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15 UNITED STATES DISTRICT COURT  
16 EASTERN DISTRICT OF CALIFORNIA  
17 SACRAMENTO DIVISION

18 SECURITIES AND EXCHANGE  
19 COMMISSION,

20 Plaintiff,

21 v.

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

26 Defendants.

Case No. 2:07-cv-001724 GEB CMK

**EXAMINER'S FOURTH INTERIM  
FEE APPLICATION**

Date: December 20, 2010  
Time: 9:00 a.m.  
Courtroom: 10

27 TO THE HONORABLE UNITED STATES DISTRICT COURT:

28 Examiner Steven A. Harr ("Examiner") moves for an order directing payment of his  
fees and expenses and that of his counsel herein, respectfully stating:

**Facts**

1. This Application covers principally the period from January 16, 2009 through  
October 15, 2010. Billing statements showing the specific activities of the Examiner are set  
forth on the attached Exhibit "A."

1           2.       In summary, during the period covered by this Application, the Examiner  
2 primarily acted to respond to investor inquiries and update the investors on the management  
3 of the portfolio and the efforts of the Receiver to investigate potential recoveries against third-  
4 parties. The Examiner's counsel and his local counsel also complied with the local rules  
5 relative to motions filed by other parties, and complied with administrative requirements, such  
6 as preparing filings like this Application.

7           3.       During the period covered by this Application, there were several months in the  
8 Spring of 2009 when there were an usually large number of discussions with investors that  
9 could not be handled in a routine manner. These discussions primarily concerned policies  
10 where the Receiver owned a fractional interest and maintained a fractional beneficiary  
11 interest. As the Court will recall, when the Receiver advised investors that he was authorized  
12 to abandon policies in which he had a fractional interest, most investors chose to transfer their  
13 ownership to the Receiver rather than seek alternative means of organizing themselves to  
14 support the policies. This left a few investors who were not pleased with this approach, and  
15 who accordingly refused to pay their fair share of the premium costs. This led to a need for  
16 the Court to resolve the issue. The Court sustained the Receiver's request that these  
17 investors be given the choice of paying a portion of the premiums or transferring their  
18 ownership. Following this resolution, there were a number of investors who then sought  
19 assistance from the Examiner in order to evaluate the choice being offered to them. These  
20 investors requested from the Examiner detailed information and comments as to the  
21 cost/benefit to them of transferring their interests. Some investors also wished to discuss  
22 whether the Receiver could re-convey interests that were previously transferred to the  
23 Receiver. As a result of these discussions, investors were able to make reasonably informed  
24 decisions, and further resort to the Court was avoided.

25           4.       The Examiner and his counsel also continued to monitor the management of  
26 the portfolio in an effort to ensure that the management is in the best interests of the investors  
27 which required extensive review of the entire portfolio in both the fall of 2009 and the fall of  
28 2010. The Examiner also provided updates to the investors in response to their comments as

1 to whether selling or holding the portfolio is preferred. This remains a difficult issue that  
2 involves risk either way, but the Examiner continues to believe, based upon discussions with  
3 investors, that the investors as a whole continue to favor holding the portfolio. Many investors  
4 continuously and regularly call to discuss the matter with the Examiner and/or his agents at  
5 some length, and the Examiner believes that these discussions allow the Receiver to respect  
6 the wishes of investors with regard to how their assets are being administered.

7 5. The Examiner and his counsel also addressed a controversy that arose when  
8 the FOW-S(1) and FOW-S(2) policies matured. FOW-S(2) was owned largely by third-party  
9 investors and the Examiner monitored the distribution of the proceeds and the court filings  
10 relating to the same, including a motion to compel payment of death benefits (which included  
11 recovery of the premiums previously paid by the Receiver) filed by the Receiver and  
12 certificates of non-opposition filed in connection therewith. The Examiner and his counsel and  
13 local counsel worked on filing investor comments to the motion to compel. Additionally, in the  
14 course of the distribution of the FOW-S(2) proceeds, the Examiner and his counsel worked  
15 with the Receiver on processes designed to streamline information available on multiple-  
16 owner policies so that the Examiner was better equipped to respond to inquires and  
17 questions.

18 6. During the period covered by this Application, the Examiner was involved in  
19 resolving whether the supposed bonds had any value and/or whether any relief could be  
20 obtained from the agents who established what was ultimately determined to be fraudulent  
21 bonds. The Examiner and/or his counsel met regularly with the Receiver to discuss the  
22 Receiver's investigations into bonds that were supposed to have supported the life settlement  
23 investments at issue. Ultimately, it was determined that all bond issuers used by the  
24 Defendants were sham entities with very little asset-worth and any recovery efforts by the  
25 Receivership would be a waste of resources. Through the course of his meeting with the  
26 Receiver, the Examiner was able to discuss the specifics of the bond investigation so that the  
27 Examiner could respond to numerous investor inquires and update the Examiner website.

7. In order to comply with the Court's procedural requirements, it has also been necessary for the Examiner to employ local counsel. The local counsel expenses were related to monitoring filings, seeking direction from the Examiner's lead counsel as to appropriate responses, and preparing and presenting routine responses.

8. As shown on Exhibit "A," the total amount sought for the Examiner and the Examiner's lead counsel and his local counsel for this period is \$34,734.88. Specifically, the fees and expenses incurred are designated with the prefix MH for lead counsel and MGS for local counsel as follows:

Invoice No.	Bill Date	Fees	Cost	Total
MH10213822	03/04/2009	4,501.00	142.57	4,643.57
MGS20388	03/17/2009	334.00	91.00	425.00
MH10216091	03/30/2009	5,158.00	10.26	5,168.26
MGS20472	04/15/2009	275.75	30.00	305.75
MH10216122	04/22/2009	3,635.00	0.00	3,635.00
MGS20569	05/20/2009	280.75	26.00	306.75
MH10218188	05/26/2009	5,335.00	0.00	5,335.00
MGS20741	06/09/2009	300.25	9.20	309.45
MGS20857	07/14/2009	85.50	0.00	85.50
MH10221607	07/24/2009	4,427.00	354.90	4,781.90
MGS20993	08/17/2009	52.25	0.00	52.25
MH10223906	09/17/2009	2,060.00	100.00	2,160.00
MGS21093	09/18/2009	99.75	0.00	99.75
MGS21243	10/07/2009	33.50	0.00	33.50
MH10227099	11/17/2009	770.00	0.00	770.00
MGS21330	11/17/2009	38.00	0.00	38.00
MGS21499	12/15/2009	100.00	0.00	100.00
MH1028714	12/17/2009	1,472.00	300.00	1,772.00
MGS21625	01/18/2010	76.00	0.00	76.00
MGS21694	02/09/2010	23.75	0.00	23.75
MH10231641	02/18/2010	2,410.00	4.85	2,414.85
MH10233166	03/17/2010	1,299.00	0.00	1,299.00
MGS22098	05/18/2010	114.00	0.00	114.00
MGS22199	06/09/2010	19.00	49.80	68.80
MH10237575	06/18/2010	399.00	103.30	502.30
MGS22264	07/16/2010	28.50	0.00	28.50
MGS22437	08/12/2010	142.50	15.00	157.50
MGS22576	09/14/2010	28.50	0.00	28.50
MH10242336	09/21/2010	553.00	650.12	1,203.12
MH10243611	10/20/2010	1,958.00	166.94	2,124.94
		33,098.00	1,236.88	34,334.88

1 These fees and expenses were reasonable and were necessarily incurred by the Examiner in  
2 carrying out the duties assigned to him herein.

3  
4 **Applicable Legal Standards**

5 9. Although the present matter is an equitable receivership, analogous cases  
6 involving bankruptcy estates set forth an appropriate standard for evaluating applications for  
7 compensation. See Pennsylvania v. Delaware Valley Citizens Counsel for Clean Air, 478 U.S.  
8 546 (1986); Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974); Lindy  
9 Brothers Builders, Inc. v. Am. Radiator and Standard Sanitary Corp., 540 F.2d 102 (3rd Cir.  
10 1976); Copper Liquor, Inc. v. Adolph Coors Co., 624 F.2d 575 (5th Cir. 1980) ("Copper I") and  
11 Copper Liquor, Inc. v. Adolph Coors Co., 684 F.2d 1087 (5th Cir. 1982) ("Cooper II"); Hensley  
12 v. Eckerhart, 461 U.S. 424, 103 S. Ct. 1933, 76 L.Ed.2d 40 (1983); In re Blum v. Stenson, 465  
13 U.S. 886, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984); see also Meronk v. Arter & Hadden, LLP (In  
14 re Meronk), 249 B.R. 208, 213 (9th Cir. BAP 2000), aff'd, 24 Fed. Appx. 737 (9th Cir. 2001)  
15 (citing Burgess v. Klenske (In re Manoa Fin. Co.), 853 F.2d 687 (9th Cir. 1988)); In re  
16 Buckridge, 367 B.R. 191 (Bankr. C.D. Cal. 2007) (citing Kerr v. Screen Extras Guild, Inc., 526  
17 F.2d 67, 70 (9th Cir. 1975), cert. denied, 425 U.S. 951, 96 S.Ct. 1726, 48 L.Ed.2d 195 (1976)).

18 10. As shown in the above authorities, the Court is entitled to exercise its discretion  
19 in taking into consideration a variety of factors, which are discussed below.

20 **Application of Legal Standards**

21 11. In similar fashion, Local Rule 54-293(c) lists the criteria to be considered for the  
22 award of attorney's fees. The following addresses the application of certain of the factors  
23 applicable to the circumstances of this case:

24 (1) Time and Labor Required. Attached as Exhibit "A" hereto are  
25 statements setting forth the services rendered during the period covered by this  
26 Application. The statements show that the time as set forth was actually expended in  
27 carrying out the tasks detailed therein. The time expended and expenses incurred  
28 were necessary, reasonable and appropriate under the circumstances of this case.

1 (2) The Novelty and Difficulty of the Issues. As explained in part above,  
2 many of the issues raised in this case are novel and complex.

3 (3) The Skill Required to Perform the Service. A number of issues in this  
4 case required a relatively high degree of skill and experience to address. The  
5 Examiner and his counsel have directly relevant experience that has allowed them to  
6 respond to this situation without incurring nearly as much time and expense as others  
7 might under similar circumstances.

8 (4) The Preclusion of Other Employment Due to the Acceptance of the  
9 Case. The Examiner has not declined any representation solely because of the  
10 services rendered in this case.

11 (5) Customary Fee. The Examiner represents and would demonstrate that  
12 the hourly rates charged are competitive and customary for the degree and skill of  
13 expertise required in the performance of similar services rendered by other  
14 experienced professionals in this District. Indeed, the rates were fixed and approved  
15 at the time of his appointment (Dkt. 91).

16 (6) Whether the Fee is Fixed or Contingent. Although the professionals in  
17 this matter are retained on the basis of a fixed hourly rate, the ability to compensate  
18 these fees is subject to the limited and uncertain liquidity of the Receivership Estate,  
19 as well as the potential for delays occasioned by the process of seeking approval by  
20 this Court.

21 (7) Time Limitations. The Examiner and his counsel have been required to  
22 respond promptly to investors. The Examiner has been unable to handle the volume  
23 of inquiries personally at certain times and has therefore relied, in part, on his counsel  
24 and staff for assistance.

25 (8) Amounts Involved and Results Obtained. This case involves in excess  
26 of 600 investors who invested over \$31 million. Many have their life savings at stake.  
27 As a result, the attention required to this matter in view of its seriousness is significant.  
28

1 The results obtained by the Examiner are intangible at this time, however, and difficult  
2 to measure.

3 (9) Counsel's Experience, Reputation and Ability. As noted above, the  
4 Examiner and his counsel have directly relevant experience that has allowed them to  
5 respond to this situation without incurring nearly as much time and expense as others  
6 might under similar circumstances. The Examiner's counsel was not retained on the  
7 basis of a particular reputation, although his counsel is well regarded among those  
8 familiar with securities enforcement receiverships.

9 (10) Undesirability. This matter is not undesirable.

10 (11) Nature and Length of Relationship. The Examiner retained the firm of  
11 which he is a member.

12 (12) Awards in Similar Actions. This is a relatively modest application  
13 compared to fees charged in similar cases for similar services. Mainly, this was  
14 achieved because of the experience of the Examiner and his counsel in a related  
15 action, and in other, similar actions.

16 **Conclusion**

17 12. For the foregoing reasons, the Examiner requests approval and payment of  
18 compensation for services rendered and reimbursement of actual and necessary out-of-  
19 pocket expenses incurred as more fully set forth in the invoices attached as Exhibit "A."

20 Dated: November 19, 2010.

21  
22 Respectfully submitted,

23 MUNSCH HARDT KOPF & HARR, P.C.

24  
25 Dennis L. Roossien, Jr.

26 Dennis L. Roossien, Jr.  
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MENNEMEIER, GLASSMAN & STROUD LLP

Kenneth C. Mennemeier  
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COUNSEL FOR EXAMINER

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