

USDC SCAN INDEX SHEET



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

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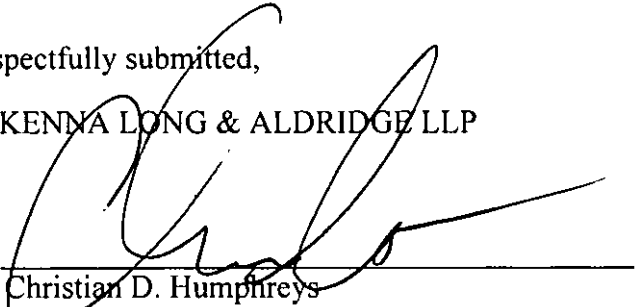
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In its Response to Defendants' objections to the [Proposed] Final Judgment, the SEC misconstrued Defendants' proposal for paying the \$1,263,000 in disgorgement and resolving the remaining issues regarding the future of the Fund. Rather than present further argument about the nature of the proposal, Defendants have simply attached as Exhibit 1 a true and correct copy of their proposal so that the Court can review it and reach its own conclusions.

Dated: February 1, 2006

Respectfully submitted,
McKENNA LONG & ALDRIDGE LLP

By: 
Christian D. Humphreys
Randy S. Grossman
Joseph N. Casas
Attorneys for Defendants
EMVEST MORTGAGE FUND, LLC;
EMVEST, INC.; and MILON LYLE BROCK



Humphreys, Christian

From: Humphreys, Christian
Sent: Wednesday, January 25, 2006 2:59 PM
To: 'White, Molly'; James R. Felton
Cc: Cocchia, Robert; Grossman, Randy; Whitaker, Lisa
Subject: January 25 Proposal to Resolve Remaining Issues

Attachments: SD-#22142591-v1-January_25_Proposal_to_Resolve_Remaining_Issues.DOC

**CONFIDENTIAL SETTLEMENT COMMUNICATION;
NOT ADMISSIBLE OR DISCOVERABLE**

Molly and James:

Attached is Defendants' proposal for resolving the remaining issues. I look forward to discussing it with you tomorrow at 10:30 a.m. Thanks,

Chris



SD-#22142591-v1-
January_25_Pro...

**CONFIDENTIAL SETTLEMENT COMMUNICATION;
NOT ADMISSIBLE OR DISCOVERABLE**

SEC v. EMVEST MORTGAGE FUND, LLC, ET AL.
CASE NO. 04CV2295-DMS (LSP)

Defendants are willing to agree to forego their rights to appeal and to secure payment of the amount of disgorgement and prejudgment interest under the following conditions:

1. Payment Terms:

The Court has held that Defendants should disgorge \$1,263,163 plus prejudgment interest on the amount, at the end of each year, that distributions exceeded the net income of Emvest Mortgage Fund, LLC. By Defendants' calculation, the disgorgement amount plus prejudgment interest as of January 27, 2006 will equal \$1,299,533.27.

Within 10 days of Court approval of an agreement between Defendants and the Receiver containing all of the material terms outlined herein, Defendants Milon Lyle Brock and/or Emvest, Inc. will make payment as follows:

(a.) \$650,000 in cash made payable to the Fund care of Dennis Murphy, Permanent Receiver, and to be deposited by him in the Fund's general account. Copies of proof of payment to Mr. Murphy will be made simultaneously by facsimile from Defendants to the SEC, and Mr. Murphy will provide Defendants and the SEC with proof of deposit in the Fund's general account; and

(b.) Payment of the remaining \$649,533.27 over a 35 month term (beginning February 27, 2006, or one month after approval of this agreement) in the amount of \$19,796.73 per month, secured by a note payable to the Fund in the amount of \$649,533.27 (the "Note") and an escrow agreement with Torrey Pines Bank or other mutually acceptable agent to collect the monthly payments and hold the pledges of \$665,000 worth of shares in the Fund and bearing annual interest at 4.36 percent (i.e., commensurate with the one-year constant treasury yield effective December 30, 2005). The \$665,000 of pledged shares would be subject to a pledge agreement held by the escrow agent and consist of the following shares: \$600,000 held by Timothy J. Canty, Jr., \$25,000 owned by Milon Lyle Brock, \$20,000 owned by Sydney Canty and \$20,000 owned by Milan Canty. The escrow instructions would provide that, in the event that any default on the Note was not cured within 10 days, the pledged investments would be liquidated to the extent necessary to satisfy the default. In addition, Defendants are willing to provide to the SEC, within 2 business days of each monthly payment, copies of checks proving that payment has been made.

**CONFIDENTIAL SETTLEMENT COMMUNICATION;
NOT ADMISSIBLE OR DISCOVERABLE**

2. Termination of the Receivership:

Court approval of the termination of the Receivership, release of any and all claims against Defendants by the Receivership, and the return of any and all management of the Fund to Defendants, without objection from the Commission, and with the recommendation of the Receiver, as follows:

(a.) All full and unconditional release by Receiver, the Fund, and Mr. Murphy in his personal capacity of Emvest, Inc., Mylon Lyle Brock, Emerald Bay Financial, Inc., Emerald Bay Funding, Inc., CNA Foreclosure, Inc. Unified Mortgage Services, Inc., Lenders Reconveyance, Inc., Heritage Mortgage Fund II, LP, Emvest Mortgage Fund II, LLC and their officers, directors, agents, shareholders, insurers, heirs, representatives, affiliates, employees, predecessors, successors, assigns, and attorneys from all acts, occurrences, costs, proceedings, obligations, claims, debts, demands and liabilities, and any and all other claims of every kind, nature, and description whatsoever, both in LAW and EQUITY, whether known or unknown, whether suspected or unsuspected, whether accrued or unaccrued, whether now or heretofore existing, whether premised on contract, statute, tort or other theory of recovery, for any compensatory, punitive, penalty, statutory, contract or tort damages.

(b.) Management of the Fund returned to Defendants as of February 1, 2006 (see further description, below);

(c.) All authority over any and all bank accounts of the Fund and Emvest, Inc. returned to Defendants as of February 1, 2006;

(d.) All records of Emvest, Inc., the Fund, Lyle Brock and any other records obtained by the Receiver from third parties, other than his attorneys, in connection with this case are to be returned by the Receiver and picked up by Defendants' agents at the Receiver's offices on February 1, 2006;

(e.) Transfer to Defendants of the rights to and control of www.Emvest.Info;

(f.) Resolution of the outstanding fee applications of the Receiver and of his counsel such that they will receive their reasonable costs plus an additional 35% of the fees applied for (for a total of 65% of fees, which includes the 30% they have already drawn upon), with no further fee applications to be submitted after the date of this Proposal;

(g.) Release of any all contempt claims the SEC and/or the Receivership may have against Defendants; and

(h.) Management will take responsibility for the preparation for financial statements and tax returns for calendar year 2005.

**CONFIDENTIAL SETTLEMENT COMMUNICATION;
NOT ADMISSIBLE OR DISCOVERABLE**

3. Future Management of the Fund:

As set forth above, all management of the Fund will be returned to Defendants as of February 1, 2006. In addition, Defendants agree to the following:

(a.) Management fees for 2004 and 2005 will be waived by Defendants (Defendants acknowledge that they did not perform management services for the Fund in 2005, but wish to make clear they will make no claim for management fees in that year). Payment of management fees for 2006 and the remaining years of operation of the Fund will be made consistent with the terms of the prospectuses;

(b.) By Court order, distributions to members will not exceed the Fund's net income and will be paid 60 days in arrears (i.e., January 2006 distributions will be paid in March 2006) to allow for Stephen J. Hawkins's firm to compile the financial statements and determine the amount of net income available for distribution. The Fund's financial statements will be made available to members upon reasonable request; and

(c.) By Court order, request for withdrawals will be granted consistent with the terms of the prospectuses (i.e., on a case-by-case basis in the discretion of management), without limitation on the percentage of the Fund that may be withdrawn in any particular year except that, in management's discretion, there must be sufficient funds available to pay withdrawing investors and still meet the Fund's operating capital needs over the next 120 days. Withdrawal requests may be submitted once management has been back in control of the Fund for 120 days, which will allow management time to communicate with investors and to assess the Fund's portfolio and its working capital needs. Withdrawing members whose request for withdrawal are granted by management will be paid their capital account balance as set forth in the most recent reconciliation of members' equity, which reconciliation will be performed by Mr. Hawkins's firm on a quarterly basis. Such reconciliations shall be made available to a withdrawing member upon reasonable request, but will be redacted to the extent necessary to protect the privacy rights of the other members.

SD:22142591.1

3 **PROOF OF SERVICE**

4 I, Lisa Whitaker, declare:

5 I am a citizen of the United States and employed in San Diego County, California. I am
6 over the age of eighteen years and not a party to the within-entitled action. My business address
7 is Suite 3300, Symphony Towers, 750 B Street, San Diego, California 92101. On **February 1,**
8 **2006**, I served a copy of the within document(s):

- 9 • **DEFENDANTS' REPLY TO THE SEC'S RESPONSE TO DEFENDANTS'**
10 **OBJECTIONS TO THE [PROPOSED] FINAL JUDGMENT FILED BY**
11 **PLAINTIFF ON JANUARY 23, 2006**

12 by transmitting via facsimile the document(s) listed above to the fax number(s) set
13 forth below on this date before 5:00 p.m.

14 by placing the document(s) listed above in a sealed envelope with postage thereon
15 fully prepaid, in the United States mail at San Diego, California addressed as set
16 forth below.

17 by personally delivering the document(s) listed above to the person(s) at the
18 address(es) set forth below.

19 Molly White, Esq.
20 Susan F. Hannan, Esq.
21 Jose Sanchez, Esq.
22 Securities and Exchange Commission
23 5670 Wilshire Boulevard, 11th Floor
24 Los Angeles, CA 90036
25 Tel. (323) 965-3998 / Fax (323) 965-3908

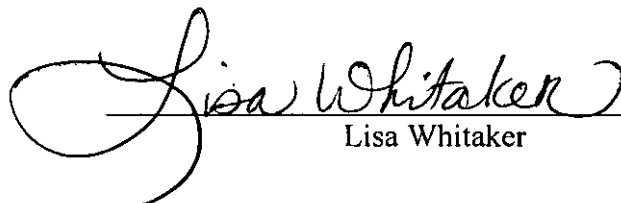
*Attorneys for Plaintiff SECURITIES
AND EXCHANGE COMMISSION*

26 James R. Felton, Esq.
27 Greenberg & Bass
28 16000 Ventura Blvd., Suite 1000
Encino, CA 91436
Tel (818) 986-5687 / Fax (818) 986-6534

*Attorneys for Receiver
DENNIS MURPHY*

29 I am readily familiar with the firm's practice of collection and processing
30 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
31 Service on that same day with postage thereon fully prepaid in the ordinary course of business.
32 I am aware that on motion of the party served, service is presumed invalid if postal cancellation
33 date or postage meter date is more than one day after date of deposit for mailing in affidavit.

34 I declare that I am employed in the office of a member of the bar of this court at whose
35 direction the service was made. Executed on **February 1, 2006**, at San Diego, California.

36 
37 Lisa Whitaker

Atlanta
Denver
Los Angeles
Philadelphia

McKenna Long & Aldridge

Attorneys at Law

Suite 3300, Symphony Towers • 750 B Street • San Diego, CA 92101
Tel: 619.595.5400 • Fax: 619.595.5450
www.mckennalong.com

San Diego
San Francisco
Washington, DC
Brussels

FACSIMILE TRANSMITTAL

Date: February 1, 2006

To: Name/Company	Fax No.	Phone No.
Molly White, Esq. Susan F. Hannan, Esq. Jose Sanchez, Esq. Securities and Exchange Commission	(323) 965-3908	(323) 965-3998
James R. Folton, Esq. Greenberg & Bass	(818) 986-6534	(818) 986-5687

From: Lisa Whitaker, Secretary
Phone: (619) 595-5400
Re: Securities and Exchange Commission v. Emvest Mortgage, etc., et al.

Number of Pages (including cover): 9 Service Copies Will Follow By U.S. Mail

COMMENTS

ATTACHMENTS:

DEFENDANTS' REPLY TO THE SEC'S RESPONSE TO DEFENDANTS' OBJECTIONS TO THE [PROPOSED] FINAL JUDGMENT FILED BY PLAINTIFF ON JANUARY 23, 2006 [See Proof of Service]

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SD:22131514.1

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