHU-A&H(1); review revise and supplement reply on thirteen motions to compel premium payment on SWA-R&G policy.

05/07/2009	MM	Exchange emails with C. Morris regarding reply in support of motion to compel payment of death benefits; exchange emails with C. Morris regarding motion to compel M. Parkinson regarding KEU-P policy.	0.50 hrs	0.00
05/08/2009	MM	Receive call from Attorney Semeniza regarding Carol Smith and motion to compel payment of death benefits; email memo to M. Quilling; address filing of reply briefs on multiple motions to compel premium payment; receive email from C. Morris regarding second motion to compel E. Jeremias.	0.80 hrs	260.00
05/11/2009	MM	Review, revise and supplement three replies in support of motion to compel premium payment; review draft motion to compel regarding JER-E(4) policy; email M. Quilling regarding next steps; receive call from investor R. Ramirez; memo to M. Quilling regarding same.	1.10 hrs	357.50
05/12/2009	MM	Receive detailed message from L. Semenza counsel for investor on FOW-S(2); receive email from C. Morris regarding motion to compel premium payment on KEU-P; finalize notice of withdrawal of motion compel J.	0.50 hrs	162.50

		Montgomery on KEU-P policy; return call of L. Semenza regarding motion to compel payment of death benefits; receive message from M. Quilling regarding JER-E(4).		
05/14/2009	MM	Exchange messages with M. Quilling ; email courtroom clerk regarding hearing status; receive letter from M. Quilling to A Gibson regarding FOW-S(1) policy; receive Notice of Appearance of L. Semenza; email M. Quilling.	0.60 hrs	195.00
05/15/2009	MM	Receive and review minute order regarding hearing; receive and review emails from M. Quilling; telephone conference with M. Quilling regarding next steps prepare notice of communication from investors regarding motion to compel payment of death benefits; receive and review statement of examiner regarding motion to compel payment of death benefits; receive email from D. Roossien regarding same.	1.20 hrs	390.00
05/18/2009	MM	Review email from D. Roossien regarding investor communications; respond to email from D. Roossien; exchange email with C. Morris regarding status of Andrews motions to compel; prepare and file notices of withdrawal of motion to compel Stephen and Susan Andrews regarding SHU-A&H(1) policy; email courtroom deputy regarding withdrawals; receive and review order approving Receiver's fifth interim application for attorney fees; receive and review second notice of investor responses regarding motion to compel payment of death benefits.	1.00 hrs	325.00
05/19/2009	MM	Respond to emails from C. Morris regarding JER-E(4) policy motion.	0.30 hrs	97.50
05/20/2009	MM	Receive and review email from C. Morris regarding motion to transfer interest.	0.20 hrs	65.00
05/21/2009	MM	Receive and review revised second motion to compel E. Jeremias; finalize and file motions to compel payment of premiums and supporting papers; finalize and file motions to compel transfer of interest; receive email from courtroom deputy.	1.70 hrs	552.50
05/22/2009	MM	Receive court order on motion to compel	1.00 hrs	325.00

		premium payment from Nouvelle, Frischetto, Chu, Palm, Dailey and Parnham; receive court order on Receiver's fifth interim application; review court order compelling payment of death benefits; exchange emails with C. Morris.		
05/26/2009	MM	Receive and review 16 orders on motions to compel premiums; receive and initially review order on summary judgment.	1.60 hrs	520.00
05/27/2009	MM	Review briefing schedule on pending motions; closely review order on SEC motion for summary judgment; email letter to M. Quilling regarding status and next steps; email courtroom deputy regarding duplicate orders and Docket No. 514.	0.90 hrs	292.50
05/28/2009	MM	Receive email discovery request from J. Greiner regarding criminal case; receive email from M. Quilling regarding same.	0.30 hrs	97.50
		Total fees for this matter	<u>16.70 hrs.</u>	<u>\$5,265.00</u>
	MacDonald, Maralee		16.70 hrs.	325 /hr. \$5,265.00

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

Client 020971
 Matter 00001
 Date 05/04/2009
 Invoice 33694
 Attorney MacDonald, Maralee

Re: Receivership

FOR PROFESSIONAL SERVICES RENDERED

04/03/2009	MM	Receive and review Court's tentative ruling on Snowden's motion for stay.	0.10 hrs	32.50
04/06/2009	MM	Receive and review minute order on motion to withdraw from J. Norine and Snowden's motion to stay; receive court order permitting supplemental briefing on partial summary judgment.	0.20 hrs	65.00
04/09/2009	MM	Receive defendant Snowden's supplemental brief on partial summary judgment.	0.20 hrs	65.00
04/10/2009	MM	Receive order denying Snowden's motion for stay.	0.10 hrs	32.50
04/14/2009	MM	Prepare fifth interim application for local counsel fees and accompanying papers; email M. Quilling regarding briefing deadline.	0.40 hrs	130.00
04/15/2009	MM	Exchange emails with M. Quilling regarding next steps; review scheduling order; exchange emails with SEC counsel regarding joint pretrial statement; receive motions to	2.70 hrs	0.00

		compel MacNama regarding SLE-K(2); and Parnham, Palm and Mussalo regarding BAU-R&L(1) policy; receive and review email from M. Quilling regarding potential motion; telephone conference with M. Quilling regarding same; review receiver's fifth interim application for filing.		
04/16/2009	MM	Review and finalize motion to compel two owners of BOT-M; review and finalize motion to compel five owners of KEU-P; review and finalize motions to compel five owners of SHU-A&H(1); prepare proposed stipulation to shorten time on anticipated motion; exchange emails with C. Morris regarding motions to compel; telephone conferences with C. Morris regarding corrections and future hearing dates; review and finalize motions to compel thirteen owners of SWA-R&G.	5.30 hrs	1722.50
04/17/2009	MM	Respond to email from J. Norine regarding motions to compel six policies; address filing of motions to compel six policies.	0.20 hrs	65.00
04/20/2009	MM	Email correspondence to plaintiff's and defense counsel regarding statements of non-opposition to pending motions to compel regarding insurance policies; email M. Quilling regarding status and next steps; receive email from Examiner's counsel regarding motions to compel; receive order of Court regarding pretrial conference.	0.70 hrs	227.50
04/21/2009	MM	Receive email from M. Quilling regarding next steps; telephone conference with M. Quilling regarding motion to compel payment of death benefit and application for order shortening time; communicate via email and phone with J. Yun regarding order shortening time; communicate via phone and email with J. Norine regarding stipulation to shorten time; exchange emails with D. Roossien regarding stipulation to shorten time; telephone conferences with B. Rodine regarding motion to compel payment of death benefit and service of same; review, revise and supplement stipulated application to shorten	3.40 hrs	1105.00

		time and proposed order; review, revise and supplement motion to compel payment of death benefits and supporting papers; receive emails from B. Rodine regarding motion to compel.		
04/22/2009	MM	Receive court order shortening time and setting hearing; receive and review statements of non-opposition from examiner regarding fee applications and motions to compel premium payments; receive letter to insurer of FOW-S(2) policy from Receiver; receive K. Sknowden's non-opposition to motions to compel policy premiums.	0.40 hrs	130.00
04/23/2009	MM	Receive call from S. Andrews regarding SHU-A&H(1) policy; email M. Quilling update.	0.20 hrs	65.00
04/27/2009	MM	Incorporate statements of non-opposition from co-defendants and examiner in draft reply in support of motions to compel premium payment; email C. Morris regarding filing and service of reply briefs.	0.20 hrs	65.00
04/28/2009	MM	Exchange emails with C. Morris regarding motions to compel premium payment; review and finalize two motions to withdraw regarding compelling premium payment.	0.50 hrs	162.50
04/30/2009	MM	Prepare reply on motion to compel payment of death benefits; follow up on email from C. Morris regarding service information; email counsel for parties and examiner regarding statement of non-opposition to fee application and motion to compel death benefits; receive response from T. Eme regarding fifth interim fee applications; exchange emails with M. Quilling regarding fee application motions.	0.90 hrs	292.50
		Total fees for this matter	<u>15.50 hrs.</u>	<u>\$4,160.00</u>
	MacDonald, Maralee		15.50 hrs.	325 /hr. \$4,160.00