

BOUTIN GIBSON DI GIUSTO HODELL INC.

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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 MOTION TO COMPEL
PAYMENT OF PREMIUM SHARE
FROM JAMES P. HUTLER AND
JACQUELINE A. HUTLER [SWA-
R&G]

Date: September 28, 2009
Time: 9:00 a.m.
Department: 10

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

Michael J. Quilling, the Receiver appointed in these proceedings (“Receiver”), files this
Motion to Compel Payment of Premium Share and in support of such would show the following:

BACKGROUND FACTS

1. By Orders dated August 24, 2007 (Dkt. No. 27) and October 30, 2007 (Dkt. No.
80), the Receiver was appointed by this Court.

1 a benefit without paying for it. *U.S. v. Healy Tibbitts Const. Co.*, 607 F.Supp. 540, 542 (N.D.
2 Cal. 1985) (citing DOBBS, REMEDIES 224 (West 1973); 66 Am.Jur.2d, §§ 2, 3). Equity will
3 typically require payment as measured by the benefit received. *Davis v. Leal*, 43 F.Supp.2d
4 1102, 1112 (E.D. Cal. 1999).

5 9. To prevent unjust enrichment, courts have upheld the right of one party to pay an
6 obligation for another and seek restitution for that amount. For example, in *Page v. Podol*, 4
7 Cal.App.2d 229 (1935), a separated couple held property together as joint tenants. When that
8 property was sold, both parties became liable for the tax obligation. Plaintiff paid the entire tax
9 obligation and filed a suit in equity to recover defendant's proportional share. The court noted
10 that "[t]he soundness of this doctrine has been upheld by innumerable decisions of courts of the
11 highest authority in many jurisdictions, and it is so obviously just and reasonable that it is matter
12 of wonder that it should ever have been called in question." *Id.* The court reversed the decision
13 below and awarded plaintiff the right to recover a proportional share of the obligation owed by
14 defendant.

15 10. Through this motion, the Receiver asks the Court to exercise its equitable powers
16 in a similar manner and compel the Hutlers to pay their proportional share of premiums for the
17 SWA-R&G policy. To date, the Receiver has paid 100% of those premiums since September 7,
18 2007, for a total of \$88,043.19. While other joint owners of this policy have either agreed to
19 transfer their interest to the Receiver in exchange for the Receiver's payment of the premiums
20 and a claim against the estate, the Hutlers have not done so. Accordingly, the Hutlers have
21 unjustly benefited by maintaining their 0.5625% ownership without paying a proportional share
22 of the premiums. *See* CAL. CIV. CODE § 3521 ("No person can be permitted to enjoy the benefits
23 of a transaction while rejecting the burdens of it.").

24 11. To avoid unjust enrichment, the Court should compel the Hutlers to pay (1)
25 \$495.24 to the Receiver for the Hutler's 0.5625% share of the premiums paid to date and (2) the
26 Hutler's proportional share of all future premiums on a quarterly basis as invoiced by the
27

1 Receiver.¹ Should the Hutlers fail to pay these obligations in a timely manner, the Court should
2 order their ownership interest in the SWA-R&G policy forfeited to the receivership estate. In the
3 event of forfeit, the Receiver would replace the Hutler's ownership interest in the SWA-R&G
4 policy with an allowed claim against the receivership estate in the amount of \$5,000.00 (the
5 amount of the original investment).

6 12. As noted above, the Court has "broad powers and wide discretion to determine the
7 appropriate relief in an equity receivership." *Elliott*, 953 F.2d at 1569-70. This includes the
8 discretionary authority to deny the Hutler's ordinary contract rights when they are "inimical to
9 receivership purposes." *See U.S. v. Vanguard Inv. Co., Inc.*, 6 F.3d 222, 226 (4th Cir. 1993).
10 That is exactly what the Receiver asks the Court to do here. The Hutlers currently have a
11 contractual right to 0.5625% of death benefits from the SWA-R&G policy even if the Receiver
12 pays all of the premiums for that policy. This Court should impose upon the Hutlers an equitable
13 obligation to pay their share of the premiums or else forfeit their ownership interest to the
14 receivership estate in exchange for an allowed claim for \$5,000.00. Doing so would both serve
15 the interests of equity and keep the SWA-R&G policy in force for the benefit of all defrauded
16 investors.

17 13. Given the fact that the Hutlers will not respond and would not be in position to
18 protect the policy from lapsing if the Receiver requests permission from the court to abandon the
19 policy and does not pay the premium, one can certainly argue that the Hutlers would be better off
20 by a forfeiture and allowance of a claim. At least that way they would have something – a claim
21 – if they or another person representing the Hutlers ever surfaces.

22 WHEREFORE, premises considered, the Receiver requests that upon final hearing and
23 consideration of this matter, that the Court issue an order compelling James P. Hutler and
24 Jacqueline A. Hutler to pay \$495.24 to the Receiver plus their share of all future premiums as

25 ¹ The Hutlers' share of the next premium payment will be \$108.00. That amount, however, will increase in the
26 future since premium obligations for the SWA-R&G policy are scheduled to increase annually. At this time, the
27 Receiver does not know how much those future premium obligations will be and, therefore, would give the Hutlers
advance notice by an invoice.

1 they become due on pain of forfeiture of their ownership interest, and for such other and further
2 relief, general or special, at law or in equity, to which the Receiver may show himself justly
3 entitled.

4 Submitted this 25th day of August, 2009.

5 Respectfully submitted,

6 */s/ Michael J. Quilling*

7 MICHAEL J. QUILLING (Tex. Bar No. 16432300)
8 BRENT J. RODINE (Tex. Bar No. 24048770)
9 QUILLING, SELANDER, CUMMISKEY
& LOWNDS, P.C.

10 Chris Gibson, SBN 073353
11 Maralee MacDonald, SBN 208699
12 BOUTIN GIBSON DI GIUSTO HODELL INC.
13 Attorneys for Receiver

14 **CERTIFICATE OF CERTIFIED MAIL SERVICE**

15 I hereby certify that on the 25th day of August, 2009, a copy of this motion was served on
16 all interested parties through the Court's electronic filing system. In addition, a copy of this
17 motion was served on by U.S. Certified Mail, Return Receipt Requested on the following
investors named as owners of the SWA-R&G Policy at their last known address:

18 James P. Hutler and Jacqueline A. Hutler
19 1064 San Ramon Drive
20 Chico, CA 95972

21 */s/ Michael J. Quilling*

22 Michael J. Quilling

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of August, 2009, a copy of this motion was served on all interested parties through the Court's electronic filing system. In addition, a copy of this motion was served on the following other persons by First Class U.S. Mail:

Bazzle John Wilson
1291 Nunneley Road
Paradise, CA 95969

Ernest Jeremias
5022 17th Avenue, Apt. 1
Brooklyn, NY 11204

/s/ Maralee MacDonald
Maralee MacDonald