

USDC SCAN INDEX SHEET



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

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FILE
04 DEC -8 PM 2:07
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE) Civil No. 04-2295-DMS (LSP)
COMMISSION,)
Plaintiff,) NOTICE AND ORDER FOR EARLY
v.) NEUTRAL EVALUATION CONFERENCE
EMVEST MORTGAGE FUND, LLC,)
et al.)
Defendants.

IT IS HEREBY ORDERED that an Early Neutral Evaluation of your case will be held on January 31, 2005, at 2:00 PM before United States Magistrate Judge Leo S. Papas, United States Courthouse, Courtroom G, First Floor, 940 Front Street, San Diego, California.

Pursuant to Rule 16.1(c) of the Local Rules of the United States District Court for the Southern District of California, both counsel and the parties who have full and unlimited authority¹ to

¹ "Full authority to settle" means that the individuals at the settlement conference must be authorized to fully explore settlement options and to agree at that time to any settlement terms acceptable to the parties. Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648 (7th Cir. 1989). The person needs to have "unfettered discretion and authority" to change the settlement position of a party. Pitman v. Brinker Intl., Inc., 216 F.R.D. 481, 485-486 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement authority to attend the conference includes that the person's view of the case may be altered during the face

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1 negotiate and enter into a binding settlement shall appear in person
2 at the conference and shall be prepared to discuss the claims,
3 defenses and damages.

4 Unless there are **extraordinary circumstances**, persons
5 required to attend the conference pursuant to this Order shall not
6 be excused from personal attendance. Requests for excuse from
7 attendance for extraordinary circumstances shall be made in writing
8 at least 48 hours prior to the conference. Where the suit involves
9 the United States or one of its agencies, only counsel for the
10 United States with full settlement authority need appear. All
11 conference discussions will be informal, off the record, privileged
12 and confidential.

13 The parties may, but are not required to, submit a short
14 Early Neutral Evaluation Conference Statement about the case on a
15 confidential basis.

16 In the event the case does not settle at the Early Neutral
17 Evaluation Conference, the parties shall also be prepared to discuss
18 the following matters at the conclusion of the conference.

19 1. Any anticipated objections under Federal Rule of Civil
20 Procedure 26(a)(1)(E) to the initial disclosure provisions of
21 Federal Rule of Civil Procedure 26(a)(1)(A-D);

22 2. The scheduling of the Federal Rule of Civil Procedure
23 26(f) conference;

24 3. The date of initial disclosure and the date for lodging
25 the discovery plan following the Rule 26(f) conference; and,

26 4. The scheduling of a Case Management Conference pursuant
27 _____

28 to face conference. Id. at 486. A limited or a sum certain of authority
is not adequate. Nick v. Morgan's Foods, Inc., 270 F.3d 590 (8th Cir.
2001).

1 to Federal Rule of Civil Procedure 16(b).

2 The Court will issue an appropriate order addressing these
3 issues and setting dates as appropriate.

4 Plaintiff's counsel shall notify all Defendants of the date
5 and time of the Early Neutral Evaluation Conference. Questions
6 regarding this case may be directed to the Magistrate Judge's
7 research attorney at (619) 557-6384.

8 DATED: December 8, 2004

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LEO S. PAPAS
United States Magistrate Judge

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cc: The Honorable Dana M. Sabraw
All Parties

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