

BOUTIN GIBSON DI GIUSTO HODELL INC.

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

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

Michael J. Quilling (Tex. Bar No. 16432300) – Admitted Pro Hac Vice
Brent J. Rodine (Tex. Bar No. 24048770) – Admitted Pro Hac Vice
2001 Bryan Street, Suite 1800
Dallas, Texas 75201
Telephone: (214) 871-2100
Facsimile: (214) 871-2111

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 MOTION TO COMPEL
TRANSFER OF OWNERSHIP
INTERESTS FROM LPG
INVESTMENTS, LLC AND WED
MARKETING, LLC [WIL-E&C]

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 LPG Investments, LLC (“LPG”) and WED Marketing LLC (“WED”) to

1 transfer each of their 1.2825% ownership interests in the WIL-E&C policy. In support, the
2 Receiver would show the Court as follows:

3
4 **INTRODUCTION**

5 LPG and WED are not innocent investors and they did not pay for their interests in the
6 WIL-E&C policy. They are alter egos of David Goldenberg who sold non-existent bonds that
7 used to perpetuate its fraudulent investment scheme. SIS gave each of those companies a
8 1.2825% interest in the WIL-E&C policy in exchange for discounted prices on those bonds. The
9 Receiver now files this motion to recover those interests because: (1) they are fraudulent
10 transfers; (2) they are proceeds from funds held in constructive trust for the defrauded investors;
11 and (3) permitting LPG and WED to retain their ownership interests would unjustly enrich each
12 of them at the defrauded investors' expense. In hearing this dispute, the Court may employ
13 summary proceedings available in federal equitable receiverships.
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15 **BACKGROUND FACTS**

16 1. By orders dated August 24, 2007 (Dkt. No. 27) and October 31, 2007 (Dkt. No.
17 80), the Court appointed Michael J. Quilling as Receiver for Secure Investment Services, Inc.
18 and other related entities (collectively, "SIS"). Those orders authorized him to take complete
19 and exclusive control, possession, and custody of all receivership assets.
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21 2. SIS acquired life insurance policies on third parties and sold fractional interests in
22 them to investors. It attracted investors by promising enormous guaranteed returns on a product
23 it called a "bonded" life settlement policy. For each policy it marketed to investors, SIS obtained
24 a life expectancy report that supposedly forecast when the insured would die. It then obtained a
25 bond that supposedly guaranteed payment of the death benefit amount if the insured lived past a
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1 certain date (e.g., the life expectancy date plus two years). In every instance the life expectancy
2 reports turned out to be inaccurate and the bonds proved to be non-existent.

3 3. The receivership estate's largest single asset is a portfolio of 42 life insurance
4 policies. One of those policies is Transamerica Life Insurance Company policy no. 60057369,
5 which the Receiver calls the WIL-E&C policy in these proceedings.
6

7 4. The WIL-E&C policy is a "multiple-owner policy" because the insurance
8 provider lists a divided ownership among numerous investors who each hold fractional interests.
9 Typically, each of those owners also has a beneficiary interest equal to his or her ownership
10 percentage.

11 5. LPG and WED each have a 1.2825% ownership and beneficial interest in the
12 WIL-E&C policy. The Receiver has investigated those companies and determined that they are
13 wholly-owned alter egos for David Goldenberg. Through his company, Surety Marketing
14 Source LLC, Goldenberg sold some of the non-existent bonds that SIS used to market its
15 fraudulent investment to unwitting investors. Receivership records show that LPG and WED did
16 not pay for their interests in the WIL-E&C policy. Instead, they received them in exchange for
17 Surety Marketing Source LLC selling non-existent bonds to SIS at a discounted rate. A true and
18 correct copy of record showing this transaction is attached as Exhibit A.
19

20 6. The Receiver sent demand letters to LPG and WED on July 15, 2009, asking each
21 of them to provide proof of payment or otherwise transfer their interests to the receivership
22 estate. True and correct copies of those letters are attached as Exhibit B and Exhibit C. To date,
23 neither LPG nor WED has responded.
24

25 7. The Receiver now asks the Court to compel both LPG and WED to transfer each
26 of their 1.2825% interests in the WIL-E&C policy to the receivership estate. Should LPG and/or
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1 WED fail to do so in a timely manner, that interest should forfeit to the receivership estate by
2 court order.

3 **ARGUMENT AND AUTHORITIES**

4 **A. Both LPG and WED Acquired Its Interest By Fraudulent Transfer.**

5 **(1) Transfers From A Ponzi Scheme Are Receivership Assets.**

6 Receivership records show that SIS transferred separate 1.2825% ownership interests in
7 the WIL-E&C policy to both LPG and WED without receiving payment for those interests.
8 Those transfers are, therefore, fraudulent transfers that are voidable under the California Uniform
9 Fraudulent Transfer Act (“UFTA”) and supplemental provisions of common law. In relevant
10 part, the UFTA states as follows:
11

12 (a) A transfer made or obligation incurred by a debtor is fraudulent as to a
13 creditor . . . if the debtor made the transfer or incurred the obligation:

14 (1) with actual intent to hinder, delay, or defraud . . .

15 CAL. CIV. CODE § 3439.04. While a plaintiff must ordinarily prove fraudulent intent to recover
16 under this section of the UFTA, that element is automatically established for transfers out of a
17 Ponzi scheme. *In re Agricultural Research & Tech. Group, Inc.*, 916 F.2d 528, 535 (9th Cir.
18 1990). This presumption is necessarily true because a Ponzi scheme is insolvent from its
19 inception. *See In re Slatkin*, 310 B.R. 740, 748 (C.D. Cal. 2004). Accordingly, all asset transfers
20 from a Ponzi scheme are presumed fraudulent and must be disgorged to the receivership estate.
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22 **(2) Receivership Records Show That SIS Was A Ponzi Scheme.**

23 At the show cause hearing, the Receiver intends to show that SIS was operated as a Ponzi
24 scheme. A Ponzi scheme exists where an insolvent company raises money from new investors to
25 satisfy obligations promised to earlier investors. SIS represented that each investor’s
26 contribution would purchase a fractional interest in a particular insurance policy and pay
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1 premiums on only that policy. Account records, however, show that SIS commingled all
2 investor funds into a single account and used them to pay commissions, buy new policies, and
3 make premium payments on numerous policies as they became due. SIS's principal officers
4 eventually depleted the company's reserves. To keep policies from lapsing, they used funds
5 from new investors to pay premiums on policies benefiting earlier investors. In reality, SIS was
6 at all times insolvent and relied on the contributions of new investors to sustain its operations. It,
7 therefore, was a Ponzi scheme that was insolvent for purposes of the UFTA.
8

9 **(3) It Is Undisputed That SIS Gave Both LPG and WED Ownership Interests In**
10 **A Life Insurance Policy.**

11 Without question, SIS gave both LPG and WED a 1.2825% ownership interest in the
12 WIL-E&C policy. Those interests were recorded both in SIS's records and with Transamerica
13 Life Insurance Company.

14 In short, the Receiver intends to establish (1) that SIS operated a Ponzi scheme by
15 diverting funds from new investors to pay the premiums on policies benefiting earlier investors
16 and (2) that SIS transferred interests in the WIL-E&C policy to LPG and WED without receiving
17 any payment or reasonably equivalent value for either interest. Under the settled law of the
18 UFTA, the Receiver may recover those interests for the receivership estate.
19

20 **B. LPG's and WED's Interests Are Proceeds From Funds Held In Constructive Trust**
21 **For The Defrauded Investors' Benefit.**

22 It is a long-standing principle of equity that assets acquired by fraud are held subject to a
23 constructive trust for the benefit of the defrauded parties. RESTATEMENT (FIRST) OF RESTITUTION
24 § 166 (1937). Under California law, a constructive trust is an equitable remedy where it is
25 inequitable for one party to hold an interest in property over the claims of another party. *Kraus*
26 *v. Willow Park Public Golf Course*, 73 Cal.App.3d 354, 373, 140 Cal. Rptr. 744 (1977). While
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1 there is no strict formula dictating when a District Court sitting in equity is bound to impose a
2 constructive trust, this remedy is appropriate to protect investor funds paid into a fraudulent
3 investment scheme. *See SEC v. Paige*, 1985 WL 2335 (D.D.C. July 30, 1985), *aff'd* 810 F.2d
4 307 (“federal legal precedent [is] clear that a thief obtains no title to the stolen property and
5 holds such property and the proceeds thereof in trust for the victim”); *United States v. Fontana*,
6 528 F.Supp. 137, 146 (S.D.N.Y. 1981) (“Where the title to property is acquired by one person
7 under such circumstances that he is under a duty to surrender it, a constructive trust immediately
8 arises”), quoting 5 A. SCOTT, LAW OF TRUSTS § 462.4 (3d ed. 1967).

10 This Court clearly anticipated that funds of SIS investors may be imposed with a
11 constructive trust. The Order Appointing Receiver expressly directs that:

12 The Receiver is hereby authorized to institute such actions or
13 proceedings to impose a constructive trust, obtain possession
14 and/or recover judgment with respect to persons or entities who
15 received assets or funds or proceeds from the corporate
16 Defendants. All such actions shall be filed in this Court. The
17 Receiver is specifically authorized to pursue such actions on behalf
18 of and for the benefit of the constructive trust beneficiaries,
including without limitation any and all investors who may be the
victims of the fraudulent conduct alleged herein by the
Commission.

19 (Order Appointing Receiver [Dkt. No. 80] at ¶ 13.) SIS used commingled investor funds to
20 purchase the WIL-E&C policy. It then transferred a percentage of that ownership interest to
21 LPG and another to WED. The Receiver, therefore, submits those interests are held in
22 constructive trust and ought to be disgorged for the benefit of SIS’s investors.

23 **C. Permitting LPG and WED To Retain Its Interest Would Unjustly Enrich Them At**
24 **The Defrauded Investors’ Expense.**

25 It is well-settled that District Courts have broad powers and wide discretion to determine
26 appropriate relief for federal equity receiverships. *SEC v. Elliott*, 953 F.2d 1560, 1569-70 (11th
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1 Cir. 1992); *see also SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir.1986). In applying equitable
2 principles, courts in this district often use the theories of unjust enrichment and quasi-contract to
3 achieve equity when one party has paid obligations benefiting another.

4 Unjust enrichment is not an independent cause of action, but a general principle
5 supporting various equitable remedies. *Mauro v. Gen. Motors Corp.*, 2008 WL 2775004, *6
6 (E.D. Cal. Jul. 15, 2008); *Walker v. USAA Cas. Ins. Co.*, 474 F.Supp.2d 1168, 1174 (E.D. Cal.
7 2007). The elements supporting unjust enrichment are (1) the receipt of a benefit and (2) the
8 unjust retention of it at another's expense. *Weststyn Dairy 2 v. Eades Commodities Co.*, 280
9 F.Supp.2d 1044, 1057 (E.D. Cal. 2003). A "benefit" includes any advantage obtained by the
10 recipient or expenses paid on his behalf. *Ghirardo v. Antonioli*, 924 P.2d 996, 1003, 14 Cal.4th
11 39, 51 (Cal. 1996); *see also Process Specialties, Inc. v. Sematech, Inc.*, 2001 WL 36105562, *20
12 (E.D. Cal. 2001).

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15 Courts often redress unjust enrichment under the theory of quasi-contract or quantum
16 meruit. Such relief does not require a contract and exists independent of the parties' privity,
17 intent, or promises. *Fid. & Deposit Co. of Md. v. Harris*, 360 F.2d 402, 409 (9th Cir. 1966);
18 *McBride v. Boughton*, 123 Cal. App. 4th 379, 388 n.6 (2004). Courts will imply an obligation to
19 pay when one party, in equity and good conscience, should not be permitted to keep a benefit
20 without paying for it. *U.S. v. Healy Tibbitts Const. Co.*, 607 F.Supp. 540, 542 (N.D. Cal. 1985)
21 (citing DOBBS, REMEDIES 224 (West 1973); 66 Am.Jur.2d, §§ 2, 3).

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23 To avoid unjust enrichment, the Court should compel both LPG and WED to transfer
24 their respective interests to the Receiver. If either fails to do so in a timely manner, the Court
25 should order that ownership interest be forfeited to the receivership estate.

1 As noted above, the Court has “broad powers and wide discretion to determine the
2 appropriate relief in an equity receivership.” *Elliott*, 953 F.2d at 1569-70. This includes the
3 discretionary authority to deny LPG’s and WED’s ordinary contract rights when it is “inimical to
4 receivership purposes.” *See U.S. v. Vanguard Inv. Co., Inc.*, 6 F.3d 222, 226 (4th Cir. 1993).
5 That is exactly what the Receiver asks the Court to do here. Even if SIS agreed to give LPG and
6 WED their ownership interests without paying for them, that agreement undermines the very
7 purpose of this receivership proceeding—to recover proceeds from the commingled funds of
8 defrauded investors.
9

10 **D. In Determining The Receiver’s Claim To LPG’s and WED’s Interests, The Court**
11 **May Employ Summary Proceedings Available In Federal Equitable Receiverships.**

12 This Court may order LPG and WED to transfer their respective interests following an
13 expedited hearing. Federal receivership law recognizes the use of such summary proceedings to
14 resolve disputes to property claimed by a receivership estate. *SEC v. Basic Energy & Affiliated*
15 *Resources*, 273 F.3d 657, 668 (6th Cir. 2001); *see also CFTC v. Topworth Int’l, Ltd.*, 205 F.3d
16 1107, 1113 (9th Cir. 2000); *SEC v. Wencke*, 783 F.2d 829, 837-38 (9th Cir. 1986). It is well
17 settled that Federal Courts have “broad powers and wide discretion” to fashion such relief in
18 equitable receivership proceedings. *Basic Energy & Affiliated Resources*, 273 F.3d at 668. This
19 discretion, which derives from the Court’s inherent equitable powers, makes abbreviated and
20 summary proceedings possible without violating the interests of due process. *See id.* (allowing
21 summary proceedings so long as they “permit parties to present evidence when the facts are in
22 dispute and to make arguments regarding those facts”); *SEC. v. Elliott*, 953 F.2d 1560, 1571 (9th
23 Cir. 1992). Therefore, as long as this Court gives LPG and WED a meaningful opportunity to
24 present their factual and legal contentions, summary proceedings are proper to determine
25 whether they must each disgorge the 1.2825% interest they received from SIS.
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1 Furthermore, summary proceedings are favored in the context of federal receivership
2 actions because they embrace the long-recognized policy of preserving and protecting assets for
3 claimants of the receivership estate. *See Elliott*, 453 F.2d at 1566; *Wencke*, 783 F.2d at 837-38.
4 Abbreviated procedures—including the use of a single receivership proceeding to resolve all
5 claims—advance the government’s interest in judicial efficiency by “reducing the time needed to
6 resolve disputes, decreasing the costs of litigation, and preventing the dissipation of the
7 receiver’s assets.” *Basic Energy & Affiliated Resources*, 273 F.3d at 668; *Elliott*, 453 F.2d at
8 1566; *Wencke*, 783 F.2d at 837-38. Summary proceedings allow the Receiver to consolidate
9 litigation before a single District Judge and “avoid formalities that would slow down the
10 resolution of disputes.” *Wencke*, 783 F.2d at 837 n.9. This both promotes judicial efficiency and
11 reduces litigation costs to the receivership. *Id.* (citing *Smith v. Am. Industrial Research Corp.*,
12 665 F.2d 397, 399 (1st Cir.1981)).
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15 WHEREFORE, premises considered, the Receiver asks for an Order compelling both
16 LPG Investments, LLC and WED Marketing, LLC to each transfer their 1.2825% interests in
17 Transamerica Life Insurance Company policy no. 60057369 to Michael J. Quilling, Receiver,
18 within 10 days from the date of that order. If either fails to do so, that interest should be forfeited
19 to the receivership estate. The Receiver also asks for such other and further relief, general or
20 special, at law or in equity, to which he may show himself entitled.
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Dated: August 26, 2009

Respectfully submitted,

/s/ Michael J. Quilling

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

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

CERTIFICATE OF CERTIFIED MAIL SERVICE

I hereby certify that on the 26th 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 by U.S. Certified Mail, Return Receipt Requested on the following entities named as owners of the WIL-E&C Policy at its last known address:

LPG Investments, LLC
David A. Goldenberg, Registered Agent
4190 Telegraph Road, Suite 2500
Bloomfield Hills, Michigan 48302

WED Marketing, LLC
Ms. Paula Cetean, Registered Agent
5395 Putname Drive
West Bloomfield, Michigan 48323

/s/ Michael J. Quilling

Michael J. Quilling

Exhibit “A”

**SURETY MARKETING SOURCE, LLC
 4190 TELEGRAPH ROAD
 SUITE 2500
 BLOOMFIELD HILLS, MICHIGAN 48322
 PHONE: 248) 644-8601 / FAX: 248) 644-8651
 TOLL FREE: 866) 644-8821**

INVOICE NO: INVOICE DATE: August 14, 2003

To: American Financial Services, Inc
 2875 Churn Creek Road
 Suite A
 Redding, CA 96002

ACCOUNT #	NAME: BER-H&V			
<u>FILE</u>	<u>BOND</u>	<u>BOND</u>		
<u>NAME</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>RATE</u>	<u>PREMIUM DUE</u>
WIL-E&C	8/18/03	\$2,200,000.00	4.75%	\$104,500.00
Less:	15% to be used to acquire an ownership interest in the Settlement for WED Marketing, LLC, a Michigan Limited Liability Company.....			-\$15,675.00
Less:	15% to be used to acquire an ownership interest in the Settlement for LPG Investments, LLC, a Michigan Limited Liability Company.....			-\$15,675.00
Total Net Bond Premium Due				\$73,150.00

TOTAL DUE SURETY MARKETING SOURCE, LLC	\$73,150.00
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REMARKS: Wire instructions enclosed

PAYMENT DUE UPON RECEIPT TO ASSURE BOND DATE

Exhibit “B”

Brent J. Rodine
Phone: (214) 871-2100



E-mail: brodine@qsclpc.com

July 15, 2009

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND U.S. FIRST CLASS MAIL

LPG Investments, LLC
Mr. David Goldenberg, Registered Agent
4190 Telegraph Road, Suite 2500
Bloomfield Hills, Michigan 48302

Re: *Securities and Exchange Commission v. Secure Investments Services, Inc., American Financial Services, Inc., Lyndon Group, Inc., Donald F. Neuhaus, and Kimberly A. Snowden*, Cause No. 2:07-CV-01724-LEW-CMK, U.S. District Court for the Eastern District of California

Insured Names: WIL-E&C
Policy No.: 60057369

Dear Mr. Goldenberg:

The United States District Court for the Eastern District of California has appointed Michael J. Quilling as the Receiver for investment companies owned and operated by Donald Neuhaus. A copy of the Order Appointing Receiver is attached.

Receivership records indicate that LPG Investments, LLC ("LPG") did not pay for its 1.2825% interest in the life insurance policy described above nor have you or anyone on behalf of LPG submitted an investor claim to the receivership estate. It therefore appears that LPG's 1.2825% interest is a fraudulent transfer from an insolvent investment scheme and must be returned to the receivership estate. The Receiver demands that you execute the attached transfer form and send it to us within 14 days from the date of this letter. If you fail to do so, I will ask the Court to forfeit that interest to the receivership estate or hold you in contempt for refusing to return a receivership asset.

We appreciate your attention to this matter and feel free to contact me with any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brodine", is written over the typed name.

Brent J. Rodine
Attorney for Receiver

Enclosure

Exhibit “C”



July 15, 2009

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND U.S. FIRST CLASS MAIL

WED Marketing, LLC
Ms. Paula Cetean, Registered Agent
5395 Putnam Drive
West Bloomfield, Michigan 48323

Re: *Securities and Exchange Commission v. Secure Investments Services, Inc., American Financial Services, Inc., Lyndon Group, Inc., Donald F. Neuhaus, and Kimberly A. Snowden, Cause No. 2:07-CV-01724-LEW-CMK, U.S. District Court for the Eastern District of California*

Insured Names: WIL-E&C
Policy No.: 60057369

Dear Ms. Cetean:

The United States District Court for the Eastern District of California has appointed Michael J. Quilling as the Receiver for investment companies owned and operated by Donald Neuhaus. A copy of the Order Appointing Receiver is attached.

Receivership records indicate that WED Marketing, LLC ("WED") did not pay for its 1.2825% interest in the life insurance policy described above nor have you or anyone on behalf of WED submitted an investor claim to the receivership estate. It therefore appears that WED's 1.2825% interest is a fraudulent transfer from an insolvent investment scheme and must be returned to the receivership estate. The Receiver demands that you execute the attached transfer form and send it to us within 14 days from the date of this letter. If you fail to do so, I will ask the Court to forfeit that interest to the receivership estate or hold you in contempt for refusing to return a receivership asset.

We appreciate your attention to this matter and feel free to contact me with any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brodine", is written over a horizontal line.

Brent J. Rodine
Attorney for Receiver

Enclosure