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

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Attorneys for Receiver
Dennis Murphy

FILED
2006 APR 10 PM 4:09
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY Lo DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

EMVEST MORTGAGE FUND, LLC;
EMVEST, INC.; and MILON LYLE
BROCK,

Defendants.

CASE NO.: 04CV2295-DMS (LSP)

JUDGE: Hon. Dana M. Sabraw

FINAL REPORTING OF
COUNSEL'S FEES AND COSTS;
DECLARATION OF JAMES R.
FELTON IN SUPPORT THEREOF

CTRM: 10
DATE: April 28, 2006
TIME: 1:30 p.m.

Disc. Cut-off: November 10, 2005
Motion Cut-off: November 10, 2005
Trial Date: January 3, 2006

I.

PRELIMINARY STATEMENT

By stipulation of the Parties, the Receiver and his counsel are hereby submitting their Motion for Approval of Final Fee Application of Receiver and Counsel in anticipation of the possibility that the Court will terminate the Receivership as of April 28, 2006. This pleading will outline Counsel's expected billing for April, 2006

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1 as well as provide a brief overview of the Receivership and fees and expenses of
2 counsel to date.

3 **II.**

4 **STATEMENT OF FACTS**

5 On or about November 16, 2004, this Court created the current Receivership.
6 Shortly thereafter, the Receiver, Dennis Murphy, employed the firm of Greenberg &
7 Bass, to represent him. Greenberg & Bass agreed to cap its hourly rate at \$250.00 per
8 hour.

9 To date, Greenberg & Bass has submitted the following fee applications or
10 other reporting to this Court:

| 11 <u>PERIOD COVERED</u> | 12 <u>FEES</u> | 13 <u>COSTS</u> |
|---------------------------------|-----------------------|------------------------|
| 14 11/04 – 1/05 | \$23,449.99 | \$2,924.11 |
| 15 2/05-5/15/05 | \$13,603.50 | \$1,051.43 |
| 16 5/15/05-5/31/05 | \$ 3,787.50 | \$ 397.26 |
| 17 6/05 | \$ 3,408.50 | \$ 451.20 |
| 18 7/05 | \$ 1,375.00 | \$ 102.22 |
| 19 8/05 | \$ 2,754.50 | \$ 190.01 |
| 20 9/05 | \$13,057.50 | \$1,369.18 |
| 21 10/05 | \$14,785.50 | \$1,837.69 |
| 22 11/05 | \$ 8,807.50 | \$1,818.83 |
| 23 12/05 | \$ 4,471.00 | \$ 386.26 |
| 24 1/06 | \$ 2,881.50 | \$ 75.17 |
| 25 2/06 | \$ 6,500.00 | \$ 514.30 |
| 26 3/06 | \$ 6,375.00 | \$ 342.96 |
| 27 4/06 | \$ 4,000 (estimated) | \$ 250.00 (estimated) |

28 (Declaration of James R. Felton ("Felton Decl."), ¶ 2.)

To date, Greenberg & Bass received authorization for \$20,000.00 of the
\$26,374.10 for the first reporting period as well as 75% of all fees incurred since the



1 inception of the Receivership. By Order dated June 7, 2005, this Court asked that
2 both the Receiver and his counsel submit a monthly billing of fees and costs without
3 hearing. At that time, the Court authorized payment of 30% of all such fees and costs
4 with the balance to be considered at the time of the termination of the Receivership.
5 Earlier this year, this Court authorized the payment of 75% of such fees with the
6 balance to be considered as of the termination of the Receivership. (Felton Decl., ¶ 3.)

7 All of the time sheets for each of the month's for which fees are being sought
8 have either been filed with the Court or served on the parties. As this Court may
9 recall, as of June, 2005, the Court asked that the monthly report of fees be served on
10 all parties but not filed. To the extent that this Court would like to review time
11 entries, such documents can either be submitted ahead of the hearing or brought to the
12 hearing.

13 III.

14 ARGUMENT

15 A. This Court Should Authorize Payment of 100% of Fees and 16 Costs Incurred.

17 Greenberg & Bass will not spend the time to review the ebb and flow of
18 this case. This Court knows that this matter was hotly contested on both sides
19 and required determination by trial. This Court also knows that the Receiver
20 was a witness at the trial and that his reports and conclusions became an
21 integral part of this Court's ultimate determination.

22 Approximately 75% of all work performed by Greenberg & Bass was
23 performed by James Felton. His customary billing rate was \$325.00 in 2005
24 and \$335 in 2006. (Felton Decl., ¶ 5.) However, Greenberg & Bass agreed to
25 cap its fees at \$250.00 per hour.

26 In addition to the reduced rate, counsel also took steps to reduce fees
27 where possible by either 1) asking to be excused from court appearances, or 2)
28 appearing telephonically when possible. (Felton Decl., ¶ 6.) Counsel did not

1 accompany Mr. Murphy for his testimony at trial. Greenberg & Bass never
2 brought more than one lawyer to any of the court hearings.

3 Given this court's determinations and the reduced rate for the work performed
4 by James Felton, counsel respectfully requests that this Court authorize payment of
5 100% of all fees incurred.

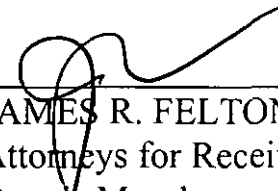
6 IV.

7 CONCLUSION

8 Based upon the foregoing, Greenberg & Bass requests that this Court approve
9 all of the fees that it incurred on behalf of the Receiver, Dennis Murphy, in this
10 matter.

11 Dated: April 7, 2006

GREENBERG & BASS
A Registered Limited
Liability Partnership

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14 By: 
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16 JAMES R. FELTON
17 Attorneys for Receiver,
18 Dennis Murphy
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G&B
GREENBERG & BASS LLP

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2 **DECLARATION OF JAMES R. FELTON**

3 I, James R. Felton, declare as follows:

4 1. I am an attorney duly licensed to practice law in this Court and am a
5 partner in the law firm of Greenberg & Bass, counsel for the Receiver herein. The
6 facts recited in this declaration are known to me of my own personal knowledge, and
7 if called upon to testify as a witness, I could and would competently testify thereto.

8 2. On or about November 16, 2004, this Court created the current
9 Receivership. Shortly thereafter, the Receiver, Dennis Murphy, employed the firm of
10 Greenberg & Bass, to represent him. Greenberg & Bass agreed to cap its hourly rate
11 at \$250.00 per hour.

12 3. To date, Greenberg & Bass has submitted the following fee applications
13 or other reporting to this Court:

| <u>PERIOD COVERED</u> | <u>FEES</u> | <u>COSTS</u> |
|-----------------------|----------------------|-----------------------|
| 14 11/04 – 1/05 | \$23,449.99 | \$2,924.11 |
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| 26 3/06 | \$ 6,375.00 | \$ 342.96 |
| 27 4/06 | \$ 4,000 (estimated) | \$ 250.00 (estimated) |
| 28 | | |

1 4. To date, Greenberg & Bass received authorization for \$20,000.00 of the
2 \$26,374.10 for the first reporting period as well as 75% of all fees incurred since the
3 inception of the Receivership. By Order dated June 7, 2005, this Court asked that
4 both the Receiver and his counsel submit a monthly billing of fees and costs without
5 hearing. At that time, the Court authorized payment of 30% of all such fees and costs
6 with the balance to be considered at the time of the termination of the Receivership.
7 Earlier this year, this Court authorized the payment of 75% of such fees with the
8 balance to be considered as of the termination of the Receivership.

9 5. I performed approximately 75% of all work performed by Greenberg &
10 Bass in this case. My customary billing rate was \$325.00 in 2005 and \$335.00 in
11 2006. However, Greenberg & Bass agreed to cap its fees at \$250.00 per hour.

12 6. In addition to the reduced rate, I also took steps to reduce fees where
13 possible by either 1) asking to be excused from court appearances (the Receiver and I
14 requested and were excused from early settlement meetings with Judge Porter), or 2)
15 appearing telephonically when possible (there was at least one hearing before Judge
16 Sabraw where I appeared telephonically).

17 7. I did not accompany Mr. Murphy for his testimony at trial as it seemed to
18 me that I would have added little to the process and would have only increased fees to
19 be paid by the estate. Greenberg & Bass never brought more than one lawyer to any
20 of the court hearings.

21 8. My office has obviously not billed the estimated time to be incurred for
22 April, 2006. I estimate the following additional fees that have yet to be billed:

23 a) preparing this fee application as well as the Receiver's Final
24 application – 3 hours;

25 b) responding to Defendants' request for termination of Receivership
26 – 3 hours;

27 c) attending hearing on 4/28/06 – 8 hours;

28 d) other Receivership business through the month – 2 hours.

1 Thus, I would estimate another 16 hours of fees (approximately \$4,000.00) will
2 be incurred in April with approximately \$250.00 in costs. The amount of costs
3 estimated is based upon previous months' billings. I can update this Court at the April
4 28, 2006 hearing and provide exact numbers if this Court so desires.

5 9. I have reviewed all of the time entries previously submitted to this Court
6 and/or served upon counsel, as directed by this Court, and believe them to be
7 reasonable given the nature of this matter and the amount of work that was needed to
8 be performed.

9 I declare under penalty of perjury pursuant to the laws of the State of California
10 that the foregoing is true and correct. Executed this 7th day of April, 2006 at Encino,
11 California.

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15 JAMES R. FELTON
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G&B
GREENBERG & BASS LLP

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16000 Ventura Boulevard, Suite 1000, Encino, California 91436.

On April 7, 2006, I served the foregoing document described as **FINAL REPORTING OF COUNSEL'S FEES AND COSTS; DECLARATION OF JAMES R. FELTON IN SUPPORT THEREOF** on the interested parties in this action.

- by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

SEE ATTACHED SERVICE LIST

- BY REGULAR MAIL:** I deposited such envelope in the mail at 16000 Ventura Boulevard, Suite 1000, Encino, California. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

- BY FACSIMILE MACHINE:** I transmitted a true copy of said document(s) by facsimile machine, and no error was reported. Said fax transmission(s) were directed as indicated on the service list.
- BY OVERNIGHT MAIL:** I deposited such documents at the Overnite Express or Federal Express Drop Box located at 16000 Ventura Boulevard, Suite 1000, Encino, California. The envelope was deposited with delivery fees thereon fully prepaid.
- BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the above addressee(s).

I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 7, 2006, at Encino, California.


Margaret Tyndall

SERVICE LIST

United States Securities and Exchange Commission
v. Emvest Mortgage Fund, et al.
Case No. 04CV2295-DMS(LSP)

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