Breach of Fiduciary Duty (BFD): Chris McConnell releases the third in a series of fiduciary alerts

Los Angeles, CA (PRWeb) February X, 2009. In the latest in a series of articles looking at the issue of Breach of Fiduciary Duty, BFD, **Fiduciary*FORENSICS*®** cites a potential case study-in-the-making lurking at Lennar Corporation (NYSE:LEN). After two pieces that look at the role of BFD in the Madoff scandal, **Fiduciary*FORENSICS*®** principal, Chris McConnell, AIFA, offers a third look glimpse into the multiple conflict-of-interests toxic cocktail CEO's and Boards are currently being asked to drink in contemporary corporate America.

When and how do CEOs and board members fulfill--rather, *juggle*--their often-conflicting fiduciary duties to shareholders, employees' as 401k plan participants, joint venture or strategic partners, bondholders and other stakeholders? This is a question that has become more challenging as pressure on them grows in the wake of the current economic downturn.

For many banks, broker/dealers, hedge funds, and other public companies, including Enron and Worldcom, which seemed to magically outperform rivals quarter after quarter, when not if problems like off balance sheet entities, leverage, debt-to-equity ratios, and revenue recognition concerns waited. We've seen this scenario before, perhaps not yet at NYSE:LEN, but we may be seeing a pattern we are familiar with. According to McConnell, it may be time to take a look at these matters very carefully.

What is a fiduciary's responsibility? Fiduciary duty is the highest standard known under the law. Fiduciaries must avoid or manage conflicts, disclosure is essential. It is predicated upon trust; a fiduciary must place his own interests in second place, behind those of the principal. This is referred to as the duty of loyalty; other duties are to act with care, skill, impartiality and caution with assets and any other requirement per the contract or instrument. This is called *prudence*; courts often compare fiduciaries to the expert standard.

Here are some of the issues fiduciaries – trustees, investment advisers, mutual funds, regulators and public policy makers should take a close look at. If any of these are apparent at a company, in which they have a fiduciary role or relationship they may be at risk.

- Corporate governance rating of 26.4% or "D"
- CEO's family controls 47% of voting power

- Unconsolidated joint ventures, disclosure issues, transparency
- Warranty reserves declining $35 million; in contrast to company-initiated litigation and potential recovery
- Scant insider holdings
- CEO cash compensation versus shares owned
- The role of financial intermediation or disintermediation

As McConnell noted in previous Fiduciary Alerts, "In good times, leverage can generate outsize, stellar profits. However, absent appropriate due diligence, in difficult times, astounding but avoidable losses will likely occur."

McConnell's article may be viewed at http://www.lenn-ron.com/docs/McConnell%20Release.pdf.

About Chris McConnell, AIFA®

Chris McConnell received a BA in Economics with an Accounting option from Rutgers University in 1983, passed the CPA exam in New York State in 1986, and received an MBA from Pepperdine University in 1990. He was certified as an AIFA® by the Center for Fiduciary Studies in 2003. He has 25 years of combined experience as a recognized fiduciary, securities industry and compensation expert.

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