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

17 SECURITIES AND EXCHANGE  
18 COMMISSION,

19 Plaintiff,

20 v.

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

25 Defendants.

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

**EXAMINER'S FINAL  
FEE APPLICATION AND  
MOTION FOR DISCHARGE**

Date: March 2, 2015  
Time: 9:00 a.m.  
Courtroom: 10

26 TO THE HONORABLE UNITED STATES DISTRICT COURT:

27 Examiner Steven A. Harr ("Examiner") moves for discharge and for a final order on his  
28 fees and expenses and that of his counsel herein, respectfully stating:

**Facts**

1. On August 23, 2007, the United States Securities and Exchange Commission ("SEC") filed its Complaint and requested the appointment of a receiver. On October 31,

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1 2007, the court appointed Michael J. Quilling to serve as receiver and he has functioned in  
2 that capacity since that time.

3 2. On November 30, 2007, the Receiver filed a Motion to Appoint Examiner. On  
4 December 3, 2007, the Court granted the motion and appointed Steven A. Harr as the Court's  
5 Examiner. The Examiner was appointed to monitor the activities of the Receiver,  
6 communicate with the investors and establish a website for this purpose, and to report to the  
7 Court whenever necessary as to the collective interest of the investors. The Examiner  
8 employed the law firm of Munsch Hardt Kopf & Harr, P.C. ("MHKH") as his general counsel.  
9 The Examiner is an attorney and shareholder of MHKH.

10 3. The life settlement portfolio has now been liquidated and a distribution to  
11 investors effected. Accordingly, the Examiner seeks a discharge and presents this final fee  
12 application.

13 4. During the period covered by this Application, the Examiner and his counsel  
14 continued to evaluate the performance of the life settlement portfolio and the issue of whether  
15 the portfolio should be liquidated. The Examiner and his counsel assisted in the determination  
16 to liquidate the portfolio. The Examiner also maintained a website. Finally, the Examiner's  
17 counsel complied with all local rules and requirements of this Court with regard to this matter.

18 5. The examiner subsequently retained the law firm of Mennemeier, Glassman &  
19 Stroud LLP ("MGS"), located in Sacramento, California, as his local counsel. MGS assisted the  
20 Examiner in filing all documents with the Court.

21 6. The period covered by this Application is as follows: with regard to the  
22 Examiner and MHKH, this Application covers principally the period from March 15, 2013  
23 through December 10, 2014. With regard to MGS, this Application covers principally the  
24 period from February 16, 2013 through January 16, 2015. Billing statements showing the  
25 specific activities of the Examiner, MHKH and MGS are set forth on the attached Exhibit "A."  
26 Exhibit "A" conveys: (a) the number of hours worked by each attorney and staff member on a  
27 particular day; (b) the work performed by each attorney and staff member; and (c) the rates for  
28 each person rendering service in this matter.

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7. As shown on Exhibit "A," the total amount sought for the Examiner and MHKH for this period is \$8,488.76. Specifically, the fees and expenses incurred are as follows:

MH10283295	03/22/13	\$192.00	\$162.50	\$354.50
MH10285247	04/26/13	245.00	162.98	407.98
MH10287620	06/17/13	35.00	162.78	197.78
MH10287736	06/19/13	35.00	162.50	197.50
MH10289804	07/26/13	0.00	162.50	162.50
MH10290687	08/20/13	0.00	162.50	162.50
MH10292198	09/18/13	419.00	162.50	581.50
MH10293615	10/18/13	0.00	162.50	162.50
MH10295502	11/20/13	1,340.00	162.50	1,502.50
MH10296740	12/17/13	0.00	162.50	162.50
MH10299357	02/19/14	0.00	325.00	325.00
MH10300782	03/19/14	0.00	162.50	162.50
MH10302226	04/17/14	0.00	162.50	162.50
MH10304867	05/19/14	35.00	162.50	197.50
MH10305216	06/17/14	0.00	162.50	162.50
MH10306712	07/17/14	0.00	162.50	162.50
MH10308223	08/19/14	0.00	162.50	162.50
MH10309771	09/17/14	0.00	162.50	162.50
MH10313084	11/18/14	0.00	162.50	162.50
MH10314590	12/11/14	2,548.00	167.54	2,715.54
<b>TOTAL</b>		<b>\$4,849.00</b>	<b>\$3,418.30</b>	<b>\$8,267.30</b>

In addition, the total amount MGS incurred for this period is \$1,025.50. The fees and expenses incurred are as follows:

Date	Inv. #	Total Fees	Total Expenses	Total Invoice
05/10/2013	MGS 26273	\$85.00	\$0.00	\$85.00
06/21/2013	MGS 26409	\$424.00	\$70.60	\$494.60
12/13/2013	MGS 26824	\$402.00	\$9.90	\$411.90
10/03/2014	MGS 22275	\$34.00	\$0.00	\$34.00
<b>TOTAL</b>		<b>\$945.00</b>	<b>\$80.50</b>	<b>\$1,025.50</b>

These fees and expenses were reasonable and were necessarily incurred by the Examiner, MHKH and MGS in carrying out the duties assigned to them herein.

**Applicable Legal Standards**

8. Although the present matter is an equitable receivership, analogous cases involving bankruptcy estates set forth an appropriate standard for evaluating applications for compensation. See Pennsylvania v. Delaware Valley Citizens Counsel for Clean Air, 478 U.S.

1 546 (1986); Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974); Lindy  
2 Brothers Builders, Inc. v. Am. Radiator and Standard Sanitary Corp., 540 F.2d 102 (3rd Cir.  
3 1976); Copper Liquor, Inc. v. Adolph Coors Co., 624 F.2d 575 (5th Cir. 1980) ("Copper I") and  
4 Copper Liquor, Inc. v. Adolph Coors Co., 684 F.2d 1087 (5th Cir. 1982) ("Cooper II"); Hensley  
5 v. Eckerhart, 461 U.S. 424, 103 S. Ct. 1933, 76 L.Ed.2d 40 (1983); In re Blum v. Stenson, 465  
6 U.S. 886, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984); see also Meronk v. Arter & Hadden, LLP (In  
7 re Meronk), 249 B.R. 208, 213 (9th Cir. BAP 2000), aff'd, 24 Fed. Appx. 737 (9th Cir. 2001)  
8 (citing Burgess v. Klenske (In re Manoa Fin. Co.), 853 F.2d 687 (9th Cir. 1988)); In re  
9 Buckridge, 367 B.R. 191 (Bankr. C.D. Cal. 2007) (citing Kerr v. Screen Extras Guild, Inc., 526  
10 F.2d 67, 70 (9th Cir. 1975), cert. denied, 425 U.S. 951, 96 S.Ct. 1726, 48 L.Ed.2d 195 (1976)).

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

#### 13 Application of Legal Standards

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

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

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

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

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

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

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

14          (7)    Time Limitations. There were no time limitations relevant to this  
15   Application.

16          (8)    Amounts Involved and Results Obtained. This case involves the  
17   salvaging of a portfolio of life settlements and the pursuit of claims. The Examiner has  
18   worked with the Court, the Receiver, and many of the investors to evaluate the best  
19   course of action, to make a number of recommendations, and to support certain efforts  
20   of the Receiver. During the period covered by this Application, the Examiner assisted  
21   in evaluating whether the portfolio should be liquidated and on what terms, and also  
22   maintained a website with regard to this matter.

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

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

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

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

8 11. This Application also requests approval on a final basis of the fees and expenses  
9 previously allowed to the Examiner, MHKH and MGS on an interim basis by virtue of the  
10 following six interim fee applications:

11

Application	Doc. No.	Approval Order	Doc. No.
First	227	September 8, 2008	292
Second	362	January 20, 2009	421
Third	491	March 25, 2009	500
Fourth	792	December 16, 2010	809
Fifth	918	March 29, 2012	923
Sixth	942	June 26, 2013	946

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20 **Conclusion**

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

24 13. To clarify, pursuant to paragraph 6 of the Order on Stipulated Motion to Appoint  
25 Examiner [Doc. 93] which adopts paragraph 17 of the Order Appointing Receiver [Doc. 80],  
26 and after obtaining the consent of the SEC, the Receiver has paid the Examiner and MHKH  
27 90% of their fees (\$4,364.10) and 100% of their expenses (\$3,418.70). In addition, after  
28 obtaining the consent of the SEC, the Receiver has paid the Examiner's local counsel, MGS,

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1 90% of their fees (\$850.50) and 100% of their expenses (\$80.50). The purpose of this  
2 Application is to request Court approval of all of these fees and expenses and to allow  
3 payment of the 10% fee holdback to the Examiner and MHKH in the amount of \$481.40, and  
4 to allow payment of the 10% fee holdback to the Examiner's Local Counsel, MGS, in the  
5 amount of \$94.50.

6 14. Accordingly, the Examiner requests approval and payment of the holdback  
7 amounts.

8 15. From the ending date of addressed above (December 10, 2014) through the date  
9 an Order is entered approving a final distribution and closure of the case. The amount of fees  
10 and expenses associated with these tasks cannot be stated exactly, but the Examiner and/or his  
11 counsel anticipates that additional fees and expenses in the amount of \$2,500 will be incurred  
12 with respect to at least the following activities:

13 a. Preparing this Application and attending any hearings or closing  
14 meetings relevant to closing the case; and

15 b. Attending to issues of final closing of the file, responding to  
16 inquiries from claimants with regard to the final distribution and attending to the  
17 closing of the physical file.

18 16. As all assets have now been liquidated, the Examiner requests a discharge.  
19

20 WHEREFORE, PREMISES CONSIDERED, the Examiner and MHKH request that this Court:

21 (1) Approve on a final basis all of the fees and expenses previously  
22 awarded to the Examiner and MHKH on an interim basis;

23 (2) For the Examiner and MHKH, approve on a final basis the fees  
24 and expenses for the period from March 15, 2013 through December 10, 2014  
25 and authorize the Receiver to pay the 10% fee holdback of \$481.40 as set out in  
26 paragraph 7 above;  
27  
28

1 (3) For the MGS, approve on a final basis the fees and expenses for the  
2 period from February 16, 2013 through December 31, 2015 and authorize the Receiver  
3 to pay the 10% fee holdback of \$94.50 as set out in paragraph 7 above;

4 (4) Authorize the Receiver to pay MHKH and/or his counsel the amount of  
5 \$2,500 to cover fees and expenses to complete the final distribution and closure of this  
6 case;

7 (5) For an Order discharging the Examiner from this matter; and

8 (6) For such other and further relief, general or special, at law or in equity, to  
9 which the Examiner and MHKH may show themselves justly entitled.

10 Dated: January 28, 2015.

11  
12 Respectfully submitted,

13 MUNSCH HARDT KOPF & HARR, P.C.

14 /s/ Dennis L. Roossien, Jr.

15 Dennis L. Roossien, Jr.

16  
17 MENNEMEIER GLASSMAN LLP

18 /s/ Kenneth C. Mennemeier

19 Kenneth C. Mennemeier

20 COUNSEL FOR EXAMINER  
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