

USDC SCAN INDEX SHEET



CAG 11/28/05 13:52

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

\*199\*

\*DECL.\*

ORIGINAL

1 MICHAEL A. PIAZZA, Cal Bar No. 235881  
2 MOLLY M. WHITE, Cal. Bar No. 171448  
3 SUSAN F. HANNAN, Cal. Bar No. 97604

4 Attorneys for Plaintiff  
5 Securities and Exchange Commission  
6 Randall R. Lee, Regional Director  
7 Briane Nelson Mitchell, Associate Regional Director  
8 5670 Wilshire Boulevard, 11th Floor  
9 Los Angeles, California 90036  
10 Telephone: (323) 965-3998  
11 Facsimile: (323) 965-3908

05 NOV 23 PM 3:31

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY: *[Signature]* DEPUTY

12 UNITED STATES DISTRICT COURT  
13 SOUTHERN DISTRICT OF CALIFORNIA

BY FAX

14 SECURITIES AND EXCHANGE  
15 COMMISSION,

16 Plaintiff,

17 v.

18 EMVEST MORTGAGE FUND, LLC,  
19 EMVEST, INC., and MILON LYLE BROCK,

20 Defendants.

Case No. 04 CV 2295 DMS (POR)

**DECLARATION OF MOLLY M. WHITE  
SUPPORTING SECURITIES AND  
EXCHANGE COMMISSION'S  
SUBMISSION REGARDING FOURTH  
VERIFIED REPORT OF RECEIVER**

Date: December 9, 2005

Time: 1:30 p.m.

Courtroom: 10 (Hon. Dana M. Sabraw)

Trial Date: January 3, 2006

*[Handwritten mark]*

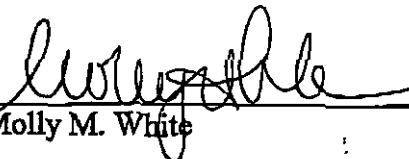
DECLARATION OF MOLLY M. WHITE

I, Molly M. White, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney admitted to practice law by the State Bar of California and by this Court. I am Senior Trial Counsel with Plaintiff Securities and Exchange Commission ("Commission") in the Office of Enforcement. I make this declaration in support of the Securities and Exchange Commission's Submission Regarding Fourth Verified Report of Receiver. I have personal knowledge of each of the matters set forth below, and, if called as a witness, I could and would competently testify to the facts stated herein.

2. Attached hereto as Exhibit 1 is a true and correct copy of excerpts from the deposition transcript of Milon Lyle Brock, taken on October 25, 2005.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 23rd day of November, 2005, in Los Angeles, California.

  
Molly M. White

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**PROOF OF SERVICE**

1 I am over the age of 18 years and not a party to this action. My business address is:

2  U.S. SECURITIES AND EXCHANGE COMMISSION, 5670 Wilshire Boulevard, 11th  
3 Floor, Los Angeles, California 90036-3648

4 Telephone No. (323) 965-3998; Facsimile No. (323) 965-3908.

5 On November 23, 2005, I served the document entitled **DECLARATION OF MOLLY M.**  
6 **WHITE SUPPORTING SECURITIES AND EXCHANGE COMMISSION'S**  
7 **SUBMISSION REGARDING FOURTH VERIFIED REPORT OF RECEIVER** upon the  
parties to this action addressed as stated on the attached service list:

8  **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and  
9 mailing today following ordinary business practices. I am readily familiar with this  
10 agency's practice for collection and processing of correspondence for mailing; such  
correspondence would be deposited with the U.S. Postal Service on the same day in the  
ordinary course of business.

11  **PERSONAL DEPOSIT IN MAIL:** By placing in sealed envelope(s), which I  
12 personally deposited with the U.S. Postal Service. Each such envelope was  
deposited with the U.S. Postal Service at Los Angeles, California, with first class  
postage thereon fully prepaid.

13  **EXPRESS U.S. MAIL:** Each such envelope was deposited in a facility regularly  
14 maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles,  
California, with Express Mail postage paid.

15  **HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of  
16 the addressee as stated on the attached service list.

17  **FEDERAL EXPRESS:** By placing in sealed envelope(s) designated by Federal Express  
with delivery fees paid or provided for, which I deposited in a facility regularly  
18 maintained by Federal Express or delivered to a Federal Express courier, at Los Angeles,  
California.

19  **ELECTRONIC MAIL:** By transmitting the document by electronic mail to the  
20 electronic mail address as stated on the attached service list.

21  **FAX:** By transmitting the document by facsimile transmission. The transmission was  
reported as complete and without error.

22  **(Federal)** I declare that I am employed in the office of a member of the bar of this Court,  
23 at whose direction the service was made. I declare under penalty of perjury that the  
foregoing is true and correct.

24 Date: November 23, 2005



25 KIM L. HAACK

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27  
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1                    **SEC v. EMVEST MORTGAGE FUND, LLC, et al.**  
2                    **United States District Court – Southern District of California**  
3                    **Case No. 04 CV 2295 DMS (POR)**  
4                    **(LA-2864)**

5                    **SERVICE LIST**

6                    **Robert A. Cocchia, Esq. (served by fax and Federal Express)**  
7                    **Joseph N. Casas, Esq.**  
8                    **McKenna Long & Aldridge LLP**  
9                    **Symphony Towers**  
10                   **750 B Street, Suite 3300**  
11                   **San Diego, CA 92101**  
12                   **Facsimile: (619) 595-5450**  
13                   ***Attorney for Defendants Emvest Mortgage Fund, LLC, Emvest, Inc.,***  
14                   ***and Milon Lyle Brock***

15                   **David Adelman, Esq. (served by fax and Federal Express)**  
16                   **James R. Felton, Esq.**  
17                   **Greenberg & Bass, LLP**  
18                   **16000 Ventura Boulevard, Suite 1000**  
19                   **Encino, CA 91436**  
20                   **Facsimile: (818)986-6534**  
21                   ***Attorney for Permanent Receiver Dennis M. Murphy***

22                   **Dennis M. Murphy, CPA, CIRA (served by fax and Federal Express)**  
23                   **630 N. Rosemead Boulevard, Suite 100**  
24                   **Pasadena, CA 91107**  
25                   **Facsimile: (626) 794-7298**  
26                   ***Permanent Receiver***  
27  
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**EXHIBIT 1**

**CERTIFIED  
COPY**

09:00:21

UNITED STATES DISTRICT COURT

09:00:21

SOUTHERN DISTRICT OF CALIFORNIA

09:00:21

SECURITIES AND EXCHANGE COMMISSION, )

09:00:21

09:00:21

Plaintiff, )

CASE NO.

09:00:21

vs. )

04 CV 2295 DMS (POR)

09:00:21

EMVEST MORTGAGE FUND, LLC, EMVEST, )

09:00:21

INC., and MILON LYLE BROCK, )

09:00:21

Defendants. )

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VIDEOTAPED DEPOSITION OF MILON LYLE BROCK

09:00:21

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09:00:21

TAKEN ON: Tuesday, October 25, 2005

09:00:21

TAKEN AT: 750 B Street

09:00:21

Suite 3300

09:00:21

San Diego, California

09:00:21

09:00:21

REPORTED BY: Becky L. Owens, RPR

09:00:21

CSR No. 11944

**Exhibit** 1 **Page** 1

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?

01:41:30 1 A. No.

01:41:33 2 Q. How many took a cash distribution?

01:41:36 3 A. A number, I don't remember.

01:41:39 4 Q. Can you give me a percentage?

01:41:42 5 A. Perhaps 20 percent.

01:41:49 6 Q. With respect to Heritage, what happened to the

01:41:50 7 unit holders in that partnership?

01:41:52 8 A. Same thing.

01:41:52 9 Q. And how many took a cash distribution?

01:41:54 10 A. Probably pretty close to 20 percent. Perhaps

01:41:58 11 less.

01:42:08 12 Q. When were the unit holders in Tri-Star and

01:42:13 13 Heritage rolled into Emvest Mortgage Fund?

01:42:19 14 A. With the approval of the Department of

01:42:22 15 Corporations of Emvest Mortgage Fund.

01:42:25 16 Q. In March 2002?

01:42:33 17 A. Seems to me like it was later than that. Seems

01:42:39 18 like it was in October.

01:42:46 19 Q. Can you tell me how the investors were moved

01:42:50 20 into Emvest Mortgage Fund?

01:42:53 21 MR. COCCHIA: Objection. Vague.

01:43:02 22 THE WITNESS: In Emvest?

01:43:03 23 BY MS. WHITE:

01:43:03 24 Q. Yep.

01:43:04 25 A. They were pulled and asked if they wanted to --

01:43:11 1 if they'd like to take their capital account, or if they  
 01:43:14 2 would like to roll forward into the Emvest Fund. And  
 01:43:18 3 those that elected to roll forward, we transferred trust  
 01:43:25 4 deeds that were owned by -- for example, by Tri-Star,  
 01:43:31 5 the trust deeds that were owned in Tri-Star equal to the  
 01:43:36 6 amount of dollars of trusts, unit holders that wanted to  
 01:43:39 7 transfer into Emvest. And they were sent a prospectus,  
 01:43:46 8 subscription agreement, and they executed that, and the  
 01:43:49 9 transfer was made.

01:43:51 10 Q. Same thing with respect to Heritage?

01:43:53 11 A. Same.

01:44:02 12 Q. Can you tell me the dollar amount of trust  
 01:44:05 13 deeds that were rolled into Emvest Mortgage Fund as a  
 01:44:08 14 result of rolling Tri-Star over?

01:44:14 15 A. I really don't remember. I -- I really don't  
 01:44:19 16 remember. And the reason for that was that we also  
 01:44:23 17 bought trust deeds -- I say "we." Emvest Mortgage Fund  
 01:44:30 18 bought trust deeds from Tri-Star and Heritage to provide  
 01:44:35 19 the cash for the liquidation of those that wanted to  
 01:44:37 20 roll out. So I don't remember the dollars.

01:44:55 21 Q. When you rolled the Tri-Star and Heritage  
 01:45:03 22 investors into the fund, did you charge them any sort of  
 01:45:08 23 commission?

01:45:08 24 MR. COCCHIA: Objection. Vague.

01:45:09 25 THE WITNESS: Were they charged a commission

01:45:10 1 when they rolled into Emvest Mortgage Fund?

01:45:13 2 BY MS. WHITE:

01:45:22 3 Q. And, actually, let me rephrase that.

01:45:22 4 Were they charged any sort of costs?

01:45:22 5 A. No.

01:45:22 6 Q. Did you give them any sort of a credit?

01:45:24 7 A. Yes.

01:45:25 8 Q. What credit did you give them?

01:45:27 9 A. 4 percent.

01:45:28 10 Q. Why did you give them a 4 percent credit?

01:45:32 11 A. All things being equal, if they rolled forward,

01:45:35 12 they -- they didn't have to pay the 4 percent, and they

01:45:41 13 actually -- they actually got the benefit of the

01:45:45 14 4 percent added to their capital rollover.

01:45:51 15 Q. I just want to make sure that I understand you

01:45:53 16 correctly.

01:45:53 17 Are you saying that when the investors from

01:45:56 18 Tri-Star and Heritage were rolled into Emvest Mortgage

01:45:59 19 Fund, 4 percent of their capital account was added to

01:46:03 20 their capital account?

01:46:04 21 A. They were not charged 4 percent.

01:46:24 22 Q. And why were they not charged 4 percent?

01:46:27 23 MR. COCCHIA: Asked and answered.

01:46:35 24 THE WITNESS: I think we felt that the -- they

01:46:39 25 were already investors in the partnerships, and through

01:46:49 1 no fault of theirs or ours, we -- we felt it was only  
01:47:00 2 fair.  
01:47:04 3 BY MS. WHITE:  
01:47:11 4 Q. The prospectus indicates that the Fund should  
01:47:15 5 pay Emvest, Inc., a management fee if the Fund earns  
01:47:20 6 greater than 12 percent; is that correct?  
01:47:24 7 MR. COCCHIA: Objection. Document speaks for  
01:47:26 8 itself.  
01:47:27 9 THE WITNESS: That's my understanding, yes.  
01:47:28 10 BY MS. WHITE:  
01:47:29 11 Q. And in 2002, the Fund did not pay Emvest, Inc.,  
01:47:35 12 a management fee; is that correct?  
01:47:36 13 A. I believe that's correct.  
01:47:37 14 Q. Why not?  
01:47:40 15 A. We just -- we, the managers, and I as the agent  
01:47:44 16 discussed it, and we felt that at the infancy of the  
01:47:49 17 Fund, it probably just didn't need to be paid.  
01:48:05 18 Q. The Fund did pay Emvest, Inc., a management fee  
01:48:09 19 in 2003; is that correct?  
01:48:10 20 A. That's right.  
01:48:11 21 Q. How much did it pay?  
01:48:13 22 A. I don't remember the exact figure.  
01:48:16 23 Q. Who calculated how much money the Fund should  
01:48:20 24 pay Emvest, Inc.?  
01:48:24 25 A. Kornfeld and Levy.

03:18:18 1 that's probably not a good way to state it.

03:18:21 2 Q. Okay. And let me just ask the question again.

03:18:25 3 How many bulk loans did the Fund purchase prior

03:18:27 4 to being placed in receivership?

03:18:32 5 A. Perhaps three.

03:18:35 6 Q. You mentioned one of them, the largest one, was

03:18:39 7 purchased from PNL Bank; is that correct?

03:18:43 8 A. That's correct.

03:18:43 9 Q. Can you tell me who the other two were

03:18:45 10 purchased from?

03:18:47 11 A. I believe we -- Emvest purchased four -- four

03:18:53 12 loans from Balboa Thrift, and then later purchased a

03:19:01 13 group of three loans from Balboa.

03:19:04 14 Q. Okay. And the large bulk loan from PNL, that's

03:19:13 15 sometimes referred to as the Florida bulk loan; is that

03:19:16 16 correct?

03:19:16 17 A. Yes.

03:19:17 18 Q. Where is the property located -- strike that.

03:19:22 19 Who decided to purchase the Florida bulk loan?

03:19:29 20 A. I don't understand your question.

03:19:30 21 Q. Okay. How did Emvest Mortgage Fund come to

03:19:38 22 purchase the PNL bulk loan, or the Florida bulk loan?

03:19:44 23 A. Emerald Bay Financial hired an individual whose

03:19:50 24 only job was to contact servicing companies and to

03:19:59 25 negotiate the purchase of small bulk -- small quantities

03:20:05 1 of loans, and that individual, through management,  
03:20:16 2 presented a small bulk, which is what you call the  
03:20:20 3 Florida loans, to Emvest. Emvest essentially made an  
03:20:29 4 offer to purchase for a set fixed percentage of the face  
03:20:39 5 amount of the loans.

03:20:43 6 Q. Who was the individual at Emerald Bay Financial  
03:20:46 7 whose job it was?

03:20:48 8 A. His name is Scott Lester.

03:20:52 9 Q. And is Mr. Lester paid compensation by Emerald  
03:20:56 10 Bay Financial?

03:20:58 11 A. He's a salaried employee, plus I believe he  
03:21:02 12 receives some bonuses from Emerald Bay Financial.

03:21:06 13 Q. And do you know what the base for his bonuses  
03:21:08 14 is?

03:21:11 15 A. It was a quarter of a percent or half of a  
03:21:13 16 percent of the spread on the purchase.

03:21:22 17 Q. And when you say, "the spread on the purchase,"  
03:21:26 18 can you tell me what you mean by that? The spread  
03:21:30 19 between what two numbers?

03:21:33 20 A. I think that was calculated on the discount  
03:21:40 21 that was received.

03:21:46 22 Q. Do you recall what the discount was that was  
03:21:48 23 received?

03:21:49 24 A. On PNL? 208,000, something like -- something  
03:21:55 25 close to that.

03:21:59 1 Q. When you said that Mr. Lester presented the  
03:22:07 2 bulk loan to Emvest, to whom in management did he make  
03:22:11 3 that presentation?

03:22:14 4 A. I believe that Mr. Lester -- Scott presented  
03:22:21 5 several offers to -- to management, and management,  
03:22:30 6 being Mr. Canty, Mr. Bradley, and I believe at that time  
03:22:37 7 that I was in management, because I later evolved. I  
03:22:47 8 think those -- those bulks or at least a spreadsheet on  
03:22:54 9 the bulks was presented, and Mr. Scott was given a high  
03:23:03 10 percentage offer.

03:23:09 11 Q. What do you mean, "a high percentage offer"?

03:23:14 12 A. Well, if he came in and said, "Well, there's a  
03:23:17 13 small purchase that can be made, and we think we can get  
03:23:21 14 it for 75 cents on the dollar," and management would  
03:23:26 15 say, "Fine, that would be the max that they'd be willing  
03:23:36 16 to pay, see if you can get it for less. Go back with a  
03:23:42 17 low offer."

03:23:44 18 Q. And did Mr. Scott eventually conclude a deal  
03:23:48 19 with PNL?

03:23:51 20 A. He did.

03:23:51 21 Q. And do you recall what that -- strike that.

03:24:02 22 Do you know where the property is that -- first  
03:24:03 23 of all, how many loans comprise that bulk loan?

03:24:08 24 A. I think there was 24 in the PNL bulk.

03:24:11 25 Q. And do you know where the property is located

03:31:03 1 package loan."

03:31:06 2 Q. Do you recognize whose handwriting that is?

03:31:11 3 A. That may be Sylvia's.

03:31:19 4 MS. WHITE: Why don't we go off the record so

03:31:23 5 we can copy the exhibit.

03:31:24 6 THE VIDEOGRAPHER: We're going off the record.

03:31:26 7 The time is 3:31.

03:32:21 8 (Recess was held.)

03:38:47 9 THE VIDEOGRAPHER: We are back on the record.

03:38:48 10 The time is 3:39.

03:38:51 11 MS. WHITE: During the break, Mr. Cocchia was

03:38:55 12 able to copy Exhibit 312.

03:38:58 13 BY MS. WHITE:

03:38:59 14 Q. Mr. Brock, you indicated that the handwriting

03:39:01 15 on Exhibit 312 is your handwriting; is that correct?

03:39:04 16 A. That's correct.

03:39:04 17 Q. And it indicates the bulk purchase was

03:39:07 18 828,982.44, correct?

03:39:12 19 A. Yes.

03:39:12 20 Q. And then the next item was Emvest will pay

03:39:16 21 621,735.78; is that correct?

03:39:19 22 A. Yes.

03:39:20 23 Q. And then you've written a capital gain of

03:39:23 24 207,246.66; is that correct?

03:39:26 25 A. Yes.

Exhibit 1 Page 10

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03:39:26 1 Q. Okay. And at the bottom then you've written  
03:39:30 2 "Emvest Wire \$435,215.78 to PNL Bank"; is that correct?  
03:39:39 3 A. Yes.  
03:39:39 4 Q. And what did that reflect?  
03:39:41 5 A. That was part of the purchase price.  
03:39:43 6 Q. So part of the purchase price was for Emvest to  
03:39:46 7 wire \$435,000 to PNL Bank?  
03:39:50 8 A. Yes.  
03:39:50 9 Q. Then the other part of the purchase price was  
03:39:51 10 "Emvest Pay Emerald Bay Financial \$186,520"; is that  
03:39:57 11 correct?  
03:39:58 12 A. That's correct.  
03:40:02 13 Q. And that was for Emerald Bay's fees in  
03:40:06 14 connection with the transaction; is that correct?  
03:40:07 15 A. That was the balance of the purchase price.  
03:40:09 16 Q. And why did Emerald Bay receive the balance of  
03:40:12 17 the purchase price?  
03:40:15 18 A. Emerald Bay Financial negotiated the purchase  
03:40:23 19 at 400- -- excuse me -- at 435,000, and Emvest was  
03:40:34 20 willing to pay 621,000. So the difference, 186,000, was  
03:40:41 21 retained by Emerald Bay Financial.  
03:40:43 22 Q. When you say, "Emvest was willing to pay  
03:40:46 23 621,000," who at Emvest decided that it was willing to  
03:40:49 24 pay 621,000?  
03:40:53 25 A. I believe that when Mr. Scott presented the

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

REPORTER'S CERTIFICATE

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

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

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

Becky L. Owens  
Becky L. Owens, CSR No. 11944