



## **Fiduciary Analyst Chris McConnell Expands Scope Of Lennar Concerns With New Report, Says Fraud Discovery Institute**

*Says potential "Bad Bank" scenario lurking*

For Immediate Release

SAN DIEGO/EWORLDWIRE/Feb. 4, 2009 --- Chris McConnell, principal of Chris McConnell & Associates, indicates that disclosure may be lurking at Lennar Corp (LEN) (NYSE:LEN) and has arranged with the Fraud Discovery Institute Inc. to evaluate the company for breach of fiduciary duty (BFD).

McConnell has identified a case study in the making that continues to move his investigation and analysis of current issues involving breach of fiduciary duty (BFD) forward. According to McConnell, a potential bad "Land" bank problem has been lurking beneath the surface at Lennar Corp. (NYSE:LEN) for years. This may raise the specter of BFD for executives at LEN. Hundreds of off-balance sheet, joint ventures hold various interests in land assets and related debt obligations. This allowed for a more favorable financial presentation but is reminiscent of the Enron era.

As a result, a potential quintuple, conflict-laden fiduciary liability scenario arises. McConnell asks, "Is Lennar a full-fledged five-flavor case study of BFD, a financial crime, a Cinderella story, or the saga of a recovering homebuilder in the making?"

In an arrangement with the Fraud Discovery Institute (FDI), McConnell is working to help dissect the admittedly complex implications of the LEN case for shareholders, bondholders, other stakeholders and fiduciaries. He believes, based on the information and advice he has gathered following a 2008 10-k review, that on the surface the company is currently in compliance with GAAP, debt-to-equity ratios, loan covenants, and other regulations. Barry Minkow, co-founder of the Fraud Discovery Institute, affirms, "The major concerns regarding this company relate to what may lurk below the surface. It is hoped that LEN soon returns to prosperity for the benefit of all, including the unconsolidated joint venture partners."

Five flavors of fiduciary responsibility: wearing more than one fiduciary hat leads to potential conflicts.

Lennar Corp executives and directors may jointly and severally owe a melange of prudent fiduciary duty not limited to the following parties:

- 1) Shareholders
- 2) Employees - Is it still prudent to own LEN shares in their 401k plan? A potential conflict with other shareholders
- 3) Joint Venture Partners - Potential conflict with shareholders
- 4) Bondholders - Especially later if in the zone of insolvency
- 5) Beneficiaries of their own family trusts or foundations which own LEN shares - Potential conflict with shareholders

Asks Minkow, "What should a fiduciary do? Eliminate or manage around conflicts, second, fiduciaries depend on disclosure. Fiduciary duty is the highest standard known under the law. 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 care, skill, impartiality and caution with assets and any other requirement per the contract or instrument."

What intrigued McConnell about Lennar is that it operates in many facets of what's ailing the U.S. economy right now, notably homebuilding and credit. McConnell observed that the company served many first-time and move-up homebuyers in the over-55 adult communities, following its acquisition of U.S. Home Inc. earlier this decade. "It appears that Lennar determined early on that land acquisition was a key industry profit driver. With a lead over its competitors, the company obtained control of over 300,000 future lots - for instance, El Toro

Marine Base in Orange County, Calif., and Newhall Land in the Santa Clarita Valley, Calif. Lennar's profits grew due to ventures like these, often held in off-balance sheet entities, many with joint venture partners."

Minkow affirms an aggrieved joint venture partner has engaged FDI to investigate potential fraud at LEN.

Performance attribution is a key to dissecting past results and future insights into stocks. "What is LEN?" asks Minkow. "What drove its profits like few others in the boom years?"

Well-educated on the operations of the investment industry, Minkow points out that for many banks, broker/dealers, hedge funds, and other public companies including Enron and Worldcom - which seemed to magically outperform rivals quarter after quarter - problems like off-balance sheet entities, leverage (debt), aggressive, if not questionable, capitalizations, and revenue recognition concerns waited. Similarly, questions about the quality of earnings were pervasive. "We've seen this scenario before, perhaps not yet at LEN, but we recognize an emerging pattern," adds Minkow.

McConnell notes the situation "is a two-sided coin: Side one shows that since year end 2006 over \$4 billion or nearly 40 percent in write-downs on a \$12 billion on-the-books asset base have been recorded. Side two is a cloudy picture of uncertainty, revolving around asset values and liabilities, with perhaps future write-downs to come in both inventories of unsold homes and other long term assets."

"Only Lennar executives know the solutions," states Minkow. "Surely these experienced managers realize their fiduciary duty to maximize shareholder value; yet, these concerns have been floating around for several years now."

Additionally some analysts' concerns include:

- Accounting treatment, policies and disclosures erodes the quality of earnings, perhaps even with cost and expense shifting to off-balance sheet entities as sometimes occurs depending on actual control or influence of certain joint ventures.

- Lennar has been able to increase debt and leverage in some joint ventures, in turn allowing it to take cash out; however, in a riskier real estate environment this activity may be imprudent.

- Lennar has experienced increased leverage and financial risk off in the joint ventures while at the same time enhancing its own financial picture.

"Ironically, however, if Lennar can reap \$100 million from a since-terminated bankrupt joint venture, the man on the street may then ask, 'Why don't they look similarly to book gains from all the other joint ventures?'"

Some partnerships pay Lennar a substantial amount in management fees, raising a potential conflict, control issues and/or adequacy of reporting for related-party transactions.

"With hundreds of millions in potential recourse exposure, shareholders are at risk of having a material amount of debt come onto a shrinking balance sheet," affirms Minkow. "However, if Lennar is able to go after other partners for up to \$200 million dollars of it, is this realistically recoverable given this industry environment?"

"In the early boom years, gross margins from land sales have varied widely from about 1 percent to 36 percent; earnings from land development ranged from 9 percent to 20 percent of total earnings. This historical variability exacerbates investors uncertainties compared to a more stable earnings stream.

"What remains fenced off in the joint ventures for now potentially complicates and may stretch compliance with its lenders' recently tightened financial terms."

Noteworthy, according to McConnell, are valuation models used during the boom years which triggered huge bonus checks. Lennar's CEO earned over \$40 million in cash compensation - and owns 190,000 shares, with no purchases since 2007. Says McConnell, "No one that I know of, at any financial services or real estate entity, ever raised his or her hand upon receiving a bonus check during the boom years and said, 'It's too much.' Similarly, LEN will face continuing scrutiny in its future reporting of net realizable values of unsold homes and land that use off-balance sheet or joint ventures with leverage and or recourse. Lennar and its auditors, Deloitte & Touche, must recognize that although its not currently required, that more transparent disclosures in the full light of day is the disinfectant that's needed; otherwise, bloggers - and others - may inquire."

Issues for fiduciaries - trustees, investment advisers, mutual funds and regulators and public policy makers include:

- Corporate governance rating of 26.4 percent or "D"
- CEO's family controls 47 percent of voting power
- Unconsolidated joint ventures, and ongoing questions of reporting transparency
- Warranty reserves dropped by \$35 million; in the context of Lennar's lawsuit filed against a Chinese supplier and pending consumer complaints
- CEO cash compensation versus shares-owned, scant insider holdings
- The impact of the Graham-Leach-Bliley Financial Services Modernization Act and the role of financial intermediaries or disintermediaries

"It's sometimes helpful to check out how an entity holds itself out to its customers, and McConnell notes that Lennar's sales pitch to would-be homebuyers states: 'Everything's included,' including the tag lines, 'Everything you want,' 'Everything you need, we included it,' 'Look for the crystal clear box at our Welcome Home Center.' Really? There appears to be a not-too-subtle contrast here - to investors' uncertainty related to off-balance sheet assets, and liabilities not in Lennar's financial statements. Financial disclosures, like these tag lines, are clearly under management control; curiously for the time being, fuller disclosure is a problem - and remains in the shadows," says Minkow.

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

About Chris McConnell, AIFA

Chris McConnell received a B.A. in economics with an accounting option from Rutgers University in 1983, passed the C.P.A. exam for New York State in 1986, and received an M.B.A. 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 and compensation expert, in addition to his considerable securities industry experience.

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For more information, visit '<http://www.fiduciaryexpert.com>'.

To learn more about the Fraud Discovery Institute Inc., visit '<http://www.frauddiscovery.net>'.

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