

USDC SCAN INDEX SHEET



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3:04-CV-02295 SEC V. EMVEST MORTGAGE FUND

\*189\*

\*DECL.\*

1 ROBERT S. BREWER, JR., ESQ. (SBN 65294)  
2 ROBERT A. COCCHIA, ESQ. (SBN 172315)  
3 JOSEPH N. CASAS, ESQ. (SBN 225800)  
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FILED  
05 NOV 22 AM 10:35  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY: *Casas* DEPUTY

6 Attorneys for Defendants EMVEST MORTGAGE FUND,  
7 LLC; EMVEST, INC.; and MILON LYLE BROCK

**NUNC PRO TUNC**

NOV 21 2005

9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

12 SECURITIES AND EXCHANGE  
13 COMMISSION,  
14 Plaintiff,  
15 v.  
16 EMVEST MORTGAGE FUND, LLC;  
17 EMVEST, INC.; and MILON LYLE BROCK,  
18 Defendants.

CASE NO. 04 CV 2295 DMS (POR)  
DECLARATION OF JOSEPH N. CASAS  
IN SUPPORT OF DEFENDANTS  
EMVEST MORTGAGE FUND, LLC'S,  
EMVEST, INC.'S AND MILON LYLE  
BROCK'S OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
DATE: DECEMBER 2, 2005  
TIME: 1:30 P.M.  
CTRM: 10

19 I, Joseph N. Casas, hereby declare as follows:

20 1. I am an attorney licensed to practice law in the States of California and Illinois and  
21 before this Court, and a member of the law firm of McKenna Long & Aldridge LLP, attorneys for  
22 Defendants Emvest Mortgage Fund, LLC (the "Fund"); Emvest, Inc.; and Milon Lyle Brock  
23 ("Defendants"). I make this Declaration in support of Defendants' Opposition to Plaintiff's  
24 Motion for Summary Judgment. I have personal knowledge of the facts set forth herein, except  
25 as to those facts stated upon information and belief, which facts I believe to be true. If called to  
26 testify, I could and would competently do so.

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28 ///

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2. Attached as Exhibit 1 is a true and correct copy of The Fund's Compendium of Warnings & Disclosures.


3. Attached as Exhibit 2 is a true and correct copy of excerpts from Milon Lyle Brock's Deposition Transcript, dated October 25, 2005.

4. Attached as Exhibit 3 is a true and correct copy of excerpts from Volume I of Timothy Canty's Pre-Litigation Deposition Transcript, dated July 12, 2004.

5. Attached as Exhibit 4 is a true and correct copy of excerpts from Dominic LoBuglio's Deposition Transcript, dated November 9, 2005.

6. Attached as Exhibit 5 is a true and correct copy of excerpts from Timothy Canty's Deposition Transcript, dated October 27, 2005.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 21st day of November 2005, at San Diego, California.

  
JOSEPH N. CASAS

SD:22141034.1



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The Fund's Compendium of Warnings & Disclosures

	<u>JUNE 2004 PROSPECTUS</u>	<u>OPERATING AGREEMENT</u>	<u>SUBSCRIPTION AGREEMENT</u>
<u>TOPIC</u>	<u>Citation</u>	<u>Citation</u>	<u>Citation</u>
<b>Distributions</b>	(1) Bates No. EM 04500; (2) "Distributions" EM 04511; (3)	(1) "Priority Operating Return Distribution" EM 04530; (2) "Payment of and Interest on Capital Contributions" EM 04531 (3) "Cash Distributions From Operation" EM 04536; (4) "Allocation of Net Profits" EM 04538	N/A
<b>Use of Proceeds</b>	(1) "The Offering" EM 04499; (2) "Use Of Proceeds" EM 04507	(1) "Capital Account" EM 04528; (2) "Distributable Cash" EM 04529; (3) "Cash Distributions From Operation" EM 04536; (4) "Allocation of Net Profits" EM 04538; (5) "Distribution of Assets" EM 04540; (6) "Return of Capital Contribution" EM 04541.	N/A
<b>Affiliate Disclosures</b>	(1) "Loan Types" EM 04502; (2) "Servicing of Loans" EM 04503-04; (3) "Plan of Distribution" EM 04512; (4) "Certain Transactions" EM 04513; (5) "Conflicts of Interest" EM 04517	(1) "Affiliate" EM 04527; (2) "Loans From the Manager or its Affiliates" EM 04533; (3) "Compensation to the Manager" EM 04534; (4) "Independent Activities: Transactions with the Company" EM 04534.	(1) "Indemnification" EB 04490;
<b>Manager Discretion And/Or Compensation</b>	(1) "Loan Portfolio: Selection" EM 04501; (2) "Underwriting" EM 04502; (3) "Manager" EM 04506; (4) "Compensation To Manager" EM 04507; (5) "Term" EM 04508; (6) "Rights & Powers of Shareholders" EM 04508; (7) "Annual Reports" EM 04509; (8) "Limits of Liability: Manager" EM 04510; (9) "Plan of Distribution" EM 04512; (10) "Subscription" EM 04512; (11) "Certain Transactions" EM 04513; (12) "Reliance on the Manager" EM 04515; (13) "Change of Control of Manager" EM 04515; (14) "Conflicts of Interest" EM 04517	(1) "Business" EM 04527; (2) "Additional Capital Contributions" EM 04532; (3) "Transfer of Shares" EM 04532; (4) "Management" EM 04533; (5) "Compensation to the Manager" EM 04534	(1) "Representations, Warranties, and Agreements" EM 04489
<b>Conflict of Interest</b>	(1) "Loan Types" EM 04502; (2) "Loan Types" EM 04501-02; (3) "Compensation To Manager" EM 04507; (4) "Certain Transactions" EM 04513; (4) "Conflicts of Interest" EM 04517	N/A	N/A

The Fund's Compendium of Warnings & Disclosures

	<u>JUNE 2004 PROSPECTUS</u>	<u>OPERATING AGREEMENT</u>	<u>SUBSCRIPTION AGREEMENT</u>
<u>TOPIC</u>	<u>Citation</u>	<u>Citation</u>	<u>Citation</u>
<b>No Guarantees</b>	(1) "Operating Risks: Unseasoned Entity: Short History of Profitability" EM 04517; (2) "No Assurance of Return of Invested Capital" EM 04517	N/A	N/A
<b>Risk Factors</b>	(1) "For California Residents Only" EM 04496; (2) "Prospectus Summary" EM 04499; (3) "Risk Factors" 04501-02; (4) "Loan Types" EM 04501-02; (5) "Collateral Value" EM 04501-02; (4) "Prospective Borrowers" EM 04503; (5) "Insurance" EM 04503; (6) "Capitalization" EM 04508; (7) "Limits of Liability: Manager" EM 04510; (8) "Limited Transferability of Shares" EM 04510; (9) "Liquid Distributions to Shareholders and Managers" EM 04511-12; (10) "The Offering" EM 04512; (11) "Limitations on Transfer" EM 04513; (12) "Certain Transactions" EM 04513; (13) "RISK FACTORS" EM 04514-20;	(1) "Capital Account" EM 04528; (2) "Determination of Net Profits and Net Losses" EM 04536; (3) "Allocation of Net Losses" EM 04538; (4) "Qualified Income Offset" EM 04539	(1) "Representations, Warranties, and Agreements" EM 04490
<b>Qualified Investors</b>	(1) "For California Residents Only" EM 04496	(1) "Initial Capitalization" EM 04531; (2) "Transfer of Shares" EM 04532	(1) "Representations, Warranties, and Agreements" EM 04490; (2) "Investor Suitability" EM 04491-92
<b>Reference To Other Documents</b>	(1) "Operating Agreement" EM 04507; (2) "Term" EM 04508; (3) "Distributions To Shareholders" EM 04150; (4) "Dissolution" EM 04150-51; (5) "Profit and Loss Allocations..." EM 04519; (6) "Allocations of Net Income and Loss" EM 04522	N/A	(1) "Representations, Warranties, and Agreements" EM 04489-90





09:36:18 1 Do you think that it's untrue that the Fund  
09:36:20 2 sold away the asset?  
09:36:25 3 A. I think that's untrue.  
09:36:26 4 Q. Why do you think that's untrue?  
09:36:27 5 A. Because it didn't happen.  
09:36:29 6 Q. Mr. Brock, can you describe for me what your  
09:36:31 7 understanding is of the collateral note program?  
09:36:35 8 A. Collateral note program is very simply a  
09:36:40 9 leveraging program to use the assets of the Fund to  
09:36:45 10 create more working capital, retaining ownership, and  
09:36:53 11 magnifying the yield on that ownership interest.  
09:37:01 12 Q. Okay. And when you say it's a program to use  
09:37:03 13 the assets of the Fund, what assets of the Fund are you  
09:37:07 14 referring to?  
09:37:11 15 A. Trust deeds.  
09:37:12 16 THE REPORTER: I'm sorry?  
09:37:14 17 THE WITNESS: Trust deeds.  
09:37:15 18 THE REPORTER: Trust deeds.  
09:37:15 19 BY MS. WHITE:  
09:37:16 20 Q. And how does the collateral note program use  
09:37:19 21 those trust deeds to increase working capital?  
09:37:23 22 A. The trust deeds are pledged to another  
09:37:25 23 investor. And when I say "pledged," I mean borrowed  
09:37:30 24 against. New money comes in that is used to invest in  
09:37:36 25 new trust deeds.

11:10:18 1 market?

11:10:19 2 A. No.

11:10:27 3 Q. Do you have any ownership interest in Emerald

11:10:29 4 Bay Financial, Inc.?

11:10:34 5 A. I already disclosed that. Yes.

11:10:36 6 Q. What do you mean, you already disclosed that?

11:10:38 7 A. I think I've already answered that question.

11:10:41 8 Q. Is there a reason why Emerald Bay Financial,

11:10:44 9 Inc., was not listed on your list of assets as of

11:10:47 10 November 22nd, 2004?

11:10:50 11 MR. COCCHIA: Assumes facts.

11:10:55 12 THE WITNESS: I don't know that it has any

11:10:56 13 value in excess of 5,000.

11:11:01 14 BY MS. WHITE:

11:11:02 15 Q. Does Emerald Bay Financial have any bank

11:11:04 16 accounts?

11:11:05 17 A. Yes.

11:11:09 18 Q. Do you know how much money is in Emerald Bay

11:11:10 19 Financial's bank accounts?

11:11:19 20 A. Can you be more specific as to time?

11:11:21 21 Q. Sure.

11:11:21 22 As of November 2004, do you know how much money

11:11:25 23 Emerald Bay Financial, Inc., had in its bank accounts?

11:11:30 24 A. Exactly, no.

11:11:33 25 Q. Did you do anything to investigate how much

01:30:39 1 what the accountants would have told you; is that  
01:30:41 2 correct?  
01:30:42 3 MR. COCCHIA: Same objections.  
01:30:44 4 THE WITNESS: I think I would have relied on  
01:30:46 5 the accountants to give us -- to give management  
01:30:49 6 instruction on that.  
01:30:57 7 BY MS. WHITE:  
01:30:57 8 Q. Was it your understanding that there's nothing  
01:30:59 9 in the prospectus that indicates how the syndication  
01:31:03 10 costs are to be treated, then?  
01:31:04 11 MR. COCCHIA: Objection. Document speaks for  
01:31:05 12 itself. The question's vague and ambiguous, overbroad.  
01:31:09 13 BY MS. WHITE:  
01:31:10 14 Q. And, again, I'm asking you for your  
01:31:12 15 understanding of the prospectus as manager of the Fund  
01:31:14 16 and as having read the prospectus before it was  
01:31:17 17 finalized.  
01:31:17 18 What's your understanding of how the  
01:31:19 19 syndication costs were going to be treated when the Fund  
01:31:21 20 terminated?  
01:31:22 21 MR. COCCHIA: Objection. Document speaks for  
01:31:23 22 itself, calls for a legal conclusion, incomplete  
01:31:26 23 hypothetical, lacks foundation, calls for speculation.  
01:31:30 24 THE WITNESS: Number one, I don't think I was  
01:31:31 25 the manager of the Fund. I was an agent of the manager.

01:31:35 1 BY MS. WHITE:

01:31:36 2 Q. You were the CEO of the manager; is that

01:31:38 3 correct?

01:31:39 4 A. Not until a later date.

01:31:41 5 Q. When did you become CEO of Emvest, Inc.?

01:31:45 6 A. At a later date. I think that -- that was much

01:31:48 7 later, and I don't remember the date. But as to my

01:31:56 8 understanding, I think that in my prior testimony, I

01:32:00 9 stated that I always felt that employing the Funds over

01:32:09 10 a period of five years, that there was a very high

01:32:15 11 likelihood that all costs, syndication costs, would be

01:32:21 12 recaptured through discount fees by the Fund.

01:32:30 13 BY MS. WHITE:

01:32:30 14 Q. Mr. Brock, aside from what your hopes or

01:32:35 15 expectations were with respect to the operation of the

01:32:38 16 Fund, do you understand whether or not the prospectus

01:32:42 17 says anything about how syndication costs are supposed

01:32:44 18 to be treated with respect to investors' capital

01:32:47 19 accounts?

01:32:47 20 MR. COCCHIA: Objection. Document speaks for

01:32:49 21 itself.

01:32:50 22 THE WITNESS: I don't know.

01:32:52 23 BY MS. WHITE:

01:33:03 24 Q. Mr. Brock, if you'll turn to page 3 of

01:33:06 25 Exhibit 41 under the section entitled "Loan Portfolio."

01:33:13 1 Do you see that?

01:33:13 2 A. Yes.

01:33:14 3 Q. Did you read that section of the prospectus

01:33:18 4 before it was finalized?

01:33:20 5 A. I read the entire prospectus, so I'm sure I

01:33:22 6 read this section.

01:33:23 7 Q. Okay. The first sentence there reads, "The

01:33:25 8 Company's Loan Portfolio will be selected at the sole

01:33:28 9 discretion of the Manager."

01:33:31 10 Do you see that?

01:33:31 11 A. Yes.

01:33:32 12 Q. Who was the manager?

01:33:33 13 A. Emvest, Inc.

01:33:34 14 Q. Okay. And you are the CEO of Emvest, Inc.?

01:33:38 15 MR. COCCHIA: Objection. Asked and answered.

01:33:40 16 THE WITNESS: Not at the time this was written.

01:33:41 17 BY MS. WHITE:

01:33:42 18 Q. When did you become CEO of Emvest, Inc.?

01:33:45 19 MR. COCCHIA: Objection. Asked and answered.

01:33:47 20 THE WITNESS: I don't remember. It was a later

01:33:51 21 date.

01:33:52 22 BY MS. WHITE:

01:33:52 23 Q. Can you estimate how much later than March 14,

01:33:56 24 2002?

01:33:59 25 A. I believe in '04.

01:34:01 1 Q. Do you recall what month of '04?

01:34:10 2 A. I think it's when we filed for Emvest II, and I

01:34:17 3 don't remember the month.

01:34:18 4 Q. Who was CEO of Emvest, Inc., in 2002?

01:34:22 5 A. Mr. Canty was president.

01:34:32 6 Q. At the bottom of that paragraph, it states, (as

01:34:33 7 read): "To the extent required in order to comply with

01:34:36 8 the requirements governing intra-state offerings set

01:34:41 9 forth in Rule 147 promulgated under Section 3(a)(11) of

01:34:46 10 the Securities Act of 1933, as amended, the Company

01:34:50 11 plans to utilize at least 80 percent of the proceeds of

01:34:54 12 this offering for investments in Loans secured by

01:34:58 13 property located in California."

01:35:00 14 Do you see that?

01:35:01 15 A. I do.

01:35:09 16 Q. Do you recall reading that?

01:35:09 17 A. I do.

01:35:09 18 Q. Did you ever discuss that with your lawyer?

01:35:09 19 A. Yes.

01:35:09 20 Q. And what do you recall discussing with him?

01:35:10 21 A. That the Fund could buy loans other than in

01:35:17 22 California.

01:35:22 23 Q. Was there any limitation on the amount of loans

01:35:24 24 that the Fund could buy other than in California?

01:35:28 25 MR. COCCHIA: Objection. Document speaks for

01:39:50 1 Q. Why?

01:39:54 2 A. There were legislative changes that basically

01:40:00 3 mandated that that type of investment vehicle would

01:40:05 4 not -- would not survive the Department of Real Estate

01:40:14 5 view of the law.

01:40:15 6 Q. And when did you terminate Tri-Star?

01:40:20 7 A. I filed the limited partnership dissolution

01:40:28 8 form with the Secretary of State perhaps in '03 or '04.

01:40:39 9 Q. And Heritage was also terminated?

01:40:42 10 A. Yes.

01:40:43 11 Q. When was Heritage terminated?

01:40:45 12 A. The same time.

01:40:46 13 Q. And why was Heritage terminated?

01:40:48 14 A. Same reason.

01:40:52 15 Q. What happened to the investors or the

01:40:54 16 individuals who invested money -- strike that.

01:40:57 17 What happened to the unit holders in Tri-Star?

01:41:00 18 MR. COCCHIA: Objection. Vague.

01:41:02 19 THE WITNESS: Unit holders were given the

01:41:03 20 option to roll their investment into Emvest, Inc., or

01:41:11 21 Emvest Fund, or they could take a cash distribution

01:41:17 22 equal to their capital account and go on their way.

01:41:23 23 BY MS. WHITE:

01:41:24 24 Q. Did the unit holders -- did all the unit

01:41:28 25 holders roll over their investment to Emvest?

02:05:04 1 A. I don't see -- well, I see service fees, 9928.  
02:05:09 2 I really don't know what that -- I don't know what that  
02:05:12 3 represents.  
02:05:15 4 Q. Did the Fund also pay a loan servicing fee?  
02:05:20 5 A. I don't know if that represents the fee to  
02:05:23 6 Unified Mortgage Service or not.  
02:05:38 7 Q. Mr. Brock, I'm handing you what has been marked  
02:05:40 8 as Exhibit 13.  
02:05:44 9 Do you recognize Exhibit 13?  
02:06:01 10 A. I do.  
02:06:01 11 Q. What is Exhibit 13?  
02:06:04 12 A. Financial statement for Emvest Mortgage Fund,  
02:06:06 13 LLC.  
02:06:08 14 Q. And this is for the period ending June 30,  
02:06:11 15 2003; is that correct?  
02:06:13 16 A. Yes.  
02:06:14 17 Q. And, again, I'd like you to turn to the balance  
02:06:17 18 sheet, which is the first page of the financial  
02:06:20 19 statements.  
02:06:22 20 A. I see that.  
02:06:22 21 Q. It's a balance sheet. Again, the cash in bank  
02:06:25 22 listed there is approximately \$2.5 million; is that  
02:06:28 23 correct?  
02:06:29 24 A. That's correct.  
02:06:29 25 Q. And do you have any reason to believe that

02:06:32 1 that's inaccurate?

02:06:33 2 A. I don't.

02:06:34 3 Q. And, again, that cash would be in the Fund's

02:06:37 4 operating account; is that correct?

02:06:39 5 A. That's correct.

02:06:40 6 Q. And that operating account was earning no

02:06:42 7 interest, correct?

02:06:45 8 A. I don't believe it was earning interest.

02:06:53 9 Q. And, again, if you'll -- strike that.

02:07:03 10 Mr. Brock, I'd like to talk a little bit about

02:07:05 11 the investors who withdrew their investments from the

02:07:10 12 Fund.

02:07:12 13 Is it true that while you were managing the

02:07:15 14 Fund, certain investors who had invested money in the

02:07:19 15 Fund asked to withdraw their capital investment?

02:07:25 16 A. When I worked for the manager of the Fund,

02:07:28 17 there were times when people would petition to withdraw,

02:07:33 18 yes.

02:07:35 19 Q. Were any of those people ever denied their

02:07:38 20 petition to withdraw?

02:07:47 21 A. Not that I know of.

02:07:51 22 Q. When the petitions to withdraw were granted,

02:07:55 23 how much money was paid to the people who withdrew?

02:08:01 24 MR. COCCHIA: Objection. Overbroad.

02:08:03 25 THE WITNESS: Are we talking about the

02:08:04 1 beginning, the earlier in the fund, the early years of  
02:08:10 2 the fund or later in the fund?  
02:08:11 3 BY MS. WHITE:  
02:08:12 4 Q. Okay. So that tells me that they were treated  
02:08:14 5 differently. So let's start with the year 2002, the  
02:08:17 6 first nine months of operation of the Fund.  
02:08:21 7 When people petitioned to withdraw money from  
02:08:21 8 the Fund, did they receive back their initial capital  
02:08:24 9 investment?  
02:08:25 10 A. In some cases they received a hundred percent  
02:08:27 11 of their investment, yes.  
02:08:29 12 Q. Why?  
02:08:32 13 MR. COCCHIA: Objection. Overbroad, compound.  
02:08:36 14 THE WITNESS: That was the best figure I had to  
02:08:37 15 work with.  
02:08:39 16 BY MS. WHITE:  
02:08:40 17 Q. And what do you mean by that?  
02:08:49 18 A. That was the best figure I had to work with. I  
02:08:51 19 didn't -- I didn't have any way of calculating it less  
02:09:03 20 if they were only in for a few months.  
02:09:06 21 Q. Mr. Brock, why were people permitted to  
02:09:08 22 withdraw from the Fund?  
02:09:11 23 MR. COCCHIA: Objection. Overbroad, compound.  
02:09:15 24 THE WITNESS: I don't know that there was  
02:09:15 25 anything to be gained from keeping someone in the Fund.

02:09:27 1 BY MS. WHITE:

02:09:29 2 Q. Does the prospectus say anything about an

02:09:31 3 investor's ability to withdraw from the Fund?

02:09:35 4 MR. COCCHIA: Objection. Document speaks for

02:09:37 5 itself.

02:09:38 6 THE WITNESS: I think there was some verbiage

02:09:40 7 that they could petition, and that it may or may not be

02:09:48 8 granted.

02:09:48 9 BY MS. WHITE:

02:09:49 10 Q. So just in the discretion of the manager

02:09:52 11 whether somebody could withdraw?

02:09:54 12 MR. COCCHIA: Objection.

02:09:54 13 THE WITNESS: That's my understanding.

02:09:55 14 MR. COCCHIA: Document speaks for itself.

02:09:59 15 BY MS. WHITE:

02:09:59 16 Q. And is it -- is that your belief how the Fund

02:10:02 17 operated?

02:10:03 18 A. That's my belief.

02:10:09 19 Q. In 2003, when investors petitioned to withdraw

02:10:14 20 from the Fund, how much money were they paid?

02:10:18 21 MR. COCCHIA: Objection. Compound, overbroad.

02:10:24 22 THE WITNESS: I don't recall at what point we

02:10:26 23 decided that people should -- should eat the 4 percent

02:10:31 24 or be paid only their capital account as shown in their

02:10:41 25 K-1s, but that was decided later on.

02:51:07 1 and other documents will be placed on my desk for  
02:51:10 2 signature, and it's certainly not uncommon for me to  
02:51:14 3 kind of race through the documents and autograph them  
02:51:17 4 just in the course of business.  
02:51:19 5 BY MS. WHITE:  
02:51:20 6 Q. So you think this is one that you raced through  
02:51:22 7 and signed?  
02:51:23 8 A. I think it was mixed in with some others, and I  
02:51:25 9 signed it inadvertently.  
02:51:27 10 Q. Did you sign any of the other Loan Servicing  
02:51:30 11 Agreements inadvertently?  
02:51:33 12 A. Not that I know of.  
02:51:37 13 Q. Okay. Now I'd like to go back to our  
02:51:41 14 discussion regarding J. Stephen Hawkins.  
02:51:45 15 Mr. Hawkins is a forensic accountant who was  
02:51:49 16 hired by your attorneys; is that correct?  
02:51:51 17 A. That's right.  
02:51:51 18 Q. Have you had any discussions with Mr. Hawkins?  
02:51:54 19 A. I have.  
02:51:54 20 Q. Okay. When was your most recent discussion  
02:51:57 21 with Mr. -- strike that.  
02:51:59 22 How many times have you spoken with  
02:52:01 23 Mr. Hawkins?  
02:52:05 24 A. Perhaps two, maybe three times.  
02:52:08 25 Q. When was the first time you spoke with

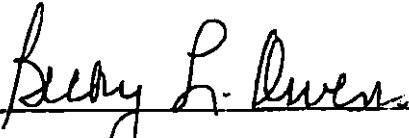
03:40:56 1 package to Emvest management, it was agreed that they  
03:41:02 2 would pay 621- -- as much as 621,735.  
03:41:11 3 Q. Who at Emvest management agreed they would pay  
03:41:14 4 that much?  
03:41:14 5 A. I believe that I was part of that. Mr. Canty  
03:41:16 6 was part of it. And I don't know if anyone else was  
03:41:24 7 involved in that. Maybe -- maybe Mr. Bradley or  
03:41:29 8 Mr. Thrailkill, but I don't remember specifically.  
03:41:47 9 Q. And ultimately Emvest paid Emerald Bay  
03:41:50 10 Financial \$186,520; is that correct?  
03:41:57 11 A. I think it's more correct to say that Emvest  
03:42:00 12 paid 621,000, of which 186- was paid to Emerald Bay  
03:42:07 13 Financial as part of the purchase price.  
03:42:10 14 Q. Why do you feel that that's more correct?  
03:42:13 15 A. Because I -- I believe that the 186- was a  
03:42:17 16 capital investment by Emvest Mortgage Fund.  
03:42:23 17 Q. And what's your basis for having that belief?  
03:42:28 18 A. I believe that Emvest was willing to pay  
03:42:30 19 621,000, and that the representative of Emerald Bay  
03:42:34 20 Financial was able to negotiate a less price. So,  
03:42:46 21 therefore, Emerald Bay Financial made the spread.  
03:42:50 22 Q. And the lower price was not passed on to Emvest  
03:42:53 23 Mortgage Fund; is that correct?  
03:42:55 24 A. That's correct.  
03:42:57 25 MS. WHITE: I'm having the court reporter mark

1 REPORTER'S CERTIFICATE

2  
3 I, Becky L. Owens, Certified Shorthand  
4 Reporter in and for the State of California, do  
5 hereby certify:

6  
7 That the witness in the foregoing deposition  
8 was by me first duly sworn to testify to the truth, the  
9 whole truth, and nothing but the truth in the foregoing  
10 cause; that the deposition was then taken before me at  
11 the time and place therein named; that said deposition  
12 was reported by me in shorthand and later transcribed  
13 under my direction, and the preceding pages contain a  
14 true record of the testimony of the witness; and I do  
15 further certify that I am a disinterested person and am  
16 in no way interested in the outcome of said action or  
17 connected with or related to any of the parties in said  
18 action or to their respective counsel.

19  
20 IN WITNESS WHEREOF, I have hereunto set my  
21 hand this 31 day of October 2005.

22  
23   
24 \_\_\_\_\_  
25 Becky L. Owens, CSR No. 11944



1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
 2  
 3 In the Matter of: )  
 4 ) File No. LA-02864-A  
 5 EMVEST MORTGAGE FUND, )  
 6 LLC )  
 7 WITNESS: Timothy Joseph Canty, III  
 8 PAGES: 154 through 289  
 9 PLACE: Securities and Exchange Commission  
 10 5670 Wilshire Boulevard  
 11 11th Floor  
 12 Los Angeles, California 90036  
 13 DATE: Friday, August 20, 2004  
 14  
 15 The above-entitled matter came on for hearing, pursuant  
 16 to notice, at 10:00 a.m.  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24 Diversified Reporting Services, Inc.  
 25 (202) 467-9200

1 APPEARANCES:  
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 25

1 are sort of categorized for accounting purposes or where we  
 2 could find the information, but I think you sort of set forth  
 3 that you don't have them separately in some sheet of paper,  
 4 but evidence of the loans will show up in these various  
 5 places that you indicated to me. And then we did want to  
 6 find out as far as servicing the loans, and I think the  
 7 answer is yes but let me just put it to you straight forward.  
 8 When the person who buys all or a portion of the loan --  
 9 purchases it, does Unified then transmit to them directly the  
 10 interest payment that they collect on their behalf?

11 A Yes.

12 Q It doesn't go to Emvest Mortgage Fund and then  
13 Emvest sends them a check.

14 A It's not allowed.

15 Q Okay. So the checks that Emvest sends are checks  
16 to their investors and checks to collateral note holders and  
17 that's it as far as interest payments being disbursed by  
18 Emvest Mortgage Fund?

19 A That's my understanding. Possible exception I can  
20 think of would be a check to off set the proration I  
21 mentioned in the case of a sale where a payment might have  
22 already been collected.

23 Q On behalf of Emvest Mortgage Fund?

24 A Right. Emvest was holding interest that because the  
25 loan had just been sold was no longer really their's and so

1 for the year 2002?

2 (SEC Exhibit No. 9 was marked  
3 for identification)

4 A Yes I do.

5 Q And is your signature on that?

6 A It is.

7 Q Okay. And if you go to the fourth page of that  
8 exhibit there is another form for US Partnership declaration --  
9 and signature for electronic filing for Emvest Mortgage Fund,  
10 LLC for the year 2003. Do you recognize that document?

11 A Yes I do.

12 Q And is that your signature on that document?

13 A Yes it is.

14 Q And did you sign these documents at or about the  
15 time the partnership returns were given to you by Kornfeld  
16 and Levy for review?

17 A Yes I did.

18 Q Did you review the partnership reviews before they  
19 were filed in 2002? I guess they were filed in 2003 for 2002.

20 A I believe so.

21 Q Did you review the partnership returns in 2004 for  
22 the 2003 filing year?

23 A Yes.

24 Q Let me take that. Next I'll had you what we have  
25 had the Court reporter mark as Exhibit 10. This is the 2003

1 they might send a check out to correct that.

2 Q And you say it's your understanding. Who would be  
3 the best person to answer questions of this nature at Emvest  
4 Mortgage Fund?

5 A Lyle would understand that and deals with that on a  
6 daily basis. So he is the person that executes it.

7 Q Let's get to your tax returns then because this is  
8 also follow up from the last time.

9 A Sure.

10 Q If you give me a moment. If you'd like to go off  
11 the record for a few moments --

12 (Whereupon, a short recess was taken.)

13 MS. HANNAN: Mr. Canty, while we were off the  
14 record for the last two or three minutes, did anyone from the  
15 SEC have any substantive conversations with you about the  
16 matter?

17 THE WITNESS: No.

18 BY MS. HANNAN:

19 Q I've asked the Court reporter to mark as the next  
20 Exhibit 9 signature sheets that Kornfeld and Levy faxed over  
21 to me with your signature related to tax returns to 2002 and  
22 2003. I just want to put them on the record and identify them  
23 please. Do you recognize what we've marked as Exhibit 9 as  
24 the first page being the US Partnership declaration and  
25 signature for electronic filing for Emvest Mortgage Fund, LLC

1 partnership return for Emvest Mortgage Fund. Are you familiar  
2 with this document?

3 (SEC Exhibit No. 10 was marked  
4 for identification)

5 A Yes I am.

6 Q And to the best of your knowledge is this a true  
7 and correct copy of the 2003 partnership return for Emvest  
8 Mortgage Fund?

9 MR. GOURLEY: Let the record reflect it's several  
10 hundred pages long.

11 MS. HANNAN: And the statements are at the back.

12 THE WITNESS: Yes they are.

13 BY MS. HANNAN:

14 Q Let's just establish to the best of your knowledge  
15 a copy --

16 A To the best of my knowledge a true and correct  
17 copy.

18 Q And a note on the first page of form 1065. What  
19 was provided to us was actually a copy with blue ink that you  
20 had signed on August 5, 2004. Did you sign that recently for  
21 purposes of producing it to the SEC or do you remember  
22 signing it on August 5, 2004?

23 A No I don't.

24 Q Okay.

25 A I'm sure that I did because that's my signature.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

\_\_\_\_\_)  
SECURITIES AND EXCHANGE )  
COMMISSION, )  
 )  
Plaintiff, )  
 )  
vs. ) Case No. 04 CV 2295 DMS  
 ) (POR)  
EMVEST MORTGAGE FUND, LLC; )  
EMVEST, INC.; and MILON LYLE )  
BROCK, )  
 )  
Defendants. )  
\_\_\_\_\_)

DEPOSITION OF EXPERT  
DOMINIC LOBUGLIO, CPA  
SAN DIEGO, CALIFORNIA  
NOVEMBER 9, 2005

REPORTING  
& LITIGATION  
SERVICES

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Reported by Annette C. Dunham, CSR No. 11898  
PRS Job No. 46-292286

1 Q Great.

2 Other than those, everything you have with you  
3 today are all the documents that you've used in this  
4 case?

5 A Correct.

6 Q What interactions with the Securities and  
7 Exchange Commission, or Ms. White, if she's the one  
8 you've been talking to, have you had with regard  
9 to preparing for this deposition?

10 A None specifically. Since the beginning of the  
11 case, all the work I've done is leading up to this  
12 deposition.

13 Q Have you done anything to prepare for this  
14 deposition?

15 A I have myself. I reviewed my files and my  
16 work papers and my reports last week.

17 Q Have you had any specific meetings with  
18 Ms. White regarding this deposition?

19 A No, we haven't.

20 Q Have you had any meetings with any SEC  
21 attorney regarding this deposition?

22 A No.

23 Q I'm going to ask you some background questions  
24 about yourself just to get a better understanding of  
25 where you come from, what you've done.

1 I've had a chance to review your resume or  
2 curriculum vitae, but I'm going to ask you some of those  
3 questions again just to make sure we get a full  
4 understanding of your background.

5 Have you ever been charged with any criminal  
6 offenses?

7 A No.

8 Q What is your education?

9 A College, I went -- undergraduate from  
10 Cal State LA, graduated in 1974, I believe. I have an  
11 MBA, master's in business administration, from the  
12 University of California, graduated in 1976. That's my  
13 formal college education.

14 Q Are you a member of any professional  
15 affiliations?

16 A Yes, I am.

17 Q What would those be?

18 A The American Institute of Certified Public  
19 Accountants, California Society of Certified --  
20 California Society of CPAs, and I'm a member of the  
21 California Receiver's Forum.

22 Q Tell me what your role is with the California  
23 Receiver's Forum.

24 A Currently I'm a board member with the  
25 Los Angeles and Orange County chapter, and I'm an

1 officer this year. Last year and this year I was chair  
2 of programs, so I coordinate. We have a couple programs  
3 we put on during the year, and I coordinate those.

4 Q What is the purpose of the California  
5 Receiver's Forum, or mission statement, whichever you  
6 feel confident?

7 A To provide educational programs, newsletters,  
8 a forum to exchange information for receivers, attorneys  
9 who work for receivers, accountants who work for  
10 receivers.

11 Those are our main core people; although, we  
12 have -- we sometimes have other members in related  
13 fields that may provide services for receivers. But the  
14 focus is on education and staying on top of changes in  
15 the law.

16 Q Do you provide any training as a member of the  
17 California Receiver's Forum?

18 A Me specifically?

19 Q Yes.

20 A I participate in some of the programs when  
21 they deal with accounting or tax issues, but I don't --  
22 I'm not a receiver. I don't have experience as a  
23 receiver.

24 And I'm involved in that organization because  
25 I'm an accountant for receivers, but I'm not a

1 receiver. So I don't get involved -- even though I'm  
2 program chair, I coordinate the program, putting people  
3 together, handling logistics, and so forth, but I do not  
4 actually teach anything to receivers other than  
5 accounting -- participate in programs where I'm dealing  
6 with accounting issues or taxation issues.

7 Q What type of programs have you put together  
8 for receivers with regard to accounting and tax issues?

9 Were there any specific topics that you've  
10 discussed?

11 A A number of years back we put on a two-hour  
12 program, panel-type presentation. We took a sample  
13 receivership and we tried to lay out all of the tax  
14 problems that might be encountered by the accounting --  
15 tax and accounting problems that might be encountered by  
16 the professionals on the job.

17 I was on the panel as an accountant. We had a  
18 receiver on the panel. We had a judge on the panel. I  
19 don't recall who else. But I was involved in that  
20 program. I wasn't the program chair at the time, but I  
21 was involved in putting that panel together.

22 For the past -- every couple years -- we've  
23 had two programs at Loyola Law School of two-day  
24 programs we've done about a year ago and, I think, maybe  
25 two years prior to that.

1           And I was in charge of putting together the  
2           accounting section of that program. I put together a  
3           binder of materials and structured the presentation and  
4           put a panel together, things like that.

5           Q     How long have you been a member of the  
6           California Receiver's Forum?

7           A     Almost since it was founded. I think it's at  
8           least 10 years, maybe a little longer. It's been a long  
9           time.

10          Q     How long have you been on the board of  
11          directors for the California Receiver's Forum?

12          A     The whole time. I initially went on the board  
13          to -- I was the first accountant put on the board.

14          Q     Are there other accountants on the board?

15          A     At least one other accountant, yes.

16                 Well, let me explain. There's a couple  
17          chapters throughout the states. I'm just referring to  
18          our local chapter here. Then there's a chapter in  
19          San Francisco, Sacramento, and, I think, Fresno.

20                 MR. CASAS: Are you capturing all that?

21                 MS. WHITE: Can we wait for the window washers  
22          to just pass through this? It's very distracting.

23                 MR. CASAS: We'd have to take a break, because  
24          it's probably going to take about ten minutes, if you'd  
25          like to do that.

1 MS. WHITE: That's fine. I just think it's  
2 too distracting.

3 MR. CASAS: Sure. No problem. Why don't we  
4 go off the record and have about a 10-minute break until  
5 these guys come through.

6 (Recess)

7 BY MR. CASAS:

8 Q Mr. LoBuglio, let's talk a little bit about  
9 your employment history, if you could start with the  
10 operations officer and loan officer at Security National  
11 Pacific Bank.

12 Could you tell me a little bit more about  
13 that, please?

14 A Certainly.

15 MS. WHITE: Objection. Vague.

16 BY MR. CASAS:

17 Q Go ahead.

18 A I worked with Security Pacific National Bank  
19 while I was going to college, started as a teller. Back  
20 in 1970 when I got out of the Air Force, I started going  
21 to college and began working for the bank.

22 During that time, I became a bank officer. I  
23 was first an operations officer for a while. Then I  
24 became a loan officer. And about halfway through  
25 graduate school, I left the bank and went to work for a

1 CPA firm.

2 Q That's Arthur Young & Company?

3 A Yes.

4 Q Tell me about your employment history with  
5 Arthur Young & Company.

6 A I worked at Arthur Young & Company for about  
7 four years in the auditing department as a staff  
8 accountant.

9 Q What type of entities would you audit?

10 A A variety of entities. I didn't specialize in  
11 any particular industry. Quite a bit of manufacturing.

12 Q Then you moved on to be a manager at Martin  
13 Algaze; is that correct?

14 A Yes. It's a single office, local accounting  
15 firm, employed about 40 people.

16 Q Was there any specialization with that  
17 accounting firm?

18 A No. It was a fairly general firm, and my work  
19 was fairly general. Although, during that time, just  
20 the nature of the business, it being a local firm, I  
21 started doing more tax work in addition to auditing work.

22 Q Then you started your own company; correct?

23 A Correct.

24 Q Your only partner is Mr. Sigman?

25 A Correct.

1 Q How long has that -- has the partnership of  
2 LoBuglio & Sigman been in existence?

3 A Since 1982 or '83.

4 Q And is it also a general accounting firm?

5 A We do a lot of work for attorneys that are  
6 receivers and trustees, so I do a lot of receivership  
7 work and bankruptcy work. So, in that regard, we have a  
8 specialty.

9 And then we do regular accounting and tax work  
10 for business clients and a few individual clients, but  
11 mostly business clients, clients that are running  
12 businesses.

13 Q Have you ever been a court-appointed receiver?

14 A No.

15 Q Tell me about your prior deposition  
16 experience.

17 MS. WHITE: Objection. Vague.

18 BY MR. CASAS:

19 Q Have you ever been deposed?

20 A Yes.

21 Q What cases have you been deposed on?

22 A Three cases --

23 Q And what are those?

24 A -- I believe.

25 A case called Miller -- I don't remember the

1 name of the case. It's laid out in my resume, Miller  
2 Metals.

3 Q I'm going to hand you a copy of your  
4 Exhibit A, Pages 19 and 20 to your expert report.

5 Could you identify which cases you've been  
6 deposed in?

7 A It wouldn't be on -- this is a list of  
8 receivership engagements. There's also, behind this, a  
9 list of expert witness cases. It should be on that one.

10 Q So I'm going to hand you Page 21 to Exhibit A  
11 of your expert report.

12 A It's the third one from the bottom: Miller  
13 Metals, et al.

14 Q What was your capacity in that case?

15 A I was retained as an expert accounting witness.

16 Q Were you a plaintiff's expert or defense  
17 expert?

18 A I don't remember. Let me read it here.

19 I was retained on behalf of the defendant.

20 Q What were the issues in that case?

21 A It involved the issue of usurious interests on  
22 a note.

23 Q And what were you specifically retained to do,  
24 sir?

25 A To compute the impact -- I believe it was to

1 compute the impact of how much interest was usurious,  
2 how much interest was charged that was above legal  
3 rate. I'm just basing this on my recollection.

4 It was a computation interest that was  
5 actually charged and a comparison to interest with what  
6 would have been charged at the legal rate and the  
7 difference or damages resulting from that.

8 Q What was the next case you were deposed in?

9 A Can I see Page 22 of this --

10 Q Sure.

11 A -- to trigger my memory?

12 Q I'm handing the witness what's been marked as  
13 Exhibit A, Page 22, of his report, just using them to  
14 refresh your recollection, not as exhibits.

15 A Case called Compaq --

16 MR. CASAS: Let's go off the record.

17 (Recess)

18 BY MR. CASAS:

19 Q What was the next case that you were deposed  
20 in?

21 A Case called Smurfit, S-m-u-r-f-i-t, versus  
22 Media News Group, et al.

23 Q And were you retained by the plaintiffs or  
24 defendants?

25 A The defendant.

1 Q What were the issues in that case?

2 A Case involving damages resulting from a breach  
3 of contract.

4 Q And what were you specifically asked to  
5 examine?

6 A The damages claimed by their expert  
7 accountant -- by the plaintiff's expert accountant.

8 Q And what was the next case you were deposed in?

9 A Compaq Computer Corporation versus Mag-Tek,  
10 Inc., M-a-g, dash, capital T-e-k, Inc.

11 Q And same question, what side retained you?

12 A Defendant.

13 Q And what were the issues in that case?

14 A Damages. This time I was presenting the  
15 damages on behalf of the defendant, the damage  
16 calculations.

17 Q How many cases that you've worked on have you  
18 dealt specifically with securities issues?

19 MS. WHITE: Objection. Lacks foundation.

20 BY MR. CASAS:

21 Q Have you been retained in any cases where  
22 securities litigation was at issue?

23 A As an expert witness --

24 Q Yes.

25 A -- or as an accountant?

1 Q As an expert witness.

2 A One case on Page 22, third from the bottom,  
3 The Capital Life Insurance Company versus Prudential  
4 Insurance Company of America.

5 Q What were the issues in that case?

6 A There are some security issues, but I'm not  
7 involved in the securities issues. I was -- I was  
8 involved with computing just interest -- amounts of  
9 money on interest and investments which were going to be  
10 claimed as damages.

11 So I was not involved in the fraud issues. It  
12 was just computations pertaining to interest on  
13 investments.

14 Q How many cases have you been involved with  
15 that involved -- where you were the accountant for a  
16 receiver in securities actions?

17 A I'd have to look at the list.

18 Q Go ahead.

19 A That's the other pages.

20 Q And I'm handing the witness Page 19 and 20 of  
21 his Exhibit A to his expert report.

22 A The first case, Goldfield Deep Mines. I'm not  
23 sure if Schoolhouse Coins was a securities issues case  
24 or not.

25 Q I'm sorry, what was the name of that case?

1           A     Schoolhouse Coins. I just don't remember much  
2 about that particular case. It was a case involving  
3 selling investments and coins.

4                     I don't recall if they were actually just  
5 selling the coins themselves or securities interest in  
6 the coins. I really don't remember if there were  
7 securities issues involved in that or not.

8           Q     That's fine.

9           A     I don't think the one above it, American  
10 Cellular, involved securities issues either, but I'm not  
11 sure.

12                     American Equities, I don't remember. Visa  
13 Enterprises, Inc., I don't think. Eurobond/Eurogold,  
14 that was a case involving securities investments. I'm  
15 pretty sure that involved securities issues.

16           Q     Let's focus on that case real quick.

17                     Eurobond/Eurogold?

18           A     Yeah.

19           Q     And you were an accountant for the receiver in  
20 that case?

21           A     Right.

22           Q     What were you specifically retained to do?

23           A     I don't remember specifically on that case.

24                     But, in general, when I'm retained as an accountant for  
25 the receiver, there are always tax issues to deal with,

1 usually tax compliance issues, accounting issues, books  
2 and records issues, usually problems with books and  
3 records.

4           And then there's usually investigative  
5 accounting, or what I call forensic accounting work,  
6 tracing money, determining if there was a business in  
7 existence, the extent of business that was actually  
8 conducted, determining where moneys came in from and  
9 where moneys went out to, a lot of cash flow and cash  
10 analysis work.

11           So any one of these cases that were what I  
12 call regulatory receiverships, which is a receivership  
13 in which the plaintiff is the SEC, Federal Trade  
14 Commission, Department of Corporations, something like  
15 that, those usually involve all of those kinds of  
16 tasks.

17           So I don't specifically remember. This case  
18 doesn't stand out too much in my mind other than I just  
19 know that -- I just recall -- the distinguishing thing  
20 in this case, I believe, is the attorney ended up  
21 obtaining a lot of money that was in Switzerland, and he  
22 ended up getting it back. And we dealt with tax  
23 issues.

24           Certain things stand out in my mind as for  
25 sure. Like the first case, Goldfield Deep Mines, that

1 was the first case I was involved in. That was an SEC  
2 case, so I remember there were securities issues in  
3 there.

4 Q Let's keep going down the list. The last case  
5 we talked about was Eurobond.

6 A Right. I think that was.

7 Q Were there any other cases that involved  
8 securities issues in which you were an accountant for  
9 the receiver?

10 A I don't know if Univest Home Loan involved  
11 securities issues or not. I think it was a Department  
12 of Real Estate case. I'm not sure.

13 Q Why does that stand out in your mind?

14 A It doesn't necessarily stand out in my mind.  
15 I just saw the word "mortgage broker." It was a fairly  
16 large case. I know we did a lot of work on it. We did  
17 some investigative work. There was some forgery  
18 involved.

19 It was -- the receiver filed a lawsuit against  
20 the bank, and it was settled. It was just one of the  
21 bigger cases, so I remember it. But I doubt it was  
22 securities involved, but I just don't remember.

23 Q Any others?

24 A I don't remember if PCI Data, Inc. is or not.

25 Q Why does that one stand out?

1           A     It doesn't stand out. It was a small case.  
2     That's why I don't remember much about it. I think it  
3     was a regulatory case; that's why -- any regulatory  
4     case, as I said, is from a government agency. And  
5     depending on if it's Department of Corporations or SEC,  
6     there's a good chance it was a security violation. But  
7     not necessarily with the Department of Corporations  
8     because they do other things.

9                     Automated Systems & Concepts International, I  
10    just don't remember. Mediworks, medical billing  
11    software, I think that was an FTC case, so possibly.  
12    But I don't think that was the issue.

13           Q     And you're highlighting that case, again, only  
14    because it was a regulatory?

15           A     Yes.

16           Q     And that was an example of how we're talking  
17    over each other a little bit. Let's try not to do that  
18    so we can keep the record clean.

19                     Go on, please.

20           A     Schultz Department of Corporations Advisory,  
21    that was a Department of Corporations case, supposed  
22    securities related, but I think there was an issue with  
23    the management of a fund and how it was managed.

24           Q     Have you ever been asked to assess whether the  
25    management issues or the management decisions followed

1 correct accounting principles?

2 MS. WHITE: Objection. Vague.

3 THE WITNESS: I don't understand the question.

4 BY MR. CASAS:

5 Q You stated that in that case you were asked to  
6 look at some management decisions; correct?

7 A That's not what I meant to state, I'm sorry.  
8 Let me try and restate that.

9 Q Go ahead.

10 A I don't know if it involved the issuance of  
11 securities. The Department of Corporations was  
12 concerned with the management of an investment fund and  
13 put a receiver in place. I worked for the receiver.

14 It was not -- I don't think they were  
15 questioning his accounting, how he did his accounting;  
16 more they were questioning how he did his investment.  
17 He had lost a lot of money in the fund, so we were  
18 involved.

19 We were not involved in his performance or  
20 looking at his performance or anything like that. I  
21 think we did an analysis, if my memory serves me, how  
22 much money was left in the fund and how to pay it out to  
23 the investors, basically almost like a claims procedure  
24 situation.

25 Q Great.

1 Any other cases on that list that you recall  
2 dealt with securities issues in your role as accountant  
3 for a receiver?

4 A I think that pretty much covers it.

5 Q Have you heard the term "Ponzi" before?

6 A Yes, I have.

7 Q What does "Ponzi" mean to you?

8 A A fraudulent investment scheme in which  
9 investors are paid a return for moneys raised from  
10 subsequent investors rather than the profits of  
11 operating a real business.

12 MS. WHITE: Can I just state for the record  
13 that there's a tremendous amount of noise right now. I  
14 would suggest that we just take another break because  
15 it's very difficult to even concentrate with the noise  
16 going on outside.

17 MR. CASAS: I have no problem with that.  
18 Let's go off the record again.

19 (Recess)

20 MR. CASAS: If you could repeat the answer to  
21 my question, please, so that Mr. LoBuglio can reference  
22 it.

23 (Record read)

24 THE WITNESS: "Rather than profits of  
25 operating a real business."

1 THE WITNESS: I don't envision that.

2 BY MR. CASAS:

3 Q Okay. Are you aware of the facts and  
4 circumstances regarding each investor reimbursement?

5 MS. WHITE: Objection. Vague.

6 THE WITNESS: I'm not sure what you mean.

7 BY MR. CASAS:

8 Q Are you aware of the facts and circumstances  
9 surrounding each withdrawing investor, in other words,  
10 why he or she withdrew from the Fund or requested to  
11 withdraw from the Fund?

12 MS. WHITE: Objection. Vague. Lacks  
13 foundation.

14 THE WITNESS: Can I answer the question?

15 BY MR. CASAS:

16 Q You may.

17 A Can I have it read back? I just lost track of  
18 it in the interim.

19 (Record read)

20 BY MR. CASAS:

21 Q Are you aware of the facts and circumstances  
22 regarding each withdrawing investor's reimbursement, in  
23 other words, the reasons for their wanting to withdraw  
24 from the Fund?

25 MS. WHITE: Objection. It's vague and lacks

1 foundation.

2 THE WITNESS: No.

3 BY MR. CASAS:

4 Q Do you know if any of those withdrawing  
5 investors threatened litigation against the Fund?

6 MS. WHITE: Objection. Vague. Lacks  
7 foundation.

8 THE WITNESS: I don't know that.

9 BY MR. CASAS:

10 Q Did you perform any investigation as to the  
11 reasons for the investors withdrawing from the Fund?

12 A No, I did not.

13 Q What is -- what do you mean by "erosion of  
14 capital"?

15 A Kind of like a slow reduction over time,  
16 diminishing by degrees, just not all at once, just  
17 slowly over time, bit by bit.

18 Q What was your basis for your conclusion on  
19 Page 5 of your report that the impact of the excess of  
20 cumulative annual priority operating return  
21 distributions over actual cumulative net income is an  
22 erosion of capital?

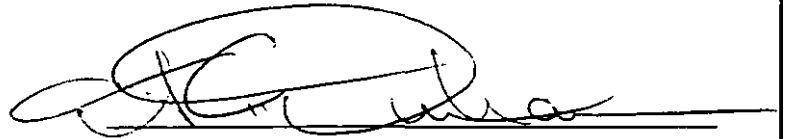
23 A Because it depletes capital. It reduces  
24 capital little bit, bit by bit, to the extent of an  
25 excess of distributions over a net income, then capital

REPORTER'S CERTIFICATION

I, Annette C. Dunham, Certified Shorthand Reporter,  
in and for the State of California, do hereby certify:

That the foregoing witness was by me duly sworn;  
that the deposition was then taken before me at the time  
and place herein set forth; that the testimony and  
proceedings were reported stenographically by me and  
later transcribed into typewriting under my direction;  
that the foregoing is a true record of the testimony and  
proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my name this  
day of November, 2005.



Annette C. Dunham, CSR No. 11898



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

\_\_\_\_\_  
)  
SECURITIES AND EXCHANGE COMMISSION, )  
)  
Plaintiff, ) CASE NO.  
)  
)  
vs. ) 04 CV 2295 DMS (POR)  
)  
)  
EMVEST MORTGAGE FUND, LLC, EMVEST, )  
INC., and MILON LYLE BROCK, )  
)  
Defendants. )  
\_\_\_\_\_

VIDEOTAPED DEPOSITION OF

TIMOTHY J. CANTY, III

TAKEN ON: Thursday, October 27, 2005

TAKEN AT: 750 B Street  
Suite 3300  
San Diego, California

REPORTED BY: Becky L. Owens, RPR  
CSR No. 11944



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Encino, CA 91436      fax (818) 783-7310

02:20:46 1 anybody else regarding -- or in the time frame shortly  
02:20:50 2 after the preliminary injunction was --  
02:20:54 3 A. I believe I spoke with at least one other and  
02:21:00 4 perhaps two other investors, but names don't come to  
02:21:04 5 mind. They're not people that I knew personally.  
02:21:13 6 Q. If you didn't know them personally, how did you  
02:21:16 7 end up speaking with them?  
02:21:18 8 A. My name's in the prospectus.  
02:21:24 9 Q. And do you recall what you discussed with these  
02:21:26 10 other one, possibly two investors?  
02:21:31 11 A. That we were involved in litigation, and that I  
02:21:42 12 had been advised not to have communication with people  
02:21:48 13 outside of counsel about the case.  
02:21:55 14 Q. Before you sent Exhibit 174, did you -- did  
02:21:59 15 anybody review a draft of your letter?  
02:22:10 16 A. I believe Mr. Brock did.  
02:22:16 17 Q. Did anybody other than Mr. Brock review the  
02:22:18 18 letter?  
02:22:26 19 A. Yes. I think, actually -- I think counsel may  
02:22:34 20 have.  
02:22:39 21 Q. And at the time you sent out Exhibit 174, were  
02:22:42 22 you -- had you read the preliminary injunction order?  
02:22:47 23 A. I don't believe so. Well, I'm confident that I  
02:23:08 24 had not, because it doesn't mention anything about  
02:23:11 25 preliminary injunction order.