

Vick, Ted

From: baileylawfirm@charter.net
Sent: Wednesday, July 13, 2011 2:50 PM
To: Pack, Angie
Cc: thomas@pendarvislaw.com; Vick, Ted; Johnston, Ellis; Craddock, Hugh
Subject: RE: Davis et al. vs. AIMCO

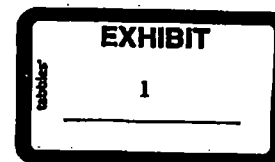
With regard to your questions concerning Appellants' designations, the order should be the order of 3-3-09. The motion to compel actually referred to the discovery requests dated 10-5-07, so there is no motion of that date.

With regard to the privilege log, it is the privilege log that was forwarded to Ellis on 7-21-05.

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On Tue, Jul 12, 2011 at 2:47 PM, Pack, Angie wrote:

> RE: Laurance H. Davis, Jr., et al vs. Parkview Apartments, et al
> Laurance H. Davis, Jr., et al vs. Palmetto Apartments, et al
> Carolina Management Corporation, et al vs. Pinewood Park
> Apartments
> Laurance H. Davis, Jr., et al vs. Roosevelt Gardens, et al
> Rhonda G. Rentz, et al vs. Orleans Gardens, et al
>
>
> Gentlemen:
>
> Please find attached Mr. Vick's letter of today's date regarding the
> above-referenced matters. Please do not hesitate to contact me if you
> have any questions.
>
> <<Davis v. Parkview, et al - ltr to Bailey and Pendarvis dated July
> 12,
> 2011.pdf>>
>
> Thank you,
>
> Angela M. Pack
> Secretary to Thomas H. Coker, Jr.
> J.W. Matthews III and Calvin T. Vick, Jr. Haynsworth Sinkler Boyd,
> P.A.
> 75 Beattie Place - Eleventh Floor (29601)
> Post Office Box 2048
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>
>
> *****
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THE STATE OF SOUTH CAROLINA
In the Supreme Court

ORIGINAL JURISDICTION

Ex Parte:

Laurance H. Davis, Jr., *et al.*, ... Petitioners,

In Re:

Laurance H. Davis, Jr., *et al.*, ... Plaintiffs,

v.

Parkview Apartments,

et al., ... Defendants.

DEFENDANTS' RETURN IN OPPOSITION
TO PETITION FOR WRIT OF PROHIBITION
OR ALTERNATIVELY FOR WRIT OF CERTIORARI

Ellis M. Johnston, II
Calvin T. Vick, Jr.
HAYNSWORTH SINKLER
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Greenville, SC 29602
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EXHIBIT

2

administration of these lawsuits.

The trial court's July 28, 2009 Order, which is the target of the instant Petition, compels the Petitioners to produce ninety-six (96) documents for which they had claimed attorney-client privilege and/or work product protection. See Exhibit 2. As shown below, the Petitioners expressly endorsed each step in the process, now complained of, that ultimately led to the trial court's July 28, 2009 order. They simply do not like the results, and have refused to comply with the trial court's order. As a result of Petitioners' willful non-compliance, the Defendants were forced to file a motion for sanctions seeking dismissal of the actions pursuant to Rule 37(b), SCRPC. See Exhibit 3. This was the second time that the Defendants were forced to file a motion for sanctions. The first motion for sanctions, which remains pending in the trial court, was necessary due to the Petitioners' willful non-compliance with another discovery order, dated March 3, 2009, which compelled them to fully and completely respond to Defendants' August 28, 2008 interrogatories and requests for production of documents.²

In regards to both of the discovery orders, and both of the Defendants' motions for sanctions, the trial court has exhibited extraordinary patience with the Petitioners. However, with less than five (5) months remaining before the trial in the Parkview action, and the Petitioners openly refusing to comply with the trial court's July 28, 2009 order, the trial court informed the parties that it had no alternative but to dismiss the actions as sanctions for Petitioners' willful non-compliance, with the substantial caveat that it would

² Copies of the following documents are attached as exhibits: March 3, 2009 Order, Exhibit 4; Defendants' first Motion for Sanctions, Exhibit 5; Memorandum in Support of Defendants' Two Motions for Sanctions, Exhibit 6; and Supplemental Memorandum in Support of Defendants' Motions for Sanctions, Exhibit 7 (addressing Petitioners' continuing failure to comply with the March 3, 2009 discovery order).

vacate the dismissal order if the Petitioners complied with the July 28, 2009 discovery order within twenty-five (25) days of the date of the dismissal order. Moments before Judge Early was to sign the dismissal order, he received notice of the instant Petition, and determined that he would not proceed until this Court addressed the Petition. Now, Petitioners ask this Court to ignore well-established precedent in order to run interference with the trial court's proper administration of these lawsuits.

BRIEF SUMMARY OF ARGUMENT

A writ of prohibition should not issue in this case, because:

- By its own terms, Rule 53, SCRCP, does not apply to the proceedings in the trial court:
 - Former Judge Clary was not a Master-in-Equity or a Special Referee under S.C. Code Ann. § 14-11-60;
 - The trial court did not refer a cause of action or case to former Judge Clary; and
 - Former Judge Clary did not issue or enter an order or judgment.
- The trial court alone had the authority and jurisdiction to enter the July 28, 2009 Order.
- The discovery order at issue does not present some "great outrage upon the settled principles of law and procedure." Ex Parte Jones, 160 S.C. 63, 69, 158 S.E. 134, 137 (1931).
- In any event, the Petitioners have an adequate remedy of appeal.
- The imposition of sanctions for failure to comply with the discovery order is within the sound discretion of the trial court, and alleged abuse of discretion is not

grounds for a writ of prohibition.

A writ of certiorari should not issue in this case, because:

- It is well settled that an interlocutory discovery order is not immediately appealable, even when the party that is compelled to produce discovery objects based on the attorney-client privilege, and there are no exceptional circumstances warranting a writ of certiorari in this case.
- There are no novel questions of law concerning issues of significant public interest that are contained in numerous state and federal actions.
- Nor would an immediate decision by this Court serve the interests of judicial economy by eliminating numerous inevitable appeals raising the issues presented in this case.

FACTUAL BACKGROUND

The description of the facts in the Petition are incomplete and misleading. The record that is relevant to the subject discovery disputes is voluminous, spanning more than a year's time, but the key events leading to the trial court's entry of the July 28, 2009 discovery order are summarized as follows:

- July 1, 2008 - The trial court ordered the Petitioners to provide the Defendants with a complete privilege log within 30 days. The Petitioners had previously promised to provide a complete privilege log in March 2008, but had failed to do so.
- July 28, 2008 - Petitioners produced their updated Privilege Log, identifying 90 documents, dated between 1998 and 2004, which had not been previously identified in the litigation (the previous privilege log was provided on July 21,

2005).

- October 8, 2008 - Defendants challenged Petitioners' claims of privilege for most of the documents listed on the new Privilege Log.
- November 6, 2008 - Defendants filed and served their Motion to Compel Discovery, which addressed both the privilege disputes and the Petitioners' failure to respond to Defendants' August 28, 2008 discovery requests.
- November 14, 2008 - Petitioners served their delinquent and incomplete discovery responses, which included an updated Privilege Log. The November 14, 2008 Privilege Log provided very little response to the Defendants' challenges to Petitioners' privilege claims.
- December 8, 2008 - Defendants proceeded with their Motion to Compel Discovery, serving their memorandum in support of the motion. See Exhibit 6, at pp. 9-10 (setting forth the above chronology with citations to supporting documents).

On December 9, 2008, the trial court heard oral argument from the parties' counsel on Defendants' Motion to Compel Discovery. The Defendants' Motion was essentially bifurcated between matters concerning Petitioners' claims of privilege and non-privileged discovery disputes. The non-privileged discovery disputes are the subject of the trial court's March 3, 2009 discovery order, and now, yet another motion for sanctions for non-compliance. As for the privilege disputes, the Petitioners suggested that the trial court enlist the aid of a retired judge to inspect the subject documents *in camera* and issue a report to Judge Early to assist him in making his ruling. In the end, the trial court and the parties agreed to enlist the assistance of former Circuit Court Judge

Gary Clary for the limited purpose of reviewing the subject documents *in camera* before Judge Early proceeded to make his ruling on the privilege disputes. Specifically, trial counsel and Judge Early stated:

Mr. Pendarvis [Petitioners' attorney]: And there is a 14-page privilege log. There are privileged documents for the Plaintiffs' side, an inch and a half to 2 inches. I propose Your Honor appoint a discovery master.

Mr. Pendarvis: My point of all of this is that if you would appoint a discovery master to resolve this motion to compel and make me, Ted [Defendants' attorney], or whoever else go through this thing line by line or whoever the happy discovery master is going to be I think that will be able to present a report to you to make ruling and save everybody another hours of time.

Mr. Pendarvis: I think all of that needs to be in front of a master and make a report to you. That's really my proposal tonight...

The Court: [in response to Defendants' attorney's argument that the subject documents are not privileged and should be produced] You may very well be entitled to it, but before I know you're entitled to it I got to look at it or have somebody look at it.

The Court: Here is what I am going to do. As to the privilege log I am going to appoint somebody. Y'all can agree on who it can be, but I am going to get somebody that can get on it immediately and have us an answer by the first couple of weeks in January.

Mr. Johnston [Defendants' attorney]: Judge Clary would be great, I mean, if we can get him. You said Gary Clary? I mean, if he is available.

The Court: Well, he's done it for me in a number of cases. He issues a written report. He does an excellent job with it. He's familiar with the law in the area. He's just done two for me recently - - big, big cases like this and I would recommend him if he's willing to do it.

Mr. Johnston: Does that suit you guys?

Mr. Pendarvis: That suits us.

See Exhibit 8, at pp. 49 (lines 17-20); 50 (lines 19-24); 53 (lines 22-24); 55 (lines 3-5); and 56 (lines 8-23) (emphasis added).

Following the hearing, the trial court and the parties engaged former Judge Gary Clary to assist with the *in camera* inspection of documents, and the trial court entered an order, dated December 30, 2008, appointing Gary Clary as a special master for this limited purpose. In fact, the trial court ordered former Judge Clary to review *in camera* the documents identified on both parties' privilege logs, even though the trial court had earlier denied the Petitioners' motion to compel the production of the documents identified on Defendants' Privilege Log. See Exhibit 9. On January 31, 2009, as former Judge Clary proceeded with the process of *in camera* review, the trial court entered a consent order submitted by the parties, which amended the December 30, 2008 order and expanded the scope of documents to be reviewed *in camera* by former Judge Clary. Importantly, the consent order further amended the December 30, 2008 order by making it clear that former Judge Clary was not to issue an order of any type, but was merely "to provide this Court with a Report setting forth his findings and conclusions." See Exhibit 10 (emphasis added). The scope of former Judge Clary's review was further amended by an order dated April 9, 2009, which repeated the instruction that he was only to issue a Report to the trial court. See Exhibit 11.

After completing his *in camera* review of the parties' documents, former Judge Clary sent his report to Judge Early and the parties' counsel on April 14, 2009. He subsequently provided a supplemental report to Judge Early and the parties' counsel on April 22, 2009. As these were merely reports to the trial court, rather than orders or judgments, the reports were never filed with the Clerks of Court. After consulting and

reaching agreement with the parties' counsel as to how they wished to proceed, the trial court entered an order on June 2, 2009, adopting the findings and conclusions contained in former Judge Clary's reports. As was specifically agreed to and requested by the parties' counsel, the trial court included the following language in its order:

This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRCP. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(e) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any.

See Exhibit 12 (emphasis added).

As contemplated by the trial court and the parties, both of the parties timely filed motions to alter or amend the June 2, 2009 order, pursuant to Rule 59(e), SCRCP. A copy of the Petitioners' Rule 59(e) motion, dated June 11, 2009, is attached as Exhibit 13, and a copy of the Defendants' Rule 59(e) motion is attached as Exhibit 14. The parties filed their memoranda in support of their respective Rule 59(e) motions on July 2, 2009. The Petitioners' memorandum is attached as Exhibit 15, and the Defendants' memorandum is attached as Exhibit 16. Although the Petitioners now have the audacity to argue that former Judge Clary's reports constitute an "order or judgment" within the meaning of Rule 53(e), SCRCP, they were clearly aware of the reports' true nature when they stated in their Rule 59(e) memorandum: "The Special Master's report, amended, and supplemental reports contain incorrect factual findings and erroneous conclusions of law with regard to three particular topics, the arguments supporting the need for an Order correcting those findings and conclusions is set forth below..." See Exhibit 15 at p. 2 (also stating, "The Special Master's findings and conclusions in that regard are

in error, and should be modified or amended accordingly." (at p. 8)) (emphasis added).

On July 6, 2009, during a hearing of approximately three (3) hours in length, the trial court heard all of the arguments of the parties' counsel concerning their respective motions to alter or amend the June 2, 2009 Order. Not once did the Petitioners, or anyone else, question whether the trial court had the authority to alter or amend its June 2, 2009 Order, to enter the June 2, 2009 Order, to accept reports from former Judge Clary concerning his *in camera* review of the parties' documents, or to assign the *in camera* review of the documents to former Judge Clary in the first instance. The Petitioners did not contrive their jurisdictional argument until after the trial court announced its ruling on the parties' Rule 59(e) motions and the Defendants submitted the proposed order on such motions. On July 8, 2008, Judge Early advised the parties' counsel of his ruling, via e-mail, and instructed Defendants' counsel to prepare a proposed order for his review. See Exhibit 17. On July 10, 2009, Defendants submitted the proposed order via e-mail, per Judge Early's instructions, with a copy to Petitioners' counsel. See Exhibit 18. Less than two (2) hours later, the Petitioners sent a letter to Judge Early and Defendants' counsel, via e-mail, objecting to the entry of the proposed order. This was the first time the Petitioners ever questioned whether Judge Early had the authority to amend his own June 2, 2009 order or the findings contained in former Judge Clary's reports, and they did not file a motion of any kind. See Exhibit 19. The Defendants responded to Petitioners' July 10, 2009 letter, dispelling the notion that Judge Early was without authority to enter the proposed order. Defendants also reminded Petitioners' counsel that they had specifically agreed to amend the December 30, 2008 order appointing former Judge Clary in order to make it clear that he was only to issue a report to Judge Early (see Exhibit

10), "because the parties did not want to risk anyone mistakenly holding that this process was governed by Rule 53, SCRPC, concerning masters (masters-in-equity) and special referees (under S.C. Code 14-11-60)." See Exhibit 20 (quoted language at p. 2).

On July 28, 2009, the trial court entered its Order Amending Court's Order Dated June 2, 2009, granting in part and denying in part each of the parties' Rule 59(e) motions. See Exhibit 2. That same day, Judge Early, through his law clerk, advised the parties' counsel that the order had been signed. See Exhibit 21. The Defendants provided a copy of the July 28, 2009 Order to Petitioners' counsel, via e-mail and U.S. mail, on July 30, 2009, and copied the Petitioners' counsel on the letter to the Clerk of Court filing the order. See Exhibits 22, 23 and 24. The Defendants then produced their documents to Petitioners within seven (7) days as required by the trial court's July 28, 2009 Order. See Exhibit 25. The Petitioners, however, have failed and refused to comply with the trial court's July 28, 2009 Order in any respect.

On August 10, 2009, having received no response from Petitioners' counsel as to when and if the Petitioners intend to comply with the July 28, 2009 Order, Defendants filed and served their Second Motion for Sanctions. See Exhibit 3. On August 13, 2009, all counsel were notified that the hearing on the Defendants' two motions for sanctions would be held on August 24, 2009, at 2:00 p.m., in Aiken, South Carolina. All counsel agreed to this hearing date. See Exhibit 26 hereto. During the hearing on Defendants' motions for sanctions, the following exchanges took place between Petitioners' counsel and Judge Early concerning the Petitioners' failure to comply with the July 28, 2009 Order:

The Court: You want me to change my prior order?

Mr. Bailey [Petitioners' counsel]: Yes, sir. I think it should be changed.

The Court: On what basis?

Mr. Bailey: The basis that we had previously told Your Honor. That is, number one, that the authority to alter or amend the findings and conclusions of a special master apply only to the appellate courts, not to the circuit courts. So it's a usurpation of jurisdiction under that rule. The second basis, Your Honor, is that that particular order will significantly change the mode of trial and trial preparation and we think --

The Court: Mr. Bailey, you don't like it because it's opened up wide open the issue of the statute of limitations.

The Court: I suggested using Judge Clary. Y'all agreed to do that. You went up there. Neither one of you liked his ruling. Both of you filed 59(e)'s. I ruled on that. Now you don't like that. So go off to Columbia if you don't like it. I don't know what else to tell you to do. My patience is -- I gave y'all -- is this the same hearing I gave y'all a three-hour hearing the other night --

Mr. Johnston [Defendants' counsel]: Yes, Your Honor.

The Court: So I'm going to take it [Defendants' motions for sanctions] under advisement. I'm going to let you two talk and I'm going to send an e-mail tomorrow and the e-mail very well could be that my order is, as drastic as it may be is that I will dismiss the action for failure to comply. I'll give them x amount of days to comply with it to remedy that. I'd rather not do that but I'm backed into a corner.

The Court: I need you to report to your clients that I'm taking this under advisement this afternoon with strong leans towards dismissing the action for them failing to comply. And if they want to take that chance and go to Columbia that I'm wrong on what I did, that's the chance they can take. Or they can comply with my discovery order and let's move forward and try the case straight up on the facts.

The Court: I think that they're entitled to whatever documents they can to develop that [statute of limitations] defense as well as you saying it was brought within the statute.

Mr. Bailey: [I]f Your Honor would be willing to sit back and take a longer look at this thing under a 59, it might help get everything resolved and avoid any considerations of review and that type of thing.

The Court: Mr. Bailey, I have listened to y'all for three hours the other night, way into the evening in Barnwell after my court over there. And I've ruled like I think it should be done under the facts of this case, under the pleadings, and I'm not going to go back on that... I urge you to tell your clients that I've ruled on it. I may be wrong, I may be right. But that's the ruling. And if they don't want to comply with it, then it's a good chance this case is going to get tossed.

Mr. Bailey: For the record, Your Honor, we'd like to just go on record now and just ask you pursuant to Rule 59 and/or 60, to vacate that order and basically go back and take a second look at these issues.

The Court: Thank you. Respectfully denied.

See Exhibit 27, at pp. 21 (lines 19-25); 22 (lines 1-10; 25); 23 (lines 1-8); 30 (lines 10-17); 31 (lines 9-17); 32 (lines 18-20); 34 (lines 17-25); and 35 (lines 1-13).

On August 27, 2009, via a conference call with all counsel, Judge Early instructed Defendants' counsel to submit a proposed order granting Defendants' Second Motion for Sanctions and dismissing the actions, with the caveat that he would vacate the dismissal order if the Petitioners fully complied with the July 28, 2009 discovery order within 25 days. See Exhibit 28. On August 29, 2009, Defendants' counsel submitted the proposed order to Judge Early and Petitioners' counsel, via e-mail. See Exhibit 28 (proposed dismissal order attached thereto). On September 2, 2009, at 11:30 a.m., Judge Early conducted a conference call with all counsel and advised that he would sign the proposed dismissal order in the early afternoon and mail the order to the Clerk of Court for filing. See Exhibit 28. Later that day, John S. Nichols, appellate counsel for Petitioners, advised Judge Early and Defendants' counsel that the Petitioners had filed the instant Petition in this Court. See Exhibit 28. On September 3, 2009, Judge Early advised all

1998). Further, "the lawyer-client privilege does not bar questions about the nature of the legal services rendered." See Weinstein's Federal Evidence, § 503.14[5][f]. See also Exhibit 7 at pp. 11-12 (discussion of Petitioners' failure to fully and completely respond to the interrogatories described above).

B. Trial Court Has Not Usurped or Exceeded Its Jurisdiction

Despite the fact that *the Petitioners* suggested and agreed to enlist former Judge Gary Clary to review the documents *in camera*, and to issue a *report* to Judge Early so that he, as the presiding judge, could enter an order resolving the privilege disputes, and despite the fact that *the Petitioners* filed a motion asking Judge Early to alter or amend his June 2, 2009 Order, which he did, the Petitioners now claim that the trial court had no jurisdiction under Rule 53, SCRCF, to:

- (a) enter its Order of June 2, 2009; or
- (b) consider Petitioners' and Defendants' subsequent Rule 59(e) Motions; or
- (c) issue its July 28, 2009 Order granting in part and denying in part both Plaintiffs' and Defendants' Rule 59(e) Motions; or
- (d) enforce its Order with appropriate sanctions.

An examination of Rule 53 shows this claim to be specious.

First, Rule 53 applies only to Masters (defined in Rule 53(a) as "master-in-equity for the county," which former Judge Clary is not) and Special Referees, defined by Rule 53(a) as "a member of the South Carolina Bar to whom a matter has been referred under S.C. Code Ann. §14-11-60." S.C. Code Ann. §14-11-60 provides:

In case of a vacancy in the office of master-in-equity or in case of the disqualification or disability of the master-in-equity from interest or any

other reason for which cause can be shown the presiding circuit court judge, upon agreement of the parties, may appoint a special referee in any case who as to the case has all the powers of a master-in-equity.

Here, there was no vacancy in the office of Master-in-Equity, nor was the Master-in-Equity disqualified or disabled from interest or any other reason for which cause could be shown. Former Judge Clary was not appointed a "Special Referee" under S.C. Code Ann. §14-11-60, nor could he have been within the meaning of the Rule. By its own terms, Rule 53, SCRCP, does not apply.

Second, Rule 53 applies to the reference of causes of actions and cases to a Master-in-Equity or Special Referee; not, as here, to a review of documents within a discrete discovery dispute.

In an action where the parties consent ... some or all of the causes of action in a case may be referred to a master or special referee... In all other actions, the circuit court may, upon application of any party or upon its own motion, direct a reference of some or all of the causes of action in a case... A case shall not be referred to a master or special referee for the purpose of making a report to the circuit court.

Rule 53(b), SCRCP (emphasis added). That the Rule is applicable only to the reference of cases and causes of action is further buttressed by S.C. Code Ann. §14-11-85 (Appeals from final judgment of masters-in-equity), which provides:

When some or all of the causes of action in a case are referred to a master-in-equity or special referee, the master or referee shall enter final judgment as to those causes of action, and an appeal from an order or judgment of the master or referee must be to the Supreme Court or the court of appeals as provided by the South Carolina Appellate Court Rules.

No "cause of action" or "case," as contemplated by Rule 53, SCRCP, and S.C. Code Ann. §14-11-60, 85, was referred to former Judge Clary. He was merely asked to review *in camera* allegedly privileged documents, and provide a report of his findings to the trial court. Again, Rule 53, SCRCP, does not apply by its own terms.

Third, Petitioners apparently now claim that it was inappropriate (though they requested that it be done) that privileged documents be reviewed by former Judge Clary and a "report" issued, arguing that Rule 53 and S.C. Code Ann. §14-11-85 prohibit such a reference for the purpose of issuing a "report" when clearly they do not. Rule 53's prohibition against referring a matter to a Master or Special Referee (as those terms are defined in Rule 53(a)) to issue a report applies to a "case" or "cause of action;" not, as here, to a review of allegedly privileged documents. See Rule 53(b), SCRPC ("A case shall not be referred to a master or special referee for the purpose of making a report to the circuit court." (emphasis added)).

Fourth, former Judge Clary never issued an "order or judgment," and none was filed with the Clerk of Court. See Rule 53(e), SCRPC ("When a matter has been referred, any appeal from any order or judgment issued by the master or special referee shall be to the Supreme Court or the Court of Appeals..." (emphasis added)). Thus, except for Judge Early's Orders, no enforceable order exists resolving Plaintiffs' and Defendants' privilege disputes, nor does an order exist from which either side could appeal. Instead, as instructed, and pursuant to the trial court's Orders of December 30, 2008, January 31, 2009, and April 9, 2009, former Judge Clary made a report to the trial court with respect to his review of the subject documents. The trial court, at Plaintiffs' and Defendants' request and without argument, entered an Order adopting the report's findings and conclusions, and specifically reserving to Plaintiffs and Defendants an opportunity to object through Rule 59 Motions to any part of it. Both sides timely made Rule 59(e) Motions, a lengthy hearing was held (and no objection was made as to the trial court's authority to hear the Motions), and, on July 8, 2009, Judge Early informed the

parties' counsel of his decision, granting in part and denying in part both parties' Rule 59(e) Motions. Only then did Petitioners mention by letter, and *not* by motion, their contrived Rule 53 jurisdictional issue. The trial court issued its Order on July 28, 2009, and it was forwarded to Petitioners by U.S. Mail and e-mail on July 30, 2009. The Defendants simultaneously sent the Order to the Clerks of Court for Beaufort, Charleston, and Orangeburg for filing, where it was entered on August 3, August 3, and August 6, 2009, respectively.³ See Exhibit 2. The only orders deciding the "privilege" issues and from which an appeal, when appropriate, might be taken are those of Judge Early.

As for the Petitioners' claim that the trial court was without authority to enter the July 28, 2009 Order because one trial judge can not overrule an order from another trial judge (see Buckley v. Shealey, 370 S.C. 317, 635 S.E.2d 76 (2006)), that rule does not apply here, because (1) former Judge Clary was not a trial judge when he conducted his review of the documents and (2) he did not enter an order at all. In sum, this Court specifically assigned Judge Early to preside over all aspects of this litigation, and he has not relinquished his authority or jurisdiction to former Judge Clary or anyone else. It is beyond dispute that the trial court had jurisdiction to enter the June 2, 2009 and July 28, 2009 Orders, and it has the authority and jurisdiction to enforce those orders. Petitioners have no grounds for a writ of prohibition in this case.

C. Adequate Remedy of Appeal Available to Petitioners

As discussed above, where the Petitioners have an adequate remedy by appeal, a

³ Plaintiffs claim to have first received written notice of the "entry" of the Order on August 14, 2009, by letter from the Charleston County Clerk's office, and Defendants have no reason to doubt this. Clearly, though, they were on notice no later than July 30, 2009 (15 days earlier) when they received a copy of the signed Order, and even agreed to a hearing date on Defendants' motions for sanctions on August 13, 2009.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2003-CP-07-726
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Orangeburg County
) C.A. No. 2005-CP-38-1131
)

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Charleston County
) C.A. No. 2005-CP-10-4229
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2005-CP-07-1989
)

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2005-CP-07-1990
)

ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009

These matters are before the Court on the Plaintiffs' Motion to Alter or Amend, dated June 11, 2009, and the Defendants' Motion to Alter or Amend, dated June 15, 2009. In their respective motions, the Plaintiffs and the Defendants request that the Court amend its Order dated June 2, 2009, which adopted Special Master Clary's reports verbatim. The parties' motions were timely filed, pursuant to Rule 59(e), SCRCP, and the Court has carefully considered the parties' memoranda, exhibits, oral arguments of all counsel, and the parties' proposed amendments.

Certified July 16, 2009

EXHIBIT 2

[Signature]
Elizabeth M. Smith, Clerk of Court
Beaufort County, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Orangeburg County
C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Charleston County
C.A. No. 2005-CP-05-229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1990

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FILED FOR RECORD
WINNIE A. CLARK
CLERK OF COURT
CHARLESTON, SC

ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009

These matters are before the Court on the Plaintiffs' Motion to Alter or Amend, dated June 11, 2009, and the Defendants' Motion to Alter or Amend, dated June 12, 2009. In their respective motions, the Plaintiffs and the Defendants request that the Court amend its Order dated June 2, 2009, which adopted Special Master Clary's reports verbatim. The parties' motions were timely filed, pursuant to Rule 59(e), SCRCP, and the Court has carefully considered the parties' memoranda, exhibits, oral arguments of all counsel at the July 6, 2009

Certified True Copy

[Signature]
Elizabeth M. Shipp, Clerk of Court
Beaufort County, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
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Partnership, *et al.*, Defendants.

Beaufort County
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Laurance H. Davis, Jr., *et al.*, Plaintiffs,
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Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Orangeburg County
C.A. No. 2005-CP-38-11

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Charleston County
C.A. No. 2005-CP-10-1489

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009

These matters are before the Court on the Plaintiffs' Motion to Alter or Amend, dated June 11, 2009, and the Defendants' Motion to Alter or Amend, dated June 15, 2009. In their respective motions, the Plaintiffs and the Defendants request that the Court amend its Order dated June 2, 2009, which adopted Special Master Clary's reports verbatim. The parties' motions were timely filed, pursuant to Rule 59(e), SCRCP, and the Court has carefully considered the parties' memoranda, exhibits, oral arguments of all counsel at the July 6, 2009

Elizabeth M. Smith, Clerk of Court
Beaufort County, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
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Parkview Apartments, a South Carolina Limited
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Laurance H. Davis, Jr., *et al.*, Plaintiffs,
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Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Charleston County
) C.A. No. 2005-CP-10-4229
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v.
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Entered July 16, 2009
Clerk of Court

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

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hearing, and Special Master Clary's reports, which were incorporated into the Court's June 2, 2009 Order by reference. The motions of the Plaintiffs and the Defendants are granted, in part, and denied, in part, as set forth herein.

The Court's June 2, 2009 Order and the Special Master's reports incorporated therein are sustained in all aspects, except for the following amendments thereto:

(1) With regard to the Plaintiffs' argument that the fiduciary duty exception applies to Defendants' privileged documents, the Court finds that the requisite mutuality of interest between the parties ceased to exist as of December 9, 1999, which is the date of Mr. Weinberg's first letter to a general partner threatening litigation (AMREAL 014864, attached to Defendants' Memorandum as Exhibit 1). Accordingly, the fiduciary duty exception is not available to the Plaintiffs with regard to any privileged document dated (i.e., created) after December 9, 1999, and the following privileged documents, which were previously designated for production, shall not be produced:

Defendants' Documents (listed on pp. 12-14 of the Special Master's April 14, 2009 report):

1	AMREAL 00573-00576
20	AMREAL 004865-004867
23	GWB 000011
60	GWB 000271
76	GWB 000458-000459
78	GWB 000484

"Bryan Cave" Documents (listed on pp. 14-17 of the Special Master's April 14, 2009 report):

2	AMREAL 014670-014671
3	AMREAL 014672-014681
16	AMREAL 014875

17	AMREAL 014876
18	AMREAL 014877-014879
19	AMREAL 014880-014886
20	AMREAL 014887-014890
21	AMREAL 014891-014892
22	AMREAL 014893-014894
24	AMREAL 014896-014897
26	AMREAL 014899
27	AMREAL 014900-014902
28	AMREAL 014903-014904
30	AMREAL 014906
31	AMREAL 014907
32	AMREAL 014908
33	AMREAL 014909
34	AMREAL 014910-014912
36	AMREAL 014914
37	AMREAL 014915
59	AMREAL 015060-015061
60	AMREAL 015062-015066
62	AMREAL 015068-015071
63	AMREAL 015072-015074
64	AMREAL 015075-015077
66	AMREAL 015079-015081
67	AMREAL 015087
68	AMREAL 015091-015092
69	AMREAL 015093-015095
70	AMREAL 015100-015103
71	AMREAL 015104-015107
72	AMREAL 015118-015119
73	AMREAL 015120-015122
74	AMREAL 015123-015126
75	AMREAL 015136-015138
76	AMREAL 015139-015140
77	AMREAL 015141-015144
78	AMREAL 015145-015151
79	AMREAL 015152-015153
81	AMREAL 015157-015167
87	AMREAL 015209-015213
89	AMREAL 015256
90	AMREAL 015257
91	AMREAL 015258
92	AMREAL 015259-015261
93	AMREAL 015262-015263
94	AMREAL 015268-015269
95	AMREAL 015272-015273

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96	AMREAL 015276-015277
97	AMREAL 015278-015279
98	AMREAL 015282-015283
99	AMREAL 015284
100	AMREAL 015285-015286
101	AMREAL 015287-015297
102	AMREAL 015298-015306
103	AMREAL 015307-015316
104	AMREAL 015317-015332
108	AMREAL 015341-015342
109	AMREAL 015343-015344
110	AMREAL 015345-015346
112	AMREAL 015350-015352
113	AMREAL 015353-015357
114	AMREAL 015358-015362
115	AMREAL 015363-015366
116	AMREAL 015367-015369
129	AMREAL 015423-015426
130	AMREAL 015427-015430
131	AMREAL 015431-015436
132	AMREAL 015437-015442
133	AMREAL 015443-015445

(2) The Court finds that the limited power of attorney from Mary Jane Pike to Jim Pike and/or Jane Miller was valid and there was no waiver of privilege as a result of documents being provided to Jim Pike and/or Jane Miller. The subject documents are identified in Special Master Clary's reports as Plaintiffs' documents 8, 9, 46, 54, 59, 100 and 103. However, two of these documents (46 - Bailey 3735, dated 2/14/01; 54 - Bailey 4019-4020, dated 9/19/02) are subject to production under paragraph 4 below, so they shall be produced as previously ordered. The net result of the Court's findings is that the following documents, which were previously designated for production, shall not be produced:

8	Parkview 2114-2115
9	Parkview 2143
59	Bailey 4055
100	Bailey 4874-4875

*note
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(3) The Special Master concluded that documents involving communications with prospective clients of Mr. Bailey were not privileged and should be produced, because Mr. Bailey lacked the necessary attorney-client relationship with such prospective clients. Plaintiffs argue that the attorney-client privilege extends to communications between Mr. Bailey and prospective clients, such as Warren Griffin, a limited partner in Lincoln Limited Partnership who did not retain Mr. Bailey and is not a party to these lawsuits. The Court agrees with the Plaintiffs. Communications that are solely between Mr. Bailey and prospective clients, who are not parties (or their predecessors or successors) to these lawsuits, are privileged and should not be produced. However, after reviewing the Special Master's reports and the Plaintiffs' Privilege Log, it appears that there are no such documents. There are, however, communications between Mr. Bailey and his current clients (Plaintiffs) concerning, in whole or in part, Lincoln Limited Partnership. Mr. Griffin is a party to some of these communications, but his participation does not, itself, destroy the privilege. Such documents are privileged unless the privilege has been impliedly waived by the Plaintiffs as described in paragraph 4 below (i.e., Plaintiffs have impliedly waived privilege as to documents dated more than three years prior to the filing of these lawsuits). The Court finds that two of the documents concerning the Lincoln Limited Partnership, which were designated for production by the Special Master, are privileged and are not subject to the implied waiver described in paragraph 4. These documents are communications occurring in 2004 between Mr. Bailey and Plaintiffs, Rentz and Hodge. Accordingly, the following documents, which were previously designated for production, shall not be produced:

83	Bailey 4593

(4) The Court finds that the statute of limitations is a major issue in these cases, and, as shown in the Defendants' Memorandum and exhibits thereto, that the Plaintiffs impliedly waived their claims of privilege with respect to documents dated (i.e., created) more than three years prior to the filing of these lawsuits. As a result, the following documents, which were previously designated for protection, shall be produced:

12	Bailey 3059
13	Bailey 3060
14	Bailey 3067-3069
15	Bailey 3070-3072
17	Bailey 3077-3078
18	Bailey 3082
19	Bailey 3105
20	Bailey 3148
21	Bailey 3151
22	Bailey 3152
23	Bailey 3153
24	Bailey 3154
25	Bailey 3155-3156
26	Bailey 3180
27	Bailey 3209-3212
28	Bailey 3215
29	Bailey 3216
30	Bailey 3217
31	Bailey 3316
34	Bailey 3321
38	Bailey 3333
39	Bailey 3334-3335
40	Bailey 3512
41	Bailey 3526-3528
42	Bailey 3695
43	Bailey 3715-3719
44	Bailey 3721-3726
45	Bailey 3731-3732
47	Bailey 3737
48	Bailey 3738

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49	Bailey 3754-3755
51	Bailey 3758-3759
52	Bailey 3768
53	Bailey 3799
66	Bailey 4218-4219
77	Bailey 4560
85	Bailey 4783
86	Bailey 4785-4787
87	Bailey 4804
88	Bailey 4808-4809
89	Bailey 4810
91	Bailey 4827
93	Bailey 4837
94	Bailey 4842
95	Bailey 4843
97	Bailey 4847-4851
98	Bailey 4854
99	Bailey 4859-4868
110	Bailey 4999
111	Bailey 5002-5004
112	Bailey 5008-5012
113	Bailey 5016
114	Bailey 5024
116	Bailey 5028
117	Bailey 5056
118	Bailey 5062
119	Bailey 5064
120	Bailey 5065-5069
121	Bailey 5071
122	Bailey 5073
123	Bailey 5074
124	Bailey 5080-5081
125	Bailey 5088-5089
126	Bailey 5092

(5) The Court finds that the Defendants' privileged documents identified as "Bryan Cave" documents Nos. 2 and 3 (listed on p. 15 of the Special Master's April 14, 2009 report) are not subject to the fiduciary duty exception, because these documents are not communications between a general partner, acting in that capacity, and the Limited Partnerships' attorneys.

MRC
2/7

Rather, these documents concern communications between AIMCO, acting in its individual capacity, and AIMCO's separate counsel, Art Hessel, who did not represent the Limited Partnerships. As a result, the following documents, which were previously designated for production, shall not be produced:

2	AMREAL 014670-014671
3	AMREAL 014672-014681

The Court's June 2, 2009 Order, and the Special Master's reports incorporated therein, are hereby amended as set forth above. In sum, pursuant to the Court's June 2, 2009 Order, as amended herein, the Plaintiffs and Defendants are ordered to produce the following documents within seven (7) days of the date of this Order:

Plaintiffs Shall Produce:

1	Parkview 1951-1952
5	Parkview 2083
12	Bailey 3059
13	Bailey 3060
14	Bailey 3067-3069
15	Bailey 3070-3072
16	Bailey 3073
17	Bailey 3077-3078
18	Bailey 3082
19	Bailey 3105
20	Bailey 3148
21	Bailey 3151
22	Bailey 3152
23	Bailey 3153
24	Bailey 3154
25	Bailey 3155-3156
26	Bailey 3180
27	Bailey 3209-3212
28	Bailey 3215
29	Bailey 3216
30	Bailey 3217

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31	Bailey 3316
32	Bailey 3317
33	Bailey 3320
34	Bailey 3321
35	Bailey 3325
36	Bailey 3326-3327
37	Bailey 3328
38	Bailey 3333
39	Bailey 3334-3335
40	Bailey 3512
41	Bailey 3526-3528
42	Bailey 3695
43	Bailey 3715-3719
44	Bailey 3721-3726
45	Bailey 3731-3732
46	Bailey 3735
47	Bailey 3737
48	Bailey 3738
49	Bailey 3754-3755
50	Bailey 3756-3757
51	Bailey 3758-3759
52	Bailey 3768
53	Bailey 3799
54	Bailey 4019-4020
66	Bailey 4218-4219
71	Bailey 4467-4468
72	Bailey 4471
73	Bailey 4473
74	Bailey 4540-4543
75	Bailey 4547
76	Bailey 4548
77	Bailey 4560
78	Bailey 4565
79	Bailey 4572-4575
80	Bailey 4576-4577
81	Bailey 4580-4582
84	Bailey 4763
85	Bailey 4783
86	Bailey 4785-4787
87	Bailey 4804
88	Bailey 4808-4809
89	Bailey 4810
90	Bailey 4811
91	Bailey 4827
92	Bailey 4831

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93	Bailey 4837
94	Bailey 4842
95	Bailey 4843
96	Bailey 4846
97	Bailey 4847-4851
98	Bailey 4854
99	Bailey 4859-4868
104	Bailey 4885-4886
105	Bailey 4968
106	Bailey 4980
107	Bailey 4993
108	Bailey 4995 (identified as 4996 on Plaintiffs' Privilege Log)
109	Bailey 4998
110	Bailey 4999
111	Bailey 5002-5004
112	Bailey 5008-5012
113	Bailey 5016
114	Bailey 5024
115	Bailey 5025
116	Bailey 5028
117	Bailey 5056
118	Bailey 5062
119	Bailey 5064
120	Bailey 5065-5069
121	Bailey 5071
122	Bailey 5073
123	Bailey 5074
124	Bailey 5080-5081
125	Bailey 5088-5089
126	Bailey 5092

Defendants Shall Produce:

70	GWB 000380
71	GWB 000381-000421
"Bryan Cave"	
6	AMREAL 014865
7	AMREAL 014866
8	AMREAL 014867
9	AMREAL 014868
10	AMREAL 014869
11	AMREAL 014870

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12	AMREAL 014871
13	AMREAL 014872
14	AMREAL 014873
39	AMREAL 014917-014922
41	AMREAL 014924-014928
42	AMREAL 014939-014944
43	AMREAL 014945-014949
44	AMREAL 014950-014953
45	AMREAL 014954-014959
46	AMREAL 014960-014964
47	AMREAL 014965-014968
48	AMREAL 014984-014989
49	AMREAL 014990-014994
50	AMREAL 014995-014998
51	AMREAL 014999-015004
52	AMREAL 015005-015009
53	AMREAL 015010-015013
54	AMREAL 015020-015024
55	AMREAL 015044-015049
56	AMREAL 015050-015054
57	AMREAL 015055-015058

IT IS SO ORDERED

This 28th day of July, 2009.

Beakley, South Carolina

Doyet A. Early, III

Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

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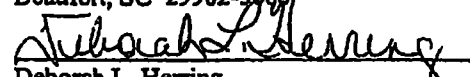
)
) Beaufort County
) C.A. No. 2005-CP-07-1990
)

I HEREBY CERTIFY that true and correct copies of the attached ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009 was served upon counsel of record by depositing copies in the United States mail, first class postage affixed, this 30th day of July, 2009, addressed as follows:

Joel D. Bailey
The Bailey Law Firm
Post Office Box 1437
Beaufort, SC 29901-1437

Thomas A. Pendarvis
Pendarvis Law Offices, P.C.
500 Carteret Street, Suite A
Beaufort, SC 29902-5066

July 30, 2009
Greenville, South Carolina


Deborah L. Herring
Legal Assistant to Calvin T. Vick, Jr.

State of South Carolina

) Court of Common Pleas

Laurance H. Davis, Jr., et
al.,

Plaintiffs

vs.

Roosevelt Gardens, a South
Carolina Limited Partnership,
et al.,

Defendants

2005-CP-38-1131

Rhonda G. Rentz, et al.,

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2005-CP-10-4229

Laurance H. Davis, Jr., et
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vs.

Palmetto Apartments, a South
Carolina Limited Partnership,
et al.,

Defendants

2005-CP-07-1989

Carolina Management
Corporation of Beaufort,
et al.,

Plaintiffs,

vs.

Pinewood Park Apartments, a
South Carolina Limited
Partnership, et al.,

Defendants

2005-CP-07-1990

December 9, 2008
Bamberg, South Carolina

EXHIBIT 8

B E F O R E :

The Honorable Doyet A. Early, III, Judge.

A P P E A R A N C E S :

Joel D. Bailey, Esq.
Thomas A. Pendarvis, Esq.
Attorneys for the Plaintiff

Ellis M. Johnston, II, Esq.
C. Theodore Vick, Jr., Esq.
Attorney for the Defendant

Lisa H. Davenport
Official Court Reporter

1 tell you what we did? We took theirs precisely verbatim
2 their language that you approved at the July hearing and
3 we submitted it back to them. If it was okay for them,
4 it's got to be okay for us, and, so, that's what we did,
5 and then we went and answered what we could. But a
6 general objection, here is our objection. Subject to the
7 objection, here is what we got and you've got it.

8 THE COURT: All right, Thomas.

9 MR. PENDARVIS: Your Honor, I think I've got a
10 proposal that might help everyone tonight. The
11 Plaintiffs' responses alone were 89 pages. They are
12 multiple -- There are are issues on every -- There are
13 questions that are being raised in this motion on
14 virtually every response.

15 THE COURT: They've got attached to their memorandum
16 they've got 89 --

17 MR. PENDARVIS: Correct. And there is a 14-page
18 privilege log. There are privileged documents for the
19 Plaintiff's side, an inch and a half to 2 inches. I
20 propose Your Honor appoint a discovery master.

21 THE COURT: I'll be glad to. I just did it the other
22 day in a big case with the McNair firm.

23 MR. PENDARVIS: I would suggest with two things in
24 mind -- With the anticipation of Your Honor ruling on the
25 Defendant's motion for protective order regarding the

1 attorney-client privilege issues, we still -- One other
2 just housekeeping matter that kind of comes back into this
3 very motion is we haven't gotten a written order on that
4 attorney-client motion to compel that the Plaintiffs'
5 filed on requesting the court to compel Defendants to
6 produce this material in the attorney-client -- in that
7 motion to compel which was filed in november of last year.
8 There has not been a written order signed that I've
9 gotten.

10 MR. VICK: Your Honor, you had me send you orders for
11 the most part denying five or six motions to compel and I
12 sent them to you and, no, we have not received back --

13 MR. PENDARVIS: My point is there was going to be a
14 rule 59 motion coming behind that to protect our record
15 and these same issues part of your oral ruling was, Well,
16 to the extent that you all are complaining about questions
17 in the deposition that hadn't been asked, your motion is
18 not ripe. Well, those depositions have been taken.

19 My point of all of this is that if you would appoint
20 a discovery master to resolve this motion to compel and
21 make me, Ted, or whoever else go through this thing line
22 by line or whoever the happy discovery master is going to
23 be I think that will be able to present a report to you to
24 make ruling and save everybody another hours of time.
25 I'll go through this if you need me to, but it's pretty

1 cut the baby somehow. I don't know how else to do it.

2 MR. JOHNSTON: Your Honor, you're right. May 18 is
3 going to be here before we know it.

4 THE COURT: It is bearing down. This is December 9
5 and Christmas is coming up and then you got -- you don't
6 have but January, February, March, April -- four months to
7 do it.

8 MR. PENDARVIS: I think we're going to be -- I am
9 going to predict some things. I think we'll probably be
10 able to make some headway on some of the motion -- the
11 document production -- that part and possibly some
12 interrogatory responses, but the attorney-client issue
13 which we've all recognized is really at the heart of this
14 case --

15 MR. JOHNSTON: That's on the statute of limitations.

16 MR. BAILEY: Not just the statute of limitations.

17 MR. PENDARVIS: For example, Your Honor, the at issue
18 argument -- The at issue argument when they take -- When
19 we say, Well, you told us you were going to hire lawyers
20 to pursue claims on these properties and we say, okay,
21 well, what did they say, and you say it's privileged,
22 that's at issue. I mean, it is the very same. I think
23 all of that needs to be in front of a master and make a
24 report to you. That's really my proposal tonight that
25 rather than --

1 I mean, we got a non-party accountant communicating with a
2 party.

3 THE COURT: You may very well be entitled to it, but
4 before I know you're entitled to it I got to look at it or
5 have somebody look at it.

6 MR. PENDARVIS: I'll tell you what I can do and I'll
7 agree to provide a more descriptive privilege log if that
8 will assist things, but there's a couple of things that
9 Your Honor needs to consider while you're evaluating
10 really what to do. The properties that we're talking
11 about weren't sold to third parties until the year of
12 2000. So, anything that happened in '98 can't be
13 addressing something that hadn't happened yet.

14 THE COURT: Well, you say that, Mr. Pendarvis, but
15 Mr. Johnston says that it goes right to the heart of the
16 statute of limitations issue.

17 MR. PENDARVIS: And, Your Honor, to the degree that
18 there's -- you may be aware of a case called Marshall
19 versus Marshall. It's an attorney-client waiver case --
20 one of the only ones, a Court of Appeals case from '93, I
21 believe. It's cited in text about states that have what's
22 called partial waiver and full waiver. South Carolina is
23 listed as a full waiver state. If you waive privilege,
24 it's all waived. We would be concerned. That's why we
25 have to be as aggressive as we need to be for fear of a

1 full waiver to the degree there are documents in these
2 privileged materials that deal with Lincoln Partnership
3 that's not a plaintiff in this case or not a property in
4 this case that somehow may relate. I've got to protect
5 privilege for the client that made that communication to
6 counsel. It's in our files. It's a communication between
7 a client.

8 THE COURT: I understand that. Here is what I am
9 going to do. As to the privilege log I am going to
10 appoint somebody. Y'all can agree on who it can be, but I
11 am going to get somebody that can get on it immediately
12 and have us an answer by the first couple of weeks in
13 January.

14 MR. JOHNSTON: Judge Clary would be great, I mean, if
15 we can get him. You said Gary Clary? I mean, if he is
16 available.

17 THE COURT: Well, he's done it for me in a number of
18 cases. He issues a written report. He does an excellent
19 job with it. He's familiar with the law in the area.
20 He's just done two for me recently -- big, big cases like
21 this and I would recommend him if he's willing to do it.

22 MR. JOHNSTON: Does that suit you guys?

23 MR. PENDARVIS: That suits us.

24 MR. JOHNSTON: Should we contact him or should the
25 Court contact him?

CERTIFICATE OF REPORTER

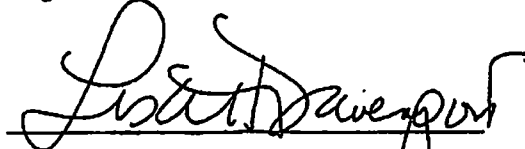
State of South Carolina }

County of Aiken }

I, Lisa H. Hicklin, Official Court Reporter for the
Second Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for Aiken
County, South Carolina, on the 9th day of December, 2008.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

August 21, 2009



Lisa H. Davenport, Court Reporter

Original in led 8/20/09

STATE OF SOUTH CAROLINA 2009 JAN -6 PM 2:00 IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,)
v.) BEAUFORT COUNTY
Parkview Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.) CLERK OF COURT
BEAUFORT, S.C. Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,)
v.) Orangeburg County
Roosevelt Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.) C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,)
v.) Charleston County
Orleans Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.) C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,)
v.) Beaufort County
Palmetto Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.) C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort, *et al.*, Plaintiffs,)
v.) Beaufort County
Pinewood Park Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.) C.A. No. 2005-CP-07-1990

**ORDER APPOINTING THE HONORABLE GARY E. CLARY AS SPECIAL MASTER
FOR RESOLUTION OF SPECIFIED DISCOVERY DISPUTES**

THESE MATTERS COME BEFORE THE COURT on Defendants' Motion to Compel Discovery, dated November 6, 2008, and Plaintiffs' Motion to Compel Production, dated November 7, 2007, in each of the above-captioned actions. The Court has considered the parties' memoranda and other submissions, as well as the oral argument of the parties' counsel at the hearings held on December 9, 2008 (Defendants' Motion) and November 19, 2007 (Plaintiffs' Motion).

Certified - A True Copy

EXHIBIT 9

Melissa Johnson
Elizabeth M. Smith - Clerk of Court
Beaufort County, SC

A portion of the Defendants' Motion concerns whether certain documents listed on the Plaintiffs' Privilege Log are subject to discovery and, thus, whether Plaintiffs should be compelled to produce such documents to Defendants. Similarly, a portion of the Plaintiffs' Motion concerns whether certain documents listed on Defendants' Privilege Log are subject to discovery and, thus, whether Defendants should be compelled to produce such documents to Plaintiffs. By Order dated December 17, 2008, the Court denied the Plaintiffs' Motion. The Court has not yet ruled on the Defendants' Motion.

WHEREFORE, the Court, with the consent of the parties, hereby appoints the Honorable Gary E. Clary as Special Master in these actions for the purpose of conducting an *in camera* inspection of the documents that are the subject of the parties' respective motions to compel, for the purposes set forth below:

(a) With respect to the Defendants' Motion, it is requested that Judge Clary review *in camera* the documents listed on Plaintiffs' Privilege Log, which the Defendants identify as being at issue in their Motion to Compel, and make his ruling as to whether each such document is subject to discovery and production should be compelled; and

(b) With respect to the Plaintiffs' Motion, it is requested that Judge Clary review *in camera* the documents listed on Defendants' Privilege Log, which the Plaintiffs identify as being at issue in their Motion to Compel, and, subject to and in light of this Court's Order dated December 17, 2008, make his ruling as to whether each such document is subject to discovery and production should be compelled.

It is further ordered that the parties shall compensate Judge Clary for his time spent as Special Master in these actions, at a rate agreed upon by the parties and Judge Clary, and that the

Plaintiffs and Defendants shall share this cost equally.

IT IS SO ORDERED

This 30 day of Dec, 2008.
Palm Bay, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

2009 FEB 10 PM 1:53
STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT BEAUFORT SEVENTEENTH JUDICIAL CIRCUIT
CLERK OF COURT ACTION NO. 2003-CP-07-726
BEAUFORT, S.C.

Laurance H. Davis, Jr.; et al.;

Plaintiffs,
vs.

Parkview Apartments, a South
Carolina Limited Partnership;
Apartment Investment and
Management Company a/k/a AIMCO;
Insignia Financial Group, Inc.; AmReal
Corporation a/k/a and f/k/a USS
Corporation a/k/a and f/k/a U.S.
Shelter Corporation; ISTC Corporation;
N. Barton Tuck, Jr.; and John Doe, a
generic designation for a party or
parties whose true identity is unknown.

Defendants.

2005-CP-07-1990 (Beaufort) (Pinewood)
2005-CP-07-1989 (Beaufort) (Palmetto)
2005-CP-10-4229 (Charleston) (Orleans)
2005-CP-38-1131 (Orangeburg) (Roosevelt)

**CONSENT ORDER
REGARDING SCOPE OF
AUTHORITY FOR SPECIAL
MASTER**

THIS MATTER IS BEFORE THE COURT on a joint motion on behalf of all parties in these foregoing cases for the entry of an Order to alter or amend the language in this Court's Order dated December 30, 2008, appointing Gary E. Clary as Special Master. The subject Order is hereby amended to include in Special Master Clary's authority and scope of engagement the review of the documents from the BRYAN CAVE law firm and AmReal 014467-014468, 014670-014671, 014672-014681, 015481, and 015482, all of which are identified on Defendants' Privilege Log, dated January 26, 2009. The subject Order is further amended to provide that Special Master Clary is to provide this Court with a Report setting forth his findings and conclusions.

EXHIBIT 10

AND IT IS SO ORDERED.

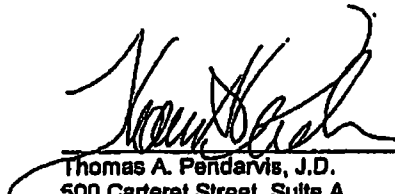

Doyet A. Early, III
Circuit Court Judge

January 31, 2009

Bamberg, South Carolina

WE SO MOVE AND CONSENT:

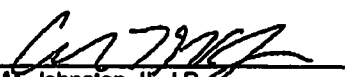
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Attorneys for Defendants

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs

v.

Parkview Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

Beaufort County

C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,

v.

Roosevelt Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.

Orangeburg County

C.A. No. 2005-CP-383431

Rhonda G. Rentz, *et al.*, Plaintiffs,

v.

Orleans Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.

Charleston County

C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,

v.

Palmetto Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

Beaufort County

C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort, *et al.*, Plaintiffs,

v.

Pinewood Park Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

Beaufort County

C.A. No. 2005-CP-07-1990

ORDER REGARDING SCOPE OF AUTHORITY FOR SPECIAL MASTER

THIS MATTER COMES BEFORE THE COURT on the Plaintiffs' two motions to alter or amend, dated December 30, 2008 and January 13, 2009, in which the Plaintiffs seek to alter or amend the Court's Orders dated December 17, 2008 (Order denying Plaintiffs' Motion to Compel # 2) and December 30, 2008 (Order appointing Gary E. Clary as Special Master, as amended by the Consent Order dated January 31, 2009). This matter is also before the Court on the Defendants' motion for protective order, dated August 21, 2008.

Certified - A True Copy

DAE
#1

EXHIBIT 11

Elizabeth M. Bright
Elizabeth M. Bright - Clerk of Court
Beaufort County, SC

The Order dated December 30, 2008 (as amended by the Consent Order dated January 31, 2009), is hereby amended to include in Special Master Clary's authority and scope of engagement the review of objections made based on claims of attorney-client privilege and/or attorney work product during the depositions of attorneys Arthur L. Howson, Jr. (August 14, 2008) and Douglas G. Brown (August 15, 2008). Further, the subject Order is hereby amended to include in Special Master Clary's authority and scope of engagement the review of appropriate limitations, if any, based on claims of attorney-client privilege and/or attorney work product, on the scope of any future depositions of attorneys that represented the Limited Partnerships in and between 1999 and 2001. The subject Order is further amended to provide that Special Master Clary is to provide this Court with a Report setting forth his findings and conclusions.

IT IS SO ORDERED

This 9 day of April, 2009.

Bamberg, South Carolina


Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Orangeburg County
C.A. No. 2005-CP-

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY

By Orders of this Court dated December 30, 2008, January 31, 2009, and April 9, 2009 (collectively, "Prior Orders"), the Court appointed the Honorable Gary E. Clary as Special Master in these actions for the purposes set forth in such Prior Orders. Pursuant to the Prior Orders, which are incorporated herein by reference, Special Master Clary issued his Reports to the Court, dated April 14, 2009 and April 22, 2009 (collectively, "Reports"). The Reports contain Special Master Clary's findings and conclusions with respect to the matters referred to

EXHIBIT 12

[Handwritten signature]

him. Counsel for the parties have advised the Court that they wish to be heard concerning their respective arguments and objections to the findings and conclusions contained in the Reports.

The Reports are hereby adopted verbatim as an Order of the Court. The Reports, which are attached hereto, are incorporated herein by reference. This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRCP. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(c) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any.

IT IS SO ORDERED

This 7 day of May, 2009.
Erinley, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., et al., Plaintiffs,	)	
v.	)	Beaufort County
Parkview Apartments, a South Carolina	)	C.A. No. 2003-CP-07-0726
Limited Partnership, et al., Defendants.	)	
 Laurance H. Davis, Jr., et al., Plaintiffs,	)	
v.	)	Orangeburg County
Roosevelt Gardens, a South Carolina	)	C.A. No. 2005-CP-38-1131
Limited Partnership, et al., Defendants.	)	
 Rhonda G. Rentz, et al., Plaintiffs,	)	
v.	)	Charleston County
Orleans Gardens, a South Carolina	)	C.A. No. 2005-CP-10-4229
Limited Partnership, et al., Defendants.	)	
 Laurance H. Davis, Jr., et al., Plaintiffs,	)	
v.	)	Beaufort County
Palmetto Apartments, a South Carolina	)	C.A. No. 2005-CP-07-1989
Limited Partnership, et al., Defendants.	)	
 Carolina Management Corporation of	)	
Beaufort, et al., Plaintiffs,	)	
v.	)	Beaufort County
Pinewood Park Apartments, a South	)	C.A. No. 2005-CP-07-1990
Carolina Limited Partnership, et al.,	)	
Defendants.	)	

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF
THEIR MOTION TO ALTER OR AMEND ORDER
ADOPTING FINDINGS AND CONCLUSIONS OF
SPECIAL MASTER CLARY, DATED JUNE 2, 2009**

TO: MARVIN D. INFINGER, J.D., ANNE ROSS ROSEN, J.D., ELLIS M. JOHNSTON, II, J.D., JESSE C. BELCHER, J.D., AND CALVIN T. VICK, J.D., ATTORNEYS FOR DEFENDANTS:

EXHIBIT 15

Plaintiffs, through their undersigned counsel, respectfully submit the following memorandum of law in support of their motion filed pursuant to Rule 59(e), SCRCP, for an Order altering or amending the ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY, issued by the Honorable Doyel A. Early, III, dated June 2, 2009, and received by counsel for Plaintiffs on June 9, 2009.

ARGUMENTS

The Special Master's report, amended, and supplemental reports contain incorrect factual findings and erroneous conclusions of law with regard to three particular topics, the arguments supporting the need for an Order correcting those findings and conclusions is set forth below, all of which are based upon the information presented to the Special Master.

I. **THE BRYAN CAVE DOCUMENTS – BECAUSE THERE WAS A MUTUALITY OF INTERESTS – NOT DIVERGENCE – DURING THE FALL OF 2000 THE SPECIAL MASTER'S FACTUAL FINDINGS ON THAT POINT WERE IN ERROR.**

While the Plaintiff Limited Partners agree with the Special Master's use of the mutuality of interests test from the *Gamer* case, they believe he erred in determining that September 14, 2000 was the date the parties' mutuality of interests ceased to exist. The transcripts from the partnership meetings on September 14, 2000 and October 24, 2000 clearly demonstrate a mutuality of interests not a divergence.

Unlike the parties in *Continental Ins. Co. v. Rutledge & Co., Inc.*, 1999 WL 66528 (Del.Ch. January 26, 1999) (cited in original and amended report by the Special Master), there is no evidence that any of the limited partners in any of these limited

partnerships ever threatened or indicated an intent to withdraw from the partnerships. Unlike the parties in *Metropolitan Bank and Trust Co. v. Dovenmuehle Mortg., Inc.*, 2001 WL 1671445, *3 (Del.Ch. December 20, 2001), there is no evidence that the general partners and limited partners reasonably anticipated litigation between themselves "about an identified dispute". In other words, their interests had not diverged in the fall of 2000. "[S]omething more than a simple disagreement between the limited partner and the general partner must exist before the rationale for preserving confidentiality of the general partner's communications with the partnership's counsel can come into play." *Id.* During the fall of 2000 the only unanswered question between the general partners and limited partners related to how the Limited Partnerships were going to proceed on their claims against Boston Financial on the notes or recovering the properties.

"Once litigation can reasonably be anticipated, the interests of the parties are sufficiently adverse that the general partner should be able to communicate with the partnership's counsel about the matters likely to be litigated without fear that the fiduciary duty exception might be invoked to deny continuing confidentiality to those communications." *Id.* In these matters, because the general partners had not been threatened with litigation by the Limited Partners during the fall of 2000, there is no reason to allow the general partners to protect from disclosure the information (i.e., communications with counsel for the Limited Partnerships about claims belonging to the Limited Partnerships) that their fiduciary duty requires them to disclose to the Limited Partners.

While the Limited Partners began questioning the General Partners in the winter of 1999 about what the Limited Partnerships were going to do about the Boston Financial notes and properties, they did not seek the assistance of legal counsel until the first Limited Partners first contacted Joel D. Bailey, Esq. in the February - March time period of 2000. The information before Judge Clary showed the purpose of the engagement at that time was to investigate the status of the notes and properties on behalf of the Limited Partners of Parkview, with plans to possibly expand the representation to other Limited Partners. If the investigation revealed the existence of any specific claims, a contingency was discussed as a potential payment option. This is documented and confirmed by the correspondence in the February - March 2000 time frame.

It took a period of time for the various partners to engage Mr. Bailey. By September and October 2000, two limited partnership meetings had been conducted, during which Mr. Bailey and his clients were still trying to find out the status of the debt and potential partnership remedies. The transcripts from these meetings with the General Partners clearly shows the Limited Partners' efforts to obtain information and an understanding at the conclusion of the October 2000 meeting that the General Partners were going to engage counsel on behalf of the Limited Partnerships to investigate and then pursue the Limited Partnerships' claims and/or recover the subject properties. The documents reviewed by Judge Clary reveal that, in the fall of 2000, the Limited Partners were still trying to get information from the General Partners as to what they intended to do. The only potential adverse position before the September 14, 2000 meeting vis-a-vis the General Partners was whether the General Partners would be replaced under the partnership agreements if they elected not to pursue any recourse against the Boston

Financial entities. That proved to be unnecessary based upon the discussions during previously referenced meetings of September and October 2000 – when the General Partners indicated that they intended to pursue some recourse for the partnerships.

The subject Order should be amended to require production of all communications between the General Partners and the Bryan Cave lawyers subsequent to the fall of 2000, as there was no evidence before the Special Master showing the mutuality of interest had ceased before that time.

II. BECAUSE JIM PIKE AND JANE MILLER ARE MRS. MARY PIKE'S DULY AUTHORIZED AGENTS FOR THIS LITIGATION THERE WAS NO WAIVER OF PRIVILEGE.

The Special Master's findings and conclusions essentially rule that certain documents on Plaintiffs' privilege log should be produced either because 1) Plaintiffs themselves engaged in communications prior to engaging an attorney, i.e., there never was a privilege, or 2) by a voluntary disclosure to a third-party, i.e., by a waiver of privilege, based upon an allegedly defectively executed power of attorney or a failure file the power of attorney. Plaintiffs acknowledge that communications prior to engaging counsel are not privileged. Plaintiffs disagree, however, with the Special Master that there was a waiver of privilege because the subject powers of attorney were not properly witnessed nor recorded.

The general rule is that clients may act through agents, and the attorney-client privilege covers communications between a client's agent and the client's lawyer. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 70, at 537 (1998) ("Privileged persons . . . are the client (including a prospective client), the client's lawyer, agents of

either who facilitate communications between them, and agents of the lawyer who facilitate the representation."); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 75 cmt. A at 580 (1998) ("A communication subject to the privilege for co-clients may be made through a client's agent for communication and a lawyer's agent for communication and other agents."); *Federal Election Comm'n v. Christian Coalition*, 178 F.R.D. 61, 66 (E.D. Va. 1998). See also, *Floyd v. Floyd*, 365 S.C. 56, 615 S.E.2d 465 (Cl. App. 2005) (the attorney-client privilege may extend to agents); *Rodgers v. Wise*, 193 S.C. 5, 9, 7 S.E.2d 517, 518-19 (1940) (holding the attorney-client privilege was not waived when an attorney dictated a letter to a stenographer). Designating someone as an agent does not require execution of a power of attorney.

Even if a power of attorney is executed, most powers of attorney do not have to be recorded to be effective; only *durable* powers of attorney executed under Article V. Protection of Persons Under Disability and Their Property are required to be recorded. See, S.C. CODE ANN. § 62-5-501(C) (Supp. 2009). See also, *Timmons v. Starkey*, 380 S.C. 590, 671 S.E.2d 101, 103 (Cl. App. 2008). In addition, only parties to the power of attorney have standing to challenge whether it is effective. Furthermore, the Defendants should be estopped from challenging Ms. Miller's or Mr. Pike's role as agent based upon Defendants' own conduct in their dealings with the Limited Partners in these Limited Partnerships.

The Special Master's findings and conclusions that the Limited Powers of Attorney from Mrs. Mary Jane Pike to Mr. Jim Pike and/or Ms. Jane Miller is not valid because it was not recorded are in error, and the Order adopting those findings and conclusions should

be altered or amended.

III. THE DOCUMENTS CONTAINING ATTORNEY-CLIENT COMMUNICATIONS BETWEEN COUNSEL FOR PLAINTIFFS AND OTHER PROSPECTIVE CLIENTS ARE PRIVILEGED BASED IN PART ON RULE 1.18, RPC AND SOUTH CAROLINA COMMON LAW.

The Special Masters' findings and conclusions that the communications between certain of the limited partners in the Lincoln Limited Partnership and Mr. Bailey are not privileged because he was not retained as their counsel are in error. There is no dispute that those limited partners were communicating with Mr. Bailey with a view toward engaging him as their attorney. Just because those communications did not lead to a formal engagement and filing suit does not defeat the privilege.

An attorney's communications with prospective clients are privileged. *Clary v. Blackwell*, 160 S.C. 142, 158 S.E. 223 (1931). See also, Rule 1.18, RPC, Rule 407, SCACR. See also, RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 70 cmt. c at 537 (1998) ("The privilege protects prospective clients – persons who communicate with a lawyer in an initial consultation but whom the lawyer does not thereafter represent – as well as persons with whom a client-lawyer relationship is established."); *In re Auclair*, 951 F.2d 65, 69 (5th Cir. 1992) ("communications made in the course of preliminary discussions with a view to employing the lawyer are privileged though employment is not . . . accepted. No person could ever safely consult an attorney for the first time . . . If the privilege depended on the chance of whether the attorney after hearing the statement of facts decided not to accept employment or decline it."). Such communications deserve the privilege because both parties are exploring the possibility of establishing a formal attorney-

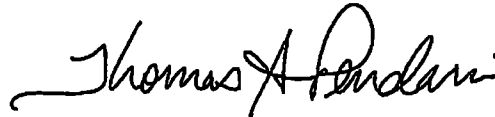
client relationship.

The Special Master's findings and conclusions in that regard are in error, and should be modified or amended accordingly.

Respectfully submitted,

Joel D. Bailey, J.D.
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PO Box 1437
Beaufort SC 29901-1437
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baileylawfirm@charter.net

PENDARVIS LAW OFFICES, P.C.



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Thomas@PendarvisLaw.com

Attorneys for Plaintiffs
Beaufort, South Carolina
July 1, 2009

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., et al., Plaintiffs,
v.
Parkview Apartments, a South Carolina
Limited Partnership, et al., Defendants.

)
) Beaufort County
) C.A. No. 2003-CP-07-726
)

Laurance H. Davis, Jr., et al., Plaintiffs,
v.
Roosevelt Gardens, a South Carolina
Limited Partnership, et al., Defendants.

)
) Orangeburg County
) C.A. No. 2005-CP-38-1131
)

Rhonda G. Rentz, et al., Plaintiffs,
v.
Orleans Gardens, a South Carolina
Limited Partnership, et al., Defendants.

)
) Charleston County
) C.A. No. 2005-CP-10-4229
)

Laurance H. Davis, Jr., et al., Plaintiffs,
v.
Palmetto Apartments, a South Carolina
Limited Partnership, et al., Defendants.

)
) Beaufort County
) C.A. No. 2005-CP-07-1989
)

Carolina Management Corporation of
Beaufort, et al., Plaintiffs,
v.
Pinewood Park Apartments, a South
Carolina Limited Partnership, et al.,
Defendants.

)
)
) Beaufort County
) C.A. No. 2005-CP-07-1990
)
)

CERTIFICATE OF SERVICE

I, Jennifer A. Clark, paralegal for Pendarvis Law Offices, PC, hereby certify that I have served the documents listed below upon all counsel of record by e-mail and mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said counsel at the following address:

Documents Served

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO ALTER OR AMEND ORDER
ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY, DATED JUNE 2, 2009

Counsel Served

Ellis M. Johnston, II, JD
Calvin T. Vick, Jr., JD
Jesse C. Belcher, Jr., JD
HAYNSWORTH SINKLER BOYD, PA
PO Box 2048
Greenville SC 29602

Marvin D. Infinger, JD
Anne Ross Rosen, JD
HAYNSWORTH SINKLER BOYD, PA
134 Meeting Street, 3rd Floor
Charleston SC 29401

Jennifer A. Clark

Jennifer A. Clark

Beaufort, South Carolina

July 2, 2009

Vick, Ted

From: Early, Doyet A. Law Clerk (Carra Henderson) [dearlylc@sccourts.org]
Sent: Wednesday, July 08, 2009 1:41 PM
To: Johnston, Ellis; Early, Doyet A.; baileylawfirm@charter.net; Thomas Pendarvis; Vick, Ted
Subject: RE: Kumbaya: FW: #698455 v1 - Davis v. Parkview: letter to Judge Doyet A. Earle, III

PER JUDGE EARLY:

Gentlemen, I have carefully considered everyone's memos, exhibits, arguments, and Judge Clary's reports. I will sustain his report in all aspects except for the following amendments:

1. I will amend the Master's report to alter the date the parties' mutuality of interest ceased to exist to the date of Weinberg's first letter dated December 9, 1999.
2. I overrule the Master's findings that the limited power of attorney from Mary Jane Pike to Jim Pike and/or Jane Miller is not valid and there was no waiver of privilege regarding these documents.
3. I overrule the Master in regarding communications of potential clients of Joel Bailey, thus I find they are deemed to be privileged.
4. I find the statute of limitations to be a major issue in the case and therefore I alter the Master's report to require the production of Plaintiff's documents designated as numbers 5, 12-15, 17-31, 34, 38-45, 47-49, 51-53, 66, 77, 85, 86-89, 91, 93-95, 97-99, 110-114, and 116-126.
5. I overrule the Master's report as it applies to Brian Caves' documents numbered 2 and 3 for the reason as set forth in Defendant's memo.

Mr. Vick please prepare a proposed order for my review. Thanks.

DAE

J. Carra Henderson
Law Clerk to the Honorable D.A. Early, III
The Circuit Court of the 2nd Judicial Circuit
PO Box 90
Bamberg, SC 29003
Telephone: 803.245.4004
Fax: 803.245.2983
dearlylc@sccourts.org

From: Johnston, Ellis [mailto:ejohnston@hsblawfirm.com]
Sent: Wednesday, July 08, 2009 12:33 PM
To: Early, Doyet A.; Early, Doyet A. Law Clerk (Carra Henderson); baileylawfirm@charter.net; Thomas Pendarvis; Vick, Ted
Subject: Kumbaya: FW: #698455 v1 - Davis v. Parkview: letter to Judge Doyet A. Earle, III

Dear Judge Early, attached is a short chronology which should shed some light on Plaintiffs' "Kumbaya" argument made at Monday's hearing. The exhibits (all but one of which came from Plaintiffs' production and the other an exhibit to a deposition) will be forwarded with the hard copy of the letter via US Mail.

EXHIBIT 17

9/9/2009

Ellis M. Johnston, II
Haynsworth Sinkler Boyd, PA
75 Beattie Place, 11th Floor (29601)
PO Box 2048 (29602)
Greenville, SC 29602
864-240-3217 (tel)
864-240-3300 (fax)
ejohnston@hsblawfirm.com

—Original Message—

From: Harris, Kelli
Sent: Wednesday, July 08, 2009 12:18 PM
To: Johnston, Ellis
Subject: #698455 v1 - Davis v. Parkview: letter to Judge Doyet A. Earle, III

<<#yxj011.pdf>>

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IRS CIRCULAR 230 NOTICE: Internal Revenue Service regulations generally provide that, for the purpose of avoiding federal tax penalties, a taxpayer may rely only on formal written advice meeting specific requirements. Any tax advice in this message, or in any attachment to this message, does not meet those requirements. Accordingly, any such tax advice was not intended or written to be used, and it cannot be used, for the purpose of avoiding federal tax penalties that may be imposed on you or for the purpose of promoting, marketing or recommending to another party any tax-related matters. mmcorp

9/9/2009

Vick, Ted

From: Vick, Ted
Sent: Friday, July 10, 2009 1:03 PM
To: 'Early, Doyel A.'; 'Early, Doyel A. Law Clerk (Carra Henderson)'
Cc: 'Thomas A. Pendavis'; 'baileylawfirm@charter.net'; Johnston, Ellis
Subject: Proposed Order in Parkview et al. re: parties' motions to alter/amend

Attachments: Untitled.pdf; Greenville-698615-v2-Parkview proposed order re parties' motion to amend (Clary reports).DOC

Judge Early, Carra, Thomas and Joel:

Please find attached the proposed Order (in Word format) and a cover letter concerning the proposed Order. If you have any trouble opening these documents, please let me know. We are sending everyone hard copies of the letter and the proposed Order via mail. Please do not hesitate to contact me if you have any questions or concerns. Thank you.

Ted Vick
Haynsworth Sinkler Boyd, P.A.
75 Beattie Place, Eleventh Floor (29601)
P.O. Box 2048 (29602-2048)
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Telephone 864-240-3324
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tvick@hsblawfirm.com



Untitled.pdf (121 KB)



Greenville-698615-v2-Parkview ...

EXHIBIT 18

GREENVILLE CHARLESTON COLUMBIA FLORENCE

**Haynsworth
Sinkler Boyd, PA** ATTORNEYS AND COUNSELORS AT LAW

75 BEATTIE PLACE, 11TH FLOOR (28501-2118)
POST OFFICE BOX 2040 (28002-2040)
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CALVIN F. VICK, JR.
DIRECT DIAL NUMBER (864) 240-2324
EMAIL: cvick@hsb-law.com

July 10, 2009

VIA E-MAIL AND U.S. MAIL

The Honorable Doyce A. Early, III
Judge of Second Judicial Circuit
P.O. Box 90
Bamberg, South Carolina 29003
dearly@sccourts.org

Re: Defendants' Proposed Order in Parkview and Related Litigation (C.A. No. 2003-CP-07-726; C.A. No. 2005-CP-07-1989; C.A. No. 2005-CP-10-4229; C.A. No. 2005-CP-07-1989; and C.A. No. 2005-CP-07-1990) Concerning Plaintiffs' and Defendants' Motions to Alter or Amend Order Dated June 2, 2009

Dear Judge Early:

I am enclosing with this letter the Defendants' proposed Order, as you instructed in your e-mail dated July 8, 2009. There are two matters addressed in the proposed Order that I would like to bring to your attention, until these are discussed below. I am providing a copy of this letter and the enclosed proposed Order to Plaintiffs' counsel simultaneously. The length of the proposed Order is primarily due to our listing of the documents affected by your rulings and a summary listing of all of the documents to be produced by the parties pursuant to the June 2, 2009 Order, as amended.

With regard to the second ruling addressed in your e-mail (Mary Jane Pike's limited power of attorney to Jim Pike/Jane Miller was valid; see Paragraph 2 of the proposed Order), your ruling affects seven of Plaintiffs' documents that Special Master Clary had designated for production. However, two of these documents are dated more than three years prior to the filing of these lawsuits (i.e., communications occurring prior to October 15, 2002). These documents were identified by the Special Master as Plaintiffs' Nos. 46 (Bailey 3735, dated 2/14/01) and 54 (Bailey 4019-4020, dated 9/19/02). In accordance with the fourth ruling addressed in your e-mail (see Paragraph 4 of the proposed Order), the Plaintiffs impliedly waived privilege with respect to documents dated more than three years prior to the filing of these lawsuits (statute of limitations at issue in these cases). Thus, even though documents 46 and 54 would otherwise be privileged under the second ruling addressed in your e-mail, these two documents remain subject to production under your cumulative rulings in this matter. In Defendants' Rule 59 Motion, we did not expressly address the implied waiver of privilege with respect to Plaintiffs' documents 46 and 54, because they were already designated for production under the Special Master's report at the time. The cumulative effect of your rulings on documents 46 and 54 is explained in Paragraph 2 of the

Haynsworth
Sinkler Boyd, PA

ATTORNEYS AND COUNSELORS AT LAW

The Honorable Doyet A. Early, III
July 10, 2009
Page 2

proposed Order. If this was not your intent, please let me know and I will make any changes you deem necessary.

On the opposite side of the coin, in reviewing the materials to determine which documents are affected by your rulings, we discovered that two documents between Mr. Bailey and his clients (Rentz, Plaintiff in Parkview, Orleans and Roosevelt; Hodge, Plaintiff in Roosevelt), which were designated for production by Special Master Clary, are dated after October 15, 2002. These two documents were identified by the Special Master as Plaintiffs' Nos. 82 (Bailey 4591-4592, dated 6/29/04) and 83 (Bailey 4593, dated 8/3/04). These documents would not be subject to production under your fourth ruling concerning implied waiver of documents dated earlier than October 15, 2002. Nor does it appear that these documents would be subject to production under your other rulings (whether or not Hodge was a client at the time of the communication, he was at least a prospective client). We have addressed Plaintiffs' documents 82 and 83, and stated that they shall not be produced, in Paragraph 3 of the proposed Order. In that paragraph, we also set forth the third ruling contained in your e-mail (privilege extends to communications between Mr. Bailey and prospective clients). However, as you will see in Paragraph 3, after reviewing the Plaintiffs' Privilege Log and the Special Master's reports, we can not identify any documents that are solely between Mr. Bailey and Mr. Griffin, the prospective client that did not retain Mr. Bailey. There are some documents between/among Mr. Bailey, Mr. Griffin and/or Mr. Bailey's other clients (who are now Plaintiffs), but with the exception of documents 82 and 83, discussed above, all such documents would appear to be subject to production because they are all dated prior to October 15, 2002. If we have misconstrued your third ruling, or any of your other rulings, please let me know and I will make any changes you deem necessary.

Thank you for your consideration of these matters. If you have any questions or would like for me to provide you with additional information, please do not hesitate to contact me.

Sincerely yours,



Calvin T. Vick, Jr.

CTVjr:dlh

Enclosure (via e-mail and U.S. Mail)

cc: Ms. Caru Henderson.
Law Clerk to the Honorable Doyet A. Early, III (via e-mail and U.S. Mail)
Joel D. Bailey, Esq. (via e-mail and U.S. Mail)

Haynsworth
Sinkler Boyd, PA

ATTORNEYS AND COUNSLORS AT LAW

The Honorable Doyet A. Early, III
July 10, 2009
Page 3

Thomas A. Pendavis, Esq. (via e-mail and U.S. Mail)
Ellis M. Johnston, II, Esq. (via e-mail)

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs,	)	
v.	)	Beaufort County
Parkview Apartments, a South Carolina Limited	)	C.A. No. 2003-CP-07-726
Partnership, <i>et al.</i> , Defendants.	)	

Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs,	)	
v.	)	Orangeburg County
Roosevelt Gardens, a South Carolina Limited	)	C.A. No. 2005-CP-38-1131
Partnership, <i>et al.</i> , Defendants.	)	

Rhonda G. Rentz, <i>et al.</i> , Plaintiffs,	)	
v.	)	Charleston County
Orleans Gardens, a South Carolina Limited	)	C.A. No. 2005-CP-10-4229
Partnership, <i>et al.</i> , Defendants.	)	

Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs,	)	
v.	)	Beaufort County
Palmetto Apartments, a South Carolina Limited	)	C.A. No. 2005-CP-07-1989
Partnership, <i>et al.</i> , Defendants.	)	

Carolina Management Corporation of Beaufort,	)	
<i>et al.</i> , Plaintiffs,	)	
v.	)	Beaufort County
Pinewood Park Apartments, a South Carolina	)	C.A. No. 2005-CP-07-1990
Limited Partnership, <i>et al.</i> , Defendants.	)	

ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009

These matters are before the Court on the Plaintiffs' Motion to Alter or Amend, dated June 11, 2009, and the Defendants' Motion to Alter or Amend, dated June 15, 2009. In their respective motions, the Plaintiffs and the Defendants request that the Court amend its Order dated June 2, 2009, which adopted Special Master Clary's reports verbatim. The parties' motions were timely filed, pursuant to Rule 59(e), SCRCP, and the Court has carefully considered the parties' memoranda, exhibits, oral arguments of all counsel at the July 6, 2009

hearing, and Special Master Clary's reports, which were incorporated into the Court's June 2, 2009 Order by reference. The motions of the Plaintiffs and the Defendants are granted, in part, and denied, in part, as set forth herein.

The Court's June 2, 2009 Order and the Special Master's reports incorporated therein are sustained in all aspects, except for the following amendments thereto:

(1) With regard to the Plaintiffs' argument that the fiduciary duty exception applies to Defendants' privileged documents, the Court finds that the requisite mutuality of interest between the parties ceased to exist as of December 9, 1999, which is the date of Mr. Weinberg's first letter to a general partner threatening litigation (AMREAL 014864, attached to Defendants' Memorandum as Exhibit 1). Accordingly, the fiduciary duty exception is not available to the Plaintiffs with regard to any privileged document dated (i.e., created) after December 9, 1999, and the following privileged documents, which were previously designated for production, shall not be produced:

Defendants' Documents (listed on pp. 12-14 of the Special Master's April 14, 2009 report):

1	AMREAL 00573-00576
20	AMREAL 004865-004867
23	GWB 000011
60	GWB 000271
76	GWB 000458-000459
78	GWB 000484

"Bryan Cave" Documents (listed on pp. 14-17 of the Special Master's April 14, 2009 report):

2	AMREAL 014670-014671
3	AMREAL 014672-014681
16	AMREAL 014875

17	AMREAL 014876
18	AMREAL 014877-014879
19	AMREAL 014880-014886
20	AMREAL 014887-014890
21	AMREAL 014891-014892
22	AMREAL 014893-014894
24	AMREAL 014896-014897
26	AMREAL 014899
27	AMREAL 014900-014902
28	AMREAL 014903-014904
30	AMREAL 014906
31	AMREAL 014907
32	AMREAL 014908
33	AMREAL 014909
34	AMREAL 014910-014912
36	AMREAL 014914
37	AMREAL 014915
59	AMREAL 015060-015061
60	AMREAL 015062-015066
62	AMREAL 015068-015071
63	AMREAL 015072-015074
64	AMREAL 015075-015077
66	AMREAL 015079-015081
67	AMREAL 015087
68	AMREAL 015091-015092
69	AMREAL 015093-015095
70	AMREAL 015100-015103
71	AMREAL 015104-015107
72	AMREAL 015118-015119
73	AMREAL 015120-015122
74	AMREAL 015123-015126
75	AMREAL 015136-015138
76	AMREAL 015139-015140
77	AMREAL 015141-015144
78	AMREAL 015145-015151
79	AMREAL 015152-015153
81	AMREAL 015157-015167
87	AMREAL 015209-015213
89	AMREAL 015256
90	AMREAL 015257
91	AMREAL 015258
92	AMREAL 015259-015261
93	AMREAL 015262-015263
94	AMREAL 015268-015269
95	AMREAL 015272-015273

96	AMREAL 015276-015277
97	AMREAL 015278-015279
98	AMREAL 015282-015283
99	AMREAL 015284
100	AMREAL 015285-015286
101	AMREAL 015287-015297
102	AMREAL 015298-015306
103	AMREAL 015307-015316
104	AMREAL 015317-015332
108	AMREAL 015341-015342
109	AMREAL 015343-015344
110	AMREAL 015345-015346
112	AMREAL 015350-015352
113	AMREAL 015353-015357
114	AMREAL 015358-015362
115	AMREAL 015363-015366
116	AMREAL 015367-015369
129	AMREAL 015423-015426
130	AMREAL 015427-015430
131	AMREAL 015431-015436
132	AMREAL 015437-015442
133	AMREAL 015443-015445

(2) The Court finds that the limited power of attorney from Mary Jane Pike to Jim Pike and/or Jane Miller was valid and there was no waiver of privilege as a result of documents being provided to Jim Pike and/or Jane Miller. The subject documents are identified in Special Master Clary's reports as Plaintiffs' documents 8, 9, 46, 54, 59, 100 and 103. However, two of these documents (46 - Bailey 3735, dated 2/14/01; 54 - Bailey 4019-4020, dated 9/19/02) are subject to production under paragraph 4 below, so they shall be produced as previously ordered. The net result of the Court's findings is that the following documents, which were previously designated for production, shall not be produced:

8	Parkview 2114-2115
9	Parkview 2143
59	Bailey 4055
100	Bailey 4874-4875

(3) The Special Master concluded that documents involving communications with prospective clients of Mr. Bailey were not privileged and should be produced, because Mr. Bailey lacked the necessary attorney-client relationship with such prospective clients. Plaintiffs argue that the attorney-client privilege extends to communications between Mr. Bailey and prospective clients, such as Warren Griffin, a limited partner in Lincoln Limited Partnership who did not retain Mr. Bailey and is not a party to these lawsuits. The Court agrees with the Plaintiffs. Communications that are solely between Mr. Bailey and prospective clients, who are not parties (or their predecessors or successors) to these lawsuits, are privileged and should not be produced. However, after reviewing the Special Master's reports and the Plaintiffs' Privilege Log, it appears that there are no such documents. There are, however, communications between Mr. Bailey and his current clients (Plaintiffs) concerning, in whole or in part, Lincoln Limited Partnership. Mr. Griffin is a party to some of these communications, but his participation does not, itself, destroy the privilege. Such documents are privileged unless the privilege has been impliedly waived by the Plaintiffs as described in paragraph 4 below (i.e., Plaintiffs have impliedly waived privilege as to documents dated more than three years prior to the filing of these lawsuits). The Court finds that two of the documents concerning the Lincoln Limited Partnership, which were designated for production by the Special Master, are privileged and are not subject to the implied waiver described in paragraph 4. These documents are communications occurring in 2004 between Mr. Bailey and Plaintiffs, Rentz and Hodge. Accordingly, the following documents, which were previously designated for production, shall not be produced:

83	Bailey 4593

(4) The Court finds that the statute of limitations is a major issue in these cases, and, as shown in the Defendants' Memorandum and exhibits thereto, that the Plaintiffs impliedly waived their claims of privilege with respect to documents dated (i.e., created) more than three years prior to the filing of these lawsuits. As a result, the following documents, which were previously designated for protection, shall be produced:

12	Bailey 3059
13	Bailey 3060
14	Bailey 3067-3069
15	Bailey 3070-3072
17	Bailey 3077-3078
18	Bailey 3082
19	Bailey 3105
20	Bailey 3148
21	Bailey 3151
22	Bailey 3152
23	Bailey 3153
24	Bailey 3154
25	Bailey 3155-3156
26	Bailey 3180
27	Bailey 3209-3212
28	Bailey 3215
29	Bailey 3216
30	Bailey 3217
31	Bailey 3316
34	Bailey 3321
38	Bailey 3333
39	Bailey 3334-3335
40	Bailey 3512
41	Bailey 3526-3528
42	Bailey 3695
43	Bailey 3715-3719
44	Bailey 3721-3726
45	Bailey 3731-3732
47	Bailey 3737
48	Bailey 3738

49	Bailey 3754-3755
51	Bailey 3758-3759
52	Bailey 3768
53	Bailey 3799
66	Bailey 4218-4219
77	Bailey 4560
85	Bailey 4783
86	Bailey 4785-4787
87	Bailey 4804
88	Bailey 4808-4809
89	Bailey 4810
91	Bailey 4827
93	Bailey 4837
94	Bailey 4842
95	Bailey 4843
97	Bailey 4847-4851
98	Bailey 4854
99	Bailey 4859-4868
110	Bailey 4999
111	Bailey 5002-5004
112	Bailey 5008-5012
113	Bailey 5016
114	Bailey 5024
116	Bailey 5028
117	Bailey 5056
118	Bailey 5062
119	Bailey 5064
120	Bailey 5065-5069
121	Bailey 5071
122	Bailey 5073
123	Bailey 5074
124	Bailey 5080-5081
125	Bailey 5088-5089
126	Bailey 5092

(5) The Court finds that the Defendants' privileged documents identified as "Bryan Cave" documents Nos. 2 and 3 (listed on p. 15 of the Special Master's April 14, 2009 report) are not subject to the fiduciary duty exception, because these documents are not communications between a general partner, acting in that capacity, and the Limited Partnerships' attorneys.

Rather, these documents concern communications between ADMCO, acting in its individual capacity, and AIMCO's separate counsel, Art Hessel, who did not represent the Limited Partnerships. As a result, the following documents, which were previously designated for production, shall not be produced:

2	AMREAL 014670-014671
3	AMREAL 014672-014681

The Court's June 2, 2009 Order, and the Special Master's reports incorporated therein, are hereby amended as set forth above. In sum, pursuant to the Court's June 2, 2009 Order, as amended herein, the Plaintiffs and Defendants are ordered to produce the following documents within seven (7) days of the date of this Order:

Plaintiffs Shall Produce:

1	Parkview 1951-1952
5	Parkview 2083
12	Bailey 3059
13	Bailey 3060
14	Bailey 3067-3069
15	Bailey 3070-3072
16	Bailey 3073
17	Bailey 3077-3078
18	Bailey 3082
19	Bailey 3105
20	Bailey 3148
21	Bailey 3151
22	Bailey 3152
23	Bailey 3153
24	Bailey 3154
25	Bailey 3155-3156
26	Bailey 3180
27	Bailey 3209-3212
28	Bailey 3215
29	Bailey 3216
30	Bailey 3217

31	Bailey 3316
32	Bailey 3317
33	Bailey 3320
34	Bailey 3321
35	Bailey 3325
36	Bailey 3326-3327
37	Bailey 3328
38	Bailey 3333
39	Bailey 3334-3335
40	Bailey 3512
41	Bailey 3526-3528
42	Bailey 3695
43	Bailey 3715-3719
44	Bailey 3721-3726
45	Bailey 3731-3732
46	Bailey 3735
47	Bailey 3737
48	Bailey 3738
49	Bailey 3754-3755
50	Bailey 3756-3757
51	Bailey 3758-3759
52	Bailey 3768
53	Bailey 3799
54	Bailey 4019-4020
66	Bailey 4218-4219
71	Bailey 4467-4468
72	Bailey 4471
73	Bailey 4473
74	Bailey 4540-4543
75	Bailey 4547
76	Bailey 4548
77	Bailey 4560
78	Bailey 4565
79	Bailey 4572-4575
80	Bailey 4576-4577
81	Bailey 4580-4582
84	Bailey 4763
85	Bailey 4783
86	Bailey 4785-4787
87	Bailey 4804
88	Bailey 4808-4809
89	Bailey 4810
90	Bailey 4811
91	Bailey 4827
92	Bailey 4831

93	Bailey 4837
94	Bailey 4842
95	Bailey 4843
96	Bailey 4846
97	Bailey 4847-4851
98	Bailey 4854
99	Bailey 4859-4868
104	Bailey 4885-4886
105	Bailey 4968
106	Bailey 4980
107	Bailey 4993
108	Bailey 4995 (identified as 4996 on Plaintiffs' Privilege Log)
109	Bailey 4998
110	Bailey 4999
111	Bailey 5002-5004
112	Bailey 5008-5012
113	Bailey 5016
114	Bailey 5024
115	Bailey 5025
116	Bailey 5028
117	Bailey 5056
118	Bailey 5062
119	Bailey 5064
120	Bailey 5065-5069
121	Bailey 5071
122	Bailey 5073
123	Bailey 5074
124	Bailey 5080-5081
125	Bailey 5088-5089
126	Bailey 5092

Defendants Shall Produce:

70	GWB 000380
71	GWB 000381-000421
"Bryan Cave"	
6	AMREAL 014865
7	AMREAL 014866
8	AMREAL 014867
9	AMREAL 014868
10	AMREAL 014869
11	AMREAL 014870

12	AMREAL 014871
13	AMREAL 014872
14	AMREAL 014873
39	AMREAL 014917-014922
41	AMREAL 014924-014928
42	AMREAL 014939-014944
43	AMREAL 014945-014949
44	AMREAL 014950-014953
45	AMREAL 014954-014959
46	AMREAL 014960-014964
47	AMREAL 014965-014968
48	AMREAL 014984-014989
49	AMREAL 014990-014994
50	AMREAL 014995-014998
51	AMREAL 014999-015004
52	AMREAL 015005-015009
53	AMREAL 015010-015013
54	AMREAL 015020-015024
55	AMREAL 015044-015049
56	AMREAL 015050-015054
57	AMREAL 015055-015058

IT IS SO ORDERED

This ____ day of July, 2009.

_____, South Carolina

Doyet A. Early, III, Circuit Court Judge

Vick, Ted

From: Jennifer Clark [JClark@pendarvislaw.com]
Sent: Friday, July 10, 2009 2:38 PM
To: The Honorable Doyel A. Early, III; deariyc@sccourts.org
Cc: Joel D. Bailey, J.D.; Johnston, Ellis; Vick, Ted; Belcher, Jesse; Infinger, Marvin; Rosen, Anne; Eric.Hilly@almco.com
Subject: Re: Davis v. Almco
Attachments: 2009-07-10 TAP to Early - Object to Entry of Proposed Order.pdf



2009-07-10 TAP to
Early - Obje...

Please see attached correspondence.

Jennifer Clark
Pendarvis Law Offices, PC
500 Carteret Street, Suite A
Beaufort SC 29902
843-524-9500

EXHIBIT 19



PENDARVIS LAW OFFICES, P.C.
500 CARTERET STREET, SUITE A
BEAUFORT, SOUTH CAROLINA 29902-5066

THOMAS A. PENDARVIS, J.D.
ADMITTED IN SC AND GA

THOMAS@PENDARVISLAW.COM

TEL. 843.524.9500
FAX. 843.524.9501

July 10, 2009

VIA E-MAIL AND U.S. MAIL

The Honorable Doyet A. Early, III
PO Box 90
Bamberg SC 29003
dearly@sccourts.org
dearlyvic@sccourts.org

Re: Laurence H. Davis, Jr., et al. v. Parkview Apartments, et al.
Laurence H. Davis, Jr., et al. v. Roosevelt Gardens, et al.
Rhoda G. Rentz, et al. v. Orleans Gardens, et al.
Laurence H. Davis, Jr., et al. v. Palmetto Apartments, et al.
Carolina Management Corp. of Beaufort, et al. v. Pinewood Park Apts., et al.

Dear Judge Early:

On behalf of the Plaintiffs in the above-referenced and unconsolidated matters, on multiple grounds Plaintiffs object to the entry of the proposed Order offered on behalf of Defendants.

First, upon further research and investigation we believe the Circuit Court does not have authority to alter or amend the Findings and Conclusions of Special Master. Next, the proposed Order would materially affect the mode and preparation for trial. Finally, the proposed Order is not in keeping with the express direction from Your Honor by e-mail communication earlier this week.

For the above reasons, Plaintiffs respectfully request that Your Honor decline to enter any Order altering or amending the Findings and Conclusions of the Special Master, including the proposed Order submitted on behalf of Defendants via e-mail earlier today.

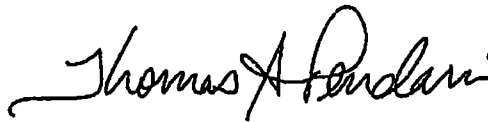
Thank you for your attention to this matter.

Page 2
July 10, 2009

With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink, reading "Thomas A. Pendarvis". The signature is fluid and cursive, with a large initial "T" and "P".

Thomas A. Pendarvis, J.D.

TAP\pdh

cc: Joel D. Bailey, J.D. (via e-mail w/enclosures)
Ellis M. Johnston, II, J.D. (via e-mail and U.S. Mail w/enclosures)
Calvin T. Vick, J.D. (via e-mail and U.S. Mail w/enclosures)
Jesse C. Belcher, J.D. (via e-mail and U.S. Mail w/enclosures)
Marvin D. Infinger, J.D. (via e-mail and U.S. Mail w/enclosures)
Anne Ross Rosen, J.D. (via e-mail and U.S. Mail w/enclosures)
Eric Hilty, J.D. (via e-mail w/enclosures)

Haynsworth
Sinkler Boyd, PA

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FLORENCE

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CALVIN T. VICK, JR.
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EMAIL tvick@hsblawfirm.com

July 13, 2009

VIA E-MAIL AND U.S. MAIL

The Honorable Doyet A. Early, III
Judge of Second Judicial Circuit
P.O. Box 90
Bamberg, South Carolina 29003
dearly@sccourts.org

Re: Defendants' Proposed Order in Parkview and Related Litigation (C.A. No. 2003-CP-07-726; C.A. No. 2005-CP-07-1989; C.A. No. 2005-CP-10-4229; C.A. No. 2005-CP-07-1989; and C.A. No. 2005-CP-07-1990) Concerning Plaintiffs' and Defendants' Motions to Alter or Amend Order Dated June 2, 2009

Dear Judge Early:

We are in receipt of Mr. Pendarvis' July 10, 2009 letter to you. While the statements contained in Mr. Pendarvis' letter are so vague as to make it difficult to respond, we feel compelled to address the Plaintiffs' claim that Your Honor has no authority to amend its June 2, 2009 Order.

Plaintiffs' statement that "the Circuit Court does not have authority to alter or amend the Findings and Conclusions of Special Master" is incredible. First, the only order that has been entered is your Order dated June 2, 2009 (copy attached). As the parties and Your Honor intended, Judge Clary never issued an order. He only issued reports to Your Honor, which you adopted in your June 2, 2009 Order. At the request of the Plaintiffs and the Defendants, your Order specifically contemplates the parties' mutual intent to file Rule 59 Motions to alter or amend the findings and conclusions contained in Judge Clary's reports. The Order states, in part:

"Counsel for the parties have advised the Court that they wish to be heard concerning their respective arguments and objections to the findings and conclusions contained in the Reports. The Reports are hereby adopted verbatim as an Order of the Court. . . . This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRCP. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(e) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any."

EXHIBIT 20

The Honorable Doyet A. Early, III
July 13, 2009
Page 2

I prepared the June 2, 2009 Order, as you instructed. Prior to submitting that order to you, I sent it to Plaintiffs' counsel for their review and comments on May 27, 2009. Mr. Pendarvis responded, "Joel and I have no objections to this proposed Order." See Mr. Pendarvis' e-mail, dated May 27, 2009, attached hereto. In the absence of the June 2, 2009 Order, there is no order or judgment resolving the parties' motions to compel documents identified on the privilege logs (except for the December 17, 2008 Order Denying Plaintiffs' Motion to Compel, discussed below). Further, even in the absence of the specific language quoted above, this Court's June 2, 2009 Order would be subject to Rule 59(e).

Now that the Rule 59 Motions have run their course, the Plaintiffs simply do not like the results of the process they, themselves, suggested. Plaintiffs' current attempts to avoid your rulings in this matter are plainly made in bad faith. This entire process started on December 9, 2008, during a hearing on Defendants' Motion to Compel, which was filed on November 6, 2008. Rather than responding to Defendants' arguments that documents on Plaintiffs' privilege log should be produced (i.e., no privilege, or privilege waived), Plaintiffs' counsel simply suggested that the Court enlist someone, such as a retired judge, to assist Your Honor by reviewing the subject documents *in camera*. Plaintiffs' counsel even convinced Your Honor that the same person should review the documents on Defendants' privilege log *in camera*, even though Your Honor had previously rejected Plaintiffs' motion to compel such privileged documents. See Order Denying Plaintiffs' Motion to Compel #2, attached hereto (the Court verbally denied the Plaintiffs' motion on July 1, 2008, and the proposed Order reflecting this ruling was provided to Your Honor on July 16, 2008, but the Order was not signed until December 17, 2008).

After Your Honor indicated interest in having Judge Clary assist with the *in camera* inspection of documents, Defendants' counsel agreed to this process. Three Orders were subsequently entered concerning the *in camera* review of documents by Judge Clary, who was referred to as a Special Master in such orders. These Orders, dated December 30, 2008, January 31, 2009, and April 9, 2009, are attached hereto. In the second Order, which was a consent order, the parties very purposefully stated, "The subject Order is hereby amended to provide that Special Master Clary is to provide this Court with a Report setting forth his findings and conclusions." The third Order reiterates this important mandate (last sentence of third Order). On or about January 21, 2009, the parties' counsel discussed the fact that they did not want Judge Clary to issue an Order, but only wanted Judge Clary to issue a non-binding report to the Court. The parties' counsel agreed that they only wanted Judge Early to issue any resulting Order. As the parties' counsel discussed, this was an important distinction, which needed to be reflected in the Orders concerning Judge Clary's *in camera* review, because the parties did not want to risk anyone mistakenly holding that this process was governed by Rule 53, SCRCP, concerning masters (masters-in-equity) and special referees (under S.C. Code 14-11-60). The parties and Your Honor did not enlist Judge Clary's help as a master-in-equity or as a special referee under S.C. Code 14-11-60, and Rule 53 has no application to this process involving Judge Clary. If the Plaintiffs now claim that Rule 53 does

Haynsworth
Sinkler Boyd, PA

ATTORNEYS AND COUNSELORS AT LAW

The Honorable Doyet A. Early, III

July 13, 2009

Page 3

apply, after the specific discussion of this matter between the parties' counsel and the resulting amendment of the December 30, 2008 Order to state that Judge Clary will only issue a report to Your Honor (not an order or judgment under Rule 53), then Plaintiffs' bad faith in this matter has reached epic proportions.

As for the Plaintiffs' claim that the proposed Order would materially affect the mode and preparation for trial, we frankly have no idea what Plaintiffs mean by this. The discovery disputes concerning the documents on the parties' privilege logs have been going on for many months. Now that the discovery disputes have been resolved by Your Honor, the parties must produce certain documents in accordance with your rulings. This should not be a surprise to the Plaintiffs. The trial in the Parkview action is at least six months away. If the Plaintiffs would cease in delaying the production of their documents and discovery responses, there is no reason to believe the parties can not be ready for trial by late January 2010.

As for the Plaintiffs' claim that the proposed Order is "not in keeping with the express direction from Your Honor by e-mail," we believe that we faithfully prepared the proposed Order pursuant to your instructions (please see proposed Order and our July 10, 2009 cover letter regarding the same). Obviously, Your Honor is the only person capable of determining whether we succeeded in that endeavor. If we misunderstood or misinterpreted your instructions in any way, we would be happy to change the proposed Order as you direct.

Thank you for your consideration of these matters. If you have any questions or would like for me to provide you with additional information, please do not hesitate to contact me.

Sincerely yours,



Calvin T. Vick, Jr.

CTVjr:dlh

Enclosures

cc: Ms. Carra Henderson,
Law Clerk to the Honorable Doyet A. Early, III (via e-mail and U.S. Mail)
Joel D. Bailey, Esq. (via e-mail and U.S. Mail)
Thomas A. Pendarvis, Esq. (via e-mail and U.S. Mail)
Ellis M. Johnston, II, Esq. (via e-mail)

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Orangeburg County
C.A. No. 2005-CP-

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY

By Orders of this Court dated December 30, 2008, January 31, 2009, and April 9, 2009 (collectively, "Prior Orders"), the Court appointed the Honorable Gary E. Clary as Special Master in these actions for the purposes set forth in such Prior Orders. Pursuant to the Prior Orders, which are incorporated herein by reference, Special Master Clary issued his Reports to the Court, dated April 14, 2009 and April 22, 2009 (collectively, "Reports"). The Reports contain Special Master Clary's findings and conclusions with respect to the matters referred to

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him. Counsel for the parties have advised the Court that they wish to be heard concerning their respective arguments and objections to the findings and conclusions contained in the Reports.

The Reports are hereby adopted verbatim as an Order of the Court. The Reports, which are attached hereto, are incorporated herein by reference. This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRPC. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(e) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any.

IT IS SO ORDERED

This 3 day of June, 2009.
Barney, South Carolina

M. A. Early, III
Doyet A. Early, III, Circuit Court Judge

Vick, Ted

From: Thomas A. Pendarvis [tpendarvis@pendarvislaw.com]
Sent: Wednesday, May 27, 2009 1:46 PM
To: Vick, Ted
Cc: Johnston, Ellis; baileylawfirm@charter.net; Pamela D. Higgins
Subject: RE: Proposed Order re: Clary Reports

Ted:

Joel and I have no objections to this proposed Order.

Thomas A. Pendarvis, J.D.
Pendarvis Law Offices, P.C.
500 Carteret St., Ste. A
Beaufort, SC 29902
843.524.9500 tel.
843.524.9501 fax.
Thomas@PendarvisLaw.com

—Original Message—

From: Vick, Ted
Sent: Wednesday, May 27, 2009 11:16 AM
To: Thomas A. Pendarvis; baileylawfirm@charter.net
Cc: Johnston, Ellis

Thomas,

I'll call you to discuss in a few minutes. Thanks.

Ted

<<Greenville-692200-v1-Parkview Proposed Order re Clary reports.DOC>>

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Attachment(s): Greenville-692200-v1-Parkview Proposed Order re Clary reports.DOC

7/13/2009

STATE OF SOUTH CAROLINA 2008 DEC 23 PM 1:31 IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Orangeburg County
C.A. No. 2005-CP-38-1

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER DENYING
PLAINTIFFS' MOTION TO COMPEL # 2

THESE MATTERS COME BEFORE THE COURT on Plaintiffs' Motion to Compel Production, dated November 7, 2007 (hereinafter, "Motion"), in each of the above-captioned actions. The Court has considered the parties' memoranda and other submissions, including the Defendants' Privilege Log, a copy of which was provided to the Court and to Plaintiffs' counsel in connection with the Motion (hereinafter, "Defendants' Privilege Log"), as well as the oral argument of the parties' counsel at the hearing held on November 19, 2007. The Court finds that

Certified - A True Copy

Melissa Johnson
Elizabeth M. Smith - Clerk of Court

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FILED
2008 DEC 31 PM 2:40
JULIE J. ARMSTRONG
CLERK OF COURT

the documents identified in the Defendants' Privilege Log are privileged and that the Defendants shall not be compelled to produce such documents to Plaintiffs.

Further, the Court finds that Plaintiffs' Motion is not ripe with respect to questions that may be asked at the depositions of certain attorneys that previously represented the Defendants, such depositions having not yet taken place.

WHEREFORE, Plaintiffs' Motion is hereby DENIED. Further, Plaintiffs' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRPC, is DENIED.

IT IS SO ORDERED

This 17 day of Dec, 2008.

Bonkay, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs.
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
) Beaufort County
) C.A. No. 2003-CP-07-726
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
) Orangeburg County
) C.A. No. 2005-CP-38-1131
)

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
) Charleston County
) C.A. No. 2005-CP-10-4229
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
) Beaufort County
) C.A. No. 2005-CP-07-1989
)

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

)
) Beaufort County
) C.A. No. 2005-CP-07-1990
)

**ORDER APPOINTING THE HONORABLE GARY E. CLARY AS SPECIAL MASTER
FOR RESOLUTION OF SPECIFIED DISCOVERY DISPUTES**

THESE MATTERS COME BEFORE THE COURT on Defendants' Motion to Compel
Discovery. dated November 6, 2008, and Plaintiffs' Motion to Compel Production. dated
November 7, 2007. in each of the above-captioned actions. The Court has considered the
parties' memoranda and other submissions, as well as the oral argument of the parties' counsel at
the hearings held on December 9, 2008 (Defendants' Motion) and November 19, 2007
(Plaintiffs' Motion).

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A portion of the Defendants' Motion concerns whether certain documents listed on the Plaintiffs' Privilege Log are subject to discovery and, thus, whether Plaintiffs should be compelled to produce such documents to Defendants. Similarly, a portion of the Plaintiffs' Motion concerns whether certain documents listed on Defendants' Privilege Log are subject to discovery and, thus, whether Defendants should be compelled to produce such documents to Plaintiffs. By Order dated December 17, 2008, the Court denied the Plaintiffs' Motion. The Court has not yet ruled on the Defendants' Motion.

WHEREFORE, the Court, with the consent of the parties, hereby appoints the Honorable Gary E. Clary as Special Master in these actions for the purpose of conducting an *in camera* inspection of the documents that are the subject of the parties' respective motions to compel, for the purposes set forth below:

(a) With respect to the Defendants' Motion, it is requested that Judge Clary review *in camera* the documents listed on Plaintiffs' Privilege Log, which the Defendants identify as being at issue in their Motion to Compel, and make his ruling as to whether each such document is subject to discovery and production should be compelled; and

(b) With respect to the Plaintiffs' Motion, it is requested that Judge Clary review *in camera* the documents listed on Defendants' Privilege Log, which the Plaintiffs identify as being at issue in their Motion to Compel, and, subject to and in light of this Court's Order dated December 17, 2008, make his ruling as to whether each such document is subject to discovery and production should be compelled.

It is further ordered that the parties shall compensate Judge Clary for his time spent as Special Master in these actions, at a rate agreed upon by the parties and Judge Clary, and that the

Plaintiffs and Defendants shall share this cost equally.

IT IS SO ORDERED

This 22 day of Dec, 2008.
Palmborg, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2003-CP-07-726

Laurance H. Davis, Jr.; et al.:

Plaintiffs,
vs.

Parkview Apartments, a South
Carolina Limited Partnership;
Apartment Investment and
Management Company a/k/a AIMCO;
Insignia Financial Group, Inc.; AmReal
Corporation a/k/a and f/k/a USS
Corporation a/k/a and f/k/a U.S.
Shelter Corporation; ISTC Corporation;
N. Barton Tuck, Jr.; and John Doe, a
generic designation for a party or
parties whose true identity is unknown.

Defendants.

2005-CP-07-1990 (Beaufort) (Pinewood)
2005-CP-07-1989 (Beaufort) (Palmetto)
2005-CP-10-4229 (Charleston) (Orleans)
2005-CP-38-1131 (Orangeburg) (Roosevelt)

**CONSENT ORDER
REGARDING SCOPE OF
AUTHORITY FOR SPECIAL
MASTER**

THIS MATTER IS BEFORE THE COURT on a joint motion on behalf of all parties in these foregoing cases for the entry of an Order to alter or amend the language in this Court's Order dated December 30, 2008, appointing Gary E. Clary as Special Master. The subject Order is hereby amended to include in Special Master Clary's authority and scope of engagement the review of the documents from the BRYAN CAVE law firm and AmReal 014467-014468, 014670-014671, 014672-014681, 015481, and 015482, all of which are identified on Defendants' Privilege Log, dated January 26, 2009. The subject Order is further amended to provide that Special Master Clary is to provide this Court with a Report setting forth his findings and conclusions.

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AND IT IS SO ORDERED.

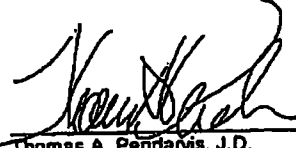

Doyal A. Early, III
Circuit Court Judge

January 31, 2009

Bamberg, South Carolina

WE SO MOVE AND CONSENT:

PENDARVIS LAW OFFICES, P.C.


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Attorneys for Plaintiffs

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(843) 722-2266 fax.

Attorneys for Defendants

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs,	)	
v.	)	Beaufort County
Parkview Apartments, a South Carolina Limited	)	C.A. No. 2003-CP-07-726
Partnership, <i>et al.</i> , Defendants.	)	
 Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs,	)	
v.	)	Orangeburg County
Roosevelt Gardens, a South Carolina Limited	)	C.A. No. 2005-CP-38-1131
Partnership, <i>et al.</i> , Defendants.	)	
 Rhonda G. Rentz, <i>et al.</i> , Plaintiffs.	)	
v.	)	Charleston County
Orleans Gardens, a South Carolina Limited	)	C.A. No. 2005-CP-10-4229
Partnership, <i>et al.</i> , Defendants.	)	
 Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs,	)	
v.	)	Beaufort County
Palmetto Apartments, a South Carolina Limited	)	C.A. No. 2005-CP-07-1989
Partnership, <i>et al.</i> , Defendants.	)	
 Carolina Management Corporation of Beaufort,	)	
<i>et al.</i> , Plaintiffs,	)	
v.	)	Beaufort County
Pinewood Park Apartments, a South Carolina	)	C.A. No. 2005-CP-07-1990
Limited Partnership, <i>et al.</i> , Defendants.	)	

ORDER REGARDING SCOPE OF AUTHORITY FOR SPECIAL MASTER

THIS MATTER COMES BEFORE THE COURT on the Plaintiffs' two motions to alter or amend, dated December 30, 2008 and January 13, 2009, in which the Plaintiffs seek to alter or amend the Court's Orders dated December 17, 2008 (Order denying Plaintiffs' Motion to Compel # 2) and December 30, 2008 (Order appointing Gary E. Clary as Special Master, as amended by the Consent Order dated January 31, 2009). This matter is also before the Court on the Defendants' motion for protective order, dated August 21, 2008.

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The Order dated December 30, 2008 (as amended by the Consent Order dated January 31, 2009), is hereby amended to include in Special Master Clary's authority and scope of engagement the review of objections made based on claims of attorney-client privilege and/or attorney work product during the depositions of attorneys Arthur L. Howson, Jr. (August 14, 2008) and Douglas G. Brown (August 15, 2008). Further, the subject Order is hereby amended to include in Special Master Clary's authority and scope of engagement the review of appropriate limitations, if any, based on claims of attorney-client privilege and/or attorney work product, on the scope of any future depositions of attorneys that represented the Limited Partnerships in and between 1999 and 2001. The subject Order is further amended to provide that Special Master Clary is to provide this Court with a Report setting forth his findings and conclusions.

IT IS SO ORDERED

This 9 day of April, 2009.

Bamberg, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

1 STATE OF SOUTH CAROLINA
 2 CIRCUIT COURT
 3
 4 LAURANCE H. DAVIS, JR., et al, Plaintiff,
 -vs- Orangeburg County
 5 ROOSEVELT GARDENS, a South Carolina 05-CP-38-1131
 Limited Partnership, et al, Defendant.
 6
 7 RHODA G. RENTZ et al, Plaintiff,
 -vs- Charleston County
 8 ORLEANS GARDENS, a South Carolina 05-CP-10-4229
 Limited Partnership, et al, Defendant.
 9
 10 LAURANCE H. DAVIS, JR., et al, Plaintiff,
 -vs- Beaufort County
 11 PALMETTO APARTMENTS, a South Carolina 05-CP-07-1989
 Limited Partnership, et al, Defendant.
 12
 13 LAURANCE H. DAVIS, JR., et al, Plaintiff,
 -vs- Beaufort County
 14 PARKVIEW APARTMENTS, a South Carolina 03-CP-07-726
 Limited Partnership, et al, Defendant.
 15
 16 CAROLINA MANAGEMENT COMPANY, et al,
 Plaintiff,
 -vs- Beaufort County
 17 PINWOOD PARK APARTMENTS, et al, 05-CP-07-1990
 Defendant.
 18
 19 Heard on Monday, August 24, 2009
 Aiken, South Carolina
 20
 21 BEFORE:
 THE HONORABLE DOYET A. EARLY, II
 22
 23
 24 Cheri L. Young, RPR
 Circuit Court Reporter
 P O Box 1154
 25 Aiken, SC 29802-1154

EXHIBIT 27

1 APPEARANCES:

2 Counsel on Behalf of the Plaintiffs:

3 Thomas A. Pendarvis, Esq.

4 Joel D. Bailey, Esq.

5 Counsel on Behalf of the Defendants:

6 Ellis M. Johnston, II, Esq.

7 Calvin T. Vick, Jr., Esq.

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1 THE COURT: I've never heard that you can file a
2 59, Rule 59 motion in response to a ruling on a Rule 59
3 motion. You got any law that says I can do that?

4 MR. BAILEY: Evan versus Department of
5 Transportation.

6 THE COURT: I know that one right off the top of
7 my head, Mr. Bailey.

8 MR. BAILEY: That permits it in certain
9 circumstances. We think this falls within it.

10 We really think, Judge, quite frankly, it's
11 something that the Court really ought to consider because
12 we really need -- we're at a point it seems to me when you
13 got lawyers filing these kinds of motions, somebody needs
14 to step back, take a real hard look at this thing and
15 let's just see if there's some way that all of this can be
16 avoided.

17 That may be something that can be addressed in a
18 59 motion.

19 THE COURT: You want me to change my prior
20 order?

21 MR. BAILEY: Yes, sir. I think it should be
22 changed.

23 THE COURT: On what basis?

24 MR. BAILEY: The basis that we had previously told
25 Your Honor. That is, number one, that the authority to

1 alter or amend the findings and conclusions of a special
2 master apply only to the appellate courts, not to the
3 circuit courts. So it's a usurpation of jurisdiction
4 under that rule.

5 The second basis, Your Honor, is that that
6 particular order will significantly change the mode of
7 trial and trial preparation and we think --

8 THE COURT: Mr. Bailey, you don't like it because
9 it's opened up wide open the issue of the statute of
10 limitations.

11 MR. BAILEY: That's certainly one reason, Judge.
12 And quite frankly --

13 THE COURT: And that's a viable defense but I
14 think anything that's a viable defense that you're
15 entitled to look at stuff that's relevant.

16 MR. BAILEY: But that's not the way you opened it
17 up, Judge. You didn't open it up because it's a viable
18 defense. You opened it up on the theory that we waived
19 it, that we waived any claim of attorney-client privilege
20 by filing the lawsuit. That's what your order says,
21 Judge.

22 THE COURT: You can take it to Columbia. Do
23 whatever you want to do with it, Mr. Bailey. I'm moving
24 forward.

25 I don't know of any -- y'all -- I suggested using

1 Judge Clary. Y'all agreed to do that. You went up
2 there. Neither one of you liked his ruling. Both of you
3 filed 59-E's. I ruled on that. Now you don't like that.

4 So go to Columbia if you don't like it. I don't
5 know what else to tell you to do. My patience is -- I
6 gave y'all -- is this the same hearing I gave y'all a
7 three-hour hearing the other night --

8 MR. JOHNSTON: Yes, Your Honor.

9 THE COURT: -- in Barnwell?

10 MR. BAILEY: If it's any consolation, Judge, I've
11 been involved since 2000.

12 THE COURT: Well, there's no consolation on this.

13 MR. BAILEY: My patience gets a little frayed at
14 times, too.

15 THE COURT: I understand.

16 MR. JOHNSTON: Your Honor.

17 THE COURT: Anything else?

18 MR. BAILEY: I would point out, Judge, that the
19 order also materially changes the duty of a fiduciary in
20 this state.

21 That's another reason that, quite frankly,
22 they're looking considerably at advice of other counsel.
23 So for those reasons --

24 THE COURT: What am I supposed to? Just sit
25 around and wait until they decide what they're going to

1 are not compliant with the order. And it's -- I've just
2 never heard in all my 35 years that you can do a 59 motion
3 on an order that was a result of a 59 motion. I just
4 don't know where that's coming from.

5 In all due respect to Mr. Bailey, he and I go
6 back a long way, and it's certainly not anything personal
7 to me and him, but there's no way for this case to be
8 tried in January and it's going to be tried without the
9 discovery being there.

10 So I'm going to take it under advisement. I'm
11 going to let you two talk and I'm going to send an e-mail
12 tomorrow and the e-mail very well could be that my order
13 is, as drastic as it may be is that I will dismiss the
14 action for failure to comply. I'll give them X. amount of
15 days to comply with it to remedy that.

16 I'd rather not do that but I'm backed into a
17 corner

18 MR. JOHNSTON: I understand. The startling thing
19 to me is this discovery dispute is controlling whether
20 this case will get tried when. I mean, we had the trial
21 date set for May or a tentative one set for May and we
22 couldn't do it because of discovery.

23 Now the Plaintiffs are controlling the trial
24 date, once again. And it is -- just puts us in a heck of
25 a mess. We've got -- I mean, if this thing's going to be

1 tried in January --

2 THE COURT: It's going to be tried in January. I
3 don't have any choice, unless it's dismissed.

4 MR. JOHNSTON: Good reason to dismiss it. My
5 client isn't going to like me very much.

6 THE COURT: In all due respect to you and
7 Mr. Pendarvis, I just got out of a lengthy trial with
8 Thomas. He knows I try to be fair to everybody. I am
9 fair to everybody. I even try to be, but I need you to
10 report to your clients that I'm taking this under
11 advisement this afternoon with strong leans towards
12 dismissing the action for them failing to comply.

13 And if they want to take that chance and go to
14 Columbia that I'm wrong on what I did, that's the chance
15 they can take. Or they can comply with my discovery order
16 and let's move forward and try the case straight up on the
17 facts.

18 Y'all are certainly in a position to be ready to
19 go. You've been living with the thing for a long time.

20 MR. BAILEY: We were ready to go, Your Honor,
21 until these latest rulings. And, quite frankly, they
22 changed everything. They may well require counsel to be
23 out of the case and testifying.

24 The latest order, quite frankly, and I'm sure
25 Your Honor doesn't realize the implications, but the

1 implications are far reaching even beyond this case. I
2 mean, they go to the very substantive issues of law in
3 this state relating to attorney-client privilege and duty
4 of fiduciaries and things of that nature.

5 So it's not something, you know, that we take
6 lightly.

7 THE COURT: I'm not suggesting that you take it
8 lightly. I never have suggested that.

9 MR. BAILEY: Yes, sir.

10 THE COURT: I'm dealing with a case that's a
11 major, major issue. From the day I got this case, one of
12 the first things I had to do was decide a motion for
13 summary judgment on the statute problem.

14 MR. BAILEY: Yes, sir.

15 THE COURT: And that, I ruled in your favor
16 against Mr. Johnston on those that it was a factual issue.

17 MR. BAILEY: Yes, sir.

18 THE COURT: I think that they're entitled to
19 whatever documents they can to develop that defense as
20 well as you saying it was brought within the statute. If
21 my ruling creates some problems in that regards, I have to
22 live with it.

23 MR. BAILEY: But my only comment in that regard,
24 Judge, is that it's -- as I mentioned earlier it was the
25 nature of the ruling. The way the law is historically

1 between clients that set forth trial strategy, that set
2 forth mental impressions. It basically gives the defense
3 an entire game book right before the game for the opposing
4 party.

5 So that's the difficulty that I see with it.
6 It's not that they, that they raised it in a traditional
7 manner because had they done it in a traditional manner
8 the law is very clear. You know, the statute of
9 limitations defense being raised by a defendant doesn't
10 trump the attorney-client privilege.

11 But the way they did it through the back door and
12 claiming that we impliedly waived it, first of all, which
13 we dispute. There's nothing in the complaints that would
14 indicate that. But secondly, that premise has not been
15 adopted by the courts of this state.

16 So that's a whole different ball game we're
17 into. That's one of the reasons that I think if Your
18 Honor would be willing to sit back and take a longer look
19 at this thing under a 59, it might help get everything
20 resolved and avoid any considerations of review and that
21 type of thing.

22 THE COURT: Mr. Bailey, I have listened to y'all
23 for three hours the other night, way into the evening in
24 Barnwell after my court over there.

25 And I've ruled like I think it should be done

1 under the facts of this case, under the pleadings, and I'm
2 not going to go back on that. Y'all know what my
3 situation is.

4 I urge you to tell your clients that I've ruled
5 on it. I may be wrong, I may be right. But that's the
6 ruling. And if they don't want to comply with it, then
7 it's a good chance this case is going to get tossed.

8 MR. BAILEY: I understand, Your Honor. For the
9 record, Your Honor, we'd like to just go on record now and
10 just ask you pursuant to Rule 59 and/or 60, to vacate that
11 order and basically go back and take a second look at
12 these issues.

13 THE COURT: Thank you. Respectfully denied.

14 MR. BAILEY: Okay.

15 THE COURT: All right. I look to hear from you
16 gentlemen. I'm just going to issue the order. Please
17 tell your clients what's going on, and they have a right
18 to know before I do anything.

19 MR. BAILEY: Yes, sir. I just want to make sure I
20 understand your ruling. Is it your ruling that --

21 THE COURT: I'm not ruling. I'm telling you that
22 I am thinking very seriously --

23 MR. BAILEY: I understand.

24 THE COURT: -- that if they choose not to comply
25 with my order that I am going to dismiss the action. And

1 I will probably issue some type of order saying that
2 failure to comply within 30 days, not 30 days -- 15 days
3 or something of that nature will result in dismissal as a
4 sanction, and attorney's fees.

5 MR. BAILEY: All right, sir.

6 THE COURT: I'll leave attorney's fees open until
7 I decide what to do.

8 MR. JOHNSTON: All right.

9 THE COURT: Thank y'all.

10 MR. JOHNSTON: Thank you, Your Honor.

11 MR. VICK: Thank you, Judge.

12 MR. BAILEY: Thank you, Your Honor.

13 END OF PROCEEDINGS : 2:45 p.m.

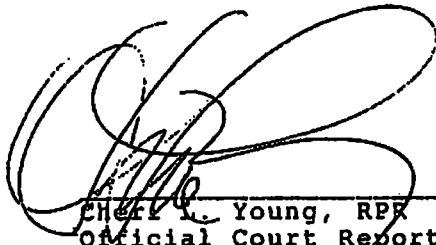
14 CERTIFICATE OF REPORTER

15 I, Cheri L. Young, Registered Professional
16 Reporter, and Official Court Reporter for the State of
17 South Carolina, do hereby certify that the foregoing
18 transcript of proceedings heard on Monday, August 24,
19 2009, in Aiken, South Carolina, was reported by me using
20 machine shorthand and realtime computer-aided translation
21 and is a true, accurate and complete transcript of the
22 proceedings had and evidence introduced in the hearing of
23 the matter.

24 I do further certify that I am neither of kin,
25 counsel nor interest to any party hereto.

1 I have hereunto set my hand this Saturday, the
2 5th day of September, 2009.

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Cheryl L. Young, RPR
Official Court Reporter

STATE OF SOUTH CAROLINA

) THE COURT OF COMMON PLEAS

LAURANCE H. DAVIS, JR., ET
AL.,

PLAINTIFFS
VS.

BEAUFORT COUNTY
2003-CP-07-726

PARKVIEW APARTMENTS, A SOUTH
CAROLINA LIMITED PARTNERSHIP,
ET AL.,

DEFENDANTS

LAURANCE H. DAVIS, JR., ET AL.,

PLAINTIFFS
VS.

ORANGEBURG COUNTY
2005-CP-38-1131

ROOSEVELT GARDENS, A SOUTH
CAROLINA LIMITED PARTNERSHIP,
ET AL.,

DEFENDANTS

RHONDA G. RENTZ, ET AL.,

PLAINTIFFS
VS.

CHARLESTON COUNTY
2005-CP-10-4229

ORLEANS GARDENS, A SOUTH
CAROLINA LIMITED PARTNERSHIP,
ET AL.,

DEFENDANTS

LAURANCE H. DAVIS, JR., ET
AL.,

PLAINTIFFS
VS.

BEAUFORT COUNTY
2005-CP-07-1989

PALMETTO APARTMENTS, A SOUTH
CAROLINA LIMITED PARTNERSHIP,
ET AL.,

DEFENDANTS

EXHIBIT

3

CAROLINA MANAGEMENT
CORPORATION OF BEAUFORT, ET
AL.,

PLAINTIFFS
VS.

BEAUFORT COUNTY
2005-CP-07-1990

PINEWOOD PARK APARTMENTS, A
SOUTH CAROLINA LIMITED
PARTNERSHIP, ET AL.,

DEFENDANTS

JULY 6, 2009
BARNWELL, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DOYET A. EARLY, III, JUDGE.

A P P E A R A N C E S:

JOEL D. BAILEY, ESQ.
THOMAS A. PENDARVIS, ESQ.
ATTORNEYS FOR THE PLAINTIFF

ELLIS M. JOHNSTON, II, ESQ.
CALVIN T. VICK, JR., ESQ.
ATTORNEYS FOR THE DEFENDANT

LISA H. DAVENPORT
OFFICIAL COURT REPORTER

1 DIVERGENCE ANALYSIS AS OPPOSED TO A FIDUCIARY DUTY
2 ANALYSIS, IT REALLY BECOMES THEN A FACTUAL ISSUE, AND IF
3 YOU ASSUMED THAT THE LEGAL APPROACH IS CORRECT, THEN IT
4 BECOMES A FACTUAL ISSUE, AND OUR POSITION ON THIS POINT,
5 JUDGE, IS THAT IT'S FACTUALLY INACCURATE TO SAY THAT THE
6 INTEREST OF THE LIMITED PARTNERS AND THE GENERAL PARTNERS
7 HAD DIVERGED AS OF SEPTEMBER TO THE POINT WHERE THE
8 PRIVILEGE SHOULD NOT ATTACH, IF YOU CAN.

9 THE COURT: WHAT IS YOUR CUT-OFF DATE? WHAT DO YOU
10 ALLEGE FACTUALLY TO BE THE POINT OF DIVERGENCE?

11 MR. BAILEY: IF YOU'LL BEAR WITH ME, I'LL GET TO
12 THAT, JUDGE.

13 THE COURT: I WILL.

14 MR. BAILEY: MY FIRST POINT WAS THAT THE DATE
15 SELECTED BY JUDGE CLARY WAS NOT ACCURATE. WE DON'T THINK
16 IT TOOK PLACE UNTIL THE EARLIEST UNTIL THE SUMMER OF THE
17 NEXT YEAR AND MORE THAN LIKELY IN 2002. THAT'S THE SHORT
18 ANSWER TO YOUR QUESTION. I CAN ADDRESS WHY LATER.

19 TAKING THE SEPTEMBER 14 DATE THAT JUDGE CLARY LOOKED
20 AT, THE REASON THAT THAT DATE WAS CHOSEN IS BECAUSE THERE
21 WAS A MEETING OF THE VARIOUS LIMITED PARTNERSHIPS THAT WAS
22 HELD IN BEAUFORT ON THAT DATE. NOW, THE GOOD NEWS ABOUT
23 ALL OF THAT IS THAT WE HAVE A TRANSCRIPT OF THAT
24 MEETING -- THAT VERBATIM TRANSCRIPT, A COURT-REPORTER
25 TRANSCRIPT -- AND THERE WAS A SECOND MEETING THAT WAS HELD

1 IN OCTOBER. THERE IS ALSO A TRANSCRIPT OF THAT MEETING.
2 SO, FROM A FACTUAL STANDPOINT YOU DON'T HAVE TO SAY, WELL,
3 BAILEY SAYS THIS OR ELLIS SAYS THAT. YOU'VE GOT THE
4 ACTUAL TRANSCRIPT TO SEE WHAT ACTUALLY WAS SAID AND WHAT
5 TOOK PLACE.

6 RATHER THAN GO THROUGH THE TRANSCRIPT WHAT WE'VE DONE
7 IS SELECTED PORTIONS OF THAT TRANSCRIPT THAT WE THINK
8 ILLUSTRATE OUR POINT. WE'LL TRY TO RUN THROUGH QUICKLY
9 FOR YOU IN THE FORM OF A POWER POINT. IT MAY BE EASIER
10 THAN FUMBLING THROUGH PAGES, IF YOU DON'T MIND.

11 THE SEPTEMBER MEETING WAS CALLED SOMETIME AFTER SOME
12 OF THE LIMITED PARTNERS HAD RETAINED ME TO TRY TO FIND
13 OUT -- BASICALLY, INVESTIGATE AND FIND OUT WHAT WAS THE
14 STATUS OF THE NOTE THAT WAS DUE TO THE LIMITED PARTNERSHIP
15 AND WHAT, IF ANYTHING, WAS BEING DONE TO COLLECT THAT NOTE
16 AND OR TO OBTAIN THE COLLATERAL THAT WOULD BE ASSOCIATED
17 WITH THAT NOTE. THE LIMITEDS HAD BEEN SORT OF AT A
18 POSITION WHERE THEY WERE NOT ABLE TO GET ALL THE
19 INFORMATION THEY THOUGHT THEY NEEDED IN ORDER TO EVALUATE
20 THEIR POSITION FROM THE GENERAL PARTNERS KEEPING IN MIND,
21 ONCE AGAIN, A LOT OF THESE THINGS WERE DOCUMENTS THAT THEY
22 NEEDED TO LOOK AT WERE 25 OR 30 YEARS OLD THAT THEY DIDN'T
23 HAVE.

24 SO, THEY WERE ASKING, BASICALLY, FOR THE DOCUMENTS.
25 THE GENERAL PARTNER, SOMEWHAT UNDERSTANDABLY, WAS NOT ABLE

1 TO JUST GRAB, YOU KNOW, 30 YEARS WORTH OF DOCUMENTS AND
2 THEY WERE HAVING TO LOOK FOR SOME STUFF. SO, THE LIMITED
3 PARTNERS BECAME A LITTLE FRUSTRATED AND THEY ASKED ME TO
4 SEE WHAT WE COULD DO. I WAS UNABLE, AND, QUITE CANDIDLY,
5 WHEN IT CAME TO ME MY POSITION WAS, I DON'T KNOW WHAT
6 HAPPENED 20 YEARS AGO, 15 YEARS AGO, 10 YEARS AGO. WE'VE
7 GOT TO GET THE DOCUMENTS BEFORE I CAN GIVE YOU ANY ADVICE.
8 SO, MY INITIAL ROLE WAS TO CONTACT THE GENERAL PARTNER,
9 TRY TO GET THE INFORMATION IF WE COULD.

10 SHORT OF BEING ABLE TO GET ALL OF THAT, WHAT WE ENDED
11 UP DOING WAS CALLING AN INFORMATIONAL MEETING, BASICALLY,
12 OF THE VARIOUS LIMITED PARTNERSHIPS TO SEE WHAT, IF
13 ANYTHING, COULD BE DONE. ONE OF THE PURPOSES WAS TO TRY
14 TO GET THIS INFORMATION. ANOTHER ONE WAS TO DETERMINE
15 WHETHER OR NOT THE GENERAL PARTNERS WERE INTERESTED IN
16 PURSUING THESE CLAIMS AGAINST THE DEBTOR, AND, IF NOT,
17 THEN WHAT, IF ANYTHING, COULD BE DONE ABOUT REPLACING THEM
18 WITH SOMEBODY WHO MIGHT WANT TO BE MORE AGGRESSIVE IN
19 COLLECTING THE PARTNERSHIP ASSET.

20 GIVEN THAT BACKGROUND, WE HAD THE MEETING IN
21 SEPTEMBER. GEORGE BUCHANAN WHO IS AN OFFICER OF AIMCO
22 CAME DOWN DO TO THE MEETING IN BEAUFORT AND, BASICALLY,
23 WAS THERE TO TRY TO ANSWER WHATEVER QUESTIONS WE HAD TO
24 PROVIDE AND WHATEVER INFORMATION THAT WE NEEDED.

25 SO, I AM GOING TO TRY TO TAKE YOU THROUGH. THESE ARE

1 COPIES. DO YOU WANT TO LOOK AT THE TRANSCRIPT OR LOOK ON
2 HERE?

3 THE COURT: HOWEVER YOU WANT TO DO IT.

4 MR. BAILEY: I HAVE THE ACTUAL TRANSCRIPT AVAILABLE.

5 THE COURT: THIS IS A SEPTEMBER 14, 2000 MEETING.

6 THAT'S SORT OF THE MAGIC DATE WITH JUDGE CLARY?

7 MR. BAILEY: YES, IT IS, AND THIS IS THE WAY THE
8 MEETING SORT OF STARTED OUT, AND I POINTED OUT FOR THE
9 RECORD THAT I REPRESENTED THOSE PARTNERSHIPS THAT WERE
10 NAMED AT THAT TIME WHICH WERE THE FIVE LIMITED
11 PARTNERSHIPS THAT WE ARE NOW INVOLVED IN, AND I POINTED
12 OUT, JUDGE, AT THAT POINT IN TIME THE LIMITED PARTNERS
13 WERE DUE AND THE PARTNERSHIPS WERE DUE A SUM OF MONEY
14 THROUGH THESE NOTES THAT WERE DUE AND THAT SINCE THEY HAD
15 NOT BEEN PAID THAT AS YOU CAN SEE HERE WE SAY WE HAVE
16 REQUESTED A MEETING WITH THE GENERAL PARTNERS TO GET SOME
17 INFORMATION ABOUT THE STATE OF THESE NOTES AND OTHER
18 MATTERS INVOLVING THE LIMITED PARTNERSHIPS.

19 SO, THE OVERALL PRIMARY PURPOSE OF THIS MEETING WAS
20 AN INFORMATION-SEEKING INFORMATIONAL MEETING. THE NEXT
21 ITEM WHICH IS ALL -- ALL OF THOSE ARE, BY THE WAY, JUDGE,
22 JUST SIMPLY PAGES OF THE TRANSCRIPT I'M GOING TO GO TO,
23 AND, AS WE SAID, WITH REGARD TO MR. BUCHANAN WE'D LIKE TO
24 HAVE THE GENERAL PARTNERS ANSWER THE QUESTION TO SEE IF WE
25 CAN FIND OUT SOME INFORMATION ABOUT WHERE WE STAND WITH

1 THE NOTES AND THE VARIOUS PARTNERSHIP AFFAIRS. THEN I
2 POINT OUT THAT WE'RE ALSO LOOKING AT THE FEASIBILITY AND
3 THE ECONOMY OF GOING FORWARD WITH A SORT OF GENERAL
4 QUESTION AND ANSWER SESSION TO WHICH MR. BUCHANAN AGREED.

5 SO, OUR PURPOSE AT THAT TIME IS WE WERE JUST GOING TO
6 ASK HIM QUESTIONS AND LET HIM ANSWER IT, AND THAT'S THE
7 WAY IT WAS GOING TO TAKE PLACE. SO, FROM WHAT YOU'LL SEE
8 FROM NOW IS A Q & A TYPE OF SITUATION. SO, ONE OF THE
9 THINGS WE WANTED TO KNOW IS WHETHER THERE HAD BEEN ANY
10 ATTEMPT TO PRESERVE THE ASSETS. HE WAS NOT FAMILIAR WITH
11 THAT. I ASKED HIM WHETHER OR NOT THERE HAD BEEN ANY TPA'S
12 FILED. HE DIDN'T KNOW.

13 WHAT YOU'LL SEE WHEN WE GO THROUGH THIS, JUDGE, IS,
14 BASICALLY, WHAT HAPPENED IS AT THIS MEETING MR. BUCHANAN
15 JUST SIMPLY DID NOT KNOW THE ANSWER TO A LOT OF THE
16 QUESTIONS THAT WE WERE ASKING, AND IT BECAME APPARENT
17 TOWARDS THE END OF THE MEETING THAT THE BEST COURSE TO
18 TAKE AT THAT POINT IN TIME WAS TO CONVENE A SECOND MEETING
19 AND GET SOME PEOPLE IN WHO ACTUALLY HAD ANSWERS TO THE
20 QUESTIONS, BUT HE SAYS -- IN THIS NEXT SLIDE HE SAYS HE'S
21 TALKING WITH A GUY NAMED PAT FOYE.

22 NOW, PAY FOYE WAS ALSO AN OFFICER WITH AIMCO AND
23 MR. FOYE SAID HE'D BE WILLING TO SIT DOWN AND MEET WITH
24 YOU AND THE PARTNERS IN GREENVILLE IN A FORMAL
25 PROPERLY-CALLED MEETING AND DISCUSS WHATEVER ALTERNATIVES

1 THAT THE LIMITEDS WOULD LIKE TO FOLLOW AND MR. FOYE
2 APPARENTLY HAD BEEN UNABLE TO ATTEND THAT DAY AS
3 MR. BUCHANAN POINTS OUT. THERE WAS A LITTLE PROBLEM WITH
4 HIM. THE KEY WORDS HERE IS THAT THEY WANTED TO HAVE A
5 SECOND MEETING TO DISCUSS WHATEVER ALTERNATIVES THE
6 LIMITEDS WOULD LIKE TO FOLLOW.

7 NOW, THAT IS NOT A POINT OF DIVERGENCE. THAT'S A
8 POINT OF CONVERGENCE. AT THAT POINT IN TIME IT'S PRETTY
9 CLEAR FROM THE RECORD WE'RE ON THE SAME -- WE'RE ON THE
10 SAME PROGRAM. AT LEAST WE THOUGHT SO. WE'RE ON THE SAME
11 PROGRAM. THEY WANT TO GET TOGETHER WITH US AND LET'S SEE
12 WHAT IT IS THAT THE LIMITEDS WANT TO DO. LET'S SEE IF WE
13 CAN GET TOGETHER AND ADOPT A COMMON MUTUAL COURSE OF
14 ACTION.

15 NOW, THE NEXT QUESTION IS, DO YOU THINK THERE WOULD
16 BE ANY BENEFIT AT THIS TIME IN SUING THE PURCHASERS IN
17 ORDER TO REGAIN THESE PROPERTIES ULTIMATELY? THE
18 PURCHASORS MEANING BOSTON FINANCIAL. AGAIN, MR. BUCHANAN
19 SAYS, I DON'T KNOW. HE SAYS, POTENTIALLY, IT DEPENDS --
20 AND HE GOES INTO A NUMBER OF THINGS -- LONG-TERM GOALS OF
21 THE PARTNERS AS A GROUP, WHAT THEY WANT TO DO, INTERESTED
22 IN RECAPITALIZING, AND HE GOES ON AND ON, BUT, YOU KNOW,
23 HE SAYS IT POINTS OUT THAT THE GENERAL PARTNERS REALLY
24 HAVE ONLY A 3 PERCENT INTEREST IN IT, BUT AT THE SAME TIME
25 THAT IS THEIR INTEREST. SO, OBVIOUSLY, THEY ARE IN THE

1 SAME BOAT WE ARE, ALBEIT TO A LESSER EXTENT, AND HE USES
2 THE SAME TERM. WE'RE IN THE SAME SHOES AS THE LIMITEDS.
3 THE ONLY DIFFERENCE IS WE HAVE TO TRY AND MAKE DECISIONS
4 THAT WILL AFFECT THE COLLECTIBILITY OF THE NOTES AND HOW
5 DO WE GO ABOUT DOING IT.

6 THAT'S FINE. WE HAVE NO PROBLEM WITH THAT. THAT'S
7 WHAT WE WANTED TO KNOW: ARE WE GOING TO GO AFTER THEM?
8 CAN WE COLLECT THEM? IF WE CAN COLLECT THEM, FINE. IF WE
9 CAN'T, CAN WE GET SOME OF THE COLLATERAL BACK? SO, AS HE
10 POINTS OUT, WE'RE IN THE SAME SHOES. WE'RE ALL IN THE
11 SAME BOAT AT THAT POINT IN TIME.

12 I ASKED HIM THEN IF IT WOULD HELP IF WE COULD GET THE
13 INFORMATION. HE AGAIN SAYS HE DOESN'T KNOW, DOESN'T HAVE
14 ANY ANSWERS, BUT HE KNOWS WHERE TO GO TO GET THEM, AND
15 THAT'S WHEN WE MADE THE DECISION THAT WE WOULD, BASICALLY,
16 HAVE A SECOND MEETING, AND AS YOU CAN SEE ACCORDING TO THE
17 TRANSCRIPT I THANK HIM AT THE BEGINNING FOR GIVING US THE
18 INFORMATION HE WAS ABLE TO AND TOLD HIM THAT IT WAS PRETTY
19 OBVIOUS WE DIDN'T HAVE ACCESS TO SOME OF THE STUFF WE
20 NEEDED -- THE INFORMATION AND RECORDS -- AND I PROPOSED
21 THAT WE RECESS IT AND THAT WE, YOU KNOW, RECONVENE IT
22 LATER IN THE FALL AND THAT, YOU KNOW, IN THE MEANTIME WE
23 COULD HOPEFULLY GET SOME OF THE INFORMATION TOGETHER SO WE
24 COULD ALL TRY TO COME TO A CONCLUSION ON THAT, AND THEN I
25 SAID IF YOU COULD HAVE THE RECORDS AVAILABLE FOR US TO

1 LOOK AT AND HAVE PEOPLE THERE WHO WOULD ANSWER THE
2 QUESTIONS -- AND WE HAD MENTIONED MR. TUCK AND MR. FOYE OR
3 MR. GERARD -- I SAID, YOU KNOW, GIVEN THAT, THEN WE SHOULD
4 HAVE ENOUGH INFORMATION THAT WE COULD SATISFY OUR CONCERNS
5 IN THE CASE.

6 SO, BASICALLY, THE WAY WE HAD IT AT THAT POINT IN
7 TIME I ASKED HIM, YOU KNOW, DOES THAT -- IS THAT THE
8 AGREEMENT? HE SAID, NO, HE DIDN'T HAVE A PROBLEM WITH
9 THAT. HE SAID IT SOUNDED REASONABLE TO HIM. SO, THAT
10 GETS US TO THE OCTOBER MEETING.

11 SO, WHEN YOU LOOK AT THE SEPTEMBER --

12 THE COURT: THAT LAST -- WHEN YOU ADJOURNED THAT'S ON
13 PAGE 54 ON ONE TRANSCRIPT. HOW MANY PAGES?

14 MR. BAILEY: THERE IS A FEW MORE PAGES AFTER IT, BUT
15 IT'S, BASICALLY, CONFIRMING ALL OF THAT.

16 THE COURT: SO ABOUT 60 PAGES?

17 MR. BAILEY: SIXTY-FOUR TOTAL AND YOU CAN --

18 BASICALLY, I MEAN, THERE IS THINGS IN IT LIKE GEORGE
19 BUCHANAN SAYS, I'LL STAY IN CONTACT WITH YOU AND MAKE SURE
20 WE CAN COME UP WITH A MUTUALLY AGREED-UPON DATE AND TIME,
21 CHECKING WITH PAT FOYE'S SCHEDULE. THERE IS ABOUT 10
22 PAGES OF THAT. THE ESSENCE OF IT IS WHAT WE AGREED TO DO
23 IS JUST RECESS THAT MEETING, CALL ANOTHER MEETING.
24 ACCORDING TO MR. BUCHANAN HE FELT LIKE THE MEETING SHOULD
25 BE CALLED BY THE GENERAL PARTNERS. IT SHOULD ALL BE DONE

1 OCTOBER 24 MEETING, JUDGE, AND AS YOU CAN SEE THERE AGAIN
2 I'VE KIND OF REFERRED TO THESE MEETINGS AS MAYBE ONE OF
3 THE FEW TRUE KUMBAYA TIMES THAT WE HAD THE WITH THE
4 GENERALS. I THOUGHT AT BOTH OF THESE MEETINGS THAT WE
5 WERE ALL ON THE SAME PAGE. WE POINT OUT AT THE BEGINNING
6 THAT WHEN WE WERE AT THE MEETING IN BEAUFORT HE WAS
7 UNABLE -- HE ACKNOWLEDGED HE WAS UNABLE TO ANSWER SOME OF
8 THE QUESTIONS AND THAT MAYBE SOME THESE OTHER PEOPLE COULD
9 AND HE POINTED OUT THAT PAY FOYE -- HE IS REFERRING TO PAT
10 FOYE THERE -- HAS INFORMATION MORE THAN HE DID AND THAT HE
11 WOULD BE ATTENDING THIS MEETING AND SO FORTH AND WHAT THE
12 THOUGHT PROCESSES WERE.

13 SO, WHAT WE THEN DECIDED TO DO BECAUSE PAT WASN'T
14 THERE INITIALLY WAS TO TALK TO MR. TUCK AND WHAT WE ENDED
15 UP DOING WAS SORT OF DIVIDING IT INTO TWO AREAS AT THIS
16 MEETING, JUDGE. ONE AREA WAS FOR MR. TUCK WHO HAD BEEN IN
17 IT FROM THE INCEPTION TO SORT OF GIVE US A HISTORICAL
18 BACKGROUND BECAUSE, AS I SAID, SOME OF THE PEOPLE WHO WERE
19 THERE WERE CHILDREN OF THE ORIGINAL PARTIES. THEY DIDN'T
20 KNOW WHAT HAD GONE ON. THEY WERE, YOU KNOW -- IT WAS JUST
21 AN IDEA THAT WE NEEDED TO GET EVERYBODY EDUCATED INCLUDING
22 MYSELF TO FIND OUT WHAT ALL HAD HAPPENED. IN ORDER TO
23 KNOW WHERE YOU'RE GOING, YOU GOT TO KNOW WHERE YOU ARE.
24 IN ORDER TO KNOW YOU ARE, YOU GOT TO KNOW WHERE YOU'VE
25 BEEN. SO, THAT WAS KIND OF WHERE WE WERE.

1 SO, MR. TUCK WAS, BASICALLY, GOING TO TELL US THE
2 HISTORY AND WHAT WAS THE ORIGINAL THINKING AND THE
3 RATIONALE BEHIND THE ORIGINAL PARTNERSHIP WHICH HE DID.
4 HE WENT THROUGH SOME LONG DISSERTATION AND TOLD US ALL
5 THAT AND AS I SAID HERE TO FIND OUT HOW WE GOT HERE AND
6 THEN WHERE WE'RE GOING, AND MR. FOYE SAYS SURE.

7 SO, THEN MR. FOYE SAYS -- HE TELLS US THAT THERE
8 REALLY ARE THREE OPTIONS IS THE WAY THAT IT WAS BEING
9 VIEWED, AND HE -- AS YOU CAN SEE HERE, HE SAYS, WE'RE
10 WILLING TO TAKE INPUT FROM YOU AND YOUR CLIENTS AS TO
11 WHICH OF THEM THEY INTENDED TO PURSUE. SO, IT WASN'T AT
12 THIS POINT IN TIME A MY-WAY-OR-THE-HIGHWAY MEETING BY ANY
13 MEANS BY THE GENERAL PARTNERS. IN FACT, THEY WERE TELLING
14 US THAT, LOOK, WE WANT INPUT FROM YOU GUYS. WE WANT TO
15 COME TO A MUTUAL DECISION AS TO HOW TO PROCEED AGAINST
16 THIS THING, AND LET'S TALK ABOUT WHAT OPTIONS ARE
17 AVAILABLE, AND THEN LET'S TRY TO SELECT A COURSE OF
18 ACTION.

19 SO, WHAT HE SAYS HERE IS HE STARTS TALKING AND HE
20 SAYS THEY HAD ALREADY DONE A COUPLE OF THINGS TO BRING US
21 UP TO DATE. HE TALKS ABOUT A GUY NAME GARY HEDIGER WHO
22 SAYS HE BUYS NOTES LIKE THIS AND HE SAYS THEY HAD BEEN
23 TALKING TO HIM FOR A WHILE AND HE SAYS THAT THE PROCESS
24 WAS GOING A LITTLE SLOWER, BUT, BASICALLY, HE SAYS THAT
25 THAT'S WHAT HE IS GETTING INTO IS THAT THAT'S ONE

1 OPTION -- MAYBE HE WOULD JUST BUY THE NOTE FROM US FOR
2 SOME SORT OF VALUE.

3 THEN HE SAYS THAT SINCE THEY HAVE A SMALL OWNERSHIP
4 IN IT THAT WE ARE WILLING TO ALLOW THE MAJORITY
5 NOTEHOLDERS WHICH WOULD BE THE LIMITEDS TO DETERMINE OR
6 INFLUENCE BECAUSE IT'S ULTIMATELY THE GENERAL PARTNERS'
7 CALL THAT WE WOULD BE GUIDED BY THE DESIRES OF THE
8 MAJORITY NOTEHOLDERS INCLUDING THE CHOICE TO INSTITUTE
9 LEGAL ACTION, THE CHOICE OF COUNSEL, THE HIRING OF AN
10 APPRAISER AND SO FORTH.

11 SO, ONCE AGAIN, AS LATE AS OCTOBER WE'RE NOT ON A
12 DIVERGING METHOD. WE'RE ON A CONVERGING. THEY'RE SAYING
13 WE'RE ALL UNDER THE SAME TENT. YOU GUYS -- WE'RE GOING TO
14 MUTUALLY DECIDE CHOICE OF COUNSEL OR APPRAISERS, WHATEVER
15 WE NEED. YOU GUYS ARE INVOLVED IN THE THOUGHT PROCESS.
16 HE STARTED TALKING ABOUT POTENTIAL BUYERS AND POTENTIAL
17 PEOPLE WHO MIGHT BE INTERESTED AND HE POINTS OUT THAT A
18 LOCAL CHARLESTON OPERATOR MAY BE BELOW OUR RADAR SCREEN
19 WHO MAY HAVE AN INTEREST IN BUYING IT AND WE'RE OPEN TO
20 EXPLORING THAT.

21 SO, HE COMES DOWN TO -- HE SAYS THAT HE TALKED TO --
22 THIS IS MR. TUCK. HE SAID HE TALKED TO LAWRENCE ABOUT
23 TRYING TO SIT DOWN WITH THIS GUY MR. HEDIGER AND SEE IF
24 THERE IS ANYTHING TO DO WITH THAT AND THEN HE POINTS OUT
25 THAT MR. HEDIGER HAD A CONTRACT TO BUY THE PROPERTIES FOR

1 A DOLLAR PLUS THE MORTGAGE WHICH WAS A LITTLE REVELATION,
2 BUT AT THAT POINT IN TIME IT WAS A MATTER OF DEALING WITH
3 MR. HEDIGER SINCE HE, APPARENTLY, HAD A CONTRACT TO SEE IF
4 THERE WAS SOME SORT OF JOINT VENTURE THAT WE COULD WORK
5 OUT WITH HIM OR WHETHER HE WAS INTERESTED IN BUYING THE
6 NOTES, FINDING A LOCAL PURCHASER OR SOMEBODY ON THE LOCAL
7 LEVEL. HE MENTIONED THE CHARLESTON AREA. IT COULD HAVE
8 BEEN ANY AREA LOCALLY FOR ANY OF THESE PROPERTIES BECAUSE
9 WHAT REALLY WAS TAKING PLACE IS --

10 THE COURT: GIVE ME FIVE MINUTES. I GOT A CONFERENCE
11 CALL. IT WON'T TAKE BUT FIVE MINUTES.

12 (WHEREUPON, A BREAK WAS TAKEN.)

13 THE COURT: ALL RIGHT. THANK YOU, GENTLEMEN.

14 MR. BAILEY: BASICALLY, AS YOU CAN SEE EVEN AS LATE
15 AS OCTOBER 24 --

16 THE COURT: OCTOBER 24.

17 MR. BAILEY: -- WE'RE STILL TALKING ABOUT GETTING ON
18 BOARD TOGETHER AND FIGURING OUT VARIOUS WAYS AND DIFFERENT
19 AVENUES TO LOOK AT. HE SAYS THAT THEY ARE -- ONE OF THE
20 THINGS THEY'RE GOING TO DO MR. FOYE SAYS IS THEY HAD
21 BEFORE WE CAN MAKE ANY DECISION WE NEED TO LOOK AT THE
22 REGULATORY AGREEMENT AND SEE WHAT REGULATORY AGREEMENTS
23 MIGHT HAVE BEEN IN EFFECT AT THE TIME. THEY TALKED ABOUT
24 \$40,000 IN ADDITION TO THE REGULATORY AGREEMENT.

25 JUDGE, I AM NOT SURE THAT YOU'RE AWARE OF THE FACT

1 THAT EACH OF THESE UNITS ALSO HAD WHAT THEY CALLED
2 RESIDUAL FUNDS THAT WERE KEPT. HE MENTIONS THAT ONE OF
3 THEM IS \$43,000 IN CASH. SO, WE HAD TO LOOK AT THE
4 REGULATORY AGREEMENT. WE HAD TO LOOK AT WHETHER OR NOT
5 THERE WAS CASH AVAILABLE IN THESE THINGS WHEN WE TOOK THEM
6 BACK. THERE WERE A NUMBER OF THINGS WE WERE DISCUSSING
7 THAT HAD TO TAKE A LOOK AT AND HE MADE THE SUGGESTION EVEN
8 THEN ABOUT HIRING THE LOCAL APPRAISERS AND HAVING THE
9 PROPERTIES APPRAISED AND ALL OF THAT SORT OF STUFF.

10 SO, THAT WAS ONE OF THE THINGS BEING CONSIDERED AND
11 WE WERE GOING TO GET BACK IN AND I MADE THE POINT THAT I
12 THINK HIS IDEA WAS A GOOD ONE -- FIND OUT ABOUT THE
13 REGULATORY AGREEMENTS AND HE SAYS THEY WOULD GET BACK WITH
14 US ON THAT. TRY TO COME UP WITH A BUYER OR SOME OTHER
15 BUYERS BESIDES MR. HEDIGER PERHAPS. TALK WITH HIM ABOUT
16 IT AND SEE WHAT HE SAYS IF HE IS INTERESTED, BUT LET'S SEE
17 WHETHER THERE ARE ANY LOCAL PEOPLE OUT THERE. SO, ONCE
18 AGAIN, WE'RE ON THE SAME SHEET HERE. WE'RE ALL EXPLORING
19 THESE VARIOUS OPTIONS.

20 HE TALKED ABOUT THE DIFFERENT APARTMENTS AND HE
21 MENTIONS LINCOLN IN HERE AS WELL. THEY WERE NOT REALLY
22 PRESENT AT THE SEPTEMBER MEETING BUT WERE AT BY THE TIME
23 WE HAD THE OCTOBER MEETING, AND I MADE THE POINT THAT, YOU
24 KNOW, I DIDN'T -- I THINK I SAID I DON'T SEE ANY NEED IN
25 GOING THROUGH THE SAME THING WITH THE OTHERS BECAUSE WHAT

1 HAD HAPPENED IS WHEN WE STARTED OUT WITH THE MEETING ON
2 ONE PARTNERSHIP AND THEN WE'RE GOING TO GO TO THE NEXT
3 ONE, SINCE WE'RE TALKING ALL OF THEM, BASICALLY, AT THE
4 TIME THAT THERE IS NO NEED TO HAVE THE SAME THINGS SAID.
5 SO, BASICALLY, WE KIND OF JUST DEALT WITH IT IN ONE
6 MEETING.

7 SO, THEN I JUST WANTED TO POINT OUT WHAT THE
8 UNDERSTANDING WAS AND THAT THERE WERE REALLY THREE
9 POTENTIAL OPTIONS. ONE WAS TO SELL THE NOTE BASED ON WHAT
10 MR. FOYE WAS TELLING US, ONE TO SELL THE PARTNERSHIP, AND
11 THE OTHER TO PURSUE AN ACTION AGAINST THE BOSTON FINANCIAL
12 CROWD TO TRY TO COLLECT THE DEBT, AND I SAID SO -- BUT IN
13 ALL CASES THAT WE HAD AN AGREEMENT THAT WE WERE GOING TO
14 AT LEAST EXPLORE THESE POSSIBILITIES AND THEY SAID
15 ABSOLUTELY. WE'RE ON THE SAME PAGE. WE'RE NOT DIVERGING.
16 WE'RE AT A -- THIS IS OUR KUMBAYA MOMENT.

17 I SAID IF WE DROP BACK TO THE OTHER OPTIONS; THAT IS,
18 FOR SOMEBODY TO PURCHASE THE NOTE AND THEN I SAID THE ONLY
19 PROSPECT FROM WHAT MR. FOYE SAID OF SOMEBODY DOING THAT
20 WOULD BE HEDIGER. THEN I ASKED ABOUT WHETHER HE HAD SHOWN
21 ANY INTEREST AND THEY SAID THAT HE HAD SHOWN AN INTEREST
22 IN PINWOOD ONLY, BUT HE SAID THEY WERE GOING TO PRESENT
23 ALL OF THEM TO THEM. SO, ONCE AGAIN, WE'RE IN AGREEMENT
24 THAT THEY SHOULD GO FORWARD AND TRY TO DO THAT.

25 HE SAYS THAT TO THE EXTENT THAT ANY HELP TO THE

1 PARTNERS WOULD GIVE US IN IDENTIFYING THE PROSPECTS WOULD
2 BE A BENEFIT TO US. HE IS ASKING FOR INPUT FOR THE
3 PARTNERS BECAUSE IT IS GOING TO BE A JOINT EFFORT TO TRY
4 TO DO THESE THINGS. WHAT HE WAS POINTING OUT THERE,
5 JUDGE, AND THIS HAS BECOME KIND OF AN ISSUE WITH IT LATER
6 ON I THINK IS TRUE IS THAT THERE REALLY WAS NO REAL MARKET
7 FOR THESE THINGS IN THE BIG NATIONAL MARKET. PEOPLE AT
8 THAT TIME, THEY WERE LOOKING FOR THE 6000 UNIT THINGS IN
9 CHICAGO, NOT THE 60 UNIT THINGS IN SOUTH CAROLINA.

10 SO, THEY'RE WERE SAYING IF WE'RE GOING TO FIND
11 SOMEBODY, IT'S GOING TO HAVE TO PROBABLY BE SOMEBODY LOCAL
12 AND THAT'S ONE OF THE THINGS WE'RE GOING TO COOPERATE IN
13 LOOKING FOR, AND THEN, FRANKLY, I POINTED OUT ON THERE
14 THAT IN DISCUSSING THE OPTIONS MY QUESTION WAS IS THAT WE
15 REALLY WON'T KNOW UNTIL WE GET THE PROPERTIES APPRAISED
16 AND EVALUATED TO SEE WHETHER IT'S GOING TO BE, YOU KNOW,
17 FEASIBLE TO TAKE IT BACK OR WHETHER TO CONTINUE THEM AS
18 HUD PROPERTIES. WE DIDN'T KNOW WHETHER TO CONVERT THEM
19 AND TRY TO MAKE THEM CONVENTIONAL OR WHATEVER. SO, WE
20 WERE ALL TALKING ABOUT THAT, AND AS MR. BUCHANAN SAYS, YOU
21 KNOW, THAT'S RIGHT. AGAIN, WE'RE ON THE SAME SONG SHEET.

22 THEN MR. BUCHANAN POINTED OUT THAT -- HE SAYS, WE
23 CAN'T AGREE EXACTLY THE CONCLUSION AND THE FINDINGS. HE
24 SAYS, WE'VE AGREED ON A PROCESS WHEREBY WE WILL GO ABOUT
25 CERTAIN STEPS TO GATHER FACTS AND THEN COME BACK OR

1 COMMUNICATE THAT IN WRITING AND SAY THESE ARE THE FACTS AS
2 WE UNDERSTAND THEM AND IT MAY LEAD US TO A CONCLUSION OR
3 IT MAY LEAD US TO A DIFFERENT QUANDARY. HE SAID, I DON'T
4 KNOW. I SAID, WELL, I UNDERSTAND THAT, BUT YOU'RE GOING
5 TO PROVIDE US WITH THE FINANCIAL DATA CONCERNING THESE
6 THINGS, PARTNERSHIPS SO WE CAN DETERMINE WHETHER OR NOT
7 THERE MAY BE ANY OTHER ASSETS OR ANY OTHER -- IN ORDER TO
8 MAKE THESE DECISIONS, AND HE SAID, RIGHT.

9 SO, ONCE AGAIN, PROCESS-WISE WE'RE ON THE SAME PAGE,
10 AND HE SAYS, WE WILL NOT SELL ANYTHING AND THE NOTES AND
11 SO FORTH, AND I TOLD HIM HE HAD OUR APPROVAL TO DO THAT IF
12 HE COULD GET FACE VALUE OF THEM, BUT HE SAYS, NO, WE'RE
13 NOT GOING TO SELL ANYTHING WITHOUT COMING TO YOU GUYS
14 FIRST. THAT'S OUR AGREEMENT. SO, WE'RE ON THE SAME PAGE.
15 WE'RE GOING TO BE WORKING TOGETHER TO TRY TO GET SOMETHING
16 ACCOMPLISHED TO EITHER SELL THE NOTE, SELL THE
17 PARTNERSHIP, OR COLLECT WHAT WAS DUE TO THE PARTNERSHIP.

18 HE THEN POINTED OUT THAT THEY WERE, BASICALLY, TRYING
19 TO DECIDE THEIR OPTIONS -- WHICH OPTION TO CHOOSE AND THEY
20 WERE STILL GATHERING INFORMATION. JUST LIKE WE WERE
21 TRYING TO GET IT, THEY WERE STILL GATHERING INFORMATION
22 WHETHER TO SELL IT. SO, HE SAYS, IT IS REALLY SELL OR
23 FORECLOSE AND HOLD OR FORECLOSE AND DO SOMETHING ELSE, BUT
24 TO GET TO DECIDE WHICH OPTION IS THE MOST VIABLE WE MUST
25 GATHER SOME MORE INFORMATION WITH REGARD TO REGULATORY

1 AGREEMENTS, PROPERTY VALUES. ONCE WE HAVE THAT
2 INFORMATION, THEN WE GET TO SIT BACK DOWN THROUGH THE
3 LETTERS AND CONFERENCE CALLS OR WHATEVER AND COME TO SOME
4 CONSENSUS OR OPINION, AND THAT'S, BASICALLY, WHAT WE WERE
5 TALKING ABOUT DOING BY THE END OF THAT MEETING.

6 WE NEEDED TO ALL GET MORE INFORMATION, SIT BACK DOWN
7 TOGETHER, AND LET'S DECIDE WHERE ARE WE GOING WITH THIS
8 THING. ONE OF THE THINGS THAT MR. FOYE SAYS -- YOU CAN
9 SEE THERE, HE SAYS, WE DON'T THINK SITTING ON OUR HANDS IS
10 A KIND OF STRATEGY. WE'RE GOING TO DO SOMETHING. SO, OUR
11 INITIAL CONCERN UP UNTIL THAT POINT WAS WHETHER OR NOT
12 ANYTHING WAS GOING TO BE DONE. HE ASSURED US THAT THEY
13 WERE GOING TO DO SOMETHING.

14 INCLUDED IN THE THINGS THAT THEY WERE GOING TO DO IS
15 THEY WERE GOING TO GO HIRE COUNSEL, AND, IN FACT, THEY DID
16 HIRE COUNSEL SHORTLY AFTER THAT MEETING. THE FACT OF THE
17 MATTER IS THAT THEY HAD ALREADY HIRED COUNSEL PRIOR TO
18 THAT MEETING THAT WE HAD NOT BECOME AWARE OF UNTIL THE
19 MEETING. THEY HAD HIRED THE BRYAN CAVE LAW FIRM AND THEY
20 HAD ACTUALLY WRITTEN -- A MAN NAMED LEVINE HAD WRITTEN A
21 LETTER BACK IN THE SPRING OF 2000 TO BOSTON FINANCIAL
22 ABOUT TRYING TO COLLECT SOME OF THESE THINGS.

23 AFTER THE MEETING THEY HIRED SOME OTHER COUNSEL.
24 THEY HIRED MR. HOWSON AND HE WROTE LETTERS AND THEY
25 COPIED. THEY TOLD US ABOUT HIM. HE COPIED US ON THE

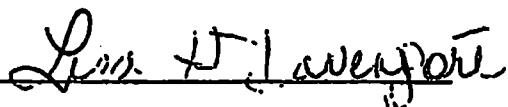
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN }

I, LISA H. DAVENPORT, OFFICIAL COURT REPORTER FOR THE
SECOND JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE COURT OF COMMON PLEAS FOR AIKEN
COUNTY, SOUTH CAROLINA, ON THE 6TH DAY OF JULY, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

SEPTEMBER 17, 2009



LISA H. DAVENPORT, COURT REPORTER

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

2010 APR -9 PM 3:32
Laurance H. Davis, Jr., *et al.*, Plaintiffs,)
v.) Beaufort County
Parkview Apartments, a South Carolina Limited) C.A. No. 2003-CP-07-726
Partnership, *et al.*, Defendants.)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,)
v.) Orangeburg County
Roosevelt Gardens, a South Carolina Limited) C.A. No. 2005-CP-38-1131
Partnership, *et al.*, Defendants.)

Rhonda G. Rentz, *et al.*, Plaintiffs,)
v.) Charleston County
Orleans Gardens, a South Carolina Limited) C.A. No. 2005-CP-10-4229
Partnership, *et al.*, Defendants.)

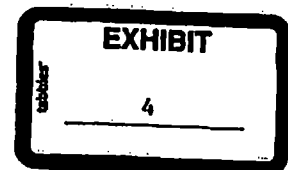
Laurance H. Davis, Jr., *et al.*, Plaintiffs,)
v.) Beaufort County
Palmetto Apartments, a South Carolina Limited) C.A. No. 2005-CP-07-1989
Partnership, *et al.*, Defendants.)

Carolina Management Corporation of Beaufort,)
et al., Plaintiffs,)
v.) Beaufort County
Pinewood Park Apartments, a South Carolina) C.A. No. 2005-CP-07-1990
Limited Partnership, *et al.*, Defendants.)

**ORDER GRANTING DEFENDANTS' TWO MOTIONS FOR SANCTIONS, FINDING
PLAINTIFFS IN CONTEMPT OF COURT, AND DISMISSING THE ABOVE-
CAPTIONED ACTIONS AS SANCTIONS FOR PLAINTIFFS' CONTEMPT**

This matter comes before the Court on Defendants' two Motions for Sanctions, dated July 24, 2009 and August 10, 2009. For the reasons set forth below, the Court grants Defendants' Motions. The Court finds and hereby declares that Plaintiffs in each of the above-captioned actions are in contempt of court as a result of their willful failure to comply with the Court's Order dated July 28, 2009 (which amended the Court's Order dated June 2, 2009), and

DAT #1



discovery orders, the Court was compelled to continue the scheduled trial of these cases from the January 19, 2010 trial term, by Order dated January 4, 2010.²

On January 14, 2010, the Court held a second hearing on the record concerning Defendants' Motions for Sanctions, which was the fourth hearing on the record concerning Plaintiffs' discovery deficiencies.³ At the hearing, Plaintiffs once again represented to the Court that their latest responses (i.e., Second Supplemental Responses to Discovery Requests) fully complied with the General Discovery Order. Contrary to such representation, the Court found that the Plaintiffs had not complied with the General Discovery Order, but granted Plaintiffs' request for an additional ten (10) days to fully comply. On January 25, 2010, Plaintiffs in the Parkview case served their Third Supplemental Responses to the Discovery Requests, supplementing their answers to Interrogatory Nos. 6, 18 and 19. None of the other Plaintiffs provided any supplemental response. Defendants responded by filing and serving their Second Supplemental Memorandum in Support of Motion for Sanctions Re: General Discovery Order, identifying the continuing failure of all Plaintiffs, including the Parkview Plaintiffs, to comply with the General Discovery Order.

The Court finds that, despite the numerous opportunities afforded to Plaintiffs over the last year, the Plaintiffs have persistently failed to comply with the General Discovery Order and have failed to provide any legitimate excuse for their non-compliance. Plaintiffs' continuous non-compliance is well documented in the Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009 (pp. 2-6, 12-13), Supplemental Memorandum in

² The Court took no further action concerning the Motions for Sanctions between September and December, because the Plaintiffs filed a petition in the Supreme Court (denied), and a Notice of Appeal in the Court of Appeals (dismissed), seeking immediate review of the Privilege Discovery Order. The Court of Appeals issued remittitur on December 17, 2009.

³ In addition to the hearings on the record, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies during several telephone conference calls and in-person meetings over the last 14 months.

D&E #8

8

face sanctions for their failure to comply. At the August 24, 2009 hearing, the Court informed the parties' counsel that it was taking the matter under advisement, but warned that, if Plaintiffs' failure to comply with the Court's Order continued, the Court would likely dismiss the lawsuits pursuant to Rule 37(b), SCRPC. Plaintiffs made an oral motion for reconsideration of the Privilege Discovery Order at the conclusion of the hearing, which this Court denied.

On August 27, 2009, during a conference call among the parties' attorneys and the Court, the Court informed the parties' counsel that it intended to grant Defendants' Second Motion for Sanctions and dismiss the actions, but such sanctions would be vacated if Plaintiffs complied with the Privilege Discovery Order within twenty-five (25) days. The Court instructed Defendants' counsel to submit a proposed order and instructed Plaintiffs' counsel to immediately inform each of the Plaintiffs of the Court's intention to sign such an order in the next week. During a September 2, 2009 conference call with the parties' attorneys, the Court informed Plaintiffs' counsel that it would sign the aforementioned sanctions order that day. However, hours after the conference call concluded, and before the Court issued the written sanctions order, the Court was informed that Plaintiffs had filed that morning a Petition in the Supreme Court of South Carolina, seeking a Writ of Prohibition and/or a Writ of Certiorari concerning the Privilege Discovery Order and/or the sanctions order. The Court informed the parties that, in light of Plaintiffs' Petition to the Supreme Court, it would hold in abeyance the signing of the sanctions order. On September 10, 2009, Plaintiffs filed a Notice of Appeal to the Court of Appeals of South Carolina, seeking immediate review of the Privilege Discovery Order. On October 6, 2009, Plaintiffs sent a letter to Chief Justice Toal, requesting that these cases be transferred from the Undersigned to the Business Court. Chief Justice Toal denied Plaintiffs' request for a transfer on November 3, 2009. The Supreme Court denied Plaintiffs Petition on

DAE#15

November 19, 2009. The Court of Appeals dismissed Plaintiffs' appeal as premature on December 2, 2009, and issued remittitur on December 17, 2009.

On January 14, 2010, the Court held a second hearing on Defendants' Motions for Sanctions, which was the fourth hearing concerning Plaintiffs' discovery deficiencies.⁸ Plaintiffs' counsel acknowledged that Plaintiffs still had not complied with the Privilege Discovery Order, and the Court instructed Defendants' counsel to revise the proposed order granting Defendants' Second Motion for Sanctions to account for the passage of time since the Court first stated it would sign the sanctions order. The Court also advised Plaintiffs' counsel that they would have ten (10) days from the date Defendants' counsel submitted the revised proposed order to respond to the proposed order. Defendants' counsel submitted the revised proposed order, with a copy to Plaintiffs' counsel, and Plaintiffs' counsel responded within the ten (10) day period, sending a letter to the Court (copied to Defendants' counsel) with alternative proposed orders and filing and serving Motions for Relief from July 28, 2009 Order Amending Court's Order Dated June 2, 2009 in each of the above-captioned cases. Plaintiffs' motions purported to be motions made under Rule 60(b), SCRCP.

The above findings are based upon evidence appearing in the record of these cases, including the various motions, memoranda and transcripts of the hearings identified on pp. 3-4 of this Order.

DISCUSSION OF APPLICABLE LAW AND CONCLUSIONS

1. Civil Contempt

At this time, Plaintiffs have given the Court no reason to believe that they intend to

⁸ In addition to the hearings on the record on December 9, 2008, July 6, 2009, August 24, 2009 and January 14, 2010, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies on several other occasions, including conference calls and meetings off the record.

DAE #16

16

for reconsideration on August 24, 2009, which the Court denied). Further, Plaintiffs' motions are clearly untimely under Rule 59(e), which requires that such a motion be served "not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRPC. Plaintiffs' motions are inappropriate and are, therefore, denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT: both of the Defendants' Motions for Sanctions are hereby GRANTED; the Court finds and hereby declares that the Plaintiffs in the above-captioned actions are in CONTEMPT of court; each of the above-captioned actions is hereby DISMISSED WITH PREJUDICE as sanctions for Plaintiffs' contempt, and pursuant to Rule 37(b)(2), SCRPC, subject to the terms stated herein; and the Court finds and hereby declares that Defendants are entitled to an award of reasonable expenses, including attorneys' fees, incurred in connection with their Motion to Compel Discovery and each of their two Motions for Sanctions, and that a subsequent order shall be entered as to the amount of the award. Plaintiffs may purge the sanctions of dismissal with prejudice by showing the Court that they have fully complied with the Court's Orders dated March 3, 2009 and July 28, 2009 within twenty-five (25) calendar days of the date of this Order (i.e., the date this Order is signed, set forth below). Further, Plaintiffs' Motions for Relief from July 28, 2009 Order, which purport to be motions under Rule 60(b), SCRPC, but are actually untimely motions for reconsideration, are DENIED.

IT IS SO ORDERED.

This 12th day of April, 2010.
Orken, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

Vick, Ted

From: John Nichols [jsnichols@bntdlaw.com]
Sent: Wednesday, September 02, 2009 1:46 PM
To: dearlylc@sccourts.org; dearlyj@sccourts.org
Cc: baileylawfirm@charter.net; tpendarvis@pendarvislaw.com; Vick, Ted; Johnston, Ellis; Blake Hewitt; John Nichols; Ashleigh Hair
Subject: Davis, et al. v Parkview Apartments, etc., et al.

September 2, 2009

Honorable Doyet A. Early, III
Judge
Second Judicial Circuit

RE: *Davis, et al. v Parkview Apartments, etc., et al.*
Case No. 2003-CP-07-726
Case No. 2005-CP-38-1131
Case No. 2005-CP-4229
Case No. 2005-CP-07-1989
Case No. 2005-CP-07-1990

Dear Judge Early:

Blake Hewitt and I have been retained to assist the plaintiffs in these matters in seeking appellate review of the discovery orders you have entered as well as your ruling that you intend to sign an order dismissing these actions. I am writing to inform you that today we filed a Petition with the Supreme Court of South Carolina seeking a Writ of Prohibition directed at your orders as well as a Petition in the Court's Original Jurisdiction seeking issuance of a common law writ of certiorari to review those orders. It is my understanding you held a conference call today advising trial counsel that you intended to sign and enter the draft order provided to you by Mr. Vick and Mr. Johnston. I felt it best to advise you of the steps we have taken on behalf of the plaintiffs in the Supreme Court. We will serve these documents upon counsel for the defendants as well as the Clerk of Court, and will provide a copy to you.

If you need any additional information please let me know.

Regards,

John S. Nichols
Bluestein Nichols Thompson & Delgado, LLC
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599
(803) 779-8995 fax
jsnichols@bntdlaw.com



7/28/2011

Vick, Ted

From: Blake Hewitt [bhewitt@BNTDlaw.com]
Sent: Wednesday, September 02, 2009 2:53 PM
To: Vick, Ted; Johnston, Ellis
Cc: Thomas A. Pendarvis; baileylawfirm@charter.net
Subject: RE: Davis, et al. v Parkview Apartments, etc., et al.
Attachments: Petition for Writ of Prohibition or Cert .pdf

Ted:

Here you go. Please do not hesitate to contact John or me if we can be of any additional assistance.

-Blake Hewitt

From: Vick, Ted [mailto:tvick@hsblawfirm.com]
Sent: Wednesday, September 02, 2009 2:49 PM
To: John Nichols; dearlyc@sccourts.org; dearlyj@sccourts.org
Cc: baileylawfirm@charter.net; tendarvis@pendarvislaw.com; Johnston, Ellis; Blake Hewitt; Ashleigh Hair
Subject: RE: Davis, et al. v Parkview Apartments, etc., et al.

Mr. Nichols,

Would you please send us an electronic copy of everything you have filed via reply to this e-mail? Thank you for your courtesy.

Ted Vick
Haynsworth Sinkler Boyd, P.A.
75 Beattie Place, Eleventh Floor (29601)
P.O. Box 2048 (29602-2048)
Greenville, South Carolina
Telephone 864-240-3324
Facsimile 864-240-3336
tvick@hsblawfirm.com

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To: dearlyc@sccourts.org; dearlyj@sccourts.org
Cc: baileylawfirm@charter.net; tendarvis@pendarvislaw.com; Vick, Ted; Johnston, Ellis; Blake Hewitt; John Nichols; Ashleigh Hair
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7/28/2011

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If you need any additional information please let me know.

Regards,

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jsnichols@bntdlaw.com

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IRS CIRCULAR 230 NOTICE: Internal Revenue Service regulations generally provide that, for the purpose of avoiding federal tax penalties, a taxpayer may rely only on formal written advice meeting specific requirements. Any tax advice in this message, or in any attachment to this message, does not meet those requirements. Accordingly, any such tax advice was not intended or written to be used, and it cannot be used, for the purpose of avoiding federal tax penalties that may be imposed on you or for the purpose of promoting, marketing or recommending to another party any tax-related matters. mmcorp

7/28/2011

THE STATE OF SOUTH CAROLINA
In the Supreme Court

ORIGINAL JURISDICTION

Ex Parte:

Laurance H. Davis, Jr., et al., ... Petitioners,

In Re:

Laurance H. Davis, Jr., et al., ... Plaintiffs,

v.

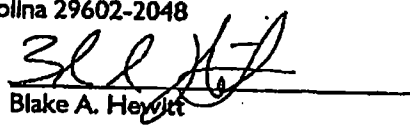
Parkview Apartments,
et al., ... Defendants,

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below, he served counsel for the Defendants, with a copy of the Petition for the Writ of Prohibition or Alternatively for Writ of Certiorari by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

C. Theodore Vick, Jr., Esquire
Ellis M. Johnston, II, Esquire
Haynsworth Sinkler Boyd, P.A.
Post Office Box 2048
Greenville, South Carolina 29602-2048

September 2, 2009
Columbia, South Carolina


Blake A. Hewitt

Vick, Ted

From: Blake Hewitt [bhewitt@BNTDlaw.com]
Sent: Thursday, September 17, 2009 4:59 PM
To: Early, Doyet A. Law Clerk (Britton All); Vick, Ted; Johnston, Ellis
Cc: Thomas A. Pendarvis; Joel D. Bailey
Subject: FW: Parkview Cases
Attachments: Motion to Hold Appeal in Abeyance.pdf; Notice of Appeal.pdf

Britton:

If you would please relay this correspondence to Judge Early, I would be most grateful. Thank you for your assistance.

-Blake Hewitt

Judge Early:

Ted Vick kindly forwarded to me your correspondence related to the January dates set aside in Beaufort to try these cases. I am an attorney in Columbia and along with John Nichols, I am assisting the plaintiffs with their filings in the Supreme Court.

As a housekeeping matter, please allow me to inform you that we filed a notice of appeal in the Court of Appeals with respect to the order issued 7/28/09. The petition filed in the Supreme Court referenced our plans in this respect, and we filed the notice last Thursday. Along with the notice, we filed a motion to hold the direct appeal in abeyance while the petition in the Supreme Court is pending. I apologize for not sending you a courtesy copy of these filings immediately after they were filed. We will not repeat the oversight.

Without speaking out-of-turn, I believe your assessment that a January trial is doubtful will prove to be accurate; particularly in light of these recent filings.

A copy of the filings in the Court of Appeals are attached in the event you want to review them. Please do not hesitate to contact me if you think I may be of any assistance, and I will of course be glad to furnish you with courtesy copies of any additional filings in these matters should you desire them.

Blake Hewitt
Bluestein Nichols Thompson & Delgado, LLC

From: Vick, Ted [mailto:tvick@hsblawfirm.com]
Sent: Thursday, September 17, 2009 4:10 PM
To: Blake Hewitt
Subject: FW: Parkview Cases

Blake,

Please see the e-mail below from Judge Early to Judge Kinard regarding trial dates. It appears that Judge Early does not yet know about the Notice of Appeal filed in the Court of Appeals. Given his concern about not wasting the January jury trial term in Beaufort, it might be helpful to him if you would notify him of the Notice of Appeal. If you think it best that we notify him, please let me know. Thank you.

7/28/2011

Ted

From: Early, Doyet A. Law Clerk (Britton All) [mailto:dearlylc@sccourts.org]
Sent: Thursday, September 17, 2009 3:40 PM
To: 'ekinardj@sccourt.org'
Cc: 'coccop@bcgov.net'; Bailey, J.D., Joel D.; Thomas A. Pendarvis; Johnston, Ellis; Vick, Ted; Craddock, Hugh; Buckner, Perry M.; Talley, Motte; Mullen, Carmen T.; Kinard, J. Ernest Jr. Law Clerk (Julia Miller)
Subject: Parkview Cases

RE: Parkview Cases

Judge Kinard, please see the below correspondence from Judge Early:

Ernest,

The Chief assigned the above cases to me some time ago (my apologies, I'm in Aiken and do not know the CA numbers). I had scheduled the first of the five cases to be tried in Beaufort 1-18-10 and 1-25-10 (the third time I have set this case). Court Administration has assigned the above weeks to me in Beaufort to try the first case. Recently I signed a discovery order requiring the production of certain records in the Plaintiff's possession. Plaintiff has now filed a petition with the Supreme Court seeking a "Writ of Prohibition" and/or an appeal of my discovery order. Whatever the Court decides, the appeal and/or petition will probably cause another delay in this case unless they render an immediate decision. I wanted to give you advance notice of this latest development so you can make the most efficient use of those two weeks.

Thanks,

Jack

Cc: Judge Mullen
Judge Bucker
Clerk of Court – Beaufort County
Motte Talley
Parkview Attorneys
Thomas Pendarvis
Joel Bailey
Ellis Johnston
Hugh Craddock
Ted Vick

Britton All
Law Clerk to the Honorable D.A. Early, III
The Circuit Court of the 2nd Judicial Circuit
PO Box 90
Bamberg, SC 29003
Telephone: 803.245.4004
Fax: 803.245.2983
dearlylc@sccourts.org

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7/28/2011

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Vick, Ted

From: Blake Hewitt [bhewitt@BNTDlaw.com]
Sent: Monday, September 21, 2009 4:40 PM
To: Vick, Ted; Johnston, Ellis
Cc: John Nichols; Ashleigh Hair; Thomas A. Pendarvis; baileylawfirm@charter.net; Early, Doyet A. Law Clerk (Britton All)
Subject: Davis v. Parkview et al
Attachments: Reply In Support of Petition for Prohibition or Cert .pdf

Ted & Ellis:

A copy of the reply we filed today in the Supreme Court is attached to this message. I have copied Judge Early's law clerk on this message in the event their office would like a copy of the filings.

Please do not hesitate to contact me if you believe I may be of assistance in any respect. Yours truly,

Blake Hewitt
Bluestein Nichols Thompson & Delgado, LLC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., et al., Plaintiffs,)
v.)
Parkview Apartments, a South Carolina) Beaufort County
Limited Partnership, et al., Defendants.) C.A. No. 2003-CP-07-0726

Laurance H. Davis, Jr., et al., Plaintiffs,)
v.) Orangeburg County
Roosevelt Gardens, a South Carolina) C.A. No. 2005-CP-38-1131
Limited Partnership, et al., Defendants.)

Rhoda G. Rentz, et al., Plaintiffs,)
v.) Charleston County
Orleans Gardens, a South Carolina) C.A. No. 2005-CP-10-4229
Limited Partnership, et al., Defendants.)

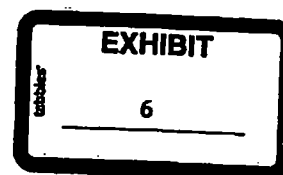
Laurance H. Davis, Jr., et al., Plaintiffs,)
v.) Beaufort County
Palmetto Apartments, a South Carolina) C.A. No. 2005-CP-07-1989
Limited Partnership, et al., Defendants.)

Carolina Management Corporation of)
Beaufort, et al., Plaintiffs,)
v.) Beaufort County
Pinewood Park Apartments, a South) C.A. No. 2005-CP-07-1990
Carolina Limited Partnership, et al.,)
Defendants.)

**PLAINTIFFS' SECOND SUPPLEMENTAL RESPONSES TO
DEFENDANTS' DISCOVERY REQUESTS TO ALL PLAINTIFFS DATED
AUGUST 28, 2008**

TO: CALVIN T. VICK, J.D., AND ELLIS M. JOHNSTON, II, J.D., ATTORNEYS FOR DEFENDANTS:

INTRODUCTION



Without waiving any objection, any such non-privileged or protected documents were previously produced in connection and association with the following discovery responses: See PLAINTIFFS' ANSWERS TO DEFENDANTS' FIRST SET OF INTERROGATORIES, dated July 14, 2005; PLAINTIFFS' RESPONSES TO DEFENDANTS' FIRST REQUEST TO PRODUCE, dated July 14, 2005; PLAINTIFFS' SUPPLEMENTAL RESPONSES TO DEFENDANTS' FIRST REQUEST TO PRODUCE dated November 6, 2007; PLAINTIFFS' SUPPLEMENTAL RESPONSES TO DEFENDANTS' FIRST REQUEST TO PRODUCE dated November 12, 2007; PLAINTIFFS' SUPPLEMENTAL DISCOVERY RESPONSES dated December 10, 2007; PLAINTIFFS' SUPPLEMENTAL DISCOVERY RESPONSES dated December 12, 2007; PLAINTIFFS' SUPPLEMENTAL DISCOVERY RESPONSES dated December 19, 2007; PLAINTIFFS' SUPPLEMENTAL DISCOVERY RESPONSES dated January 7, 2008; PLAINTIFFS' SUPPLEMENTAL RESPONSES TO DEFENDANTS' REQUEST TO PRODUCE dated March 5, 2008; or are already in the possession of Defendants or counsel for Defendants.

SUPPLEMENTAL RESPONSE: Subject to the previous stated objections, the Plaintiffs in the *Parkview Apartments* matter respond with the attached documents with Bates Nos. Davis 007134 - Davis 007192. See also, PLAINTIFFS' SUPPLEMENTAL PRIVILEGE LOG, dated January 5, 2009.

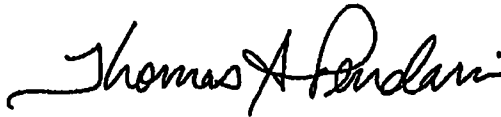
SECOND SUPPLEMENTAL RESPONSE: In addition to documents being produced herewith, Defendants are directed to any documents identified and/or produced in prior discovery responses by all parties, as well as any documents identified or produced at any deposition taken in this case or obtained via subpoena. All additional relevant non-privileged documents or information believed to be responsive to this request and which

Respectfully submitted,

Joel D. Bailey
THE BAILEY LAW FIRM, P.A.
PO Box 1437
Beaufort SC 29901-1437
843.525.6090 Tel.
843.525.6070 Fax.
baileylawfirm@charter.net

PENDARVIS LAW OFFICES, P.C.
Thomas A. Pendarvis
500 Carteret St Ste A
Beaufort SC 29902-5066
843.524.9500 Tel.
843.524.9501 Fax.
Thomas@PendarvisLaw.com

Attorneys for the Plaintiffs

A handwritten signature in black ink, reading "Thomas A. Pendarvis". The signature is fluid and cursive, with the first name "Thomas" and last name "Pendarvis" clearly legible.

Thomas A. Pendarvis, J.D. (SC Bar # 064918)

Beaufort, South Carolina

August 24, 2009

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2005-CP-07-726

Laurance H. Davis, Jr.; et al.;

Plaintiffs,

vs.

Parkview Apartments, a South Carolina
Limited Partnership; Apartment
Investment and Management Company
a/k/a AINCO; Insignia Financial Group,
Inc.; AmReal Corporation a/k/a and f/k/a
USS Corporation a/k/a and f/k/a U.S.
Shelter Corporation; ISTC Corporation;
N. Barton Tuck, Jr.; and John Doe, a
generic designation for a party or parties
whose true identity is unknown,

Defendants.

CONSOLIDATED CASES:

2005-CP-07-1990 (Beaufort) (Pinewood)
2005-CP-07-1989 (Beaufort) (Palmetto)
2005-CP-10-4229 (Charleston) (Orleans)
2005-CP-38-1131 (Orangeburg) (Roosevelt)

**DEFENDANTS' RESPONSES TO
PLAINTIFFS' DISCOVERY REQUESTS
(Dated October 5, 2007)**

**TO: PLAINTIFFS AND THEIR ATTORNEYS, JOEL D. BAILEY, ESQ. AND
THOMAS A. PENDARVIS, ESQ.**

Defendants hereby answer the Interrogatories of Plaintiffs pursuant to SCRCP 26 and 33, as
follows:

INTRODUCTION

The following responses are made without waiver of, and with preservation of:

A. All questions as to competency, relevancy, materiality, privilege, and admissibility of
each response and the subject matter thereof as evidence for any purpose in any further proceedings
in this action (including the trial of this action), and in any other action;

B. The right to object to the use of any response, or the subject matter thereof, on any
ground in any further proceedings in this action (including the trial of this action), and in any other
action;

EXHIBIT 2

EXHIBIT

7

REQUEST NO. 6: For each of the five subject apartment complexes produce all writings and recordings reflecting or making any reference to bank accounts in which the FLD reserve accounts funds were deposited and any other bank accounts reflecting assets held or otherwise owned at the end of each year for each year between 1984 to the present.

RESPONSE:

All non-privileged responsive documents in Defendants' possession, custody or control have been produced to Plaintiffs' counsel.

REQUEST NO. 7: For each of the five subject apartment complexes produce all writings and recordings reflecting or making any reference to appraisals, valuations, and attempts to appraise or value the property that took place between 1984 to the present.

RESPONSE:

All non-privileged responsive documents in Defendants' possession, custody or control have been produced to Plaintiffs' counsel.

HAYNSWORTH SINKLER BOYD, PA



Ellis M. Johnston, II, SC Bar # 3065
Jesse C. Belcher, SC Bar #621
Calvin T. Vick, SC Bar #68187
Post Office Box 2048
Greenville, South Carolina 29602
(864) 240-3200

Attorneys for Defendants

November 9, 2007
Greenville, South Carolina
DOC #609170

EXHIBIT A

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EXHIBIT C

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EXHIBIT D

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EXHIBIT E

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EXHIBIT F

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AmReal 0000568	AMREAL007291	BAO_0454
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AMREAL006990	BAO_0402	CAO_0137

EXHIBIT F

Dep. Exh. 26 (Buchanan)
Dep. Exh. 26 (Buchanan)
Dep. Exh. 27 (Buchanan)
Dep. Exh. 35 (Buchanan)
Dep. Exh. 102 (Tuck)
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BRYAN CAVE LLP

F.02/03

MEMO FROM RODNEY F. PAGE
PARTNER

TO: Anne-Christine Massullo, Esq.
Dane Narode, Esq.

DATE: October 5, 1998

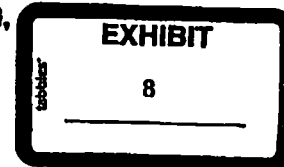
RE: Settlement Proposal

The HUD IG has demanded payment of \$4.2 million to settle proposed civil charges arising from the receipt by NHP of supervisory management fees from management companies which have contracts with partnerships in which an NHP affiliate is the general partner. In addition, the settlement demand requires that the amounts being held in escrow by AIMCO since it took over the NHP portfolio be rebated to the reserve for replacement accounts; that AIMCO agree not to receive such fees in the future; and that, as the owner, NHP agree to reduce the management fee by the amount of the fee portion paid to NHP. AIMCO countered by offering the payment of \$1.75 million, or, if the additional investigation relating to cash management issues and Buyers Access were also resolved, \$ 2 million. HUD rejected this offer and repeated its original demand.

On behalf of AIMCO, I submit the following proposal to you for resolving the supervisory management fee issue:

1. AIMCO will pay immediately the sum of \$2 million as a refund for NHP having received the supervisory management fees, without admitting that the receipt of the fees was illegal or improper.
2. The other terms demanded by HUD will be accepted as well, except that, with regard to the management fee level, NHP can only agree for itself since it is not the controlling general partner in all of the ownership entities, contrary to HUD's assumption.
3. AIMCO will agree to submit to binding arbitration before a three person panel of neutral arbitrators selected in accordance with the Administrative Dispute Resolution Act, 5 U.S.C. sec. 571, et seq., and in a proceeding conducted under that law and other applicable Alternative Dispute Resolution provisions and orders of the Federal Government, the question of whether any other payments should be made to resolve the "fee splitting" issue with respect to supervisory management fees, up to a maximum of \$4.2 million. The proceeding will determine and resolve the defenses AIMCO has asserted, i.e., that NHP had approvals for the fees it charged, and that NHP lacked the intent or willfulness to support multiple damages in any violations that occurred.
4. A settlement agreement at this time will include the limited release proposed by the IG, i.e., one which covers all civil liability for those matters which are disclosed. The scope of the agreement will exclude the other matters under review by the IG, including the Oxford transaction.

BRYAN CAVE LLP
700 THIRTEENTH STREET, N. W.
WASHINGTON, D. C. 20005-3800



DIRECT DIAL (202) 508-6002
FACSIMILE (202) 508-6200

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5. The agreement will include HUD's approval of all 2530 applications now pending and an agreement by HUD that, because AIMCO is cooperating in good faith to resolve all pending inquiries relating to NHP's practices, the pendency of any investigation by HUD into those practices will not in the future be an impediment with regard to Multifamily Participation Review Committee decisions or other programmatic decisions regarding AIMCO and its affiliates.

6. The arbitration shall be completed within 120 days, or within such longer time period requested by the IG and HUD.

7. To the extent that the Administrative Dispute Resolution Act does not resolve or define the procedures required to conduct the arbitration, the parties will proceed in good faith to discuss and agree upon those procedures.

8. In addition, AIMCO will agree that the investigation into cash management practices of NHP and dividend procedures of Buyers Access when it was owned by NHP will be subject to negotiation and mediation. If the parties have not reached a resolution within 90 days, these matters shall also be submitted to binding arbitration as outlined above.

9. Except as agreed upon by the parties, the terms of the settlement agreement and the steps taken to implement it shall be confidential.

The advantages of this settlement to both sides are these:

a.) AIMCO commits to comply with HUD policy regarding the "fee splitting" issue by not receiving supervisory management fees; its cooperation will result in the reduction of management fees paid at the approximately 50 properties in the portfolio;

b.) the procedure will result in a speedy resolution of this portion of the OIG's inquiry in a cost-efficient manner;

c.) to the extent AIMCO succeeds in asserting the defenses noted above, the outcome of this proceeding will not be a precedent in HUD/IG cases involving others in the industry; and,

d.) the resolution permits AIMCO to conduct its business without being unfairly burdened by the separate history of one of the companies it acquired, NHP, while remaining responsible for its own conduct.

I would appreciate hearing from you at your earliest convenience.

cc: Laura A. Miller, Esq.

TOTAL P.03

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MEMORANDUM

To: Members of the Multifamily Participation
Review Committee

From: Apartment Investment and Management Company
Joel P. Bondar, Exec. Vice President
and General Counsel

Re: AIMCO Compliance with HUD Inspector
General Subpoena

Date: September 16, 1998

Apartment Investment and Management Company ("AIMCO") is a real estate investment trust headquartered in Denver, Colorado which acquired the ownership of The National Housing Partnership ("NHP") and its general partner, National Corporation for Housing Partnerships ("NCHP"), in June 1997. AIMCO also acquired an interest in NHP Incorporated ("NHPI"), then the parent of NHP Management Company ("NHPMC"), in May 1997. AIMCO purchased the remaining shares of NHPI in December 1997, at which time NHPI was merged into AIMCO. NHP and NHPMC serve, respectively, as the general partner and management agent of over 400 limited partnerships, which own HUD-assisted multifamily properties.

Prior to these transactions, AIMCO's participation in government-assisted housing programs was limited to approximately ten multifamily properties with FHA-insured mortgages only. In October 1997, NHPI and others in the affordable housing industry received a subpoena from the HUD Inspector General ("IG") requesting documents relating to any so-called "fee-splitting" arrangements NHPI or its affiliates had entered into with other owners or managers of HUD-assisted properties.

As the new owners of NHP, NCHP and NHPMC, AIMCO's intent is to conduct business in full compliance with the law and HUD policy. In that spirit, AIMCO has responded candidly and quickly to any inquiries from the IG. Upon learning that certain arrangements entered into by NCHP and NHPMC during the period 1977 to 1984 with local joint venture partners were of concern to the IG and Assistant U.S. Attorney for San Francisco ("AUSA"), AIMCO's President directed that all monies received for supervisory management fees and management consulting fees since receipt of the subpoena be held in escrow and not taken into income.

Members of the Multifamily
Participation Review Committee
Page 2

We understand that the HUD Office of General Counsel ("OGC") has raised a "flag" in the 2530 system related to the IG subpoena. While AIMCO continues to negotiate in good faith with the IG and AUSA to reach a resolution of all pending issues related to NHP and NHPMC, we do not know whether an agreement will be reached prior to this Committee's consideration of AIMCO's pending 2530 applications. Notwithstanding the OGC flag, AIMCO believes its practices and history as an owner and manager of government-assisted housing is clearly distinguishable from that of other owners and managers, and therefore, it would be appropriate for the Committee to approve AIMCO's 2530 at this time. Distinguishing factors are:

- (1) AIMCO's own previous participation record has always been clear.
- (2) AIMCO itself has never initiated a fee-splitting arrangement. All practices under review by the IG and AUSA were put in place by NHP and NHP Management Company.
- (3) Unlike other situations in the industry, AIMCO has shown the IG and AUSA that significant services were provided by NHP Management Company for the fees at issue.
- (4) AIMCO has cooperated fully with the IG and AUSA in the production of documents and is making a good faith effort to resolve all issues with the government. As noted above, AIMCO has escrowed all supervisory management fees received since receipt of the subpoena.

AIMCO intends to be a good partner with the Department and has demonstrated that AIMCO makes a difference. For example the company has instituted a "properties come first policy" with respect to capital needs and vendor payables. In that regard, AIMCO held back for property repairs, capital improvements, working capital and accounts payable \$9.1 million out of a total \$17.2 million of otherwise distributable 1997 Surplus Cash from 204 HUD-assisted properties. As the largest owner and manager of HUD-assisted properties in the country, we look forward to working closely with HUD to address the needs and future of both NHP and Insignia's affordable portfolios in a comprehensive and creative way.

We respectfully request 2530 approval today.

Royal Towers - Kansas City

In fulfilling its original congressional mandate, NHP developed many properties in America's most difficult neighborhoods. NHP's experiences in Kansas City are representative of the inherent risks associated with developing and owning properties which are challenged by problems such as drug-related crime and the general decline of America's inner cities.

Royal Towers, one of the few active residential buildings in Downtown Kansas City, further represents NHP's effort to provide housing not only for those in need of assistance, but those with the greatest and most pressing needs, the elderly and disabled. Although not formally a Single Room Occupancy community, the property's unit configuration, 233 small one-bedroom units, and location in an area devoid of basic residential services, effectively mandates a resident profile limited to those elderly and disabled who would otherwise be without shelter. To support residents, shopping and social services were brought into the building. The importance of these ancillary support services to the community's success is a focal point of ownership's efforts to meet resident needs. In order to open additional funding doors for resident support programs, NHP plans to transfer ownership of Royal Towers to a non-profit entity acceptable to HUD. This will also position the property to be rehabilitated using low income housing tax credits.

In the meantime, NHP has responded to the Area Office by addressing all known ownership-related issues, including the contribution of \$183,000 to the property, and resolving long standing paperwork issues regarding the original Transfer of Physical Assets. When the Area Office expressed dissatisfaction with the management of the property, NHP Management Company stepped aside, appointing a HUD-approved local agent. Since that transfer in December 1996, NHP, as general partner, has continued to oversee improvement of the property's operations.

AIMCO - St. Louis HUD Settlement Agreement

The St. Louis field office issue a Limited Denial of Participation to NHP in June 1997 related to a property known as JVL 19. Although the LDP expired by its terms on June 24, 1998, AIMCO and the St. Louis office, with the approval of Deputy Secretary Wehrwain, have reached agreement on a Settlement Agreement, which addresses JVL 19 and certain other NHP properties in the St. Louis area.

It is expected that the Settlement Agreement will be fully executed prior to the date of the Committee's meeting and that the St. Louis office will report that all flags have been satisfactorily resolved. Attached is a copy of the Settlement Agreement, executed by AIMCO.

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES
Washington, D.C.

Before Administrative Law Judge William C. Cregar

In the Matter of:

JVL 19 Associates and
Affiliates: National Housing
Partnership, Ltd., National
Corp. For Housing Partnership,
NHP Partners, Inc., J. Roderick
Heller, Ann Torre Grant, Linda
G. Davenport, Mildred C. Banks,
Joel F. Bonder and NHP Property
Management, Inc.

HUDALJ 98-8004-DB(LDP)

Respondents.

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between JVL 19 Associates and Affiliates, The National Housing Partnership, identified in this matter as National Housing Partnership, Ltd. (collectively, "NHP"), National Corp. For Housing Partnership ("NCHP"), NHP Partners, Inc., J. Roderick Heller, Ann Torre Grant, Linda G. Davenport, Mildred C. Banks, Joel F. Bonder and NHP Property Management, Inc. (a/k/a NHP Management Company) (collectively "Respondents"), and the United States Department of Housing and Urban Development ("HUD").

WHEREAS, Respondents are, respectively, the owner, general partner of the owner, general partner of the general partner, parent of the general partner, officers of the management agent, and management agent of a previously insured HUD property known as JVL 19 Apartments ("JVL 19") which is located in St. Louis, Missouri, and NHP is the general partner and NHP Property Management, Inc. is the management agent of other HUD insured properties in St. Louis ("Related Properties"); and

WHEREAS, Apartment Investment and Management Company ("AIMCO") acquired all of the stock of the parent of NCHP and all of the limited partner interests in NHP on or about June 7, 1997, and

WHEREAS, under the terms of the FHA insured mortgage ("Mortgage") and the HUD Regulatory Agreement ("Regulatory Agreement") applicable to JVL 19, HUD is allowed to inspect JVL 19, conduct management reviews, and audit the books and records of JVL 19; and

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WHEREAS, the physical inspection and management reviews of JVL 19 are undertaken by the HUD St. Louis Area Office ("HUD St. Louis"), and HUD St. Louis caused a physical inspection of JVL 19 to take place on or about January 7-9, 1997 ("Inspection"); and

WHEREAS, as a result of the Inspection, HUD St. Louis issued a Limited Denial of Participation ("LDP") to Respondents; and

WHEREAS, Respondents have pursued an appeal of the LDP through the HUD Office of Administrative Law Judges; and

WHEREAS, Respondents and HUD St. Louis desire to settle the LDP as well as other issues which concern Respondents, JVL 19, and the Related Properties; and

NOW, THEREFORE, for and in good consideration of the terms contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Respondents and HUD agree as follows:

1. This Agreement will become effective as of the date the final signature is applied to the Settlement Agreement ("Effective Date").
2. On or within 10 business days of the Effective Date of this Agreement, AIMCO will tender to HUD the sum of \$375,000.00 ("Settlement Payment"). HUD may elect, at its sole discretion, to use the Settlement Payment in any manner it deems appropriate.
3. On or within 10 business days of the Effective Date of this Agreement, HUD St. Louis will withdraw the LDP which was issued against Respondents. The parties further agree that they will jointly advise the HUD Office of Administrative Law Judges that the LDP has been withdrawn and that Respondent's Appeal should be dismissed as moot.
4. HUD represents that it will not impose any sanction against Respondents with respect to JVL 19, or against any owner, any affiliate of any owner, or any Principal concerning JVL 15, JVL 18 and/or Murphy Blair Apartments. Notwithstanding this representation, HUD reserves the right to impose any sanction or take any other action based on (i) facts of which it or any employee, representative or agent is not actually and could not be deemed to be aware with respect to a Property as of the Effective Date of this Agreement, (ii) facts and circumstances related to criminal activity involving any Property, and (iii) facts and

circumstances occurring or coming to the attention of HUD subsequent to the Effective Date of this Agreement with respect to the Murphy Blair Apartments, provided HUD or any employee, representative or agent was not actually and could not be deemed to have been aware of such fact or circumstance prior to the Effective Date.

5. In response to any inquiry from the Previous Participation System Committee, or any similar or successor entity, HUD St. Louis will respond that HUD has reached a satisfactory resolution of any issues or defaults which may have occurred at JVL 15, JVL 18, and JVL 19 while those properties were under Respondents' ownership, management, or control, or under the ownership and control of an entity in which one or more of Respondents are the general partner of the owner, management agent, or Principal. As to Murphy Blair, HUD St. Louis' response will be based upon the then current status of that project. In response to any such inquiry, HUD St. Louis may provide to the inquiring entity a copy of this Agreement as evidence of the satisfactory resolution of any issue concerning JVL 15, JVL 18, JVL 19 and Murphy Blair.

6. As part of the consideration for this Agreement, simultaneous to the execution of this Agreement AIMCO will bring current the mortgage loan on Murphy Blair, including all late fees and default interest. Further, AIMCO will provide to HUD St. Louis a workout proposal concerning Murphy Blair within 30 days of the Effective Date, which will address Murphy Blair's long term physical needs.

7. AIMCO has caused an inspection of all properties in St. Louis in which NHP is a general partner and is the beneficiary of FHA Insurance or HUD assistance. These inspections checked the physical condition of the properties as well as management operations. AIMCO provided reports of those inspections to HUD St. Louis on or about April 3, 1998. HUD St. Louis has received and reviewed those inspection reports, and is prepared to enter into this Agreement.

8. This Agreement constitutes the entire agreement between Respondents and HUD. No party has relied on any statement or oral representation made by any other party in entering into this Agreement. Any modification or amendment to this Agreement will only be enforceable if made in writing.

9. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

10. This Agreement shall be governed by the laws of the State of Missouri and Federal Law. To the extent there is a conflict between the laws of the State of Missouri and applicable Federal Law, Federal Law shall control.

11. By execution of this Agreement, each party represents that the individual executing this Agreement on behalf of the party is authorized to do so, and has provided the other party with satisfactory evidence of such authorization.

12. Respondents agree to waive, release, and remit any and all claims against HUD that they may have had with respect to this administrative action or the issuance of the LDP dated June 24, 1997.

13. Failure of the Respondents to timely perform in accordance with the terms of this Agreement shall render the Agreement null and void.

On behalf of HUD:

By: Joy M. Miller, Director
Office of Housing - St Louis Office
United States Department of Housing
and Urban Development
1222 Spruce Street
St. Louis, MO 63103

DATE: _____

On behalf of Respondents:

By: Joel F. Bander
Joel F. Bander, Esq.
Executive Vice President and
General Counsel
AIMCO - Suite 200
1225 Eye Street, N.W.
Washington, D.C. 20005

DATE: 9/15/98

COPY

AGREEMENT AND RELEASEParties

This Agreement and Release ("Agreement") is made this 2nd day of July, 2001, (the "Effective Date of this Agreement") between and among the United States of America ("United States"); The United States Department of Housing and Urban Development ("HUD"), acting on its behalf and acting through the Department of Justice and the United States Attorney's Office for the Northern District of California; and Apartment and Investment Management Company and its affiliated entities (collectively "AIMCO"), with its principal place of business at 2000 S. Colorado Boulevard, Denver, Colorado 80222 (hereinafter jointly referred to as "the Parties"), through their undersigned counsel and/or authorized representatives.

Recitals

For purposes of this Agreement, the Parties agree to the following recital of facts:

1. The Housing and Urban Development Act of 1968 established The National Housing Partnership ("NHP") and National Corporation for Housing Partnerships ("NCHP"). These two private, for-profit entities were created to promote private investment in the development of low- and -moderate income multifamily housing properties throughout the country through joint venture partnerships with local businesses. NHP Management Company ("NHPMC"), an affiliate of NCHP and NHP, provides property management services to multifamily housing properties. For purposes of this Agreement, "affiliate" shall mean any entity or person controlling, controlled by, or under common control with AIMCO.

2. From 1977 through 1984, NHP, NCHP or NHPMC entered into approximately 110 agreements with local property management companies. Pursuant to these agreements, the property managers paid NCHP, NHP, or NHPMC a supervisory management fee.

3. Prior to 1998, NHP Incorporated ("NHPI") (as of 1986, the parent company of NHP, NCHP, and NHPMC), NHP, NCHP or NHPMC participated in several transactions in which they expanded their ownership and management of multifamily housing units.

4. In October and December 1997, the HUD Office of Inspector General began investigating NHPI and NHP for alleged statutory and regulatory violations and violations of the HUD Regulatory Agreement regarding HUD-insured and -assisted housing projects, including but not limited to requiring management companies to pay to NHP a fee as a condition of NHP awarding the management companies management contracts for projects in which NHP held a general partnership interest.

5. Findings from the HUD Office of Inspector General's investigation indicate that NHP received, among other things, payments for supervisory management fees from certain management agents who managed certain of NHP's HUD-insured and -assisted projects. The United States contends that, based on these findings, NHP's request and receipt of supervisory management fees, and other conduct, may give rise to civil liability under the False Claims Act, 31 U.S.C. §§ 3729-3733, as amended, common law, Section 421 of the Housing and Community Development Act of 1987, 12 U.S.C. § 1715z-4a, the Anti-Kickback Act of 1986, 41 U.S.C. §§ 51-58, and under administrative regulations; AIMCO and NHP contend that NHP's conduct was not contrary to law and would not give rise to any such liability.

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6. In June 1997, AIMCO acquired the ownership of NHP and NCHP. In May 1997, AIMCO acquired an interest in NHPI, then the parent of NHP Management Company. AIMCO purchased the remaining shares of NHPI in December 1997, and NHPI was merged into an AIMCO affiliate.

7. The Parties have negotiated in good faith and desire a final compromise as set forth more fully herein, without any admission or determination of liability, legal fault or responsibility.

Terms and Conditions

Accordingly, in reliance upon the representations contained herein, and in consideration of the mutual promises, covenants and obligations in this Agreement, and for good and valuable consideration receipt of which is hereby acknowledged, the Parties agree and covenant as follows:

8. Within five (5) business days following the Effective Date of this Agreement, AIMCO and NHP will pay the United States the sum of Four Million Two Hundred Thousand Dollars (\$4,200,000.00) (the "Settlement Amount"). AIMCO's payment will be made by Fedwire electronic funds transfer made payable to the "Department of Justice." Arrangements for the payment will be made through the Financial Litigation Unit, Office of the United States Attorney, Northern District of California within one (1) business day after the Effective Date of this Agreement.

9. Within thirty (30) business days following the Effective Date of this Agreement, AIMCO shall take the following measures to reduce the management fees paid on the HUD-insured and -assisted projects where NHP or an affiliate has received supervisory management

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fees to an amount commensurate with the amount of the current fee minus the amount paid as a supervisory fee (current management fee - supervisory fee). Within sixty (60) days following the Effective Date of this Agreement, AIMCO will provide documentation to the HUD Enforcement Center (or its successor) demonstrating its compliance with these measures.

- (a) For properties that AIMCO or an affiliate owns as of the Effective Date of this Agreement but for which it does not perform management services, AIMCO will propose the reduction in writing first to the management agents currently managing the properties and then to the appropriate HUD Field Offices which have jurisdiction over the projects.
- (b) For properties that AIMCO or an affiliate manages (whether owned by AIMCO or an affiliate, or by some third party) as of the Effective Date of this Agreement, AIMCO will unilaterally reduce the fee that it charges for managing these properties.

At the end of one year from the date of reduction pursuant to Paragraph 9(a) or (b), AIMCO or the management company (at properties where AIMCO owns but does not perform management services), may seek an increase in its management fees from the appropriate local HUD Field Offices with jurisdiction over the projects. This Paragraph 9 shall be effective only as long as AIMCO or an affiliate owns or manages a property subject to this Agreement. Any reduction in the management fees under Paragraphs 9(a) or (b) shall not be the basis, in whole or in part for a reduction in the level of Section 8 payments paid to properties subject to this Agreement. A list of the properties that AIMCO or an affiliate owns and/or manages as of the Effective Date of this Agreement is attached hereto as Attachment A.

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10. Upon the Effective Date of this Agreement, AIMCO agrees as follows:

- (a) Subject to Paragraph 10(b), AIMCO agrees not to, and shall not at anytime hereafter, require management companies who manage HUD-insured, HUD-assisted or HUD-held properties to remit a percentage of their respective management fees to AIMCO or any of its affiliates.
- (b) In the event the practice described in Paragraph 10(a) of this Agreement is determined not to be prohibited subsequent to the Effective Date of this Agreement, whether by legislative, regulatory or written governmental action, or by mutual written agreement between the Parties, neither anything contained in this Agreement nor any actions taken by AIMCO or any of its affiliates pursuant to this Agreement will be deemed to preclude AIMCO from thereafter engaging in or resuming such a practice. AIMCO shall provide the HUD Enforcement Center (or its successor) written notice thirty (30) days prior to its engaging in or resuming such a practice.

11. This Agreement does not cover any payments, actions, or conduct not specifically disclosed in writing (with the exception of what is commonly referred to as the NHP-Oxford transaction which closed as of December 10, 1993 [the "NHP-Oxford Transaction"], and claims related to AIMCO's participation in the Buyers Access program), prior to the Effective Date of this Agreement. The United States expressly reserves the right to take appropriate civil, administrative, or other action regarding any matter not disclosed in writing prior to the Effective Date of this Agreement.

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12. AIMCO agrees to cooperate in a timely and reasonable manner with reasonable requests for information or assistance that the United States or HUD may make in connection with other investigations concerning allegations of the splitting of fees (or similar arrangements) for goods or services provided to HUD-insured and/or -assisted properties. Such cooperation will include, but not be limited to, making employees available for interviews, depositions and/or testimony at trial, provided that reasonable notice is given regarding same. In this regard, AIMCO agrees to encourage and not interfere with requests for assistance directed by the United States or HUD to AIMCO and its affiliates, divisions, subsidiaries, and their respective predecessors, successors and assigns; and their respective current and former directors, officers, members, partners, employees and agents (collectively "the AIMCO-related Parties"). AIMCO will respond affirmatively to any subpoenas or other official process directed to it. Nothing in this paragraph shall be construed to eliminate the AIMCO-related Parties' ability to exercise their rights under the Fifth Amendment of the United States Constitution.

13. In consideration for and upon full payment of the amount referred to in Paragraph 8, the United States and the Department of Housing and Urban Development, acting through the United States Department of Justice, hereby release the AIMCO-related Parties from any civil or administrative monetary claim that the United States or HUD has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Housing and Community Development Act of 1987, 12 U.S.C. § 1715z-4a; the Anti-Kickback Act of 1986, 41 U.S.C. §§ 51-58, or any other statute or common law theories creating causes of action for civil damages or civil penalties for the claims of relief alleged in Paragraph 5, including specifically, but not limited to, claims relating to or arising from those

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matters disclosed in writing to HUD prior to the Effective Date of this Agreement in response to those certain subpoenas dated October and December, 1997. This release specifically excludes any claims related to the NHP-Oxford Transaction and/or AIMCO's participation in the Buyers Access program, and any claims for actions that were not specifically disclosed in writing to HUD prior to the Effective Date of this Agreement.

14. Should any third party seek contribution or implied indemnity arising out of the claims hereby released, the United States will not oppose any effort by AIMCO to dismiss such third party claims upon the grounds that this Agreement represents a good faith compromise of the claims hereby released.

15. Subject to the exceptions set forth in Paragraph 16 of this Agreement, and in consideration for the full and faithful performance by AIMCO of its material obligations under this Agreement, HUD agrees to refrain from instituting or maintaining any administrative claim or action seeking to debar or suspend AIMCO from, or limit AIMCO's participation in, HUD programs pursuant to 24 C.F.R. Part 24 for the conduct and matters released in Paragraph 13.

16. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement are any and all:

- (a) claims for personal or property injury or for other consequential damages arising from defective or deficient management services to the projects, including the breach of any express or implied warranty of habitability, which claims are held solely by the tenants or other third parties;
- (b) claims based on such obligations as are created by this Agreement;

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- (c) liability to the United States (or any agencies thereof) for any conduct other than that released herein;
- (d) claims by HUD relating to mismanagement of a project other than those relating to conduct released herein;
- (e) determinations or actions by HUD related to the termination or nonrenewal of Section 8 Housing Assistance Payments contracts which HUD may have with AIMCO as the owner of properties where AIMCO has not complied with Housing Quality Standards; or
- (f) claims that the United States may have under the Internal Revenue Code, Title 26 of the United States Code.

17. AIMCO has no claim against the United States or HUD for the actions of the United States or HUD in pursuing its rights and claims leading to the settlement of this matter, except for:

- (a) any claims based on such obligations as are created by this Agreement; or
- (b) any claims that AIMCO may have under the Internal Revenue Code, Title 26 of the United States Code.

18. Should either party default and fail to perform any of the obligations set forth in this Agreement, the non-defaulting party shall notify the defaulting party in writing of the default as soon as practical after the default is known to the non-defaulting party, and provide the defaulting party ten (10) business days to cure the default. In no event shall a default under this Agreement result in the rescission or modification of the releases set forth in this Agreement.

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If the defaulting party fails to cure the default, the Parties agree that suit may be filed in the United States District Court for the Northern District of California by the non-defaulting party seeking to cure the default, except as otherwise prohibited by the terms of this Agreement, including by specific performance. The Parties agree that the District Court for the Northern District of California shall have jurisdiction over any such suit and shall be the exclusive forum in which to enforce the terms of this Agreement.

19. AIMCO agrees that all costs incurred by or on behalf of it, its present or former officers, directors, agents and employees in connection with (a) the matters covered by this Agreement; (b) the Government's audit and investigation of the matters covered by this Agreement; (c) AIMCO's investigation, defense and corrective actions with respect to the matters covered by this Agreement; (d) the negotiation of this Agreement; and (e) the payments made to the United States and HUD pursuant to this Agreement, shall not be paid from project funds (as HUD uses that term); provided, however, that this does not limit AIMCO's ability to use funds identifiable as surplus cash (as HUD uses that term) or fees earned by AIMCO.

20. This Agreement is intended to be for the benefit of the United States, HUD, AIMCO and the AIMCO-related Parties, as described above, only, and by this instrument the Parties do not waive, compromise or release any claims or causes of action against any other person or entity not expressly released by this Agreement.

21. The Parties agree that the facts and circumstances underlying the negotiations leading up to this Agreement and the Agreement itself shall not be admissible for any purpose against AIMCO or its affiliates, or the AIMCO-related Parties in any action or proceeding of any

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kind, without regard to the forum or its governing rules of evidence, except to prove a default pursuant to Paragraph 18.

22. All notices given pursuant to, or relating to, this Agreement shall be forwarded by facsimile and Federal Express, next morning delivery, as follows:

(a) If to AIMCO to:

Rodney F. Page, Esq.
Bryan Cave LLP
700 Thirteenth Street, NW
Washington, D.C. 20005-3960
Fax: (202) 508-6200

and

Joel F. Bonder, Esq.
General Counsel
AIMCO
2000 S. Colorado Blvd.
Tower Two, Suite 2-1000
Denver, Colorado 80222
Fax: (303) 300-3260

(b) If to the United States or HUD to:

United States Attorney
for the Northern District of California
Civil Division
450 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
Fax: (415) 436-6748

23. In no event shall any term or provision of this Agreement, or any document executed in connection herewith, or the performance hereunder, be interpreted to effect a waiver by AIMCO and the AIMCO-related Parties of the attorney-client privilege, attorney-work product immunity or any other privilege or immunity, and all such privileges are expressly reserved by AIMCO and the AIMCO-related Parties, except to the extent that AIMCO or the

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AIMCO-related Parties subsequently, in their sole discretion, expressly and in writing waive such privileges.

24. This Agreement is executed in quadruplicate originals, and each shall be of the same force and effect at law as an original.

25. Each person who signs this Agreement in a representative capacity warrants that his or her execution of this Agreement is duly authorized, executed, delivered by and for the entity for which he or she signs.

26. This Agreement is effective when all parties have signed. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

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On Behalf of the UNITED STATES OF AMERICA:

ROBERT S. MUELLER, III
United States Attorney

Dated: 7-2-01

By: *J. Swanson*

JOANN SWANSON
Assistant United States Attorney
United States Attorney
for the Northern District of California
Civil Division
450 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
Telephone: (415) 436-6855

UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

Dated: _____

By: _____

SEAN G. CASSIDY
General Deputy Assistant Secretary for Housing
U.S. Department of Housing and
Urban Development
451 7th Street, SW
Washington, D.C. 20410-4500
Telephone: (202) 708-2601

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On Behalf of the UNITED STATES OF AMERICA:

ROBERT S. MUELLER, III
United States Attorney

Dated: _____

By: _____

JOANN SWANSON
Assistant United States Attorney
United States Attorney
for the Northern District of California
Civil Division
450 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
Telephone: (415) 436-6855

UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

Dated: _____

By: _____

SEAN G. CASSIDY
General Deputy Assistant Secretary for Housing
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451 7th Street, SW
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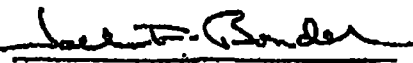
-12-

On Behalf of APARTMENT INVESTMENT AND MANAGEMENT COMPANY:

APARTMENT INVESTMENT AND
MANAGEMENT COMPANY

Dated: 6/14/01

By:



JOEL F. BONDER
General Counsel
ARMCO
2000 S. Colorado Blvd.
Tower Two, Suite 2-1000
Denver, CO 80222
Tel: (303) 691-4379

COUNSEL FOR APARTMENT INVESTMENT
AND MANAGEMENT COMPANY

By:



RODNEY F. PACE
Bryan Cave LLP
700 Thirteenth Street, NW
Washington, D.C. 20005-3960
Telephone: (202) 508-6000

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Exhibit A

Paragraph 9(a) Properties

1. Clemens Place A
2. Duke Manor L
3. Genesee Gardens L
4. Howard Robbins Tower L
5. Lee Hy Manor A
6. Miami Manor A
7. Park View Arms I A
8. Park View Arms II A
9. Pittsfield A
10. South Mountain Terrace L
11. Talladega Downs A
12. Tiffany L
13. Townview Towers A
14. Twin Gables A
15. Two Bridges A
16. Virata Heritage A

Paragraph 9(b) Properties

1. Academy Gardens L
2. Athens Arms L
3. Baidley Park A - 38761 - NO - 519109 - NY LK A
4. Brunsdick House A - 38247 - YES - 111106
5. Buckingham Hall L
6. Carolinas L
7. Columbus Square I L
8. Columbus Square II L
9. Elmwood Apartments A 40916 - YES (01) - 111101
10. Hatillo A 38763 - YES - 121104
11. Hollows A 38451 - NO - 4116199
12. Las Americas L
13. Laurelwood A 40981 - YES 101103
14. Minnear A 38768 - YES (01) 111101
15. Montblanc Housing L
16. Oakwood Apts. A 38370 - YES 911105
17. Parkview A 41144 - NO - 111111, one currency
18. Pershing Waterman I L
19. Pershing Waterman III L
20. Pershing Waterman IV L
21. Pershing Waterman V L
22. Pershing Waterman VI L
23. St. Nicholas Manor L
24. Winter Gardens A 42579 - YES (Mgt + Agmt) 2

JIA, SC-LOST



U.S. Department of Justice
Criminal Division

Washington, D.C. 20530

July 12, 1999

BY MESSENGER

Rodney Page, Esq.
Bryan Cave LLP
600 Thirteenth Street, N.W.
Washington, DC 20005

Re: July 12, 1999 District of Columbia Grand Jury Subpoena

Dear Mr. Page:

Pursuant to your agreement to accept service on behalf of your client, National Housing Partnerships, Inc. ("NHP"), and its affiliates, enclosed is a grand jury subpoena issued by a federal grand jury in connection with a criminal investigation being conducted in the District of Columbia. The subpoena directs a custodian of records to appear and produce certain documents before the grand jury in Washington, D.C. on Thursday, August 19, 1999, at 9:00 a.m. As a convenience to you, you may deliver the requested documents to the United States Department of Justice, Criminal Division, Fraud Section, Third Floor, 1400 New York Ave., N.W., Washington, D.C. 20005.

Should you have any questions, please feel free to call me at (202) 514-0886. Thank you for your attention to this matter.

Sincerely,

Marie A. O'Rourke

Marie A. O'Rourke
Senior Litigation Counsel
Fraud Section

Enclosure

12-22_30(b)(6)_000026

United States District Court

FOR THE DISTRICT OF COLUMBIA

TO: National Housing Partnerships, Inc.
c/o Rodney Page, Esq.
Bryan Cave LLP
600 Thirteenth Street, N.W.
Washington, DC 20005

SUBPOENA TO TESTIFY BEFORE GRAND JURY

SUBPOENA FOR:

☒ PERSON

☐ DOCUMENT(S) OR OBJECT(S)

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date, and time specified below.

PLACE United States District Court for the District of Columbia United States Courthouse Third & Constitution Avenues, N.W. Washington, D.C. 20001	COURTROOM Grand Jury Third Floor DATE AND TIME August 19, 1999 9:00 a.m.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

Please provide all of the documents listed on the Attachment.

☐ Please see additional information on reverse.

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

U.S. MAGISTRATE IN CHIEF OF COURT Nancy M. Meyer-Whitely, Clerk U.S. DEPT. OF JUSTICE <i>Margaret S. Pier</i>	DATE July 12, 1999
This subpoena is based upon a request of the United States Attorney	NAME, ADDRESS AND PHONE NUMBER OF ASSISTANT U.S. ATTORNEY Marie O'Rourke, Giuliana Dunham, John Cunningham (202) 514-0819 U. S. Department of Justice Criminal Division, Fraud Section 1400 New York Avenue, N.W. Washington, D.C. 20005

*If not applicable, enter "none."

*U.S.GPO:1999-6-310-787/20119

12-22_30(b)(6)_000027

ATTACHMENT A

INSTRUCTIONS

1. This subpoena requires a complete search of all documents and records in your possession or subject to your control, as well as documents or records in the possession of your agents, attorneys, auditors, employees, representatives, partnerships, trusts, corporations, officers, directors, subsidiaries or affiliates.
2. Unless otherwise noted, unaltered original documents and records shall be produced to the grand jury on the date shown on the subpoena and supported by the testimony of a qualified custodian of records who can authenticate the documents as business records.
3. The person designated as the custodian of records must be a person who is fully knowledgeable concerning the search for the documents and records that are responsive to this subpoena; the custodian of records also must be able to authenticate the documents. Should the same person not be capable of performing both of the foregoing requirements, you shall designate such additional persons as may be necessary to appear before the grand jury on the same date and time.
4. Except as otherwise noted, the time period covered by the subpoena is January 1, 1992 to the present.
5. Bates stamped numbers may be affixed to the documents or records produced to the grand jury; however, no additional alterations may be made on the face of the documents and records, including identifying markings, such as the company name, date of the subpoena or the identity of location of the grand jury issuing the subpoena.
6. Each and every document or record requested by this subpoena shall be produced in the manner in which it is or has been maintained in the ordinary course of business. If, by way of illustration, documents or records requested by this subpoena are or have been maintained in a folder, the documents or records requested shall be produced in the original folder, with the original label or marking.
7. If any document or record was, but no longer is, in your possession or subject to your control, whether actual or constructive, identify the document or record as completely as possible and provide the following information:
 - a. The manner of transfer/removal/disposal, including destruction, loss discarding, or any other means of disposal;
 - b. The date of transfer/removal/disposal;

- c. The reason for transfer/removal/disposal;
 - d. The person authorizing the transfer/removal/disposal and the person transferring/removing/disposing of the document or record;
 - e. The present custodian and location of the document or record;
 - f. If the document or record was destroyed, the date such document or record was destroyed, the procedure or policy pursuant to which such document or record was destroyed, and the identity of the last known custodian of such document or record prior to its destruction, and
 - g. All of the memoranda, orders, minutes or other documents relating to such transfer/disposal or destruction.
8. In the event that any document or record responsive to this subpoena is to be withheld on the basis of a claim of privilege, as to each such document or record:
- a. Identify the nature of the privilege which is being claimed and all facts upon which any such privilege is based; and
 - b. Provide the following information:
 - (i) the type of document or record;
 - (ii) the subject matter of the document or record;
 - (iii) the date of the creation;
 - (iv) the author of the document or record, including the author's address, telephone number and employment capacity;
 - (v) the signatory of the document or record, if different from the author;
 - (vi) the addressee of the document or record, including the addressee's address and employment capacity;
 - (vii) where not apparent, the relationship of the author and the addressee to each other;
 - (viii) any other recipient of the document or record; and
 - (ix) the number of pages of the document or record.

9. Please provide an index of the documents and records produced. The index should identify the person, office and department from which the documents and records were obtained, and may include the Bates stamp numbers, if any, of such documents and records. The index should also identify the paragraph(s) and subparagraph(s) of the subpoena to which the documents or records are responsive.
10. No modifications will be made to the terms of this subpoena except in writing.
11. This subpoena is continuing in nature and shall remain in effect until the conclusion of the grand jury's investigation.

DEFINITIONS

1. "NHP" shall refer to National Housing Partnership, Inc., all of its affiliates, present and former subsidiaries, divisions, branches, predecessors or successors in interest, including, but not limited to Apartment Investment and Management Company, National Corporation for Housing Partnerships, NHP Incorporated, NHP Management Company, and NHP Partners, Inc., and all present and former officers, directors, partners, employees, agents and representatives, and each person purporting to act on behalf of any of the foregoing.
2. "HUD/FHA" shall mean the United States Department of Housing and Urban Development, the Federal Housing Administration, and any subdivision, office, entity, agency, agent, representative, employee, or contractor thereof.
3. "Document" refers to each and every writing, of whatever nature, whether an original, a draft, or a copy, however produced, reproduced, or stored, whether manually, mechanically, electronically, electromagnetically or otherwise, and each and every tangible thing from which information can be processed or transcribed, including, but not limited to letters, telegrams, telexes, facsimiles, contracts, agreements, memoranda, receipts, calendars, diaries, appointment books, personal files, telephone messages and message logs, notes, schedules, work sheets, books, pamphlets, summaries, proposals, photographs, ledgers, statements, files, invoices, billing information, notebooks, verifications of assets, adding machine tapes, financial statements and other compilations of financial data, work papers, checks, records of wire transfers or cash payments, charts, graphs, research materials, prospectuses, registration statements, e-mail, computer printouts, word processing files and other computer-generated writings, or any similar item.
4. "Record" includes all tangible, written or non-written forms of expression in your possession, custody or control, including partial, preliminary and completed versions, however created, produced or stored, whether electronically, electromagnetically or

otherwise, including but not limited to, e-mail (the content of those communications, however created or stored), tape recordings, video recordings, magnetic tapes, disks, diskettes, disk packs, and other electronic media, microfilm, microfiche, and storage devices, or any similar item.

5. The terms "document" and "record" include all drafts and versions, whether or not identical with the final document, and also includes all copies which are not identical with the original, whether or not different because of notes made on or attached to such copy or otherwise.
6. The terms "document" and "record" also include any such items that have been deleted or otherwise destroyed but are recoverable by any electronic, mechanical, optical or other means. However, the terms "document" and "record" exclude materials in "electronic storage" for 180 days or fewer. "Electronic storage" is specifically defined in 18 U.S.C. Section 2510(17) to be "any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and any storage of such communication by an electronic communication service for purposes of backup protection of such communication." The government does not seek access to any such materials.
7. As used herein, "project" shall refer to a multifamily housing development for low-and-moderate-income families, which is insured, held or assisted by HUD/FHA.
8. As used herein, "asset management services" shall refer to those functions and activities associated with overseeing the management agent's performance and managing and protecting the assets of the ownership entity, as set forth in HUD Handbook 4381.5 REV-2, namely: disbursing surplus cash; owner visits to the project to review the management agent's performance; and obtaining or providing tax advice to the ownership entity or its principals. "Asset management fees" shall refer to the reasonable and necessary costs of providing asset management services.
9. The term "Named Properties" shall refer to the following HUD-insured and -assisted housing projects, as designated by project name, FHA project number and NHP project number:

<u>Project Name</u>	<u>FHA Project Number</u>	<u>NHP Project Number</u>
Park Place	085-35204	1002
Townview Terrace I	087-44026	1004
Elmwood Towers	044-44030	1011
RAC Gardens	012-44090	1026
Spring Hill	042-44080	1040
Townview Towers	087-44032	1067

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12-22_30(b)(6)_000031

Two Bridges	012-57018	1215
Debaliviere Place I	085-35259	1245
Clemens Place	017-35131	1247
Lamorada	056-35217	1252
Munekil	053-35053	1267
San Luis	056-35052	1268
Jardines de Joanne	056-35054	1269
Williamsport Manor	PA26-8023-023	1750
Buckingham Hall	012-57190	1767
Baisley Park	012-32201	1772
Duke Manor	034-35149	1790
Hollows	012-32191	1792
Academy Gardens	012-57128	1797
Debaliviere Place II	085-35291	1806
Parkview	054-35484	1848
Crosland Housing	054-35480	1849
Tiffany	085-35297	1856
Vistula Heritage Village	042-35298	1864
Debaliviere Place III	085-35307	1868
Shaker Boulevard	042-35331	1928
Page-Wymore	042-35311	1930
Carolins	085-35310	1933
Queenstown	000-35244	1935
Columbus Square I	085-35313	1940
Leo-Hy Manor	051-35326	1943
Elmwood Apts	062-35330	3004
Elkhorn Towers	045-35130	3005
Laurelwood	087-35091	3006
Kapuna I	140-38005	3017
Oakwood Apts	061-35312	3019
Kaneohe Elderly Apts	140-35091	3024
St. Nicholas Manor	012-57199	3031
Hatillo	056-35092	3036
Montblanc Housing	056-35093	3037
Walpahu Elderly	140-35087	3046
Las Americas	056-35120	3047
Halli Elderly	140-35089	3062
Boardwalk Apts	042-35378	3095
Columbus Square II	085-35337	3096
Debaliviere Place IV	085-35324	3101
Miramar	056-35132	3114
Munekil II	056-35133	3123
South Mountain Terrace	123-35139	3128

Villa de Lomas Verdes	056-35134	3133
Washington Northgate	033-55031	3151
Washington Westgate	033-55024	3152
Harris Gardens	033-44054	3167
Churchview Gardens	033-44090	3168
Hawkworth	033-44092	3169
Willow Creek	000-55066	3170
	000-44113	
Genosess Gardens	012-55079	3172
	012-92504	
Athens Arms	061-55068	3177
Colonial Terrace I	061-55011	3178
Colonial Terrace II	061-55017	3179
Brunswick Village	031-55075	3200
Kimberton	032-44013	3235
Windsor Apts	032-44012	3236
Deballiviere Place V	085-35352	3257
Holly Oak Park	053-44202	3258
Talladega Downs	062-44054	3260
Rodeo Drive	122-44452	3263
Savoy Court	085-35353	3265
Spruce Park	034-44103	3291
Spring Meadow	023-44087	3292
Leyden Woods	023-44091	3293
Eldon Terrace	000-44086	3294
Woodmark	000-44062	3295
Indian Valley I	042-44028	3306
Indian Valley II	042-44079	3307
Indian Valley III	042-44164	3308
Newton Hill	042-44094	3311
Gallon East	042-35068	3312
Park Avenue West I	042-55048	3314
	042-92504	
Park Avenue West II	042-44021	3315
Muskeon Townhouses	047-55021	3321
Twin Gables	046-44041	3591
Miami Manor	046-44100	3592
Parkview Arms I	046-35046	3593
Parkview Arms II	046-35388	3594
Howard Robbins Tower	042-44062	(unknown)

DOCUMENTS AND RECORDS TO BE PRODUCED

1. For each of the "Named Properties," any and all documents and records that constitute, refer to or concern any contract, agreement or arrangement between NHP and the property management companies or agents responsible for providing management services. This request includes, but is not limited to:
 - a. Project Owner's and Management Agent Certifications, Form HUD-9839-B;
 - b. Any and all documents and records that specify contract amounts, list dates of contracts, statements of work, budget by task/activity, standard provisions, and amendments;
 - c. Any and all documents and records that constitute, discuss or refer to written or oral communications relating to asset management services and fees;
 - d. Any and all documents and records that constitute, discuss or refer to the first or initial management contract, agreement or arrangement entered into between NHP and the property management company for each of the "Named Properties."
2. For each of the "Named Properties," any and all documents and records that constitute, refer to or concern any contract, agreement or arrangement whereby the property management company provides or provided compensation, payment(s), loan(s) or anything of value (other than asset management services and fees, as defined above) to NHP, or to any affiliates or other entities designated by NHP, in connection with the property management company's management of a project or projects. This request includes, but is not limited to supervisory management agreements, consulting agreements, fee-splitting arrangements, indirect management arrangements, or any arrangements whereby the property management company paid a percentage or portion of its HUD/FHA-approved management fee to NHP, or to any affiliates or other entities designated by NHP. This request also includes any other contract, agreement or arrangement to provide NHP, or any affiliates or other entities designated by NHP, distributions from project income, or payments from any other source. Documents to be produced include, but are not limited to:
 - a. All such contracts or agreements and amendments thereto, and any and all corresponding negotiation notes;
 - b. Any and all payment and billing records relating to the receipt of funds by NHP for payments made under the arrangement described above, including but not limited to invoices, receipts, checks, check ledgers, cash ledgers, wire transfers, deposit slips, and bank/financial institution account statements;

- c. Any and all documents and records relating to and describing work performed or services rendered in support of payments made to NHP under the arrangement described above, including but not limited to work requests, invoices, project inspection and/or trip reports, statements of work, and budget by task/activity;
 - d. Any and all documents and records that constitute, discuss or refer to the first or initial contract, agreement or arrangement entered into between NHP and the property management company for the "Named Properties."
3. For each of the "Named Properties," all documents or records relating to NHP's "Buyers Access" program. This request includes, but is not limited to:
- a. any and all documents and records received or processed by NHP relating to requests from property management agents for work; services, materials, supplies or repairs under the "Buyers Access" program;
 - b. documents and records relating to any form of compensation, payment, rebates, consideration, loans or anything of value received by or processed by NHP in connection with the "Buyers Access" program; and
 - c. any and all payment and disbursement records relating to the disbursement of funds, including rebates, by NHP to the property management companies in connection with the "Buyers Access" program.
4. For each of the "Named Properties," any and all documents pertaining to:
- a. the Regulatory Agreement and mortgage note;
 - b. the mortgagor entity, that is, the partnership, corporation or other form of ownership;
 - c. ownership transfer of physical assets;
 - d. bankruptcy petitions;
 - e. the filing of Housing Assistance Payments (HAP) Contract, and HAP Contract Renewal; and
 - f. the filing of Section 8 rental increases.
5. Complete personnel files, including but not limited to all documents reflecting current or last known addresses and phone numbers, job applications, job descriptions, employment agreements or contracts, consulting agreements or contracts, salaries, evaluations, ratings,

awards, promotions, merit pay increases, bonuses, distribution of stock options and performance shares, retirement packages, post-employment restrictions, confidentiality agreements, as well as any other financial incentives from the initial period of employment through the present for the following individuals:

- a. Tom Alm
- b. Patrizia A. Bailey
- c. Mary Bergstrom
- d. Howard Campbell
- e. John Ehrhardt
- f. Tracey Franklin
- g. Virginia Glenn
- h. John Robert Helner
- i. Rod Heller
- j. David Lowe
- k. Jack H. Murray
- l. C. Shannon Murray
- m. David O'Leary
- n. Eric Ross
- o. Carla R. Stoner
- p. Barbara Stover
- q. Roberta A. Ujakovich
- r. Charlie Vanover
- s. Charles S. Wilkins, Jr.

- 6. All organizational charts, manning charts, and personnel rosters that identify any and all employees, personnel, secretaries, and clerical staff at NHP who had responsibility, whether direct or indirect, for implementing or overseeing any phase of NHP's supervision or operation of the "Named Properties," including, but not limited to any and all departments handling Asset Management, Buyers Access, Finance and Administration.
- 7. All documents and records relating to NHP's Code of Ethics, Code of Conduct, compliance manuals, regulations, directives, procedures, guidelines, policies, notes, training materials and other documents and notes relating to compliance with HUD/FHA rules and regulations and with the Anti-Kickback Act, 41 U.S.C. §§ 51-58.
- 8. All documents and records of any audits, whether internal or external relating to the "Named Properties".
- 9. For each year from 1992 to the present, NHP's annual audited financial plans.
- 10. All documents and records relating to NHP's record and document retention and

destruction policies and procedures.

11. For each year from 1992 to the present, NHP's internal telephone directories.
12. All corporate records of NHP, including, but not limited to, articles of incorporation, by-laws, list of officers or directors, ownership records, minutes, resolutions, and related records.

AUG-07-00 14:12 From: S. ATORNY'S OFFICE
JUL-31-2000 13:31

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T-084 P.02/03 Job-533
P.02

NEW YORK, NEW YORK
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NEW YORK, NEW YORK

BRYAN CAVE LLP

700 THIRTEENTH STREET, N.W.
WASHINGTON, D.C. 20005-3850

(202) 555-6000

FACSIMILE (202) 555-6100

BRISBANE, AUSTRALIA
BUNNAY CITY, KENYA
ABU DHABI, UNITED ARAB EMIRATES
DUBAI, UNITED ARAB EMIRATES
HONG KONG
SHANGHAI, PEOPLE'S REPUBLIC OF CHINA
IN ASSOCIATION WITH BRYAN CAVE,
A MULTINATIONAL PRACTICE,
LONDON, ENGLAND

RODNEY F. FACE
DIRECTOR
DIRECT DIAL NUMBER
(202) 555-6002

INTERNET ADDRESS
BFACE@BRYANCAVE.COM

July 31, 2000

By Fax (415) 436-6748 and by First Class Mail

Joann M. Swanson, Esquire
Assistant United States Attorney
Northern District of California
10th Floor, Federal Building
450 Golden Gate Avenue, Box 36055
San Francisco, California 94102

Dear Ms. Swanson,

I have your letter of July 21, 2000, relating to the "NHP-Supervisory Management Fee Settlement."

Your letter correctly reflects the fact that the settlement specified under paragraph 2 of the December 17, 1998, agreement between Apartment Investment and Management Company ("AIMCO") and the United States Department of Housing and Urban Development ("HUD") (the "Agreement"). As you state, the period of time contemplated by the Agreement for the implementation of that settlement has been extended at the request of the United States. AIMCO has at all times remained ready, in good faith, to implement the settlement.

AIMCO agrees to memorialize a further extension of time within which to implement the settlement under paragraph 2 of the Agreement, as you have requested. We assume, in so stating, that all other provisions in the Agreement remain in full force and effect, and any other obligations of the parties therein are also extended. In addition, it would seem prudent to extend the implementation period until December 1, 2000, subject to further agreement of the parties, inasmuch as the September 15 date you suggested is already close.

If you agree to extend the provisions of the Agreement in accordance with the foregoing paragraph, i.e. subject to the promise that all obligations of the parties are extended and that the date for expiration of this extension is December 1, 2000, please sign a copy of this letter and return it to me, retaining the original in your files. A copy is provided herewith for that purpose.

DCS:DOCE/19497.01

AUG-07-2000 18:11

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12-22_30(6)(6)_000038

BRYAN CAVE LLP

Joann M. Swanson, Esquire
July 31, 2000
Page 2

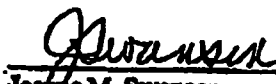
At your convenience, I am available to discuss this matter further.

Sincerely yours,


Rodney R. Page
Counsel for AIMCO

cc: Helen Gaebler, Esq. (DOJ)
Joel F. Bonder, Esq. (AIMCO)

Agreed on behalf of the United States of America
and the United States Department of Housing and
Urban Development:

 8-7-00
Joann M. Swanson
Assistant United States Attorney

DC01DOC97194987.01

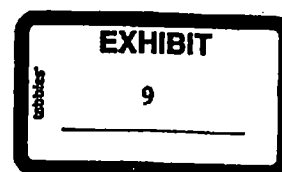
AUG-07-00 14:13

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12-22_30(5)(6)_000039

EXHIBIT A



EX-11A
TPA and 2530 Applications Submitted By and on Behalf of AIMCO and Insignia
1997-2002

Timeframe	2530 Applications for Properties Owned	2530 Applications for Properties Managed	TPA's	
AIMCO NHP Merger - 1997 ¹	145	141		
Insignia (Pre AIMCO) - 1997 ²	1	43		
Insignia Merger - 1998 ³	242	437		
Outside of merger - 1998 ⁴	12	24		
1999 ⁵	1	8	24	
Oxford Merger - 2000 ⁶	69			
Outside of merger - 2000 ⁷	10	17		
2001 ⁸	2	1	3	
Casden/Napico Merger - 2002 ⁹	329	119		
Outside of merger - 2002 ¹⁰			1	
Totals	811	790	28	1629

¹ Submitted as result of AIMCO/NHP merger/acquisition. Not clear whether separate 2530 application submitted for each property, or one 2530 application submitted for all properties, or both.

² Submitted by and on behalf of Insignia before AIMCO/Insignia merger/acquisition.

³ Submitted by and on behalf of AIMCO as result of AIMCO/Insignia merger/acquisition.

⁴ Submitted by and on behalf of AIMCO and Insignia.

⁵ Submitted by and on behalf of AIMCO.

⁶ Submitted by and on behalf of AIMCO as result of AIMCO/Oxford merger/acquisition (Oxford Realty Financial Group, Inc. and Oxford Holdings Corp.).

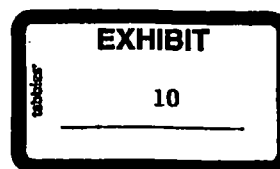
⁷ Submitted by and on behalf of AIMCO.

⁸ Submitted by and on behalf of AIMCO.

⁹ Submitted by and on behalf of AIMCO as result of AIMCO/Casden Properties, Inc. and Napico merger/acquisition.

¹⁰ Submitted by and on behalf of AIMCO.

EXHIBIT B



APR-16-'99 FRI 15:27 ID:PORTICP & CORPL1 DIV TEL NOI
 2530 approved
 as HND
 BKUP2530 Query

H721 P81
 04/18/1999

PRTIN	PROJNAME	PRJNUM	PRTSN	ANALYST	RECD
INSIGNIA RES	ANTON SQUA	082-35388	MURRAY, JAC KT		03/11/1999
INSIGNIA RES	BETHEL APAR	054-35002	MURRAY, JAC KT		03/18/1999
INSIGNIA RES	BETHEL BISH	054-35023	MURRAY, JAC KT		03/18/1999
INSIGNIA RES	CEDAR CREE	082-38270	MURRAY, JAC KT		03/11/1999
INSIGNIA RES	CHESTNUT PL	024-35040	MURRAY, JAC KT		04/01/1999
INSIGNIA RES	COMMUNITY	042-44135	MURRAY, JAC KT		03/11/1999
INSIGNIA RES	CONNECTICU	054-35050	MURRAY, JAC KT		03/18/1999
INSIGNIA RES	CROFT HOU	054-EH001	MURRAY, JAC KT		03/18/1999
INSIGNIA RES	EME APARTM	054-62505	MURRAY, JAC KT		03/18/1999
INSIGNIA RES	FAIRWOOD A	054-35051	MURRAY, JAC KT		03/18/1999
INSIGNIA RES	FOREST HILL	082-35002	MURRAY, JAC KT		03/11/1999
INSIGNIA RES	HERITAGE OO	024-EH015	MURRAY, JAC KT		04/01/1999
INSIGNIA RES	JEFFERSONIA	089-35308	MURRAY, JAC KT		03/11/1999
INSIGNIA RES	JOSEPH PAUL	054-35020	MURRAY, JAC KT		03/18/1999
INSIGNIA RES	LAKESIDE AP	054-EH003	MURRAY, JAC KT		03/18/1999
INSIGNIA RES	LAPLATA GRA	082-34314	MURRAY, JAC KT		03/11/1999
INSIGNIA RES	LAPLATA GRA	052-35350	MURRAY, JAC KT		03/11/1999
INSIGNIA RES	LAWRENCE S	042-35395	MURRAY, JAC KT		03/11/1999
INSIGNIA RES	LINCOLN APA	084-35081	MURRAY, JAC KT		03/18/1999
INSIGNIA RES	MAPLE KNOLL	022-35011	MURRAY, JAC KT		04/01/1999
INSIGNIA RES	MCNALLEY H	022-44020	MURRAY, JAC KT		04/01/1999
INSIGNIA RES	MILL RUN	082-35344	MURRAY, JAC KT		03/11/1999
INSIGNIA RES	MT. ZION AME	054-35037	MURRAY, JAC KT		03/18/1999
INSIGNIA RES	MT. ZION AME	054-44055	MURRAY, JAC KT		03/18/1999
INSIGNIA RES	OAKLAND AP	054-44078	MURRAY, JAC KT		03/18/1999
INSIGNIA RES	ORLEANS GA	054-35005	MURRAY, JAC KT		03/18/1999
INSIGNIA RES	PALMETTO A	054-44011	MURRAY, JAC KT		03/18/1999
INSIGNIA RES	PARKVIEW AP	054-35038	MURRAY, JAC KT		03/18/1999
INSIGNIA RES	PENDLETON	125-44093	MURRAY, JAC KT		04/07/1999
INSIGNIA RES	PINECREST J	024-EH012	MURRAY, JAC KT		04/01/1999
INSIGNIA RES	PINE TREE	054-44141	MURRAY, JAC KT		03/18/1999
INSIGNIA RES	PINEWOOD P	054-25047	MURRAY, JAC KT		03/18/1999
INSIGNIA RES	RIVERBEND A	ME16-H017-32	MURRAY, JAC KT		03/18/1999
INSIGNIA RES	ROOSEVELT	054-35083	MURRAY, JAC KT		03/18/1999
INSIGNIA RES	ST. STEPHEN	054-35075	MURRAY, JAC KT		03/18/1999
INSIGNIA RES	STANDPOINT	054-35494	MURRAY, JAC KT		03/18/1999
INSIGNIA RES	STONEGATE	082-92002	MURRAY, JAC KT		03/11/1999
INSIGNIA RES	SWIFT CREEK	054-44089	MURRAY, JAC KT		03/18/1999
INSIGNIA RES	THE WOODLA	082-35342	MURRAY, JAC KT		03/11/1999
INSIGNIA RES	WATERFORD	082-10518	MURRAY, JAC KT		03/11/1999
INSIGNIA RES	WESTVIEW A	042-35288	MURRAY, JAC KT		03/11/1999
INSIGNIA RES	WESTWOOD	054-35242	MURRAY, JAC KT		03/18/1999
INSIGNIA RES	WILTON BENI	024-EH008	MURRAY, JAC KT		04/01/1999
INSIGNIA RES	WOODLAND C	082-35358	MURRAY, JAC KT		03/11/1999
INSIGNIA RES	WOODLAND C	082-35358	MURRAY, JAC KT		03/11/1999

OPTIONAL FORM NO 7-69

FAX TRANSMITTAL

of pages = 16
 Date: 04/18/1999
 To: JAC K Murray
 From: Doree Shurt
 Fax #
 Fax #

AMREAL 018056

BKUP2530 Query

04/18/1999

Page II

PRTIN	PROJNAME	PR-NUM	STATUS	PRT2N	ANALYST	REQVD
MURRAY, JAC	DRUID HILLS	054-35433	A		KT	03/18/1999
MURRAY, JAC	HI VIEW GAR	033-44025	A		KT	03/18/1999
MURRAY, JAC	HICKORY HILL	054-35139	A		KT	03/18/1999
MURRAY, JAC	CLINTON MAN	054-35403	A		KT	03/18/1999
MURRAY, JAC	CANYON	057-35040	A		KT	03/18/1999
MURRAY, JAC	OL LUND HILL	W38-1200-02	A		KT	03/18/1999
MURRAY, JAC	KALMA APAR	054-35451	A		KT	03/18/1999
MURRAY, JAC	INDIAN LAND	054-35181	A		KT	03/18/1999
MURRAY, JAC	GREENLEAF	INDA-18-74	A		KT	03/18/1999
MURRAY, JAC	FOREST GRO	102-10527	A		KT	03/25/1999
MURRAY, JAC	GLENDALE TE	054-44048	A		KT	03/18/1999
MURRAY, JAC	J.B. MILAM	118-35117	A		KT	03/18/1999
MURRAY, JAC	CARNEGIE TO	033-44074	A		KT	03/18/1999
MURRAY, JAC	CAPITOL HILL	045-35003	A		KT	03/18/1999
MURRAY, JAC	GREENVILLE	054-35398	A		KT	03/18/1999
MURRAY, JAC	WALHALLA G	054-44083	A		KT	03/18/1999
MURRAY, JAC	SUNSET TOW	102-44014	A		KT	03/18/1999
MURRAY, JAC	SUNNY HILL	075-88080	A		KT	03/18/1999
MURRAY, JAC	TOWN AND C	073-35454	A		KT	03/18/1999
MURRAY, JAC	WOODLAND A	054-44030	A		KT	03/18/1999
MURRAY, JAC	TILLERY RIDG	057-35085	A		KT	03/18/1999
MURRAY, JAC	ROOSEVELT	054-35186	A		KT	03/18/1999
MURRAY, JAC	THE WOODS	1108-0034-001	A		KT	03/18/1999
MURRAY, JAC	SALEM MANO	128-44188	A		KT	03/18/1999
MURRAY, JAC	SUNNYBROO	057-35103	A		KT	03/18/1999
MURRAY, JAC	THE WOODS		A		KT	03/18/1999
MURRAY, JAC	PULLMAN WH	071-35380	A		KT	03/18/1999
MURRAY, JAC	WOODCREST	117-44108	A		KT	03/25/1999
MURRAY, JAC	WEST VIRGINI	045-35082	A		KT	03/18/1999
MURRAY, JAC	WESTGATE VI	033-55032	A		KT	03/18/1999
MURRAY, JAC	THE GLENS	054-35405	A		KT	03/18/1999
MURRAY, JAC	SWIFT CREEK	054-35458	A		KT	03/18/1999
MURRAY, JAC	WESTGATE VI	033-55018	A		KT	03/18/1999
MURRAY, JAC	STONEWALL I	057-35018	A		KT	03/18/1999
MURRAY, JAC	STONEWALL I	057-35043	A		KT	03/18/1999
MURRAY, JAC	STRAWBRIDG	000-35119	A		KT	03/18/1999
MURRAY, JAC	STEEPLECHA	054-35323	A		KT	03/18/1999
MURRAY, JAC	NORTH WASH	071-35472	A		KT	03/18/1999
MURRAY, JAC	LONG MEADO	054-44119	A		KT	03/18/1999
MURRAY, JAC	MARTEL PAR	122-35371	A		KT	03/18/1999
MURRAY, JAC	MIDTOWN PL	033-44175	A		KT	03/18/1999
MURRAY, JAC	MODEL CITY	057-35052	A		KT	03/18/1999
MURRAY, JAC	MODEL CITY	057-35058	A		KT	03/18/1999
MURRAY, JAC	VANTAGE POI	102-35132	A		KT	03/18/1999
MURRAY, JAC	1212 SOUTH	071-35358	A		KT	03/18/1999
MURRAY, JAC	NEW SALEM A	033-44128	A		KT	03/18/1999
MURRAY, JAC	NEWTON PLA	102-35148	A		KT	03/18/1999

47

SKIP2530 Query

04/10/1999

PRTH	PRONAME	PRNUM	STATUS	PRTH	ANALYST	RECEIVED
MURRAY, JAG	PULLMAN WA	87-38389	A		KT	03/10/1999
MURRAY, JAG	NORTH WA	87-38471	A		KT	03/10/1999
MURRAY, JAG	MALIBU CA	88-38117	A		KT	03/10/1999
MURRAY, JAG	MURBEE AR	102-38184	A		KT	03/10/1999
MURRAY, JAG	FREE HAVEN	88-38224	A		KT	03/10/1999
MURRAY, JAG	FREE TREE VI	88-38288	A		KT	03/10/1999
MURRAY, JAG	TRINITY MS	88-38310	A	INSONIA RES	KT	03/10/1999
MURRAY, JAG	TRIAL RIDGE	102-38143	A		KT	03/10/1999
MURRAY, JAG	PLEASANT V	822-44656	A		KT	03/10/1999
MURRAY, JAG	POINT JAMES	88-11091	A		KT	03/10/1999
MURRAY, JAG	NEWBERRY VA	88-38389	A		KT	03/10/1999
INSONIA RES	FOREST HILL	88-38002	A	MURRAY, JAG	KT	03/10/1999
INSONIA RES	LINDOLN AKA	88-38081	A	MURRAY, JAG	KT	03/10/1999
INSONIA RES	HEBSTER RD	88-38015	A	MURRAY, JAG	KT	03/10/1999
INSONIA RES	RIVERBEND A	88-38174	A	MURRAY, JAG	KT	03/10/1999
INSONIA RES	CHILDS CA	88-38085	A	MURRAY, JAG	KT	03/10/1999
INSONIA RES	MOOSEVELT	88-38191	A	MURRAY, JAG	KT	03/10/1999
INSONIA RES	WOODLAND E	88-38388	A	MURRAY, JAG	KT	03/10/1999
INSONIA RES	MAPLE KNOLL	88-38011	A	MURRAY, JAG	KT	03/10/1999
INSONIA RES	LAWRENCE S	88-38188	A	MURRAY, JAG	KT	03/10/1999
INSONIA RES	MCNALLY H	88-38028	A	MURRAY, JAG	KT	03/10/1999
INSONIA RES	HILL RUN	88-38114	A	MURRAY, JAG	KT	03/10/1999
INSONIA RES	LA PLATA CNA	88-38380	A	MURRAY, JAG	KT	03/10/1999
INSONIA RES	MT. ZION AKA	88-38187	A	MURRAY, JAG	KT	03/10/1999
INSONIA RES	MT. ZION AKA	88-44656	A	MURRAY, JAG	KT	03/10/1999
INSONIA RES	PARKVIEW AP	88-38024	A	MURRAY, JAG	KT	03/10/1999
INSONIA RES	LAKESIDE AP	88-38003	A	MURRAY, JAG	KT	03/10/1999
INSONIA RES	PINEWOOD P	88-38047	A	MURRAY, JAG	KT	03/10/1999
INSONIA RES	JOSEPH PAUL	88-38020	A	MURRAY, JAG	KT	03/10/1999
INSONIA RES	LESTER PERSONA	88-38389	A	MURRAY, JAG	KT	03/10/1999
INSONIA RES	OAKLAND AP	88-44656	A	MURRAY, JAG	KT	03/10/1999

Page 1

AMREAL 018058

PRIN	PROJNAME	PRJNUM	STATUS	PRIN	ANALYST	RECVD
INSEIGNA RES	PALMETTO A	844-44911	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	PENCLITON	844-44912	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	PINECREST	844-44913	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	PINEHURST	844-44914	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	LAPLATA GRA	844-44915	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	THE WOODS	844-44916	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	WOODLAND	844-44917	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	ANTON BONA	844-44918	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	MILTON BONA	844-44919	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	WESTWOOD	844-44920	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	WESTVIEW	844-44921	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	BETHEL AFAR	844-44922	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	BETHEL BISH	844-44923	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	MATHEW FORD	844-44924	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	DEBAR URB	844-44925	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	DEBARTUPT	844-44926	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	PALMWOOD A	844-44927	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	SWIFT CREEK	844-44928	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	COMMUNITY	844-44929	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	CONNECTION	844-44930	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	ST. STEPHEN	844-44931	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	CHOPY HOUSE	844-44932	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	STANDFORD	844-44933	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	ELM APARTM	844-44934	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	STONEGATE	844-44935	A	MURRAY, JAG KT		04/11/1999
INSEIGNA RES	BENTLEWAKE	844-44936	A	MURRAY, JAG KT		04/11/1999
MURRAY, JAG	SHRETTMA	844-44937	A	KT		04/11/1999
MURRAY, JAG	NEW SALEM A	844-44938	A	KT		04/11/1999
MURRAY, JAG	BEVERLY APA	844-44939	A	KT		04/11/1999
MURRAY, JAG	LANDAU APA	844-44940	A	KT		04/11/1999
MURRAY, JAG	GEORGETOWN	844-44941	A	KT		04/11/1999
MURRAY, JAG	FARMVIEW QA	844-44942	A	KT		04/11/1999
MURRAY, JAG	LAUREN WIL	844-44943	A	KT		04/11/1999
MURRAY, JAG	EDMUNDSON	844-44944	A	KT		04/11/1999
MURRAY, JAG	WINDYBUSH	844-44945	A	KT		04/11/1999
MURRAY, JAG	GREEN HILL	844-44946	A	KT		04/11/1999
MURRAY, JAG	CROSS CREEK	844-44947	A	KT		04/11/1999
MURRAY, JAG	HIVEN GAT	844-44948	A	KT		04/11/1999

Page 2

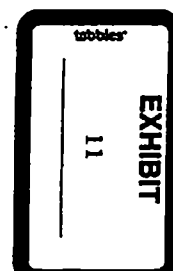
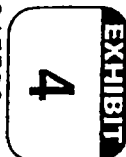
AMREAL 018059

Exhibit 8. Summary of Current and Projected Total Management Fees

NOTES TO BE FORECLOSED															
BFTG Carolina I															
1	Orleans	2.5%	100	Charleston	SC	\$39,237	\$0	\$14,708	\$500	\$54,448	\$46,672	3.00%	\$56,073	\$37,761	\$59,494
2	Roosevelt I	8%	100	Orangeburg	SC	\$39,806	\$0	\$12,705	\$500	\$53,011	\$38,572	3.00%	\$54,601	\$36,239	\$37,927
3	Roosevelt II	2.25%	100	Orangeburg	SC	\$40,122	\$0	\$11,326	\$500	\$51,948	\$16,575	3.00%	\$53,506	\$35,112	\$36,785
*4	Walhalla	9%	32	Walhalla	SC	\$0	\$0	\$0	\$0	\$0	\$0	3.00%	\$0	\$0	\$0
BFTG Carolina II															
1	Madison	9.5%	92	Savannah	GA	\$32,132	\$1,502	\$15,901	\$460	\$49,995	\$25,306	3.00%	\$51,495	\$33,040	\$34,631
2	Swift Creek	10%	48	Darlington	SC	\$21,879	\$1,051	\$4,204	\$240	\$27,349	\$4,115	3.00%	\$28,189	\$29,233	\$29,806
BFTG Carolina III															
1	Palmetto	8.5%	40	Burton	SC	\$17,045	\$1,283	\$4,438	\$200	\$22,965	\$2,449	3.00%	\$23,655	\$24,365	\$25,096
2	Piedmont	6%	60	Beaufort	SC	\$25,315	\$1,003	\$2,998	\$300	\$26,614	\$31,617	3.00%	\$37,714	\$38,846	\$40,011
3	Ramblerwood	9%	96	Shelby	SC	\$25,866	\$1,657	\$11,662	\$480	\$39,665	\$62,602	3.00%	\$40,835	\$42,081	\$43,343
TOTAL			668			\$342,396	\$4,496	\$43,942	\$2,180	\$336,914	\$293,908		\$346,094	\$336,477	\$347,173

8
properties -

* We currently manage # 490 Walhalla I





INSIGNIA RESIDENTIAL GROUP, L.P.
ONE INSIGNIA FINANCIAL PLAZA • P. O. BOX 1089
GREENVILLE, SOUTH CAROLINA 29602
Phone: (864) 239-1428 Fax: (864) 239-1495 or 1455

PART I NOTICE OF MANAGEMENT OF AN ASSISTED/AFFORDABLE PROPERTY
Submitted By: Frank DuPre Date: February 10, 1998

Effective Date: January 1, 1998
Property Number: 37464
Property Name: PALMETTO Apartments
Property Address: 209 Old Jericho Road
Burton, SC 29902 (county Beaufort)
Telephone Number: (803) 524-9191
Fax Number: (803) 524-4927
Modem Number: _____
Number Units: 40
HUD FHA/Section 8/FmHA #: FHA#054-44011 / Section 8#SC16-1.000-06
Insignia Affiliation: Non-Affiliated
Portfolio Number & Reference Name: 30016
Owner: New Palmetto Limited Partnership by: BFG Carolina III Inc., G.P.
Federal ID Number: 04-2845888
Property Manager: Mary Chapman
District Manager: Cliff Smalls
Regional Vice President: Frank DuPre
Sr. Vice President: Jim Mathes
Previous Management: Boston Financial
101 Arch Street
Boston, MA 02110
David Flad / 617-439-3911
National Purchasing: YES Swimming Pool: NO Propane Gas: NO

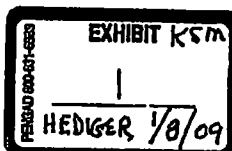
PART II MANAGEMENT FEE INFORMATION SCHEDULE
Submitted By: Frank DuPre Date: April 14, 1998
(Contract Agreement Attached)

Term of Contract: 01/01/98-12/31/02; thereafter, 11Re-term renewal
Cancellation Provisions: 60 days initial term / 30 days renewal term
Management Fee: 8.5%
Bookkeeping Fee: 5.30
Other Fees: _____
Expense Limit: 10,000
cc: Distribution List
cc: (Form & Agreement) Direct Cos
cc: Mike Dickford / Affiliated

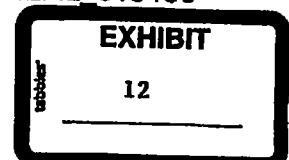
DM

NVP

Sr. VP



AMREAL 015460





SM

INSIGNIA RESIDENTIAL GROUP, L.P.
ONE INSIGNIA FINANCIAL PLAZA @ P. O. BOX 1089
GREENVILLE, SOUTH CAROLINA 29602
Phone: (864) 239-1428 Fax: (864) 239-1495 or 1455

PART I: NOTICE OF MANAGEMENT OF AN ASSISTED/AFFORDABLE PROPERTY

Submitted By: Brenda DuPre Date: February 10, 1998

Effective Date: January 1, 1998
Property Number: 37463
Property Name: ORLEANS GARDENS Apartments
Property Address: 1900 Hazelwood Drive
Charleston, SC 31405 (county Charleston)
Telephone Number: (803) 556-4184
Fax Number: (803) 769-6854
Modem Number: _____
Number Units: 100
HUD PHA#/Section 8#/FmHA #: PHIA#054-35095 / Section #SC16-M000-026
Insignia Affiliation: Non-Affiliated
Portfolio Number & Reference Name: 30016
Owner: New Orleans Gardens Apartments Associates by: BFG Carolina I, C.P.
Federal ID Number: 04-2845875
Property Manager: TBA
District Manager: Cliff Smalls
Regional Vice President: Frank DuPre
Sr. Vice President: Jim Mathis
Previous Management: Boston Financial
101 Arch Street
Boston, MA 02110
David Flad / 617-439-3911
National Purchasing: YES Swimming Pool: NO Propane Gas: NO

PART II: MANAGEMENT FEE INFORMATION SCHEDULE

Submitted By: Brenda DuPre Date: April 13, 1998

(Cost & Mgt Agreement Attached)

Term of Contract: 1/1/98-12/31/02; thereafter, like-term renewal
Cancellation Provisions: 60 days initial term / 30 days prior to renewal term
Management Fee: 7.5%
Bookkeeping Fee: 5.30
Other Fees: _____
Expense Limit: 10,000
cc: Distribution List
cc: (Form & Agreement) Brent Cox
cc: Mike Bickford/Affiliated

DM

RVP

Sr. VP

AMREAL_015461



SM

INSIGNIA RESIDENTIAL GROUP, L.P.
ONE INSIGNIA FINANCIAL PLAZA @ P. O. BOX 1089
GREENVILLE, SOUTH CAROLINA 29602
Phone: (864) 239-1428 Fax: (864) 239-1495 or 1455

PART I NOTICE OF MANAGEMENT OF AN ASSISTED/AFFORDABLE PROPERTY

Submitted By: Brenda DuPre Date: February 10, 1998

Effective Date: January 1, 1998

Property Number: 37465

Property Name: PARKVIEW Apartments

Property Address: 2500 Duke Street
Burton, SC 29902 (county Beaufort)

Telephone Number: (803) 524-7815

Fax Number: (803) 524-4927

Modem Number: _____

Number Units: 60

HUD PHA/Section 8/PinIA #: FLIA#054-35039/ Section 8#SC16-M000-041

Insignia Affiliation: Non-Affiliated

Portfolio Number & Reference Name: 30016

Owner: New Parkview Limited Partnership by: DFO Carolina III Inc., G.P.

Federal ID Number: 04-2845892

Property Manager: Mary Chapman

District Manager: Cliff Smalls

Regional Vice President: Frank DuPre

Sr. Vice President: Jim Mathes

Previous Management: Boston Financial
101 Arch Street
Boston, MA 02110
David Flad / 617-439-3911

National Purchasing: YES Swimming Pool: NO Propane Gas: NO

PART II MANAGEMENT FEE INFORMATION SCHEDULE

Submitted By: Brenda DuPre Date: April 12, 1998

(Part & Mat Agreement attached)

Term of Contract: 01/01/98-12/31/02; thereafter, like-term renewal

Cancellation Provisions: 60 days initial term / 30 days renewal term

Management Fee: 7.5%* (*NOTE-original fee was listed as 8.0%)

Bookkeeping Fee: 5.30

Other Fees: _____

Expense Limit: 10,000

cc: Distribution List

cc: (Form & Agreement) Servant Cos DM RVP Sr. VP

cc: Mike Dickford/Affiliated

AMREAL_015498



INSIGNIA RESIDENTIAL GROUP, L.P.
 ONE INSIGNIA FINANCIAL PLAZA @ P. O. BOX 1009
 GREENVILLE, SOUTH CAROLINA 29602
 Phone: (864) 239-1428 Fax: (864) 239-1495 or 1455

Effective Date: January 1, 1998

Property Number: 37461

Property Name: ROOSEVELT GARDENS I Apartments
 Property Address: 3290 Magnolia Street
Orangeburg, SC 29115 (county Orangeburg)

Telephone Number: (803) 534-9701
 Fax Number: (803) 533-1876
 Modem Number: (803) 533-1750 / 803-536-4288

Number Units: 100

HUD FHA/Section 8/FmHA #: FHA#054-35063 / Section 8#SC-16-M000-051

Insignia Affiliation: Non-Affiliated

Portfolio Number & Reference Name: 30016
 Owner: New Roosevelt I Apartments Associates LP by: BFG Carolina I Inc., G.P.
 Federal ID Number: 04-2845876
 Property Manager: Valerie Powell
 District Manager: Melanie Thompson
 Regional Vice President: Frank DuPree
 Sr. Vice President: Jim Mothes

Previous Management: Hoston Financial
101 Arch Street
Boston, MA 02110
David Flad / 617-439-3911

National Purchasing: YES Swimming Pool: NO Propane Gas: NO

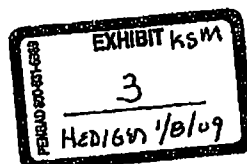
PART 2: MANAGEMENT FEE INFORMATION SCHEDULE

Submitted By: Brenda DuPree Date: April 13, 1998

Term of Contract: 01/01/98-12/31-02; thereafter, like-term renewal
 Cancellation Provisions: 60 days initial term / 30 days renewal term
 Management Fee: 8.0%
 Bookkeeping Fee: 5.30
 Other Fees: _____
 Expense Limit: 10,000

cc: Distribution List
 cc: (Form & Agreement) Brent Cox
 cc: Mike Blehford / Affiliated

DM NVP Sr. VP



AMREAL_015472

MEMORANDUM

TO: File
FROM: Ford von Weise
DATE: August 31, 1999
RE: AIMCO Chronology

2nd Week, May, 1999: Spoke with Mike Bickford of AIMCO about taking back the Orphans which they had agreed to as part of the BF Carolina deal. Mike said they didn't want to take back all the deals but were interested in taking back the good ones. I said we were not interested in that and that we wanted them to take all of them back as a portfolio. Alternatively, I proposed we sell the portfolio in a third party sale with them getting all the excess proceeds over deal costs and that we hire Berkeley to market the portfolio. Mike tentatively agreed to this strategy but said he had to talk with his people about it. I called later to schedule a meeting in Greenville with him.

May 27, 1999. Greenville, SC. Meeting with Mike Bickford, Doug Plyler and Tom Shuler to discuss Orphans. Stephen Roger and I asked them to live up to their agreement to take the deals back. They refused and said they would agree to market the deals through Berkeley and get the excess proceeds. We agreed and scheduled a trip through South Carolina to visit the properties and the markets with Bickford and Plyler.

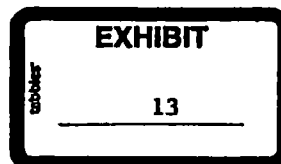
June 8, 1999. Called Pender Murphy of Berkeley to discuss marketing the Orphans. He asked for financial information for the deals. Faxed information to him.

June 11, 1999. Sent Letter of Intent to Mike Bickford to market Orphans through Berkeley.

June 22-24, 1999. Tour of South Carolina to visit the deals. Mike Bickford and Doug Plyler informed me that they were being laid off at the end of August and that the Orphans would be handled by Les Boeckel out of Denver. Bickford said LOI was being reviewed in Denver and would be signed shortly.

July 6, 1999. Called Les Boeckel to inquire why the LOI hadn't been signed. Les said he would look into and get back to me.

July 12, 1999. Les Boeckel informed me that AIMCO had decided to take the deals back but were concerned about HUD's requirement for a TPA. They were selling a subsidized portfolio and would include these deals as "sweeteners". He said he would ask Jack Murray of AIMCO to research with HUD whether or not HUD would require a TPA from AIMCO.



AMREAL 00563

July 19 - August 13, 1999. Called Les on several occasions to inquire about the status of their discussions with HUD regarding the TPA. Les did not return calls, except for August 20th where he said he did not know anything but would call the following week.

August 24, 1999. Les called to say that AIMCO did not want to take the deals back due to HUD's requirement for a TPA. He also informed me that they would be resigning as management agent for the Orphans due their concern over a possible 2530 problem associated with their management of them. He said he was still willing to take back the better deals. I informed him that the portfolio had to remain intact in order for us to sell it. He asked me to hire a broker to sell the portfolio and to get three bids. I replied that we had asked Berkley to stop work due to AIMCO's previous desire to take the deals back. I also said that the portfolio in my opinion did not have much value due to the dire capital needs of three deals and the decrease in income due to the mark-to-market program coming us on three deals. He responded by saying that the management contracts had value of \$2-\$3 million. I said that the capital needs would chew up a bunch of that value and that a buyer would have to have some value in the deal to be incented to buy. He insisted that I involve a third party broker because he had a fiduciary responsibility to his investors to seek the highest value. He stated he needed a third party valuation to give to his investors.

September 2, 1999. Les called to check in to see how I was coming on hiring a third party broker. I replied that we had asked Berkeley to look at the deals again and that the preliminary feedback indicated that there wasn't much value. I also informed him of last night's fire at Roosevelt. Les said he wasn't surprised that there wasn't much value but needed something to give his investors. I said to prepare his investors for the eventuality that they wouldn't be getting any money. I also reminded him that the better BF Carolina second notes were settled for \$0.10 on the dollar and that these were the worst deals and, correspondingly, he should get a lot less, maybe nothing. He said he understood and agreed. He even asked if we had considered simply walking away from the deals and giving them back to HUD. I said that would create a 2530 problem and didn't want to do that and that we might have to find someone to take the deals for a \$1.00. Les was very understanding and appeared to be looking for something to give his investors. Les even admitted to me that the only thing of value was the management contracts and that they themselves had given that away. He said the 2530 problem was just to great for them to worry about value to their investors.

AMREAL 00564

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CONSOLIDATED CASES: 2005-CP-07-1990 (Beaufort) (Pinewood);
2005-CP-07-1989 (Beaufort) (Palmetto); 2005-CP-10-4229 (Charleston) (Orleans);
2005-CP-38-1131 (Orangeburg) (Roosevelt), Laurance H. Davis, Jr., et al.,
Plaintiffs.

vs.

Parkview Apartments, a South Carolina Limited Partnership; Apartment
Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; AmReal
Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John Doe, a generic
designation for a party or parties whose true identity is unknown,
Defendants.

DEPOSITION OF

BRADFORD L. VON WEISE

January 13, 2009
9:58 a.m.

Jet Aviation of America, Inc.
380 Hanscom Drive
Bedford, Massachusetts

Susan A. Romano, Notary Public, Registered Merit Reporter and
Certified Realtime Reporter within and for the Commonwealth of Massachusetts

EXHIBIT

14

1 converted to market rate units, and how
2 Boston Financial might go about marketing
3 those properties to convert to -- to sell
4 them to be converted to create some -- some
5 return to their investors. Because they
6 never received any return on the tax benefits
7 or a very limited return for a short period
8 of time.

9 So the was -- the idea was to
10 market the entire portfolio to somebody who
11 would go out and convert the properties to
12 market rate and try and create some value,
13 because, you know, in and of themselves as
14 HUD properties, they didn't have a tremendous
15 amount of value.

16 Q. Okay. And among those that were
17 put out for, I guess, bids, did that include
18 Parkview? Was it a part of the group?

19 A. Yes, it was.

20 Q. And Palmetto --

21 A. Yes.

22 Q. -- was it part of the group?
23 And Orleans, was it part of the
24 group?

25 A. Yes.

1 Q. And Roosevelt 1, was it part of
2 the group?

3 A. Yes.

4 Q. And how were these properties --
5 and this was, as a larger group of -- as
6 part of the larger group of properties, I
7 assume?

8 A. Yes.

9 Q. How would they -- how did you go
10 about putting them out to the market, so to
11 speak?

12 A. An offering memorandum was prepared
13 for the real estate industry as a group of
14 properties. I do not know how many people
15 bid on it, but I know it was put out to a
16 large number of people. There were several
17 bidders. I was not directly involved in that
18 process. But what I do know is that all the
19 bidders came back and said, we will purchase
20 the portfolio properties minus what we came
21 to know as, what we called the "orphans."
22 And the four properties you just mentioned
23 were part of the orphan group.

24 Nobody -- we tried to force people
25 to buy the entire portfolio to include the

1 orphans, but nobody was willing to do so, so
2 ultimately, the portfolio was sold without the
3 four properties you mentioned being included
4 in part of the sale. Just the way it was.

5 Q. Okay. Let me -- let's see.

6 MR. JOHNSTON: This is coming
7 apart. Your stapler is as good as ours.

8 BY MR. JOHNSTON:

9 Q. Let me hand you what

10 MR. JOHNSTON: Let's ask the court
11 reporter to mark this as Exhibit 2 to your
12 deposition.

13 (Exhibit-2, July 30, 1997 Letter,
14 marked for identification).

15 BY MR. JOHNSTON:

16 Q. Mr. von Weise, I put in front of
17 you what has been marked as Exhibit 2 to
18 your deposition, which appears to be an offer
19 that was presented to Insignia Financial Group
20 in connection with Dogwood Forest I
21 apartments, which I believe was -- were part
22 of the ones that were not considered
23 "orphans."

24 MR. BAILEY: Before you answer,
25 let me just ask you, Ellis, where are you

1 (Deponent viewing document)

2 A. Next item, "There is interest rate
3 risk associated with the funding of this
4 transaction."

5 Again, during the construction
6 period, construction loans are variable rate
7 loans. If there was a -- a quick spike-up
8 in interest rates could have a dramatic
9 negative impact on the construction costs of
10 the project.

11 (Deponent viewing document)

12 And the last item, "There's a
13 limited window of opportunity to take
14 advantage of the HUD prepayment program."

15 HUD initiated, during this time,
16 the ability for people to prepay mortgages
17 and convert properties to market-rate housing.
18 And the question was, how long would that
19 window for people to get out of their
20 existing contracts remain open? There was a
21 rush of properties to prepay their mortgages
22 to take them out of the program, but there
23 was a risk that that may not continue in the
24 -- in the medium term or distant future.

25 Q. Okay. Now we've gone through the

1 risk associated with the -- the, quote, non-
2 orphans. Why didn't the -- if you know, why
3 were the orphans -- why didn't people bid on
4 them? Why didn't they want them to be part
5 of --

6 MR. BAILEY: Objection --

7 A. I can speak --

8 MR. BAILEY: -- to the form.

9 You can answer.

10 BY MR. JOHNSON:

11 Q. Okay. Go ahead.

12 A. I can speak generally to the
13 orphans as a collective group of properties,
14 of nine properties, but not specifically to
15 any one property. But, primarily, the -- a
16 bunch of reasons. Number one, the people who
17 bought the other properties didn't feel that
18 there was a substantial upside in -- in
19 converting the -- the orphans to market-rate
20 properties, that there wasn't enough of a
21 delta to be made to justify the investment.
22 Also, some of the orphan properties had
23 substantial deferred maintenance. And the
24 overall demographics of where these properties
25 resided, for the most part, was not terribly

1 desirable. There were some properties located
2 in better areas, but the people who were
3 looking to buy these properties didn't feel
4 that there was significant upside there.

5 Q. Now, did -- we're going to get
6 into a little more detail about your own
7 evaluation, but -- of the properties and the
8 numbers and that type of thing, but is that
9 consistent with what you found upon your
10 review, not only of the financial statements
11 of the properties but your visit to the
12 properties? Is that -- is that consistent
13 with that?

14 A. Based on visiting, you know,
15 hundreds of properties over several years and
16 being generally familiar with affordable
17 housing and properties purchased as part of
18 the tax advantage boom in the early '80s and
19 late '70s, as well as my familiarity with tax
20 credit housing, for the most part, these
21 properties were dumps, they were in poor
22 shape, not in good areas. So the answer to
23 your question is, yes.

24 What I subsequently found on
25 physical inspections of these properties, and

1 I can speak generally as a group in
2 comparison to my experience with affordable
3 housing and in comparison to the specific
4 group of properties that were sold to be
5 converted, which are collectively not known as
6 the "orphans," I would say yes, they were --
7 I can see why the investor -- why the
8 investor group who purchased the overall group
9 of properties excluded these. In comparison
10 to the rest of the properties, they were in
11 much worse physical and financial condition.

12 Q. Okay. Now, why, as I understand
13 it, all of these properties were HUD-financed
14 and supported properties; is that --

15 A. Yes. There were different HUD
16 mortgages on some of the -- it wasn't exact
17 structure -- the structure wasn't the same
18 for every property, but yes, generally, there
19 was HUD assistance both in the form of debt
20 and income assistance.

21 Q. Why would you want to convert and
22 take these out of HUD?

23 A. Well, if a property was in an area
24 that you could -- an attractive area, you
25 might be able to buy the property and invest

1 invoice that backs it up somewhere --

2 Q. I'm not concerned about that.

3 A. -- if you gave me ten, you know,
4 ten hours to dig through my old computer
5 records.

6 Q. Please don't.

7 Let me just sort of summarize, and
8 then I'm going to turn the floor over to Mr.
9 Bailey and Mr. Pendarvis.

10 But it's my understanding that
11 Boston Financial attempted to market not only
12 the properties that are issued -- at issue in
13 this litigation, together with the other
14 orphans, but others to basically put together
15 a package, and submitted it to the real
16 estate market in general; is that correct?

17 A. Yes.

18 Q. And the responses that you got to
19 that, you got several bids, all of which
20 excluded these nine, quote, orphans?

21 A. Correct.

22 MR. BAILEY: Objection to the
23 form.

24 BY MR. JOHNSTON:

25 Q. In response to that bid package,

1 what -- I was just trying to summarize. I
2 apologize.

3 In response to that bid package,
4 did you receive a number of bids?

5 A. Yes.

6 Q. Did any of them include the
7 Carolina -- excuse me, the orphans?

8 A. No.

9 Q. Did you independently analyze the
10 properties, their financials, and visit the
11 properties themselves?

12 A. Yes.

13 Q. And did you come to the conclusion
14 that the properties had no value above the
15 first mortgage?

16 A. Yes.

17 Q. Did -- and did you also -- I
18 think we saw this in Exhibit Number 3,
19 analyze the value of the properties, if you
20 continued them and if they were continued in
21 the HUD program?

22 A. Yes.

23 Q. And did you reach the same
24 conclusion under that scenario?

25 A. Yes, I did.

1 Q. Okay. Did you attempt to have --
2 get a reputable real estate investment group
3 to market the properties?

4 A. Yes.

5 Q. And was that Berkeley Capital
6 Advisors?

7 A. Yes.

8 Q. And did they agree to market the
9 properties?

10 A. No.

11 Q. In speaking with AIMCO
12 representatives, did they come to the same
13 conclusion that you did and Berkeley did,
14 that the properties had no value?

15 MR. BAILEY: Objection to the
16 form.

17 A. As stated to me by Les Boeckel,
18 yes.

19 Q. Okay. And, ultimately, the
20 properties were sold to, looks like Carolina
21 IX LLC, for essentially nominal consideration;
22 is that fair?

23 A. Yes.

24 Q. During the course of my questions
25 today you have, perhaps, delved into the

1 MR. JOHNSTON: I'll withdraw the
2 question.

3 BY MR. JOHNSTON:

4 Q. I see an entry on August 24, "Les
5 called to say that AIMCO did not want to
6 take the deals back due to HUD's requirement
7 for a TPA."

8 (Deponent viewing document)

9 What was -- I guess my question
10 is, is what are HUD's requirements when you
11 do a transfer of physical assets? Or is
12 there anything associated with capital
13 improvements and that type of thing?

14 A. The short answer is yes. The
15 properties have to have any deferred
16 maintenance brought current.

17 Q. Okay. And why is maintenance -- I
18 mean, you indicated earlier that there's a
19 limited amount of return that you get. Why
20 is maintenance deferred on a property such as
21 this?

22 A. There just isn't cash available.

23 Q. Okay. Well, isn't there something
24 called a "reserve for improvements" or
25 "reserve for" -- there's some category of

1 reserve that HUD requires?

2 A. Typically, the reserves were not
3 sufficient to pay for this, but sometimes
4 HUD, seizing an opportunity to get work done
5 on properties that they otherwise wouldn't get
6 done, sometimes would require owners to do
7 more work than was originally contemplated
8 when you established and calculated the level
9 of reserves.

10 Q. Okay. And if -- if you do not
11 bring the -- if the owner doesn't have the
12 money to bring the property up to snuff, what
13 happens? Is that a black mark?

14 A. It -- if the problem got worse
15 enough and HUD got mad enough, it could be a
16 black mark and affect a firm's ability to
17 obtain and participate in new HUD projects
18 going forward.

19 Q. How about a manager? Is it a
20 black mark on his record putting the property
21 as not properly maintained?

22 A. I can't recall. I don't know
23 specifically.

24 Q. Okay. All right. Let's go to
25 the September 2, 1999 entry. And this

1 Q. Okay.

2 A. Originally it was AIMCO had managed
3 the properties for a period of time. AIMCO
4 called us up and said they no longer wanted
5 to manage the properties. I had to scramble
6 to find somebody to manage the properties and
7 I gave the management to Gary Hediger.

8 Q. Okay. And then it goes on to say
9 he said the 20 -- you mentioned the 2530
10 problem earlier with respect to Boston
11 Financial. And your last sentence says, he
12 said the 2530 problem is just too great for
13 them to worry about value to their investors.

14 (Deponent viewing document)

15 What is the -- what -- what is
16 this 2530 problem or issue?

17 A. The 2530 refers to, actually, a
18 form that HUD requires every property owner
19 to file to essentially obtain a, what one
20 might call a "certificate of good standing
21 with HUD."

22 Q. Okay.

23 A. And that HUD, as part of the
24 Reagan administration's reforms, had been under
25 a tremendous amount of pressure to force

1 property owners to clean up their act,
2 essentially, and that they were really --
3 whereas the form was essentially a formality
4 before, it was now being used by HUD to gain
5 leverage against property owners and to force
6 property owners to invest money in older
7 properties to upgrade them.

8 Q. Okay.

9 A. And that in -- the 2530, in order
10 for anybody to buy a HUD-sponsored property
11 to develop a new HUD property, you had to
12 have a clean 2530.

13 Q. Okay. What -- and I've seen these
14 2530s, you know, you -- do you file -- you
15 file a 2530 if you're an owner, as well as
16 if you're a manager; is that correct?

17 A. I can only speak from the
18 perspective of owners, as I was never --
19 never worked for our management company or
20 was involved in a management company --

21 Q. Okay.

22 A. -- so I can only speak from -- my
23 only knowledge was that an owner had to file
24 it. I don't know if a management company
25 had to file it. I wouldn't be surprised if

1 A. Yes.

2 Q. And what did Mr. Boeckel tell you
3 about the management contracts?

4 A. Specifically, I can't remember what
5 he said at the time.

6 Q. All right. But what did you put
7 down in your memo that he said at that time?

8 (Deponent viewing document)

9 A. That the only thing on these
10 properties of any value were the management
11 contracts themselves.

12 Q. Okay. And did he also indicate to
13 you that they themselves had given those
14 away?

15 A. Yes.

16 Q. Okay. And would that coincide
17 with your earlier notation about them
18 resigning as manager?

19 A. Yes.

20 Q. Okay. Now, when he says in the
21 last sentence that the 2530 problem was just
22 too great for them to worry about value to
23 their investors, did he elaborate at all on
24 the 2530 problem?

25 A. No. He did not specifically say

1 what their 2530 -- what the 2530 problem
2 meant to them. He implied that these
3 properties themselves had issues relating to
4 their 2530, but he did not elaborate.

5 Q. Okay. And did he -- did he, at
6 any time, ever tell you that AIMCO had their
7 2530s flagged by HUD because of a -- of a
8 kickback scheme investigation that HUD was
9 doing on one of their affiliates and AIMCO?

10 A. No, he did not.

11 MR. JOHNSTON: Object to the form
12 of the question.

13 Good stopping point to go get
14 something to eat?

15 MR. BAILEY: Is it ready?

16 (Recess)

17 BY MR. BAILEY:

18 Q. Mr. von Weise, during this '99, up
19 until 2000 time frame, was Boston Financial
20 in the process of merging with Lend Lease?

21 A. Yes. But I can't remember exactly
22 when the merger took place.

23 Q. I don't know that it really
24 matters that much, but let me just give you
25 a reference point. Looking at the purchase

AMREAL 00567

South Carolina Income Portfolio Analysis - Updated to Include Mar-to-Market Rent Adjustments & Capital Improvements

	New Madison	New Orleans	New Palmetto	New Parkview	New Ramblewood	New Roosevelt I	New Roosevelt II	New Swift Creek	New Walhalla	Total	Per Unit
Effective Gross Income	\$ 390,360	\$ 480,000	\$ 177,728	\$ 288,000	\$ 280,580	\$ 417,000	\$ 477,000	\$ 165,945	\$ 125,000	\$ 2,852,493	4,270
Less Operating Expenses	(345,748)	(369,748)	(150,417)	(223,910)	(217,233)	(368,582)	(343,343)	(216,860)	(106,120)	(2,341,720)	(3,508)
Net Operating Income	\$ 44,611	\$ 120,254	\$ 27,311	\$ 65,090	\$ 73,327	\$ 48,448	\$ 133,657	\$ (20,505)	\$ 18,880	\$ 510,773	765
Value at 13.00% Cap Rate	\$ 343,182	\$ 825,031	\$ 210,085	\$ 500,882	\$ 584,854	\$ 372,877	\$ 1,028,131	\$ (180,038)	\$ 145,231	\$ 3,829,023	5,882
Outstanding First Mortgage	1,002,827	469,455	311,537	301,709	610,528	614,534	1,187,388	329,385	181,155	4,829,001	7,379
After 1st Mortgage Value	(659,765)	435,575	(104,752)	199,183	(46,573)	(741,657)	(753,259)	(489,403)	(25,924)	(999,978)	(1,497)
Less Capital Improvements	(425,000)	(393,000)	(150,000)	(225,000)	(750,000)	(150,000)	(175,000)	(225,000)	(175,000)	(2,678,000)	(3,887)
Market Value	(1,084,765)	40,575	(254,752)	(26,817)	(796,573)	(291,637)	(234,259)	(714,603)	(210,924)	(3,668,978)	(5,484)
Outstanding Second Mortgage	240,752	598,421	153,444	288,731	294,538	610,294	321,108	75,689	130,865	2,682,643	4,018
Accrued Interest on 2nd	1,301,577	881,537	478,726	807,784	817,680	934,830	848,881	368,887	263,874	8,831,496	10,227
After 2nd Note Value	(2,202,394)	(1,152,383)	(733,922)	(888,432)	(712,814)	(1,886,881)	(1,327,327)	(963,979)	(420,453)	(10,914,117)	(16,740)
1st Mortgage Type	238	221(0)(3)	238	238	238	221(0)(3)	221(0)(3)	238	238		
Section 8 Expiration	3/31/89 10/31/89	10/31/89	9/30/88	9/30/88	9/30/88 9/30/90	8/30/88	5/31/89	10/31/88 10/31/93	7/31/89 8/30/89		
Units	82	100	40	60	80	100	100	48	32	668	
Current Assets	\$ 34,155	\$ 78,743	\$ 23,809	\$ 58,538	\$ 34,272	\$ 71,942	\$ 38,778	\$ 50,232	\$ 12,365	\$ 306,732	
Payables - Operations	\$ 82,888	\$ 7,283	\$ 20,322	\$ 8,810	\$ 9,854	\$ 62,483	\$ 50,289	\$ 42,422	\$ 2,910	\$ 265,483	
Management Fee	\$ 30,720	\$ 43,880	\$ 14,668	\$ 28,825	\$ 19,300	\$ 40,380	\$ 37,003	\$ 20,091	\$ 11,059	\$ 243,801	\$ 365
Other Fees	\$ 4,476	\$ 5,412	\$ 2,892	\$ 3,732	\$ 3,024	\$ 5,812	\$ 18,581	\$ 8,747	\$ 788	\$ 51,344	\$ 77
Location	601 W. 54th Street Savannah, GA 1800 Hazelwood Drive Charleston, SC Highway 280, #127 Burton, SC 2500 Duke Street Beaufort, SC			203 Ramblewood Drive Shelby, NC Highway 601 North Orangeburg, SC Highway 601 North Orangeburg, SC 411 Wells Street Darlington, SC 100 Walhalla Gardens Cir. Walhalla, SC							

South Carolina Income Portfolio Analysis - Updated to Include Mar-to-Market Rent Adjustments & Capital Improvements

18/31/89 12:20 PM Ophelia JLE

Von Weise
Exhibit 3
Date: 1/13/89
Rptr: Susan A. Romano

February 1, 2000

Mr. Bradford L. von Weise
Vice President
LEND LEASE
101 Arch Street
Boston, MA 02110-1106

Re: *Roosevelt Gardens Apartments, Phases I & II*
Parkview Apartments
Palmetto Apartments
Swift Creek Apartments
Orleans Gardens Apartments

Dear Ford:

The meeting with Barton Tuck and the other partners that you may attend in February involves only the above referenced properties. I am attaching a mortgage balance and the NOI for each.

There are three (3) properties in the Mark to Market process. They are:

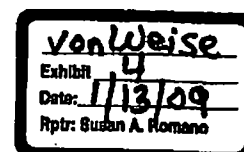
Roosevelt Gardens, Phase I -- will have its rent cut by \$25,000 decreasing the NOI by \$25,000. In addition, the Replacement Reserve will be increased from \$20,800 a year to \$35,000. I am also attaching the summary pages of the Physical Condition Assessment prepared by JPS & Associates, Inc. for South Carolina State Housing Finance and Development Authority, the PAE who is doing the Mark to Market for HUD. If you will note on the second page of the Executive Summary there is \$928,118 worth of repairs that may be required. The owner will be required to contribute 25% of this amount under the Mark to Market program or face foreclosure.

Roosevelt Gardens, Phase II -- will have its revenue cut \$109,000 directly reducing the NOI. In addition, the Replacement Reserve will be increased from \$22,100 a year to \$25,000. Also attached is the Executive Summary done by the same firm showing \$906,802 of work to be done on the property with the owner contributing 25%.

Parkview Apartments -- the rent out has not yet been established. The initial physical inspection and repairs has been done by MTB Investments, Inc. of Rockwall, Texas for the South Carolina State Housing Finance and Development Authority. The second page of the summary shows the total of various categories. All of them add up to \$398,148 and again the ownership would be required to contribute 25% of this or face foreclosures.

AMREAL 00570

HEDIGER ENTERPRISES, INC. • 301 N. Main Street, Ste. 1901 • Greenville, SC 29601 Telephone: 864-370-0480 • Fax: 864-370-0482



00570

Mr. Bradford L. von Weise
February 1, 2000
Page Two

The next set of properties is not on the Mark to Market hit list; however, they do require extensive work.

Palmetto Apartments - I am enclosing the last couple of pages of our budget showing \$163,000 worth of repairs needed.

Swift Creek Apartments - I am showing a schedule summarizing the work that we feel is needed for the property during the coming year.

Orleans Gardens Apartments - I am again enclosing the last few pages of the capital work that we feel is needed at the property. The amount of \$187,900 may actually be slightly more because there are two fire-damaged areas that need repair. The proof of loss has been settled for \$5,000 each less than the total cost of repairs, which is the amount of the deductible.

This last group of properties has yet to go through the TPA process. HUD's opinion of what needs to be repaired at the properties may actually be more than we estimated; therefore, HUD may require us to contribute more than we anticipated as a condition of their approval of the TPA.

Finally, you should be aware that the partners who are pushing Barton into this are all located in the Beaufort area and are familiar with the Parkview, Palmetto and Orleans Gardens properties possibly from recent visits.

Sincerely,

HEDIGER ENTERPRISES, INC.


Gary R. Hediger, CPM®
President

GRH/amm

J:\gary\letter\vonweise2

AMREAL 00571

0057

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

FILED
AUG 11 1975
AMENDED CERTIFICATE AND AGREEMENT OF
LIMITED PARTNERSHIP OF ORLEANS GARDENS

THIS AMENDED CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP made this 1st day of June, 1975 by and among U. S. SHELTER CORPORATION, a South Carolina Corporation, and N. BARTON TUCK, JR. (hereinafter called "General Partners") and the Undersigned parties designated as Limited Partners (hereinafter called "Limited Partners").

W I T N E S S E T H :

WHEREAS, a Partnership was formed on September 5, 1968, under the laws of South Carolina pursuant to an Agreement dated as of that date, and

WHEREAS, said Partnership was amended in certain respects by an Amendment of Partnership Agreement dated April 30, 1970, and

WHEREAS, the parties hereto desire to amend the Partnership Agreement, as amended, for the purpose of, among other things, continuing the Partnership as a Limited Partnership and admitting U. S. Shelter Corporation and N. Barton Tuck, Jr. as General Partners, all effective as of the date hereof;

NOW, THEREFORE, for and in consideration of the mutual premises and covenants set forth herein, it is hereby agreed among the parties hereto as follows:

1. Continuation. A Partnership known as Orleans Gardens is hereby continued under the laws of the State of South Carolina as a Limited Partnership.
2. Name. The name of the Partnership shall be "Orleans Gardens, A Limited Partnership". The location of the principal place of business shall be in Charleston, Charleston County, South Carolina.
3. Purpose. The purpose of the Partnership shall be to own, manage and operate an apartment project located in Charleston, Charleston County, South Carolina known as Orleans Gardens and designated as FKA Project No. 054-35005-LDP-SUP by the Department of Housing and Urban Development, Federal Housing Administration.

EXHIBIT

15

AMREAL 005823

December 31, 2008 unless sooner terminated by law or by any of the following:

(a) The withdrawal, retirement, death, insanity, adjudication of bankruptcy, insolvency, dissolution, liquidation or removal of either General Partner. If any such event occurs with respect to either General Partner, the remaining General Partner shall have the sole right to elect to continue the Partnership and the business of the Partnership which election shall be made within ninety (90) days of the occurrence of any such event. If there is no remaining General Partner then, if all the obligations of the General Partners and under any FPA Regulatory Agreement applicable to the project are assumed by a successor General Partner within ninety (90) days period, approved in writing by all of the Limited Partners within ninety (90) days of the occurrence of such event, the Partnership shall not be dissolved, but shall continue to do business. Each Limited Partner hereby agrees that he will accept and consent without further action to the election of a successor General Partner by 75% in interest of the Limited Partners. In such event the General Partners will be required to purchase the General Partner interest of the predecessor General Partner at a price equal to the then market price of such interest. In such event the relationship of the partners and of any person who has acquired an interest of a partner in the Partnership shall be governed by this Agreement which shall continue in full force and effect.

(b) Whenever partners owning 75% of the interest in the Partnership shall contemporaneously determine in writing that the Partnership shall be dissolved.

(c) The sale or condemnation of all or substantially all of the property of the Partnership; or the condemnation of a part of the property or the destruction of all or part of the property where the General Partners determine that no restoration is required or feasible.

In the event the Partnership is dissolved any group of Partners owning 75% of the total Partnership interest may reform the Partnership and continue in business under arrangements which make proper provisions for its liabilities.

5. Capital. The capital contributed and the capital interest of each partner are as follows:

<u>NAME</u>	<u>CAPITAL CONTRIBUTED</u>	<u>CAPITAL INTEREST</u>
General Partners:		
U. S. Shelter Corporation		3%
N. Barton Tuck, Jr.		2%
Limited Partners:		
Darson R. Rentz	\$ 30,000	20%
Edwin W. Pike, Jr.	30,000	25%
W. H. Hodge	30,000	25%
Arthur D. Mercy	27,000	25%

The Limited Partners shall not be required to make any additional capital contributions.

The net profits and losses and cash flow of the Partnership shall be distributed among the Partners in accordance with their respective capital interests.

6. Powers of the General Partners.

Effective as of the date hereof, U. S. Shelter Corporation and N. Barton Tuck, Jr. shall be the General Partners of the Partnership. The General Partners shall use their best efforts to further the interest of the Partnership but this shall not be construed so as to prevent them from engaging in other business.

In addition to the powers given them by law, the General Partners shall have authority:

- (a) To generally supervise the management of the Partnership property and the operations of the Partnership and to set up the management of the Partnership so as to provide for the efficient and economical operation of its business;
- (b) To acquire, own, lease, mortgage, and manage the property;
- (c) To negotiate, enter into and execute other contracts or leases or modifications thereof, and to incur obligations for and on behalf of the Partnership in connection with its business;
- (d) To borrow money or issue evidences of indebtedness in furtherance of any of all of the objects of its business; to secure the same by a mortgage to be insured by the Federal Housing Authority, pledge or other lien;

AMREAL 005825

(g) To execute notes, guarantees, endorsements, loan applications, instruments and agreements of any and every sort required or requested from time to time by any lending institution;

(f) With the written consent of 75% in interest of the Limited Partnership to repay in whole or in part, refinance, recast, modify or extend any mortgage affecting the property, and in connection therewith to execute for and on behalf of the Partnership any or all extensions, renewals, modifications of such mortgage, or to execute new mortgages on the property in lieu of any mortgage, and to execute instruments to carry out the intentions and the purposes thereof;

(g) With the written consent of 75% in interest of the Limited Partners, to sell the property or any interests therein, and to execute in the name of the Partnership any contract, deed or other documents necessary to effect such sale;

(h) To make tax accounting elections including depreciation methods;

(i) To enter into any kind of activity, and to perform and carry out contracts of any kind to, or in connection with, or incidental to the accomplishment of the purposes of the Partnership including the entering into of contracts of any kind necessary or appropriate to the accomplishment of the development of the project referred to herein, including a Regulatory Agreement and any other contract or contracts with the Federal Housing Commissioner which may be desirable or necessary to comply with the requirements of the Federal Housing Act, as amended, and the Administrative Rules and Regulations of the Federal Housing Commissioner thereunder, relating to the regulations of restriction of mortgagors, rents, sales, charges, capital structure, rate of return and methods of operations;

(j) To enter into agreements for lease or management of the property with other firms or corporations (including the General Partners and including one in which a General or a Limited Partner has an interest; and to pay such firm such amount for such services as is permitted under applicable FHA regulations;

(k) To do any and all things necessary and proper for the accomplishment of the objects herein enumerated or necessary or incident to the protection and benefit of the Partnership.

The General Partners shall not be liable, responsible or accountable in damages or otherwise to any Partner for any acts performed by them in good faith within the scope of the authority conferred on them by this Agreement.

interest in the Partnership, a General Partner or the General Partners may be removed provided that such removal shall be for good cause shown, including negligence, willful misconduct, or other similar acts but such General Partner or General Partners shall not be removed if they have faithfully performed their duties pursuant to this Agreement.

7. Activities of Limited Partners.

The Limited Partners shall take no part in the conduct or control of the Partnership business and shall have no right or authority to act for the Partnership in any way. No Limited Partner shall be subject to calls or assessments for cash contributions beyond the amount of capital shown herein as already contributed nor shall any Limited Partner in his capacity as such be bound by, or be personally liable for, any expense, liability or obligation of the Partnership, except to the extent of his contribution to the capital of the Partnership as reflected in the capital account.

8. Assignability of the Limited Partner's Rights and Interests.

The Limited Partners agree that they will not sell, transfer or assign, pledge, encumber, mortgage, or otherwise hypothecate the whole or any part of their interest in the Partnership without complying with the provisions of this paragraph.

(a) In the event that a Limited Partner shall desire to sell his interest in the Partnership, the such Limited Partner shall receive a bonafide written offer for the whole or any part of his interest in the Partnership, which offer is acceptable to such Partner, such Partner (herein referred to as the "Selling Party") may sell the whole or any part of such interest, as the case may be, after compliance with the following requirements and limitations:

(i) Such Selling Party shall extend to the General Partners a written offer to purchase the interest of the Selling Party at the same price as that contained in the bonafide written offer; provided, however, that the terms and conditions of the offer made to the General Partners need not be the same as the terms and conditions of the bonafide written offer. The General Partners (or their designees) shall have the right for a period of 15 days from the receipt of such written notice to purchase said interest in their pro rata percentages of ownership. If neither the General Partners nor their designees accept said offer within said 15-day period, the Selling Party shall then extend such offer to the Limited Partners at the same price. If neither the Limited

...or, if the undersigned does not accept such offer within 14 days of receipt of written notice of such offer, the Selling Party may thereupon accept such bonafide written offer, but if for any reason the Selling Party does not consummate such sale, the interest of the Selling Party shall continue to be subject to the provisions hereof.

(ii) In the event that any Purchasing Party deemed bound to purchase any interest of the Selling Party, or any portion thereof as above provided, shall default in his obligation to purchase the same, the Selling Party shall be deemed free of the restrictions imposed by the provisions of this subparagraph in respect to such interest or portion thereof.

(b) Notwithstanding the foregoing, the interest of a Limited Partner may be:

(i) Transferred or disposed of by Will or intestacy to or for the benefit of his immediate family.

(ii) Transferred during his lifetime, by gift or inter vivos trust to or for the benefit of his immediate family. For the purpose of this subparagraph, "immediate family" is defined as the husband, wife, adult child, father, mother or adult sister or adult brother of the Limited Partner.

(iii) Sold, transferred, assigned, pledged, encumbered or otherwise hypothecated to the Partnership or any other Partner herein.

(iv) Transferred or assigned to any Successor Corporation of a Limited Partner or to its stockholders in event of its dissolution.

(c) No conveyance of a Limited Partner's interest, or any part thereof, though otherwise permitted hereunder, shall be valid and effective, and the Partnership shall not recognize the same for the purposes of making payment of profits, income, return or contributions, or other distributions with respect to such interest or part thereof, until:

(i) The written consent of the General Partners is obtained with respect to the substitution of the Transferee as the new Limited Partner in place of the Transferor.

(ii) An appropriate instrument of conveyance or assignment is executed and filed with the General Partners, and

(iii) The incoming Limited Partner shall execute a Limited Partnership Agreement to evidence his acceptance and agreement to be bound as a Limited Partner by all the terms of this Agreement.

(iv) If either the Transferor or the Transferee is a corporation,

such corporation shall provide the General Partners with a certified copy of a Corporate Resolution authorizing the sale and/or purchase of such Partnership interest in accordance with the terms and conditions set forth herein.

(d) The Partnership shall, after recording any transfer pursuant to the provisions herein, thereafter pay all further distributions of income, profits and contributions on account of the interest transferred to the Transferee, regardless of whether such transfer as between the parties thereto, is or is intended to be by way of pledge, mortgage, encumbrance or other hypothecation, until such time as the interest transferred on its books in accordance with the provisions thereof.

9. Distribution on Dissolution.

Upon the dissolution and termination of the Partnership, the then General Partners shall proceed with the sale and liquidation of the Partnership assets on such terms as it may approve and the proceeds of such liquidation shall be applied and distributed as follows:

(a) To the payment of the debts and liabilities of the Partnership and the expenses of liquidation, including sales commission to the selling agent and any indebtedness to a Partner.

(b) To the setting up of any reserves which the then General Partners may deem reasonably necessary for any contingent or unforeseen liability or obligations of the Partnership or of the then General Partners arising out of or in connection with the Partnership. Such reserves shall be paid over by the then General Partners to a bank or to an attorney at law as escrowee, to be held for the purpose of disbursing such reserves in payment of any of the aforementioned contingencies, and, at the expiration of such period as the then General Partners shall deem advisable, to distributed the balance thereafter remaining in the manner provided in this section in the order named. Such assets on hand after payment of all debts and liabilities is hereafter referred to as Distributable Net Worth.

(c) To the payment to each of the Partners of any advance made and not repaid but not payment of contributed capital to the Partnership.

(d) To the payment to all Partners, to the extent available, an amount equal to the product of their respective interests provided herein and the Distributable Net Worth.

(e) The balance of any monies or other assets shall then be divided among all the Partners in proportion to their respective Partnership interests as set out herein.

A reasonable time shall be allowed for the orderly liquidation of the assets of the Partnership and the discharge of liabilities to the creditors so as to enable the then General Partner to minimize the normal losses attendant upon liquidation. No Limited Partner shall have the right to demand and receive property other than cash in return for his capital contribution.

Each of the Partners shall be furnished with a statement prepared by the Partnership's then accountants, which shall set forth the assets and liabilities of the Partnership as at the date of complete liquidation and the manner in which the assets of the Partnership are to be distributed. Upon the then General Partners complying with the foregoing distribution plan (including payment over to the escrowee if there are sufficient funds therefor), the Limited Partners shall cease to be such, and the then General Partners shall execute, acknowledge and cause to be filed a Certificate of Cancellation of the Partnership.

Anything in this Agreement to the contrary notwithstanding, the then General Partners shall not be personally or jointly liable for the return of any capital contributions of Limited Partners, or any portion thereof, it being expressly understood that any such return shall be made solely from Partnership assets; nor shall the General Partners be required to pay to the Partnership or the Limited Partners any advances or any deficit reflected in the Partnership capital account upon dissolution or otherwise.

10. Books, Records and Reports.

At all times during the continuance of the Partnership, the General Partners shall keep or cause to be kept true and full books of account, in which shall be entered fully and accurately the transactions of the Partnership; all of the books shall at all times be maintained at the principal office of the Partnership and shall be open to the inspection and examination of the Limited Partner or his representatives. The books and transactions of the Partnership shall be kept separately from all other books and transactions of the General Partners. The General Partners agree to deliver to the Limited Partners within a reasonable time after the expiration of each fiscal year of the Partnership a statement of receipt and expenses as prepared by the Partnership's accountant, together with a statement showing the profit or losses of the Partnership for Federal income Tax purposes and the distribution thereof to the Limited Partners.

Neither U.S. Shelter Corporation nor N. Barton Tuck nor
shall be deemed to assume personal liability for any obligations of the Partne-
ship incurred prior to their admission to the Partnership and the liability for
such obligations shall be satisfied solely out of Partnership property.

EXCEPT AS SPECIFICALLY amended herein, the provisions of the
Agreement dated September 5, 1968 as amended by Amendment of Partnership Agree-
ment dated April 30, 1970 shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF the parties hereto have set forth their hands
and seals as of the date hereof.

GENERAL PARTNERS:

U. S. SHELTER CORPORATION

By: [Signature]
N. Barton Tuck, Vice President
P. O. Box 6725
Greenville, South Carolina 29605

[Signature]
N. Barton Tuck, Jr.
P. O. Box 6725
Greenville, South Carolina 29605

LIMITED PARTNERS:

[Signature]
Carson R. Rantz
P. O. Box 81064
Beaufort, South Carolina 29902

[Signature]
Edwin M. Blikstein
P. O. Box 81064
Beaufort, South Carolina 29902

[Signature]
W. H. Hodge
P. O. Box 696
Sumter, South Carolina 29150

[Signature]
Arthur O. Mercy
P. O. Box 57
Manning, South Carolina 29102

STATE OF SOUTH CAROLINA }

COUNTY OF Beaufort }

I, Michael A. Vinton, a Notary Public in and for
the State and County aforesaid, whose commission expires on the 15 day of
JANUARY, 1978, do hereby certify that EDWIN W. PIKE, JR.,
signed and swore to the foregoing AMENDED CERTIFICATE AND AGREEMENT OF LIMITED
PARTNERSHIP.

Given under my hand and Notarial seal, this 25 day of

July, 1975.

Michael A. Vinton
Notary Public for South Carolina
My Commission Expires: 1-15-78

STATE OF SOUTH CAROLINA }

COUNTY OF Beaufort }

I, Michael A. Vinton, a Notary Public in and for
the State and County aforesaid, whose commission expires on the 15 day of
JANUARY, 1978, do hereby certify that W. M. HODGE, signed
and swore to the foregoing AMENDED CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP.

Given under my hand and Notarial seal, this 25 day of

July, 1975.

Michael A. Vinton
Notary Public for South Carolina
My Commission Expires: 1-15-78

AMREAL 005832

STATE OF SOUTH CAROLINA }
COUNTY OF GREENVILLE }

I, Carol J. Reams, a Notary Public in and for
the State and County aforesaid, whose commission expires on the 20th day of
March, 1984, do hereby certify that U. S. SHELTER
CORPORATION by its President and N. BARTON TUCK, JR. signed and swore to the
foregoing AMENDED CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP.

Given under my hand and Notarial seal, this 23rd day of

July, 1975.

Carol J. Reams
Notary Public for South Carolina
My Commission Expires: 3-20-84

STATE OF SOUTH CAROLINA }
COUNTY OF Beaufort }

I, Michael A. Veyton, a Notary Public in and
for the State and County aforesaid, whose commission expires on the 15 day
of JANUARY, 1978, do hereby certify that CARSON R.
RENTZ, signed and swore to the foregoing AMENDED CERTIFICATE AND AGREEMENT OF
LIMITED PARTNERSHIP.

Given under my hand and Notarial seal, this 25th day of

July, 1975.

Michael A. Veyton
Notary Public for South Carolina
My Commission Expires: 1-15-78

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

I, W. H. C. Goffey, Jr., a Notary Public in and for
the State and County aforesaid, whose commission expires on the 15th day
of JANUARY, 1980, do hereby certify that ARTHUR D. MERO
signed and swore to the foregoing AMENDED CERTIFICATE AND AGREEMENT OF LIMITED
PARTNERSHIP.

Given under my hand and Notary Seal this 27th day of
AUGUST, 1975.

W. H. C. Goffey, Jr.
Notary Public for South Carolina
My Commission Expires 1/15/80

AMREAL 005834

7/2/89
12/19/85
05-12-05
12-500

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

AMENDED CERTIFICATE AND AGREEMENT
OF LIMITED PARTNERSHIP OF 20670
ROOSEVELT LARDERS, A LIMITED PARTNERSHIP
7/8/91 11:21:27 31415

THIS AMENDED CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP made this 1st day of June, 1975 by and among, HODGE LAND COMPANY, INC., a South Carolina Corporation, and CARSON R. RENTZ (hereinafter sometimes called "Former General Partners"), U. S. SHELTER CORPORATION, a South Carolina Corporation, and H. BARTON TUCK, JR. (hereinafter called "General Partners") and the undersigned parties designated as Limited Partners (hereinafter called "Limited Partners").

W I T N E S S E T H :

WHEREAS, a General Partnership was formed and organized under the laws of the State of South Carolina pursuant to a Partnership Agreement dated May 15, 1970, which Partnership was continued as a Limited Partnership by a Limited Partnership Agreement dated February 18, 1971 and which Limited Partnership was further amended in certain respects as of August 1, 1971, all of which Amendments were reflected by a Certificate or Amended Certificate of Limited Partnership duly filed with the Office of the Secretary of State and the Clerk of Court of Orangeburg County, South Carolina; and

WHEREAS, the parties hereto desire to amend the Partnership Agreement, as amended, and the Certificate of Limited Partnership, as amended, for the purpose of, among other things, substituting U. S. Shelter Corporation and H. Barton Tuck, Jr. as General Partners in place of Hodge Land Company, Inc. and Carson R. Rentz who shall be deemed as withdrawn from the Partnership as General Partners but who shall become Limited Partners in the Partnership effective as of the date hereof, and,

WHEREAS, the parties hereto further desire to amend the Partnership Agreement, as amended, and the Certificate of Limited Partnership, as amended, by combining and incorporating both documents into the within Amended Certificate and Agreement of Limited Partnership,

NOW, THEREFORE, for and in consideration of the mutual premises and covenants set forth herein, the parties hereto hereby agree as follows:

EXHIBIT

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AMREAL 005860

1. Continuation. A Limited Partnership known as Roosevelt Gardens, a Limited Partnership is hereby continued under the laws of the State of South Carolina.

2. Name. The name of the Partnership shall be Roosevelt Gardens, A Limited Partnership. The location of the principal place of business shall be Orangeburg, Orangeburg County, South Carolina.

3. Purpose. The purpose of the Partnership shall be:

(a) To hold for investment, operate and manage an apartment project known as Roosevelt Gardens located in Orangeburg, Orangeburg County, South Carolina, and designated as FHA Project No. 054-15061-EDP-SUP.

(b) To mortgage, sell, transfer and exchange or otherwise convey and encumber said property and the improvements built thereon in furtherance of any of the Partnership's business in connection with said Project.

(c) To enter into contracts of any kind necessary or appropriate to the development of said Project, including, but not by way of limitation, any contract or contracts with the Federal Housing Commissioner which may be desirable or necessary to comply with the requirements of the National Housing Act, as amended, and the administrative rules and regulations of the Federal Housing Commissioner thereunder, relating to the regulations or restriction of mortgagors as to rents, sales, charges, capital structure, rate of return and methods of operation.

(d) To rent units in said Project from time to time for periods not less than thirty (30) days or more than three (3) years, collect the rents therefrom, pay the expenses incurred in connection with said property and distribute the net proceeds to the Partners, all of which shall be subject to any requirements which may be imposed by the Federal Housing Administration Regulatory Agreement.

4. Term. The term of the Partnership shall expire on August 2, 2011 unless sooner terminated by law or by any of the following events:

(a) The bankruptcy, resignation, death, incapacity, insolvency or removal of a General Partner, not otherwise provided for herein.

(b) The sale or destruction of the improvements constructed on said premises; provided, however, that a sale of the improvements may not be made without the consent of all General Partners and at least 70% in interest of the Limited Partners in terms of profit and loss sharing ratio.

(c) The payment in full, foreclosure or other discharge of the first lien indebtedness on the said premises which is insured by the Federal Housing Administration; provided, however, that payment in full resulting from refinancing may not be made without the consent of the General Partners and 70% in interest of the Limited Partners in terms of profit and loss sharing ratio.

(d) The unanimous written consent of all partners.

The death of a Limited Partner shall not dissolve the Partnership nor terminate the Partnership business. Upon dissolution of this Partnership while the Regulatory Agreement with the Federal Housing Commissioner in connection with the insured loan on said Project is still in effect, no title or right to possession and control shall pass to any individual unless he has agreed to become bound by the Regulatory Agreement in a manner satisfactory to the Federal Housing Commissioner.

The insolvency, resignation, bankruptcy, removal or withdrawal for any other cause from the Partnership of either General Partner shall not result in the dissolution of the Partnership if all of the remaining Partners, General and Limited, shall unanimously elect to continue the Partnership with the remaining General Partners or Partner, and to carry on the business of the Partnership. Upon the dissolution of the Partnership by reason of the death, insolvency, incapacity, resignation, removal or bankruptcy of the last surviving General Partner the remaining Limited Partners, together with the personal representative of said General Partner, may elect by unanimous decision, to form a new Partnership with a new General Partner satisfactory to 70% in interest of the Limited Partners in terms of profits and loss sharing ratio. No General Partner may resign or withdraw from the Partnership without the consent of all of the Limited Partners and without providing a successor General Partner satisfactory to all of the Limited Partners. The Limited Partners will not unreasonably withhold approval of a proposed successor General Partner.

5. Capital (the capital contributions) and the capital interests

of the partners are as follows:

<u>Name</u>	<u>Capital Contributed</u>	<u>Capital Interest</u>
General Partners:		
U. S. Shelter Corporation		3%
N. Barton Tuck, Jr.		2%
Limited Partners:		
Hodge Land Company, Inc.		25.0%
Carlson R. Rentz		8.0%
Laurence H. Davis, Jr.	\$ 100.00	13.0%
Dan Trotter	30,000.00	24.5%
Mortimer H. Weinberg, Jr.	30,000.00	24.5%

The net profits and losses and available cash flow of the Partnership shall be distributed to the partners in accordance with their respective capital interests.

The Limited Partners shall not be required to make any additional capital contributions beyond the amounts shown as contributed herein.

Effective as of the date hereof U. S. Shelter Corporation and N. Barton Tuck, Jr. shall be deemed as substituted as General Partners in place of Hodge Land Company, Inc. and Carlson R. Rentz both of which shall be deemed as withdrawn from the Partnership as General Partners and which shall become Limited Partners effective as of the date hereof.

6. Neither U. S. Shelter Corporation nor N. Barton Tuck, Jr. shall be deemed to assume personal liability for any obligations of the Partnership incurred prior to their admission to the Partnership and such obligations shall be satisfied solely out of Partnership property.

EXCEPT AS SPECIFICALLY AMENDED herein the provisions of the Limited Partnership Agreement, as amended, and the Certificate of Limited Partnership, as amended, for Roosevelt Gardens, shall remain unchanged and in full force and effect as of the date hereof.

hand and seals as of the date hereof.

FORMER GENERAL PARTNERS:

Hodge Land Company, Inc.

By: Edwin F. Bell, Jr.

Beaufort, South Carolina 29902

GENERAL PARTNERS:

D. S. HODGE COMPANY

By: Edwin F. Bell, Jr.

Greenville, South Carolina 29606

W. B. HODGE, JR.
P. O. Box 1064
Greenville, South Carolina 29606

LIMITED PARTNERS:

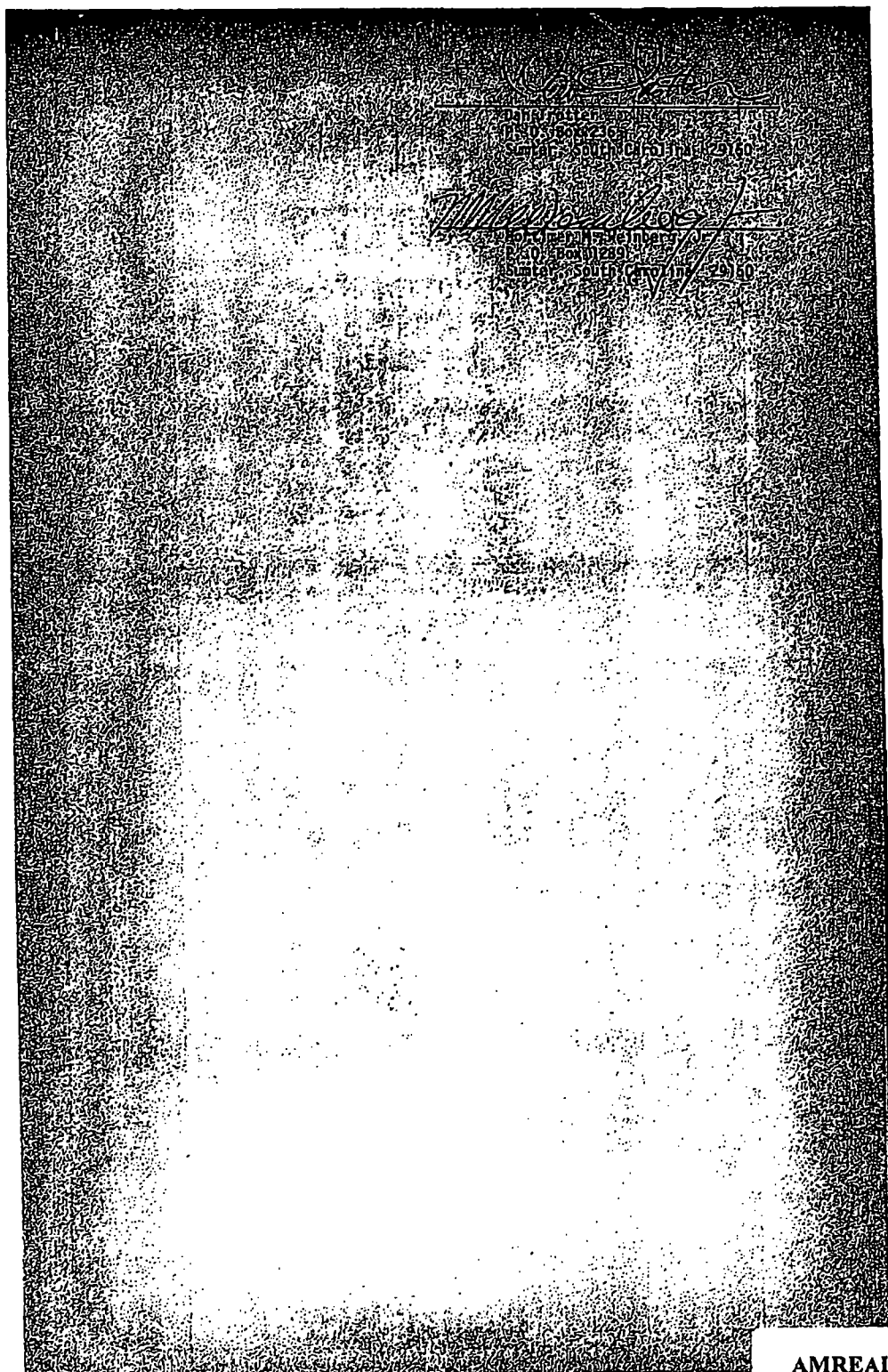
Hodge Land Company, Inc.

By: Edwin F. Bell, Jr.

Beaufort, South Carolina 29902

Larson R. Bentz
P. O. Box 1064
Beaufort, South Carolina 29902

Laurance H. Davis, Jr.
P. O. Box 1064
Beaufort, South Carolina 29902



AMREAL 005865

STATE OF SOUTH CAROLINA }

COUNTY OF Beaufort }

I, Michael A. Vaytes, a Notary Public in and
for the State and County aforesaid, whose commission expires on the 15 day
of January, 1978, do hereby certify that HODGE LAND
COMPANY, INC. by its President, signed and swore to the foregoing AMENDED
CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP OF ROOSEVELT GARDENS, A LIMITED
PARTNERSHIP.

Given under my hand and Notarial seal, this 26 day of

July, 1975.

Michael A. Vaytes
Notary Public for South Carolina
My Commission Expires: 1-15-1978

STATE OF SOUTH CAROLINA }

COUNTY OF Beaufort }

I, Michael A. Vaytes, a Notary Public in and
for the State and County aforesaid, whose commission expires on the 15 day
of January, 1978, do hereby certify that CARSON R. RENTZ
signed and swore to the foregoing AMENDED CERTIFICATE AND AGREEMENT OF LIMITED
PARTNERSHIP OF ROOSEVELT GARDENS, A LIMITED PARTNERSHIP.

Given under my hand and Notarial seal, this 25 day of

July, 1975.

Michael A. Vaytes
Notary Public for South Carolina
My Commission Expires: 1-15-1978

AMREAL 005866

STATE OF SOUTH CAROLINA }
COUNTY OF GREENVILLE

I, Carl A. Bruns, a Notary Public in and
for the State and County aforesaid, whose commission expires on the 20th day
of March, 1984, do hereby certify U. S. SHELTER
CORPORATION by its President and H. BARTON TUCK, JR., signed and swore to the
foregoing AMENDED CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP OF ROOSEVELT
GARDENS, A LIMITED PARTNERSHIP.

Given under my hand and Notarial seal, this 23rd day of

July, 1975.

Carl A. Bruns
Notary Public for South Carolina
My Commission Expires: 3-20-84

STATE OF SOUTH CAROLINA }
COUNTY OF Beaufort

I, Michael A. Vayten, a Notary Public in
and for the State and County aforesaid, whose commission expires on the 15th
day of January, 1978, do hereby certify that LAURANCE H.
DAVIS, JR., signed and swore to the foregoing AMENDED CERTIFICATE AND AGREEMENT
OF LIMITED PARTNERSHIP OF ROOSEVELT GARDENS, A LIMITED PARTNERSHIP.

Given under my hand and Notarial seal, this 25th day of

July, 1975.

Michael A. Vayten
Notary Public for South Carolina
My Commission Expires: 1-15-78

AMREAL 005867

STATE OF SOUTH CAROLINA

COUNTY OF Sumter

I, Estel Praeger, a Notary Public for and
in the State and County aforesaid, whose commission expires on the 20 day
of October, 1975, do hereby certify that DAN TROTTER,
signed and swore to the foregoing AMENDED CERTIFICATE AND AGREEMENT OF LIMITED
PARTNERSHIP OF ROOSEVELT GARDENS, A LIMITED PARTNERSHIP.

Given under my hand and Notarial seal, this 20 day of

October, 1975.

Estel Praeger
Notary Public for South Carolina
My Commission Expires 10-20-75

STATE OF SOUTH CAROLINA

COUNTY OF Sumter

I, Estel Praeger, a Notary Public in and
for the State and County aforesaid, whose commission expires on the 20
day of October, 1975, do hereby certify that
WORTHER M. WEINBERG, JR., signed and swore to the foregoing AMENDED CERTIFICATE
AND AGREEMENT OF LIMITED PARTNERSHIP OF ROOSEVELT GARDENS, A LIMITED PARTNERSHIP.

Given under my hand and Notarial seal, this 20 day of

October, 1975.

Estel Praeger
Notary Public for South Carolina
My Commission Expires 10-20-75

AMREAL 005868

THIS AMENDED CERTIFICATE AND RECEIPT made this 15th day of June 1975 by and among U. S. SHELTER CORPORATION, a South Carolina Corporation and N. BARTON TUCK, JR., (hereinafter called "General Partners") and the undersigned parties designated as Limited Partners (hereinafter called "Limited Partners").

WITNESSETH:

WHEREAS, a Partnership known as Parkview Apartments was formed and organized under the laws of the State of South Carolina pursuant to a Partnership Agreement dated June 2, 1969, and

WHEREAS, the parties hereto desire to amend the Partnership Agreement for the purpose of, among other things, admitting U. S. Shelter Corporation and N. Barton Tuck, Jr. into the Partnership as General Partners and to amend the Partnership Agreement in certain other respects;

NOW THEREFORE, in and for the consideration of the mutual premises and covenants set forth herein, the parties hereto agree as follows:

1. Continuation.

A Partnership known as Parkview Apartments is hereby continued under the laws of the State of South Carolina as a Limited Partnership.

2. Name.

The name of the Partnership shall be Parkview Apartments, A Limited Partnership. The location of the office of the principal place of business shall be in Beaufort, Beaufort County, South Carolina.

3. Purpose.

The purpose of the Partnership shall be to own, operate and manage an apartment project known as Parkview Apartments located on Duke Street, Beaufort, South Carolina and designated as FHA Project Number 054-35038-LDP-SUP by the Department of Housing and Urban Development, Federal Housing Administration.

4. Term.

The term of the Partnership shall expire on December 31, 2009 unless sooner terminated by law or by any of the following:

EXHIBIT

tabbier

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AMREAL 00711

...shall be dissolved. If any such event occurs with respect to either General Partner, the remaining General Partner shall have the sole right to elect to continue the Partnership and the business of the Partnership, which election shall be made within ninety (90) days of the occurrence of any such event. If there is no remaining General Partner then, if all the obligation of the General Partners and under any FMA Regulatory Agreement applicable to the project are assumed by a Successor General Partner within such ninety (90) days period, approved in writing by all of the Limited Partners within ninety (90) days of receipt of written notice of such event, the Partnership shall not be dissolved but shall continue to do business. Each Limited Partner hereby agrees that he will accept and consent without further action to the election of a Successor General Partner by 75% in interest of the Limited Partners. In such event the General Partners will be required to purchase the General Partner interest of the predecessor General Partner at a price equal to the then market price of such interest. In such event the relationship of the partners and of any person who has acquired an interest of a partner in the Partnership shall be governed by this Agreement which shall continue in full force and effect.

(b) Whenever partners owning 75% of the interest in the Partnership shall contemporaneously determine in writing that the Partnership shall be dissolved.

(c) The sale or condemnation of all or substantially all of the property of the Partnership; or the condemnation of a part of the property or the destruction of all or part of the property where the General Partners determine that no restoration is required or feasible.

In the event the Partnership is dissolved any group of Partners owning 75% of the total Partnership interest may reform the Partnership and continue in business under arrangements which make proper provisions for its liabilities.

5. Capital.

The capital contributions and the capital interest of the Partners are as follows:

CAPITAL CONTRIBUTIONS		CAPITAL INTEREST
<u>General Partners:</u>		
U. S. Shelter Corporation		3%
H. Barton Tuck, Jr.		2%
<u>Limited Partners:</u>		
Laurence H. Davis, Jr.	\$ 75,000	25%
Carlson R. Kentz	15,000	20%
Edwin W. Pike, Jr.	15,000	25%
W. M. Hodge	15,000	25%

The net profits and losses and cash flow shall be distributed among the partners in accordance with their respective capital interest in the Partnership.

6. Powers of the General Partners.

Effective as of the date hereof, U. S. Shelter Corporation and H. Barton Tuck, Jr. shall be the General Partners of the Partnership. The General Partners shall use their best efforts to further the interest of the Partnership but this shall not be construed so as to prevent them from engaging in other business.

In addition to the powers given them by law, the General Partners shall have authority:

- (a) To generally supervise the management of the Partnership property and the operations of the Partnership and to set up the management of the Partnership so as to provide for the efficient and economical operation of its business;
- (b) To acquire, own, lease, mortgage, and manage the property;
- (c) To negotiate, enter into and execute other contracts or leases or modifications thereof, and to incur obligations for and on behalf of the Partnership in connection with its business;
- (d) To borrow money or issue evidences of indebtedness in furtherance of any of all of the objects of its business; to secure the same by a mortgage to be insured by the Federal Housing Authority, pledge or other lien;
- (e) To execute notes, guarantees, endorsements, loan applications, instruments and agreements of any and every sort required or requested from time to time by any lending institution;

AMREAL 00713

or extend any mortgage affecting the property, and in connection therewith to execute for and on behalf of the Partnership any or all extensions, renewals, modifications of such mortgage, or to execute new mortgages on the property in lieu of any mortgage, and to execute instruments to carry out the intentions and the purposes thereof;

(g) With the written consent of 75% in interest of the Limited Partners, to sell the property or any interests therein, and to execute in the name of the Partnership any contract, deed or other documents necessary to effect such sale;

(h) To make tax accounting elections including depreciation methods;

(i) To enter into any kind of activity, and to perform and carry out contracts of any kind to, or in connection with, or incidental to the accomplishment of the purposes of the Partnership (including the entering into of contracts of any kind necessary or appropriate to the accomplishment of the development of the project referred to herein, including a Regulatory Agreement and any other contract or contracts with the Federal Housing Commissioner which may be desirable or necessary to comply with the requirements of the Federal Housing Act, as amended, and the Administrative Rules and Regulations of the Federal Housing Commissioner thereunder, relating to the regulations of restriction of mortgagors, rents, sales, charges, capital structure, rate of return and methods of operations;

(j) To enter into agreements for lease or management of the property with other firms or corporations (including the General Partners and including one in which a General or a Limited Partner has an interest; and to pay such firm such amount for such services as is permitted under applicable FHA regulations;

(k) To do any and all things necessary and proper for the accomplishment of the objects herein enumerated or necessary or incident to the protection and benefit of the Partnership.

The General Partners shall not be liable, responsible or accountable in damages or otherwise to any Partner for any acts performed by them in good faith within the scope of the authority conferred on them by this Agreement.

1. Interest on the Partnership's (including the General Partners') debts may be removed provided that such removal shall be for good cause shown, (including negligence, willful misconduct, or other similar acts) but such General Partner or General Partners shall not be removed if they have faithfully performed the duties pursuant to this Agreement.

As a member of the American Society of International Law

1. The undersigned hereby certifies that the conduct or control of the undersigned is not subject to the authority to extradite or to extradite the undersigned to the United States to carry out the service of a criminal sentence imposed by a United States court in a criminal case, and that the undersigned is not subject to the authority to extradite or to extradite the undersigned to the United States to carry out the service of a criminal sentence imposed by a United States court in a criminal case, and that the undersigned is not subject to the authority to extradite or to extradite the undersigned to the United States to carry out the service of a criminal sentence imposed by a United States court in a criminal case.

8. Assignability of Designated Person's Rights and Interests

The limited partners agree that they will not sell, transfer or assign, pledge, encumber, mortgage, or otherwise hypothecate the whole or any part of their interest in the Partnership without complying with the provisions of this paragraph.

(a) In the event that a Limited Partner shall desire to sell his interest in the Partnership, the such Limited Partner shall receive a bona fide written offer for the whole or any part of his interest in the Partnership, which offer is acceptable to such Partner, such Partner (herein referred to as the "Selling Party") may sell the whole or any part of such interest, as the case may be, after compliance with the following requirements and limitations:

(1) Such Selling Party shall extend to the General Partners a written offer to purchase the interest of the Selling Party at the same price as that contained in the bonafide written offer; provided, however, that the terms and conditions of the offer made to the General Partners need not be the same as the terms and conditions of the bonafide written offer. The General Partners (or their designees) shall have the right for a period of 15 days from the receipt of such written notice to purchase said interest

not their designees accept such offer within the 15-day period, the Selling Party shall then extend such offer to the Limited Partners at the same price. If neither the Limited Partners nor their designees accept such offer within 15 days or receipt of written notice of such offer, the Selling Party may thereupon accept such bona fide written offer, but for any reason the Selling Party does not consummate such sale in the interest of the Selling Party shall continue to be subject to the provisions hereof.

(f) In the event of a bona fide purchase by the Selling Party or bona fide purchase by a third party of any portion thereof, the Selling Party shall be relieved of its obligation to purchase the same, the Selling Party shall be relieved of the restrictions imposed by the provisions of this subparagraph in relation to such interest or portion thereof.

(b) Notwithstanding the foregoing, the interest of a Limited Partner may be:

(i) Transferred or disposed of by will or intestacy to or for the benefit of his immediate family.

(ii) Transferred during his lifetime, by gift or inter vivos trust to or for the benefit of his immediate family. For the purpose of this subparagraph, "immediate family" is defined as the husband, wife, adult child, father, mother or adult sister or adult brother of the Limited Partner.

(iii) Sold, transferred, assigned, pledged, encumbered or otherwise hypothecated to the Partnership or any other Partner herein.

(iv) Transferred or assigned to any Successor Corporation of a Limited Partner or to its stockholders in event of its dissolution.

(c) No conveyance of a Limited Partner's interest, or any part thereof, though otherwise permitted hereunder, shall be valid and effective, and the Partnership shall not recognize the same for the purposes of making payment of profits, income, return or contributions, or other distributions with respect to such interest or part thereof, until:

(i) The written consent of the General Partners is obtained with respect to the substitution of the Transferee as the new Limited Partner in place of the Transferor.

(ii) An appropriate instrument of conveyance or assignment is executed and filed with the General Partners, and

AMREAL 00716

Partnership Agreement of the General Partners of the Partnership, as a limited partnership, shall be subject to the following:

(iv) If either the Transferor or the Transferee is a corporation, such corporation shall provide the General Partners with a certified copy of a Corporate Resolution authorizing the sale and/or purchase of such Partnership interest in accordance with the terms and conditions set forth herein.

(d) The Partnership shall, after recording any transfer pursuant to the provisions herein, thereafter pay all further distributions of income, profits and contributions on account of the interest transferred to the Transferee, regardless of whether such transfer as between the parties thereto, is or is intended to be by way of pledge, mortgage, encumbrance or other hypothecation, until such time as the interest transferred on its books in accordance with the provisions thereof.

9. Distribution on Dissolution.

Upon the dissolution and termination of the Partnership, the then General Partners shall proceed with the sale and liquidation of the Partnership assets on such terms as it may approve and the proceeds of such liquidation shall be applied and distributed as follows:

- (a) To the payment of the debts and liabilities of the Partnership and the expenses of liquidation, including sales commission to the selling agent and any indebtedness to a Partner.
- (b) To the setting up of any reserves which the then General Partners may deem reasonably necessary for any contingent or unforeseen liability or obligations of the Partnership or of the then General Partners arising out of or in connection with the Partnership. Such reserves shall be paid over by the then General Partners to a bank or to an attorney at law as escrowee, to be held for the purposes of disbursing such reserves in payment of any of the aforementioned contingencies, and, at the expiration of such period as the then General Partners shall deem advisable, to distributed the balance thereafter remaining in the manner provided in this section in the order named. Such assets on hand after payment of all debts and liabilities is hereafter referred to as Distributable Net Worth.

made and not repaid but not payment of contributed capital to the Partnership.

(d) To the payment to all Partners, to the extent available, an amount equal to the product of their respective interests provided herein and the Distributable Net Worth.

(e) The balance of any monies or other assets shall then be divided among all the Partners in proportion to their respective Partnership interests as set out herein.

A reasonable time shall be allowed for the orderly liquidation of the assets of the Partnership and the discharge of liabilities to the creditors so as to enable the then General Partner to minimize the normal losses attendant upon liquidation. No Limited Partner shall have the right to demand and receive property other than cash in return for his capital contribution.

Each of the Partners shall be furnished with a statement prepared by the Partnership's then accountants, which shall set forth the assets and liabilities of the Partnership as at the date of complete liquidation and the manner in which the assets of the Partnership are to be distributed. Upon the then General Partners complying with the foregoing distribution plan (including payment over to the escrowee if there are sufficient funds therefor), the Limited Partners shall cease to be such, and the then General Partners shall execute, acknowledge and cause to be filed a Certificate of Cancellation of the Partnership.

Anything in this Agreement to the contrary notwithstanding, the then General Partners shall not be personally or individually liable for the return of any capital contributions of Limited Partners, or any portion thereof, it being expressly understood that any such return shall be made solely from Partnership assets; nor shall the General Partners be required to pay to the Partnership or the Limited Partners any advances or any deficit reflected in the Partnership capital account upon dissolution or otherwise.

10. Books, Records and Reports.

At all times during the continuance of the Partnership, the General Partners shall keep or cause to be kept true and full books of account, in which shall be entered fully and accurately the transactions of the Partnership; all of the books shall at all times be maintained at the principal office of the Partnership and shall be open to the inspection and examination of the Limited Partner or his representatives. The books and transactions of the Partnership shall be kept separately from all other books and transactions

AMREAL 00718

1. The Partnership shall cause to be prepared at the close of each fiscal year of the Partnership a statement of receipts and expenses as prepared by the Partnership's accountant, together with a statement showing the profit or losses of the Partnership for Federal income tax purposes and the distribution thereof to the Limited Partners.

2. Neither U.S. Shelter Corporation nor H. Barton Jack, Jr. shall be deemed to have waived or released the Partnership from the Partnership's obligation to cause to be prepared and distributed to the Limited Partners a statement of receipts and expenses as prepared by the Partnership's accountant, together with a statement showing the profit or losses of the Partnership for Federal income tax purposes and the distribution thereof to the Limited Partners.

EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THE PARTNERSHIP AGREEMENT, ALL OF THE PARTNERSHIP'S ASSETS AND LIABILITIES AS OF THE DATE HEREOF SHALL REMAIN UNCHANGED AND UNLIQUIDATED.

IN WITNESS WHEREOF, the Partnership has caused its name to be written and its seal to be hereunto set on this day of the date hereof.

GENERAL PARTNERS:

U.S. SHELTER CORPORATION

By: [Signature]
President
P. O. Box 1725
Greenville, South Carolina 29606

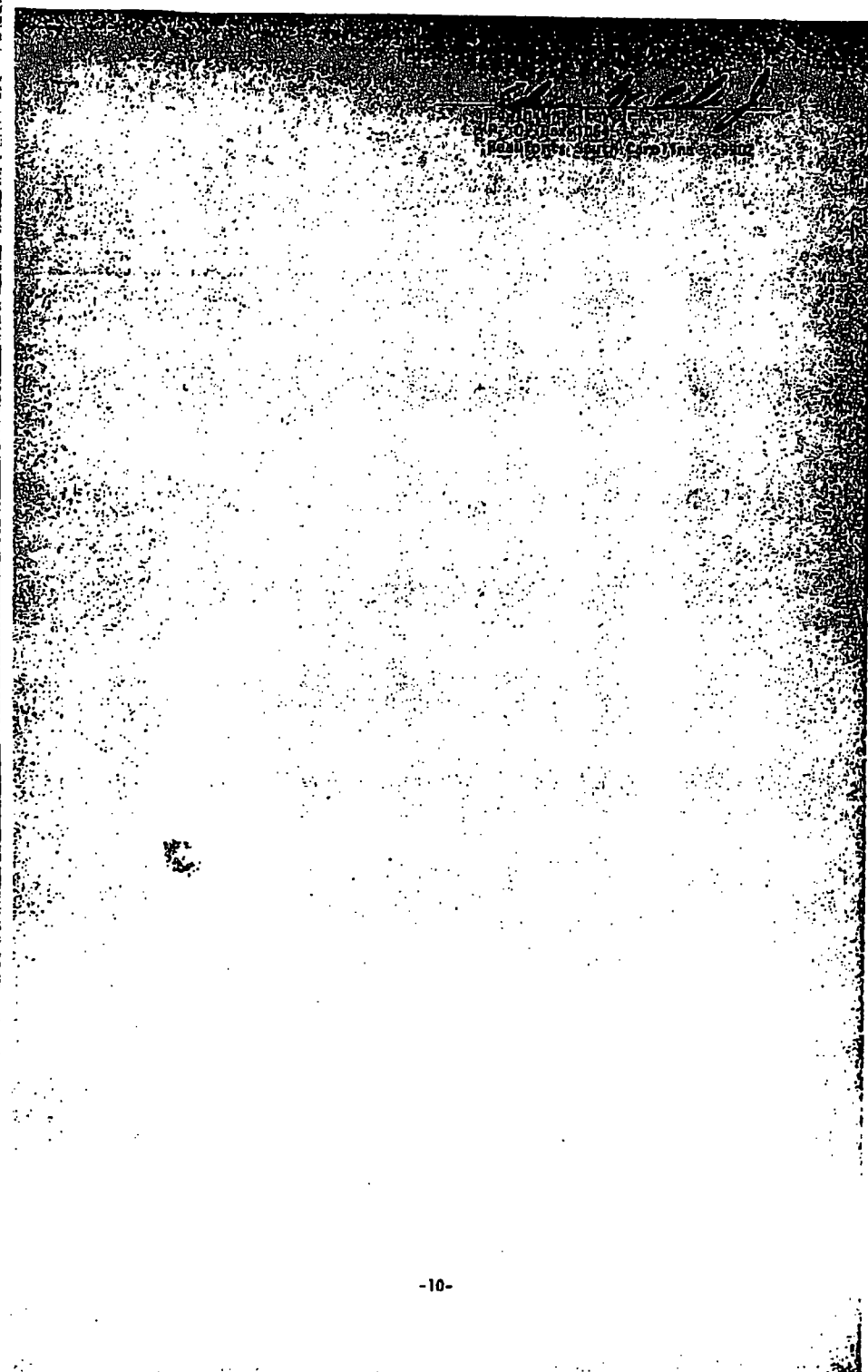
[Signature]
H. Barton Jack, Jr.
P. O. Box 1725

LIMITED PARTNERS:

[Signature]
Laurie McQuinn
1203 Highway 17
Beaufort, South Carolina 29902

[Signature]
Carson H. Korte
P. O. Box 1084
Beaufort, South Carolina 29902

[Signature]
W. M. Hodge
P. O. Box 636
Sumter, South Carolina 29150



-10-

AMREAL 00720

STATE OF SOUTH CAROLINA
COUNTY OF _____

I, Paul L. Rains, a Notary Public in and
for the State and County aforesaid, whose commission expires on the 20 day
of March, 1976, do hereby certify that SHILTER
CORPORATION by its President and Mr. BARTON STUCK, JR., along and sworn to the
forgoing AMENDED CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP FOR PARKVIEW
APARTMENTS.

Given under my hand and Notarial seal, this 23rd day of
July, 1975.
Paul L. Rains
Notary Public for South Carolina
My Commission Expires 3-20-76

STATE OF SOUTH CAROLINA }
COUNTY OF Beaufort }

I, Michael A. Voutec, a Notary Public in and
for the State and County aforesaid, whose commission expires on the 15
day of JANUARY, 1976, do hereby certify that LAURANCE
H. DAVIS, JR., signed and swore to the foregoing AMENDED CERTIFICATE AND AGREE-
MENT OF LIMITED PARTNERSHIP FOR PARKVIEW APARTMENTS.

Given under my hand and Notarial seal, this 25 day of
July, 1975.
Michael A. Voutec
Notary Public for South Carolina
My Commission Expires 1-15-76

AMREAL 00721

STATE OF SOUTH CAROLINA
COUNTY OF BERKLEY

Michael A. Vetter, a Notary Public in and for
the State and County aforesaid, whose commission expires on the 15 day of
January, 1978, do hereby certify that W. N. HOUSE
signed and swore to the foregoing AMENDED CERTIFICATE AND AGREEMENT OF LIMITED
PARTNERSHIP FOR PARKVIEW APARTMENTS.

Given under my hand and Notarial seal, this 15 day of
July, 1975.

Michael A. Vetter
Notary Public for South Carolina
My Commission Expires 1-15-78

STATE OF SOUTH CAROLINA
COUNTY OF BERKLEY

Michael A. Vetter, a Notary Public in and for
the State and County aforesaid, whose commission expires on the 15 day of
January, 1978, do hereby certify that W. N. HOUSE
signed and swore to the foregoing AMENDED CERTIFICATE AND AGREEMENT OF LIMITED
PARTNERSHIP FOR PARKVIEW APARTMENTS.

Given under my hand and Notarial seal, this 15 day of

July, 1975.

Michael A. Vetter
Notary Public for South Carolina
My Commission Expires 1-15-78

AMREAL 00722

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort

Michael A. Vetter, Notary Public, in and for the
State and County aforesaid, whose commission expires on the 15 day of
January, 1978, do hereby certify that WINNIE PIERCE JR.
signed and swore to the foregoing AMENDED CERTIFICATE AND AGREEMENT OF LIMITED
PARTNERSHIP FOR PARKVIEW APARTMENTS.

Given under my hand and Notarial seal, this 25 day of

July, 1975

Marshall M. Harte
Notary Public for South Carolina
My Commission Expires 12-25-77

AMREAL 00723

STATE OF SOUTH CAROLINA }
COUNTY OF BEAUFORT

AMENDED CERTIFICATE AND
AGREEMENT OF LIMITED PARTNERSHIP
OF PALMETTO APARTMENTS SEP 2 1975

FILED
10 11 12 13 14 15 16

15.00

THIS AMENDED CERTIFICATE AND AGREEMENT made this 1st day of June, 1975 between U. S. SHELTER CORPORATION, a South Carolina Corporation, and N. BARTON TUCK, JR. (hereinafter called "General Partners") and LAURANCE H. DAVIS, JR., JAMES M. IVEY, ERIN E. IVEY and HARVIN D. MCCARTHY (hereinafter called "Limited Partners").

W I T N E S S E I N :

WHEREAS, a Limited Partnership was formed and organized under the laws of the State of South Carolina pursuant to a Partnership Agreement dated May 15, 1970, which Partnership Agreement was amended by an Amendment to Limited Partnership Agreement dated April 1, 1972, and

WHEREAS, the parties hereto desire to amend the Limited Partnership Agreement, as amended, and the Certificate of Limited Partnership, as amended, for the purpose of, among other things, substituting U. S. Shelter Corporation and N. Barton Tuck, Jr. as the General Partners in place of Laurance H. Davis, Jr. who shall be deemed as withdrawn from the Partnership as General Partner as of the date hereof, and who shall be a Limited Partner in the Partnership from this date forward, and

WHEREAS, the parties hereto desire to further amend the Limited Partnership Agreement, as amended, and the Certificate of Limited Partnership, as amended, by combining both documents into the within Amended Certificate and Agreement of Limited Partnership of Palmetto Apartments;

NOW, THEREFORE, for and in consideration of the mutual premises and covenants set forth herein, it is hereby agreed among the parties as follows:

1. Continuation. A Partnership known as Palmetto Apartments, a Limited Partnership, is hereby continued under the laws of the State of South Carolina.
2. Name. The name of the Limited Partnership shall be Palmetto Apartments, a Limited Partnership. The principal office of the Partnership shall be located in Beaufort County, South Carolina.

EXHIBIT

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AMREAL 005885

3. Purpose. The purpose of the Partnership shall be for the construction, owning, operating, and management of an apartment project known as Palmetto Apartments located in Beaufort County, South Carolina and designated as Project No. 054-44011-LDC by the Department of Housing and Urban Development Federal Housing Administration.

4. Term. The term of the Partnership shall terminate on December 31, 2012 unless sooner terminated in accordance with the terms and conditions of the Limited Partnership Agreement, as amended, or by law.

5. Capital. The capital interest of the parties hereto shall be as follows:

<u>NAME:</u>	<u>CAPITAL INTEREST</u>
<u>General Partners:</u>	
U. S. Shelter Corporation	1.8%
N. Barton Tuck, Jr.	1.2%
<u>Limited Partners:</u>	
Laurance H. Davis, Jr.	7.0%
Erin E. Ivey	37.5%
James M. Ivey	37.5%
Harvin D. McCarthy	15.0%

The Partners shall share in the distribution of profits and losses in accordance with their respective capital interest. Effective as of the date hereof U. S. Shelter Corporation and N. Barton Tuck, Jr. shall be substituted as General Partners in place of Laurance H. Davis, Jr. who shall be deemed as withdrawn from the Partnership as General Partner as of the date hereof, and who shall continue in the Partnership as a Limited Partner from this date forward.

The Limited Partners shall take no part in the business of the Partnership.

6. Neither U. S. Shelter Corporation nor N. Barton Tuck, Jr. shall be deemed to assume personal liability for any obligations of the Partnership incurred prior to their admission to the Partnership and the liability for such obligations shall be satisfied only out of Partnership property.

EXCEPT AS SPECIFICALLY AMENDED HEREIN the provisions of the Limited Partnership Agreement, as amended, shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have set forth their hands
and seals as of the date hereof.

FORMER GENERAL PARTNER:

Laurence H. Davis, Jr.

Laurence H. Davis, Jr.
1203 Boundary Street
Beaufort, South Carolina 29902

GENERAL PARTNERS:

U. S. Shelter Corporation

By:

Michael J. Smith
Michael J. Smith, Jr.
P.O. Box 6725
Greenville, South Carolina 29606

Michael J. Smith, Jr.
Michael J. Smith, Jr.
P.O. Box 16725
Greenville, South Carolina

LIMITED PARTNERS:

Laurence H. Davis, Jr.

Laurence H. Davis, Jr.
1203 Boundary Street
Beaufort, South Carolina 29902

Erin E. Ivey

Erin E. Ivey
1128 Woodburn Road
Spartanburg, South Carolina

James W. Ivey

James W. Ivey
1128 Woodburn Road
Spartanburg, South Carolina

Marvin D. McCarthy

Marvin D. McCarthy
Boyer Street
Beaufort, South Carolina 29902

STATE OF SOUTH CAROLINA }
COUNTY OF Beaufort }

I, C. D. Thomas Jr., a Notary Public in and for the
State and County aforesaid, whose commission expires on the 16 day of
Dec., 1980, do hereby certify that LAURANCE H. DAVIS, JR.
signed and swore to the foregoing AMENDMENT TO CERTIFICATE AND AGREEMENT OF LIMITED
PARTNERSHIP OF PALMETTO APARTMENTS.

Given under my hand and Notarial seal, this 28 day of July,
_____, 1975.

C. D. Thomas Jr.
Notary Public for South Carolina
My Commission Expires: 12-16-80

STATE OF SOUTH CAROLINA }
COUNTY OF GREENVILLE }

I, Paul S. Riane, a Notary Public in and for the
State and County aforesaid, whose commission expires on the 20th day of
March, 1984, do hereby certify that U. S. SHELTER
CORPORATION by its President and N. BARTON TUCK, JR., signed and swore to the
foregoing AMENDMENT TO CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP OF
PALMETTO APARTMENTS.

Given under my hand and Notarial seal, this 23rd day of _____
July, 1975.

Paul S. Riane
Notary Public for South Carolina
My Commission Expires: 3-20-84

AMREAL 005888

STATE OF SOUTH CAROLINA
COUNTY OF

I, J. WOFFORD LUCAS, a Notary Public in and for the
State and County aforesaid, whose commission expires on the 16th day of
August, 1978, do hereby certify that ERIN E. IVEY, signed
and swore to the foregoing AMENDMENT TO CERTIFICATE AND AGREEMENT OF LIMITED
PARTNERSHIP OF PALMETTO APARTMENTS.

Given under my hand and Notarial seal, this 12th day of
August, 1975.

J. Wofford Lucas
Notary Public for South Carolina
My Commission Expires 8/16/78

STATE OF SOUTH CAROLINA
COUNTY OF

I, J. WOFFORD LUCAS, a Notary Public in and for the
State and County aforesaid, whose commission expires on the 16th day of
August, 1978, do hereby certify that JAMES H. IVEY,
signed and swore to the foregoing AMENDMENT TO CERTIFICATE AND AGREEMENT OF
LIMITED PARTNERSHIP OF PALMETTO APARTMENTS.

Given under my hand and Notarial seal, this 13th day of
August, 1975.

J. Wofford Lucas
Notary Public for South Carolina
My Commission Expires 8/16/78

AMREAL 005889

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, Lawrence H. Davis Jr., a Notary Public in and for
the State and County aforesaid, whose commission expires on the 13 day
of October, 1979, do hereby certify that MARVIN D. MCCARTHY
signed and swore to the foregoing AMENDMENT TO CERTIFICATE AND AGREEMENT OF
LIMITED PARTNERSHIP OF PALMETTO APARTMENTS.

Given under my hand and Notary Seal, this 28 day of July,
1975.

Lawrence H. Davis Jr.
Notary Public for South Carolina
My Commission Expires

AMREAL 005890



October 25, 1999

Mr. Barton Tuck
C/O Golf South
P O Box 2324
Greenville, SC 29602

RE: Past Due Payments to Partnerships

Dear Barton:

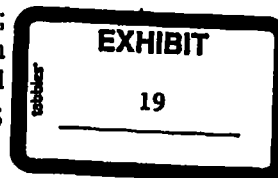
Early this year I realized that we had interest in several partnerships that had notes which should be maturing. In reviewing what records I had as the first managing agent, I found notes suggesting maturity dates as early as March of this year, and I began locating partners in the seven partnerships remaining. As you know three partnerships accepted a token payment for their notes in 1997 or 1998. These were Manchester I and II in Savannah, Georgia and Dogwood Limited Partnership in Myrtle Beach.

The partners or agents that I have spoken with feel that they have been neglected and have not received reports and projections from management or the general partners that represent us.

There has been no pressure on me as the contact person; however, some are starting to plan their year-end taxes and have called me.

I have been to each project and taken pictures of the properties and find them in fair to good condition. In some cases I am satisfied that the land is more valuable than the notes in question.

I have proposed getting a meeting together with the fifteen individuals involved; however, we agree that you, as one of our general partners, should initiate a collection effort on those past due notes and establish a line of communication with the limited partners, before we do anything else. We all prefer that the note be paid as issued; however, we will consider accepting the real property if necessary.



BUNDY APPRAISAL & MANAGEMENT, INC.

P-000993

P.O. Box 1225 Beaufort, SC 29901 Phone (843) 524-2207 Fax (843) 521-0743

Page Two
Mr. Tuck
10/25/99

For your information I have enclosed a list of the fifteen individuals contacted and a list of the remaining seven partnerships.

I have also enclosed pictures and information on Pinewood Park Apartments and Roosevelt Gardens Apartments Phase I for your review. I have this information on the other projects and have spent a good bit of time while working a full schedule in property management here in Beaufort. We are prepared to provide management, if necessary, to any of the projects in our area.

I have no authority to represent any partner other than Mrs. Edwin W. Pike, Jr. (Mary Jane), Carson R. Rentz, Carolina Management Corp. and myself. I do not claim any agency relationship with them but I am willing to assist in getting the group together.

Looking forward to hearing from you, I remain

Sincerely,

Laurance H. Davis, Jr.

Cc: Partners

Tuck

P 000994

January 18, 2000

Mr. Laurance H. Davis, Jr.
Bundy Appraisal & Management, Inc.
Post Office Box 1225
Beaufort, South Carolina 29901

Dear Laurance:

The on-going saga of trying to find out the note balances that are due to the partnerships that you and your group are limited partners in continues to be extremely frustrating and difficult to trace. We are starting to make some progress, even though the news is not good.

As you may remember, these properties were sold about two years ago, along with others that we got pay-offs on, to a company called Boston Financial. They formed partnerships and resyndicated them. When they settled on some of the projects that were paid off two years ago, it was determined at that time that there was no value in the remaining properties. That was the reason they did not offer any payments on the remaining properties.

Boston Financial has been sold to Lend Lease Real Estate Investment. The person who I have now been able to talk with at Lend Lease is Ford von Weise. His address is 101 Arch Street, Boston, MA 02110-1106. His telephone number is 617-790-4734. While not helpful in solving the problems, Ford is quite familiar with these properties and is someone I think you may want to speak with.

Sometime in the early part of 1999, Ford and Lend Lease decided that the properties were not worth the first mortgage and consequently agreed to give the properties back to Insignia/AIMCO. While I do not have the person's name, Ford would have it. Insignia/AIMCO looked at the properties and came to the same conclusion - that there was no value to the partnership and the second mortgages. Enclosed is an evaluation by Berkley Capital Advisors out of Charlotte. This may be of some use to you.

In October of 1999, Lend Lease sold all of the properties for the mortgage and \$1.00 to Hediger Enterprises here in Greenville. Gary used to run our property management arm and does a lot of HUD work-out and management throughout the country. Deeds were prepared and delivered, as I understand it, to Hediger Enterprises. He is in the process of trying to get HUD to approve the transfers. While I am not totally familiar with the current process he has to go through getting HUD to approve the transfers into whatever entity he is using for the purchase of these properties, as I understand it, HUD has not yet approved these and is holding up pending evaluations of the properties, including the

EXHIBIT

P 001080

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Laurance Davis
January 18, 2000 - page two

capital dollars that will be necessary to bring the projects up to HUD's requirements. Gary's address and phone number here in Greenville is: Hediger Enterprises, 301 North Main St, Suite 1901, Greenville, S.C. 29601 phone 864-370-0480 You are welcome to speak to Gary.

I do not know whether you are managing any HUD Properties but in speaking to Bill Jarrard, I understand that the subsidy contracts all expired at the end of twenty years and sometime during 1998 or 1999, all these properties were marked "to market" which I don't understand, but in speaking to Ford, he explained this reduced the rental income to a point where they would not sustain the underlying current mortgages.

Ford von Weise has sent me documents that show the different mortgages on Orleans Gardens. He says that all these documents are the same for each project and I am sure that is correct. I have also gotten him to send me some of the last HUD physical inspections of the project and have asked him to send us the audits on the projects for 1999 as soon as they are completed. I will forward this on to you.

I have been speaking to Pat Foye at AIMCO about this situation. I do not think that he was aware of what had transpired. He retained Doug Brown to try and see what was collectible, if anything, from these mortgages. Doug, not realizing that Gary Hediger had bought these, started down that track, but he also represents Gary Hediger and consequently has a conflict and cannot represent the partnerships against Gary.

While I know you think there was value in some of these properties, in speaking with everyone I have been able to talk to, no-one thinks there is any value over and above the underlying insured mortgage. I am not sure I know where to turn, other than Ford von Weise. He has agreed to come down and meet with your group to talk about these properties and why Lend Lease has agreed to sell these properties at \$1.00 above the HUD mortgages. He is available on Saturday, February 26th He will be in South Carolina at that time doing some work on other projects they are involved in. You may want to read the HUD Reports, which I have enclosed, to see if that is a worthwhile venture. Again, I frankly do not know where else to turn and have no expertise today as to the valuation of any of these properties.

Why don't you give me a call on Friday and we can discuss this to see which way you think we should go.

Very truly yours,



N. Barton Tuck, Jr.

P 001081

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Beaufort County
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2010180088

RECEIVED

JAN 21 2011

SC COURT OF APPEALS

Carolina Management Corporation of Beaufort, James B.
Jackson, Whaley R. Hinnant, Jr., Mary Gasser Rawl and
Rhoda G. Rentz, individually and in their capacities as the
Limited Partners of Pinewood Park Apartments, a South
Carolina Limited Partnership, ... Appellants,

v.

Pinewood Park Apartments, a South Carolina Limited Partnership,
Apartment Investment and Management Company a/k/a
AIMCO, Insignia Financial Group, Inc., AmReal Corporation
a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John
Doe, a generic designation for a party or parties whose true
identity is unknown, ... Respondents.

RESPONDENTS' MOTION TO DISMISS

Ellis M. Johnston, II
Calvin T. Vick, Jr.
HAYNSWORTH SINKLER BOYD, PA
Post Office Box 2048
Greenville, SC 29602
Telephone: (864) 240-3200
Facsimile: (864) 240-3336

Respondents in the above-captioned appeal, through their undersigned attorneys, hereby move that the instant appeal be dismissed due to Appellants' failure to comply with Rule 203(b)(1), SCACR.¹

Rule 203(b)(1), SCACR, provides, in part, "A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment." The subject order, which is captioned "Order Granting Defendants' Two Motions for Sanctions, Finding Plaintiffs in Contempt of Court, and Dismissing the Above-Captioned Actions as Sanctions for Plaintiffs' Contempt," was signed by the Honorable Doyet A. Early, III on April 6, 2010, and entered on April 9, 2010 (see Appellants' Notice of Appeal, Exhibit 8 thereto). On its face, the single April 6, 2010 Order clearly applied to the instant case and four related cases, which had also been assigned to Judge Early and are now on appeal. Appellants served a single Motion for Reconsideration with respect to the subject order on April 22, 2010, stating that they received written notice of the entry of the subject order on April 13, 2010 (via e-mail) and on April 15, 2010 (via mail).

Rule 203(b)(1), SCACR, provides, "When a timely motion for judgment n.o.v. (Rule 50, SCRCPP), motion to alter or amend the judgment (Rules 52 and 59, SCRCPP), or a motion for a new trial (Rule 59, SCRCPP) has been made, the time for appeal for all parties shall be stayed and shall run from the receipt of written notice of entry of the order granting or denying such motion." In a single order signed on September 16, 2010,

¹ Respondents in three (3) other related appeals are moving to dismiss those appeals on the same grounds. Those related appeals are captioned as follows: *Davis, et al. v. Parkview Apartments, et al.*, Case No. 2010180666; *Davis, et al. v. Roosevelt Gardens, et al.*, Case No. 2010180086; and *Davis, et al. v. Palmetto Apartments, et al.*, Case No. 2010180087.

and entered on September 20, 2010, Judge Early denied Appellants' Motion for Reconsideration (see Appellants' Notice of Appeal, Exhibit 9 thereto). The September 16, 2010 Order clearly applied, on its face (i.e., in both the caption and body of the Order), to the instant case and the four related cases. Appellants received written notice of the entry of that order **on October 1, 2010**, as acknowledged by counsel for the Appellants in the Notice of Appeal filed in *Rentz, et al. v. Orleans Gardens, et al.*, Case No. 2010176826 (see **Exhibit A** hereto, at p.2, ¶ 9).²

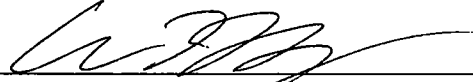
Appellants did not serve their Notice of Appeal in this case until December 3, 2010, more than sixty (60) days after they received written notice of the entry of the Order denying their Motion for Reconsideration.

In light of the above, and as discussed more fully in Respondents' accompanying Memorandum, the appeal in the instant case should be dismissed as a result of Appellants' failure to comply with Rule 203(b)(1), SCACR.

² Respondents' counsel received written notice of the entry of the Order denying Appellants' Motion for Reconsideration on September 30, 2010.

Respectfully Submitted,

HAYNSWORTH SINKLER BOYD, PA



Ellis M. Johnston, II, SC Bar # 3065

Calvin T. Vick, Jr., SC Bar #68187

Post Office Box 2048

Greenville, South Carolina 29602

(864) 240-3200 (phone)

(864) 240-3336 (fax)

tvick@hsblawfirm.com

ejohnston@hsblawfirm.com

Attorneys for Respondents

This 18th day of January, 2011.
Greenville, South Carolina

10 300 300 300

A 1000

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-10-4229

Rhoda G. Rentz, Mary Jane Pike, Eva Marie Reynolds, and
Joanne O. Mercy, individually and in their capacities as the
Limited Partners of Orleans Gardens, a South Carolina
Limited Partnership. Appellants,

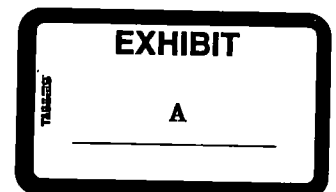
vs.

Orleans Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John
Doe, a generic designation for a party or parties whose true
identity is unknown Respondents.

NOTICE OF APPEAL

Appellants Rhoda G. Rentz, Mary Jane Pike, Eva Marie Reynolds, and Joanne O.
Mercy appeal the following orders:

1. ORDER denying Plaintiffs' motion to compel #6, dated August 18, 2008, a
copy of which is attached as Exhibit 1.
2. ORDER DENYING PLAINTIFFS' MOTION TO COMPEL #2, dated December 17,
2008, a copy of which is attached as Exhibit 2.
3. ORDER GRANTING DEFENDANTS' MOTION TO COMPEL, DATED NOVEMBER 6, 2008,



dated March 3, 2009, a copy of which is attached as Exhibit 3.

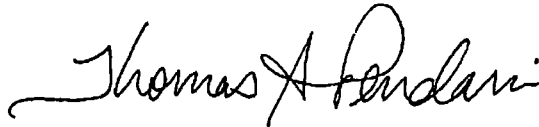
4. ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO COMPEL, DATED JULY 29, 2005, dated March 3, 2009, a copy of which is attached as Exhibit 4.
5. ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY, dated June 2, 2009, a copy of which is attached as Exhibit 5.
6. ORDER DENYING PLAINTIFFS' MOTION TO ALTER OR AMEND ORDER GRANTING DEFENDANTS' MOTION TO COMPEL DATED NOVEMBER 6, 2008, dated June 16, 2009, a copy of which is attached as Exhibit 6.
7. ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009, dated July 28, 2009, a copy of which is attached as Exhibit 7.
8. ORDER GRANTING DEFENDANTS' TWO MOTIONS FOR SANCTIONS, FINDING PLAINTIFFS IN CONTEMPT OF COURT, AND DISMISSING THE ABOVE-CAPTIONED ACTIONS AS SANCTIONS FOR PLAINTIFFS' CONTEMPT, dated April 6, 2010, a copy of which is attached as Exhibit 8.
9. ORDER denying Plaintiffs' motion for reconsideration, dated September 16, 2010, filed on September 20, 2010, and receipt of written notice of entry of which was received by Counsel for Appellants on October 1, 2010, a copy of which is attached as Exhibit 9.

All Orders were issued by the Honorable Doyet A. Early, III.

Respectfully submitted,

Joel D. Bailey
THE BAILEY LAW FIRM, P.A.
PO Box 1437
Beaufort, SC 29901-1437
(843) 525-6090 tele
(843) 525-6070 fax
baileylawfirm@charter.net

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis (SC Bar # 064918)
500 Carteret St., Suite A
Beaufort, SC 29902-5066
843.524.9500 tel
843.524.9501 fax
Thomas@PendarvisLaw.com

Counsel for Appellants

October 28, 2010

Beaufort, South Carolina

OTHER COUNSEL OF RECORD:

Ellis M. Johnston, Jr., J.D.
Calvin T. Vick, J.D.
Jesse C. Belcher, J.D.
HAYNSWORTH SINKLER BOYD, P.A.
P.O. Box 2048
Greenville SC 29602

Marvin D. Infinger, J.D.
Anne Ross Rosen, J.D.
HAYNSWORTH SINKLER BOYD, P.A.
134 Meeting Street, 3rd Floor
Charleston SC 29401

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Orangeburg County
C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2005-CP-07-1990

ORDER

This matter is before the court upon Plaintiffs' Motion to Compel #6 dated June 12, 2008 seeking discovery of certain financial information from Defendants which Plaintiffs deem necessary for their expert to give opinions on the appropriate level of punitive damages that might be awarded. The court finds that there is sufficient information publicly available through filings with the Securities and Exchange Commission to satisfy this request, and therefore denies Plaintiffs' Motion to Compel #6 dated June 12, 2008.

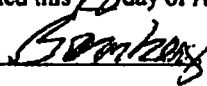
Greenville: 651588 v.1

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IT IS SO ORDERED


The Honorable Doyet A. Early, III,
Judge, 2nd Judicial Circuit

Dated this 18 day of August, 2008
 South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs,	)	
v.	)	Beaufort County
Parkview Apartments, a South Carolina Limited	)	C.A. No. 2003-CP-07-726
Partnership, <i>et al.</i> , Defendants.	)	

Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs,	)	
v.	)	Orangeburg County
Roosevelt Gardens, a South Carolina Limited	)	C.A. No. 2005-CP-38-1131
Partnership, <i>et al.</i> , Defendants.	)	

Rhonda G. Rentz, <i>et al.</i> , Plaintiffs,	)	
v.	)	Charleston County
Orleans Gardens, a South Carolina Limited	)	C.A. No. 2005-CP-10-4229
Partnership, <i>et al.</i> , Defendants.	)	

Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs,	)	
v.	)	Beaufort County
Palmetto Apartments, a South Carolina Limited	)	C.A. No. 2005-CP-07-1989
Partnership, <i>et al.</i> , Defendants.	)	

Carolina Management Corporation of Beaufort,	)	
<i>et al.</i> , Plaintiffs,	)	
v.	)	Beaufort County
Pinewood Park Apartments, a South Carolina	)	C.A. No. 2005-CP-07-1990
Limited Partnership, <i>et al.</i> , Defendants.	)	

ORDER DENYING
PLAINTIFFS' MOTION TO COMPEL #2

THESE MATTERS COME BEFORE THE COURT on Plaintiffs' Motion to Compel Production, dated November 7, 2007 (hereinafter, "Motion"). In each of the above-captioned actions. The Court has considered the parties' memoranda and other submissions, including the Defendants' Privilege Log, a copy of which was provided to the Court and to Plaintiffs' counsel in connection with the Motion (hereinafter, "Defendants' Privilege Log"), as well as the oral argument of the parties' counsel at the hearing held on November 19, 2007. The Court finds that

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the documents identified in the Defendants' Privilege Log are privileged and that the Defendants shall not be compelled to produce such documents to Plaintiffs.

Further, the Court finds that Plaintiffs' Motion is not ripe with respect to questions that may be asked at the depositions of certain attorneys that previously represented the Defendants, such depositions having not yet taken place.

WHEREFORE, Plaintiffs' Motion is hereby DENIED. Further, Plaintiffs' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCP, is DENIED.

IT IS SO ORDERED

This 17 day of Dec, 2008.
Bonkus, South Carolina

Doyet A. Early, III.
Doyet A. Early, III. Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2003-CP-07-726
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Orangeburg County
) C.A. No. 2005-CP-38-1131
)

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Charleston County
) C.A. No. 2005-CP-10-4229
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
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) Beaufort County
) C.A. No. 2005-CP-07-1989
)

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

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) Beaufort County
) C.A. No. 2005-CP-07-1990
)

ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL, DATED NOVEMBER 6, 2008

THESE MATTERS COME BEFORE THE COURT on Defendants' Motion to Compel, dated November 6, 2008 (the "Motion"), which concerns Defendants' Interrogatories and Requests for Production, dated August 28, 2008 (the "Discovery Requests"), and Plaintiffs' responses to such Discovery Requests. The Court has considered the Defendants' memorandum in support of the Motion, which was filed on December 8, 2008 ("Defendants' Memorandum"); and the oral argument of the parties' counsel at the hearing held on December 9, 2008, as well as

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the additional written materials submitted by the parties since the hearing on December 9, 2008, including Plaintiffs' Supplemental Response to Defendants' Discovery to All Plaintiffs Dated August 28, 2008 ("Supplemental Response"). The Plaintiffs did not submit a memorandum in opposition to the Motion.

The Court finds that the Defendants served the Discovery Requests upon Plaintiffs on August 28, 2008, and the Defendants subsequently granted Plaintiffs a 30-day extension to serve their responses, such that Plaintiffs' responses were due to be served by October 27, 2008. Plaintiffs failed to timely serve their responses to the Discovery Requests, and Defendants filed the Motion on November 6, 2008. Plaintiffs then served their initial responses to the Discovery Requests on November 14, 2008, but Defendants elected to proceed with the Motion, claiming that the Plaintiffs' responses to the Discovery Requests were incomplete and inadequate.

The subject matter of the Motion can be broken into two distinctive sets of issues. The first set of issues concerns whether Plaintiffs should be compelled to produce documents identified on their Privilege Log, and these issues were referred by the Court to Gary E. Clary, as Special Master, for *in camera* inspection of the subject documents. Special Master Clary's report to the Court concerning his findings is pending at this time, and those issues shall be addressed in a separate Order of this Court. The second set of issues concerns whether Plaintiffs should be compelled to provide full and complete responses to certain Interrogatories, which were identified in the Defendants' Memorandum, and whether Plaintiffs should be compelled to produce documents (separate and apart from the documents listed on Plaintiffs' Privilege Log) in response to certain Requests for Production, which were also identified in Defendants' Memorandum. At the hearing of the Motion, the Court directed the parties to make further attempts to resolve the discovery disputes presented by this second set of issues, but the parties'

attempts have not resulted in a resolution of their disputes.

On January 29, 2009, Plaintiffs served their Supplemental Response to the Discovery Requests, as well as documents Bates stamped Davis 007134-007192. Though the Defendants' Discovery Requests were directed to each of the Plaintiffs in the five (5) above-captioned actions, the Plaintiffs' Supplemental Response expressly provides that it is made only by the Plaintiffs in the Parkview action, and that the Plaintiffs in the other actions will supplement their responses to the Discovery Requests "at a later date." Further, the documents produced along with the Supplemental Response were the financial statements of only one of the Plaintiffs, Laurance Davis. As for the content of the Supplemental Response, very little additional information is provided, and Plaintiffs reaffirm their objections contained in their previous responses to the Discovery Requests.

The Defendants seek to compel the Plaintiffs to provide full and complete answers to the following Interrogatories: Nos. 3, 6-18, 20, and 22-23. The Court finds that the Plaintiffs' responses to these Interrogatories are incomplete and inadequate, and the Plaintiffs are hereby compelled to provide full and complete responses to these Interrogatories, subject only to the limitations stated herein.

The Defendants also seek to compel the Plaintiffs to produce all documents in their possession, custody or control, which are responsive to the following Requests for Production: Nos. 1-8, 10-16, 19-34, 36-43, and 45-48. The Court finds that the Plaintiffs' responses to these Requests for Production are incomplete and inadequate, and the Plaintiffs are hereby compelled to produce all documents in their possession, custody or control, which are responsive to these Requests, subject only to the limitations stated herein.

Where Plaintiffs can fully and completely respond to such Interrogatories or Requests for

Production by reference to documents that have been produced by Plaintiffs in these lawsuits, and all such documents have been Bates stamped for tracking and identification purposes,¹ Plaintiffs may so state. Any information or documents withheld on the grounds of attorney-client privilege or work product must be specifically identified, as discussed further below. With respect to Interrogatory No. 6, if the experts identified by Plaintiffs have produced written reports setting forth the opinions held by the experts and the bases for such opinions, Plaintiffs may produce such reports in response to this Interrogatory to the extent the reports contain all of the information requested. If the reports do not contain all of the requested information, Plaintiffs must supplement the information contained in the reports so as to fully and completely answer Interrogatory No. 6. If the Plaintiffs' experts have not produced such written reports, Plaintiffs must provide a summary of the important opinions held by each expert (i.e. the opinion testimony the expert is expected to give in these cases), as well as the factual bases for such opinions. A description of the expert's general experience is not sufficient.

In response to each and every Interrogatory and Request for Production, the Plaintiffs incorporate numerous general objections, which are set out in their initial discovery response and Supplemental Response prior to the Plaintiffs' specific responses to the Discovery Requests ("General Objections"). This blanket method of objecting to all of the Discovery Requests, coupled with Plaintiffs' subsequent failure to respond in any meaningful way to the particular complaints raised in Defendants' Memorandum, make it impossible for Defendants to know if

¹ Though the parties are not required to Bates stamp all documents produced, as a matter of law, the parties have agreed to Bates stamp the documents produced in these cases for purposes of tracking and identification. Due to the volume of documents produced by the parties in these cases, as a practical matter, it is unfair and ambiguous for the Plaintiffs to respond to discovery requests by merely stating that responsive documents have already been produced or are already in the possession of Defendants or their counsel, leaving open the question as to whether the referenced documents are among the Bates stamped documents produced by Plaintiffs. While the Court has not required the parties to identify the specific documents or pages by reference to specific Bates numbers when responding in this fashion, the responding party must at least identify the group of documents in a readily discernable fashion, such as "Bates stamped documents produced in these cases by Plaintiffs."

responsive information and/or documents are being withheld, and, if so, based on which specific grounds. To the extent that Plaintiffs have withheld any information or documents that would otherwise be responsive to the Discovery Requests on the grounds of attorney-client privilege or work product, such information and documents shall be sufficiently identified in Plaintiffs' Privilege Log or by other written means, so as to afford Defendants a reasonable opportunity to assess the applicability of the privilege or protection, as required by Rule 26(b)(5), SCRCP. To the extent that Plaintiffs have withheld any information or documents that would otherwise be responsive to the Discovery Requests on the grounds of any of the other General Objections contained in Plaintiffs' discovery responses, Plaintiffs are hereby compelled to provide full and complete responses to all such Interrogatories and to produce the documents responsive to all such Requests for Production. The Court notes that Defendants have withdrawn Request for Production No. 44, so no further response to that Request is required.

Plaintiffs' response to Interrogatory No. 24 indicates that each of the Plaintiffs in the above-captioned actions may not have participated in answering the Interrogatories. Each and every Plaintiff is required to provide all information reasonably available to him or her, which would be responsive to any of the Interrogatories. Further, each and every Plaintiff is required to produce all documents in his or her possession, custody or control, which would be responsive to any of the Requests for Production.

Plaintiffs shall fully comply with the terms of this Order within thirty (30) days of the date of this Order.

WHEREFORE, Defendants' Motion is GRANTED, as stated above. Further, Defendants' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCP, is GRANTED. *held in abeyance pending*
~~Defendants shall submit evidence~~

Resolution of all discovery disputes.
Done.

~~of the amount of their reasonable expenses of the Motion, including their attorneys' fees, within~~
~~twenty (20) days of the date of this Order.~~ *DEF*

IT IS SO ORDERED

This *3rd* day of *March*, 2009.
Bamber, South Carolina

DA Early III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Orangeburg County
C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2005-CP-07-1990

**ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFFS' MOTION TO COMPEL, DATED JULY 29, 2005**

THESE MATTERS COME BEFORE THE COURT on Plaintiffs' Motion to Compel, dated July 29, 2005 ("Motion"), which concerns Defendants' responses to Plaintiffs' Interrogatories and Request for Production, dated April 22, 2003, in the Parkview action. The Court has considered the parties' memoranda, and the oral argument of the parties' counsel at the hearing held on July 1, 2008, as well as the additional written materials submitted by the parties since the hearing on July 1, 2008.

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It appears to the Court that the only remaining issue arising out of the Plaintiffs' Motion is the reasonable and appropriate scope of Plaintiffs' Interrogatory No. 12, Interrogatory No. 24 and Request for Production No. 6. In accordance with the Court's previous instructions to the parties, counsel for the Plaintiffs and Defendants have attempted to reach an agreement as to the reasonable and appropriate scope of such discovery requests, but have been unable to do so. The subject discovery requests, and Defendants' responses to such requests, are set forth below:

Interrogatory No. 12:

For each complaint, claim or lawsuit initiated against the responding Defendant, state:

- (a) *The title and date of each such complaint, claim or lawsuit;*
- (b) *Outline the contents of the complaint, claim or lawsuit filed in each such action;*
- (c) *The name and address of the court involved, if any, including the case number or civil action number assigned to the action; and*
- (d) *The name and address of the complaining party, if applicable, and the name and address of the attorney for such party in each such complaint, claim or lawsuit.*

ANSWER: Defendants object to this interrogatory on the grounds that it is vague and ambiguous, overly broad, unduly burdensome, and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to Interrogatory No. 12 to the extent it seeks historical information as to entities which no longer exist. Defendants further object on the basis that, to the extent such is public information, such is as easily available to Plaintiffs as Defendants. AIMCO is producing a list of lawsuits from its database.

Interrogatory No. 24:

Has the responding Defendant been investigated, reprimanded, criticized, cited or sanctioned by any governmental entity or organization with respect to the ownership, management and/or operation of any apartment complex? If so, set forth the names, addresses and telephone numbers of each such entity or organization, together with the precise nature of the investigation, reprimand, criticism, citation or sanction, and the form in which such activity occurred.

ANSWER: Defendants object to this interrogatory on the grounds that it is vague and ambiguous, overly broad, unduly burdensome, and to the extent it seeks discovery of information that is not reasonably calculated to lead to the discovery of admissible evidence. For instance, the responding Defendants are subject to a vast array of rules and regulations of federal, state, and local agencies.

Request for Production No. 6:

Originals or complete copies of any and all documentation relating to any lawsuits or other legal claims made against the responding Defendant by any limited partner of any other limited partnership in which the Defendant is or has been involved while also acting as a general partner in the Defendant Parkview Apartments Limited Partnership.

RESPONSE: *Defendants object to this Request on the grounds that it is improper, overly broad, unduly burdensome, and seeks discovery of information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request to the extent that it seeks documents readily available in the public domain and already in the possession of Plaintiffs or their attorneys.*

The Court finds that each of the above discovery requests is overly broad and unduly burdensome, and seeks information that will be inadmissible at the trial of this action and is not reasonably calculated to lead to the discovery of admissible evidence. As such, the above discovery requests are beyond the scope of permissible discovery, pursuant to Rule 26(b), SCRCP. However, rather than flatly denying Plaintiffs' Motion with respect to these discovery requests, the Court orders the Defendants AIMCO, AmReal and Barton Tuck ("Tuck") to produce the following information and documents that are reasonably available to them, within thirty (30) days of the date of this Order:

(1) Identify each lawsuit known to the Defendants AIMCO, AmReal or Tuck, which was initiated against AmReal or Tuck between 1984 and 2004, or initiated against AIMCO between 1994 and 2004, and which involved each of the following:

- (a) claims by limited partners of a limited partnership, as plaintiffs, against the Defendants AIMCO, Tuck or AmReal, as general partners of the same limited partnership;
- (b) allegations that the Defendants AIMCO, Tuck or AmReal breached fiduciary duties owed to the plaintiff limited partners; and
- (c) allegations that the plaintiff limited partners' claims arise out of or are related to the said Defendants' ownership, management and/or operation of low-income apartment housing.

The scope of this discovery does not include lawsuits based on tenant or prospective tenant complaints of any kind, employment disputes, construction disputes, vendor disputes, violation of any applicable environmental laws or regulations, claims of personal injury or property

damage, claims of simple breach of contract unrelated to the general partner-limited partner fiduciary relationship, or similar claims that are wholly unrelated to the subject matter of these cases. Defendants may comply with this discovery by providing a listing of the litigation with sufficient descriptors such that Plaintiffs can locate the court filings. The Court notes that Defendants have informed it and the Plaintiffs that, with respect to information that is reasonably available to Defendants AIMCO, AmReal and Tuck, the lawsuits responsive to this discovery have been previously identified to the Plaintiffs.

(2) Identify all formal administrative proceedings initiated by the United States Department of Housing and Urban Development ("HUD") against Defendants AmReal or Tuck between 1984 and 2001, or against Defendant AIMCO between 1994 and 2001, which involved or resulted in each of the following:

- (a) fines, financial penalties or financial settlements paid to HUD by Defendants AIMCO, AmReal or Tuck; and
- (b) alleged violation of HUD regulations by Defendants AIMCO, AmReal or Tuck in the course of their ownership, management and/or operation of any low-income apartment housing.

For the purposes of this discovery, "administrative proceedings" shall be limited to those matters in which HUD sought administrative relief for the violation of a federal regulation or other law. The scope of this discovery does not include proceedings based on tenant or prospective tenant complaints of any kind, employment disputes, construction disputes, vendor disputes, violation of any applicable environmental laws or regulations, claims of personal injury or property damage, or similar claims that are wholly unrelated to the subject matter of these cases. In lieu of identifying the administrative proceedings responsive to this discovery by written response, Defendants may produce documents that would be responsive to this discovery.

WHEREFORE, Plaintiffs' Motion is GRANTED, in part, with respect to the information or documents that Defendants are required to produce to Plaintiffs, as stated above. Except as expressly provided above, the Motion is DENIED. Further, Plaintiffs' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCP, is DENIED.

IT IS SO ORDERED

This 3rd day of March, 2009.
Burke, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Orangeburg County
C.A. No. 2005-CP-

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY

By Orders of this Court dated December 30, 2008, January 31, 2009, and April 9, 2009 (collectively, "Prior Orders"), the Court appointed the Honorable Gary E. Clary as Special Master in these actions for the purposes set forth in such Prior Orders. Pursuant to the Prior Orders, which are incorporated herein by reference, Special Master Clary issued his Reports to the Court, dated April 14, 2009 and April 22, 2009 (collectively, "Reports"). The Reports contain Special Master Clary's findings and conclusions with respect to the matters referred to

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him. Counsel for the parties have advised the Court that they wish to be heard concerning their respective arguments and objections to the findings and conclusions contained in the Reports.

The Reports are hereby adopted verbatim as an Order of the Court. The Reports, which are attached hereto, are incorporated herein by reference. This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRCF. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(e) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any.

IT IS SO ORDERED

This 7 day of June, 2009.
[Signature]
South Carolina

[Signature]
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
Case No.: 2003-CP-07-726

Davis, et al.

2009 JUN 19 AM 11:54 Arkview Apartments LP, et al.

Plaintiff(s)

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

Defendant(s)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☒ DECISION BY COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON: ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. nonsuit)
☐ Rule 43(k), SCRPC (Settled); ☐ Other - _____)
- ☐ ACTION STRICKEN (CHECK REASON: ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding Arbitration,
Subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____)

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by Court

After carefully reviewing all evidence before me and my prior order in the above-referenced matter, the Applicant's Motion to Alter or Amend Order Granting Defendant's Motion to Compel, dated November 6, 2008, Pursuant to Rule 59(e), SCRPC, is hereby DENIED.

Dated at ^{Aiken} ~~Bamberg~~, South Carolina, Date June 16, 2009 Judge W.B. Early Jr.

This judgment was entered on the 16th Day of June, 20 09, and a copy mailed this 22 Day of June, 20 09, to attorneys of record or to parties as follows:

Attorney for Plaintiff(s)
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Calvin T. Vick, Jr.
Haynsworth Sinkler Boyd, P.A.
Post Office Box 2048
Greenville, SC 29602-2048



[Signature]

SCR Form 4 (Rev. 2/96)

Clerk of Court

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., <i>et al.</i> Plaintiffs,	)	
v.	)	Beaufort County
Parkview Apartments, a South Carolina Limited	)	C.A. No. 2003-CP-07-726
Partnership, <i>et al.</i> Defendants.	)	

Laurance H. Davis, Jr., <i>et al.</i> Plaintiffs,	)	
v.	)	Orangeburg County
Roosevelt Gardens, a South Carolina Limited	)	C.A. No. 2005-CP-38-1131
Partnership, <i>et al.</i> Defendants.	)	

Rhonda G. Rentz, <i>et al.</i> Plaintiffs,	)	
v.	)	Charleston County
Orleans Gardens, a South Carolina Limited	)	C.A. No. 2005-CP-10-4229
Partnership, <i>et al.</i> Defendants.	)	

Laurance H. Davis, Jr., <i>et al.</i> Plaintiffs,	)	
v.	)	Beaufort County
Palmetto Apartments, a South Carolina Limited	)	C.A. No. 2005-CP-07-1989
Partnership, <i>et al.</i> Defendants.	)	

Carolina Management Corporation of Beaufort,	)	
<i>et al.</i> Plaintiffs,	)	
v.	)	Beaufort County
Pinewood Park Apartments, a South Carolina	)	C.A. No. 2005-CP-07-1990
Limited Partnership, <i>et al.</i> Defendants.	)	

ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009

These matters are before the Court on the Plaintiffs' Motion to Alter or Amend, dated June 11, 2009, and the Defendants' Motion to Alter or Amend, dated June 15, 2009. In their respective motions, the Plaintiffs and the Defendants request that the Court amend its Order dated June 2, 2009, which adopted Special Master Clary's reports verbatim. The parties' motions were timely filed, pursuant to Rule 59(e), SCRCP, and the Court has carefully considered the parties' memoranda, exhibits, oral arguments of all counsel at the July 6, 2009

[Handwritten signature]



hearing, and Special Master Clary's reports, which were incorporated into the Court's June 2, 2009 Order by reference. The motions of the Plaintiffs and the Defendants are granted, in part, and denied, in part, as set forth herein.

The Court's June 2, 2009 Order and the Special Master's reports incorporated therein are sustained in all aspects, except for the following amendments thereto:

(1) With regard to the Plaintiffs' argument that the fiduciary duty exception applies to Defendants' privileged documents, the Court finds that the requisite mutuality of interest between the parties ceased to exist as of December 9, 1999, which is the date of Mr. Weinberg's first letter to a general partner threatening litigation (AMREAL 014864, attached to Defendants' Memorandum as Exhibit 1). Accordingly, the fiduciary duty exception is not available to the Plaintiffs with regard to any privileged document dated (i.e., created) after December 9, 1999, and the following privileged documents, which were previously designated for production, shall not be produced:

Defendants' Documents (listed on pp. 12-14 of the Special Master's April 14, 2009 report):

1	AMREAL 00573-00576
20	AMREAL 004865-004867
23	GWB 000011
60	GWB 000271
76	GWB 000458-000459
78	GWB 000484

"Bryan Cave" Documents (listed on pp. 14-17 of the Special Master's April 14, 2009 report):

2	AMREAL 014670-014671
3	AMREAL 014672-014681
16	AMREAL 014875

17	AMREAL 014876
18	AMREAL 014877-014879
19	AMREAL 014880-014886
20	AMREAL 014887-014890
21	AMREAL 014891-014892
22	AMREAL 014893-014894
24	AMREAL 014896-014897
26	AMREAL 014899
27	AMREAL 014900-014902
28	AMREAL 014903-014904
30	AMREAL 014906
31	AMREAL 014907
32	AMREAL 014908
33	AMREAL 014909
34	AMREAL 014910-014912
36	AMREAL 014914
37	AMREAL 014915
59	AMREAL 015060-015061
60	AMREAL 015062-015066
62	AMREAL 015068-015071
63	AMREAL 015072-015074
64	AMREAL 015075-015077
66	AMREAL 015079-015081
67	AMREAL 015087
68	AMREAL 015091-015092
69	AMREAL 015093-015095
70	AMREAL 015100-015103
71	AMREAL 015104-015107
72	AMREAL 015118-015119
73	AMREAL 015120-015122
74	AMREAL 015123-015126
75	AMREAL 015136-015138
76	AMREAL 015139-015140
77	AMREAL 015141-015144
78	AMREAL 015145-015151
79	AMREAL 015152-015153
81	AMREAL 015157-015167
87	AMREAL 015209-015213
89	AMREAL 015256
90	AMREAL 015257
91	AMREAL 015258
92	AMREAL 015259-015261
93	AMREAL 015262-015263
94	AMREAL 015268-015269
95	AMREAL 015272-015273

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96	AMREAL 015276-015277
97	AMREAL 015278-015279
98	AMREAL 015282-015283
99	AMREAL 015284
100	AMREAL 015285-015286
101	AMREAL 015287-015297
102	AMREAL 015298-015306
103	AMREAL 015307-015316
104	AMREAL 015317-015332
108	AMREAL 015341-015342
109	AMREAL 015343-015344
110	AMREAL 015345-015346
112	AMREAL 015350-015352
113	AMREAL 015353-015357
114	AMREAL 015358-015362
115	AMREAL 015363-015366
116	AMREAL 015367-015369
129	AMREAL 015423-015426
130	AMREAL 015427-015430
131	AMREAL 015431-015436
132	AMREAL 015437-015442
133	AMREAL 015443-015445

(2) The Court finds that the limited power of attorney from Mary Jane Pike to Jim Pike and/or Jane Miller was valid and there was no waiver of privilege as a result of documents being provided to Jim Pike and/or Jane Miller. The subject documents are identified in Special Master Clary's reports as Plaintiffs' documents 8, 9, 46, 54, 59, 100 and 103. However, two of these documents (46 - Bailey 3735, dated 2/14/01; 54 - Bailey 4019-4020, dated 9/19/02) are subject to production under paragraph 4 below, so they shall be produced as previously ordered. The net result of the Court's findings is that the following documents, which were previously designated for production, shall not be produced:

8	Parkview 2114-2115
9	Parkview 2143
59	Bailey 4055
100	Bailey 4874-4875

*NOTE
RA*

(3) The Special Master concluded that documents involving communications with prospective clients of Mr. Bailey were not privileged and should be produced, because Mr. Bailey lacked the necessary attorney-client relationship with such prospective clients. Plaintiffs argue that the attorney-client privilege extends to communications between Mr. Bailey and prospective clients, such as Warren Griffin, a limited partner in Lincoln Limited Partnership who did not retain Mr. Bailey and is not a party to these lawsuits. The Court agrees with the Plaintiffs. Communications that are solely between Mr. Bailey and prospective clients, who are not parties (or their predecessors or successors) to these lawsuits, are privileged and should not be produced. However, after reviewing the Special Master's reports and the Plaintiffs' Privilege Log, it appears that there are no such documents. There are, however, communications between Mr. Bailey and his current clients (Plaintiffs) concerning, in whole or in part, Lincoln Limited Partnership. Mr. Griffin is a party to some of these communications, but his participation does not, itself, destroy the privilege. Such documents are privileged unless the privilege has been impliedly waived by the Plaintiffs as described in paragraph 4 below (i.e., Plaintiffs have impliedly waived privilege as to documents dated more than three years prior to the filing of these lawsuits). The Court finds that two of the documents concerning the Lincoln Limited Partnership, which were designated for production by the Special Master, are privileged and are not subject to the implied waiver described in paragraph 4. These documents are communications occurring in 2004 between Mr. Bailey and Plaintiffs, Rentz and Hodge. Accordingly, the following documents, which were previously designated for production, shall not be produced:

Handwritten signature and date, possibly "MBC" and "10/6".

83	Bailey 4593

(4) The Court finds that the statute of limitations is a major issue in these cases, and, as shown in the Defendants' Memorandum and exhibits thereto, that the Plaintiffs impliedly waived their claims of privilege with respect to documents dated (i.e., created) more than three years prior to the filing of these lawsuits. As a result, the following documents, which were previously designated for protection, shall be produced:

12	Bailey 3059
13	Bailey 3060
14	Bailey 3067-3069
15	Bailey 3070-3072
17	Bailey 3077-3078
18	Bailey 3082
19	Bailey 3105
20	Bailey 3148
21	Bailey 3151
22	Bailey 3152
23	Bailey 3153
24	Bailey 3154
25	Bailey 3155-3156
26	Bailey 3180
27	Bailey 3209-3212
28	Bailey 3215
29	Bailey 3216
30	Bailey 3217
31	Bailey 3316
34	Bailey 3321
38	Bailey 3333
39	Bailey 3334-3335
40	Bailey 3512
41	Bailey 3526-3528
42	Bailey 3695
43	Bailey 3715-3719
44	Bailey 3721-3726
45	Bailey 3731-3732
47	Bailey 3737
48	Bailey 3738

MP
2/6

49	Bailey 3754-3755
51	Bailey 3758-3759
52	Bailey 3768
53	Bailey 3799
66	Bailey 4218-4219
77	Bailey 4560
85	Bailey 4783
86	Bailey 4785-4787
87	Bailey 4804
88	Bailey 4808-4809
89	Bailey 4810
91	Bailey 4827
93	Bailey 4837
94	Bailey 4842
95	Bailey 4843
97	Bailey 4847-4851
98	Bailey 4854
99	Bailey 4859-4868
110	Bailey 4999
111	Bailey 5002-5004
112	Bailey 5008-5012
113	Bailey 5016
114	Bailey 5024
116	Bailey 5028
117	Bailey 5056
118	Bailey 5062
119	Bailey 5064
120	Bailey 5065-5069
121	Bailey 5071
122	Bailey 5073
123	Bailey 5074
124	Bailey 5080-5081
125	Bailey 5088-5089
126	Bailey 5092

(5) The Court finds that the Defendants' privileged documents identified as "Bryan Cave" documents Nos. 2 and 3 (listed on p. 15 of the Special Master's April 14, 2009 report) are not subject to the fiduciary duty exception, because these documents are not communications between a general partner, acting in that capacity, and the Limited Partnerships' attorneys.

MR
2/7

Rather, these documents concern communications between AIMCO, acting in its individual capacity, and AIMCO's separate counsel, Art Hessel, who did not represent the Limited Partnerships. As a result, the following documents, which were previously designated for production, shall not be produced:

2	AMREAL 014670-014671
3	AMREAL 014672-014681

The Court's June 2, 2009 Order, and the Special Master's reports incorporated therein, are hereby amended as set forth above. In sum, pursuant to the Court's June 2, 2009 Order, as amended herein, the Plaintiffs and Defendants are ordered to produce the following documents within seven (7) days of the date of this Order:

Plaintiffs Shall Produce:

1	Parkview 1951-1952
5	Parkview 2083
12	Bailey 3059
13	Bailey 3060
14	Bailey 3067-3069
15	Bailey 3070-3072
16	Bailey 3073
17	Bailey 3077-3078
18	Bailey 3082
19	Bailey 3105
20	Bailey 3148
21	Bailey 3151
22	Bailey 3152
23	Bailey 3153
24	Bailey 3154
25	Bailey 3155-3156
26	Bailey 3180
27	Bailey 3209-3212
28	Bailey 3215
29	Bailey 3216
30	Bailey 3217

*WRE
#8*

31	Bailey 3316
32	Bailey 3317
33	Bailey 3320
34	Bailey 3321
35	Bailey 3325
36	Bailey 3326-3327
37	Bailey 3328
38	Bailey 3333
39	Bailey 3334-3335
40	Bailey 3512
41	Bailey 3526-3528
42	Bailey 3695
43	Bailey 3715-3719
44	Bailey 3721-3726
45	Bailey 3731-3732
46	Bailey 3735
47	Bailey 3737
48	Bailey 3738
49	Bailey 3754-3755
50	Bailey 3756-3757
51	Bailey 3758-3759
52	Bailey 3768
53	Bailey 3799
54	Bailey 4019-4020
66	Bailey 4218-4219
71	Bailey 4467-4468
72	Bailey 4471
73	Bailey 4473
74	Bailey 4540-4543
75	Bailey 4547
76	Bailey 4548
77	Bailey 4560
78	Bailey 4565
79	Bailey 4572-4575
80	Bailey 4576-4577
81	Bailey 4580-4582
84	Bailey 4763
85	Bailey 4783
86	Bailey 4785-4787
87	Bailey 4804
88	Bailey 4808-4809
89	Bailey 4810
90	Bailey 4811
91	Bailey 4827
92	Bailey 4831

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93	Bailey 4837
94	Bailey 4842
95	Bailey 4843
96	Bailey 4846
97	Bailey 4847-4851
98	Bailey 4854
99	Bailey 4859-4868
104	Bailey 4885-4886
105	Bailey 4968
106	Bailey 4980
107	Bailey 4993
108	Bailey 4995 (identified as 4996 on Plaintiffs' Privilege Log)
109	Bailey 4998
110	Bailey 4999
111	Bailey 5002-5004
112	Bailey 5008-5012
113	Bailey 5016
114	Bailey 5024
115	Bailey 5025
116	Bailey 5028
117	Bailey 5056
118	Bailey 5062
119	Bailey 5064
120	Bailey 5065-5069
121	Bailey 5071
122	Bailey 5073
123	Bailey 5074
124	Bailey 5080-5081
125	Bailey 5088-5089
126	Bailey 5092

Defendants Shall Produce:

70	GWB 000380
71	GWB 000381-000421
"Bryan Cave"	
6	AMREAL 014865
7	AMREAL 014866
8	AMREAL 014867
9	AMREAL 014868
10	AMREAL 014869
11	AMREAL 014870

*7/11/11
JAC*

12	AMREAL 014871
13	AMREAL 014872
14	AMREAL 014873
39	AMREAL 014917-014922
41	AMREAL 014924-014928
42	AMREAL 014939-014944
43	AMREAL 014945-014949
44	AMREAL 014950-014953
45	AMREAL 014954-014959
46	AMREAL 014960-014964
47	AMREAL 014965-014968
48	AMREAL 014984-014989
49	AMREAL 014990-014994
50	AMREAL 014995-014998
51	AMREAL 014999-015004
52	AMREAL 015005-015009
53	AMREAL 015010-015013
54	AMREAL 015020-015024
55	AMREAL 015044-015049
56	AMREAL 015050-015054
57	AMREAL 015055-015058

IT IS SO ORDERED

This 28th day of July, 2009.

Bonker, South Carolina

Doyet A. Early

Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,

v.

Parkview Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

Beaufort County

C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,

v.

Roosevelt Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.

Orangeburg County

C.A. No. 2005-CP-38-1131

Rhonda O. Rentz, *et al.*, Plaintiffs,

v.

Orleans Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.

Charleston County

C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,

v.

Palmetto Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

Beaufort County

C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort, *et al.*, Plaintiffs,

v.

Pinewood Park Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

Beaufort County

C.A. No. 2005-CP-07-1990

ORDER GRANTING DEFENDANTS' TWO MOTIONS FOR SANCTIONS, FINDING PLAINTIFFS IN CONTEMPT OF COURT, AND DISMISSING THE ABOVE-CAPTIONED ACTIONS AS SANCTIONS FOR PLAINTIFFS' CONTEMPT

This matter comes before the Court on Defendants' two Motions for Sanctions, dated July 24, 2009 and August 10, 2009. For the reasons set forth below, the Court grants Defendants' Motions. The Court finds and hereby declares that Plaintiffs in each of the above-captioned actions are in contempt of court as a result of their willful failure to comply with the Court's Order dated July 28, 2009 (which amended the Court's Order dated June 2, 2009), and

DME #1



dismisses each of the above-captioned actions with prejudice as sanctions for such contempt, pursuant to Rule 37(b), SCRPC. The Court further finds and declares that Plaintiffs in each of the above-captioned actions are in contempt of court for the separate and additional reason that they have willfully disobeyed the Court's Order dated March 3, 2009. The Court dismisses each of the above-captioned actions with prejudice as sanctions for Plaintiffs' contempt with regard to the March 3, 2009 Order, as well. The Court also finds that Defendants should receive a monetary award to compensate them for the reasonable costs and attorneys' fees incurred in connection with their Motion to Compel Discovery and their two Motions for Sanctions, and the Court will enter a subsequent order declaring the amount of the award, as provided in this Order. Plaintiffs may purge the sanctions of dismissal of these actions by fully complying with both of the Court's discovery Orders, dated March 3, 2009 and July 28, 2009, within twenty-five (25) calendar days of the date of this Order.

FINDINGS OF FACT

1. General Background

By Order of the Supreme Court of South Carolina, dated March 7, 2006, these five (5) cases were assigned to the Undersigned to hear and decide all pre-trial motions and other matters pertaining to these cases, including the trial and post-trial motions. The matters before the Court concern two separate discovery disputes that date back to the summer of 2008. The first discovery dispute concerned Plaintiffs' failure to provide adequate responses to discovery requests served on August 28, 2008, and the dispute resulted in the Court's March 3, 2009 Order ("General Discovery Order"). The second discovery dispute concerned Defendants' challenges to Plaintiffs' claims of privilege for documents identified in Plaintiffs' July 28, 2008 Privilege Log, which resulted in the Court's July 28, 2009 Order ("Privilege Discovery Order"). Plaintiffs

DAE #2

have failed to comply with either of the Court's discovery orders, resulting in Defendants' two Motions for Sanctions, dated July 24, 2009 (relating to General Discovery Order) and August 10, 2009 (relating to Privilege Discovery Order). The trial in the Parkview action was scheduled to commence on May 18, 2009, and again on January 19, 2010, but the trial had to be continued both times on account of Plaintiffs' failure to comply with the South Carolina Rules of Civil Procedure, the General Discovery Order and/or the Privilege Discovery Order.

Before taking the actions set forth in this Order, the Court has considered at length all of the motions, memoranda, arguments, reports, letters from counsel, proposed orders, and orders relating to the underlying discovery disputes and the current Motions for Sanctions, including without limitation the following: Defendants' Motion to Compel Discovery, dated November 6, 2008; all memoranda filed by the parties concerning Defendants' Motion to Compel; Plaintiffs' Responses to Defendants' Discovery Requests to All Plaintiffs, dated November 14, 2008; the oral argument of counsel at the December 9, 2008 hearing on Defendants' Motion to Compel; this Court's Orders dated December 30, 2008, January 31, 2009 and April 14, 2009, concerning the appointment of Special Master Clary, as well as the scope of the *in camera* review of documents by him; Plaintiffs' Supplemental Responses to Defendants' Discovery Requests to All Plaintiffs, dated January 26, 2009; this Court's Order dated March 3, 2009; Plaintiffs' Motion to Alter or Amend Order Granting Defendants' Motion to Compel, dated March 13, 2009, and all memoranda filed by the parties concerning Plaintiffs' Motion to Alter or Amend; Special Master Clary's reports to this Court, dated April 14, 2009 and April 22, 2009; this Court's Order dated June 2, 2009; the Plaintiffs' Motion to Alter or Amend the Court's Order, dated June 11, 2009; the Defendants' Motion to Alter or Amend the Court's Order, dated June 15, 2009; all memoranda filed by the parties concerning their respective motions to alter or

DAE #3

amend the June 2, 2009 Order; the oral argument of counsel at the July 6, 2009 hearing on the parties' respective motions to alter or amend the June 2, 2009 Order; this Court's Order dated July 28, 2009 (amending the June 2, 2009 Order); Defendants' Motion for Sanctions, dated July 24, 2009; Defendants' Second Motion for Sanctions, dated August 10, 2009; all memoranda (including supplemental memoranda) filed by the parties concerning either or both of Defendants' Motions for Sanctions; the oral argument of counsel at the August 24, 2009 hearing on Defendants' two Motions for Sanctions, including Plaintiffs' oral motion for reconsideration of the July 28, 2009 Order (denied); Plaintiffs' Second Supplemental Response to Defendants' Discovery Requests to All Plaintiffs, dated August 24, 2009; the oral argument of counsel at the January 14, 2010 hearing on Defendants' two Motions for Sanctions; Plaintiffs' Third Supplemental Responses to Defendants' Discovery Requests to All Plaintiffs, dated January 25, 2010; and Plaintiffs' Motions for Relief from July 28, 2009 Order, dated January 28, 2010, and all memoranda filed by the parties concerning Plaintiffs' Motions for Relief from July 28, 2009 Order.

2. Background and Findings of Fact: Defendants' First Motion for Sanctions (General Discovery Order)

Defendants' first Motion for Sanctions concerns Plaintiffs' failure to comply with the Court's General Discovery Order, which compelled Plaintiffs to fully and completely answer Defendants' August 28, 2008 discovery requests within thirty (30) days of the Order. The Court makes the following findings of fact relevant to the first Motion for Sanctions:

Defendants served the subject discovery requests ("Discovery Requests") on Plaintiffs on August 28, 2008, and granted Plaintiffs a 30-day extension to respond, making the responses due October 27, 2008. After receiving no responses from Plaintiffs, Defendants filed their Motion to

DAE #9

U.S. District Court for the District of Columbia

Compel Discovery on November 6, 2008. Plaintiffs then served their responses and objections to the Discovery Requests on November 14, 2008. As the Court would later find in the General Discovery Order, Plaintiffs' responses to numerous document requests and interrogatories were "incomplete and inadequate." Defendants sent Plaintiffs' counsel a 12-page letter, dated December 4, 2008, discussing in detail the various deficiencies in Plaintiffs' discovery responses. Plaintiffs responded, by letter dated December 8, 2008, summarily dismissing the concerns and complaints raised in Defendants' counsel's letter. On that same date, Defendants filed and served their Memorandum in Support of Motion to Compel, which essentially addressed the same deficiencies noted in Defendants' counsel's December 4, 2008 letter.

On December 9, 2008, the Court heard oral argument from counsel on Defendants' Motion to Compel. The Court, with the agreement of the parties' counsel, essentially bifurcated the issues presented in the Motion to Compel. The Motion to Compel dealt primarily with two issues: (1) Plaintiffs' failure to provide full and complete responses to interrogatories and to produce non-privileged documents that were responsive to the Discovery Requests, and (2) Plaintiffs' failure to produce documents that they had withheld under claims of privilege, which had been challenged by Defendants. As to the first issue, the Court instructed the parties to attempt to resolve their dispute without Court intervention. Failing that, they were to return to the Court for its decision. As to the second issue (disputed claims of privilege), the Court and the parties agreed to enlist the assistance of a former Circuit Court Judge, Gary E. Clary, who would review the subject documents *in camera* and report his findings to the Court before the Court proceeded to rule on the privilege issues. The privilege issues pertain to Defendants' Second Motion for Sanctions, which is discussed separately in this Order.

In the weeks following the December 9, 2008 hearing, the parties' attorneys conferred

DAE #5 5

about the resolution of the discovery dispute, and Plaintiffs' counsel advised that Plaintiffs would serve supplemental responses to the Discovery Requests by Christmas, which would address the issues raised by Defendants. Christmas came and went with no supplemental responses from Plaintiffs. Defendants' counsel inquired as to when Plaintiffs would provide their supplemental responses, and Plaintiffs' counsel advised that they would provide the supplemental responses by January 19, 2009. Plaintiffs did not serve their Supplemental Responses until January 26, 2009, and when they did, Defendants found that they did not address the deficiencies previously raised by Defendants. The parties informed the Court of the impasse, and the Court instructed the parties to submit proposed orders on the Motion to Compel with regard to the adequacy of Plaintiffs' responses to the Discovery Requests. On March 3, 2009, pursuant to Defendants' motion, the Court issued the General Discovery Order, which required Plaintiffs to "fully comply with the terms of this Order within thirty (30) days of the date of this Order." Further, the Order stated that the "Defendants' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCP, is held in abeyance pending resolution of all discovery disputes."

On March 13, 2009, Plaintiffs filed and served their Motion to Alter or Amend the Court's March 3, 2009 Order, thereby staying the 30-day period for compliance with the General Discovery Order. Due to Plaintiffs' continuing failure to respond to discovery (and the ongoing dispute over alleged privileged materials), the Court was forced to continue the trial of the Parkview action from the May 18, 2009 term. On or about June 3, 2009, the parties' counsel received written notice that the Court had denied Plaintiffs' Motion to Alter or Amend as of that

DAE #6

date.¹ On July 21, 2009, having received no further responses from Plaintiffs, Defendants' counsel gave Plaintiffs written notice of their intent to file a motion for sanctions if Plaintiffs did not immediately comply with the General Discovery Order. Plaintiffs' counsel replied, via letter, that they "hope" to provide complete discovery responses by the end of July. Defendants filed their Motion for Sanctions on July 24, 2009, as a result of Plaintiffs' complete failure to comply with the General Discovery Order. On July 28, 2009, during a conference call between and among the Court and the parties' counsel, the Court advised the parties that the new trial date for the Parkview action would be January 19, 2010. During that call, Plaintiffs' counsel again indicated that Plaintiffs would comply with the General Discovery Order, at least in piecemeal fashion, by the end of July.

Despite Plaintiffs' assurances, they failed to provide any supplemental responses by the end of July. Thus, the Court was required to hold a hearing on, *inter alia*, Defendants' Motion for Sanctions on August 24, 2009. At the hearing, Plaintiffs' counsel informed the Court that they were then serving Plaintiffs' Second Supplemental Response to the Discovery Requests (including two boxes of documents), and that such supplemental response constituted full compliance with the Court's General Discovery Order. Based upon Plaintiffs' representation, the Court took the Motion for Sanctions under advisement. Three days later, on August 27, 2009, Defendants filed and served their Supplemental Memorandum in Support of Defendants' Motions for Sanctions, showing that Plaintiffs had not, in fact, complied with the General Discovery Order, and identifying the numerous deficiencies that remained in Plaintiffs' discovery responses. As a result of Plaintiffs' continuing failure to comply with the Court's

¹ That June 3, 2009 Order was apparently lost during transmission from the Court to the Clerk of Court, so the Court issued a new order denying Plaintiffs' Motion to Alter or Amend on June 16, 2009, and the parties received written notice of the entry of that order soon thereafter. Giving Plaintiffs the benefit of the doubt, the 30-day period for compliance with the General Discovery Order recommenced on or about June 16, 2009.

DAE #7

discovery orders, the Court was compelled to continue the scheduled trial of these cases from the January 19, 2010 trial term, by Order dated January 4, 2010.²

On January 14, 2010, the Court held a second hearing on the record concerning Defendants' Motions for Sanctions, which was the fourth hearing on the record concerning Plaintiffs' discovery deficiencies.³ At the hearing, Plaintiffs once again represented to the Court that their latest responses (i.e., Second Supplemental Responses to Discovery Requests) fully complied with the General Discovery Order. Contrary to such representation, the Court found that the Plaintiffs had not complied with the General Discovery Order, but granted Plaintiffs' request for an additional ten (10) days to fully comply. On January 25, 2010, Plaintiffs in the Parkview case served their Third Supplemental Responses to the Discovery Requests, supplementing their answers to Interrogatory Nos. 6, 18 and 19. None of the other Plaintiffs provided any supplemental response. Defendants responded by filing and serving their Second Supplemental Memorandum in Support of Motion for Sanctions Re: General Discovery Order, identifying the continuing failure of all Plaintiffs, including the Parkview Plaintiffs, to comply with the General Discovery Order.

The Court finds that, despite the numerous opportunities afforded to Plaintiffs over the last year, the Plaintiffs have persistently failed to comply with the General Discovery Order and have failed to provide any legitimate excuse for their non-compliance. Plaintiffs' continuous non-compliance is well documented in the Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009 (pp. 2-6, 12-13), Supplemental Memorandum in

² The Court took no further action concerning the Motions for Sanctions between September and December, because the Plaintiffs filed a petition in the Supreme Court (denied), and a Notice of Appeal in the Court of Appeals (dismissed), seeking immediate review of the Privilege Discovery Order. The Court of Appeals issued remittitur on December 17, 2009.

³ In addition to the hearings on the record, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies during several telephone conference calls and in-person meetings over the last 14 months.

DAG #8 8

Support of Defendants' Motions for Sanctions, dated August 27, 2009, and Defendants' Second Supplemental Memorandum in Support of Motion for Sanctions Re: General Discovery Order, dated February 11, 2010. Plaintiffs' failure to comply with the General Discovery Order includes the following deficiencies:

- Contrary to the explicit instructions contained in the General Discover Order, Plaintiffs have still not disclosed the relevant opinions held by their testifying expert witnesses or the bases for said opinions in response to Interrogatory No. 6 (the Parkview Plaintiffs' Third Supplemental Responses fall well short of what is required by the General Discovery Order, as shown in Defendants' Second Supplemental Memorandum at pp. 9-14; Plaintiffs in the other cases have provided even less);⁴
- Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided full and complete responses to Interrogatory Nos. 9, 10 and 12, which seek information concerning the *first* communications between two or more Plaintiffs, and/or between a Plaintiff and an attorney, regarding the investigation or pursuit of legal claims against any of the Defendants, and the date(s) upon which each of the Plaintiffs agreed to retain Joel Bailey, their attorney in these actions, to represent such Plaintiff or to provide legal services concerning the investigation or pursuit of claims against the Defendants (Plaintiffs refuse to answer these interrogatories, relying on groundless objections or answering that they "do not recall"; see Defendants' Second Supplemental Memorandum

⁴ Though the General Discovery Order addresses Plaintiffs' failure to provide adequate responses to the August 28, 2008 Discovery Requests, the answers compelled to Interrogatory No. 6 (discovery of expert witnesses' opinions and basis for same) would be responsive to discovery served in the Parkview case on November 17, 2004, as well (see Interrogatory No. 10 in November 17, 2004 discovery requests).

DAE #9

9

at pp. 3-8 and Supplemental Memorandum at pp. 11-12);³

- Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided a full and complete response to Interrogatory No. 3, which requests, for each case, an itemized statement of all damages claimed to have been sustained by Plaintiffs (see Defendants' Supplemental Memorandum at pp. 9-10);
- Contrary to the express terms of the General Discovery Order, Plaintiffs continue to refuse to identify which documents were actually in the possession of each of the Plaintiffs, which is clearly relevant to Defendants' statute of limitations defense (i.e. what did each Plaintiff know, and when) (see Supplemental Memorandum at pp. 7-8); and
- Contrary to the express terms of the General Discovery Order, Plaintiffs only provide partial responses to Interrogatory Nos. 8, 18 (except as to Plaintiffs Davis, Pike, Reynolds and Rentz, who supplemented their response to No. 18 in the Parkview Plaintiffs' Third Supplemental Responses) and 20 (see Supplemental Memorandum at pp. 10-13).

The above findings are based upon evidence appearing in the record of these cases, including the various motions, memoranda and transcripts of the hearings identified on pp. 3-4 of this Order.

3. Background and Findings of Fact: Defendants' Second Motion for Sanctions (Privilege Discovery Order)

Defendants' Second Motion for Sanctions concerns Plaintiffs' failure to comply with the Court's Privilege Discovery Order, which compelled Plaintiffs to produce ninety-six (96)

³ Even if each of the Plaintiffs has no independent recollection of these matters, as Plaintiffs apparently contend, it is clear they could provide responses that are more complete by reviewing information readily available to them (e.g., the numerous documents from that time period that are identified on Plaintiffs' Privilege Log). The fact of consultation with an attorney, and the subject matter of the consultation, are not privileged.

*DAG #510
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documents identified in the Order within seven (7) days of the Order. The Court makes the following findings of fact relevant to the Second Motion for Sanctions:

The underlying discovery dispute began when Plaintiffs, pursuant to this Court's verbal order during a July 1, 2008 hearing, produced a complete privilege log to Defendants on July 30, 2008 ("Privilege Log").⁶ The Privilege Log identified ninety (90) documents, dated (i.e., created) between 1998 and 2004, which had not been previously identified in this litigation. On October 8, 2008, Defendants' counsel sent a letter to Plaintiffs' counsel, challenging Plaintiffs' claims of attorney-client privilege and/or work product protection for most of the documents listed on the Privilege Log. The parties were not able to resolve their differences as to whether various documents listed on the Privilege Log were privileged or subject to discovery. Defendants filed a Motion to Compel Discovery on November 6, 2008 (same as the Motion to Compel discussed above concerning the General Discovery Order), and argued, among other things, that various documents on Plaintiffs' Privilege Log were not protected by privilege and should be produced to Defendants.⁷

On December 9, 2008, this Court heard oral argument from counsel concerning Defendants' Motion to Compel Discovery. With respect to Defendants' claims that documents on Plaintiffs' Privilege Log should be produced in discovery, the Court, Plaintiffs' counsel and Defendants' counsel all agreed that an *in camera* review of the subject documents was in order.

⁶ Plaintiffs had provided a privilege log to Defendants on or about July 21, 2005 (identifying 44 documents), in response to discovery requests served by Defendants in the Parkview case on November 17, 2004, but Plaintiffs had since acknowledged that the privilege log needed to be supplemented to identify additional documents relevant to the subject matter of these actions. These additional documents were identified in Plaintiffs' July 30, 2008 Privilege Log.

⁷ After producing their July 28, 2008 Privilege Log, Plaintiffs subsequently produced revised privilege logs dated November 14, 2008 and December 31, 2008. All three are similar in content (same documents identified), but the December 31, 2008 version was the primary version considered in the parties' arguments and the Court's deliberations leading to the entry of the Privilege Discovery Order.

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Further, the Court advised the parties that it would also order the *in camera* review of documents identified in Defendants' privilege log, which Plaintiffs had unsuccessfully sought to obtain in their own motion to compel. Specifically, the Court and the parties' counsel agreed that the Court would enlist the assistance of a retired Circuit Court Judge, Gary E. Clary, to review the subject documents (of both Plaintiffs and Defendants) *in camera* and to report his findings and conclusions to this Court, whereupon the Court would issue an order ruling on the privilege disputes. This Court then entered an Order, dated December 30, 2008, appointing Gary Clary as Special Master for the limited purpose of reviewing *in camera* the documents identified on the parties' respective privilege logs and to issue a report of his findings and conclusions to the Court.

To be clear, the Court did not refer the actions themselves, or any cause of action asserted in these actions, to Special Master Clary. The scope of documents and privilege issues to be reviewed *in camera* by Special Master Clary was later expanded by a Consent Order, dated January 31, 2009, and by this Court's Order dated April 9, 2009. Importantly, these orders amended the December 30, 2008 Order to expressly provide: "The subject Order is further amended to provide that Special Master Clary is to provide this Court with a Report setting forth his findings and conclusions." See Orders dated January 31, 2009 and April 9, 2009. These orders, the *in camera* review performed by Special Master Clary pursuant to these orders, and the issuance of the Special Master's reports to the Court were all the subject of agreement between and among the Court and the parties' counsel.

After meeting on several occasions with the parties' counsel and completing his *in camera* review of the various documents identified on the parties' respective privilege logs, Special Master Clary provided this Court with his Report, dated April 14, 2009, and a

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Supplemental Report, dated April 22, 2009. After a discussion with the parties' counsel, this Court entered its Order, dated June 2, 2009, adopting the findings and conclusions contained in Special Master Clary's Reports, and incorporating the Reports therein. As specifically requested by counsel for the Plaintiffs and the Defendants, the Court included the following language in its Order:

"This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRCF. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(e) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any."

See Order dated June 2, 2009. Plaintiffs then timely filed their Motion to Alter or Amend the June 2, 2009 Order, on June 11, 2009. Defendants also timely filed their Motion to Alter or Amend the June 2, 2009 Order, on June 15, 2009. On July 2, 2009, Plaintiffs and Defendants each served their memoranda in support of their respective motions to amend the June 2, 2009 Order, and the Court heard oral argument from the parties' counsel during a lengthy hearing on July 6, 2009.

On July 28, 2009, this Court entered the Privilege Discovery Order, amending the June 2, 2009 Order, and granting in part and denying in part each of the parties' Rule 59(e) Motions. In the Order, the Court specifically designated, by Bates number, the documents to be produced by Plaintiffs and the documents to be produced by Defendants. Because the designated documents were readily available to the parties for production, having been previously Bates numbered and provided for *in camera* inspection, the Court ordered the parties to produce the documents within seven (7) days of the date of the Order. See Order dated July 28, 2009. Defendants served a copy of the Privilege Discovery Order on Plaintiffs' counsel, via U.S. mail, on July 30, 2009.

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See Defendants' Certificate of Service, dated July 30, 2009. Defendants also provided an electronic copy of the Order to Plaintiffs' counsel via e-mail on July 30, 2009. See Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009, at Exhibit F.

Pursuant to the terms of the Privilege Discovery Order, Defendants produced their designated documents to Plaintiffs on August 3, 2009. See Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009, at Exhibit G. Plaintiffs, however, failed to produce their designated documents as required by the Court's Order. On August 10, 2009, having received no documents from Plaintiffs, nor any indication as to when and if Plaintiffs intended to comply with the Court's Order, Defendants filed and served their Second Motion for Sanctions.

Defendants served their Memorandum in Support of Defendants' Two Motions for Sanctions on August 21, 2009, and the Court heard oral argument from the parties' counsel on August 24, 2009. At the hearing, Plaintiffs' counsel confirmed that the Plaintiffs had not produced any of the ninety-six (96) documents they were compelled to produce in the Privilege Discovery Order. In response to the Court's inquiries, Plaintiffs' counsel informed the Court that the individual Plaintiffs had still not determined whether they would produce the subject documents in compliance with the Order or refuse to produce the documents and seek to appeal the Order. Plaintiffs' counsel informed the Court that they had consulted with the Plaintiffs on this matter, and that some or all of the Plaintiffs had also consulted with other attorneys as to whether they should comply with the Privilege Discovery Order or pursue an appeal of the Order. It is well settled that the claim of privilege belongs to the client, of course, and not his attorney. The Plaintiffs alone must decide whether they will comply with the Court's Order or

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face sanctions for their failure to comply. At the August 24, 2009 hearing, the Court informed the parties' counsel that it was taking the matter under advisement, but warned that, if Plaintiffs' failure to comply with the Court's Order continued, the Court would likely dismiss the lawsuits pursuant to Rule 37(b), SCRCP. Plaintiffs made an oral motion for reconsideration of the Privilege Discovery Order at the conclusion of the hearing, which this Court denied.

On August 27, 2009, during a conference call among the parties' attorneys and the Court, the Court informed the parties' counsel that it intended to grant Defendants' Second Motion for Sanctions and dismiss the actions, but such sanctions would be vacated if Plaintiffs complied with the Privilege Discovery Order within twenty-five (25) days. The Court instructed Defendants' counsel to submit a proposed order and instructed Plaintiffs' counsel to immediately inform each of the Plaintiffs of the Court's intention to sign such an order in the next week. During a September 2, 2009 conference call with the parties' attorneys, the Court informed Plaintiffs' counsel that it would sign the aforementioned sanctions order that day. However, hours after the conference call concluded, and before the Court issued the written sanctions order, the Court was informed that Plaintiffs had filed that morning a Petition in the Supreme Court of South Carolina, seeking a Writ of Prohibition and/or a Writ of Certiorari concerning the Privilege Discovery Order and/or the sanctions order. The Court informed the parties that, in light of Plaintiffs' Petition to the Supreme Court, it would hold in abeyance the signing of the sanctions order. On September 10, 2009, Plaintiffs filed a Notice of Appeal to the Court of Appeals of South Carolina, seeking immediate review of the Privilege Discovery Order. On October 6, 2009, Plaintiffs sent a letter to Chief Justice Toal, requesting that these cases be transferred from the Undersigned to the Business Court. Chief Justice Toal denied Plaintiffs' request for a transfer on November 3, 2009. The Supreme Court denied Plaintiffs Petition on

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November 19, 2009. The Court of Appeals dismissed Plaintiffs' appeal as premature on December 2, 2009, and issued remittitur on December 17, 2009.

On January 14, 2010, the Court held a second hearing on Defendants' Motions for Sanctions, which was the fourth hearing concerning Plaintiffs' discovery deficiencies.⁸ Plaintiffs' counsel acknowledged that Plaintiffs still had not complied with the Privilege Discovery Order, and the Court instructed Defendants' counsel to revise the proposed order granting Defendants' Second Motion for Sanctions to account for the passage of time since the Court first stated it would sign the sanctions order. The Court also advised Plaintiffs' counsel that they would have ten (10) days from the date Defendants' counsel submitted the revised proposed order to respond to the proposed order. Defendants' counsel submitted the revised proposed order, with a copy to Plaintiffs' counsel, and Plaintiffs' counsel responded within the ten (10) day period, sending a letter to the Court (copied to Defendants' counsel) with alternative proposed orders and filing and serving Motions for Relief from July 28, 2009 Order Amending Court's Order Dated June 2, 2009 in each of the above-captioned cases. Plaintiffs' motions purported to be motions made under Rule 60(b), SCRCP.

The above findings are based upon evidence appearing in the record of these cases, including the various motions, memoranda and transcripts of the hearings identified on pp. 3-4 of this Order.

DISCUSSION OF APPLICABLE LAW AND CONCLUSIONS

1. Civil Contempt

At this time, Plaintiffs have given the Court no reason to believe that they intend to

⁸ In addition to the hearings on the record on December 9, 2008, July 6, 2009, August 24, 2009 and January 14, 2010, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies on several other occasions, including conference calls and meetings off the record.

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comply with either the General Discovery Order or the Privilege Discovery Order. Indeed, their time for compliance under the terms of the two discovery orders passed many months ago. Plaintiffs have steadfastly refused to comply with the terms of the Privilege Discovery Order. The Court has afforded Plaintiffs many opportunities over the last year to comply with the terms of the General Discovery Order, but they have persistently failed to do so. They have been presented with a road map for compliance many times, through the plain terms of the General Discovery Order, the detailed memoranda served by Defendants, which specifically identify the manner in which Plaintiffs have failed to comply, and the Court's oral comments and rulings concerning the same. Further, the Plaintiffs, through their counsel, have been repeatedly warned that sanctions, including the sanctions of dismissing these actions, were not only a possible consequence, they were the likely consequence if the Plaintiffs persisted in their disobedience of the Court's orders. The Court even advised Plaintiffs that it was signing an order dismissing the actions as sanctions six (6) months ago. The Court can not escape the conclusion that Plaintiffs' failure to comply with the General Discovery Order and the Privilege Discovery Order is willful.

It is clear to the Court that Plaintiffs' failure to comply with either or both of the discovery orders has caused, and would continue to cause, extreme prejudice to Defendants. Plaintiffs' willful disobedience has deprived Defendants of critical discovery that is necessary to the presentment of their full defenses to Plaintiffs' claims. Plaintiffs' failure to produce the ninety-six (96) documents compelled in the Privilege Discovery Order, many of which appear relevant to Defendants' statute of limitations defense in these actions, continues to impede the Defendants' ability to complete discovery and prepare for trial. Defendants are similarly impacted by Plaintiffs' failure to provide complete responses to interrogatories concerning Plaintiffs' first communications with one another or with an attorney concerning the

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investigation or pursuit of claims against any of the Defendants. Defendants are also deprived of a fair opportunity to defend against Plaintiffs' claims as a result of Plaintiffs' failure to provide meaningful responses concerning the opinions held by their expert witnesses, the bases for such experts' opinions, or the damages claimed in these cases.

Further, it is inescapable that Plaintiffs' failure to obey the discovery orders has directly challenged and obstructed the Court's ability to control the administration of these cases. The trial in the Parkview action had been scheduled to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders. Plaintiffs' failure to comply with the General Discovery Order (in addition to the ongoing discovery dispute concerning the privilege issues) was a primary cause of the Court's earlier continuance of the Parkview trial from the May 18, 2009 term. The Court's and the public's interests in the orderly, prompt and efficient administration of justice can little afford to have these cases, which were filed in 2003 and 2005, held hostage by Plaintiffs' continuing failure to comply with the Court's General Discovery Order and Privilege Discovery Order. In addition to the obvious prejudice to Defendants, Plaintiffs' refusal to obey the Court's discovery orders impedes the Court's ability to control and efficiently manage its docket.

After considering the record in these cases, the Court concludes that all Plaintiffs in these actions are in contempt of court. "Contempt results from the willful disobedience of a court order, and before a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. A willful act is one ... done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done..." Ex Parte: David G. Cannon. In Re: The Estate of James Brown, 685 S.E.2d 814, 824 (Cl. App. 2009) (internal quotation marks and citations

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omitted). The record clearly shows that all of the Plaintiffs in the above-captioned actions have willfully disobeyed both the General Discovery Order and the Privilege Discovery Order. Plaintiffs' persistent failure to comply with such orders has been both voluntary and intentional. Plaintiffs could produce the documents as required by the Privilege Discovery Order, but they choose not to do so. Plaintiffs could provide complete and intelligible responses to the interrogatories as required by the General Discovery Order, but they have chosen not to do so despite numerous opportunities. Instead, they have remained deliberately evasive and ambiguous in their responses.

While the Court is entering a finding of civil contempt, and imposing sanctions for the purpose of coercing compliance with the discovery orders and compensating and indemnifying Defendants (award of attorneys' fees), the record clearly reflects that Plaintiffs' persistent disobedience has, in fact, undermined the Court's administration of justice in these cases. "In addition, courts have the inherent power to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice. Judges have the authority to *sua sponte* use contempt proceedings to preserve the authority and dignity of their courts." *Id.* (internal quotation marks and citations omitted).

"Once the moving party has made out a *prima facie* case for contempt, the burden then shifts to the respondent to establish his ... defense and inability to comply with the order." *Id.* (internal quotation marks and citations omitted). Civil contempt "must be proven by clear and convincing evidence..." *Id.* The Court concludes that, as shown in its findings of fact, there is clear and convincing evidence of Plaintiffs' contempt (i.e., willful disobedience of both discovery orders), and Defendants have clearly made out a *prima facie* case for contempt.

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Plaintiffs have provided no defense, nor have they shown an inability to comply with either of the discovery orders. Their repeated representations that they have complied with the General Discovery Order, without more, is no defense at all in light of the clear evidence to the contrary. They freely admit that they have not complied with the terms of the Privilege Discovery Order. Instead, Plaintiffs have persisted in arguing, by way of untimely motions for reconsideration and otherwise, that the Privilege Discovery Order was wrongly decided. Plaintiffs continue to ask the Court to vacate or amend the Privilege Discovery Order, arguing, *inter alia*, that there are questions as to the effect of the implied waiver in the Orleans and Roosevelt cases, that the Court's Privilege Discovery Order was the result of mistakes of fact and law, and that the Court must now undertake a review of the 96 documents themselves. First, the Court disagrees with Plaintiffs' arguments. Once privilege was waived as to the documents (by mere filing of the suits and/or by reason of the allegations in the Orleans and Roosevelt complaints), they were subject to discovery in all five cases. There is no question that the 96 documents are relevant to the subject matter of these actions.⁹ At the July 6, 2009 hearing, which preceded the entry of the Privilege Discovery Order, in view of Special Master Clary's reports and the information contained in the parties' privilege logs, the Court did not find it necessary to review the documents themselves, nor did the parties request, or even suggest, such a review. The factual bases for the Court's rulings on the privilege issues have not changed. Second, and most importantly, Plaintiffs' dissatisfaction with the Court's rulings in the discovery orders are not an excuse for their willful disobedience of those orders. If Plaintiffs' disobedience

⁹ Plaintiffs briefly raised the question of relevance with respect to a few documents concerning Lincoln Limited Partnership in their June 11, 2009 Rule 59(e) motion, but the Court determined that the documents concerning Lincoln are relevant (see July 28, 2009 Order at p. 3). Special Master Clary's report did not find, and Plaintiffs have not contended (except as noted regarding Lincoln), that any of the 96 documents lack relevance to the subject matter of these actions.

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were excused by reason of their disagreement with the Court's rulings, a finding of contempt would never be appropriate in any case.

"In determining whether the contempt is civil or criminal, the major factor to consider is the purpose for which the power is exercised, including the nature of the relief and the purpose for which the sentence is imposed. The purpose of civil contempt is to coerce the defendant to do the thing required by the order for the benefit of the complainant, while the primary purposes of criminal contempt are to preserve the court's authority and to punish for disobedience of its orders. If it is for civil contempt, the punishment is remedial and for the benefit of the complainant. If it is for criminal contempt, the sentence is punitive and meant to vindicate the authority of the court... When sanctions are conditioned on compliance with the court's order, the contempt is civil in nature." *Id.* (internal quotation marks and citations omitted). The Court finds and declares that Plaintiffs are in civil contempt, due to their willful disobedience of the General Discovery Order, and due to their willful disobedience of the Privilege Discovery Order. The sanctions of dismissal imposed in this Order are intended to coerce Plaintiffs' compliance with the discovery orders, allowing them to purge the dismissal sanctions if they comply with the discovery orders within twenty-five (25) calendar days of this Order. The sanction of awarding Defendants their expenses, including attorneys' fees, of the motions necessitated by Plaintiffs' misconduct in discovery is remedial, intended to compensate Defendants and indemnify them from the losses incurred due to Plaintiffs' misconduct.

2. Rule 37 Sanctions; Grounds for Dismissal

The General Discovery Order and the Privilege Discovery Order are orders compelling discovery, made under Rule 37(a), SCRCP, in response to the Defendants' Motion to Compel Discovery. It is clear that Plaintiffs have failed to comply with either of these orders and,

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therefore, Rule 37(b)(2), SCRCF, applies. The Rule provides, in part:

"If a party ... fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule ..., ... the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following: ...

(C) An order striking out pleadings or parts thereof, ... or dismissing the action or proceeding or any part thereof ...

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders...

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust."

Rule 37(b)(2), SCRCF.

In light of Plaintiffs' refusal to comply with the Court's discovery orders, and the extreme prejudice suffered by Defendants as a result of Plaintiffs' non-compliance, the only sanction that can achieve justice is the dismissal of the lawsuits. Plaintiffs' non-compliance simply deprives Defendants of their ability to defend against Plaintiffs' claims, based on the statute of limitations defense and otherwise. Most of the documents that Plaintiffs were compelled to produce in the Privilege Discovery Order are dated (i.e., were created) more than three (3) years prior to the filing of these lawsuits, and they are likely relevant to Defendants' statute of limitations defense in these actions. Plaintiffs have failed to provide the dates that they first consulted an attorney regarding (or first discussed among themselves) the investigation or pursuit of claims against any of the Defendants. The Court compelled Plaintiffs to answer interrogatories seeking this information in its General Discovery Order (Interrogatory Nos. 9, 10 and 12), but Plaintiffs have refused to provide adequate responses. The Court has already found that "the statute of limitations is a major issue in these cases." See Order dated July 28, 2009, at

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p. 6.

The other sanctions available to the Court are either inadequate or would lead to the exact same result as the sanction of dismissal. Further, lesser sanctions are incapable of addressing the additional prejudice (i.e., prejudice to defenses unrelated to the statute of limitations), which Defendants have likely suffered but can not specifically identify due to Plaintiffs' refusal to provide the relevant documents and information. "Overly lenient sanctions are to be avoided where they result in inadequate protection of discovery." Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213, 217 (Cl. App. 1997). Refusing to disclose the substance of the Plaintiffs' expert witnesses' opinions, and the bases for such opinions, is clearly prejudicial to the Defendants. A lesser sanction aimed at this particular failure to comply with the Court's General Discovery Order, such as exclusion of expert witness testimony, would lead to the same result, because expert witness testimony as to the value of the subject properties is vital to the Plaintiffs' cases given the nature of this litigation. When a party is deprived of his rights to discovery, "prejudice must be presumed." See id. The party refusing to submit to discovery must bear the burden of proving lack of prejudice. See id. Plaintiffs have not proven a lack of prejudice on the Defendants' part.

In imposing the sanctions of dismissal, the Court has considered the various factors set forth in the applicable case law. For the reasons set forth above, the Court finds that, under these circumstances, the sanction of dismissal is reasonable, it does not go beyond the necessities of the situation to foreclose a decision on the merits of the cases, and it is aimed at the specific misconduct of the Plaintiffs. See Karpel v. Greenville Terrazzo Co., Inc., 327 S.C. 538, 489 S.E.2d 679, 682 (Cl. App. 1997). Further, the sanction imposed serves to protect the rights of discovery provided by the Rules of Civil Procedure. See id. If Plaintiffs are going to file

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lawsuits, engage in discovery under the Rules of Civil Procedure and receive the benefits thereof, but repeatedly refuse to produce their documents or provide full and meaningful responses to reasonable discovery requests after being ordered to do so by the Court, then their lawsuits should be dismissed in order to, among other things, protect the rights of discovery under the Rules.

The Court has also considered the following factors in imposing the sanctions of dismissal: (1) the "precise nature of the discovery;" (2) "the discovery posture of the case;" (3) "willfulness;" and (4) "degree of prejudice." See Griffin Grading and Clearing, Inc. v. Tire Service Equipment Mfg. Co., Inc., 334 S.C. 193, 551 S.E.2d 716, 719 (Cl. App. 1999) (citing Laney v. Hefley, 262 S.C. 54, 202 S.E.2d 12 (1974)). The discovery compelled by the Court is directed at, among other things: the statute of limitations issue in these cases (the 96 documents to be produced may be responsive to a myriad of other discovery requests served in these actions by Defendants); the critical issue of the value of the properties (Plaintiffs claim the properties had substantial value and Defendants breached their fiduciary duties by not taking them back, whereas Defendants claim the properties lacked value net of indebtedness and accepting a return of the properties would not have been in the Limited Partnerships' best interests); and the basic issue of damages or the lack thereof. The trial in the Parkview action was set to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders, and the Parkview action is almost seven (7) years old. The other cases are more than four (4) years old. Considering that Plaintiffs did not identify ninety (90) of the documents listed on their Privilege Log until July 30, 2008, Defendants could not have challenged Plaintiffs' claims of privilege earlier than they did. Many of the documents first identified in July 2008 are among the documents Plaintiffs have been compelled to produce. Nor

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could Defendants have acted more expediently in addressing Plaintiffs' failure to provide adequate responses to the Discovery Requests.

The willfulness of the Plaintiffs' failure to comply with the discovery orders is abundantly clear, as discussed above. Plaintiffs have made the conscious choice to disobey the Court's discovery orders. The prejudice to the Defendants is also clear, as discussed above. As for the relative prejudice to the Plaintiffs, clearly it is prejudicial to dismiss Plaintiffs' actions. However, the prejudice to Plaintiffs if the cases are dismissed is not out of balance with the prejudice to Defendants as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. The prejudice to Plaintiffs is reasonable and necessary in order to counter the specific prejudice to Defendants. Further, the Court has afforded Plaintiffs ample opportunity to avoid the imposition of these sanctions, and Plaintiffs can purge the dismissal of these actions by complying with the General Discovery Order and the Privilege Discovery Order within twenty-five (25) days of the date of this Order. Plaintiffs control whether these cases stand permanently dismissed.

"Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." Griffin, 551 S.E.2d at 719. There is no question that Plaintiffs have willfully disobeyed the Court's discovery orders. By refusing to provide the Defendants with the documents and information as required by the Court's orders, Plaintiffs have also exhibited gross indifference to Defendants' rights in discovery. Defendants have carried their burden in showing that dismissal of the actions is the appropriate sanction under these circumstances. As to whether Plaintiffs have acted in bad faith, there is ample evidence that they have. Plaintiffs agreed to the entire process that ultimately resulted in the Court's Privilege Discovery Order, received benefits

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from this process, and it now appears that they never intended to produce the documents they claimed to be privileged if the Court ordered them to do so. Further, Plaintiffs' initial responses to the Discovery Requests, as well as their First, Second and Third Supplemental Responses, are persistently evasive, ambiguous, incomplete and/or non-responsive. Plaintiffs have repeatedly been given a road map as to how to comply with the General Discovery Order, and the Court has afforded them many opportunities over the course of a full year to do so, but they have willfully and intentionally disobeyed the General Discovery Order at every turn.

3. Award of Expenses, Including Attorneys' Fees

In each of their Motions for Sanctions, Defendants request that they be awarded their reasonable expenses, including attorneys' fees, incurred as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. Further, in the General Discovery Order, the Court held in abeyance the Defendants' request for an award of reasonable expenses of their Motion to Compel Discovery, including attorneys' fees, pursuant to Rule 37(a)(4), SCRCp. The Court finds that Defendants should receive a monetary award to compensate them for the expenses, including attorneys' fees, that they have incurred in connection with their Motion to Compel (i.e., expenses incurred in order to obtain the General Discovery Order, pursuant to Rule 37(a)(4)) and each of their Motions for Sanctions. "Courts, by exercising their contempt power, can award attorneys' fees under a compensatory contempt theory. The award of attorneys' fees is not a punishment but an indemnification to the party bringing the action. . . . However, any component of a sanction must be directly related to the contemptuous conduct and the loss incurred by the offended party." Ex Parte Cannon, 685 S.E.2d at 827 (internal quotation marks and citations omitted). The award of expenses is remedial and civil, even though the Plaintiffs will have no opportunity to purge themselves of the

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award. See id. ("A fine may also be 'remedial and civil if paid to the complainant even though the contemnor has no opportunity to purge himself of the fine...' (citations omitted)).

In order that the Court may determine the proper amount of expenses, including attorneys' fees, required for indemnification of the Defendants, the Court will accept evidence of such expenses as follows. Within fifteen (15) calendar days of the date of this Order, Defendants shall submit to the Court an affidavit in support of their requests for expenses. Beginning on the date Defendants serve their affidavit, Plaintiffs shall have fifteen (15) calendar days to respond by affidavit or at a hearing, if a hearing is requested. The Court shall retain jurisdiction over Defendants' requests for an award of expenses, and will enter a separate order as to the amount of the award at the appropriate time. The time allotted to Defendants to file their supporting affidavit, and for Plaintiffs' response to the same, shall not affect the running of the twenty-five (25) day period in which Plaintiffs may fully comply with the Orders dated March 3, 2009 and July 28, 2009, in order to purge the sanctions of dismissal entered herein.

4. Plaintiffs' Pending Motions for Relief from July 28, 2009 Order Are Denied

On January 28, 2010, Plaintiffs filed Motions for Relief from July 28, 2009 Order Amending Court's Order Dated June 2, 2009 in each of the above-captioned actions. These motions, which purport to be motions under Rule 60(b), SCRCF, are actually untimely motions for reconsideration, subject to Rule 59(e), SCRCF. The Court's July 28, 2009 Order is an interlocutory discovery order, not a final order. As such, the Privilege Discovery Order is not subject to review by the trial court under Rule 60(b), SCRCF. Instead, the trial court may consider Plaintiffs' mislabeled motions as being additional motions for reconsideration of the Privilege Discovery Order under Rule 59(e), SCRCF (Plaintiffs previously made an oral motion

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for reconsideration on August 24, 2009, which the Court denied). Further, Plaintiffs' motions are clearly untimely under Rule 59(e), which requires that such a motion be served "not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRCP. Plaintiffs' motions are inappropriate and are, therefore, denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT: both of the Defendants' Motions for Sanctions are hereby GRANTED; the Court finds and hereby declares that the Plaintiffs in the above-captioned actions are in CONTEMPT of court; each of the above-captioned actions is hereby DISMISSED WITH PREJUDICE as sanctions for Plaintiffs' contempt, and pursuant to Rule 37(b)(2), SCRCP, subject to the terms stated herein; and the Court finds and hereby declares that Defendants are entitled to an award of reasonable expenses, including attorneys' fees, incurred in connection with their Motion to Compel Discovery and each of their two Motions for Sanctions, and that a subsequent order shall be entered as to the amount of the award. Plaintiffs may purge the sanctions of dismissal with prejudice by showing the Court that they have fully complied with the Court's Orders dated March 3, 2009 and July 28, 2009 within twenty-five (25) calendar days of the date of this Order (i.e., the date this Order is signed, set forth below). Further, Plaintiffs' Motions for Relief from July 28, 2009 Order, which purport to be motions under Rule 60(b), SCRCP, but are actually untimely motions for reconsideration, are DENIED.

IT IS SO ORDERED.

This 10th day of April, 2010.
John, South Carolina

Doyel A. Early, III
Doyel A. Early, III, Circuit Court Judge

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & O.S.
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PENDARVIS, THOMAS A
500 CARTERET ST STE A
BEAUFORT SC 29902-5086

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC
ORDER - ORDER DENYING PLNTFFS' MOTION FOR RECONSIDERATION

THIS JUDGMENT WAS ENTERED ON THE 20TH DAY OF SEPTEMBER, 2010 AND A COPY MAILED
FIRST-CLASS THIS 28TH DAY OF SEPTEMBER, 2010 TO ALL COUNSEL OF RECORD AND/OR
ALL PERSONS ENTITLED TO RECEIVE NOTICE.
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PENDARVIS, THOMAS A
500 CARTERET ST STE A
BEAUFORT SC 29902-5066

2005-CF-10-004229
RENTZ, RHODA G ETAL ETC
VS.
ORLEANS GARDENS ETAL ETC



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Carolina Management Corporation of
Beaufort, *et al.*, Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Orangesburg County
C.A. No. 2005-CP-38-147

Charleston County
C.A. No. 2005-CP-10-4229

Beaufort County
C.A. No. 2005-CP-07-1989

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER

Plaintiffs have filed a motion seeking reconsideration of this court's order dated April 6, 2010, pursuant to Rule 59, SCRCP. The order was signed after Plaintiffs repeatedly failed to comply with orders dealing with discovery dated March 3, 2009 and July 28, 2009. Each of those orders have resulted from numerous hearings, motions, memoranda, arguments and rulings, including rulings denying Plaintiff's Rule 59/60 motions seeking reconsideration of these orders.

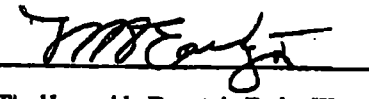
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FILED
2010 SEP 20 AM 10:19
JULIE J. BARNES, CLERK
BY

The court has carefully reconsidered all of Plaintiff's arguments in support of their motion, revisited all prior orders and the cases, memoranda and exhibits presented at each hearing; the court is still of the opinion that the previous orders were a correct application of the law to this factual matter.

Therefore Plaintiff's motion is DENIED.

IT IS SO ORDERED.


The Honorable Doyet A. Early, III

Sept 16, 2010
Blawie, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-10-4229

Rhoda G. Rentz, Mary Jane Pike, Eva Marie Reynolds, and
Joanne O. Mercy, individually and in their capacities as the
Limited Partners of Orleans Gardens, a South Carolina
Limited Partnership. Appellants,

vs.

Orleans Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John
Doe, a generic designation for a party or parties whose true
identity is unknown Respondents.

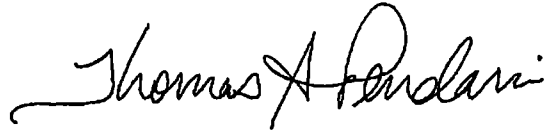
PROOF OF SERVICE

I, Thomas A. Pendarvis, an attorney with PENDARVIS LAW OFFICES, P.C., certify that
I have served one (1) copy of NOTICE OF APPEAL on counsel for Respondents, by depositing
a copy of the same in the United States Mail, postage prepaid, on the 28th day of October,
2010 addressed to:

Ellis M. Johnston, II, J.D.
Calvin T. Vick, Jr., J.D.
Jesse C. Belcher, Jr., J.D.
HAYNSWORTH SINKLER BOYD, PA
PO Box 2048
Greenville, SC 29602

Marvin D. Infinger, J.D.
Ann Ross Rosen, J.D.
HAYNSWORTH SINKLER BOYD, PA
134 Meeting Street, 3rd Floor
Charleston, SC 29401

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink, reading "Thomas A. Pendarvis". The signature is fluid and cursive, with a long horizontal line extending from the start of the name.

Thomas A. Pendarvis (SC Bar # 064918)
500 Carteret St., Suite A
Beaufort, SC 29902-5066
(843) 524.9500 tel.
(843) 524.9501 fax.
Thomas@PendarvisLaw.com

October 28, 2010

Beaufort, SC 29902

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Beaufort County
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2010180088

Carolina Management Corporation of Beaufort, James B.
Jackson, Whaley R. Hinnant, Jr., Mary Gasser Rawl and
Rhoda G. Rentz, individually and in their capacities as the
Limited Partners of Pinewood Park Apartments, a South
Carolina Limited Partnership, ... Appellants,

v.

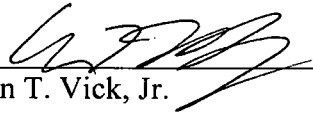
Pinewood Park Apartments, a South Carolina Limited Partnership,
Apartment Investment and Management Company a/k/a
AIMCO, Insignia Financial Group, Inc., AmReal Corporation
a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John
Doe, a generic designation for a party or parties whose true
identity is unknown, ... Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below, he served
counsel for the Appellants with a copy of *Respondents' Motion to Dismiss* and
Memorandum in Support of Respondents' Motion to Dismiss by mailing copies of the
same by United States Mail with first class postage prepaid to the following addresses:

Thomas A. Pendarvis
Pendarvis Law Offices, P.C.
500 Carteret Street, Suite A
Beaufort, South Carolina 29902-5066

Joel D. Bailey
The Bailey Law Firm, P.A.
PO Box 1437
Beaufort, South Carolina 29901-1437



Calvin T. Vick, Jr.

January 18, 2011
Greenville, SC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Beaufort County
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2010180088

RECEIVED

JAN 21 2011

SC Court of Appeals

Carolina Management Corporation of Beaufort, James B.
Jackson, Whaley R. Hinnant, Jr., Mary Gasser Rawl and
Rhoda G. Rentz, individually and in their capacities as the
Limited Partners of Pinewood Park Apartments, a South
Carolina Limited Partnership, ... Appellants,

v.

Pinewood Park Apartments, a South Carolina Limited Partnership,
Apartment Investment and Management Company a/k/a
AIMCO, Insignia Financial Group, Inc., AmReal Corporation
a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John
Doe, a generic designation for a party or parties whose true
identity is unknown, ... Respondents.

MEMORANDUM IN SUPPORT OF
RESPONDENTS' MOTION TO DISMISS

Ellis M. Johnston, II
Calvin T. Vick, Jr.
HAYNSWORTH SINKLER BOYD, PA
Post Office Box 2048
Greenville, SC 29602
Telephone: (864) 240-3200
Facsimile: (864) 240-3336

Respondents submit this memorandum in support of their Motion to Dismiss the instant appeal due to Appellants' failure to comply with Rule 203(b)(1), SCACR.

I. STATEMENT OF RELEVANT FACTS

A. Assignment of the Instant Case and Four Related Cases to Circuit

Court Judge Doyet A. Early, III

By Order dated March 7, 2006, the Supreme Court of South Carolina assigned the Honorable Doyet A. Early, III "to hear and decide all pre-trial motions and other matters pertaining to these cases [five related cases], including the trial and post-trial motions." See Exhibit A. The five (5) cases assigned to Judge Early included the case giving rise to the instant appeal, as well as cases captioned *Davis, et al. v. Parkview Apartments, et al.*, Civil Action No. 2003-CP-07-726; *Davis, et al. v. Palmetto Apartments, et al.*, Civil Action No. 2005-CP-07-1989; *Davis, et al. v. Roosevelt Gardens, et al.*, Civil Action No. 2005-CP-38-1131, and *Rentz, et al. v. Orleans Gardens, et al.*, Civil Action No. 2005-CP-10-4229. Each of the five cases involved claims by limited partners that the general partners of the defendant limited partnerships had breached their fiduciary duties in connection with the 1984 sale of five properties located within the State. All of the sales, with the exception of Pinewood (which involved a similar form of sale), were part of the same deal. The defendant general partners are identical in each of the cases, and most of the limited partners appear as plaintiffs in multiple cases (e.g., Laurance H. Davis, Jr. is a plaintiff in three of the five cases).

The undersigned attorneys have represented all of the Defendants/Respondents in these five cases in both the trial court and the current appeals. Attorneys Joel Bailey and

Thomas Pendarvis have represented all of the Plaintiffs/Appellants in these five cases in both the trial court and the current appeals.

B. Receipt of Written Notice of Entry of Order and Appellants' Untimely Notice of Appeal

The final order triggering this appeal, which is captioned "Order Granting Defendants' Two Motions for Sanctions, Finding Plaintiffs in Contempt of Court, and Dismissing the Above-Captioned Actions as Sanctions for Plaintiffs' Contempt," was signed by Judge Early on April 6, 2010, and entered on April 9, 2010 ("Sanctions Order"). See Exhibit B (also attached to Appellants' Notice of Appeal as Exhibit 8). The single Sanctions Order applied to all five (5) cases on its face (i.e., in the caption and in the body of the Order).

Appellants in all five cases served a single Motion for Reconsideration with respect to the Sanctions Order on April 22, 2010, stating that they received written notice of the entry of the Sanctions Order on April 13, 2010 (via e-mail) and on April 15, 2010 (via mail). See Exhibit C. Like the Sanctions Order, the single Motion for Reconsideration applied to all five (5) cases on its face.

In an order signed on September 16, 2010, and entered on September 20, 2010, Judge Early denied Appellants' Motion for Reconsideration. See Exhibit D (also attached to Appellants' Notice of Appeal as Exhibit 9). Like the Sanctions Order and the Motion for Reconsideration, the single Order denying Appellants' Motion for Reconsideration applied to all five (5) cases on its face.

Appellants received written notice of the entry of the Order denying their Motion for Reconsideration **on October 1, 2010**, as acknowledged by counsel for the Appellants

in the Notice of Appeal filed in *Rentz, et al. v. Orleans Gardens, et al.*, Case No. 2010176826. See Exhibit E at p.2, ¶ 9.

Appellants did not serve their Notice of Appeal in this case until December 3, 2010, more than sixty (60) days after they received written notice of the entry of the Order denying their Motion for Reconsideration. See Exhibit F.

II. APPLICABLE LAW AND ARGUMENT

Rule 203(b)(1), SCACR, states that the notice of appeal “shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.” Where, as here, the Appellants timely filed a motion for reconsideration of the subject order pursuant to Rule 59, SCRCR, “the time for appeal shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion.” Rule 203(b)(1), SCACR. It is beyond dispute that the single Sanctions Order and the single Order denying Appellants’ subsequent single Motion for Reconsideration applied to all five (5) cases assigned to Judge Early, including the instant case. See Exhibits B and D. It is also beyond dispute that:

(1) Appellants received written notice of the entry of the Sanctions Order no later than April 15, 2010 (see Exhibit C at p. 2: “The undersigned subsequently received a signed copy of the Order and notice of the entry of this Order by the Beaufort County Clerk of Court *via* U.S. mail from Ellis M. Johnston, II on April 15, 2010.”);

(2) Appellants received written notice of the entry of the Order denying their Motion for Reconsideration on October 1, 2010 (see Exhibit E at p. 2, ¶ 9: “ORDER denying Plaintiffs’ motion for reconsideration, dated September 16, 2010, filed on September 20, 2010, and receipt of written notice of entry of which was received by Counsel for Appellants on October 1, 2010...”); and

(3) Appellants did not serve their Notice of Appeal in this case until

December 3, 2010 (see Exhibit F).

Appellants clearly failed to comply with Rule 203(b)(1), SCACR.

As a result of Appellants' failure to timely serve their Notice of Appeal as required by Rule 203(b)(1), SCACR, this Court lacks subject matter jurisdiction over this appeal and the appeal must be dismissed. See USAA Property and Casualty Insurance Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008). The South Carolina Supreme Court recently held:

“Rule 203(b), SCACR, requires a party to serve his notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment, and **failure to do so divests this court of subject matter jurisdiction and results in dismissal of the appeal.**” *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 4, 524 S.E.2d 416, 418 (Ct. App. 1999). “The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004).

Id. at 651, 795 (emphasis added).

The types and quality of the written notice of entry of the Sanctions Order and the Order denying Appellants' Motion for Reconsideration, which Appellants received, are more than adequate under South Carolina law. Appellants acknowledge that they received written notice from Respondents' counsel, via e-mail (April 13, 2010) and mail (April 15, 2010), that the Beaufort County Clerk of Court had entered the Sanctions Order. Appellants' counsel also acknowledge that they received written notice of the entry of the Order denying their Motion for Reconsideration on October 1, 2010, apparently via a copy of the file-stamped Order from the Charleston County Clerk of Court (Respondents received a copy of the file-stamped Order from the Charleston

County Clerk of Court on September 30, 2010). The notice received by Appellants included copies of the signed and filed orders, which applied on their face to each of the five (5) cases assigned to Judge Early, including this case.

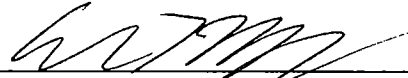
The notice received by Appellants is superior to the type and quality of notice that the defendant received in Rosen, Rosen & Hagood v. Hiller, 307 S.C. 331, 415 S.E.2d 117 (Ct. App. 1992), in which this Court held the defendant was deemed to have received written notice of the entry of an order via a letter from opposing counsel, which only implied that the order had been filed and enclosed an unsigned, undated copy of the order. Id. at 118-19, 334-35 (discussing Rule 77(d), SCRPC, which provides that the clerk shall serve a notice of entry of an order by first class mail upon every party affected thereby, **but** such mailing “shall not be necessary to parties who have already received notice” Id. at 118, 334).

III. CONCLUSION

In light of the above, Respondents respectfully submit that the instant appeal should be dismissed as a result of Appellants’ failure to serve their Notice of Appeal within 30 days of receipt of written notice of the entry of the Order denying their Motion for Reconsideration (or within 30 days of receipt of written notice of the entry of the Sanctions Order).

Respectfully Submitted,

HAYNSWORTH SINKLER BOYD, PA



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Greenville, South Carolina 29602

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tvick@hsblawfirm.com

ejohnston@hsblawfirm.com

Attorneys for Respondents

This 18th day of January, 2011
Greenville, South Carolina

2008-2009
RECEIVED

2008-2009
RECEIVED

The Supreme Court of South Carolina

Lawrence H. Davis, Jr., et al.,

v.

Plaintiffs,

Parkview Apartments, et al.,

Defendants.

Beaufort County
2003-CP-07-0723

Lawrence H. Davis, Jr., et al.,

v.

Plaintiffs,

Palmetto Apartments, et al.,

Defendants.

Beaufort County
2005-CP-07-1989

Carolina Management Corporation of Beaufort, et. al,

v.

Plaintiffs,

Pinewood Park Apartments,

Defendants.

Beaufort County
2005-CP-07-1990

Rhoda G. Rentz, et al.,

v.

Plaintiffs,

Orleans Gardens, et. al.,

Defendants.

Charleston County
2005-CP-10-4229

Lawrence H. Davis, Jr., et al.,

v.

Plaintiffs,

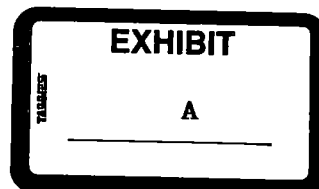
Roosevelt Gardens,

Defendants.

Orangeburg County
2005-CP-38-1131

ORDER

Pursuant to the provisions of S. C. CONST. Art. V, § 4, I find that assigning a single circuit judge to dispose of all matters arising out of the apartment management litigation currently pending and to be filed in the state court system will



promote the effective and expeditious disposition of this litigation by uniform rulings and will conserve the resources of the parties, their counsel, and the judiciary. Therefore,

IT IS ORDERED that the Honorable Doyet A. Early, III is assigned to hear and decide all pre-trial motions and other matters pertaining to these cases, including the trial and post-trial motions. Judge Early may schedule necessary hearings at any time.

S/Jean Hoefer Toal

Jean Hoefer Toal
Chief Justice

March 7, 2006
Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

2010 APR -9 PM 3:32
Laurance H. Davis, Jr., *et al.*, Plaintiffs,)
v.)
Parkview Apartments, a South Carolina Limited)
Partnership, *et al.*, Defendants.)

Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,)
v.)
Roosevelt Gardens, a South Carolina Limited)
Partnership, *et al.*, Defendants.)

Orangeburg County
C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,)
v.)
Orleans Gardens, a South Carolina Limited)
Partnership, *et al.*, Defendants.)

Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,)
v.)
Palmetto Apartments, a South Carolina Limited)
Partnership, *et al.*, Defendants.)

Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,)
et al., Plaintiffs,)
v.)
Pinewood Park Apartments, a South Carolina)
Limited Partnership, *et al.*, Defendants.)

Beaufort County
C.A. No. 2005-CP-07-1990

**ORDER GRANTING DEFENDANTS' TWO MOTIONS FOR SANCTIONS, FINDING
PLAINTIFFS IN CONTEMPT OF COURT, AND DISMISSING THE ABOVE-
CAPTIONED ACTIONS AS SANCTIONS FOR PLAINTIFFS' CONTEMPT**

This matter comes before the Court on Defendants' two Motions for Sanctions, dated July 24, 2009 and August 10, 2009. For the reasons set forth below, the Court grants Defendants' Motions. The Court finds and hereby declares that Plaintiffs in each of the above-captioned actions are in contempt of court as a result of their willful failure to comply with the Court's Order dated July 28, 2009 (which amended the Court's Order dated June 2, 2009), and

DAE #1

EXHIBIT

B

dismisses each of the above-captioned actions with prejudice as sanctions for such contempt, pursuant to Rule 37(b), SCRPC. The Court further finds and declares that Plaintiffs in each of the above-captioned actions are in contempt of court for the separate and additional reason that they have willfully disobeyed the Court's Order dated March 3, 2009. The Court dismisses each of the above-captioned actions with prejudice as sanctions for Plaintiffs' contempt with regard to the March 3, 2009 Order, as well. The Court also finds that Defendants should receive a monetary award to compensate them for the reasonable costs and attorneys' fees incurred in connection with their Motion to Compel Discovery and their two Motions for Sanctions, and the Court will enter a subsequent order declaring the amount of the award, as provided in this Order. Plaintiffs may purge the sanctions of dismissal of these actions by fully complying with both of the Court's discovery Orders, dated March 3, 2009 and July 28, 2009, within twenty-five (25) calendar days of the date of this Order.

FINDINGS OF FACT

1. General Background

By Order of the Supreme Court of South Carolina, dated March 7, 2006, these five (5) cases were assigned to the Undersigned to hear and decide all pre-trial motions and other matters pertaining to these cases, including the trial and post-trial motions. The matters before the Court concern two separate discovery disputes that date back to the summer of 2008. The first discovery dispute concerned Plaintiffs' failure to provide adequate responses to discovery requests served on August 28, 2008, and the dispute resulted in the Court's March 3, 2009 Order ("General Discovery Order"). The second discovery dispute concerned Defendants' challenges to Plaintiffs' claims of privilege for documents identified in Plaintiffs' July 28, 2008 Privilege Log, which resulted in the Court's July 28, 2009 Order ("Privilege Discovery Order"). Plaintiffs

DAE #2

have failed to comply with either of the Court's discovery orders, resulting in Defendants' two Motions for Sanctions, dated July 24, 2009 (relating to General Discovery Order) and August 10, 2009 (relating to Privilege Discovery Order). The trial in the Parkview action was scheduled to commence on May 18, 2009, and again on January 19, 2010, but the trial had to be continued both times on account of Plaintiffs' failure to comply with the South Carolina Rules of Civil Procedure, the General Discovery Order and/or the Privilege Discovery Order.

Before taking the actions set forth in this Order, the Court has considered at length all of the motions, memoranda, arguments, reports, letters from counsel, proposed orders, and orders relating to the underlying discovery disputes and the current Motions for Sanctions, including without limitation the following: Defendants' Motion to Compel Discovery, dated November 6, 2008; all memoranda filed by the parties concerning Defendants' Motion to Compel; Plaintiffs' Responses to Defendants' Discovery Requests to All Plaintiffs, dated November 14, 2008; the oral argument of counsel at the December 9, 2008 hearing on Defendants' Motion to Compel; this Court's Orders dated December 30, 2008, January 31, 2009 and April 14, 2009, concerning the appointment of Special Master Clary, as well as the scope of the *in camera* review of documents by him; Plaintiffs' Supplemental Responses to Defendants' Discovery Requests to All Plaintiffs, dated January 26, 2009; this Court's Order dated March 3, 2009; Plaintiffs' Motion to Alter or Amend Order Granting Defendants' Motion to Compel, dated March 13, 2009, and all memoranda filed by the parties concerning Plaintiffs' Motion to Alter or Amend; Special Master Clary's reports to this Court, dated April 14, 2009 and April 22, 2009; this Court's Order dated June 2, 2009; the Plaintiffs' Motion to Alter or Amend the Court's Order, dated June 11, 2009; the Defendants' Motion to Alter or Amend the Court's Order, dated June 15, 2009; all memoranda filed by the parties concerning their respective motions to alter or

DAE #3

amend the June 2, 2009 Order; the oral argument of counsel at the July 6, 2009 hearing on the parties' respective motions to alter or amend the June 2, 2009 Order; this Court's Order dated July 28, 2009 (amending the June 2, 2009 Order); Defendants' Motion for Sanctions, dated July 24, 2009; Defendants' Second Motion for Sanctions, dated August 10, 2009; all memoranda (including supplemental memoranda) filed by the parties concerning either or both of Defendants' Motions for Sanctions; the oral argument of counsel at the August 24, 2009 hearing on Defendants' two Motions for Sanctions, including Plaintiffs' oral motion for reconsideration of the July 28, 2009 Order (denied); Plaintiffs' Second Supplemental Response to Defendants' Discovery Requests to All Plaintiffs, dated August 24, 2009; the oral argument of counsel at the January 14, 2010 hearing on Defendants' two Motions for Sanctions; Plaintiffs' Third Supplemental Responses to Defendants' Discovery Requests to All Plaintiffs, dated January 25, 2010; and Plaintiffs' Motions for Relief from July 28, 2009 Order, dated January 28, 2010, and all memoranda filed by the parties concerning Plaintiffs' Motions for Relief from July 28, 2009 Order.

2. **Background and Findings of Fact: Defendants' First Motion for Sanctions (General Discovery Order)**

Defendants' first Motion for Sanctions concerns Plaintiffs' failure to comply with the Court's General Discovery Order, which compelled Plaintiffs to fully and completely answer Defendants' August 28, 2008 discovery requests within thirty (30) days of the Order. The Court makes the following findings of fact relevant to the first Motion for Sanctions:

Defendants served the subject discovery requests ("Discovery Requests") on Plaintiffs on August 28, 2008, and granted Plaintiffs a 30-day extension to respond, making the responses due October 27, 2008. After receiving no responses from Plaintiffs, Defendants filed their Motion to

DAE #4

Compel Discovery on November 6, 2008. Plaintiffs then served their responses and objections to the Discovery Requests on November 14, 2008. As the Court would later find in the General Discovery Order, Plaintiffs' responses to numerous document requests and interrogatories were "incomplete and inadequate." Defendants sent Plaintiffs' counsel a 12-page letter, dated December 4, 2008, discussing in detail the various deficiencies in Plaintiffs' discovery responses. Plaintiffs responded, by letter dated December 8, 2008, summarily dismissing the concerns and complaints raised in Defendants' counsel's letter. On that same date, Defendants filed and served their Memorandum in Support of Motion to Compel, which essentially addressed the same deficiencies noted in Defendants' counsel's December 4, 2008 letter.

On December 9, 2008, the Court heard oral argument from counsel on Defendants' Motion to Compel. The Court, with the agreement of the parties' counsel, essentially bifurcated the issues presented in the Motion to Compel. The Motion to Compel dealt primarily with two issues: (1) Plaintiffs' failure to provide full and complete responses to interrogatories and to produce non-privileged documents that were responsive to the Discovery Requests, and (2) Plaintiffs' failure to produce documents that they had withheld under claims of privilege, which had been challenged by Defendants. As to the first issue, the Court instructed the parties to attempt to resolve their dispute without Court intervention. Failing that, they were to return to the Court for its decision. As to the second issue (disputed claims of privilege), the Court and the parties agreed to enlist the assistance of a former Circuit Court Judge, Gary E. Clary, who would review the subject documents *in camera* and report his findings to the Court before the Court proceeded to rule on the privilege issues. The privilege issues pertain to Defendants' Second Motion for Sanctions, which is discussed separately in this Order.

In the weeks following the December 9, 2008 hearing, the parties' attorneys conferred

DAE #5 5

about the resolution of the discovery dispute, and Plaintiffs' counsel advised that Plaintiffs would serve supplemental responses to the Discovery Requests by Christmas, which would address the issues raised by Defendants. Christmas came and went with no supplemental responses from Plaintiffs. Defendants' counsel inquired as to when Plaintiffs would provide their supplemental responses, and Plaintiffs' counsel advised that they would provide the supplemental responses by January 19, 2009. Plaintiffs did not serve their Supplemental Responses until January 26, 2009, and when they did, Defendants found that they did not address the deficiencies previously raised by Defendants. The parties informed the Court of the impasse, and the Court instructed the parties to submit proposed orders on the Motion to Compel with regard to the adequacy of Plaintiffs' responses to the Discovery Requests. On March 3, 2009, pursuant to Defendants' motion, the Court issued the General Discovery Order, which required Plaintiffs to "fully comply with the terms of this Order within thirty (30) days of the date of this Order." Further, the Order stated that the "Defendants' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCP, is held in abeyance pending resolution of all discovery disputes."

On March 13, 2009, Plaintiffs filed and served their Motion to Alter or Amend the Court's March 3, 2009 Order, thereby staying the 30-day period for compliance with the General Discovery Order. Due to Plaintiffs' continuing failure to respond to discovery (and the ongoing dispute over alleged privileged materials), the Court was forced to continue the trial of the Parkview action from the May 18, 2009 term. On or about June 3, 2009, the parties' counsel received written notice that the Court had denied Plaintiffs' Motion to Alter or Amend as of that

DAE #6

date.¹ On July 21, 2009, having received no further responses from Plaintiffs, Defendants' counsel gave Plaintiffs written notice of their intent to file a motion for sanctions if Plaintiffs did not immediately comply with the General Discovery Order. Plaintiffs' counsel replied, via letter, that they "hope" to provide complete discovery responses by the end of July. Defendants filed their Motion for Sanctions on July 24, 2009, as a result of Plaintiffs' complete failure to comply with the General Discovery Order. On July 28, 2009, during a conference call between and among the Court and the parties' counsel, the Court advised the parties that the new trial date for the Parkview action would be January 19, 2010. During that call, Plaintiffs' counsel again indicated that Plaintiffs would comply with the General Discovery Order, at least in piecemeal fashion, by the end of July.

Despite Plaintiffs' assurances, they failed to provide any supplemental responses by the end of July. Thus, the Court was required to hold a hearing on, *inter alia*, Defendants' Motion for Sanctions on August 24, 2009. At the hearing, Plaintiffs' counsel informed the Court that they were then serving Plaintiffs' Second Supplemental Response to the Discovery Requests (including two boxes of documents), and that such supplemental response constituted full compliance with the Court's General Discovery Order. Based upon Plaintiffs' representation, the Court took the Motion for Sanctions under advisement. Three days later, on August 27 2009, Defendants filed and served their Supplemental Memorandum in Support of Defendants' Motions for Sanctions, showing that Plaintiffs had not, in fact, complied with the General Discovery Order, and identifying the numerous deficiencies that remained in Plaintiffs' discovery responses. As a result of Plaintiffs' continuing failure to comply with the Court's

¹ That June 3, 2009 Order was apparently lost during transmission from the Court to the Clerk of Court, so the Court issued a new order denying Plaintiffs' Motion to Alter or Amend on June 16, 2009, and the parties received written notice of the entry of that order soon thereafter. Giving Plaintiffs the benefit of the doubt, the 30-day period for compliance with the General Discovery Order recommenced on or about June 16, 2009.

DAE #7

discovery orders, the Court was compelled to continue the scheduled trial of these cases from the January 19, 2010 trial term, by Order dated January 4, 2010.²

On January 14, 2010, the Court held a second hearing on the record concerning Defendants' Motions for Sanctions, which was the fourth hearing on the record concerning Plaintiffs' discovery deficiencies.³ At the hearing, Plaintiffs once again represented to the Court that their latest responses (i.e., Second Supplemental Responses to Discovery Requests) fully complied with the General Discovery Order. Contrary to such representation, the Court found that the Plaintiffs had not complied with the General Discovery Order, but granted Plaintiffs' request for an additional ten (10) days to fully comply. On January 25, 2010, Plaintiffs in the Parkview case served their Third Supplemental Responses to the Discovery Requests, supplementing their answers to Interrogatory Nos. 6, 18 and 19. None of the other Plaintiffs provided any supplemental response. Defendants responded by filing and serving their Second Supplemental Memorandum in Support of Motion for Sanctions Re: General Discovery Order, identifying the continuing failure of all Plaintiffs, including the Parkview Plaintiffs, to comply with the General Discovery Order.

The Court finds that, despite the numerous opportunities afforded to Plaintiffs over the last year, the Plaintiffs have persistently failed to comply with the General Discovery Order and have failed to provide any legitimate excuse for their non-compliance. Plaintiffs' continuous non-compliance is well documented in the Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009 (pp. 2-6, 12-13), Supplemental Memorandum in

² The Court took no further action concerning the Motions for Sanctions between September and December, because the Plaintiffs filed a petition in the Supreme Court (denied), and a Notice of Appeal in the Court of Appeals (dismissed), seeking immediate review of the Privilege Discovery Order. The Court of Appeals issued remittitur on December 17, 2009.

³ In addition to the hearings on the record, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies during several telephone conference calls and in-person meetings over the last 14 months.

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Support of Defendants' Motions for Sanctions, dated August 27, 2009, and Defendants' Second Supplemental Memorandum in Support of Motion for Sanctions Re: General Discovery Order, dated February 11, 2010. Plaintiffs' failure to comply with the General Discovery Order includes the following deficiencies:

- Contrary to the explicit instructions contained in the General Discover Order, Plaintiffs have still not disclosed the relevant opinions held by their testifying expert witnesses or the bases for said opinions in response to Interrogatory No. 6 (the Parkview Plaintiffs' Third Supplemental Responses fall well short of what is required by the General Discovery Order, as shown in Defendants' Second Supplemental Memorandum at pp. 9-14; Plaintiffs in the other cases have provided even less);⁴
- Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided full and complete responses to Interrogatory Nos. 9, 10 and 12, which seek information concerning the *first* communications between two or more Plaintiffs, and/or between a Plaintiff and an attorney, regarding the investigation or pursuit of legal claims against any of the Defendants, and the date(s) upon which each of the Plaintiffs agreed to retain Joel Bailey, their attorney in these actions, to represent such Plaintiff or to provide legal services concerning the investigation or pursuit of claims against the Defendants (Plaintiffs refuse to answer these interrogatories, relying on groundless objections or answering that they "do not recall"; see Defendants' Second Supplemental Memorandum

⁴ Though the General Discovery Order addresses Plaintiffs' failure to provide adequate responses to the August 28, 2008 Discovery Requests, the answers compelled to Interrogatory No. 6 (discovery of expert witnesses' opinions and basis for same) would be responsive to discovery served in the Parkview case on November 17, 2004, as well (see Interrogatory No. 10 in November 17, 2004 discovery requests).

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at pp. 3-8 and Supplemental Memorandum at pp. 11-12);⁵

- Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided a full and complete response to Interrogatory No. 3, which requests, for each case, an itemized statement of all damages claimed to have been sustained by Plaintiffs (see Defendants' Supplemental Memorandum at pp. 9-10);
- Contrary to the express terms of the General Discovery Order, Plaintiffs continue to refuse to identify which documents were actually in the possession of each of the Plaintiffs, which is clearly relevant to Defendants' statute of limitations defense (i.e. what did each Plaintiff know, and when) (see Supplemental Memorandum at pp. 7-8); and
- Contrary to the express terms of the General Discovery Order, Plaintiffs only provide partial responses to Interrogatory Nos. 8, 18 (except as to Plaintiffs Davis, Pike, Reynolds and Rentz, who supplemented their response to No. 18 in the Parkview Plaintiffs' Third Supplemental Responses) and 20 (see Supplemental Memorandum at pp. 10-13).

The above findings are based upon evidence appearing in the record of these cases, including the various motions, memoranda and transcripts of the hearings identified on pp. 3-4 of this Order.

3. **Background and Findings of Fact: Defendants' Second Motion for Sanctions (Privilege Discovery Order)**

Defendants' Second Motion for Sanctions concerns Plaintiffs' failure to comply with the Court's Privilege Discovery Order, which compelled Plaintiffs to produce ninety-six (96)

⁵ Even if each of the Plaintiffs has no independent recollection of these matters, as Plaintiffs apparently contend, it is clear they could provide responses that are more complete by reviewing information readily available to them (e.g., the numerous documents from that time period that are identified on Plaintiffs' Privilege Log). The fact of consultation with an attorney, and the subject matter of the consultation, are not privileged.

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documents identified in the Order within seven (7) days of the Order. The Court makes the following findings of fact relevant to the Second Motion for Sanctions:

The underlying discovery dispute began when Plaintiffs, pursuant to this Court's verbal order during a July 1, 2008 hearing, produced a complete privilege log to Defendants on July 30, 2008 ("Privilege Log").⁶ The Privilege Log identified ninety (90) documents, dated (i.e., created) between 1998 and 2004, which had not been previously identified in this litigation. On October 8, 2008, Defendants' counsel sent a letter to Plaintiffs' counsel, challenging Plaintiffs' claims of attorney-client privilege and/or work product protection for most of the documents listed on the Privilege Log. The parties were not able to resolve their differences as to whether various documents listed on the Privilege Log were privileged or subject to discovery. Defendants filed a Motion to Compel Discovery on November 6, 2008 (same as the Motion to Compel discussed above concerning the General Discovery Order), and argued, among other things, that various documents on Plaintiffs' Privilege Log were not protected by privilege and should be produced to Defendants.⁷

On December 9, 2008, this Court heard oral argument from counsel concerning Defendants' Motion to Compel Discovery. With respect to Defendants' claims that documents on Plaintiffs' Privilege Log should be produced in discovery, the Court, Plaintiffs' counsel and Defendants' counsel all agreed that an *in camera* review of the subject documents was in order.

⁶ Plaintiffs had provided a privilege log to Defendants on or about July 21, 2005 (identifying 44 documents), in response to discovery requests served by Defendants in the Parkview case on November 17, 2004, but Plaintiffs had since acknowledged that the privilege log needed to be supplemented to identify additional documents relevant to the subject matter of these actions. These additional documents were identified in Plaintiffs' July 30, 2008 Privilege Log.

⁷ After producing their July 28, 2008 Privilege Log, Plaintiffs subsequently produced revised privilege logs dated November 14, 2008 and December 31, 2008. All three are similar in content (same documents identified), but the December 31, 2008 version was the primary version considered in the parties' arguments and the Court's deliberations leading to the entry of the Privilege Discovery Order.

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Further, the Court advised the parties that it would also order the *in camera* review of documents identified in Defendants' privilege log, which Plaintiffs had unsuccessfully sought to obtain in their own motion to compel. Specifically, the Court and the parties' counsel agreed that the Court would enlist the assistance of a retired Circuit Court Judge, Gary E. Clary, to review the subject documents (of both Plaintiffs and Defendants) *in camera* and to report his findings and conclusions to this Court, whereupon the Court would issue an order ruling on the privilege disputes. This Court then entered an Order, dated December 30, 2008, appointing Gary Clary as Special Master for the limited purpose of reviewing *in camera* the documents identified on the parties' respective privilege logs and to issue a report of his findings and conclusions to the Court.

To be clear, the Court did not refer the actions themselves, or any cause of action asserted in these actions, to Special Master Clary. The scope of documents and privilege issues to be reviewed *in camera* by Special Master Clary was later expanded by a Consent Order, dated January 31, 2009, and by this Court's Order dated April 9, 2009. Importantly, these orders amended the December 30, 2008 Order to expressly provide: "The subject Order is further amended to provide that Special Master Clary is to provide this Court with a Report setting forth his findings and conclusions." See Orders dated January 31, 2009 and April 9, 2009. These orders, the *in camera* review performed by Special Master Clary pursuant to these orders, and the issuance of the Special Master's reports to the Court were all the subject of agreement between and among the Court and the parties' counsel.

After meeting on several occasions with the parties' counsel and completing his *in camera* review of the various documents identified on the parties' respective privilege logs, Special Master Clary provided this Court with his Report, dated April 14, 2009, and a

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Supplemental Report, dated April 22, 2009. After a discussion with the parties' counsel, this Court entered its Order, dated June 2, 2009, adopting the findings and conclusions contained in Special Master Clary's Reports, and incorporating the Reports therein. As specifically requested by counsel for the Plaintiffs and the Defendants, the Court included the following language in its Order:

"This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRCP. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(e) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any."

See Order dated June 2, 2009. Plaintiffs then timely filed their Motion to Alter or Amend the June 2, 2009 Order, on June 11, 2009. Defendants also timely filed their Motion to Alter or Amend the June 2, 2009 Order, on June 15, 2009. On July 2, 2009, Plaintiffs and Defendants each served their memoranda in support of their respective motions to amend the June 2, 2009 Order, and the Court heard oral argument from the parties' counsel during a lengthy hearing on July 6, 2009.

On July 28, 2009, this Court entered the Privilege Discovery Order, amending the June 2, 2009 Order, and granting in part and denying in part each of the parties' Rule 59(e) Motions. In the Order, the Court specifically designated, by Bates number, the documents to be produced by Plaintiffs and the documents to be produced by Defendants. Because the designated documents were readily available to the parties for production, having been previously Bates numbered and provided for *in camera* inspection, the Court ordered the parties to produce the documents within seven (7) days of the date of the Order. See Order dated July 28, 2009. Defendants served a copy of the Privilege Discovery Order on Plaintiffs' counsel, via U.S. mail, on July 30, 2009.

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See Defendants' Certificate of Service, dated July 30, 2009. Defendants also provided an electronic copy of the Order to Plaintiffs' counsel via e-mail on July 30, 2009. See Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009, at Exhibit F.

Pursuant to the terms of the Privilege Discovery Order, Defendants produced their designated documents to Plaintiffs on August 3, 2009. See Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009, at Exhibit G. Plaintiffs, however, failed to produce their designated documents as required by the Court's Order. On August 10, 2009, having received no documents from Plaintiffs, nor any indication as to when and if Plaintiffs intended to comply with the Court's Order, Defendants filed and served their Second Motion for Sanctions.

Defendants served their Memorandum in Support of Defendants' Two Motions for Sanctions on August 21, 2009, and the Court heard oral argument from the parties' counsel on August 24, 2009. At the hearing, Plaintiffs' counsel confirmed that the Plaintiffs had not produced any of the ninety-six (96) documents they were compelled to produce in the Privilege Discovery Order. In response to the Court's inquiries, Plaintiffs' counsel informed the Court that the individual Plaintiffs had still not determined whether they would produce the subject documents in compliance with the Order or refuse to produce the documents and seek to appeal the Order. Plaintiffs' counsel informed the Court that they had consulted with the Plaintiffs on this matter, and that some or all of the Plaintiffs had also consulted with other attorneys as to whether they should comply with the Privilege Discovery Order or pursue an appeal of the Order. It is well settled that the claim of privilege belongs to the client, of course, and not his attorney. The Plaintiffs alone must decide whether they will comply with the Court's Order or

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face sanctions for their failure to comply. At the August 24, 2009 hearing, the Court informed the parties' counsel that it was taking the matter under advisement, but warned that, if Plaintiffs' failure to comply with the Court's Order continued, the Court would likely dismiss the lawsuits pursuant to Rule 37(b), SCRPC. Plaintiffs made an oral motion for reconsideration of the Privilege Discovery Order at the conclusion of the hearing, which this Court denied.

On August 27, 2009, during a conference call among the parties' attorneys and the Court, the Court informed the parties' counsel that it intended to grant Defendants' Second Motion for Sanctions and dismiss the actions, but such sanctions would be vacated if Plaintiffs complied with the Privilege Discovery Order within twenty-five (25) days. The Court instructed Defendants' counsel to submit a proposed order and instructed Plaintiffs' counsel to immediately inform each of the Plaintiffs of the Court's intention to sign such an order in the next week. During a September 2, 2009 conference call with the parties' attorneys, the Court informed Plaintiffs' counsel that it would sign the aforementioned sanctions order that day. However, hours after the conference call concluded, and before the Court issued the written sanctions order, the Court was informed that Plaintiffs had filed that morning a Petition in the Supreme Court of South Carolina, seeking a Writ of Prohibition and/or a Writ of Certiorari concerning the Privilege Discovery Order and/or the sanctions order. The Court informed the parties that, in light of Plaintiffs' Petition to the Supreme Court, it would hold in abeyance the signing of the sanctions order. On September 10, 2009, Plaintiffs filed a Notice of Appeal to the Court of Appeals of South Carolina, seeking immediate review of the Privilege Discovery Order. On October 6, 2009, Plaintiffs sent a letter to Chief Justice Toal, requesting that these cases be transferred from the Undersigned to the Business Court. Chief Justice Toal denied Plaintiffs' request for a transfer on November 3, 2009. The Supreme Court denied Plaintiffs Petition on

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November 19, 2009. The Court of Appeals dismissed Plaintiffs' appeal as premature on December 2, 2009, and issued remittitur on December 17, 2009.

On January 14, 2010, the Court held a second hearing on Defendants' Motions for Sanctions, which was the fourth hearing concerning Plaintiffs' discovery deficiencies.⁸ Plaintiffs' counsel acknowledged that Plaintiffs still had not complied with the Privilege Discovery Order, and the Court instructed Defendants' counsel to revise the proposed order granting Defendants' Second Motion for Sanctions to account for the passage of time since the Court first stated it would sign the sanctions order. The Court also advised Plaintiffs' counsel that they would have ten (10) days from the date Defendants' counsel submitted the revised proposed order to respond to the proposed order. Defendants' counsel submitted the revised proposed order, with a copy to Plaintiffs' counsel, and Plaintiffs' counsel responded within the ten (10) day period, sending a letter to the Court (copied to Defendants' counsel) with alternative proposed orders and filing and serving Motions for Relief from July 28, 2009 Order Amending Court's Order Dated June 2, 2009 in each of the above-captioned cases. Plaintiffs' motions purported to be motions made under Rule 60(b), SCRPC.

The above findings are based upon evidence appearing in the record of these cases, including the various motions, memoranda and transcripts of the hearings identified on pp. 3-4 of this Order.

DISCUSSION OF APPLICABLE LAW AND CONCLUSIONS

1. Civil Contempt

At this time, Plaintiffs have given the Court no reason to believe that they intend to

⁸ In addition to the hearings on the record on December 9, 2008, July 6, 2009, August 24, 2009 and January 14, 2010, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies on several other occasions, including conference calls and meetings off the record.

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comply with either the General Discovery Order or the Privilege Discovery Order. Indeed, their time for compliance under the terms of the two discovery orders passed many months ago. Plaintiffs have steadfastly refused to comply with the terms of the Privilege Discovery Order. The Court has afforded Plaintiffs many opportunities over the last year to comply with the terms of the General Discovery Order, but they have persistently failed to do so. They have been presented with a road map for compliance many times, through the plain terms of the General Discovery Order, the detailed memoranda served by Defendants, which specifically identify the manner in which Plaintiffs have failed to comply, and the Court's oral comments and rulings concerning the same. Further, the Plaintiffs, through their counsel, have been repeatedly warned that sanctions, including the sanctions of dismissing these actions, were not only a possible consequence, they were the likely consequence if the Plaintiffs persisted in their disobedience of the Court's orders. The Court even advised Plaintiffs that it was signing an order dismissing the actions as sanctions six (6) months ago. The Court can not escape the conclusion that Plaintiffs' failure to comply with the General Discovery Order and the Privilege Discovery Order is willful.

It is clear to the Court that Plaintiffs' failure to comply with either or both of the discovery orders has caused, and would continue to cause, extreme prejudice to Defendants. Plaintiffs' willful disobedience has deprived Defendants of critical discovery that is necessary to the presentment of their full defenses to Plaintiffs' claims. Plaintiffs' failure to produce the ninety-six (96) documents compelled in the Privilege Discovery Order, many of which appear relevant to Defendants' statute of limitations defense in these actions, continues to impede the Defendants' ability to complete discovery and prepare for trial. Defendants are similarly impacted by Plaintiffs' failure to provide complete responses to interrogatories concerning Plaintiffs' first communications with one another or with an attorney concerning the

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investigation or pursuit of claims against any of the Defendants. Defendants are also deprived of a fair opportunity to defend against Plaintiffs' claims as a result of Plaintiffs' failure to provide meaningful responses concerning the opinions held by their expert witnesses, the bases for such experts' opinions, or the damages claimed in these cases.

Further, it is inescapable that Plaintiffs' failure to obey the discovery orders has directly challenged and obstructed the Court's ability to control the administration of these cases. The trial in the Parkview action had been scheduled to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders. Plaintiffs' failure to comply with the General Discovery Order (in addition to the ongoing discovery dispute concerning the privilege issues) was a primary cause of the Court's earlier continuance of the Parkview trial from the May 18, 2009 term. The Court's and the public's interests in the orderly, prompt and efficient administration of justice can little afford to have these cases, which were filed in 2003 and 2005, held hostage by Plaintiffs' continuing failure to comply with the Court's General Discovery Order and Privilege Discovery Order. In addition to the obvious prejudice to Defendants, Plaintiffs' refusal to obey the Court's discovery orders impedes the Court's ability to control and efficiently manage its docket.

After considering the record in these cases, the Court concludes that all Plaintiffs in these actions are in contempt of court. "Contempt results from the willful disobedience of a court order, and before a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. A willful act is one ... done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done..." Ex Parte: David G. Cannon, In Re: The Estate of James Brown, 685 S.E.2d 814, 824 (Cl. App. 2009) (internal quotation marks and citations

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omitted). The record clearly shows that all of the Plaintiffs in the above-captioned actions have willfully disobeyed both the General Discovery Order and the Privilege Discovery Order. Plaintiffs' persistent failure to comply with such orders has been both voluntary and intentional. Plaintiffs could produce the documents as required by the Privilege Discovery Order, but they choose not to do so. Plaintiffs could provide complete and intelligible responses to the interrogatories as required by the General Discovery Order, but they have chosen not to do so despite numerous opportunities. Instead, they have remained deliberately evasive and ambiguous in their responses.

While the Court is entering a finding of civil contempt, and imposing sanctions for the purpose of coercing compliance with the discovery orders and compensating and indemnifying Defendants (award of attorneys' fees), the record clearly reflects that Plaintiffs' persistent disobedience has, in fact, undermined the Court's administration of justice in these cases. "In addition, courts have the inherent power to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice. Judges have the authority to *sua sponte* use contempt proceedings to preserve the authority and dignity of their courts." Id. (internal quotation marks and citations omitted).

"Once the moving party has made out a *prima facie* case for contempt, the burden then shifts to the respondent to establish his ... defense and inability to comply with the order." Id. (internal quotation marks and citations omitted). Civil contempt "must be proven by clear and convincing evidence..." Id. The Court concludes that, as shown in its findings of fact, there is clear and convincing evidence of Plaintiffs' contempt (i.e., willful disobedience of both discovery orders), and Defendants have clearly made out a *prima facie* case for contempt.

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Plaintiffs have provided no defense, nor have they shown an inability to comply with either of the discovery orders. Their repeated representations that they have complied with the General Discovery Order, without more, is no defense at all in light of the clear evidence to the contrary. They freely admit that they have not complied with the terms of the Privilege Discovery Order. Instead, Plaintiffs have persisted in arguing, by way of untimely motions for reconsideration and otherwise, that the Privilege Discovery Order was wrongly decided. Plaintiffs continue to ask the Court to vacate or amend the Privilege Discovery Order, arguing, *inter alia*, that there are questions as to the effect of the implied waiver in the Orleans and Roosevelt cases, that the Court's Privilege Discovery Order was the result of mistakes of fact and law, and that the Court must now undertake a review of the 96 documents themselves. First, the Court disagrees with Plaintiffs' arguments. Once privilege was waived as to the documents (by mere filing of the suits and/or by reason of the allegations in the Orleans and Roosevelt complaints), they were subject to discovery in all five cases. There is no question that the 96 documents are relevant to the subject matter of these actions.⁹ At the July 6, 2009 hearing, which preceded the entry of the Privilege Discovery Order, in view of Special Master Clary's reports and the information contained in the parties' privilege logs, the Court did not find it necessary to review the documents themselves, nor did the parties request, or even suggest, such a review. The factual bases for the Court's rulings on the privilege issues have not changed. Second, and most importantly, Plaintiffs' dissatisfaction with the Court's rulings in the discovery orders are not an excuse for their willful disobedience of those orders. If Plaintiffs' disobedience

⁹ Plaintiffs briefly raised the question of relevance with respect to a few documents concerning Lincoln Limited Partnership in their June 11, 2009 Rule 59(e) motion, but the Court determined that the documents concerning Lincoln are relevant (see July 28, 2009 Order at p. 5). Special Master Clary's report did not find, and Plaintiffs have not contended (except as noted regarding Lincoln), that any of the 96 documents lack relevance to the subject matter of these actions.

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were excused by reason of their disagreement with the Court's rulings, a finding of contempt would never be appropriate in any case.

"In determining whether the contempt is civil or criminal, the major factor to consider is the purpose for which the power is exercised, including the nature of the relief and the purpose for which the sentence is imposed. The purpose of civil contempt is to coerce the defendant to do the thing required by the order for the benefit of the complainant, while the primary purposes of criminal contempt are to preserve the court's authority and to punish for disobedience of its orders. If it is for civil contempt, the punishment is remedial and for the benefit of the complainant. If it is for criminal contempt, the sentence is punitive and meant to vindicate the authority of the court... When sanctions are conditioned on compliance with the court's order, the contempt is civil in nature." Id. (internal quotation marks and citations omitted). The Court finds and declares that Plaintiffs are in civil contempt, due to their willful disobedience of the General Discovery Order, and due to their willful disobedience of the Privilege Discovery Order. The sanctions of dismissal imposed in this Order are intended to coerce Plaintiffs' compliance with the discovery orders, allowing them to purge the dismissal sanctions if they comply with the discovery orders within twenty-five (25) calendar days of this Order. The sanction of awarding Defendants their expenses, including attorneys' fees, of the motions necessitated by Plaintiffs' misconduct in discovery is remedial, intended to compensate Defendants and indemnify them from the losses incurred due to Plaintiffs' misconduct.

2. Rule 37 Sanctions; Grounds for Dismissal

The General Discovery Order and the Privilege Discovery Order are orders compelling discovery, made under Rule 37(a), SCRPC, in response to the Defendants' Motion to Compel Discovery. It is clear that Plaintiffs have failed to comply with either of these orders and,

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therefore, Rule 37(b)(2), SCRPC, applies. The Rule provides, in part:

"If a party ... fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule ..., ... the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following: ...

(C) An order striking out pleadings or parts thereof, ... or dismissing the action or proceeding or any part thereof ...

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders...

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust."

Rule 37(b)(2), SCRPC.

In light of Plaintiffs' refusal to comply with the Court's discovery orders, and the extreme prejudice suffered by Defendants as a result of Plaintiffs' non-compliance, the only sanction that can achieve justice is the dismissal of the lawsuits. Plaintiffs' non-compliance simply deprives Defendants of their ability to defend against Plaintiffs' claims, based on the statute of limitations defense and otherwise. Most of the documents that Plaintiffs were compelled to produce in the Privilege Discovery Order are dated (i.e., were created) more than three (3) years prior to the filing of these lawsuits, and they are likely relevant to Defendants' statute of limitations defense in these actions. Plaintiffs have failed to provide the dates that they first consulted an attorney regarding (or first discussed among themselves) the investigation or pursuit of claims against any of the Defendants. The Court compelled Plaintiffs to answer interrogatories seeking this information in its General Discovery Order (Interrogatory Nos. 9, 10 and 12), but Plaintiffs have refused to provide adequate responses. The Court has already found that "the statute of limitations is a major issue in these cases." See Order dated July 28, 2009, at

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p. 6.

The other sanctions available to the Court are either inadequate or would lead to the exact same result as the sanction of dismissal. Further, lesser sanctions are incapable of addressing the additional prejudice (i.e., prejudice to defenses unrelated to the statute of limitations), which Defendants have likely suffered but can not specifically identify due to Plaintiffs' refusal to provide the relevant documents and information. "Overly lenient sanctions are to be avoided where they result in inadequate protection of discovery." Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213, 217 (Ct. App. 1997). Refusing to disclose the substance of the Plaintiffs' expert witnesses' opinions, and the bases for such opinions, is clearly prejudicial to the Defendants. A lesser sanction aimed at this particular failure to comply with the Court's General Discovery Order, such as exclusion of expert witness testimony, would lead to the same result, because expert witness testimony as to the value of the subject properties is vital to the Plaintiffs' cases given the nature of this litigation. When a party is deprived of his rights to discovery, "prejudice must be presumed." See id. The party refusing to submit to discovery must bear the burden of proving lack of prejudice. See id. Plaintiffs have not proven a lack of prejudice on the Defendants' part.

In imposing the sanctions of dismissal, the Court has considered the various factors set forth in the applicable case law. For the reasons set forth above, the Court finds that, under these circumstances, the sanction of dismissal is reasonable, it does not go beyond the necessities of the situation to foreclose a decision on the merits of the cases, and it is aimed at the specific misconduct of the Plaintiffs. See Karppi v. Greenville Terrazzo Co., Inc., 327 S.C. 538, 489 S.E.2d 679, 682 (Ct. App. 1997). Further, the sanction imposed serves to protect the rights of discovery provided by the Rules of Civil Procedure. See id. If Plaintiffs are going to file

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lawsuits, engage in discovery under the Rules of Civil Procedure and receive the benefits thereof, but repeatedly refuse to produce their documents or provide full and meaningful responses to reasonable discovery requests after being ordered to do so by the Court, then their lawsuits should be dismissed in order to, among other things, protect the rights of discovery under the Rules.

The Court has also considered the following factors in imposing the sanctions of dismissal: (1) the "precise nature of the discovery;" (2) "the discovery posture of the case;" (3) "willfulness;" and (4) "degree of prejudice." See Griffin Grading and Clearing, Inc. v. Tire Service Equipment Mfg. Co., Inc., 334 S.C. 193, 551 S.E.2d 716, 719 (Cl. App. 1999) (citing Laney v. Hefley, 262 S.C. 54, 202 S.E.2d 12 (1974)). The discovery compelled by the Court is directed at, among other things: the statute of limitations issue in these cases (the 96 documents to be produced may be responsive to a myriad of other discovery requests served in these actions by Defendants); the critical issue of the value of the properties (Plaintiffs claim the properties had substantial value and Defendants breached their fiduciary duties by not taking them back, whereas Defendants claim the properties lacked value net of indebtedness and accepting a return of the properties would not have been in the Limited Partnerships' best interests); and the basic issue of damages or the lack thereof. The trial in the Parkview action was set to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders, and the Parkview action is almost seven (7) years old. The other cases are more than four (4) years old. Considering that Plaintiffs did not identify ninety (90) of the documents listed on their Privilege Log until July 30, 2008, Defendants could not have challenged Plaintiffs' claims of privilege earlier than they did. Many of the documents first identified in July 2008 are among the documents Plaintiffs have been compelled to produce. Nor

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could Defendants have acted more expediently in addressing Plaintiffs' failure to provide adequate responses to the Discovery Requests.

The willfulness of the Plaintiffs' failure to comply with the discovery orders is abundantly clear, as discussed above. Plaintiffs have made the conscious choice to disobey the Court's discovery orders. The prejudice to the Defendants is also clear, as discussed above. As for the relative prejudice to the Plaintiffs, clearly it is prejudicial to dismiss Plaintiffs' actions. However, the prejudice to Plaintiffs if the cases are dismissed is not out of balance with the prejudice to Defendants as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. The prejudice to Plaintiffs is reasonable and necessary in order to counter the specific prejudice to Defendants. Further, the Court has afforded Plaintiffs ample opportunity to avoid the imposition of these sanctions, and Plaintiffs can purge the dismissal of these actions by complying with the General Discovery Order and the Privilege Discovery Order within twenty-five (25) days of the date of this Order. Plaintiffs control whether these cases stand permanently dismissed.

"Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." Griffin, 551 S.E.2d at 719. There is no question that Plaintiffs have willfully disobeyed the Court's discovery orders. By refusing to provide the Defendants with the documents and information as required by the Court's orders, Plaintiffs have also exhibited gross indifference to Defendants' rights in discovery. Defendants have carried their burden in showing that dismissal of the actions is the appropriate sanction under these circumstances. As to whether Plaintiffs have acted in bad faith, there is ample evidence that they have. Plaintiffs agreed to the entire process that ultimately resulted in the Court's Privilege Discovery Order, received benefits

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from this process, and it now appears that they never intended to produce the documents they claimed to be privileged if the Court ordered them to do so. Further, Plaintiffs' initial responses to the Discovery Requests, as well as their First, Second and Third Supplemental Responses, are persistently evasive, ambiguous, incomplete and/or non-responsive. Plaintiffs have repeatedly been given a road map as to how to comply with the General Discovery Order, and the Court has afforded them many opportunities over the course of a full year to do so, but they have willfully and intentionally disobeyed the General Discovery Order at every turn.

3. Award of Expenses, Including Attorneys' Fees

In each of their Motions for Sanctions, Defendants request that they be awarded their reasonable expenses, including attorneys' fees, incurred as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. Further, in the General Discovery Order, the Court held in abeyance the Defendants' request for an award of reasonable expenses of their Motion to Compel Discovery, including attorneys' fees, pursuant to Rule 37(a)(4), SCRCp. The Court finds that Defendants should receive a monetary award to compensate them for the expenses, including attorneys' fees, that they have incurred in connection with their Motion to Compel (i.e., expenses incurred in order to obtain the General Discovery Order, pursuant to Rule 37(a)(4)) and each of their Motions for Sanctions. "Courts, by exercising their contempt power, can award attorneys' fees under a compensatory contempt theory. The award of attorneys' fees is not a punishment but an indemnification to the party bringing the action. . . . However, any component of a sanction must be directly related to the contemptuous conduct and the loss incurred by the offended party." Ex Parte: Cannon, 685 S.E.2d at 827 (internal quotation marks and citations omitted). The award of expenses is remedial and civil, even though the Plaintiffs will have no opportunity to purge themselves of the

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award. See id. ("A fine may also be 'remedial and civil if paid to the complainant even though the contemnor has no opportunity to purge himself of the fine...'") (citations omitted)).

In order that the Court may determine the proper amount of expenses, including attorneys' fees, required for indemnification of the Defendants, the Court will accept evidence of such expenses as follows. Within fifteen (15) calendar days of the date of this Order, Defendants shall submit to the Court an affidavit in support of their requests for expenses. Beginning on the date Defendants serve their affidavit, Plaintiffs shall have fifteen (15) calendar days to respond by affidavit or at a hearing, if a hearing is requested. The Court shall retain jurisdiction over Defendants' requests for an award of expenses, and will enter a separate order as to the amount of the award at the appropriate time. The time allotted to Defendants to file their supporting affidavit, and for Plaintiffs' response to the same, shall not affect the running of the twenty-five (25) day period in which Plaintiffs may fully comply with the Orders dated March 3, 2009 and July 28, 2009, in order to purge the sanctions of dismissal entered herein.

4. Plaintiffs' Pending Motions for Relief from July 28, 2009 Order Are Denied

On January 28, 2010, Plaintiffs filed Motions for Relief from July 28, 2009 Order Amending Court's Order Dated June 2, 2009 in each of the above-captioned actions. These motions, which purport to be motions under Rule 60(b), SCRCP, are actually untimely motions for reconsideration, subject to Rule 59(e), SCRCP. The Court's July 28, 2009 Order is an interlocutory discovery order, not a final order. As such, the Privilege Discovery Order is not subject to review by the trial court under Rule 60(b), SCRCP. Instead, the trial court may consider Plaintiffs' mislabeled motions as being additional motions for reconsideration of the Privilege Discovery Order under Rule 59(e), SCRCP (Plaintiffs previously made an oral motion

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for reconsideration on August 24, 2009, which the Court denied). Further, Plaintiffs' motions are clearly untimely under Rule 59(e), which requires that such a motion be served "not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRPC. Plaintiffs' motions are inappropriate and are, therefore, denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT: both of the Defendants' Motions for Sanctions are hereby GRANTED; the Court finds and hereby declares that the Plaintiffs in the above-captioned actions are in CONTEMPT of court; each of the above-captioned actions is hereby DISMISSED WITH PREJUDICE as sanctions for Plaintiffs' contempt, and pursuant to Rule 37(b)(2), SCRPC, subject to the terms stated herein; and the Court finds and hereby declares that Defendants are entitled to an award of reasonable expenses, including attorneys' fees, incurred in connection with their Motion to Compel Discovery and each of their two Motions for Sanctions, and that a subsequent order shall be entered as to the amount of the award. Plaintiffs may purge the sanctions of dismissal with prejudice by showing the Court that they have fully complied with the Court's Orders dated March 3, 2009 and July 28, 2009 within twenty-five (25) calendar days of the date of this Order (i.e., the date this Order is signed, set forth below). Further, Plaintiffs' Motions for Relief from July 28, 2009 Order, which purport to be motions under Rule 60(b), SCRPC, but are actually untimely motions for reconsideration, are DENIED.

IT IS SO ORDERED.

This 16th day of April, 2010.
Dekeon, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., et al., Plaintiffs)
v.) Beaufort County
Parkview Apartments, a South Carolina Limited)
Partnership, et al., Defendants.) C/A # 03-CP-07-726

Laurance H. Davis, Jr., et al., Plaintiffs)
v.) Orangeburg County
Roosevelt Gardens, a South Carolina Limited)
Partnership, et al., Defendants.) C/A # 05-CP-38-1131

Rhoda G. Rentz, et al., Plaintiffs)
v.) Charleston County
Orleans Gardens, a South Carolina Limited)
Partnership, et al., Defendants.) C/A # 05-CP-10-4229

Laurance H. Davis, Jr., et al., Plaintiffs)
v.) Beaufort County
Palmetto Apartments, a South Carolina Limited)
Partnership, et al., Defendants.) C/A # 05-CP-07-1989

Carolina Management Corporation of Beaufort,)
et al., Plaintiffs)
v.) Beaufort County
Pinewood Park Apartments, a South Carolina)
Limited Partnership, et al., Defendants.) C/A # 05-CP-07-1990

**NOTICE OF MOTION AND MOTION FOR RECONSIDERATION,
ALTERATION OR AMENDMENT**

**TO: ELLIS M. JOHNSTON, II, CALVIN T. VICK, MARVIN INFINGER AND ANNE
ROSS ROSEN, AND THE DEFENDANTS ABOVE-NAMED**

YOU WILL PLEASE TAKE NOTICE that the undersigned, as counsel for the Plaintiffs in the above-captioned matters, will and hereby does move, pursuant to S.C.R.C.P. 59, for an Order of this Court granting relief as hereinafter set forth from the Order Granting Defendants' Two Motions For Sanctions, Finding Plaintiffs in Contempt of Court, and Dismissing the Above-Captioned Actions as Sanctions for Plaintiffs' Contempt, said Order being dated the 6th day of April, 2010 and filed in the Office of the Clerk of Court for Beaufort County on April 9, 2010. The undersigned first received a signed copy and notice of the entry of this Order by the Beaufort County Clerk of Court *via* e-mail from Ellis M. Johnston, II dated April 13, 2010. The undersigned subsequently received a signed copy of the Order and notice of the entry of this Order by the Beaufort County Clerk of Court *via* U.S. mail from Ellis M. Johnston, II on April 15, 2010.

This motion is subject to and not in waiver of the Plaintiffs' pending Motion for Recusal and Vacation of Orders and Motion for Protective Order; Plaintiffs specifically reserve all positions or objections stated in any prior motions or submissions concerning the qualification of Judge Doyet A. Early III to issue rulings or preside over proceedings in these cases, and that his participation in this litigation is prohibited by the Canons of Judicial Ethics and the existing laws and constitutions of this state and of the United States of America.

The grounds for this motion are hereinafter set forth in this document, as well as in any affidavits submitted in support hereof, including but not limited to any affidavit filed with this motion; in that regard, an affidavit of Thomas Pendarvis, Esquire, co-counsel for the Plaintiffs, is being submitted under separate cover due to the volume of its contents and attachments. The contents of that affidavit are hereby incorporated by reference herein as additional grounds for this motion, and it is deemed to be an affidavit submitted herewith in support of this motion as fully and

completely as if the affidavit physically accompanied this motion. The Plaintiffs further assert that the grounds for this motion are also contained in any transcripts of proceedings held in this or any related matter; any depositions or other discovery conducted in this litigation; any rulings and orders issued in this litigation; any memoranda of law submitted in this litigation; and/or any related motions, correspondence, e-mails, or other relevant documents which have been submitted, produced or identified in this litigation.

For the reasons hereinafter set forth, the Plaintiffs seek relief from the said Order in the following particulars:

A. The Plaintiffs seek reconsideration and vacation of the said Order in its entirety, on the basis that (a) it is primarily based upon Plaintiffs' failure to comply with a prior Order of Judge Early which modified and/or eliminated the rulings of the Special Master appointed in this litigation, and that such prior Order exceeded the jurisdiction of the trial judge under S.C.R.C.P. 53; (b) it is tainted in its entirety due to the bias and prejudice of the issuing judge, as demonstrated herein and in the Plaintiffs' pending Motion for Recusal and Vacation of Orders; (c) it is based upon erroneous, misleading and inaccurate findings of fact outside the evidence; (d) it is based upon errors and misapplications of existing law; (e) it is the product of at least one *ex parte* communication between Judge Early and Defendants' counsel, Calvin T. Vick, which is specifically prohibited under the law of this state.

B. The Plaintiffs alternatively seek reconsideration, alteration and/or amendment of the factual findings set forth in the said Order on the ground that they are not accurate, are incomplete, are outside the evidence presented and/or present a biased and unfair representation of the acts or conduct referenced therein, including, *inter alia*, the following particulars:

1. The finding on page 5 of the Order (as well as any additional references or "findings" in the Order relating to the same) which states that "Plaintiffs' responses to numerous document requests and interrogatories were 'incomplete and inadequate.'"

(a) This finding ignores the thousands of pages of documents which Plaintiffs have produced in this litigation, as well as the actual detail and content of Plaintiffs' written responses to the Defendants' interrogatories.

(b) This finding ignores the fact that Plaintiffs have been responding to Defendants' discovery requests since 2005, and have continually supplemented their responses since that time as additional information became known or additional documents became available to them.

(c) This finding ignores the fact that Judge Early's General Discovery Order of March 3, 2009 was actually written by counsel for the Defendants and that Judge Early merely adopted verbatim the language they proposed, with the exception of their proposed language relating to an award of attorneys' fees. This is very relevant in light of the Plaintiffs' pending Motion for Recusal and Vacation of Prior Orders.

(d) This finding ignores the fact that Plaintiffs' counsel made the same objections to the discovery responses of counsel for Defendants, only to have such objections rejected by Judge Early.

2. The finding on page 5 of the Order (as well as any additional references or "findings" in the Order relating to the same) which states that Plaintiffs responded to the positions of the Defendants' counsel by "summarily dismissing" them.

3. The finding on page 6 of the Order (as well as any additional references or "findings" in the Order relating to the same) which states that "the Court was forced to continue the trial of the Parkview action from the May 18, 2009 term" solely "due to Plaintiffs' continuing failure to respond to discovery (and the ongoing dispute over alleged privileged materials)."

(a) This finding ignores the fact that the May 18, 2009 trial date had been set over a year earlier; that, at that time, Plaintiffs' counsel sought a trial date in 2008 but Judge Early adopted the request of Defendants' counsel that the Parkview case would not be set for trial until late spring of 2009; that Judge Early gave counsel a choice of trial dates in April or May of 2009, and counsel for Plaintiffs asked for the earlier date in April but Judge Early adopted the request of Defendants' counsel for the May date.

(b) This finding ignores the fact that, prior to the setting of the May 2009 trial date, counsel for the Defendants had done almost no discovery in these cases, and had objected to virtually all of Plaintiffs' discovery requests. It also ignores the fact that, when presented with the objections of Defendants' counsel, Judge Early denied the request of Plaintiffs' counsel to compel discovery responses, so that Plaintiffs' counsel was forced to obtain discovery through other more costly means, such as depositions.

(c) This finding ignores the fact that the Defendants' discovery requests now at issue were not even submitted until less than 9 months before the May 2009 trial date, and that the requests sought documents and information which was deemed by Plaintiffs to be privileged and not subject to discovery, and which Plaintiffs' counsel had an ethical and legal duty to oppose.

(d) This finding ignores the fact that the discovery dispute did not arise over the Plaintiffs' "failure to respond to discovery," as stated in the Order; rather, it arose over the

contentions of Defendants' counsel concerning the adequacy or sufficiency of the responses which had, in fact, been made.

(e) This finding ignores the fact that Judge Early did not issue any finding as to the sufficiency of Plaintiffs' responses, which had been served in November of 2008 and supplemented in January of 2009, until March of 2009, just 2 months prior to the Parkview case trial date.

(f) This finding ignores the fact that the Plaintiffs' motion asking Judge Early to reconsider his Order of March 3, 2009, was both timely and within the South Carolina Rules of Civil Procedure, or that Judge Early did not rule on the motion for reconsideration until after the Parkview trial date had passed.

(g) This statement ignores the fact that the continuance was granted at the request of counsel for the Defendants, and over the objection of counsel for the Plaintiffs.

4. The finding on page 7 of the Order (as well as any additional references or "findings" in the Order relating to the same) which states, "...Plaintiffs' complete failure to comply with the General Discovery Order."

(a) Statements such as this are prime examples of why a presiding judge should not follow Judge Early's policy of signing orders prepared by counsel without closely scrutinizing them for errors. Counsel are advocates for their clients; a judge should be impartial and fair to all parties, or at least should appear to be fair and impartial. Signing orders with argumentative and clearly erroneous language prepared by counsel for a party is not in keeping with a judge's duty or oath of office.

(b) Even under Defendants' arguments, the Plaintiffs' alleged noncompliance with the Order can hardly be said to be a "complete failure to comply."

5. The finding on page 7 of the Order (as well as any additional references or "findings" in the Order relating to the same) which states that Plaintiffs' counsel indicated that "Plaintiffs would comply with the General Discovery Order, at least in a piecemeal fashion, ..."

(a) Plaintiffs' counsel has never used the term "piecemeal" in any representations to the Court or opposing counsel in these cases, and use of that term by counsel for Defendants again illustrates the point made above: a presiding judge should not adopt a policy of signing orders prepared by counsel for one of the parties without closely scrutinizing them for errors or argumentative language.

(b) This finding totally misrepresents and misstates the representations of Plaintiffs' counsel in the conference call referenced in the Order. What counsel for the Plaintiffs actually said was that the discovery had previously been focused on the Parkview case, as it was the only case designated for trial, but that the General Discovery Order had been made applicable to all Plaintiffs in all cases. Plaintiffs' counsel pointed out to Judge Early that this change in the discovery process required significantly more effort and, correspondingly, more time, as the individual Plaintiffs were located in multiple locations and that both of Plaintiffs' counsel were sole practitioners with limited resources. Plaintiffs' counsel offered to focus on the Parkview case initially, and asked for leeway in getting the information for the other cases, since the information being sought covered several decades and was not readily available to the Plaintiffs. To characterize this as an indication that Plaintiffs would comply in a "piecemeal fashion" is an inaccurate and unfair distortion.

6. The finding on page 7 of the Order (as well as any additional references or "findings" in the Order relating to the same) which states that "the Court was required to hold a hearing ... on August 24, 2009" because Plaintiffs had "failed to provide any supplemental responses by the end of July."

(a) This statement is unfair and misleading because it does not provide the reason for the Plaintiffs not having supplemented their discovery responses in July. Plaintiffs' counsel Thomas Pendarvis was the attorney responsible for preparation of the supplemental discovery responses, and he was in trial in a document intensive case which lasted several days and required his primary attention during this time.

(b) Mr. Pendarvis's involvement in the other trial was communicated to the counsel for the Defendants, along with his assurances that he would get the supplemental responses completed as soon as the other trial was completed. His involvement in the other trial was actually known to Judge Early, as he was the presiding judge in the other trial.

(c) To imply that Plaintiffs' counsel had engaged in some deliberate dilatory tactics which necessitated action by the Court, which the referenced "finding" certainly does, while in possession of actual knowledge of facts to the contrary, is yet another example of unfairness and partiality on the part of Judge Early in these cases.

7. The finding on pages 7 and 8 of the Order (as well as any additional references or "findings" in the Order relating to the same) which states that, "As a result of Plaintiffs' continuing failure to comply with the Court's discovery orders, the Court was compelled to continue the scheduled trial of these cases from the January 19, 2010 trial term ..."

(a) This statement is unfair and misleading because it states that there was a January date set for the trial of "these cases" when, in fact, only the Parkview case was slated for trial at that time. Again, this is another example of Judge Early choosing to adopt the language of an order written by Defendants' counsel, notwithstanding that it is clearly erroneous and factually incorrect.

(b) This statement is also unfair and misleading because it ignores the fact that the January 19, 2010 trial date was set by Judge Early after he granted the request of Defendants' counsel to continue the Parkview case past the May 2008 date, and that he refused the requests of Plaintiffs' counsel to set an earlier trial date in the fall of 2009. Furthermore, Judge Early chose to delay in issuing a ruling on the pending discovery motion of Defendants' counsel, even though he had heard it in August of 2009.

(c) The statement is also unfair and misleading because it ignores the fact that the Plaintiffs had employed other counsel to seek interlocutory appellate relief from Judge Early's rulings requiring them to provide confidential information to counsel for the Defendants. The cases were not remanded from the appellate courts until December of 2009.

(d) To hold, in light of all the relevant evidence to the contrary, that the trial delay is due solely to the conduct of Plaintiffs' counsel when, in fact, it was Plaintiffs' counsel who sought on multiple occasions to have the case tried previously, is wrong.

8. The finding on page 8 of the Order (as well as any additional references or "findings" in the Order relating to the same) relating to the Plaintiffs' Third Supplemental Responses to the Defendants' discovery requests.

(a) This finding states that only the "Plaintiffs in the Parkview case" supplemented their discovery responses, and that "none of the other Plaintiffs provided any supplemental response." This creates the impression that non-Parkview Plaintiffs were willfully refusing to provide supplemental responses, and was evidently drafted by Defendants' counsel - and once again adopted and signed by Judge Early - in order to try to cast the Plaintiffs in the worst light possible. The finding ignores the fact that Plaintiffs' counsel informed Judge Early and Defendants' counsel when the supplemental responses were submitted that the non-Parkview Plaintiffs would provide similar supplemental responses if Judge Early found the Parkview submissions to be in compliance with his General Discovery Order.

(b) Once again, the incompleteness of this finding renders it unfair and misleading because it ignores the fact that the Plaintiffs' Third Supplemental Responses were provided to Judge Early, with a letter from Plaintiffs' counsel which stated, "The response is specific to the Parkview case only at this time since, as you correctly noted at the hearing, that is the first case which was scheduled for trial...I have looked at the other discovery requests addressed in the Defendants' written submission, and believe that, as to those, we are in compliance with both your prior order and the South Carolina Rules of Civil Procedure. If you agree, we will provide similar updated responses in the other cases."

(c) The finding also fails to state that the said letter of Plaintiffs' counsel also addressed the issue of valuation expert witness disclosure, stating, "The enclosed amended response relating to the valuation experts is as detailed and complete as I know how to make it in a written discovery response. Of course, as is always the case, the witnesses may elaborate in greater detail at their depositions, should the Defendants decide to depose them...I am hopeful that you will

find these to be sufficient." This omission is both enlightening and significant, given Judge Early's later conclusions in the Order relating to this aspect of the Plaintiffs' discovery responses.

9. The finding on page 8 of the Order (as well as any additional references or "findings" in the Order relating to the same), stating that Plaintiffs "have failed to provide any legitimate excuse for their non-compliance," and that their "noncompliance is well documented" in the memoranda filed by Defendants' counsel.

(a) This finding ignores the fact that Plaintiffs' counsel informed Judge Early and Defendants' counsel on several occasions of the fact that Plaintiffs' counsel felt that their initial responses and three supplemental responses were, in fact, in compliance with the General Discovery Order, and sought specific direction from the court as to any areas of deficiency; the response of Judge Early was simply to adopt by reference the arguments of Defendants' counsel as set forth in their memoranda.

(b) This finding also ignores the information concerning Mr. Pendarvis's simultaneous involvement with the trial of another complicated case, as stated above.

(c) This finding also ignores the fact that Judge Early permitted Defendants' counsel to revise the existing discovery protocol by requiring discovery responses in all five (5) cases, even though the prior protocol was to focus primarily on the Parkview case since it was the first scheduled case for trial, and the problems this presented to Plaintiffs' counsel were specifically presented to both Judge Early and Defendants' counsel; Judge Early's response was to continue his policy of adopting Defendants' arguments.

(d) This finding also ignores the fact that Judge Early and Defendants' counsel were advised by Plaintiffs' counsel of the hardships which Judge Early's adoption of the

arguments advanced by Defendants' counsel, resulting in his imposition of a double standard with respect to the discovery aspects of this litigation, created for Plaintiffs and their ability to comply with the Order to the extent envisioned by Judge Early, particularly given the fact that their requests covered a period of several decades; some of said requests going back as far as the 1960s. Furthermore, Judge Early and Defendants' counsel were informed that many of the Plaintiffs were in ill health and elderly, while others were heirs or agents of the original limited partners, and had limited personal knowledge of the information sought or access to the documents being requested.

(e) The reference in the Order to memoranda filed by Defendants' counsel is too general, vague and broad for Plaintiffs' counsel to specifically respond thereto. In any event, Plaintiffs believe that such general reference to and reliance on argumentative memoranda filed by an advocate in the case by Judge Early in an Order is not proper, particularly given the fact that it is being used to justify imposition of the harshest sanction available, *i.e.*, total dismissal with prejudice of the Plaintiffs' claims, coupled with a sanction of costs and fees.

10. The finding on page 9 of the Order (as well as any additional references or "findings" in the Order relating to the same), relating to the opinions held by expert witnesses identified by the Plaintiffs.

(a) The Order states that "Plaintiffs have still not disclosed the relevant opinions held by their testifying experts or the bases for said opinions ...", that "the Parkview Plaintiffs' Third Supplemental Responses fall well short of what is required by the General Discovery Order" (again simply referencing one of Defendants' Memoranda) and that "Plaintiffs in the other cases have provided even less."

(b) This finding is erroneous and ignores the fact that the Plaintiffs have specifically identified persons who they believe qualify as experts concerning the values of the respective properties in these cases, have set forth their opinions to the extent known by Plaintiffs' counsel and provided the bases for their opinions to the best of their ability. Plaintiffs' counsel have provided this information to the Defendants' counsel on several occasions, both formally and informally. Defendants' counsel was provided with a summary of Plaintiffs' valuation theory at a meeting prior to the March 2008 mediation in the Parkview, Palmetto, Orleans and Roosevelt cases. Plaintiffs' counsel provided a detailed and specific analysis as to the range of values attributable to each of the subject properties/ Furthermore, Plaintiff showed video interviews they had done with the expert witnesses retained to testify as to values in the Parkview, Palmetto and Roosevelt cases. No experts have been retained in the Pinewood or Orleans cases, as those cases were not scheduled for trial. Subsequent to the mediation, Plaintiffs' counsel again provided similar detailed information to Defendants' counsel. All of this is omitted and ignored in the Order granting Defendants' motions for sanctions.

(c) The finding also ignores the fact that some of the witnesses identified by Plaintiffs as experts were not actually hired or retained by Plaintiffs. Defendants counsel is well aware of these people and their opinions and the bases for such opinions, as they have been given all documents in the possession of Plaintiffs' counsel, and they have subpoenaed the records of many of these persons and, in some instances, have taken their depositions. These include county assessors, accountants, an insurance agent, licensed appraisers who have actually performed appraisals on the subject properties, a former manager of the properties and subsequent purchasers of the properties. Defendants have had full access to these individuals and their documents for over

two years. All of this is omitted and ignored in the Order granting Defendants' motions for sanctions.

(d) As to retained experts, Plaintiffs have hired two real estate professionals to testify about the fair market value of the two Beaufort properties, since the Parkview case was designated as the first case to be tried, and the experts happened to be familiar with the Palmetto property as well. Plaintiffs have also retained a licensed appraiser as a valuation expert concerning the Roosevelt property. Plaintiffs have provided Defendants' counsel with all the information they have concerning these experts; this information has been provided as it was received over more than a two year period. Furthermore, all information in the possession or control of Plaintiffs or their counsel relating to the Parkview case experts was also provided to Judge Early in Plaintiffs' recent Third Supplemental Responses; Judge Early was specifically advised that a similar submission would be forthcoming in the other cases if he deemed the Parkview submission to comply with his prior Order. Plaintiffs' counsel personally spent hours meeting with retained counsel in an effort to gather information to submit in the supplemental discovery responses. This submission was summarily dismissed in the subject Order, with another oblique reference to Defendants Second Supplemental Memorandum. All of this is omitted and ignored in the Order granting Defendants' motions for sanctions.

(e) If Defendants' counsel really wished to obtain further information, they could certainly do so by deposing the experts listed. Plaintiffs have provided Defendants' counsel with all documents in their possession or control concerning their expert witnesses. To ignore these facts in the subject Order is to paint a grossly inaccurate and distorted picture of the efforts of Plaintiffs and their counsel to comply with the General Discovery Order.

(f) While it is not surprising that the objectionable language being addressed would be omitted from a proposed order submitted by advocates for a party, it is distressing to see a trial judge, who is supposed to be fair and impartial, simply sign off on such language with the knowledge that it paints an incomplete and distorted version of the true facts. This is particularly true when the judge is using these distorted versions of the events in this case to "justify" dismissal of the Plaintiffs' claims.

(g) The reference in the Order to memoranda filed by Defendants' counsel is too general, vague and broad for Plaintiffs' counsel to respond thereto. In any event, Plaintiffs believe that such general reference to and reliance on argumentative memoranda filed by an advocate in the case by Judge Early is not proper, particularly given the fact that he is using it to justify imposition of the harshest sanction available to him, *i.e.*, total dismissal of the Plaintiffs' claims.

11. The finding on page 9 of the Order (as well as any additional references or "findings" in the Order relating to the same), relating to Defendants' Interrogatories 9, 10 and 12.

(a) The Order states that "Plaintiffs have still not provided full and complete ... information concerning the first communications between two or more Plaintiffs, and/or between a Plaintiff and an attorney, regarding the investigation or pursuit of legal claims against any of the Defendants, and the date(s) upon which each of the Plaintiffs agreed to retain Joel Bailey, their attorney in these actions, to represent such Plaintiff or to provide legal services concerning the investigation or pursuit of claims against the Defendants (Plaintiffs refuse to answer these interrogatories, relying on groundless objections or answering that they 'do not recall' ...)."

(b) This finding ignores the fact that the Defendants, their counsel and Judge Early have all been apprised of the fact that Mr. Bailey was initially contacted by Plaintiff

Laurance Davis, Jr. in early 2000 concerning legal representation for himself and other limited partners. This fact is confirmed by the first entry on the initial Privilege Log of the Plaintiffs, and has been known to them since July of 2005. They have also been informed through affidavits previously submitted in this litigation that Mr. Bailey was initially consulted to investigate the status of the existing debts, as well as the status of any attempt by the general partners to collect the debt or recover partnership assets.

(c) This finding also ignores the fact that Judge Early and Defendants' counsel have been apprised on multiple occasions that many of the Plaintiffs are in ill health and elderly, and that they have limited or no memory of the initial communications requested by Defendants. Judge Early and Defendants' counsel have also been apprised of the fact that other Plaintiffs are heirs or agents of the original limited partners and were not directly involved in all communications with other limited partners. They have also been apprised of the fact that some of the early communications between counsel and limited partners were done indirectly through Mr. Davis, who was acting on their behalf, and that they have provided as much information in response to the Defendants' interrogatory as they have, with the exception of information and documents they assert are privileged. Although Judge Early has adopted the Defendants' argument that the Plaintiffs have waived their privilege as to these documents and communications, that remains an issue for the appellate courts to decide. Plaintiffs have requested that Judge Early employ multiple alternatives to dismissal so that the appellate courts can determine this issue at this time, but Judge Early has chosen to adopt the Defendants' arguments and rejected each such request by Plaintiffs.

(d) The reference in the Order to memoranda filed by Defendants' counsel is too general, vague and broad for Plaintiffs' counsel to respond thereto. In any event, Plaintiffs

believe that such general reference to and reliance on argumentative memoranda filed by an advocate in the case by Judge Early is not proper, particularly given the fact that he is using it to justify imposition of the harshest sanction available to him, *i.e.*, total dismissal of the Plaintiffs' claims.

12. The finding on page 10 of the Order (as well as any additional references or "findings" in the Order relating to the same), stating that Plaintiffs have not provided "an itemized statement of all damages claimed to have been sustained by Plaintiffs."

(a) This finding ignores the fact that Plaintiffs have, on multiple occasions, provided Defendants and their counsel with all documentation relating to their damages which Plaintiffs have in their possession or control.

(b) This finding also ignores the fact that Plaintiffs' are not required under the law in South Carolina to prove their damages to a mathematical certainty, and that Plaintiffs' damages in these cases are known by all parties to consist of a range of values for the respective underlying properties, rather than a sum certain which can be set forth on an itemization. These ranges of values have been itemized to the best of the ability of Plaintiffs' counsel and have been provided to Defendants' counsel on multiple occasions for more than two years.

13. The finding on page 10 of the Order (as well as any additional references or "findings" in the Order relating to the same), stating that "Plaintiffs continue to refuse to identify which documents were actually in the possession of each of the Plaintiffs, which is clearly relevant to Defendants' statute of limitations defense ..."

(a) This finding is patently erroneous and contrary to the evidence in the record.

(b) Plaintiffs' Second Supplemental Responses to Defendants' Discovery Requests clearly designate the documents in the possession of Plaintiffs' counsel by both bates stamp number and source, *i.e.*, the specific Plaintiff from whom the documents were received.

14. The finding on page 10 of the Order (as well as any additional references or "findings" in the Order relating to the same), relating to Plaintiffs' responses to Interrogatory Nos. 8, 18 and 20.

(a) This finding is also erroneous and contrary to the evidence in the record.

(b) Plaintiffs' Second Supplemental Responses to Defendants' Discovery Requests clearly designate the documents in the possession of Plaintiffs' counsel by both bates stamp number and source, *i.e.*, the specific Plaintiff from whom the documents were received.

15. The finding on page 11 of the Order (as well as any additional references or "findings" in the Order relating to the same), stating that the Privilege Log produced by the Plaintiffs on July 30, 2008 "identified ninety (90) documents, dated (*i.e.*, created) between 1998 and 2004, which had not been previously identified in this litigation."

(a) This finding is very misleading and unfair. As noted in Footnote 6 of the Order, Plaintiffs had earlier produced a Privilege Log in July, 2005 listing 44 documents. These documents were also included in the July 2008 Privilege Log, which was a continuum document, as were the subsequent revised Privilege Logs identified in Footnote 7 of the Order.

(b) This finding again illustrates the problems encountered when a judge relies upon an advocate to prepare orders and signs the orders, either without really knowing if the statements in the orders are accurate or without making any independent effort to confirm the accuracy of the contents of the orders.

16. The finding on page 12 of the Order (as well as any additional references or "findings" in the Order relating to the same), stating that Judge Early's Order of December 30, 2008 appointed "Gary Clary for the limited purpose of reviewing *in camera* the documents identified on the parties' respective privilege logs and to issue a report of his findings and conclusions to the Court."

(a) This finding gives the erroneous impression that Judge Clary's appointment was for advisory purposes only, when the appointment actually involved the delegation by Judge Early of an important issue to Judge Clary, *i.e.*, the resolution of the issue concerning which documents were, in fact, privileged and not subject to production. The Order of December 30, 2008 appointing Judge Clary as Special Master specifically states that, as to the documents in Plaintiffs' Privilege Log, Judge Clary was to "make his *ruling* as to whether each such document is subject to discovery and production should be compelled ..." (Emphasis author's)

(b) The obvious attempt in this finding of the Order is to limit the authority of Judge Clary, given the prohibitions of S.C.R.C.P. 53. The finding, however, is clearly inconsistent with Judge Clary's understanding of his role, as shown in the unambiguous language of his amended report of April 14, 2009; the very first sentence of his amended report specifically states that he was appointed Special Master "to *resolve* specified discovery disputes related to the ... actions." (Emphasis author's)

(c) It is also clear from his amended findings and conclusions that Judge Clary felt that he was, in fact, resolving these issues through the *rulings* stating his findings and conclusions. With respect to his rulings concerning the documents on Plaintiffs' Privilege Log, for example, Judge Clary specifically states, "*I find and conclude* the following documents are subject to the attorney-client and/or work product privilege properly claimed by Plaintiffs ... *and shall not be produced.*" Judge Clary goes on to list in excess of eighty (80) documents on Plaintiffs' Privilege Log which were deemed to be privileged and protected from disclosure to the Defendants.

17. The finding on page 13 of the Order (as well as any additional references or "findings" in the Order relating to the same), relating to the issuance of the Privilege Discovery Order dated July 28, 2009, amending Judge Early's prior Order of June 2, 2009, which had adopted the findings and conclusions of Judge Clary.

(a) This finding is incomplete and therefore not representative of the true facts surrounding the issuance of the Privilege Discovery Order.

(b) The finding ignores the fact that, prior to the signing of the Privilege Discovery Order, which again was prepared by counsel for the Defendants, Plaintiffs' counsel informed Judge Early of the fact that their further research into the matter demonstrated that SCRCP 53 prohibits alteration of the rulings of a special master or referee by a trial judge, and that jurisdiction for such alteration lies exclusively with the appellate courts. Plaintiffs' counsel requested that Judge Early decline to sign any order which altered the rulings of Judge Clary, as he had no legal authority or jurisdiction to do so.

(c) The finding also ignores the fact that, when Plaintiffs' counsel learned that Judge Early had signed the said order, but had not yet entered the same, they again informed him

of the restrictions of SCRCp 53 and the lack of jurisdiction by a trial court to alter or amend the rulings of a special master or referee. Plaintiffs' counsel again stated their position that Judge Early had no legal authority or jurisdiction to alter the rulings of Judge Clary, and requested that the order be withdrawn and not entered.

(d) This finding also ignores the fact that the Privilege Discovery Order granted only nominal relief to the Plaintiffs while requiring them, contrary to the rulings of Judge Clary, to produce virtually every communication between them and their counsel relating to this litigation. It further ignores the fact that the order granted the Defendants' protection from producing nearly all of the documents they had been ordered to produce by Judge Clary.

(e) Inclusion of these facts is necessary in order for the appellate courts to understand the full arguments of Plaintiffs counsel and the impact of the decision of Judge Early to side with Defendants' counsel on the issue of dismissal of Plaintiffs' claims.

18. The finding on page 16 of the Order (as well as any additional references or "findings" in the Order relating to the same), relating to the January 14, 2010 hearing and events transpiring subsequent thereto.

(a) This finding is incomplete, as it omits certain facts which transpired in chambers following the hearing. At the meeting in chambers, counsel for Plaintiffs pointed out to Judge Early that the Defendants' Motion for Sanctions was based upon the July 28, 2009 Order, which reversed the rulings of Judge Clary, and that such Order contained significant errors. Judge Early asked Defendants' counsel about the errors and they acknowledged that the statements in the Order concerning language in Plaintiffs' Complaints - which was a stated basis for the ruling that Plaintiffs had waived their attorney-client privilege - was not correct, as such language did not even

exist in all the Complaints, as stated in the Order. It was at this point that Judge Early gave Plaintiffs' counsel the opportunity to respond to the proposed sanctions order being prepared by counsel for the Defendants.

(b) This finding also ignores and omits the fact that the letter to Judge Early from Plaintiffs counsel again pointed out that the proposed sanctions Order submitted by Defendants' counsel relied *entirely* upon the prior Order which they had prepared and which Judge Early had signed on July 28, 2009, which significantly modified the rulings of Special Master Clary., and which was admittedly erroneous as stated above. Plaintiffs' counsel again informed Judge Early that Plaintiffs did not wish to be in non-compliance with his Order but it had created an impossible dilemma, whereby Plaintiffs were forced to choose to either comply with the Order and lose their constitutional rights relating to legal representation and confidential communications, or protect their constitutional rights and disobey the Order. The alternative orders proposed by Plaintiffs' counsel were submitted for the expressed and stated purpose "to restore these cases to the litigation track which we were on until last year."

(c) The finding also ignores the fact that the letter of Plaintiffs' counsel specifically called to Judge Early's attention the double standard created by his Order of July 28, 2009, whereby he gave almost universal protection to the documents which Defendants asserted were privileged, while requiring virtual total disclosure of the communications between Plaintiffs and their counsel.

(d) The finding also ignores and fails to mention the attempts of Plaintiffs to find a way to comply with the Court's July 28, 2009 Order without forfeiting their legal rights to

confidential communications with their counsel, including the filing of a Motion for Protective Order.

C. Plaintiffs further seek reconsideration, deletion or alteration of the following legal conclusions and findings, on the ground that they are not supported by the true and relevant facts, are contrary to and unsupported by the existing law in this state, and/or are outside the scope of, unsupported by and/or contrary to the evidence presented:

1. The statement or conclusion on pages 16 and 17 of the Order which states: "At this time, Plaintiffs have given the Court no reason to believe that they intend to comply with either the General Discovery Order or the Privilege Discovery Order," and "Plaintiffs have steadfastly refused to comply with the terms of the Privilege Discovery Order."

(a) This statement or conclusion is patently untrue. Plaintiffs have supplemented their discovery responses numerous times in this litigation in an attempt to comply with Judge Early's discovery rulings, including the General Discovery Order. Plaintiffs' counsel sent a letter to Judge Early with respect to the Plaintiffs' Third Supplemental Responses, seeking his review of the Parkview responses and a pledge to make similar supplemental responses in the other cases if the judge felt the Parkview responses were adequate. Judge Early did not respond to Plaintiffs' counsel with any suggestions or criticisms of their supplemental responses; rather, he chose to ignore the letter and instead, in an apparent *ex parte* communication with Defendants' counsel Vick, counseled him on how to prepare the Order to which this motion is directed.

(b) With respect to the Privilege Discovery Order, Plaintiffs' counsel has informed Judge Early on multiple occasions that the Order placed Plaintiffs in the impossible position of having to forfeit their legal and constitutional rights in order to comply with the Order.

They also stated their belief to Judge Early on multiple occasions that the circuit court had no jurisdiction to issue the Privilege Discovery Order in light of the prohibition against the same set forth in SCRCP 53. They repeatedly asked Judge Early to either rescind the Order, or to issue a simple contempt citation so that the issue would be ripe for appellate review. They also repeatedly informed Judge Early that they felt the appellate review was a critical step at this stage in the litigation, because it would either reject Judge Early's ruling, in which event the communications at issue would remain confidential and the Plaintiffs' legal and constitutional rights would remain intact, or it would affirm Judge Early's ruling, in which event the documents would be produced.

(c) Furthermore, this statement or conclusion totally ignores the fact that Plaintiffs have filed a motion for a protective order wherein they specifically state that the motion is intended to find some method by which Plaintiffs could comply with the Privilege Discovery Order while not forfeiting their legal and constitutional rights. The motion sought relief specifically provided by the South Carolina Rules of Civil Procedure. Judge Early heard arguments on the motion on March 29, 2010, when he finally placed on the record at least some of his extrajudicial affiliations and relationships with named counsel for the Defendants, but has chosen to ignore the motion since that time and has not yet issued any decision regarding Plaintiffs' request.

2. The statement or conclusion on page 17 of the Order which states: "The Court can not escape the conclusion that Plaintiffs' failure to comply with the General Discovery Order and the Privilege Discovery Order is willful."

(a) The record in this litigation clearly demonstrates Plaintiffs' numerous attempts to comply with the General Discovery Order, only to have Judge Early uniformly adopt arguments of the Defendants' counsel concerning the same. In doing so, Judge Early has chosen

arguments of Defendants' counsel over the factual evidence presented. It is evident that, with many of the Plaintiffs' discovery responses, Defendants' counsel simply do not like the answers or responses given, and seek to force Plaintiffs to give responses more to their liking. This is not a proper exercise or function of the discovery process or this Court; nevertheless, Defendants' counsel has somehow persuaded Judge Early to adopt it.

(b) The record in this litigation also clearly demonstrates the Plaintiffs' efforts to comply with the Privilege Discovery Order without forfeiting their legal and constitutional rights. (See, e.g., 2.c.(1)(b) and (c) above)

3. The statement or conclusion on page 17 of the Order which states that "...Plaintiffs' failure to comply with either or both of the discovery orders has caused, or would continue to cause, extreme prejudice to Defendants," together with the statements or conclusions which follow, purporting to delineate the "extreme prejudice to Defendants."

(a) The following statement in the Order which purportedly delineates part of the "extreme prejudice to Defendants" is not true or accurate: "Plaintiffs' willful disobedience has deprived Defendants of critical discovery that is necessary to the presentment of their full defenses to Plaintiffs' claims." Plaintiffs have provided an enormous amount of information and documentation to Defendants. Defendants have alternative and additional discovery tools available to them under the laws and rules of civil procedure in this State. Plaintiffs were forced to resort to these tools once Judge Early elected to impose a double standard for discovery by the parties. The Defendants have used these tools as well; they simply chose to stop when it appeared they could gain a receptive ear from the trial judge and could use that toward their stated goal of a dismissal of the

Plaintiffs claims without having to defend them on the merits. Defendants are not entitled to invade the attorney-client privilege in order to prove their defenses in this or any other case.

(b) The following statement in the Order which purportedly delineates part of the "extreme prejudice to Defendants" is not true or accurate: "Plaintiffs' failure to produce the ninety-six (96) documents compelled in the Privilege Discovery Order, many of which appear relevant to Defendants' statute of limitations defense in these actions, continues to impede the Defendants' ability to complete discovery and prepare for trial. See response to sub-paragraph (a) above.

(c) The following statement in the Order which purportedly delineates part of the "extreme prejudice to Defendants" is not true or accurate: "Defendants are similarly impacted by Plaintiffs' failure to provide complete responses to interrogatories concerning Plaintiffs' first communications with one another or with an attorney concerning the investigation or pursuit of claims against any of the Defendants." See response to sub-paragraph (a) above.

(d) The following statement in the Order which purportedly delineates part of the "extreme prejudice to Defendants" is not true or accurate: "Defendants' are also deprived of a fair opportunity to defend against Plaintiffs' claims as a result of Plaintiffs' failure to provide meaningful responses concerning the opinions held by their expert witnesses, the bases for such experts' opinions, or the damages claimed in these cases." See response to sub-paragraph (a) above.

4. The statement or conclusion on page 18 of the Order which states that "...Plaintiffs' failure to obey the discovery orders has directly challenged and obstructed the Court's ability to control the administration of these cases," together with the statements or conclusions which follow, purporting to delineate the claimed obstruction.

(a) The statement or conclusion that the Parkview trial "had been scheduled to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this litigation. As herein noted, the January 2010 date was selected after Judge Early granted the request of Defendants' counsel to continue the Parkview case past the May 2009 trial date. Furthermore, the statement or conclusion ignores the fact that the cases were before the appellate courts during the fall of 2009 and were not remanded until December of that year.

(b) The statement or conclusion that "Plaintiffs' failure to comply with the General Discovery Order ... was a primary cause of the Court's earlier continuance of the Parkview trial from the May 18, 2009 term" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this litigation. Judge Early continued the trial past the May 2009 term at the request - not on the motion - of Defendants' counsel, and over the objection of Plaintiffs' counsel. This conclusion omits the fact that Defendants' counsel did not even seek the discovery complained of until less than 9 months prior to the May 2009 trial date, and then framed the discovery request so that Plaintiffs' counsel had no choice but to oppose it.

(c) The statement or conclusion that Plaintiffs' conduct has resulted in the cases being "held hostage" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this litigation. The cases have been forced off the litigation tract solely by Judge Early's decision to adopt the arguments of Defendants' counsel in lieu of the evidence, to issue rulings which are outside of and contrary to such evidence, and to issue rulings which are contrary to and not supported by the existing law of this State.

5. The statements or conclusions on page 18 of the Order which state that "all Plaintiffs in these actions are in contempt of court."

(a) The statement or conclusion that "the record clearly shows that all of the Plaintiffs in the above-captioned actions have willfully disobeyed both the General Discovery Order and the Privilege Discovery Order" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this matter. As shown herein, Plaintiffs have made numerous attempts to comply with both orders.

(b) The statement or conclusion that "the record clearly shows that all of the Plaintiffs in the above-captioned actions have willfully disobeyed both the General Discovery Order and the Privilege Discovery Order" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this matter.

(c) The statement or conclusion that "Plaintiffs' could produce the documents as required by the Privilege Discovery Order, but they choose not to do so" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this matter. The untenable dilemma forced upon the Plaintiffs by Judge Early and Defendants' counsel is documented herein. The "choice" they have been given is no real choice at all.

(d) The statement or conclusion that Plaintiffs have not provided "complete and intelligible responses to the interrogatories" of the Defendants and that "they have remained deliberately evasive and ambiguous in their responses" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this matter. A review of the Plaintiffs' discovery responses clearly shows the fallacy of this conclusion.

(e) The statement or conclusion that "the record clearly reflects that Plaintiffs' persistent disobedience has, in fact, undermined the Court's administration of justice in these cases" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this matter. Again, this conclusion is simply not supported by the record.

6. The statement or conclusion on page 19 of the Order which states that "...there is clear and convincing evidence of Plaintiffs' contempt (i.e., willful disobedience of both discovery orders), and Defendants have clearly made out a *prima facie* case for contempt," together with the statements or conclusions which follow, purporting to delineate the claimed obstruction.

(a) The statement or conclusion on page 20 of the Order that "Plaintiffs' have provided no defense, nor have they shown an inability to comply with either of the discovery orders" is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this matter.

(b) The statement or conclusion on page 20 of the Order that there is "clear evidence" that Plaintiffs' have not complied with the General Discovery Order is inaccurate, incomplete and unfairly portrays Plaintiffs' conduct in this matter.

(c) The statement or conclusion on page 20 of the Order that Plaintiffs "freely admit that they have not complied with the terms of the Privilege Discovery Order" ignores the reasons repeatedly provided by the Plaintiffs for such noncompliance, as well as the options available and presented to Judge Early to resolve this matter short of dismissal of Plaintiffs' claims, thereby creating an inaccurate, incomplete and unfair portrayal of Plaintiffs' conduct.

(d) The statement or conclusion on page 20 of the Order that Plaintiffs' have filed "untimely motions for reconsideration" is inaccurate and unfairly portrays Plaintiffs' conduct in this matter. All motions for reconsideration filed by Plaintiffs have been timely. See No.

7 below. Judge Early and Defendants' counsel re-designated recent Rule 60 motions filed by Plaintiffs as motions for reconsideration, then held them to be untimely as such; this is a far cry from the conclusion stated.

(e) The statement or conclusion on page 20 of the Order that "privilege was waived as to the documents (by mere filing of the suits and/or by reason of the allegations in the Orleans and Roosevelt complaints)" is contrary to the facts and evidence in this litigation, as well as to the existing law in this State.

(f) The statement or conclusion on page 20 of the Order that "there is no question that the 96 documents are relevant to the subject matter of these actions" is inaccurate, as Judge Early has never seen the documents, and would not know if such documents are, in fact, relevant; Plaintiffs do not believe all of the documents are relevant, so the statement that "there is not question" is not true or accurate.

7. The statement or conclusion on page 20 of the Order that Plaintiffs' have filed "untimely motions for reconsideration;" is inaccurate and unfairly portrays Plaintiffs' conduct in this matter.

(a) All motions for reconsideration filed by Plaintiffs' counsel in this matter have been timely.

(b) Judge Early signed the Order dismissing Plaintiffs' cases, which was prepared by Defendants' counsel, and which elected to treat as Rule 59 motions the Rule 60 motions which were filed by Plaintiffs' counsel in an attempt to get the cases back on a trial tract. The fact that Judge Early signed Defendants' counsel's Order re-styling Plaintiffs' motions does not mean that Plaintiffs untimely filed a motion for reconsideration.

8. The statement or conclusion on page 21 of the Order that "Plaintiffs are in civil contempt, due to their willful disobedience of the General Discovery Order, and due to their willful disobedience of the Privilege Discovery Order."

(a) This finding or conclusion ignores the Plaintiffs' efforts to comply with the Orders, notwithstanding the imposition by Judge Early of a double standard with respect to both orders, whereby he held the Plaintiffs to a different and significantly higher standard than that he imposed upon the Defendants.

(b) This finding is incomplete and unfair to the Plaintiffs in that it omits and ignores their position that they are, in fact, in compliance with the General Discovery Order and that they have made several attempts to seek ways to comply with the Privilege Discovery Order while preserving their legal and constitutional rights, only to have such attempts summarily dismissed by Judge Early.

(c) This finding is erroneous in that the contempt citation imposed is criminal, not civil, in nature, as part of the basis for its issuance is clearly to punish Plaintiffs and to vindicate the authority of Judge Early.

9. The statement or conclusion on page 21 of the Order that "It is clear that Plaintiffs have failed to comply with either of these orders..."

10. The statement or conclusion on page 21 of the Order that "Plaintiffs are in civil contempt, due to their willful disobedience of the General Discovery Order, and due to their willful disobedience of the Privilege Discovery Order."

11. The statement or conclusion on page 22 of the Order that "... the only sanction that can achieve justice is the dismissal of the lawsuits," together with the statements or conclusions which follow, purporting to justify this conclusion.

(a) Dismissal of the Plaintiffs' lawsuits is the harshest sanction permitted by SCRCP 37 and ignores the fact that no prior sanctions have been imposed in this litigation, as well as the fact that alternative sanctions are clearly available in these cases.

(b) The attempt to justify imposition of the dismissal sanction under the theory that the documents included in the Privilege Discovery Order "are likely relevant to Defendants' statute of limitation defense" ignores the evidence in these cases that, *inter alia*:

- (i) The discovery of privileged documents and information is not permitted under SCRCP 26;
- (ii) The method chosen by Defendants' counsel and Judge Early to avoid this prohibition has been to hold that the Plaintiffs waived their right to assert their privilege merely by filing their complaints, contrary to the existing law of this State;
- (iii) The alternative method chosen by Defendants' counsel and Judge Early to avoid this prohibition has been to hold that the Plaintiffs waived their right to assert their privilege by including language in their complaints which affirmatively raised the statute of limitations when, in fact, the language in question makes no such assertion nor can any such assertion be reasonably implied concerning such language;
- (iv) The alternative method chosen by Defendants' counsel and Judge Early to avoid this prohibition has been to hold that the Plaintiffs waived their right to assert their privilege by including language in their complaints which affirmatively raised the statute of limitations when, in fact, the language in question does not exist in all of the complaints;
- (v) Judge Early's obsession with the statute of limitations defense in this litigation as being the only relevant and controlling

issue is at odds with his prior denial of the Defendants' motion for summary judgment based upon the statute of limitations;

- (vi) Judge Early's obsession with the statute of limitations defense in this litigation as being the only relevant and controlling issue is at odds with the evidence that the Parkview case was filed less than 3 years from the time the Plaintiffs were informed that the Defendants would not pursue legal action on behalf of the limited partnership, which is the earliest possible dated for commencement of the statutory period in that case;
- (vii) Judge Early's obsession with the statute of limitations defense in this litigation as being the only relevant and controlling issue is at odds with the evidence that the general partners had until 2002 to pursue claims on behalf of all limited partnerships, and that the Palmetto, Orleans, Roosevelt and Pinewood cases were filed in 2005, following a tolling or *status quo* agreement between the parties with respect to the filing of the Palmetto, Orleans, Roosevelt and Pinewood cases;
- (viii) Judge Early's obsession with the statute of limitations defense in this litigation as being the only relevant and controlling issue is in keeping with his imposition of a double standard relating to discovery in this litigation;
- (ix) Judge Early's obsession with the statute of limitations defense in this litigation is misplaced and unfair to the Plaintiffs as evidenced by his prohibition, at the request of Defendants' counsel, of the deposition of AIMCO Vice-President Miles Cortez, notwithstanding the fact that Mr. Cortez was present at the meeting wherein a tolling or *status quo* agreement was reached with regard to the filing of the lawsuits in Palmetto, Roosevelt, Orleans and Pinewood, and was thus a material witness concerning Plaintiffs' ability to refute the statute of limitations defense;
- (x) Judge Early's obsession with the statute of limitations defense in this litigation is misplaced and unfair to the Plaintiffs as evidenced by his disregard of the testimony of Mr. Patrick Foye, a former AIMCO Vice-President, who was also present

at the meeting wherein a tolling or *status quo* agreement was reached with regard to the filing of the lawsuits in Palmetto, Roosevelt, Orleans and Pinewood, and who confirmed under oath the Plaintiffs' assertions concerning the general agreement reached at that meeting.

12. The statement or conclusion on page 22 of the Order that "Plaintiffs have failed to provide the dates that they first consulted an attorney regarding (or first discussed among themselves) the investigation or pursuit of claims against any of the Defendants."

(a) This statement ignores the fact that the Plaintiffs responded to the interrogatory in question to the best of their ability.

(b) This statement reflects Judge Early's biased adoption of the Defendants' displeasure with the interrogatory response given, and his willingness to assist Defendants' counsel in attempting to coerce and intimidate Plaintiffs into amending their answer to one which is more to the liking of Defendants' counsel.

(c) This statement ignores the fact that many of the Plaintiffs are elderly, some are in ill health and on medications and would likely have difficulty recalling the exact times and dates of meetings or occurrences which occurred approximately 10 years ago.

13. The statement or conclusion on page 23 of the Order that "The other sanctions available to the Court are either inadequate or would lead to the exact same result as the sanction of dismissal."

(a) This statement ignores the fact that several other sanctions are available under SCRCP 37 and that Plaintiffs have requested on several occasions that Judge Early utilize a lesser sanction in order to provide a mechanism for immediate appellate review of his decisions concerning the production of privileged documents.

(b) This statement incorrectly states that any lesser sanctions would lead to the exact same result as a dismissal sanction. The dismissal sanction terminates Plaintiffs' claims with prejudice. A lesser sanction would preserve Plaintiffs' claims pending appellate review of the propriety of Judge Early's orders requiring disclosure of the privileged documents. If the appellate court deems the rulings to have been correct, the end result with a dismissal sanction is the loss of their claims by the Plaintiffs. Under a lesser sanction, the cases would be remanded and allowed to proceed with the Plaintiffs' production of the disputed documents.

14. The statement or conclusion on page 23 of the Order that "lesser sanctions are incapable of addressing the additional prejudice (i.e., prejudice to defenses unrelated to the statute of limitations), which Defendants likely suffered but can not specifically identify due to Plaintiffs' refusal to provide the relevant documents and information."

(a) This type of finding or conclusion again shows the prejudice which can result to opposing parties when a judge simply signs an order prepared by an advocate for the other side. In this instance, Judge Early has chosen to adopt a position advocated by counsel for the Defendants which is impossible for Plaintiffs to contest, as it rests upon pure speculation rather than evidence.

(b) Defendants contend that they are prejudiced and damaged by conduct of the Plaintiffs, but fail to delineate the prejudice and damage which they have allegedly sustained, nor do they specify how the conduct they complain of has resulted in their alleged damage. There is no reasonable way for Plaintiffs to even begin to refute evidence which has not been produced or facts which are not proven - or even specified. Incredibly, the Defendants' contention has been

adopted by Judge Early as a basis and justification for imposing the harshest sanction available in these cases.

15. The statement or conclusion on page 23 of the Order that the Defendants have been "clearly" prejudiced by Plaintiffs' "refusing to disclose the substance of the Plaintiffs' expert witnesses' opinions, and the bases for such opinions.."

(a) This statement or conclusion is at odds with the overwhelming body of evidence in the record on this issue, which Judge Early has chosen to ignore.

(b) First, Judge Early has chosen to ignore the evidence that Defendants have known since 1984 that Plaintiffs would be damaged in the amount of any notes which Defendants failed to collect from the defaulting debtors. They have known the exact amount of that damage since 1984, as they were involved in the preparation of the transactional documents and have had these documents in their possession since 1984.

(c) Second, Judge Early has chosen to ignore the evidence that an alternative minimal value for Plaintiffs' damages is the fair market value of the respective apartment complexes, as these should have been recovered by the Defendants in the event the notes were not collected.

(i) The importance of establishing a fair market value for the respective properties as a basis for determining damages and remedies available to the partnerships was discussed and agreed upon in a meeting between the Defendants and Plaintiffs on October 24, 2000 and has been known to Defendants since at least that time. Plaintiffs' counsel produced a transcript of the October 24th meeting as part of their discovery responses in these cases. Judge Early has chosen, however to ignore this evidence.

- (ii) The evidence in the record actually shows that Defendant AIMCO was participating in an evaluation of the properties by a marketing firm to determine their fair market value in 1999, in order to justify their refusal to take the properties back from the defaulting debtors. Plaintiffs had to discover this evidence from a former officer of the defaulting debtor, Boston Financial, even though it was known to Defendants. The Defendants were clearly aware of the importance of this damages valuation methodology at that time, and have since deposed a representative of the marketing firm. Judge Early has chosen to totally ignore this evidence in his rulings and orders.
- (iii) The evidence in the record in this litigation is that the Defendants have actually been involved in the management of the respective apartment complexes following their sales in 1984 and were required to prepare monthly operating statements and other data for annual audits and valuations to be submitted to HUD. The evidence also shows that documents reflecting these figures and data have been in the possession of the Defendants for decades and that the few copies in Plaintiffs' possession were produced to Defendants as part of Plaintiffs' discovery responses dated July 14, 2005. Plaintiffs' Answers to Interrogatories on that date were very specific and detailed and required in excess of 50 pages responding to 14 interrogatories. Additionally, Plaintiffs produced nearly 2000 pages of documents at that time. Judge Early has chosen to totally ignore this evidence in his rulings and orders.
- (iv) This alternative minimal value of Plaintiffs' damages was also specifically identified in a meeting between Plaintiffs' counsel and representatives of Defendants, including current Defendants' attorney Ellis Johnston, which occurred on August 11, 2003, and which resulted in the mutual employment of an appraiser to determine the fair market values of the respective properties. This knowledge was confirmed by the deposition testimony of witnesses, including former AIMCO Vice President Patrick Foye, as well as in correspondence between counsel for the parties. Importantly, this evidence was also known to another AIMCO officer, Miles Cortez, who was also present at the August 11, 2003 meeting, but Judge Early protected Mr. Cortez from having to

testify in this litigation, at the request of Defendants' counsel. Judge Early has chosen to adopt arguments of Defendants' counsel rather than the evidence in his rulings and orders.

- (v) The evidence in the record in this litigation is that multiple formal appraisals have been performed with respect to each of these properties which show the appraisers' opinions as to the fair market values of the properties at certain times relevant to this litigation. Many of these appraisals were known to and in the possession of Defendants prior to the initiation of this litigation; any additional appraisals discovered by Plaintiffs during the course of this litigation have been promptly produced to Defendants. The Defendants have chosen not to depose any of the appraisers in order to get detailed information relating to the values set forth in the appraisals. Judge Early has chosen to totally ignore this evidence in his rulings and orders.
- (vi) The evidence in the record in this litigation also shows that values were attached to each of the properties by the respective assessors for the counties in which they were located. These assessors were specifically identified in Plaintiffs' discovery responses as being persons Plaintiffs intended to rely upon in the establishment of value of the properties. These disclosures were actually made prior to the mediation in March, 2008, and prior to the latest discovery requests of the Defendants in August, 2008. They were again presented to the Defendants as part of the mediation, and again presented to them as part of a formal supplemental discovery response. Judge Early has chosen to totally ignore this evidence in his rulings and orders.
- (vii) Not only have Defendants been supplied with the information concerning the assessed values for the properties, they have actually deposed the Beaufort County Assessor and ascertained detailed information from him relating to his opinions and methodology for valuation of the properties located in Beaufort County. Although they have had the opportunity to depose the assessors in Charleston and Orangeburg Counties, they have chosen not to do so. Judge Early has chosen to totally ignore this evidence in his rulings and orders.
- (viii) The evidence in the record in this litigation also shows that values were attached to each of the properties by the

respective owners and managers of the properties and/or their insurance carriers. These individuals were specifically identified in Plaintiffs' discovery responses as being persons Plaintiffs intended to rely upon in the establishment of value of the properties. These disclosures were actually made prior to the mediation in March, 2008, and prior to the latest discovery requests of the Defendants in August, 2008. They were again presented to the Defendants as part of the mediation, and again presented to them as part of a formal supplemental discovery response. Judge Early has chosen to totally ignore this evidence in his rulings and orders.

- (ix) Not only have Defendants been supplied with the information concerning the values placed upon the properties by the owners and insurers, they have actually deposed at least one of the owners, as well as a representative of the insurer, and ascertained detailed information from them relating to their opinions and methodology for valuation of the various properties. This included the actual sales prices when the properties changed hands, retrofit costs and other financial information. Although they have had the opportunity to depose the other owners, they have chosen not to do so. Judge Early has chosen to totally ignore this evidence in his rulings and orders.
- (x) Additionally, the evidence in these cases demonstrates that the Plaintiffs have informed Defendants of the fact that they intend to rely upon values established by real estate professionals, and have identified persons retained to date who have opinions concerning the values of the properties. The opinions and bases for the opinions of these persons has previously been disclosed to Defendants by Plaintiffs' counsel, both formally and informally, since the spring of 2008. Plaintiffs have recently provided a third supplemental response to Defendants' August, 2008 discovery requests, providing even greater details relating to the opinions and bases for the opinions of the real estate experts located in Beaufort County. At that time, Plaintiffs' counsel informed Judge Early and Defendants' counsel that additional amendments would be made concerning the other properties. Judge Early summarily dismissed these supplemental responses in his order concerning sanctions and totally ignored the evidence in this regard.

(d) Third, the Plaintiffs' discovery responses relating to the opinions of their experts concerning the values of the respective properties not only state such values, but detail several bases for the opinions, and specifically reference "the materials produced during the discovery" among the bases for the opinions. Judge Early has chosen to ignore the evidence that Plaintiffs' discovery responses relating to expert witness testimony dealing with damages complies with both the General Discovery Order and the South Carolina Rules of Civil Procedure.

16. The statement or conclusion on page 23 of the Order that "a lesser sanction aimed at this (responses concerning experts) such as exclusion of expert witness testimony, would lead to the same result, because expert witness testimony as to the value of the subject properties is vital to the Plaintiffs' cases..." This finding is at odds with the evidence in this litigation, as detailed above, and also with the law in South Carolina that an owner of property is qualified to state his opinion concerning the value of the same. The Plaintiffs in these cases actually owned the properties in question and could testify concerning their valuation of the properties.

17. The statement or conclusion on page 23 of the Order that "Plaintiffs have not proven a lack of prejudice on the Defendants' part.":

(a) Contrary to this statement or conclusion, Plaintiffs have produced ample evidence that the Defendants already have in their possession the information sought in their written discovery requests, access to such information from other sources, and the ability to acquire such information through other discovery methods, such as depositions. Judge Early has chosen to totally ignore this evidence or the available alternative in his rulings and orders.

(b) The fact that the Defendants already have the requested information, have access to the requested information from other sources, and have alternative methods under the South Carolina Rules of Civil Procedure to acquire such information constitutes proof of a lack of prejudice to them.

18. The statement or conclusion on page 23 of the Order that "the sanction of dismissal is reasonable, it does not go beyond the necessities of the situation to foreclose a decision on the merits of the cases, and it is aimed at the specific misconduct of the Plaintiffs," together with the statement or conclusion that "the sanction imposed serves to protect the rights of discovery provided by the Rules of Civil Procedure."

(a) Contrary to this finding, the evidence in the record clearly demonstrates that the sanction of dismissal is unreasonable under the circumstances of this litigation, and that lesser, more reasonable, sanctions are clearly available to the Court.

(b) Also contrary to this finding, the sanction of dismissal clearly goes beyond the necessities of the cases in order to foreclose a decision on the merits. The Plaintiffs have demonstrated repeatedly that they have a viable claim against the Defendants for substantial damages. The Defendants have not demonstrated any viable defense on the merits to these claims. Instead, they have relied upon the relationship of their counsel with Judge Early to secure favorable rulings based upon procedural issues, which rulings appear to be contrary to both the evidence presented and the existing law of this State.

(c) The sanction imposed does not protect the rights of discovery, it undermines them.

19. The statement or conclusion on page 24 of the Order that "Considering that Plaintiffs did not identify ninety (90) of the documents listed on their Privilege Log until July 30, 2008, Defendants could not have challenged Plaintiffs' claim of privilege earlier than they did."

(a) This finding is patently incorrect and completely ignores the evidence in the litigation that the items listed on the Plaintiffs' 2008 Privilege Log included the forty-four (44) documents listed by the Plaintiffs on their privilege log in July, 2005, and that the original forty four (44) documents clearly show activity between Plaintiffs and their counsel in 2000.

(b) To find that the Defendants could not have challenged Plaintiffs' privilege claims earlier than they did is simply to ignore the existing facts and evidence in these cases.

20. The statement or conclusion on page 25 of the Order that "the prejudice to Plaintiffs if the cases are dismissed is not out of balance with the prejudice to Defendants as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. The prejudice to Plaintiffs is reasonable and necessary in order to counter the specific prejudice to Defendants."

(a) This finding is astonishingly contrary to the evidence in the record and the existing law in the State of South Carolina, which Judge Early has consciously chosen to ignore.

(b) To hold that the "prejudice" to the Defendants found by Judge Early, some of which is patently imagined, is equivalent to the prejudice to the Plaintiffs in having their claims dismissed with prejudice, particularly given the fact that they have incurred substantial costs in the prosecution of their claims to date, is absurd.

(c) On numerous occasions, Plaintiffs' counsel has asked Judge Early to impose a lesser sanction in order that his rulings would be ripe for review by an appellate court, only to have these requests completely ignored.

21. The statement or conclusion on pages 25 and 26 of the Order that "Plaintiffs agreed to the entire process that ultimately resulted in the Court's Privilege Discovery Order, received benefits from this process, and it now appears that they never intended to produce the documents they claimed to be privileged if the Court ordered them to do so."

(a) Again, this conclusion ignores the facts and evidence in the record, and goes beyond the facts and evidence established. The record is clear, for example, that the Plaintiffs did not "agree to the entire process" whereby Judge Early amended the rulings of Judge Clary. In fact, Plaintiffs' counsel specifically called to Judge Early's attention the prohibitions of SCRCP 53 prior to the time he signed Defendants' order amending Judge Clary's rulings. Additionally, Plaintiffs' counsel reiterated these prohibitions to Judge Early after he had apparently signed Defendants' order, but before the order had been entered. This does not constitute an agreement to the entire process as found by Judge Early.

(b) Furthermore, there is absolutely no evidence in the record that Plaintiffs never intended to produce the documents which they claimed to be privileged if the Court ordered them to do so. In fact, Judge Clary's order found that some of the documents claimed by Plaintiffs to be privileged were, in fact, not privileged and ordered production of these documents. Plaintiffs were prepared to produce non-privileged documents in compliance with Judge Clary's order, which rejected the Defendants' contention that Plaintiffs had waived their privileges. Once Judge Early elected to adopt the Defendants' positions relating to waiver of privilege by the Plaintiffs

and to overrule Judge Clary, Plaintiffs were placed in the untenable dilemma previously discussed herein.

22. The statement or conclusion on page 26 of the Order that "Plaintiffs' initial responses to the Discovery Requests, as well as their First, Second and Third Supplemental Responses, are persistently evasive, ambiguous, incomplete and/or non-responsive."

(a) The evidence and record in this litigation clearly shows this statement or conclusion to be erroneous.

(b) The Plaintiffs' discovery responses comply with the requirements of the South Carolina Rules of Civil Procedure and the evidence in the record shows that Plaintiffs' have repeatedly attempted to comply with Judge Early's General Discovery Order even though it imposed upon them a double standard with significantly more stringent requirements than he imposed on the Defendants.

(c) The record and evidence in this litigation clearly show that Plaintiffs' discovery responses are much more detailed, clear and responsive than the discovery responses of the Defendants.

23. The statement or conclusion on page 26 of the Order that "Defendants should receive a monetary award to compensate them for the expenses, including attorneys' fees, that they have incurred in connection with their Motion to Compel (i.e., expenses incurred in order to obtain the General Discovery Order, ... and each of their Motions for Sanctions."

(a) It is evident from an objective review of the record and evidence in these cases that the entire sanctions and discovery issues were engineered by counsel for the Defendants as a ruse to divert the focus from the Plaintiffs' viable claims against them.

- (i) The discovery requests at issue were not even generated until the end of August of 2008. At that time, it had become evident that Plaintiffs had put together sufficient proof to prevail in a trial on the merits and that the Defendants had no valid or viable defense on the merits to the Plaintiffs' claims.
- (ii) Plaintiffs' mediation presentation in March of 2008 made this clear to the in-house counsel for the Defendant AIMCO, who then threatened to terminate the services of then counsel of record. Depositions taken had increasingly revealed the extent of the Defendants' breach of their fiduciary duties to the Plaintiffs in each of these cases, and of their failure to inform the Plaintiffs of their conflicts of interest in their roles as general partners. The Defendants and their counsel then began their tactic of trying to establish a procedural mechanism to avoid a trial on the merits.

(b) They began to emphasize the issue of the statute of limitations, as this was a vehicle which, if successful, would avoid having their conduct exposed to a jury. They were confronted, however, with the fact that their motion for summary judgment on the statute of limitations issue had been earlier denied. They were also confronted with the fact that the Parkview case had been filed in 2003, well within any claimed statute of limitations period, and was scheduled to be tried in May of 2009. In a desperate attempt to resurrect the statute of limitations issue and avoid the trial date set for less than 9 months away, they embarked upon a discovery fishing expedition seeking documents between the Plaintiffs and their counsel preceding the filing of the Parkview case.

(c) In order to have any chance of success, counsel for Defendants had to frame their discovery requests in such a manner that Plaintiffs' counsel could not ethically comply with the requests. Therefore, they sought production of documents and information which was clearly confidential and protected under the laws of this state. This meant that Plaintiffs' counsel

was required under the existing law and rules to object to the production of such information and documentation. This gave the Defendants a procedural mechanism which favored them: the presentment of their requests to compel compliance by Plaintiffs to a judge who had significant personal and extra-judicial ties to Defendants' counsel.

(d) In an effort to increase their chances of success, Defendants' counsel assigned two additional members of their law firm as counsel of record in this litigation. These two additional attorneys had their own substantial extra-judicial ties to Judge Early. From this time forward, Judge Early ruled almost exclusively in favor of Defendants' counsel with respect to any discovery dispute which they managed to generate and present to him.

(e) For example, Judge Early ruled that objections filed by Defendants' counsel to Plaintiffs' discovery requests were valid and that their sparse responses were sufficient under the South Carolina Rules of Civil Procedure. Conversely, when Plaintiffs' counsel copied these objections verbatim and asserted them with respect to the Defendants' discovery requests, Judge Early ruled that the objections were improper; he has found the detailed and voluminous discovery requests provided by Plaintiffs' counsel to be "evasive, ambiguous, incomplete and/or non-responsive." This discovery double standard adopted by Judge Early is dealt with in greater detail in the affidavits and prior submissions of Plaintiffs counsel in this litigation.

(f) In addition, Judge Early summarily held that all documents on Defendants' Privilege Log, which had been amended from its original listing of only a few documents to include literally hundreds of documents as Plaintiffs' claims became more provable through depositions of witnesses and other discovery, were privileged and protected from disclosure.

- (i) These included communications between the Defendants and attorneys they ostensibly hired to represent the respective limited partnerships, which included the Plaintiffs, in the collection of the notes due to the partnerships or, alternatively, retrieval of the partnership properties.
- (ii) These documents and information were clearly relevant to Plaintiffs' claims, as they were needed to determine whether the attorneys hired by the general partners were really engaged to represent the partnerships' interests or were actually sham retentions designed to mislead the limited partners into believing that their interests were being protected.
- (iii) Furthermore, they were relevant and necessary to determine whether the attorneys hired by the general partners to represent the limited partnerships had breached any fiduciary duties to the limited partnerships by not pursuing legal remedies to recover the partnership assets. This aspect of the present litigation becomes even more troubling when Judge Early's close extra-judicial relationships with Defendants' counsel is viewed in light of the fact that a lawsuit to recover assets due to the Pinewood limited partnership was initiated - and then abandoned - by the very attorney and law firm which successfully persuaded Judge Early to keep the attorney retention information secret and non-discoverable by the Plaintiffs.
- (iv) Defendants' counsel argued that these communications were privileged and not subject to disclosure to Plaintiffs, even though Plaintiffs owned 95% or more of the limited partnerships the attorneys were ostensibly hired to represent and, as such owners and partnership members, were clearly within the "privilege" claimed. Furthermore, Defendants earlier had included Plaintiffs in communications with these attorneys - with the exception of the Haynsworth firm's representation of the Pinewood limited partnership, which representation has never been revealed by Defendants or their counsel to date. Having so included Plaintiffs, the Defendants waived any privilege which might have existed that excluded Plaintiffs. Their arguments were adopted by Judge Early as part of his rulings, even though he had not ever seen the underlying documents.

(g) Conversely, at the urging of Defendants' counsel, Judge Early summarily held that all documents on Plaintiffs' Privilege Log, which had been amended at the insistence of Defendants' counsel to include communications between Plaintiffs and their counsel in this litigation, were not privileged or protected from disclosure. Again, Judge Early made this ruling without ever seeing any of the underlying documents. It was at this stage of the litigation that Plaintiffs' counsel suggested that a special master or referee be appointed to review the documents in both privilege logs and determine which were, in fact, privileged and protected from disclosure.

(h) Additionally, when Plaintiffs sought information relating to other claims or lawsuits brought against Defendants, Judge Early adopted the arguments of Defendants' counsel that the request should be limited to only some of the Defendants, that the scope of the inquiry should be narrowed and that the time frame encompassed by the discovery request should be narrowed as well. Conversely, Judge Early required Plaintiffs to respond to Defendants' request for any information relating to other lawsuits to which Plaintiffs had been a party, with no similar limitations as to scope or time.

(i) When one of Plaintiffs' experts on damages submitted an affidavit detailing financial information from Defendants which he needed in order to formulate his opinions, Judge Early adopted the argument of Defendants' counsel that such information should not be produced. Instead, Judge Early ruled, as requested by counsel for Defendants, that the expert would have to rely on information which only the Defendant AIMCO had submitted in an annual report to the Securities and Exchange Commission. This ruling was particularly prejudicial to Plaintiffs because the annual report to the SEC was not given under oath, as would have been required of the response to the Plaintiffs' interrogatories, and also because AIMCO was cited by the SEC for filing

reports which were false and inaccurate. Ironically, Judge Early adopted the arguments of counsel for the Defendants that the detailed discovery responses of Plaintiffs concerning other persons prepared to testify as to Plaintiffs' damages were insufficient. This is doubly ironic when viewed in light of the fact that Defendants' counsel have never even listed any expert in their discovery responses in this litigation.

(j) The rulings of Judge Early have adopted positions advocated by Defendants' counsel even when they are not in keeping with the existing law of this state.

- (i) Discovery is limited in South Carolina by SCRCP 26 to non-privileged materials and information, so the Defendants had to find a way to classify the communications between the Plaintiffs and their counsel as non-privileged. They elected to advance the theory that Plaintiffs had waived their privileges with respect to documents which might be relevant to the statute of limitations issue.
- (ii) The primary obstacle which the Defendants faced in this endeavor was the fact that there was no credible evidence to support their position that Plaintiffs had waived their privilege as to communications with their counsel in this litigation. They then advanced the theory, which is totally devoid of any supporting legal authority in this state, that, merely by filing their complaints, Plaintiffs had impliedly asserted that they were filed within the applicable statute of limitations; having made this implied assertion, the argument went, the Plaintiffs impliedly waived their right to assert any privilege as to the issue of the statute of limitations. This bizarre theory was specifically presented to - and rejected by - Judge Clary in his role as special master or referee. Once it was presented again to a more receptive judge, Judge Early, he not only adopted it, he overruled Judge Clary in order to do so. This action was taken by Judge Early in spite of his knowledge of SCRCP 53's language reserving review of a special master's rulings to the appellate courts of this state.
- (iii) In an attempt to cover themselves from this glaring deficiency, the Defendants further argued that the language of

the complaints filed in these cases affirmatively asserted the statute of limitations as an issue, and that the Plaintiffs had thereby waived their right to assert attorney-client privilege against the statute of limitations argument. There are two obvious problems with this argument. First, the language cited by the Defendants never mentions the statute of limitations, and only references in general terms conduct by the Defendants which delayed the Plaintiffs in their investigation and/or prosecution of claims against the Defendants as a fiduciary violation allegation and as an item of damages. Even under the most strained interpretation imaginable, this language cannot be said to constitute, as a matter of law, an affirmative assertion of the statute of limitations as an issue. Yet that is what Judge Early has held, again at the request of counsel for the Defendants. Again, in doing so, he had to overrule Judge Clary, who had rejected this argument when it was presented to him by the Defendants' counsel. Secondly, the language cited does not even appear in all of the complaints in these cases, yet is used by Judge Early as a basis to dismiss all of the cases. His rulings in this regard are totally devoid of any supporting legal authority in this state and are, in fact, contrary to the existing legal authority that the statute of limitations is an affirmative defense, which must be pled and proven by a defendant; if the defendant fails to do so, the defense is waived.

- (iv) In a further attempt to cover themselves from this obvious deviation from existing law and the evidence presented, Defendants' counsel sought to have Judge Early adopt yet another alternative basis for the dismissal of Plaintiffs' claims - no matter how detailed or precise the Plaintiffs were in framing their responses to the other discovery requests, the Defendants' counsel always maintained the responses were not adequate. Given his proclivity to adopt virtually any argument advanced by Defendants' counsel, it is not surprising that Judge Early adopted their position in this regard as well. In doing so, he ignored or disregarded all the evidence in the record concerning Plaintiffs' numerous attempts to comply with the double standard discovery orders issued by Judge Early at the request of Defendants' counsel.
- (v) Judge Early has adopted the arguments of Defendants' counsel, and signed the attendant orders which they have

prepared, including the Order *sub judice*, without making any ruling or apparently giving any consideration to Plaintiffs' pending motion for a protective order. In this motion, Plaintiffs made various proposals under which they could seek to comply with the discovery orders while preserving their legal and constitutional rights pending appellate review of the propriety of the orders.

24. The statements or conclusions on pages 26 and 27 of the Order that "the Plaintiffs will have no opportunity to purge themselves of the award" of expenses and attorneys' fees being made in favor of the Defendants, and that "the Court will accept evidence" supporting Defendants' claims for attorney fees and costs in the form of "an affidavit in support of their requests."

(a) Given the complexity and nature of this issue, Plaintiffs believe that an affidavit alone is an improper method of proof of the Defendants' claim.

(b) Plaintiffs also submit that they will be deprived of the right to cross-examine the affiant, thereby also depriving them of their right to effective assistance of counsel, due process and equal protection of the laws as provided and guaranteed by the laws and constitutions of the United States of America and the State of South Carolina.

(c) The inability of Plaintiffs to purge themselves from the attorneys fees/expenses award renders the sanction a criminal, not a civil sanction, and deprives Plaintiffs of their legal and constitutional rights concerning the same.

I certify that I did not consult with opposing counsel concerning this motion, because, based upon prior communications and consultations with opposing counsel, the undersigned believes that such additional consultation would serve no useful purpose.

Respectfully submitted,

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Attorneys for the Plaintiffs

By 
Joel D. Bailey (SC Bar # 471)

Beaufort, South Carolina
April __, 2010

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al*, Plaintiffs,)
-vs-)
Parkview Apartments, a South Carolina)
Limited Partnership, *et al*, Defendants.)

Beaufort County
C/A # 03-CP-07-726

Laurance H. Davis, Jr., *et al*, Plaintiffs,)
-vs-)
Roosevelt Gardens, a South Carolina)
Limited Partnership, *et al*, Defendants.)

Orangeburg County
CA # 2005-CP-38-1131

Rhoda G. Rentz, *et al*, Plaintiffs,)
-vs-)
Orleans Gardens, a South Carolina)
Limited Partnership, *et al*, Defendants.)

Charleston County
CA # 2005-CP-10-4229

Laurance H. Davis, Jr., *et al*, Plaintiffs,)
-vs-)
Palmetto Apartments, a South Carolina)
Limited Partnership, *et al*, Defendants.)

Beaufort County
C/A #2005-CP-07-1989

Carolina Management Corporation of)
Beaufort, *et al*, Plaintiffs,)
-vs-)
Pinewood Park Apartments, a South)
Carolina Limited Partnership, *et al*,)
Defendants.)

Beaufort County
C/A # 2005-CP-07-1990

CERTIFICATE OF MAILING

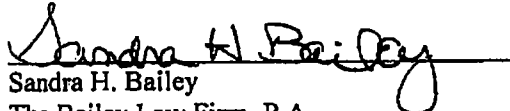
I hereby certify that I have served the Plaintiffs' Motion for Reconsideration, Alteration or Amendment, by depositing a copy in the United States Mail, postage prepaid, on April 22, 2010, addressed to the following attorneys of record:

Ellis M. Johnston, II
PO Box 2048
Greenville, SC 29602

Marvin D. Infinger
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Calvin T. Vick
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Beaufort, South Carolina 29901-1437

April 21, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.

Parkview Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.

Roosevelt Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.

Orleans Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.

Palmetto Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Carolina Management Corporation of
Beaufort, *et al.*, Plaintiffs,
v.

Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Orangeburg County
C.A. No. 2005-CP-38-122

Charleston County
C.A. No. 2005-CP-10-4229

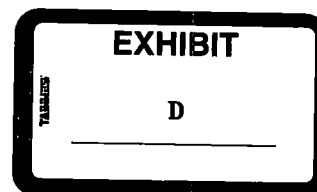
Beaufort County
C.A. No. 2005-CP-07-1989

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER

Plaintiffs have filed a motion seeking reconsideration of this court's order dated April 6, 2010, pursuant to Rule 59, SCRPC. The order was signed after Plaintiffs repeatedly failed to comply with orders dealing with discovery dated March 3, 2009 and July 28, 2009. Each of those orders have resulted from numerous hearings, motions, memoranda, arguments and rulings, including rulings denying Plaintiffs Rule 59/60 motions seeking reconsideration of these orders.

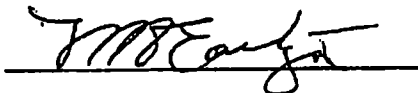
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The court has carefully reconsidered all of Plaintiff's arguments in support of their motion, revisited all prior orders and the cases, memoranda and exhibits presented at each hearing; the court is still of the opinion that the previous orders were a correct application of the law to this factual matter.

Therefore Plaintiff's motion is DENIED.

IT IS SO ORDERED.


The Honorable Doyet A. Early, III

Sept 16, 2010
Bamberg, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-10-4229

Rhoda G. Rentz, Mary Jane Pike, Eva Marie Reynolds, and
Joanne O. Mercy, individually and in their capacities as the
Limited Partners of Orleans Gardens, a South Carolina
Limited Partnership. Appellants,

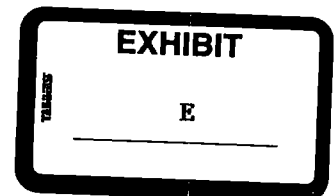
vs.

Orleans Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John
Doe, a generic designation for a party or parties whose true
identity is unknown Respondents.

NOTICE OF APPEAL

Appellants Rhoda G. Rentz, Mary Jane Pike, Eva Marie Reynolds, and Joanne O.
Mercy appeal the following orders:

1. ORDER denying Plaintiffs' motion to compel #6, dated August 18, 2008, a
copy of which is attached as Exhibit 1.
2. ORDER DENYING PLAINTIFFS' MOTION TO COMPEL #2, dated December 17,
2008, a copy of which is attached as Exhibit 2.
3. ORDER GRANTING DEFENDANTS' MOTION TO COMPEL, DATED NOVEMBER 6, 2008.



dated March 3, 2009, a copy of which is attached as Exhibit 3.

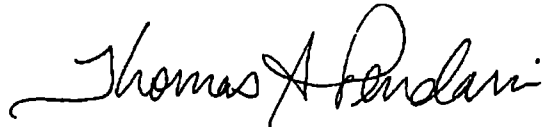
4. ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO COMPEL, DATED JULY 29, 2005, dated March 3, 2009, a copy of which is attached as Exhibit 4.
5. ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY, dated June 2, 2009, a copy of which is attached as Exhibit 5.
6. ORDER DENYING PLAINTIFFS' MOTION TO ALTER OR AMEND ORDER GRANTING DEFENDANTS' MOTION TO COMPEL DATED NOVEMBER 6, 2008, dated June 16, 2009, a copy of which is attached as Exhibit 6.
7. ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009, dated July 28, 2009, a copy of which is attached as Exhibit 7.
8. ORDER GRANTING DEFENDANTS' TWO MOTIONS FOR SANCTIONS, FINDING PLAINTIFFS IN CONTEMPT OF COURT, AND DISMISSING THE ABOVE-CAPTIONED ACTIONS AS SANCTIONS FOR PLAINTIFFS' CONTEMPT, dated April 6, 2010, a copy of which is attached as Exhibit 8.
9. ORDER denying Plaintiffs' motion for reconsideration, dated September 16, 2010, filed on September 20, 2010, and receipt of written notice of entry of which was received by Counsel for Appellants on October 1, 2010, a copy of which is attached as Exhibit 9.

All Orders were Issued by the Honorable Doyet A. Early, III.

Respectfully submitted,

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Counsel for Appellants

October 28, 2010

Beaufort, South Carolina

OTHER COUNSEL OF RECORD:

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Charleston SC 29401

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Orangeburg County
C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2005-CP-07-1990

ORDER

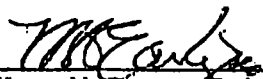
This matter is before the court upon Plaintiffs' Motion to Compel #6 dated June 12, 2008 seeking discovery of certain financial information from Defendants which Plaintiffs deem necessary for their expert to give opinions on the appropriate level of punitive damages that might be awarded. The court finds that there is sufficient information publicly available through filings with the Securities and Exchange Commission to satisfy this request, and therefore denies Plaintiffs' Motion to Compel #6 dated June 12, 2008.

Greenville: 651588 v.1

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IT IS SO ORDERED


The Honorable Doyet A. Early, III,
Judge, 2nd Judicial Circuit

Dated this 18 day of August, 2008
Gonzalez South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs.

v.

Parkview Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

)

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)

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Beaufort County

C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs.

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Orangeburg County

C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs.

v.

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Charleston County

C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs.

v.

Palmetto Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

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Beaufort County

C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort, *et al.*, Plaintiffs.

v.

Pinewood Park Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

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Beaufort County

C.A. No. 2005-CP-07-1990

**ORDER DENYING
PLAINTIFFS' MOTION TO COMPEL #2**

THESE MATTERS COME BEFORE THE COURT on Plaintiffs' Motion to Compel Production, dated November 7, 2007 (hereinafter, "Motion"). In each of the above-captioned actions. The Court has considered the parties' memoranda and other submissions, including the Defendants' Privilege Log, a copy of which was provided to the Court and to Plaintiffs' counsel in connection with the Motion (hereinafter, "Defendants' Privilege Log"), as well as the oral argument of the parties' counsel at the hearing held on November 19, 2007. The Court finds that

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#7



the documents identified in the Defendants' Privilege Log are privileged and that the Defendants shall not be compelled to produce such documents to Plaintiffs.

Further, the Court finds that Plaintiffs' Motion is not ripe with respect to questions that may be asked at the depositions of certain attorneys that previously represented the Defendants, such depositions having not yet taken place.

WHEREFORE, Plaintiffs' Motion is hereby DENIED. Further, Plaintiffs' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCP, is DENIED.

IT IS SO ORDERED

This 17 day of Dec, 2008.
Barkus, South Carolina

Doyet A. Early, III.
Doyet A. Early, III. Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,

v.

Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.)
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Beaufort County

C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,

v.

Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.)
)
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Orangeburg County

C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,

v.

Orleans Gardens, a South Carolina Limited
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Charleston County

C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,

v.

Palmetto Apartments, a South Carolina Limited
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Beaufort County

C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
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Beaufort County

C.A. No. 2005-CP-07-1990

ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL, DATED NOVEMBER 6, 2008

THESE MATTERS COME BEFORE THE COURT on Defendants' Motion to Compel, dated November 6, 2008 (the "Motion"), which concerns Defendants' Interrogatories and Requests for Production, dated August 28, 2008 (the "Discovery Requests"), and Plaintiffs' responses to such Discovery Requests. The Court has considered the Defendants' memorandum in support of the Motion, which was filed on December 8, 2008 ("Defendants' Memorandum"); and the oral argument of the parties' counsel at the hearing held on December 9, 2008, as well as

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the additional written materials submitted by the parties since the hearing on December 9, 2008, including Plaintiffs' Supplemental Response to Defendants' Discovery to All Plaintiffs Dated August 28, 2008 ("Supplemental Response"). The Plaintiffs did not submit a memorandum in opposition to the Motion.

The Court finds that the Defendants served the Discovery Requests upon Plaintiffs on August 28, 2008, and the Defendants subsequently granted Plaintiffs a 30-day extension to serve their responses, such that Plaintiffs' responses were due to be served by October 27, 2008. Plaintiffs failed to timely serve their responses to the Discovery Requests, and Defendants filed the Motion on November 6, 2008. Plaintiffs then served their initial responses to the Discovery Requests on November 14, 2008, but Defendants elected to proceed with the Motion, claiming that the Plaintiffs' responses to the Discovery Requests were incomplete and inadequate.

The subject matter of the Motion can be broken into two distinctive sets of issues. The first set of issues concerns whether Plaintiffs should be compelled to produce documents identified on their Privilege Log, and these issues were referred by the Court to Gary E. Clary, as Special Master, for *in camera* inspection of the subject documents. Special Master Clary's report to the Court concerning his findings is pending at this time, and those issues shall be addressed in a separate Order of this Court. The second set of issues concerns whether Plaintiffs should be compelled to provide full and complete responses to certain Interrogatories, which were identified in the Defendants' Memorandum, and whether Plaintiffs should be compelled to produce documents (separate and apart from the documents listed on Plaintiffs' Privilege Log) in response to certain Requests for Production, which were also identified in Defendants' Memorandum. At the hearing of the Motion, the Court directed the parties to make further attempts to resolve the discovery disputes presented by this second set of issues, but the parties'

attempts have not resulted in a resolution of their disputes.

On January 29, 2009, Plaintiffs served their Supplemental Response to the Discovery Requests, as well as documents Bates stamped Davis 007134-007192. Though the Defendants' Discovery Requests were directed to each of the Plaintiffs in the five (5) above-captioned actions, the Plaintiffs' Supplemental Response expressly provides that it is made only by the Plaintiffs in the Parkview action, and that the Plaintiffs in the other actions will supplement their responses to the Discovery Requests "at a later date." Further, the documents produced along with the Supplemental Response were the financial statements of only one of the Plaintiffs, Laurance Davis. As for the content of the Supplemental Response, very little additional information is provided, and Plaintiffs reaffirm their objections contained in their previous responses to the Discovery Requests.

The Defendants seek to compel the Plaintiffs to provide full and complete answers to the following Interrogatories: Nos. 3, 6-18, 20, and 22-23. The Court finds that the Plaintiffs' responses to these Interrogatories are incomplete and inadequate, and the Plaintiffs are hereby compelled to provide full and complete responses to these Interrogatories, subject only to the limitations stated herein.

The Defendants also seek to compel the Plaintiffs to produce all documents in their possession, custody or control, which are responsive to the following Requests for Production: Nos. 1-8, 10-16, 19-34, 36-43, and 45-48. The Court finds that the Plaintiffs' responses to these Requests for Production are incomplete and inadequate, and the Plaintiffs are hereby compelled to produce all documents in their possession, custody or control, which are responsive to these Requests, subject only to the limitations stated herein.

Where Plaintiffs can fully and completely respond to such Interrogatories or Requests for

Production by reference to documents that have been produced by Plaintiffs in these lawsuits, and all such documents have been Bates stamped for tracking and identification purposes,¹ Plaintiffs may so state. Any information or documents withheld on the grounds of attorney-client privilege or work product must be specifically identified, as discussed further below. With respect to Interrogatory No. 6, if the experts identified by Plaintiffs have produced written reports setting forth the opinions held by the experts and the bases for such opinions, Plaintiffs may produce such reports in response to this Interrogatory to the extent the reports contain all of the information requested. If the reports do not contain all of the requested information, Plaintiffs must supplement the information contained in the reports so as to fully and completely answer Interrogatory No. 6. If the Plaintiffs' experts have not produced such written reports, Plaintiffs must provide a summary of the important opinions held by each expert (i.e. the opinion testimony the expert is expected to give in these cases), as well as the factual bases for such opinions. A description of the expert's general experience is not sufficient.

In response to each and every Interrogatory and Request for Production, the Plaintiffs incorporate numerous general objections, which are set out in their initial discovery response and Supplemental Response prior to the Plaintiffs' specific responses to the Discovery Requests ("General Objections"). This blanket method of objecting to all of the Discovery Requests, coupled with Plaintiffs' subsequent failure to respond in any meaningful way to the particular complaints raised in Defendants' Memorandum, make it impossible for Defendants to know if

¹ Though the parties are not required to Bates stamp all documents produced, as a matter of law, the parties have agreed to Bates stamp the documents produced in these cases for purposes of tracking and identification. Due to the volume of documents produced by the parties in these cases, as a practical matter, it is unfair and ambiguous for the Plaintiffs to respond to discovery requests by merely stating that responsive documents have already been produced or are already in the possession of Defendants or their counsel, leaving open the question as to whether the referenced documents are among the Bates stamped documents produced by Plaintiffs. While the Court has not required the parties to identify the specific documents or pages by reference to specific Bates numbers when responding in this fashion, the responding party must at least identify the group of documents in a readily discernable fashion, such as "Bates stamped documents produced in these cases by Plaintiffs."

responsive information and/or documents are being withheld, and, if so, based on which specific grounds. To the extent that Plaintiffs have withheld any information or documents that would otherwise be responsive to the Discovery Requests on the grounds of attorney-client privilege or work product, such information and documents shall be sufficiently identified in Plaintiffs' Privilege Log or by other written means, so as to afford Defendants a reasonable opportunity to assess the applicability of the privilege or protection, as required by Rule 26(b)(5), SCRCP. To the extent that Plaintiffs have withheld any information or documents that would otherwise be responsive to the Discovery Requests on the grounds of any of the other General Objections contained in Plaintiffs' discovery responses, Plaintiffs are hereby compelled to provide full and complete responses to all such Interrogatories and to produce the documents responsive to all such Requests for Production. The Court notes that Defendants have withdrawn Request for Production No. 44, so no further response to that Request is required.

Plaintiffs' response to Interrogatory No. 24 indicates that each of the Plaintiffs in the above-captioned actions may not have participated in answering the Interrogatories. Each and every Plaintiff is required to provide all information reasonably available to him or her, which would be responsive to any of the Interrogatories. Further, each and every Plaintiff is required to produce all documents in his or her possession, custody or control, which would be responsive to any of the Requests for Production.

Plaintiffs shall fully comply with the terms of this Order within thirty (30) days of the date of this Order.

WHEREFORE, Defendants' Motion is GRANTED, as stated above. Further, Defendants' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCP, is GRANTED. *held in abeyance pending*
~~Defendants shall submit evidence~~

resolution of all discovery disputes.
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Done.

~~of the amount of their reasonable expenses of the Motion, including their attorneys' fees, within~~
~~twenty (20) days of the date of this Order.~~ DAF

IT IS SO ORDERED

This 3rd day of March, 2009.
Bamberg, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Orangeburg County
C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2005-CP-07-1990

**ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFFS' MOTION TO COMPEL, DATED JULY 29, 2005**

THESE MATTERS COME BEFORE THE COURT on Plaintiffs' Motion to Compel, dated July 29, 2005 ("Motion"), which concerns Defendants' responses to Plaintiffs' Interrogatories and Request for Production, dated April 22, 2003, in the Parkview action. The Court has considered the parties' memoranda, and the oral argument of the parties' counsel at the hearing held on July 1, 2008, as well as the additional written materials submitted by the parties since the hearing on July 1, 2008.

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It appears to the Court that the only remaining issue arising out of the Plaintiffs' Motion is the reasonable and appropriate scope of Plaintiffs' Interrogatory No. 12, Interrogatory No. 24 and Request for Production No. 6. In accordance with the Court's previous instructions to the parties, counsel for the Plaintiffs and Defendants have attempted to reach an agreement as to the reasonable and appropriate scope of such discovery requests, but have been unable to do so. The subject discovery requests, and Defendants' responses to such requests, are set forth below:

Interrogatory No. 12:

For each complaint, claim or lawsuit initiated against the responding Defendant, state:

- (a) *The title and date of each such complaint, claim or lawsuit;*
- (b) *Outline the contents of the complaint, claim or lawsuit filed in each such action;*
- (c) *The name and address of the court involved, if any, including the case number or civil action number assigned to the action; and*
- (d) *The name and address of the complaining party, if applicable, and the name and address of the attorney for such party in each such complaint, claim or lawsuit.*

ANSWER: Defendants object to this interrogatory on the grounds that it is vague and ambiguous, overly broad, unduly burdensome, and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to Interrogatory No. 12 to the extent it seeks historical information as to entities which no longer exist. Defendants further object on the basis that, to the extent such is public information, such is as easily available to Plaintiffs as Defendants. AIMCO is producing a list of lawsuits from its database.

Interrogatory No. 24:

Has the responding Defendant been investigated, reprimanded, criticized, cited or sanctioned by any governmental entity or organization with respect to the ownership, management and/or operation of any apartment complex? If so, set forth the names, addresses and telephone numbers of each such entity or organization, together with the precise nature of the investigation, reprimand, criticism, citation or sanction, and the form in which such activity occurred.

ANSWER: Defendants object to this interrogatory on the grounds that it is vague and ambiguous, overly broad, unduly burdensome, and to the extent it seeks discovery of information that is not reasonably calculated to lead to the discovery of admissible evidence. For instance, the responding Defendants are subject to a vast array of rules and regulations of federal, state, and local agencies.

Request for Production No. 6:

Originals or complete copies of any and all documentation relating to any lawsuits or other legal claims made against the responding Defendant by any limited partner of any other limited partnership in which the Defendant is or has been involved while also acting as a general partner in the Defendant Parkview Apartments Limited Partnership.

RESPONSE: *Defendants object to this Request on the grounds that it is improper, overly broad, unduly burdensome, and seeks discovery of information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request to the extent that it seeks documents readily available in the public domain and already in the possession of Plaintiffs or their attorneys.*

The Court finds that each of the above discovery requests is overly broad and unduly burdensome, and seeks information that will be inadmissible at the trial of this action and is not reasonably calculated to lead to the discovery of admissible evidence. As such, the above discovery requests are beyond the scope of permissible discovery, pursuant to Rule 26(b), SCRCP. However, rather than flatly denying Plaintiffs' Motion with respect to these discovery requests, the Court orders the Defendants AIMCO, AmReal and Barton Tuck ("Tuck") to produce the following information and documents that are reasonably available to them, within thirty (30) days of the date of this Order:

(1) Identify each lawsuit known to the Defendants AIMCO, AmReal or Tuck, which was initiated against AmReal or Tuck between 1984 and 2004, or initiated against AIMCO between 1994 and 2004, and which involved each of the following:

- (a) claims by limited partners of a limited partnership, as plaintiffs, against the Defendants AIMCO, Tuck or AmReal, as general partners of the same limited partnership;
- (b) allegations that the Defendants AIMCO, Tuck or AmReal breached fiduciary duties owed to the plaintiff limited partners; and
- (c) allegations that the plaintiff limited partners' claims arise out of or are related to the said Defendants' ownership, management and/or operation of low-income apartment housing.

The scope of this discovery does not include lawsuits based on tenant or prospective tenant complaints of any kind, employment disputes, construction disputes, vendor disputes, violation of any applicable environmental laws or regulations, claims of personal injury or property

damage, claims of simple breach of contract unrelated to the general partner-limited partner fiduciary relationship, or similar claims that are wholly unrelated to the subject matter of these cases. Defendants may comply with this discovery by providing a listing of the litigation with sufficient descriptors such that Plaintiffs can locate the court filings. The Court notes that Defendants have informed it and the Plaintiffs that, with respect to information that is reasonably available to Defendants AIMCO, AmReal and Tuck, the lawsuits responsive to this discovery have been previously identified to the Plaintiffs.

(2) Identify all formal administrative proceedings initiated by the United States Department of Housing and Urban Development ("HUD") against Defendants AmReal or Tuck between 1984 and 2001, or against Defendant AIMCO between 1994 and 2001, which involved or resulted in each of the following:

- (a) fines, financial penalties or financial settlements paid to HUD by Defendants AIMCO, AmReal or Tuck; and
- (b) alleged violation of HUD regulations by Defendants AIMCO, AmReal or Tuck in the course of their ownership, management and/or operation of any low-income apartment housing.

For the purposes of this discovery, "administrative proceedings" shall be limited to those matters in which HUD sought administrative relief for the violation of a federal regulation or other law. The scope of this discovery does not include proceedings based on tenant or prospective tenant complaints of any kind, employment disputes, construction disputes, vendor disputes, violation of any applicable environmental laws or regulations, claims of personal injury or property damage, or similar claims that are wholly unrelated to the subject matter of these cases. In lieu of identifying the administrative proceedings responsive to this discovery by written response, Defendants may produce documents that would be responsive to this discovery.

WHEREFORE, Plaintiffs' Motion is GRANTED, in part, with respect to the information or documents that Defendants are required to produce to Plaintiffs, as stated above. Except as expressly provided above, the Motion is DENIED. Further, Plaintiffs' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCP, is DENIED.

IT IS SO ORDERED

This 3rd day of March, 2009.
Burke, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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) Beaufort County
) C.A. No. 2003-CP-07-726
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
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) Orangeburg County
) C.A. No. 2005-CP-10-4229
)

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Charleston County
) C.A. No. 2005-CP-10-4229
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2005-CP-07-1989
)

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2005-CP-07-1990
)

ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY

By Orders of this Court dated December 30, 2008, January 31, 2009, and April 9, 2009 (collectively, "Prior Orders"), the Court appointed the Honorable Gary E. Clary as Special Master in these actions for the purposes set forth in such Prior Orders. Pursuant to the Prior Orders, which are incorporated herein by reference, Special Master Clary issued his Reports to the Court, dated April 14, 2009 and April 22, 2009 (collectively, "Reports"). The Reports contain Special Master Clary's findings and conclusions with respect to the matters referred to

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him. Counsel for the parties have advised the Court that they wish to be heard concerning their respective arguments and objections to the findings and conclusions contained in the Reports.

The Reports are hereby adopted verbatim as an Order of the Court. The Reports, which are attached hereto, are incorporated herein by reference. This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRCPP. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(e) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any.

IT IS SO ORDERED

This 7 day of June, 2009.
Bruce South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
Case No.: 2003-CP-07-726

Davis, et al.

2009 JUN 19 AM 11:54 Arkview Apartments LP, et al.

Plaintiff(s)

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

Defendant(s)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☒ DECISION BY COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON: ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. nonsuit)
☐ Rule 43(k), SCRPC (Settled); ☐ Other - _____)
- ☐ ACTION STRICKEN (CHECK REASON: ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding Arbitration,
Subject to right to reple to confirm, vacate or modify arbitration award; ☐ Other: _____)

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by Court

After carefully reviewing all evidence before me and my prior order in the above-referenced matter, the Applicant's Motion to Alter or Amend Order Granting Defendant's Motion to Compel, dated November 6, 2008, Pursuant to Rule 59(e), SCRPC, is hereby DENIED.

Dated at ^{Aiken} ~~Bamberg~~, South Carolina, Date June 16, 2009 Judge W. B. Early, Jr.

This judgment was entered on the 16th Day of June, 20 09, and a copy mailed this 22 Day of June, 20 09, to attorneys of record or to parties as follows:

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Calvin T. Vick, Jr.
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Post Office Box 2048
Greenville, SC 29602-2048



SCR Form 4 (Rev. 2/96)

Deborah L. Smith
Clerk of Court

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs,	)	
v.	)	Beaufort County
Parkview Apartments, a South Carolina Limited	)	C.A. No. 2003-CP-07-726
Partnership, <i>et al.</i> , Defendants.	)	

Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs,	)	
v.	)	Orangeburg County
Roosevelt Gardens, a South Carolina Limited	)	C.A. No. 2005-CP-38-1131
Partnership, <i>et al.</i> , Defendants.	)	

Rhonda G. Rentz, <i>et al.</i> , Plaintiffs,	)	
v.	)	Charleston County
Orleans Gardens, a South Carolina Limited	)	C.A. No. 2005-CP-10-4229
Partnership, <i>et al.</i> , Defendants.	)	

Laurance H. Davis, Jr., <i>et al.</i> , Plaintiffs,	)	
v.	)	Beaufort County
Palmetto Apartments, a South Carolina Limited	)	C.A. No. 2005-CP-07-1989
Partnership, <i>et al.</i> , Defendants.	)	

Carolina Management Corporation of Beaufort,	)	
<i>et al.</i> , Plaintiffs,	)	
v.	)	Beaufort County
Pinewood Park Apartments, a South Carolina	)	C.A. No. 2005-CP-07-1990
Limited Partnership, <i>et al.</i> , Defendants.	)	

ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009

These matters are before the Court on the Plaintiffs' Motion to Alter or Amend, dated June 11, 2009, and the Defendants' Motion to Alter or Amend, dated June 15, 2009. In their respective motions, the Plaintiffs and the Defendants request that the Court amend its Order dated June 2, 2009, which adopted Special Master Clary's reports verbatim. The parties' motions were timely filed, pursuant to Rule 59(e), SCRCF, and the Court has carefully considered the parties' memoranda, exhibits, oral arguments of all counsel at the July 6, 2009

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hearing, and Special Master Clary's reports, which were incorporated into the Court's June 2, 2009 Order by reference. The motions of the Plaintiffs and the Defendants are granted, in part, and denied, in part, as set forth herein.

The Court's June 2, 2009 Order and the Special Master's reports incorporated therein are sustained in all aspects, except for the following amendments thereto:

(1) With regard to the Plaintiffs' argument that the fiduciary duty exception applies to Defendants' privileged documents, the Court finds that the requisite mutuality of interest between the parties ceased to exist as of December 9, 1999, which is the date of Mr. Weinberg's first letter to a general partner threatening litigation (AMREAL 014864, attached to Defendants' Memorandum as Exhibit 1). Accordingly, the fiduciary duty exception is not available to the Plaintiffs with regard to any privileged document dated (i.e., created) after December 9, 1999, and the following privileged documents, which were previously designated for production, shall not be produced:

Defendants' Documents (listed on pp. 12-14 of the Special Master's April 14, 2009 report):

1	AMREAL 00573-00576
20	AMREAL 004865-004867
23	GWB 000011
60	GWB 000271
76	GWB 000458-000459
78	GWB 000484

"Bryan Cave" Documents (listed on pp. 14-17 of the Special Master's April 14, 2009 report):

2	AMREAL 014670-014671
3	AMREAL 014672-014681
16	AMREAL 014875

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17	AMREAL 014876
18	AMREAL 014877-014879
19	AMREAL 014880-014886
20	AMREAL 014887-014890
21	AMREAL 014891-014892
22	AMREAL 014893-014894
24	AMREAL 014896-014897
26	AMREAL 014899
27	AMREAL 014900-014902
28	AMREAL 014903-014904
30	AMREAL 014906
31	AMREAL 014907
32	AMREAL 014908
33	AMREAL 014909
34	AMREAL 014910-014912
36	AMREAL 014914
37	AMREAL 014915
59	AMREAL 015060-015061
60	AMREAL 015062-015066
62	AMREAL 015068-015071
63	AMREAL 015072-015074
64	AMREAL 015075-015077
66	AMREAL 015079-015081
67	AMREAL 015087
68	AMREAL 015091-015092
69	AMREAL 015093-015095
70	AMREAL 015100-015103
71	AMREAL 015104-015107
72	AMREAL 015118-015119
73	AMREAL 015120-015122
74	AMREAL 015123-015126
75	AMREAL 015136-015138
76	AMREAL 015139-015140
77	AMREAL 015141-015144
78	AMREAL 015145-015151
79	AMREAL 015152-015153
81	AMREAL 015157-015167
87	AMREAL 015209-015213
89	AMREAL 015256
90	AMREAL 015257
91	AMREAL 015258
92	AMREAL 015259-015261
93	AMREAL 015262-015263
94	AMREAL 015268-015269
95	AMREAL 015272-015273

Handwritten signature/initials
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96	AMREAL 015276-015277
97	AMREAL 015278-015279
98	AMREAL 015282-015283
99	AMREAL 015284
100	AMREAL 015285-015286
101	AMREAL 015287-015297
102	AMREAL 015298-015306
103	AMREAL 015307-015316
104	AMREAL 015317-015332
108	AMREAL 015341-015342
109	AMREAL 015343-015344
110	AMREAL 015345-015346
112	AMREAL 015350-015352
113	AMREAL 015353-015357
114	AMREAL 015358-015362
115	AMREAL 015363-015366
116	AMREAL 015367-015369
129	AMREAL 015423-015426
130	AMREAL 015427-015430
131	AMREAL 015431-015436
132	AMREAL 015437-015442
133	AMREAL 015443-015445

(2) The Court finds that the limited power of attorney from Mary Jane Pike to Jim Pike and/or Jane Miller was valid and there was no waiver of privilege as a result of documents being provided to Jim Pike and/or Jane Miller. The subject documents are identified in Special Master Clary's reports as Plaintiffs' documents 8, 9, 46, 54, 59, 100 and 103. However, two of these documents (46 - Bailey 3735, dated 2/14/01; 54 - Bailey 4019-4020, dated 9/19/02) are subject to production under paragraph 4 below, so they shall be produced as previously ordered. The net result of the Court's findings is that the following documents, which were previously designated for production, shall not be produced:

8	Parkview 2114-2115
9	Parkview 2143
59	Bailey 4055
100	Bailey 4874-4875

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(3) The Special Master concluded that documents involving communications with prospective clients of Mr. Bailey were not privileged and should be produced, because Mr. Bailey lacked the necessary attorney-client relationship with such prospective clients. Plaintiffs argue that the attorney-client privilege extends to communications between Mr. Bailey and prospective clients, such as Warren Griffin, a limited partner in Lincoln Limited Partnership who did not retain Mr. Bailey and is not a party to these lawsuits. The Court agrees with the Plaintiffs. Communications that are solely between Mr. Bailey and prospective clients, who are not parties (or their predecessors or successors) to these lawsuits, are privileged and should not be produced. However, after reviewing the Special Master's reports and the Plaintiffs' Privilege Log, it appears that there are no such documents. There are, however, communications between Mr. Bailey and his current clients (Plaintiffs) concerning, in whole or in part, Lincoln Limited Partnership. Mr. Griffin is a party to some of these communications, but his participation does not, itself, destroy the privilege. Such documents are privileged unless the privilege has been impliedly waived by the Plaintiffs as described in paragraph 4 below (i.e., Plaintiffs have impliedly waived privilege as to documents dated more than three years prior to the filing of these lawsuits). The Court finds that two of the documents concerning the Lincoln Limited Partnership, which were designated for production by the Special Master, are privileged and are not subject to the implied waiver described in paragraph 4. These documents are communications occurring in 2004 between Mr. Bailey and Plaintiffs, Rentz and Hodge. Accordingly, the following documents, which were previously designated for production, shall not be produced:

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83	Bailey 4593

(4) The Court finds that the statute of limitations is a major issue in these cases, and, as shown in the Defendants' Memorandum and exhibits thereto, that the Plaintiffs impliedly waived their claims of privilege with respect to documents dated (i.e., created) more than three years prior to the filing of these lawsuits. As a result, the following documents, which were previously designated for protection, shall be produced:

12	Bailey 3059
13	Bailey 3060
14	Bailey 3067-3069
15	Bailey 3070-3072
17	Bailey 3077-3078
18	Bailey 3082
19	Bailey 3105
20	Bailey 3148
21	Bailey 3151
22	Bailey 3152
23	Bailey 3153
24	Bailey 3154
25	Bailey 3155-3156
26	Bailey 3180
27	Bailey 3209-3212
28	Bailey 3215
29	Bailey 3216
30	Bailey 3217
31	Bailey 3316
34	Bailey 3321
38	Bailey 3333
39	Bailey 3334-3335
40	Bailey 3512
41	Bailey 3526-3528
42	Bailey 3695
43	Bailey 3715-3719
44	Bailey 3721-3726
45	Bailey 3731-3732
47	Bailey 3737
48	Bailey 3738

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49	Bailey 3754-3755
51	Bailey 3758-3759
52	Bailey 3768
53	Bailey 3799
66	Bailey 4218-4219
77	Bailey 4560
85	Bailey 4783
86	Bailey 4785-4787
87	Bailey 4804
88	Bailey 4808-4809
89	Bailey 4810
91	Bailey 4827
93	Bailey 4837
94	Bailey 4842
95	Bailey 4843
97	Bailey 4847-4851
98	Bailey 4854
99	Bailey 4859-4868
110	Bailey 4999
111	Bailey 5002-5004
112	Bailey 5008-5012
113	Bailey 5016
114	Bailey 5024
116	Bailey 5028
117	Bailey 5056
118	Bailey 5062
119	Bailey 5064
120	Bailey 5065-5069
121	Bailey 5071
122	Bailey 5073
123	Bailey 5074
124	Bailey 5080-5081
125	Bailey 5088-5089
126	Bailey 5092

(5) The Court finds that the Defendants' privileged documents identified as "Bryan Cave" documents Nos. 2 and 3 (listed on p. 15 of the Special Master's April 14, 2009 report) are not subject to the fiduciary duty exception, because these documents are not communications between a general partner, acting in that capacity, and the Limited Partnerships' attorneys.

WRC
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Rather, these documents concern communications between AIMCO, acting in its individual capacity, and AIMCO's separate counsel, Art Hessel, who did not represent the Limited Partnerships. As a result, the following documents, which were previously designated for production, shall not be produced:

2	AMREAL 014670-014671
3	AMREAL 014672-014681

The Court's June 2, 2009 Order, and the Special Master's reports incorporated therein, are hereby amended as set forth above. In sum, pursuant to the Court's June 2, 2009 Order, as amended herein, the Plaintiffs and Defendants are ordered to produce the following documents within seven (7) days of the date of this Order:

Plaintiffs Shall Produce:

1	Parkview 1951-1952
5	Parkview 2083
12	Bailey 3059
13	Bailey 3060
14	Bailey 3067-3069
15	Bailey 3070-3072
16	Bailey 3073
17	Bailey 3077-3078
18	Bailey 3082
19	Bailey 3105
20	Bailey 3148
21	Bailey 3151
22	Bailey 3152
23	Bailey 3153
24	Bailey 3154
25	Bailey 3155-3156
26	Bailey 3180
27	Bailey 3209-3212
28	Bailey 3215
29	Bailey 3216
30	Bailey 3217

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31	Bailey 3316
32	Bailey 3317
33	Bailey 3320
34	Bailey 3321
35	Bailey 3325
36	Bailey 3326-3327
37	Bailey 3328
38	Bailey 3333
39	Bailey 3334-3335
40	Bailey 3512
41	Bailey 3526-3528
42	Bailey 3695
43	Bailey 3715-3719
44	Bailey 3721-3726
45	Bailey 3731-3732
46	Bailey 3735
47	Bailey 3737
48	Bailey 3738
49	Bailey 3754-3755
50	Bailey 3756-3757
51	Bailey 3758-3759
52	Bailey 3768
53	Bailey 3799
54	Bailey 4019-4020
66	Bailey 4218-4219
71	Bailey 4467-4468
72	Bailey 4471
73	Bailey 4473
74	Bailey 4540-4543
75	Bailey 4547
76	Bailey 4548
77	Bailey 4560
78	Bailey 4565
79	Bailey 4572-4575
80	Bailey 4576-4577
81	Bailey 4580-4582
84	Bailey 4763
85	Bailey 4783
86	Bailey 4785-4787
87	Bailey 4804
88	Bailey 4808-4809
89	Bailey 4810
90	Bailey 4811
91	Bailey 4827
92	Bailey 4831

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#9

93	Bailey 4837
94	Bailey 4842
95	Bailey 4843
96	Bailey 4846
97	Bailey 4847-4851
98	Bailey 4854
99	Bailey 4859-4868
104	Bailey 4885-4886
105	Bailey 4968
106	Bailey 4980
107	Bailey 4993
108	Bailey 4995 (identified as 4996 on Plaintiffs' Privilege Log)
109	Bailey 4998
110	Bailey 4999
111	Bailey 5002-5004
112	Bailey 5008-5012
113	Bailey 5016
114	Bailey 5024
115	Bailey 5025
116	Bailey 5028
117	Bailey 5056
118	Bailey 5062
119	Bailey 5064
120	Bailey 5065-5069
121	Bailey 5071
122	Bailey 5073
123	Bailey 5074
124	Bailey 5080-5081
125	Bailey 5088-5089
126	Bailey 5092

Defendants Shall Produce:

70	GWB 000380
71	GWB 000381-000421
"Bryan Cave"	
6	AMREAL 014865
7	AMREAL 014866
8	AMREAL 014867
9	AMREAL 014868
10	AMREAL 014869
11	AMREAL 014870

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12	AMREAL 014871
13	AMREAL 014872
14	AMREAL 014873
39	AMREAL 014917-014922
41	AMREAL 014924-014928
42	AMREAL 014939-014944
43	AMREAL 014945-014949
44	AMREAL 014950-014953
45	AMREAL 014954-014959
46	AMREAL 014960-014964
47	AMREAL 014965-014968
48	AMREAL 014984-014989
49	AMREAL 014990-014994
50	AMREAL 014995-014998
51	AMREAL 014999-015004
52	AMREAL 015005-015009
53	AMREAL 015010-015013
54	AMREAL 015020-015024
55	AMREAL 015044-015049
56	AMREAL 015050-015054
57	AMREAL 015055-015058

IT IS SO ORDERED

This 28th day of July, 2009.

Banberry, South Carolina

Doyet A. Early

Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,

v.

Parkview Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

Beaufort County

C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,

v.

Roosevelt Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.

Orangeburg County

C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,

v.

Orleans Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.

Charleston County

C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,

v.

Palmetto Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

Beaufort County

C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort, *et al.*, Plaintiffs,

v.

Pinewood Park Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

Beaufort County

C.A. No. 2005-CP-07-1990

ORDER GRANTING DEFENDANTS' TWO MOTIONS FOR SANCTIONS FINDING PLAINTIFFS IN CONTEMPT OF COURT AND DISMISSING THE ABOVE-CAPTIONED ACTIONS AS SANCTIONS FOR PLAINTIFFS' CONTEMPT

This matter comes before the Court on Defendants' two Motions for Sanctions, dated July 24, 2009 and August 10, 2009. For the reasons set forth below, the Court grants Defendants' Motions. The Court finds and hereby declares that Plaintiffs in each of the above-captioned actions are in contempt of court as a result of their willful failure to comply with the Court's Order dated July 28, 2009 (which amended the Court's Order dated June 2, 2009), and

DKE #1



dismisses each of the above-captioned actions with prejudice as sanctions for such contempt, pursuant to Rule 37(b), SCRCP. The Court further finds and declares that Plaintiffs in each of the above-captioned actions are in contempt of court for the separate and additional reason that they have willfully disobeyed the Court's Order dated March 3, 2009. The Court dismisses each of the above-captioned actions with prejudice as sanctions for Plaintiffs' contempt with regard to the March 3, 2009 Order, as well. The Court also finds that Defendants should receive a monetary award to compensate them for the reasonable costs and attorneys' fees incurred in connection with their Motion to Compel Discovery and their two Motions for Sanctions, and the Court will enter a subsequent order declaring the amount of the award, as provided in this Order. Plaintiffs may purge the sanctions of dismissal of these actions by fully complying with both of the Court's discovery Orders, dated March 3, 2009 and July 28, 2009, within twenty-five (25) calendar days of the date of this Order.

FINDINGS OF FACT

1. General Background

By Order of the Supreme Court of South Carolina, dated March 7, 2006, these five (5) cases were assigned to the Undersigned to hear and decide all pre-trial motions and other matters pertaining to these cases, including the trial and post-trial motions. The matters before the Court concern two separate discovery disputes that date back to the summer of 2008. The first discovery dispute concerned Plaintiffs' failure to provide adequate responses to discovery requests served on August 28, 2008, and the dispute resulted in the Court's March 3, 2009 Order ("General Discovery Order"). The second discovery dispute concerned Defendants' challenges to Plaintiffs' claims of privilege for documents identified in Plaintiffs' July 28, 2008 Privilege Log, which resulted in the Court's July 28, 2009 Order ("Privilege Discovery Order"). Plaintiffs

DRE #2

have failed to comply with either of the Court's discovery orders, resulting in Defendants' two Motions for Sanctions, dated July 24, 2009 (relating to General Discovery Order) and August 10, 2009 (relating to Privilege Discovery Order). The trial in the Parkview action was scheduled to commence on May 18, 2009, and again on January 19, 2010, but the trial had to be continued both times on account of Plaintiffs' failure to comply with the South Carolina Rules of Civil Procedure, the General Discovery Order and/or the Privilege Discovery Order.

Before taking the actions set forth in this Order, the Court has considered at length all of the motions, memoranda, arguments, reports, letters from counsel, proposed orders, and orders relating to the underlying discovery disputes and the current Motions for Sanctions, including without limitation the following: Defendants' Motion to Compel Discovery, dated November 6, 2008; all memoranda filed by the parties concerning Defendants' Motion to Compel; Plaintiffs' Responses to Defendants' Discovery Requests to All Plaintiffs, dated November 14, 2008; the oral argument of counsel at the December 9, 2008 hearing on Defendants' Motion to Compel; this Court's Orders dated December 30, 2008, January 31, 2009 and April 14, 2009, concerning the appointment of Special Master Clary, as well as the scope of the *in camera* review of documents by him; Plaintiffs' Supplemental Responses to Defendants' Discovery Requests to All Plaintiffs, dated January 26, 2009; this Court's Order dated March 3, 2009; Plaintiffs' Motion to Alter or Amend Order Granting Defendants' Motion to Compel, dated March 13, 2009, and all memoranda filed by the parties concerning Plaintiffs' Motion to Alter or Amend; Special Master Clary's reports to this Court, dated April 14, 2009 and April 22, 2009; this Court's Order dated June 2, 2009; the Plaintiffs' Motion to Alter or Amend the Court's Order, dated June 11, 2009; the Defendants' Motion to Alter or Amend the Court's Order, dated June 15, 2009; all memoranda filed by the parties concerning their respective motions to alter or

DAE #3

amend the June 2, 2009 Order; the oral argument of counsel at the July 6, 2009 hearing on the parties' respective motions to alter or amend the June 2, 2009 Order; this Court's Order dated July 28, 2009 (amending the June 2, 2009 Order); Defendants' Motion for Sanctions, dated July 24, 2009; Defendants' Second Motion for Sanctions, dated August 10, 2009; all memoranda (including supplemental memoranda) filed by the parties concerning either or both of Defendants' Motions for Sanctions; the oral argument of counsel at the August 24, 2009 hearing on Defendants' two Motions for Sanctions, including Plaintiffs' oral motion for reconsideration of the July 28, 2009 Order (denied); Plaintiffs' Second Supplemental Response to Defendants' Discovery Requests to All Plaintiffs, dated August 24, 2009; the oral argument of counsel at the January 14, 2010 hearing on Defendants' two Motions for Sanctions; Plaintiffs' Third Supplemental Responses to Defendants' Discovery Requests to All Plaintiffs, dated January 25, 2010; and Plaintiffs' Motions for Relief from July 28, 2009 Order, dated January 28, 2010, and all memoranda filed by the parties concerning Plaintiffs' Motions for Relief from July 28, 2009 Order.

2. **Background and Findings of Fact: Defendants' First Motion for Sanctions (General Discovery Order)**

Defendants' first Motion for Sanctions concerns Plaintiffs' failure to comply with the Court's General Discovery Order, which compelled Plaintiffs to fully and completely answer Defendants' August 28, 2008 discovery requests within thirty (30) days of the Order. The Court makes the following findings of fact relevant to the first Motion for Sanctions:

Defendants served the subject discovery requests ("Discovery Requests") on Plaintiffs on August 28, 2008, and granted Plaintiffs a 30-day extension to respond, making the responses due October 27, 2008. After receiving no responses from Plaintiffs, Defendants filed their Motion to

DAE #4

Compel Discovery on November 6, 2008. Plaintiffs then served their responses and objections to the Discovery Requests on November 14, 2008. As the Court would later find in the General Discovery Order, Plaintiffs' responses to numerous document requests and interrogatories were "incomplete and inadequate." Defendants sent Plaintiffs' counsel a 12-page letter, dated December 4, 2008, discussing in detail the various deficiencies in Plaintiffs' discovery responses. Plaintiffs responded, by letter dated December 8, 2008, summarily dismissing the concerns and complaints raised in Defendants' counsel's letter. On that same date, Defendants filed and served their Memorandum in Support of Motion to Compel, which essentially addressed the same deficiencies noted in Defendants' counsel's December 4, 2008 letter.

On December 9, 2008, the Court heard oral argument from counsel on Defendants' Motion to Compel. The Court, with the agreement of the parties' counsel, essentially bifurcated the issues presented in the Motion to Compel. The Motion to Compel dealt primarily with two issues: (1) Plaintiffs' failure to provide full and complete responses to interrogatories and to produce non-privileged documents that were responsive to the Discovery Requests, and (2) Plaintiffs' failure to produce documents that they had withheld under claims of privilege, which had been challenged by Defendants. As to the first issue, the Court instructed the parties to attempt to resolve their dispute without Court intervention. Failing that, they were to return to the Court for its decision. As to the second issue (disputed claims of privilege), the Court and the parties agreed to enlist the assistance of a former Circuit Court Judge, Gary E. Clary, who would review the subject documents *in camera* and report his findings to the Court before the Court proceeded to rule on the privilege issues. The privilege issues pertain to Defendants' Second Motion for Sanctions, which is discussed separately in this Order.

In the weeks following the December 9, 2008 hearing, the parties' attorneys conferred

DAG #5 5

about the resolution of the discovery dispute, and Plaintiffs' counsel advised that Plaintiffs would serve supplemental responses to the Discovery Requests by Christmas, which would address the issues raised by Defendants. Christmas came and went with no supplemental responses from Plaintiffs. Defendants' counsel inquired as to when Plaintiffs would provide their supplemental responses, and Plaintiffs' counsel advised that they would provide the supplemental responses by January 19, 2009. Plaintiffs did not serve their Supplemental Responses until January 26, 2009, and when they did, Defendants found that they did not address the deficiencies previously raised by Defendants. The parties informed the Court of the impasse, and the Court instructed the parties to submit proposed orders on the Motion to Compel with regard to the adequacy of Plaintiffs' responses to the Discovery Requests. On March 3, 2009, pursuant to Defendants' motion, the Court issued the General Discovery Order, which required Plaintiffs to "fully comply with the terms of this Order within thirty (30) days of the date of this Order." Further, the Order stated that the "Defendants' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCP, is held in abeyance pending resolution of all discovery disputes."

On March 13, 2009, Plaintiffs filed and served their Motion to Alter or Amend the Court's March 3, 2009 Order, thereby staying the 30-day period for compliance with the General Discovery Order. Due to Plaintiffs' continuing failure to respond to discovery (and the ongoing dispute over alleged privileged materials), the Court was forced to continue the trial of the Parkview action from the May 18, 2009 term. On or about June 3, 2009, the parties' counsel received written notice that the Court had denied Plaintiffs' Motion to Alter or Amend as of that

DAE #6

date.¹ On July 21, 2009, having received no further responses from Plaintiffs, Defendants' counsel gave Plaintiffs written notice of their intent to file a motion for sanctions if Plaintiffs did not immediately comply with the General Discovery Order. Plaintiffs' counsel replied, via letter, that they "hope" to provide complete discovery responses by the end of July. Defendants filed their Motion for Sanctions on July 24, 2009, as a result of Plaintiffs' complete failure to comply with the General Discovery Order. On July 28, 2009, during a conference call between and among the Court and the parties' counsel, the Court advised the parties that the new trial date for the Parkview action would be January 19, 2010. During that call, Plaintiffs' counsel again indicated that Plaintiffs would comply with the General Discovery Order, at least in piecemeal fashion, by the end of July.

Despite Plaintiffs' assurances, they failed to provide any supplemental responses by the end of July. Thus, the Court was required to hold a hearing on, *inter alia*, Defendants' Motion for Sanctions on August 24, 2009. At the hearing, Plaintiffs' counsel informed the Court that they were then serving Plaintiffs' Second Supplemental Response to the Discovery Requests (including two boxes of documents), and that such supplemental response constituted full compliance with the Court's General Discovery Order. Based upon Plaintiffs' representation, the Court took the Motion for Sanctions under advisement. Three days later, on August 27, 2009, Defendants filed and served their Supplemental Memorandum in Support of Defendants' Motions for Sanctions, showing that Plaintiffs had not, in fact, complied with the General Discovery Order, and identifying the numerous deficiencies that remained in Plaintiffs' discovery responses. As a result of Plaintiffs' continuing failure to comply with the Court's

¹ That June 3, 2009 Order was apparently lost during transmission from the Court to the Clerk of Court, so the Court issued a new order denying Plaintiffs' Motion to Alter or Amend on June 16, 2009, and the parties received written notice of the entry of that order soon thereafter. Giving Plaintiffs the benefit of the doubt, the 30-day period for compliance with the General Discovery Order recommenced on or about June 16, 2009.

DAE #7

discovery orders, the Court was compelled to continue the scheduled trial of these cases from the January 19, 2010 trial term, by Order dated January 4, 2010.²

On January 14, 2010, the Court held a second hearing on the record concerning Defendants' Motions for Sanctions, which was the fourth hearing on the record concerning Plaintiffs' discovery deficiencies.³ At the hearing, Plaintiffs once again represented to the Court that their latest responses (i.e., Second Supplemental Responses to Discovery Requests) fully complied with the General Discovery Order. Contrary to such representation, the Court found that the Plaintiffs had not complied with the General Discovery Order, but granted Plaintiffs' request for an additional ten (10) days to fully comply. On January 25, 2010, Plaintiffs in the Parkview case served their Third Supplemental Responses to the Discovery Requests, supplementing their answers to Interrogatory Nos. 6, 18 and 19. None of the other Plaintiffs provided any supplemental response. Defendants responded by filing and serving their Second Supplemental Memorandum in Support of Motion for Sanctions Re: General Discovery Order, identifying the continuing failure of all Plaintiffs, including the Parkview Plaintiffs, to comply with the General Discovery Order.

The Court finds that, despite the numerous opportunities afforded to Plaintiffs over the last year, the Plaintiffs have persistently failed to comply with the General Discovery Order and have failed to provide any legitimate excuse for their non-compliance. Plaintiffs' continuous non-compliance is well documented in the Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009 (pp. 2-6, 12-13), Supplemental Memorandum in

² The Court took no further action concerning the Motions for Sanctions between September and December, because the Plaintiffs filed a petition in the Supreme Court (denied), and a Notice of Appeal in the Court of Appeals (dismissed), seeking immediate review of the Privilege Discovery Order. The Court of Appeals issued remittitur on December 17, 2009.

³ In addition to the hearings on the record, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies during several telephone conference calls and in-person meetings over the last 14 months.

DAE #8

Support of Defendants' Motions for Sanctions, dated August 27, 2009, and Defendants' Second Supplemental Memorandum in Support of Motion for Sanctions Re: General Discovery Order, dated February 11, 2010. Plaintiffs' failure to comply with the General Discovery Order includes the following deficiencies:

- Contrary to the explicit instructions contained in the General Discover Order, Plaintiffs have still not disclosed the relevant opinions held by their testifying expert witnesses or the bases for said opinions in response to Interrogatory No. 6 (the Parkview Plaintiffs' Third Supplemental Responses fall well short of what is required by the General Discovery Order, as shown in Defendants' Second Supplemental Memorandum at pp. 9-14; Plaintiffs in the other cases have provided even less);⁴
- Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided full and complete responses to Interrogatory Nos. 9, 10 and 12, which seek information concerning the *first* communications between two or more Plaintiffs, and/or between a Plaintiff and an attorney, regarding the investigation or pursuit of legal claims against any of the Defendants, and the date(s) upon which each of the Plaintiffs agreed to retain Joel Bailey, their attorney in these actions, to represent such Plaintiff or to provide legal services concerning the investigation or pursuit of claims against the Defendants (Plaintiffs refuse to answer these interrogatories, relying on groundless objections or answering that they "do not recall"; see Defendants' Second Supplemental Memorandum

⁴ Though the General Discovery Order addresses Plaintiffs' failure to provide adequate responses to the August 28, 2008 Discovery Requests, the answers compelled to Interrogatory No. 6 (discovery of expert witnesses' opinions and basis for same) would be responsive to discovery served in the Parkview case on November 17, 2004, as well (see Interrogatory No. 10 in November 17, 2004 discovery requests).

DRE #9

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at pp. 3-8 and Supplemental Memorandum at pp. 11-12);³

- Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided a full and complete response to Interrogatory No. 3, which requests, for each case, an itemized statement of all damages claimed to have been sustained by Plaintiffs (see Defendants' Supplemental Memorandum at pp. 9-10);
- Contrary to the express terms of the General Discovery Order, Plaintiffs continue to refuse to identify which documents were actually in the possession of each of the Plaintiffs, which is clearly relevant to Defendants' statute of limitations defense (i.e. what did each Plaintiff know, and when) (see Supplemental Memorandum at pp. 7-8); and
- Contrary to the express terms of the General Discovery Order, Plaintiffs only provide partial responses to Interrogatory Nos. 8, 18 (except as to Plaintiffs Davis, Pike, Reynolds and Rentz, who supplemented their response to No. 18 in the Parkview Plaintiffs' Third Supplemental Responses) and 20 (see Supplemental Memorandum at pp. 10-13).

The above findings are based upon evidence appearing in the record of these cases, including the various motions, memoranda and transcripts of the hearings identified on pp. 3-4 of this Order.

3. Background and Findings of Fact: Defendants' Second Motion for Sanctions (Privilege Discovery Order)

Defendants' Second Motion for Sanctions concerns Plaintiffs' failure to comply with the Court's Privilege Discovery Order, which compelled Plaintiffs to produce ninety-six (96)

³ Even if each of the Plaintiffs has no independent recollection of these matters, as Plaintiffs apparently contend, it is clear they could provide responses that are more complete by reviewing information readily available to them (e.g., the numerous documents from that time period that are identified on Plaintiffs' Privilege Log). The fact of consultation with an attorney, and the subject matter of the consultation, are not privileged.

DAE # 410
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documents identified in the Order within seven (7) days of the Order. The Court makes the following findings of fact relevant to the Second Motion for Sanctions:

The underlying discovery dispute began when Plaintiffs, pursuant to this Court's verbal order during a July 1, 2008 hearing, produced a complete privilege log to Defendants on July 30, 2008 ("Privilege Log").⁶ The Privilege Log identified ninety (90) documents, dated (i.e., created) between 1998 and 2004, which had not been previously identified in this litigation. On October 8, 2008, Defendants' counsel sent a letter to Plaintiffs' counsel, challenging Plaintiffs' claims of attorney-client privilege and/or work product protection for most of the documents listed on the Privilege Log. The parties were not able to resolve their differences as to whether various documents listed on the Privilege Log were privileged or subject to discovery. Defendants filed a Motion to Compel Discovery on November 6, 2008 (same as the Motion to Compel discussed above concerning the General Discovery Order), and argued, among other things, that various documents on Plaintiffs' Privilege Log were not protected by privilege and should be produced to Defendants.⁷

On December 9, 2008, this Court heard oral argument from counsel concerning Defendants' Motion to Compel Discovery. With respect to Defendants' claims that documents on Plaintiffs' Privilege Log should be produced in discovery, the Court, Plaintiffs' counsel and Defendants' counsel all agreed that an *in camera* review of the subject documents was in order.

⁶ Plaintiffs had provided a privilege log to Defendants on or about July 21, 2005 (identifying 44 documents), in response to discovery requests served by Defendants in the Parkview case on November 17, 2004, but Plaintiffs had since acknowledged that the privilege log needed to be supplemented to identify additional documents relevant to the subject matter of these actions. These additional documents were identified in Plaintiffs' July 30, 2008 Privilege Log.

⁷ After producing their July 28, 2008 Privilege Log, Plaintiffs subsequently produced revised privilege logs dated November 14, 2008 and December 31, 2008. All three are similar in content (same documents identified), but the December 31, 2008 version was the primary version considered in the parties' arguments and the Court's deliberations leading to the entry of the Privilege Discovery Order.

DRE #11 11

Further, the Court advised the parties that it would also order the *in camera* review of documents identified in Defendants' privilege log, which Plaintiffs had unsuccessfully sought to obtain in their own motion to compel. Specifically, the Court and the parties' counsel agreed that the Court would enlist the assistance of a retired Circuit Court Judge, Gary E. Clary, to review the subject documents (of both Plaintiffs and Defendants) *in camera* and to report his findings and conclusions to this Court, whereupon the Court would issue an order ruling on the privilege disputes. This Court then entered an Order, dated December 30, 2008, appointing Gary Clary as Special Master for the limited purpose of reviewing *in camera* the documents identified on the parties' respective privilege logs and to issue a report of his findings and conclusions to the Court.

To be clear, the Court did not refer the actions themselves, or any cause of action asserted in these actions, to Special Master Clary. The scope of documents and privilege issues to be reviewed *in camera* by Special Master Clary was later expanded by a Consent Order, dated January 31, 2009, and by this Court's Order dated April 9, 2009. Importantly, these orders amended the December 30, 2008 Order to expressly provide: "The subject Order is further amended to provide that Special Master Clary is to provide this Court with a Report setting forth his findings and conclusions." See Orders dated January 31, 2009 and April 9, 2009. These orders, the *in camera* review performed by Special Master Clary pursuant to these orders, and the issuance of the Special Master's reports to the Court were all the subject of agreement between and among the Court and the parties' counsel.

After meeting on several occasions with the parties' counsel and completing his *in camera* review of the various documents identified on the parties' respective privilege logs, Special Master Clary provided this Court with his Report, dated April 14, 2009, and a

DAE #12 12

Supplemental Report, dated April 22, 2009. After a discussion with the parties' counsel, this Court entered its Order, dated June 2, 2009, adopting the findings and conclusions contained in Special Master Clary's Reports, and incorporating the Reports therein. As specifically requested by counsel for the Plaintiffs and the Defendants, the Court included the following language in its Order:

"This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRCP. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(e) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any."

See Order dated June 2, 2009. Plaintiffs then timely filed their Motion to Alter or Amend the June 2, 2009 Order, on June 11, 2009. Defendants also timely filed their Motion to Alter or Amend the June 2, 2009 Order, on June 15, 2009. On July 2, 2009, Plaintiffs and Defendants each served their memoranda in support of their respective motions to amend the June 2, 2009 Order, and the Court heard oral argument from the parties' counsel during a lengthy hearing on July 6, 2009.

On July 28, 2009, this Court entered the Privilege Discovery Order, amending the June 2, 2009 Order, and granting in part and denying in part each of the parties' Rule 59(e) Motions. In the Order, the Court specifically designated, by Bates number, the documents to be produced by Plaintiffs and the documents to be produced by Defendants. Because the designated documents were readily available to the parties for production, having been previously Bates numbered and provided for *in camera* inspection, the Court ordered the parties to produce the documents within seven (7) days of the date of the Order. See Order dated July 28, 2009. Defendants served a copy of the Privilege Discovery Order on Plaintiffs' counsel, via U.S. mail, on July 30, 2009.

DAE #13

13

See Defendants' Certificate of Service, dated July 30, 2009. Defendants also provided an electronic copy of the Order to Plaintiffs' counsel via e-mail on July 30, 2009. See Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009, at Exhibit F.

Pursuant to the terms of the Privilege Discovery Order, Defendants produced their designated documents to Plaintiffs on August 3, 2009. See Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009, at Exhibit G. Plaintiffs, however, failed to produce their designated documents as required by the Court's Order. On August 10, 2009, having received no documents from Plaintiffs, nor any indication as to when and if Plaintiffs intended to comply with the Court's Order, Defendants filed and served their Second Motion for Sanctions.

Defendants served their Memorandum in Support of Defendants' Two Motions for Sanctions on August 21, 2009, and the Court heard oral argument from the parties' counsel on August 24, 2009. At the hearing, Plaintiffs' counsel confirmed that the Plaintiffs had not produced any of the ninety-six (96) documents they were compelled to produce in the Privilege Discovery Order. In response to the Court's inquiries, Plaintiffs' counsel informed the Court that the individual Plaintiffs had still not determined whether they would produce the subject documents in compliance with the Order or refuse to produce the documents and seek to appeal the Order. Plaintiffs' counsel informed the Court that they had consulted with the Plaintiffs on this matter, and that some or all of the Plaintiffs had also consulted with other attorneys as to whether they should comply with the Privilege Discovery Order or pursue an appeal of the Order. It is well settled that the claim of privilege belongs to the client, of course, and not his attorney. The Plaintiffs alone must decide whether they will comply with the Court's Order or

DAE #14 14

face sanctions for their failure to comply. At the August 24, 2009 hearing, the Court informed the parties' counsel that it was taking the matter under advisement, but warned that, if Plaintiffs' failure to comply with the Court's Order continued, the Court would likely dismiss the lawsuits pursuant to Rule 37(b), SCRCP. Plaintiffs made an oral motion for reconsideration of the Privilege Discovery Order at the conclusion of the hearing, which this Court denied.

On August 27, 2009, during a conference call among the parties' attorneys and the Court, the Court informed the parties' counsel that it intended to grant Defendants' Second Motion for Sanctions and dismiss the actions, but such sanctions would be vacated if Plaintiffs complied with the Privilege Discovery Order within twenty-five (25) days. The Court instructed Defendants' counsel to submit a proposed order and instructed Plaintiffs' counsel to immediately inform each of the Plaintiffs of the Court's intention to sign such an order in the next week. During a September 2, 2009 conference call with the parties' attorneys, the Court informed Plaintiffs' counsel that it would sign the aforementioned sanctions order that day. However, hours after the conference call concluded, and before the Court issued the written sanctions order, the Court was informed that Plaintiffs had filed that morning a Petition in the Supreme Court of South Carolina, seeking a Writ of Prohibition and/or a Writ of Certiorari concerning the Privilege Discovery Order and/or the sanctions order. The Court informed the parties that, in light of Plaintiffs' Petition to the Supreme Court, it would hold in abeyance the signing of the sanctions order. On September 10, 2009, Plaintiffs filed a Notice of Appeal to the Court of Appeals of South Carolina, seeking immediate review of the Privilege Discovery Order. On October 6, 2009, Plaintiffs sent a letter to Chief Justice Toal, requesting that these cases be transferred from the Undersigned to the Business Court. Chief Justice Toal denied Plaintiffs' request for a transfer on November 3, 2009. The Supreme Court denied Plaintiffs Petition on

DAE#15

November 19, 2009. The Court of Appeals dismissed Plaintiffs' appeal as premature on December 2, 2009, and issued remittitur on December 17, 2009.

On January 14, 2010, the Court held a second hearing on Defendants' Motions for Sanctions, which was the fourth hearing concerning Plaintiffs' discovery deficiencies.⁸ Plaintiffs' counsel acknowledged that Plaintiffs still had not complied with the Privilege Discovery Order, and the Court instructed Defendants' counsel to revise the proposed order granting Defendants' Second Motion for Sanctions to account for the passage of time since the Court first stated it would sign the sanctions order. The Court also advised Plaintiffs' counsel that they would have ten (10) days from the date Defendants' counsel submitted the revised proposed order to respond to the proposed order. Defendants' counsel submitted the revised proposed order, with a copy to Plaintiffs' counsel, and Plaintiffs' counsel responded within the ten (10) day period, sending a letter to the Court (copied to Defendants' counsel) with alternative proposed orders and filing and serving Motions for Relief from July 28, 2009 Order Amending Court's Order Dated June 2, 2009 in each of the above-captioned cases. Plaintiffs' motions purported to be motions made under Rule 60(b), SCRCP.

The above findings are based upon evidence appearing in the record of these cases, including the various motions, memoranda and transcripts of the hearings identified on pp. 3-4 of this Order.

DISCUSSION OF APPLICABLE LAW AND CONCLUSIONS

1. Civil Contempt

At this time, Plaintiffs have given the Court no reason to believe that they intend to

⁸ In addition to the hearings on the record on December 9, 2008, July 6, 2009, August 24, 2009 and January 14, 2010, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies on several other occasions, including conference calls and meetings off the record.

DAE #16

comply with either the General Discovery Order or the Privilege Discovery Order. Indeed, their time for compliance under the terms of the two discovery orders passed many months ago. Plaintiffs have steadfastly refused to comply with the terms of the Privilege Discovery Order. The Court has afforded Plaintiffs many opportunities over the last year to comply with the terms of the General Discovery Order, but they have persistently failed to do so. They have been presented with a road map for compliance many times, through the plain terms of the General Discovery Order, the detailed memoranda served by Defendants, which specifically identify the manner in which Plaintiffs have failed to comply, and the Court's oral comments and rulings concerning the same. Further, the Plaintiffs, through their counsel, have been repeatedly warned that sanctions, including the sanctions of dismissing these actions, were not only a possible consequence, they were the likely consequence if the Plaintiffs persisted in their disobedience of the Court's orders. The Court even advised Plaintiffs that it was signing an order dismissing the actions as sanctions six (6) months ago. The Court can not escape the conclusion that Plaintiffs' failure to comply with the General Discovery Order and the Privilege Discovery Order is willful.

It is clear to the Court that Plaintiffs' failure to comply with either or both of the discovery orders has caused, and would continue to cause, extreme prejudice to Defendants. Plaintiffs' willful disobedience has deprived Defendants of critical discovery that is necessary to the presentment of their full defenses to Plaintiffs' claims. Plaintiffs' failure to produce the ninety-six (96) documents compelled in the Privilege Discovery Order, many of which appear relevant to Defendants' statute of limitations defense in these actions, continues to impede the Defendants' ability to complete discovery and prepare for trial. Defendants are similarly impacted by Plaintiffs' failure to provide complete responses to interrogatories concerning Plaintiffs' first communications with one another or with an attorney concerning the

DAE #17

investigation or pursuit of claims against any of the Defendants. Defendants are also deprived of a fair opportunity to defend against Plaintiffs' claims as a result of Plaintiffs' failure to provide meaningful responses concerning the opinions held by their expert witnesses, the bases for such experts' opinions, or the damages claimed in these cases.

Further, it is inescapable that Plaintiffs' failure to obey the discovery orders has directly challenged and obstructed the Court's ability to control the administration of these cases. The trial in the Parkview action had been scheduled to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders. Plaintiffs' failure to comply with the General Discovery Order (in addition to the ongoing discovery dispute concerning the privilege issues) was a primary cause of the Court's earlier continuance of the Parkview trial from the May 18, 2009 term. The Court's and the public's interests in the orderly, prompt and efficient administration of justice can little afford to have these cases, which were filed in 2003 and 2005, held hostage by Plaintiffs' continuing failure to comply with the Court's General Discovery Order and Privilege Discovery Order. In addition to the obvious prejudice to Defendants, Plaintiffs' refusal to obey the Court's discovery orders impedes the Court's ability to control and efficiently manage its docket.

After considering the record in these cases, the Court concludes that all Plaintiffs in these actions are in contempt of court. "Contempt results from the willful disobedience of a court order, and before a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. A willful act is one ... done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done..." Ex Parte: David G. Cannon. In Re: The Estate of James Brown, 685 S.E.2d 814, 824 (Cl. App. 2009) (internal quotation marks and citations

DAE #18

omitted). The record clearly shows that all of the Plaintiffs in the above-captioned actions have willfully disobeyed both the General Discovery Order and the Privilege Discovery Order. Plaintiffs' persistent failure to comply with such orders has been both voluntary and intentional. Plaintiffs could produce the documents as required by the Privilege Discovery Order, but they choose not to do so. Plaintiffs could provide complete and intelligible responses to the interrogatories as required by the General Discovery Order, but they have chosen not to do so despite numerous opportunities. Instead, they have remained deliberately evasive and ambiguous in their responses.

While the Court is entering a finding of civil contempt, and imposing sanctions for the purpose of coercing compliance with the discovery orders and compensating and indemnifying Defendants (award of attorneys' fees), the record clearly reflects that Plaintiffs' persistent disobedience has, in fact, undermined the Court's administration of justice in these cases. "In addition, courts have the inherent power to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice. Judges have the authority to *sua sponte* use contempt proceedings to preserve the authority and dignity of their courts." *Id.* (internal quotation marks and citations omitted).

"Once the moving party has made out a prima facie case for contempt, the burden then shifts to the respondent to establish his ... defense and inability to comply with the order." *Id.* (internal quotation marks and citations omitted). Civil contempt "must be proven by clear and convincing evidence..." *Id.* The Court concludes that, as shown in its findings of fact, there is clear and convincing evidence of Plaintiffs' contempt (i.e., willful disobedience of both discovery orders), and Defendants have clearly made out a prima facie case for contempt.

DAE #19

Plaintiffs have provided no defense, nor have they shown an inability to comply with either of the discovery orders. Their repeated representations that they have complied with the General Discovery Order, without more, is no defense at all in light of the clear evidence to the contrary. They freely admit that they have not complied with the terms of the Privilege Discovery Order. Instead, Plaintiffs have persisted in arguing, by way of untimely motions for reconsideration and otherwise, that the Privilege Discovery Order was wrongly decided. Plaintiffs continue to ask the Court to vacate or amend the Privilege Discovery Order, arguing, *inter alia*, that there are questions as to the effect of the implied waiver in the Orleans and Roosevelt cases, that the Court's Privilege Discovery Order was the result of mistakes of fact and law, and that the Court must now undertake a review of the 96 documents themselves. First, the Court disagrees with Plaintiffs' arguments. Once privilege was waived as to the documents (by mere filing of the suits and/or by reason of the allegations in the Orleans and Roosevelt complaints), they were subject to discovery in all five cases. There is no question that the 96 documents are relevant to the subject matter of these actions.⁹ At the July 6, 2009 hearing, which preceded the entry of the Privilege Discovery Order, in view of Special Master Clary's reports and the information contained in the parties' privilege logs, the Court did not find it necessary to review the documents themselves, nor did the parties request, or even suggest, such a review. The factual bases for the Court's rulings on the privilege issues have not changed. Second, and most importantly, Plaintiffs' dissatisfaction with the Court's rulings in the discovery orders are not an excuse for their willful disobedience of those orders. If Plaintiffs' disobedience

⁹ Plaintiffs briefly raised the question of relevance with respect to a few documents concerning Lincoln Limited Partnership in their June 11, 2009 Rule 59(e) motion, but the Court determined that the documents concerning Lincoln are relevant (see July 28, 2009 Order at p. 5). Special Master Clary's report did not find, and Plaintiffs have not contended (except as noted regarding Lincoln), that any of the 96 documents lack relevance to the subject matter of these actions.

DAE #20 20

were excused by reason of their disagreement with the Court's rulings, a finding of contempt would never be appropriate in any case.

"In determining whether the contempt is civil or criminal, the major factor to consider is the purpose for which the power is exercised, including the nature of the relief and the purpose for which the sentence is imposed. The purpose of civil contempt is to coerce the defendant to do the thing required by the order for the benefit of the complainant, while the primary purposes of criminal contempt are to preserve the court's authority and to punish for disobedience of its orders. If it is for civil contempt, the punishment is remedial and for the benefit of the complainant. If it is for criminal contempt, the sentence is punitive and meant to vindicate the authority of the court... When sanctions are conditioned on compliance with the court's order, the contempt is civil in nature." *Id.* (internal quotation marks and citations omitted). The Court finds and declares that Plaintiffs are in civil contempt, due to their willful disobedience of the General Discovery Order, and due to their willful disobedience of the Privilege Discovery Order. The sanctions of dismissal imposed in this Order are intended to coerce Plaintiffs' compliance with the discovery orders, allowing them to purge the dismissal sanctions if they comply with the discovery orders within twenty-five (25) calendar days of this Order. The sanction of awarding Defendants their expenses, including attorneys' fees, of the motions necessitated by Plaintiffs' misconduct in discovery is remedial, intended to compensate Defendants and indemnify them from the losses incurred due to Plaintiffs' misconduct.

2. Rule 37 Sanctions: Grounds for Dismissal

The General Discovery Order and the Privilege Discovery Order are orders compelling discovery, made under Rule 37(a), SCRCF, in response to the Defendants' Motion to Compel Discovery. It is clear that Plaintiffs have failed to comply with either of these orders and,

DAE #21

therefore, Rule 37(b)(2), SCRPC, applies. The Rule provides, in part:

"If a party ... fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule ..., ... the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following: ...

(C) An order striking out pleadings or parts thereof, ... or dismissing the action or proceeding or any part thereof ...

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders...

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust."

Rule 37(b)(2), SCRPC.

In light of Plaintiffs' refusal to comply with the Court's discovery orders, and the extreme prejudice suffered by Defendants as a result of Plaintiffs' non-compliance, the only sanction that can achieve justice is the dismissal of the lawsuits. Plaintiffs' non-compliance simply deprives Defendants of their ability to defend against Plaintiffs' claims, based on the statute of limitations defense and otherwise. Most of the documents that Plaintiffs were compelled to produce in the Privilege Discovery Order are dated (i.e., were created) more than three (3) years prior to the filing of these lawsuits, and they are likely relevant to Defendants' statute of limitations defense in these actions. Plaintiffs have failed to provide the dates that they first consulted an attorney regarding (or first discussed among themselves) the investigation or pursuit of claims against any of the Defendants. The Court compelled Plaintiffs to answer interrogatories seeking this information in its General Discovery Order (Interrogatory Nos. 9, 10 and 12), but Plaintiffs have refused to provide adequate responses. The Court has already found that "the statute of limitations is a major issue in these cases." See Order dated July 28, 2009, at

DAE # 22

p. 6.

The other sanctions available to the Court are either inadequate or would lead to the exact same result as the sanction of dismissal. Further, lesser sanctions are incapable of addressing the additional prejudice (i.e., prejudice to defenses unrelated to the statute of limitations), which Defendants have likely suffered but can not specifically identify due to Plaintiffs' refusal to provide the relevant documents and information. "Overly lenient sanctions are to be avoided where they result in inadequate protection of discovery." Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213, 217 (Cl. App. 1997). Refusing to disclose the substance of the Plaintiffs' expert witnesses' opinions, and the bases for such opinions, is clearly prejudicial to the Defendants. A lesser sanction aimed at this particular failure to comply with the Court's General Discovery Order, such as exclusion of expert witness testimony, would lead to the same result, because expert witness testimony as to the value of the subject properties is vital to the Plaintiffs' cases given the nature of this litigation. When a party is deprived of his rights to discovery, "prejudice must be presumed." See id. The party refusing to submit to discovery must bear the burden of proving lack of prejudice. See id. Plaintiffs have not proven a lack of prejudice on the Defendants' part.

In imposing the sanctions of dismissal, the Court has considered the various factors set forth in the applicable case law. For the reasons set forth above, the Court finds that, under these circumstances, the sanction of dismissal is reasonable, it does not go beyond the necessities of the situation to foreclose a decision on the merits of the cases, and it is aimed at the specific misconduct of the Plaintiffs. See Karppi v. Greenville Terrazzo Co., Inc., 327 S.C. 538, 489 S.E.2d 679, 682 (Cl. App. 1997). Further, the sanction imposed serves to protect the rights of discovery provided by the Rules of Civil Procedure. See id. If Plaintiffs are going to file

DAE #23

lawsuits, engage in discovery under the Rules of Civil Procedure and receive the benefits thereof, but repeatedly refuse to produce their documents or provide full and meaningful responses to reasonable discovery requests after being ordered to do so by the Court, then their lawsuits should be dismissed in order to, among other things, protect the rights of discovery under the Rules.

The Court has also considered the following factors in imposing the sanctions of dismissal: (1) the "precise nature of the discovery;" (2) "the discovery posture of the case;" (3) "willfulness;" and (4) "degree of prejudice." See Griffin Grading and Clearing, Inc. v. Tire Service Equipment Mfg. Co., Inc., 334 S.C. 193, 551 S.E.2d 716, 719 (Cl. App. 1999) (citing Laney v. Hefley, 262 S.C. 54, 202 S.E.2d 12 (1974)). The discovery compelled by the Court is directed at, among other things: the statute of limitations issue in these cases (the 96 documents to be produced may be responsive to a myriad of other discovery requests served in these actions by Defendants); the critical issue of the value of the properties (Plaintiffs claim the properties had substantial value and Defendants breached their fiduciary duties by not taking them back, whereas Defendants claim the properties lacked value net of indebtedness and accepting a return of the properties would not have been in the Limited Partnerships' best interests); and the basic issue of damages or the lack thereof. The trial in the Parkview action was set to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders, and the Parkview action is almost seven (7) years old. The other cases are more than four (4) years old. Considering that Plaintiffs did not identify ninety (90) of the documents listed on their Privilege Log until July 30, 2008, Defendants could not have challenged Plaintiffs' claims of privilege earlier than they did. Many of the documents first identified in July 2008 are among the documents Plaintiffs have been compelled to produce. Nor

DAE #24

could Defendants have acted more expediently in addressing Plaintiffs' failure to provide adequate responses to the Discovery Requests.

The willfulness of the Plaintiffs' failure to comply with the discovery orders is abundantly clear, as discussed above. Plaintiffs have made the conscious choice to disobey the Court's discovery orders. The prejudice to the Defendants is also clear, as discussed above. As for the relative prejudice to the Plaintiffs, clearly it is prejudicial to dismiss Plaintiffs' actions. However, the prejudice to Plaintiffs if the cases are dismissed is not out of balance with the prejudice to Defendants as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. The prejudice to Plaintiffs is reasonable and necessary in order to counter the specific prejudice to Defendants. Further, the Court has afforded Plaintiffs ample opportunity to avoid the imposition of these sanctions, and Plaintiffs can purge the dismissal of these actions by complying with the General Discovery Order and the Privilege Discovery Order within twenty-five (25) days of the date of this Order. Plaintiffs control whether these cases stand permanently dismissed.

"Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." Griffin, 551 S.E.2d at 719. There is no question that Plaintiffs have willfully disobeyed the Court's discovery orders. By refusing to provide the Defendants with the documents and information as required by the Court's orders, Plaintiffs have also exhibited gross indifference to Defendants' rights in discovery. Defendants have carried their burden in showing that dismissal of the actions is the appropriate sanction under these circumstances. As to whether Plaintiffs have acted in bad faith, there is ample evidence that they have. Plaintiffs agreed to the entire process that ultimately resulted in the Court's Privilege Discovery Order, received benefits

DAE #25 25

from this process, and it now appears that they never intended to produce the documents they claimed to be privileged if the Court ordered them to do so. Further, Plaintiffs' initial responses to the Discovery Requests, as well as their First, Second and Third Supplemental Responses, are persistently evasive, ambiguous, incomplete and/or non-responsive. Plaintiffs have repeatedly been given a road map as to how to comply with the General Discovery Order, and the Court has afforded them many opportunities over the course of a full year to do so, but they have willfully and intentionally disobeyed the General Discovery Order at every turn.

3. Award of Expenses, Including Attorneys' Fees

In each of their Motions for Sanctions, Defendants request that they be awarded their reasonable expenses, including attorneys' fees, incurred as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. Further, in the General Discovery Order, the Court held in abeyance the Defendants' request for an award of reasonable expenses of their Motion to Compel Discovery, including attorneys' fees, pursuant to Rule 37(a)(4), SCRCF. The Court finds that Defendants should receive a monetary award to compensate them for the expenses, including attorneys' fees, that they have incurred in connection with their Motion to Compel (i.e., expenses incurred in order to obtain the General Discovery Order, pursuant to Rule 37(a)(4)) and each of their Motions for Sanctions. "Courts, by exercising their contempt power, can award attorneys' fees under a compensatory contempt theory. The award of attorneys' fees is not a punishment but an indemnification to the party bringing the action. . . . However, any component of a sanction must be directly related to the contemptuous conduct and the loss incurred by the offended party." Ex Parte Cannon, 685 S.E.2d at 827 (internal quotation marks and citations omitted). The award of expenses is remedial and civil, even though the Plaintiffs will have no opportunity to purge themselves of the

DAE #26 26

award. See id. ("A fine may also be 'remedial and civil' if paid to the complainant even though the contemnor has no opportunity to purge himself of the fine..." (citations omitted)).

In order that the Court may determine the proper amount of expenses, including attorneys' fees, required for indemnification of the Defendants, the Court will accept evidence of such expenses as follows. Within fifteen (15) calendar days of the date of this Order, Defendants shall submit to the Court an affidavit in support of their requests for expenses. Beginning on the date Defendants serve their affidavit, Plaintiffs shall have fifteen (15) calendar days to respond by affidavit or at a hearing, if a hearing is requested. The Court shall retain jurisdiction over Defendants' requests for an award of expenses, and will enter a separate order as to the amount of the award at the appropriate time. The time allotted to Defendants to file their supporting affidavit, and for Plaintiffs' response to the same, shall not affect the running of the twenty-five (25) day period in which Plaintiffs may fully comply with the Orders dated March 3, 2009 and July 28, 2009, in order to purge the sanctions of dismissal entered herein.

4. Plaintiffs' Pending Motions for Relief from July 28, 2009 Order Are Denied

On January 28, 2010, Plaintiffs filed Motions for Relief from July 28, 2009 Order Amending Court's Order Dated June 2, 2009 in each of the above-captioned actions. These motions, which purport to be motions under Rule 60(b), SCRCP, are actually untimely motions for reconsideration, subject to Rule 59(e), SCRCP. The Court's July 28, 2009 Order is an interlocutory discovery order, not a final order. As such, the Privilege Discovery Order is not subject to review by the trial court under Rule 60(b), SCRCP. Instead, the trial court may consider Plaintiffs' mislabeled motions as being additional motions for reconsideration of the Privilege Discovery Order under Rule 59(e), SCRCP (Plaintiffs previously made an oral motion

DAE #27

for reconsideration on August 24, 2009, which the Court denied). Further, Plaintiffs' motions are clearly untimely under Rule 59(e), which requires that such a motion be served "not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRCP. Plaintiffs' motions are inappropriate and are, therefore, denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT: both of the Defendants' Motions for Sanctions are hereby GRANTED; the Court finds and hereby declares that the Plaintiffs in the above-captioned actions are in CONTEMPT of court; each of the above-captioned actions is hereby DISMISSED WITH PREJUDICE as sanctions for Plaintiffs' contempt, and pursuant to Rule 37(b)(2), SCRCP, subject to the terms stated herein; and the Court finds and hereby declares that Defendants are entitled to an award of reasonable expenses, including attorneys' fees, incurred in connection with their Motion to Compel Discovery and each of their two Motions for Sanctions, and that a subsequent order shall be entered as to the amount of the award. Plaintiffs may purge the sanctions of dismissal with prejudice by showing the Court that they have fully complied with the Court's Orders dated March 3, 2009 and July 28, 2009 within twenty-five (25) calendar days of the date of this Order (i.e., the date this Order is signed, set forth below). Further, Plaintiffs' Motions for Relief from July 28, 2009 Order, which purport to be motions under Rule 60(b), SCRCP, but are actually untimely motions for reconsideration, are DENIED.

IT IS SO ORDERED.

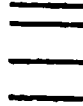
This 10th day of April, 2010.
John, South Carolina

Doyel A. Early, III
Doyel A. Early, III, Circuit Court Judge

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & O.S.
109 BROAD STREET, SUITE 100
CHARLESTON, SC 29401-3210
RETURN SERVICE REQUESTED



www3.charlestoncounty.org



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RECEIVED OCT 01 2010

PENDARVIS, THOMAS A
500 CARTERET ST STE A
BEAUFORT SC 29902-5066

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC
ORDER - ORDER DENYING PLNTFFS' MOTION FOR RECONSIDERATION

THIS JUDGMENT WAS ENTERED ON THE 20TH DAY OF SEPTEMBER, 2010 AND A COPY MAILED
FIRST-CLASS THIS 28TH DAY OF SEPTEMBER, 2010 TO ALL COUNSEL OF RECORD AND/OR
ALL PERSONS ENTITLED TO RECEIVE NOTICE.
YOU MAY VIEW AND DOWNLOAD THIS DOCUMENT AT WWW3.CHARLESTONCOUNTY.ORG

PENDARVIS, THOMAS A
500 CARTERET ST STE A
BEAUFORT SC 29902-5066

2005-CP-10-004229
RENTZ, RHODA G ETAL ETC
VS.
ORLEANS GARDENS ETAL ETC



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Carolina Management Corporation of
Beaufort, *et al.*, Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Orangeburg County
C.A. No. 2005-CP-38-1

Charleston County
C.A. No. 2005-CP-10-4229

Beaufort County
C.A. No. 2005-CP-07-1989

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER

Plaintiffs have filed a motion seeking reconsideration of this court's order dated April 6, 2010, pursuant to Rule 59, SCRCP. The order was signed after Plaintiffs repeatedly failed to comply with orders dealing with discovery dated March 3, 2009 and July 28, 2009. Each of those orders have resulted from numerous hearings, motions, memoranda, arguments and rulings, including rulings denying Plaintiff's Rule 59/60 motions seeking reconsideration of these orders.

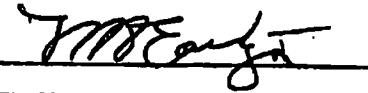
[Handwritten signature]

FILED
2010 SEP 20 AM 10:19
JULIE J. BATES-ERONG
CLERK OF COURT

The court has carefully reconsidered all of Plaintiff's arguments in support of their motion, revisited all prior orders and the cases, memoranda and exhibits presented at each hearing; the court is still of the opinion that the previous orders were a correct application of the law to this factual matter.

Therefore Plaintiff's motion is DENIED.

IT IS SO ORDERED.


The Honorable Doyet A. Early, III

Sept 16, 2010
Beaufort, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-10-4229

Rhoda G. Rentz, Mary Jane Pike, Eva Marie Reynolds, and
Joanne O. Mercy, individually and in their capacities as the
Limited Partners of Orleans Gardens, a South Carolina
Limited Partnership. Appellants,

vs.

Orleans Gardens, a South Carolina Limited Partnership;
Apartment Investment and Management Company a/k/a
AIMCO; Insignia Financial Group, Inc.; AmReal Corporation
a/ka and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John
Doe, a generic designation for a party or parties whose true
identity is unknown Respondents.

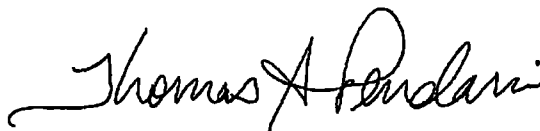
PROOF OF SERVICE

I, Thomas A. Pendarvis, an attorney with PENDARVIS LAW OFFICES, P.C., certify that
I have served one (1) copy of NOTICE OF APPEAL on counsel for Respondents, by depositing
a copy of the same in the United States Mail, postage prepaid, on the 28th day of October,
2010 addressed to:

Ellis M. Johnston, II, J.D.
Calvin T. Vick, Jr., J.D.
Jesse C. Belcher, Jr., J.D.
HAYNSWORTH SINKLER BOYD, PA
PO Box 2048
Greenville, SC 29602

Marvin D. Infinger, J.D.
Ann Ross Rosen, J.D.
HAYNSWORTH SINKLER BOYD, PA
134 Meeting Street, 3rd Floor
Charleston, SC 29401

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink, reading "Thomas A. Pendarvis". The signature is fluid and cursive, with a horizontal line extending from the left side of the first letter 'T'.

Thomas A. Pendarvis (SC Bar # 064918)
500 Carteret St., Suite A
Beaufort, SC 29902-5066
(843) 524.9500 tel.
(843) 524.9501 fax.
Thomas@PendarvisLaw.com

October 28, 2010

Beaufort, SC 29902



3. ORDER GRANTING DEFENDANTS' MOTION TO COMPEL, DATED NOVEMBER 6, 2008, dated March 3, 2009, a copy of which is attached as Exhibit 3.
4. ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO COMPEL, DATED JULY 29, 2005, dated March 3, 2009, a copy of which is attached as Exhibit 4.
5. ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY, dated June 2, 2009, a copy of which is attached as Exhibit 5.
6. ORDER DENYING PLAINTIFFS' MOTION TO ALTER OR AMEND ORDER GRANTING DEFENDANTS' MOTION TO COMPEL DATED NOVEMBER 6, 2008, dated June 16, 2009, a copy of which is attached as Exhibit 6.
7. ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009, dated July 28, 2009, a copy of which is attached as Exhibit 7.
8. ORDER GRANTING DEFENDANTS' TWO MOTIONS FOR SANCTIONS, FINDING PLAINTIFFS IN CONTEMPT OF COURT, AND DISMISSING THE ABOVE-CAPTIONED ACTIONS AS SANCTIONS FOR PLAINTIFFS' CONTEMPT, dated April 6, 2010, a copy of which is attached as Exhibit 8.
9. ORDER denying Plaintiffs' motion for reconsideration, dated September 16, 2010, filed on September 20, 2010, and receipt of written notice of entry of which was received by Counsel for Appellants on November 29, 2010, a copy of which is attached as Exhibit 9.

The above Orders were issued by the Honorable Doyet A. Early, III.

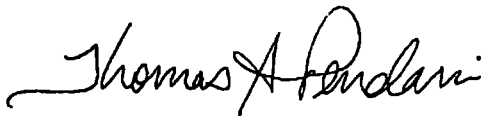
10. ORDER appointing the Honorable Doyet A. Early, III to hear and decide all matters pertaining to these cases, dated March 7, 2006, issued by Chief

Justice Jean Hoefer Toal, a copy of which is attached as Exhibit 10.

Respectfully submitted,

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THE BAILEY LAW FIRM, P.A.
PO Box 1437
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Counsel for Appellants

December 3, 2010

Beaufort, South Carolina

OTHER COUNSEL OF RECORD:

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Jesse C. Belcher, J.D.
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Marvin D. Infinger, J.D.
Anne Ross Rosen, J.D.
HAYNSWORTH SINKLER BOYD, P.A.
134 Meeting Street, 3rd Floor
Charleston SC 29401

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2003-CP-07-726
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Orangeburg County
) C.A. No. 2005-CP-38-1131
)

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Charleston County
) C.A. No. 2005-CP-10-4229
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2005-CP-07-1989
)

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2005-CP-07-1990
)

ORDER

This matter is before the court upon Plaintiffs' Motion to Compel #6 dated June 12, 2008 seeking discovery of certain financial information from Defendants which Plaintiffs deem necessary for their expert to give opinions on the appropriate level of punitive damages that might be awarded. The court finds that there is sufficient information publicly available through filings with the Securities and Exchange Commission to satisfy this request, and therefore denies Plaintiffs' Motion to Compel #6 dated June 12, 2008.

Greenville: 651588 v.1

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IT IS SO ORDERED



The Honorable Doyet A. Early, III,
Judge, 2nd Judicial Circuit

Dated this 18 day of August, 2008
Greenville South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs.

v.

Parkview Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.)

)

)

)Beaufort County
C.A. No. 2003-CP-07-726Laurance H. Davis, Jr., *et al.*, Plaintiffs.

v.

Roosevelt Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.)

)

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)Orangeburg County
C.A. No. 2005-CP-38-1131Rhonda G. Rentz, *et al.*, Plaintiffs.

v.

Orleans Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.)

)

)

)Charleston County
C.A. No. 2005-CP-10-4229Laurance H. Davis, Jr., *et al.*, Plaintiffs.

v.

Palmetto Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.)

)

)

)Beaufort County
C.A. No. 2005-CP-07-1989Carolina Management Corporation of Beaufort, *et al.*, Plaintiffs.

v.

Pinewood Park Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.)

)

)

)Beaufort County
C.A. No. 2005-CP-07-1990**ORDER DENYING
PLAINTIFFS' MOTION TO COMPEL # 2**

THESE MATTERS COME BEFORE THE COURT on Plaintiffs' Motion to Compel Production, dated November 7, 2007 (hereinafter, "Motion"). In each of the above-captioned actions. The Court has considered the parties' memoranda and other submissions, including the Defendants' Privilege Log, a copy of which was provided to the Court and to Plaintiffs' counsel in connection with the Motion (hereinafter, "Defendants' Privilege Log"), as well as the oral argument of the parties' counsel at the hearing held on November 19, 2007. The Court finds that

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the documents identified in the Defendants' Privilege Log are privileged and that the Defendants shall not be compelled to produce such documents to Plaintiffs.

Further, the Court finds that Plaintiffs' Motion is not ripe with respect to questions that may be asked at the depositions of certain attorneys that previously represented the Defendants, such depositions having not yet taken place.

WHEREFORE, Plaintiffs' Motion is hereby DENIED. Further, Plaintiffs' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRPC, is DENIED.

IT IS SO ORDERED

This 17 day of Dec, 2008.

Bentley, South Carolina

Doyet A. Early, III.
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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)

Beaufort County
C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
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)

Orangeburg County
C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Charleston County
C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

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Beaufort County
C.A. No. 2005-CP-07-1990

ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL, DATED NOVEMBER 6, 2008

THESE MATTERS COME BEFORE THE COURT on Defendants' Motion to Compel, dated November 6, 2008 (the "Motion"), which concerns Defendants' Interrogatories and Requests for Production, dated August 28, 2008 (the "Discovery Requests"), and Plaintiffs' responses to such Discovery Requests. The Court has considered the Defendants' memorandum in support of the Motion, which was filed on December 8, 2008 ("Defendants' Memorandum"); and the oral argument of the parties' counsel at the hearing held on December 9, 2008, as well as

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the additional written materials submitted by the parties since the hearing on December 9, 2008, including Plaintiffs' Supplemental Response to Defendants' Discovery to All Plaintiffs Dated August 28, 2008 ("Supplemental Response"). The Plaintiffs did not submit a memorandum in opposition to the Motion.

The Court finds that the Defendants served the Discovery Requests upon Plaintiffs on August 28, 2008, and the Defendants subsequently granted Plaintiffs a 30-day extension to serve their responses, such that Plaintiffs' responses were due to be served by October 27, 2008. Plaintiffs failed to timely serve their responses to the Discovery Requests, and Defendants filed the Motion on November 6, 2008. Plaintiffs then served their initial responses to the Discovery Requests on November 14, 2008, but Defendants elected to proceed with the Motion, claiming that the Plaintiffs' responses to the Discovery Requests were incomplete and inadequate.

The subject matter of the Motion can be broken into two distinctive sets of issues. The first set of issues concerns whether Plaintiffs should be compelled to produce documents identified on their Privilege Log, and these issues were referred by the Court to Gary E. Clary, as Special Master, for *in camera* inspection of the subject documents. Special Master Clary's report to the Court concerning his findings is pending at this time, and those issues shall be addressed in a separate Order of this Court. The second set of issues concerns whether Plaintiffs should be compelled to provide full and complete responses to certain Interrogatories, which were identified in the Defendants' Memorandum, and whether Plaintiffs should be compelled to produce documents (separate and apart from the documents listed on Plaintiffs' Privilege Log) in response to certain Requests for Production, which were also identified in Defendants' Memorandum. At the hearing of the Motion, the Court directed the parties to make further attempts to resolve the discovery disputes presented by this second set of issues, but the parties'

attempts have not resulted in a resolution of their disputes.

On January 29, 2009, Plaintiffs served their Supplemental Response to the Discovery Requests, as well as documents Bates stamped Davis 007134-007192. Though the Defendants' Discovery Requests were directed to each of the Plaintiffs in the five (5) above-captioned actions, the Plaintiffs' Supplemental Response expressly provides that it is made only by the Plaintiffs in the Parkview action, and that the Plaintiffs in the other actions will supplement their responses to the Discovery Requests "at a later date." Further, the documents produced along with the Supplemental Response were the financial statements of only one of the Plaintiffs, Laurance Davis. As for the content of the Supplemental Response, very little additional information is provided, and Plaintiffs reaffirm their objections contained in their previous responses to the Discovery Requests.

The Defendants seek to compel the Plaintiffs to provide full and complete answers to the following Interrogatories: Nos. 3, 6-18, 20, and 22-23. The Court finds that the Plaintiffs' responses to these Interrogatories are incomplete and inadequate, and the Plaintiffs are hereby compelled to provide full and complete responses to these Interrogatories, subject only to the limitations stated herein.

The Defendants also seek to compel the Plaintiffs to produce all documents in their possession, custody or control, which are responsive to the following Requests for Production: Nos. 1-8, 10-16, 19-34, 36-43, and 45-48. The Court finds that the Plaintiffs' responses to these Requests for Production are incomplete and inadequate, and the Plaintiffs are hereby compelled to produce all documents in their possession, custody or control, which are responsive to these Requests, subject only to the limitations stated herein.

Where Plaintiffs can fully and completely respond to such Interrogatories or Requests for

Production by reference to documents that have been produced by Plaintiffs in these lawsuits, and all such documents have been Bates stamped for tracking and identification purposes,¹ Plaintiffs may so state. Any information or documents withheld on the grounds of attorney-client privilege or work product must be specifically identified, as discussed further below. With respect to Interrogatory No. 6, if the experts identified by Plaintiffs have produced written reports setting forth the opinions held by the experts and the bases for such opinions, Plaintiffs may produce such reports in response to this Interrogatory to the extent the reports contain all of the information requested. If the reports do not contain all of the requested information, Plaintiffs must supplement the information contained in the reports so as to fully and completely answer Interrogatory No. 6. If the Plaintiffs' experts have not produced such written reports, Plaintiffs must provide a summary of the important opinions held by each expert (i.e. the opinion testimony the expert is expected to give in these cases), as well as the factual bases for such opinions. A description of the expert's general experience is not sufficient.

In response to each and every Interrogatory and Request for Production, the Plaintiffs incorporate numerous general objections, which are set out in their initial discovery response and Supplemental Response prior to the Plaintiffs' specific responses to the Discovery Requests ("General Objections"). This blanket method of objecting to all of the Discovery Requests, coupled with Plaintiffs' subsequent failure to respond in any meaningful way to the particular complaints raised in Defendants' Memorandum, make it impossible for Defendants to know if

¹ Though the parties are not required to Bates stamp all documents produced, as a matter of law, the parties have agreed to Bates stamp the documents produced in these cases for purposes of tracking and identification. Due to the volume of documents produced by the parties in these cases, as a practical matter, it is unfair and ambiguous for the Plaintiffs to respond to discovery requests by merely stating that responsive documents have already been produced or are already in the possession of Defendants or their counsel, leaving open the question as to whether the referenced documents are among the Bates stamped documents produced by Plaintiffs. While the Court has not required the parties to identify the specific documents or pages by reference to specific Bates numbers when responding in this fashion, the responding party must at least identify the group of documents in a readily discernable fashion, such as "Bates stamped documents produced in these cases by Plaintiffs."

responsive information and/or documents are being withheld, and, if so, based on which specific grounds. To the extent that Plaintiffs have withheld any information or documents that would otherwise be responsive to the Discovery Requests on the grounds of attorney-client privilege or work product, such information and documents shall be sufficiently identified in Plaintiffs' Privilege Log or by other written means, so as to afford Defendants a reasonable opportunity to assess the applicability of the privilege or protection, as required by Rule 26(b)(5), SCRPC. To the extent that Plaintiffs have withheld any information or documents that would otherwise be responsive to the Discovery Requests on the grounds of any of the other General Objections contained in Plaintiffs' discovery responses, Plaintiffs are hereby compelled to provide full and complete responses to all such Interrogatories and to produce the documents responsive to all such Requests for Production. The Court notes that Defendants have withdrawn Request for Production No. 44, so no further response to that Request is required.

Plaintiffs' response to Interrogatory No. 24 indicates that each of the Plaintiffs in the above-captioned actions may not have participated in answering the Interrogatories. Each and every Plaintiff is required to provide all information reasonably available to him or her, which would be responsive to any of the Interrogatories. Further, each and every Plaintiff is required to produce all documents in his or her possession, custody or control, which would be responsive to any of the Requests for Production.

Plaintiffs shall fully comply with the terms of this Order within thirty (30) days of the date of this Order.

WHEREFORE, Defendants' Motion is GRANTED, as stated above. Further, Defendants' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRPC, is GRANTED. Defendants shall submit evidence

*held in abeyance pending
resolution of all discovery disputes -
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of the amount of their reasonable expenses of the Motion, including their attorneys' fees, within
twenty (20) days of the date of this Order. DAF

IT IS SO ORDERED

This 3rd day of March, 2009.
Bamberg, South Carolina

DAF
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2003-CP-07-726
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Orangeburg County
) C.A. No. 2005-CP-38-1131
)

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Charleston County
) C.A. No. 2005-CP-10-4229
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2005-CP-07-1989
)

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2005-CP-07-1990
)

**ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFFS' MOTION TO COMPEL, DATED JULY 29, 2005**

THESE MATTERS COME BEFORE THE COURT on Plaintiffs' Motion to Compel, dated July 29, 2005 ("Motion"), which concerns Defendants' responses to Plaintiffs' Interrogatories and Request for Production, dated April 22, 2003, in the Parkview action. The Court has considered the parties' memoranda, and the oral argument of the parties' counsel at the hearing held on July 1, 2008, as well as the additional written materials submitted by the parties since the hearing on July 1, 2008.

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It appears to the Court that the only remaining issue arising out of the Plaintiffs' Motion is the reasonable and appropriate scope of Plaintiffs' Interrogatory No. 12, Interrogatory No. 24 and Request for Production No. 6. In accordance with the Court's previous instructions to the parties, counsel for the Plaintiffs and Defendants have attempted to reach an agreement as to the reasonable and appropriate scope of such discovery requests, but have been unable to do so. The subject discovery requests, and Defendants' responses to such requests, are set forth below:

Interrogatory No. 12:

For each complaint, claim or lawsuit initiated against the responding Defendant, state:

- (a) *The title and date of each such complaint, claim or lawsuit;*
- (b) *Outline the contents of the complaint, claim or lawsuit filed in each such action;*
- (c) *The name and address of the court involved, if any, including the case number or civil action number assigned to the action; and*
- (d) *The name and address of the complaining party, if applicable, and the name and address of the attorney for such party in each such complaint, claim or lawsuit.*

ANSWER: Defendants object to this interrogatory on the grounds that it is vague and ambiguous, overly broad, unduly burdensome, and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to Interrogatory No. 12 to the extent it seeks historical information as to entities which no longer exist. Defendants further object on the basis that, to the extent such is public information, such is as easily available to Plaintiffs as Defendants. AIMCO is producing a list of lawsuits from its database.

Interrogatory No. 24:

Has the responding Defendant been investigated, reprimanded, criticized, cited or sanctioned by any governmental entity or organization with respect to the ownership, management and/or operation of any apartment complex? If so, set forth the names, addresses and telephone numbers of each such entity or organization, together with the precise nature of the investigation, reprimand, criticism, citation or sanction, and the form in which such activity occurred.

ANSWER: Defendants object to this interrogatory on the grounds that it is vague and ambiguous, overly broad, unduly burdensome, and to the extent it seeks discovery of information that is not reasonably calculated to lead to the discovery of admissible evidence. For instance, the responding Defendants are subject to a vast array of rules and regulations of federal, state, and local agencies.

Request for Production No. 6:

Originals or complete copies of any and all documentation relating to any lawsuits or other legal claims made against the responding Defendant by any limited partner of any other limited partnership in which the Defendant is or has been involved while also acting as a general partner in the Defendant Parkview Apartments Limited Partnership.

RESPONSE: Defendants object to this Request on the grounds that it is improper, overly broad, unduly burdensome, and seeks discovery of information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request to the extent that it seeks documents readily available in the public domain and already in the possession of Plaintiffs or their attorneys.

The Court finds that each of the above discovery requests is overly broad and unduly burdensome, and seeks information that will be inadmissible at the trial of this action and is not reasonably calculated to lead to the discovery of admissible evidence. As such, the above discovery requests are beyond the scope of permissible discovery, pursuant to Rule 26(b), SCRCP. However, rather than flatly denying Plaintiffs' Motion with respect to these discovery requests, the Court orders the Defendants AIMCO, AmReal and Barton Tuck ("Tuck") to produce the following information and documents that are reasonably available to them, within thirty (30) days of the date of this Order:

(1) Identify each lawsuit known to the Defendants AIMCO, AmReal or Tuck, which was initiated against AmReal or Tuck between 1984 and 2004, or initiated against AIMCO between 1994 and 2004, and which involved each of the following:

- (a) claims by limited partners of a limited partnership, as plaintiffs, against the Defendants AIMCO, Tuck or AmReal, as general partners of the same limited partnership;
- (b) allegations that the Defendants AIMCO, Tuck or AmReal breached fiduciary duties owed to the plaintiff limited partners; and
- (c) allegations that the plaintiff limited partners' claims arise out of or are related to the said Defendants' ownership, management and/or operation of low-income apartment housing.

The scope of this discovery does not include lawsuits based on tenant or prospective tenant complaints of any kind, employment disputes, construction disputes, vendor disputes, violation of any applicable environmental laws or regulations, claims of personal injury or property

damage, claims of simple breach of contract unrelated to the general partner-limited partner fiduciary relationship, or similar claims that are wholly unrelated to the subject matter of these cases. Defendants may comply with this discovery by providing a listing of the litigation with sufficient descriptors such that Plaintiffs can locate the court filings. The Court notes that Defendants have informed it and the Plaintiffs that, with respect to information that is reasonably available to Defendants AIMCO, AmReal and Tuck, the lawsuits responsive to this discovery have been previously identified to the Plaintiffs.

(2) Identify all formal administrative proceedings initiated by the United States Department of Housing and Urban Development ("HUD") against Defendants AmReal or Tuck between 1984 and 2001, or against Defendant AIMCO between 1994 and 2001, which involved or resulted in each of the following:

- (a) fines, financial penalties or financial settlements paid to HUD by Defendants AIMCO, AmReal or Tuck; and
- (b) alleged violation of HUD regulations by Defendants AIMCO, AmReal or Tuck in the course of their ownership, management and/or operation of any low-income apartment housing.

For the purposes of this discovery, "administrative proceedings" shall be limited to those matters in which HUD sought administrative relief for the violation of a federal regulation or other law. The scope of this discovery does not include proceedings based on tenant or prospective tenant complaints of any kind, employment disputes, construction disputes, vendor disputes, violation of any applicable environmental laws or regulations, claims of personal injury or property damage, or similar claims that are wholly unrelated to the subject matter of these cases. In lieu of identifying the administrative proceedings responsive to this discovery by written response, Defendants may produce documents that would be responsive to this discovery.

WHEREFORE, Plaintiffs' Motion is GRANTED, in part, with respect to the information or documents that Defendants are required to produce to Plaintiffs, as stated above. Except as expressly provided above, the Motion is DENIED. Further, Plaintiffs' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRPC, is DENIED.

IT IS SO ORDERED

This 3rd day of March, 2009.
Burden, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2003-CP-07-726
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Orangeburg County
) C.A. No. 2005-CP-
)

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Charleston County
) C.A. No. 2005-CP-10-4229
)

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina Limited
Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2005-CP-07-1989
)

Carolina Management Corporation of Beaufort,
et al., Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

)
)
) Beaufort County
) C.A. No. 2005-CP-07-1990
)

2009 JUN -1, PM 12:45
ELIZABETH M. SMITH
BEAUFORT COUNTY S.C.
CLERK OF COURT

ORDER ADOPTING FINDINGS AND CONCLUSIONS OF SPECIAL MASTER CLARY

By Orders of this Court dated December 30, 2008, January 31, 2009, and April 9, 2009 (collectively, "Prior Orders"), the Court appointed the Honorable Gary E. Clary as Special Master in these actions for the purposes set forth in such Prior Orders. Pursuant to the Prior Orders, which are incorporated herein by reference, Special Master Clary issued his Reports to the Court, dated April 14, 2009 and April 22, 2009 (collectively, "Reports"). The Reports contain Special Master Clary's findings and conclusions with respect to the matters referred to

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him. Counsel for the parties have advised the Court that they wish to be heard concerning their respective arguments and objections to the findings and conclusions contained in the Reports.

The Reports are hereby adopted verbatim as an Order of the Court. The Reports, which are attached hereto, are incorporated herein by reference. This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRPC. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(e) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any.

IT IS SO ORDERED

This 3 day of June, 2009.

Barney South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
Case No.: 2003-CP-07-726

Davis, et al.

V. ~~2009~~ JUN 19 AM 11:00 Parkview Apartments LP, et al.

Plaintiff(s)

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

Defendant(s)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☒ DECISION BY COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON: ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. nonsuit)
☐ Rule 43(k), SCRPC (Settled); ☐ Other - _____)
- ☐ ACTION STRICKEN (CHECK REASON: ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding Arbitration, Subject to right to request to confirm, vacate or modify arbitration award; ☐ Other: _____)

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by Court

After carefully reviewing all evidence before me and my prior order in the above-referenced matter, the Applicant's Motion to Alter or Amend Order Granting Defendant's Motion to Compel, dated November 6, 2008, Pursuant to Rule 59(e), SCRPC, is hereby DENIED.

Dated at ^{Aiken} ~~Bamberg~~, South Carolina, Date June 16, 2009 Judge W.B. Early Jr.

This judgment was entered on the 16th Day of June, 2009, and a copy mailed this 22 Day of June, 2009, to attorneys of record or to parties as follows:

Attorney for Plaintiff(s)
Joel D. Bailey
Bailey Law Firm
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Attorney for Defendant(s)
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Greenville, SC 29602-2048

Calvin T. Vick, Jr.
Haynesworth Sinkler Boyd, P.A.
Post Office Box 2048
Greenville, SC 29602-2048



[Signature]

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,)

v.)

Parkview Apartments, a South Carolina Limited)
Partnership, *et al.*, Defendants.)Beaufort County
C.A. No. 2003-CP-07-726Laurance H. Davis, Jr., *et al.*, Plaintiffs,)

v.)

Roosevelt Gardens, a South Carolina Limited)
Partnership, *et al.*, Defendants.)Orangeburg County
C.A. No. 2005-CP-38-1131Rhonda G. Rentz, *et al.*, Plaintiffs,)

v.)

Orleans Gardens, a South Carolina Limited)
Partnership, *et al.*, Defendants.)Charleston County
C.A. No. 2005-CP-10-4229Laurance H. Davis, Jr., *et al.*, Plaintiffs,)

v.)

Palmetto Apartments, a South Carolina Limited)
Partnership, *et al.*, Defendants.)Beaufort County
C.A. No. 2005-CP-07-1989Carolina Management Corporation of Beaufort,)
et al., Plaintiffs,)

v.)

Pinewood Park Apartments, a South Carolina)
Limited Partnership, *et al.*, Defendants.)Beaufort County
C.A. No. 2005-CP-07-1990ORDER AMENDING COURT'S ORDER DATED JUNE 2, 2009

These matters are before the Court on the Plaintiffs' Motion to Alter or Amend, dated June 11, 2009, and the Defendants' Motion to Alter or Amend, dated June 15, 2009. In their respective motions, the Plaintiffs and the Defendants request that the Court amend its Order dated June 2, 2009, which adopted Special Master Clary's reports verbatim. The parties' motions were timely filed, pursuant to Rule 59(e), SCRCP, and the Court has carefully considered the parties' memoranda, exhibits, oral arguments of all counsel at the July 6, 2009



hearing, and Special Master Clary's reports, which were incorporated into the Court's June 2, 2009 Order by reference. The motions of the Plaintiffs and the Defendants are granted, in part, and denied, in part, as set forth herein.

The Court's June 2, 2009 Order and the Special Master's reports incorporated therein are sustained in all aspects, except for the following amendments thereto:

(1) With regard to the Plaintiffs' argument that the fiduciary duty exception applies to Defendants' privileged documents, the Court finds that the requisite mutuality of interest between the parties ceased to exist as of December 9, 1999, which is the date of Mr. Weinberg's first letter to a general partner threatening litigation (AMREAL 014864, attached to Defendants' Memorandum as Exhibit 1). Accordingly, the fiduciary duty exception is not available to the Plaintiffs with regard to any privileged document dated (i.e., created) after December 9, 1999, and the following privileged documents, which were previously designated for production, shall not be produced:

Defendants' Documents (listed on pp. 12-14 of the Special Master's April 14, 2009 report):

1	AMREAL 00573-00576
20	AMREAL 004865-004867
23	GWB 000011
60	GWB 000271
76	GWB 000458-000459
78	GWB 000484

"Bryan Cave" Documents (listed on pp. 14-17 of the Special Master's April 14, 2009 report):

2	AMREAL 014670-014671
3	AMREAL 014672-014681
16	AMREAL 014875

17	AMREAL 014876
18	AMREAL 014877-014879
19	AMREAL 014880-014886
20	AMREAL 014887-014890
21	AMREAL 014891-014892
22	AMREAL 014893-014894
24	AMREAL 014896-014897
26	AMREAL 014899
27	AMREAL 014900-014902
28	AMREAL 014903-014904
30	AMREAL 014906
31	AMREAL 014907
32	AMREAL 014908
33	AMREAL 014909
34	AMREAL 014910-014912
36	AMREAL 014914
37	AMREAL 014915
59	AMREAL 015060-015061
60	AMREAL 015062-015066
62	AMREAL 015068-015071
63	AMREAL 015072-015074
64	AMREAL 015075-015077
66	AMREAL 015079-015081
67	AMREAL 015087
68	AMREAL 015091-015092
69	AMREAL 015093-015095
70	AMREAL 015100-015103
71	AMREAL 015104-015107
72	AMREAL 015118-015119
73	AMREAL 015120-015122
74	AMREAL 015123-015126
75	AMREAL 015136-015138
76	AMREAL 015139-015140
77	AMREAL 015141-015144
78	AMREAL 015145-015151
79	AMREAL 015152-015153
81	AMREAL 015157-015167
87	AMREAL 015209-015213
89	AMREAL 015256
90	AMREAL 015257
91	AMREAL 015258
92	AMREAL 015259-015261
93	AMREAL 015262-015263
94	AMREAL 015268-015269
95	AMREAL 015272-015273

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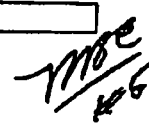
96	AMREAL 015276-015277
97	AMREAL 015278-015279
98	AMREAL 015282-015283
99	AMREAL 015284
100	AMREAL 015285-015286
101	AMREAL 015287-015297
102	AMREAL 015298-015306
103	AMREAL 015307-015316
104	AMREAL 015317-015332
108	AMREAL 015341-015342
109	AMREAL 015343-015344
110	AMREAL 015345-015346
112	AMREAL 015350-015352
113	AMREAL 015353-015357
114	AMREAL 015358-015362
115	AMREAL 015363-015366
116	AMREAL 015367-015369
129	AMREAL 015423-015426
130	AMREAL 015427-015430
131	AMREAL 015431-015436
132	AMREAL 015437-015442
133	AMREAL 015443-015445

(2) The Court finds that the limited power of attorney from Mary Jane Pike to Jim Pike and/or Jane Miller was valid and there was no waiver of privilege as a result of documents being provided to Jim Pike and/or Jane Miller. The subject documents are identified in Special Master Clary's reports as Plaintiffs' documents 8, 9, 46, 54, 59, 100 and 103. However, two of these documents (46 - Bailey 3735, dated 2/14/01; 54 - Bailey 4019-4020, dated 9/19/02) are subject to production under paragraph 4 below, so they shall be produced as previously ordered. The net result of the Court's findings is that the following documents, which were previously designated for production, shall not be produced:

8	Parkview 2114-2115
9	Parkview 2143
59	Bailey 4055
100	Bailey 4874-4875

MTC
AK

(3) The Special Master concluded that documents involving communications with prospective clients of Mr. Bailey were not privileged and should be produced, because Mr. Bailey lacked the necessary attorney-client relationship with such prospective clients. Plaintiffs argue that the attorney-client privilege extends to communications between Mr. Bailey and prospective clients, such as Warren Griffin, a limited partner in Lincoln Limited Partnership who did not retain Mr. Bailey and is not a party to these lawsuits. The Court agrees with the Plaintiffs. Communications that are solely between Mr. Bailey and prospective clients, who are not parties (or their predecessors or successors) to these lawsuits, are privileged and should not be produced. However, after reviewing the Special Master's reports and the Plaintiffs' Privilege Log, it appears that there are no such documents. There are, however, communications between Mr. Bailey and his current clients (Plaintiffs) concerning, in whole or in part, Lincoln Limited Partnership. Mr. Griffin is a party to some of these communications, but his participation does not, itself, destroy the privilege. Such documents are privileged unless the privilege has been impliedly waived by the Plaintiffs as described in paragraph 4 below (i.e., Plaintiffs have impliedly waived privilege as to documents dated more than three years prior to the filing of these lawsuits). The Court finds that two of the documents concerning the Lincoln Limited Partnership, which were designated for production by the Special Master, are privileged and are not subject to the implied waiver described in paragraph 4. These documents are communications occurring in 2004 between Mr. Bailey and Plaintiffs, Rentz and Hodge. Accordingly, the following documents, which were previously designated for production, shall not be produced:

Handwritten signature and initials, possibly "MBC" and "10/6", in the bottom right corner of the page.

83	Bailey 4593

(4) The Court finds that the statute of limitations is a major issue in these cases, and, as shown in the Defendants' Memorandum and exhibits thereto, that the Plaintiffs impliedly waived their claims of privilege with respect to documents dated (i.e., created) more than three years prior to the filing of these lawsuits. As a result, the following documents, which were previously designated for protection, shall be produced:

12	Bailey 3059
13	Bailey 3060
14	Bailey 3067-3069
15	Bailey 3070-3072
17	Bailey 3077-3078
18	Bailey 3082
19	Bailey 3105
20	Bailey 3148
21	Bailey 3151
22	Bailey 3152
23	Bailey 3153
24	Bailey 3154
25	Bailey 3155-3156
26	Bailey 3180
27	Bailey 3209-3212
28	Bailey 3215
29	Bailey 3216
30	Bailey 3217
31	Bailey 3316
34	Bailey 3321
38	Bailey 3333
39	Bailey 3334-3335
40	Bailey 3512
41	Bailey 3526-3528
42	Bailey 3695
43	Bailey 3715-3719
44	Bailey 3721-3726
45	Bailey 3731-3732
47	Bailey 3737
48	Bailey 3738

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49	Bailey 3754-3755
51	Bailey 3758-3759
52	Bailey 3768
53	Bailey 3799
66	Bailey 4218-4219
77	Bailey 4560
85	Bailey 4783
86	Bailey 4785-4787
87	Bailey 4804
88	Bailey 4808-4809
89	Bailey 4810
91	Bailey 4827
93	Bailey 4837
94	Bailey 4842
95	Bailey 4843
97	Bailey 4847-4851
98	Bailey 4854
99	Bailey 4859-4868
110	Bailey 4999
111	Bailey 5002-5004
112	Bailey 5008-5012
113	Bailey 5016
114	Bailey 5024
116	Bailey 5028
117	Bailey 5056
118	Bailey 5062
119	Bailey 5064
120	Bailey 5065-5069
121	Bailey 5071
122	Bailey 5073
123	Bailey 5074
124	Bailey 5080-5081
125	Bailey 5088-5089
126	Bailey 5092

(5) The Court finds that the Defendants' privileged documents identified as "Bryan Cave" documents Nos. 2 and 3 (listed on p. 15 of the Special Master's April 14, 2009 report) are not subject to the fiduciary duty exception, because these documents are not communications between a general partner, acting in that capacity, and the Limited Partnerships' attorneys.

WRC
2/7

Rather, these documents concern communications between AIMCO, acting in its individual capacity, and AIMCO's separate counsel, Art Hessel, who did not represent the Limited Partnerships. As a result, the following documents, which were previously designated for production, shall not be produced:

2	AMREAL 014670-014671
3	AMREAL 014672-014681

The Court's June 2, 2009 Order, and the Special Master's reports incorporated therein, are hereby amended as set forth above. In sum, pursuant to the Court's June 2, 2009 Order, as amended herein, the Plaintiffs and Defendants are ordered to produce the following documents within seven (7) days of the date of this Order:

Plaintiffs Shall Produce:

1	Parkview 1951-1952
5	Parkview 2083
12	Bailey 3059
13	Bailey 3060
14	Bailey 3067-3069
15	Bailey 3070-3072
16	Bailey 3073
17	Bailey 3077-3078
18	Bailey 3082
19	Bailey 3105
20	Bailey 3148
21	Bailey 3151
22	Bailey 3152
23	Bailey 3153
24	Bailey 3154
25	Bailey 3155-3156
26	Bailey 3180
27	Bailey 3209-3212
28	Bailey 3215
29	Bailey 3216
30	Bailey 3217

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31	Bailey 3316
32	Bailey 3317
33	Bailey 3320
34	Bailey 3321
35	Bailey 3325
36	Bailey 3326-3327
37	Bailey 3328
38	Bailey 3333
39	Bailey 3334-3335
40	Bailey 3512
41	Bailey 3526-3528
42	Bailey 3695
43	Bailey 3715-3719
44	Bailey 3721-3726
45	Bailey 3731-3732
46	Bailey 3735
47	Bailey 3737
48	Bailey 3738
49	Bailey 3754-3755
50	Bailey 3756-3757
51	Bailey 3758-3759
52	Bailey 3768
53	Bailey 3799
54	Bailey 4019-4020
66	Bailey 4218-4219
71	Bailey 4467-4468
72	Bailey 4471
73	Bailey 4473
74	Bailey 4540-4543
75	Bailey 4547
76	Bailey 4548
77	Bailey 4560
78	Bailey 4565
79	Bailey 4572-4575
80	Bailey 4576-4577
81	Bailey 4580-4582
84	Bailey 4763
85	Bailey 4783
86	Bailey 4785-4787
87	Bailey 4804
88	Bailey 4808-4809
89	Bailey 4810
90	Bailey 4811
91	Bailey 4827
92	Bailey 4831

ME
#9

93	Bailey 4837
94	Bailey 4842
95	Bailey 4843
96	Bailey 4846
97	Bailey 4847-4851
98	Bailey 4854
99	Bailey 4859-4868
104	Bailey 4885-4886
105	Bailey 4968
106	Bailey 4980
107	Bailey 4993
108	Bailey 4995 (identified as 4996 on Plaintiffs' Privilege Log)
109	Bailey 4998
110	Bailey 4999
111	Bailey 5002-5004
112	Bailey 5008-5012
113	Bailey 5016
114	Bailey 5024
115	Bailey 5025
116	Bailey 5028
117	Bailey 5056
118	Bailey 5062
119	Bailey 5064
120	Bailey 5065-5069
121	Bailey 5071
122	Bailey 5073
123	Bailey 5074
124	Bailey 5080-5081
125	Bailey 5088-5089
126	Bailey 5092

Defendants Shall Produce:

70	GWB 000380
71	GWB 000381-000421
"Bryan Cave"	
6	AMREAL 014865
7	AMREAL 014866
8	AMREAL 014867
9	AMREAL 014868
10	AMREAL 014869
11	AMREAL 014870

*7/11/11
JAC*

12	AMREAL 014871
13	AMREAL 014872
14	AMREAL 014873
39	AMREAL 014917-014922
41	AMREAL 014924-014928
42	AMREAL 014939-014944
43	AMREAL 014945-014949
44	AMREAL 014950-014953
45	AMREAL 014954-014959
46	AMREAL 014960-014964
47	AMREAL 014965-014968
48	AMREAL 014984-014989
49	AMREAL 014990-014994
50	AMREAL 014995-014998
51	AMREAL 014999-015004
52	AMREAL 015005-015009
53	AMREAL 015010-015013
54	AMREAL 015020-015024
55	AMREAL 015044-015049
56	AMREAL 015050-015054
57	AMREAL 015055-015058

IT IS SO ORDERED

This 28th day of July, 2009.

Banberry, South Carolina

M. Early

Doyet A. Early, II, Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,

v.

Parkview Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

Beaufort County

C.A. No. 2003-CP-07-726

Laurance H. Davis, Jr., *et al.*, Plaintiffs,

v.

Roosevelt Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.

Orangeburg County

C.A. No. 2005-CP-38-1131

Rhonda G. Rentz, *et al.*, Plaintiffs,

v.

Orleans Gardens, a South Carolina Limited Partnership, *et al.*, Defendants.

Charleston County

C.A. No. 2005-CP-10-4229

Laurance H. Davis, Jr., *et al.*, Plaintiffs,

v.

Palmetto Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

Beaufort County

C.A. No. 2005-CP-07-1989

Carolina Management Corporation of Beaufort, *et al.*, Plaintiffs,

v.

Pinewood Park Apartments, a South Carolina Limited Partnership, *et al.*, Defendants.

Beaufort County

C.A. No. 2005-CP-07-1990

ORDER GRANTING DEFENDANTS' TWO MOTIONS FOR SANCTIONS, FINDING PLAINTIFFS IN CONTEMPT OF COURT, AND DISMISSING THE ABOVE-CAPTIONED ACTIONS AS SANCTIONS FOR PLAINTIFFS' CONTEMPT

This matter comes before the Court on Defendants' two Motions for Sanctions, dated July 24, 2009 and August 10, 2009. For the reasons set forth below, the Court grants Defendants' Motions. The Court finds and hereby declares that Plaintiffs in each of the above-captioned actions are in contempt of court as a result of their willful failure to comply with the Court's Order dated July 28, 2009 (which amended the Court's Order dated June 2, 2009), and

DRE #1



dismisses each of the above-captioned actions with prejudice as sanctions for such contempt, pursuant to Rule 37(b), SCRCP. The Court further finds and declares that Plaintiffs in each of the above-captioned actions are in contempt of court for the separate and additional reason that they have willfully disobeyed the Court's Order dated March 3, 2009. The Court dismisses each of the above-captioned actions with prejudice as sanctions for Plaintiffs' contempt with regard to the March 3, 2009 Order, as well. The Court also finds that Defendants should receive a monetary award to compensate them for the reasonable costs and attorneys' fees incurred in connection with their Motion to Compel Discovery and their two Motions for Sanctions, and the Court will enter a subsequent order declaring the amount of the award, as provided in this Order. Plaintiffs may purge the sanctions of dismissal of these actions by fully complying with both of the Court's discovery Orders, dated March 3, 2009 and July 28, 2009, within twenty-five (25) calendar days of the date of this Order.

FINDINGS OF FACT

1. General Background

By Order of the Supreme Court of South Carolina, dated March 7, 2006, these five (5) cases were assigned to the Undersigned to hear and decide all pre-trial motions and other matters pertaining to these cases, including the trial and post-trial motions. The matters before the Court concern two separate discovery disputes that date back to the summer of 2008. The first discovery dispute concerned Plaintiffs' failure to provide adequate responses to discovery requests served on August 28, 2008, and the dispute resulted in the Court's March 3, 2009 Order ("General Discovery Order"). The second discovery dispute concerned Defendants' challenges to Plaintiffs' claims of privilege for documents identified in Plaintiffs' July 28, 2008 Privilege Log, which resulted in the Court's July 28, 2009 Order ("Privilege Discovery Order"). Plaintiffs

DAE #2

have failed to comply with either of the Court's discovery orders, resulting in Defendants' two Motions for Sanctions, dated July 24, 2009 (relating to General Discovery Order) and August 10, 2009 (relating to Privilege Discovery Order). The trial in the Parkview action was scheduled to commence on May 18, 2009, and again on January 19, 2010, but the trial had to be continued both times on account of Plaintiffs' failure to comply with the South Carolina Rules of Civil Procedure, the General Discovery Order and/or the Privilege Discovery Order.

Before taking the actions set forth in this Order, the Court has considered at length all of the motions, memoranda, arguments, reports, letters from counsel, proposed orders, and orders relating to the underlying discovery disputes and the current Motions for Sanctions, including without limitation the following: Defendants' Motion to Compel Discovery, dated November 6, 2008; all memoranda filed by the parties concerning Defendants' Motion to Compel; Plaintiffs' Responses to Defendants' Discovery Requests to All Plaintiffs, dated November 14, 2008; the oral argument of counsel at the December 9, 2008 hearing on Defendants' Motion to Compel; this Court's Orders dated December 30, 2008, January 31, 2009 and April 14, 2009, concerning the appointment of Special Master Clary, as well as the scope of the *in camera* review of documents by him; Plaintiffs' Supplemental Responses to Defendants' Discovery Requests to All Plaintiffs, dated January 26, 2009; this Court's Order dated March 3, 2009; Plaintiffs' Motion to Alter or Amend Order Granting Defendants' Motion to Compel, dated March 13, 2009, and all memoranda filed by the parties concerning Plaintiffs' Motion to Alter or Amend; Special Master Clary's reports to this Court, dated April 14, 2009 and April 22, 2009; this Court's Order dated June 2, 2009; the Plaintiffs' Motion to Alter or Amend the Court's Order, dated June 11, 2009; the Defendants' Motion to Alter or Amend the Court's Order, dated June 15, 2009; all memoranda filed by the parties concerning their respective motions to alter or

DAE #3

amend the June 2, 2009 Order; the oral argument of counsel at the July 6, 2009 hearing on the parties' respective motions to alter or amend the June 2, 2009 Order; this Court's Order dated July 28, 2009 (amending the June 2, 2009 Order); Defendants' Motion for Sanctions, dated July 24, 2009; Defendants' Second Motion for Sanctions, dated August 10, 2009; all memoranda (including supplemental memoranda) filed by the parties concerning either or both of Defendants' Motions for Sanctions; the oral argument of counsel at the August 24, 2009 hearing on Defendants' two Motions for Sanctions, including Plaintiffs' oral motion for reconsideration of the July 28, 2009 Order (denied); Plaintiffs' Second Supplemental Response to Defendants' Discovery Requests to All Plaintiffs, dated August 24, 2009; the oral argument of counsel at the January 14, 2010 hearing on Defendants' two Motions for Sanctions; Plaintiffs' Third Supplemental Responses to Defendants' Discovery Requests to All Plaintiffs, dated January 25, 2010; and Plaintiffs' Motions for Relief from July 28, 2009 Order, dated January 28, 2010, and all memoranda filed by the parties concerning Plaintiffs' Motions for Relief from July 28, 2009 Order.

2. Background and Findings of Fact: Defendants' First Motion for Sanctions (General Discovery Order)

Defendants' first Motion for Sanctions concerns Plaintiffs' failure to comply with the Court's General Discovery Order, which compelled Plaintiffs to fully and completely answer Defendants' August 28, 2008 discovery requests within thirty (30) days of the Order. The Court makes the following findings of fact relevant to the first Motion for Sanctions:

Defendants served the subject discovery requests ("Discovery Requests") on Plaintiffs on August 28, 2008, and granted Plaintiffs a 30-day extension to respond, making the responses due October 27, 2008. After receiving no responses from Plaintiffs, Defendants filed their Motion to

DAE #4

Compel Discovery on November 6, 2008. Plaintiffs then served their responses and objections to the Discovery Requests on November 14, 2008. As the Court would later find in the General Discovery Order, Plaintiffs' responses to numerous document requests and interrogatories were "incomplete and inadequate." Defendants sent Plaintiffs' counsel a 12-page letter, dated December 4, 2008, discussing in detail the various deficiencies in Plaintiffs' discovery responses. Plaintiffs responded, by letter dated December 8, 2008, summarily dismissing the concerns and complaints raised in Defendants' counsel's letter. On that same date, Defendants filed and served their Memorandum in Support of Motion to Compel, which essentially addressed the same deficiencies noted in Defendants' counsel's December 4, 2008 letter.

On December 9, 2008, the Court heard oral argument from counsel on Defendants' Motion to Compel. The Court, with the agreement of the parties' counsel, essentially bifurcated the issues presented in the Motion to Compel. The Motion to Compel dealt primarily with two issues: (1) Plaintiffs' failure to provide full and complete responses to interrogatories and to produce non-privileged documents that were responsive to the Discovery Requests, and (2) Plaintiffs' failure to produce documents that they had withheld under claims of privilege, which had been challenged by Defendants. As to the first issue, the Court instructed the parties to attempt to resolve their dispute without Court intervention. Failing that, they were to return to the Court for its decision. As to the second issue (disputed claims of privilege), the Court and the parties agreed to enlist the assistance of a former Circuit Court Judge, Gary E. Clary, who would review the subject documents *in camera* and report his findings to the Court before the Court proceeded to rule on the privilege issues. The privilege issues pertain to Defendants' Second Motion for Sanctions, which is discussed separately in this Order.

In the weeks following the December 9, 2008 hearing, the parties' attorneys conferred

DAG #5 5

about the resolution of the discovery dispute, and Plaintiffs' counsel advised that Plaintiffs would serve supplemental responses to the Discovery Requests by Christmas, which would address the issues raised by Defendants. Christmas came and went with no supplemental responses from Plaintiffs. Defendants' counsel inquired as to when Plaintiffs would provide their supplemental responses, and Plaintiffs' counsel advised that they would provide the supplemental responses by January 19, 2009. Plaintiffs did not serve their Supplemental Responses until January 26, 2009, and when they did, Defendants found that they did not address the deficiencies previously raised by Defendants. The parties informed the Court of the impasse, and the Court instructed the parties to submit proposed orders on the Motion to Compel with regard to the adequacy of Plaintiffs' responses to the Discovery Requests. On March 3, 2009, pursuant to Defendants' motion, the Court issued the General Discovery Order, which required Plaintiffs to "fully comply with the terms of this Order within thirty (30) days of the date of this Order." Further, the Order stated that the "Defendants' request for an award of reasonable expenses of the Motion, including their attorneys' fees, pursuant to Rule 37, SCRCF, is held in abeyance pending resolution of all discovery disputes."

On March 13, 2009, Plaintiffs filed and served their Motion to Alter or Amend the Court's March 3, 2009 Order, thereby staying the 30-day period for compliance with the General Discovery Order. Due to Plaintiffs' continuing failure to respond to discovery (and the ongoing dispute over alleged privileged materials), the Court was forced to continue the trial of the Parkview action from the May 18, 2009 term. On or about June 3, 2009, the parties' counsel received written notice that the Court had denied Plaintiffs' Motion to Alter or Amend as of that

DAE #6

date.¹ On July 21, 2009, having received no further responses from Plaintiffs, Defendants' counsel gave Plaintiffs written notice of their intent to file a motion for sanctions if Plaintiffs did not immediately comply with the General Discovery Order. Plaintiffs' counsel replied, via letter, that they "hope" to provide complete discovery responses by the end of July. Defendants filed their Motion for Sanctions on July 24, 2009, as a result of Plaintiffs' complete failure to comply with the General Discovery Order. On July 28, 2009, during a conference call between and among the Court and the parties' counsel, the Court advised the parties that the new trial date for the Parkview action would be January 19, 2010. During that call, Plaintiffs' counsel again indicated that Plaintiffs would comply with the General Discovery Order, at least in piecemeal fashion, by the end of July.

Despite Plaintiffs' assurances, they failed to provide any supplemental responses by the end of July. Thus, the Court was required to hold a hearing on, *inter alia*, Defendants' Motion for Sanctions on August 24, 2009. At the hearing, Plaintiffs' counsel informed the Court that they were then serving Plaintiffs' Second Supplemental Response to the Discovery Requests (including two boxes of documents), and that such supplemental response constituted full compliance with the Court's General Discovery Order. Based upon Plaintiffs' representation, the Court took the Motion for Sanctions under advisement. Three days later, on August 27 2009, Defendants filed and served their Supplemental Memorandum in Support of Defendants' Motions for Sanctions, showing that Plaintiffs had not, in fact, complied with the General Discovery Order, and identifying the numerous deficiencies that remained in Plaintiffs' discovery responses. As a result of Plaintiffs' continuing failure to comply with the Court's

¹ That June 3, 2009 Order was apparently lost during transmission from the Court to the Clerk of Court, so the Court issued a new order denying Plaintiffs' Motion to Alter or Amend on June 16, 2009, and the parties received written notice of the entry of that order soon thereafter. Giving Plaintiffs the benefit of the doubt, the 30-day period for compliance with the General Discovery Order recommenced on or about June 16, 2009.

DAE #7

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discovery orders, the Court was compelled to continue the scheduled trial of these cases from the January 19, 2010 trial term, by Order dated January 4, 2010.²

On January 14, 2010, the Court held a second hearing on the record concerning Defendants' Motions for Sanctions, which was the fourth hearing on the record concerning Plaintiffs' discovery deficiencies.³ At the hearing, Plaintiffs once again represented to the Court that their latest responses (i.e., Second Supplemental Responses to Discovery Requests) fully complied with the General Discovery Order. Contrary to such representation, the Court found that the Plaintiffs had not complied with the General Discovery Order, but granted Plaintiffs' request for an additional ten (10) days to fully comply. On January 25, 2010, Plaintiffs in the Parkview case served their Third Supplemental Responses to the Discovery Requests, supplementing their answers to Interrogatory Nos. 6, 18 and 19. None of the other Plaintiffs provided any supplemental response. Defendants responded by filing and serving their Second Supplemental Memorandum in Support of Motion for Sanctions Re: General Discovery Order, identifying the continuing failure of all Plaintiffs, including the Parkview Plaintiffs, to comply with the General Discovery Order.

The Court finds that, despite the numerous opportunities afforded to Plaintiffs over the last year, the Plaintiffs have persistently failed to comply with the General Discovery Order and have failed to provide any legitimate excuse for their non-compliance. Plaintiffs' continuous non-compliance is well documented in the Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009 (pp. 2-6, 12-13), Supplemental Memorandum in

² The Court took no further action concerning the Motions for Sanctions between September and December, because the Plaintiffs filed a petition in the Supreme Court (denied), and a Notice of Appeal in the Court of Appeals (dismissed), seeking immediate review of the Privilege Discovery Order. The Court of Appeals issued remittitur on December 17, 2009.

³ In addition to the hearings on the record, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies during several telephone conference calls and in-person meetings over the last 14 months.

DAE #8

Support of Defendants' Motions for Sanctions, dated August 27, 2009, and Defendants' Second Supplemental Memorandum in Support of Motion for Sanctions Re: General Discovery Order, dated February 11, 2010. Plaintiffs' failure to comply with the General Discovery Order includes the following deficiencies:

- **Contrary to the explicit instructions contained in the General Discover Order, Plaintiffs have still not disclosed the relevant opinions held by their testifying expert witnesses or the bases for said opinions in response to Interrogatory No. 6 (the Parkview Plaintiffs' Third Supplemental Responses fall well short of what is required by the General Discovery Order, as shown in Defendants' Second Supplemental Memorandum at pp. 9-14; Plaintiffs in the other cases have provided even less);⁴**
- **Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided full and complete responses to Interrogatory Nos. 9, 10 and 12, which seek information concerning the *first* communications between two or more Plaintiffs, and/or between a Plaintiff and an attorney, regarding the investigation or pursuit of legal claims against any of the Defendants, and the date(s) upon which each of the Plaintiffs agreed to retain Joel Bailey, their attorney in these actions, to represent such Plaintiff or to provide legal services concerning the investigation or pursuit of claims against the Defendants (Plaintiffs refuse to answer these interrogatories, relying on groundless objections or answering that they "do not recall"; see Defendants' Second Supplemental Memorandum**

⁴ Though the General Discovery Order addresses Plaintiffs' failure to provide adequate responses to the August 28, 2008 Discovery Requests, the answers compelled to Interrogatory No. 6 (discovery of expert witnesses' opinions and bases for same) would be responsive to discovery served in the Parkview case on November 17, 2004, as well (see Interrogatory No. 10 in November 17, 2004 discovery requests).

DAE #9

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at pp. 3-8 and Supplemental Memorandum at pp. 11-12);⁵

- Contrary to the express terms of the General Discovery Order, Plaintiffs have still not provided a full and complete response to Interrogatory No. 3, which requests, for each case, an itemized statement of all damages claimed to have been sustained by Plaintiffs (see Defendants' Supplemental Memorandum at pp. 9-10);
- Contrary to the express terms of the General Discovery Order, Plaintiffs continue to refuse to identify which documents were actually in the possession of each of the Plaintiffs, which is clearly relevant to Defendants' statute of limitations defense (i.e. what did each Plaintiff know, and when) (see Supplemental Memorandum at pp. 7-8); and
- Contrary to the express terms of the General Discovery Order, Plaintiffs only provide partial responses to Interrogatory Nos. 8, 18 (except as to Plaintiffs Davis, Pike, Reynolds and Rentz, who supplemented their response to No. 18 in the Parkview Plaintiffs' Third Supplemental Responses) and 20 (see Supplemental Memorandum at pp. 10-13).

The above findings are based upon evidence appearing in the record of these cases, including the various motions, memoranda and transcripts of the hearings identified on pp. 3-4 of this Order.

3. **Background and Findings of Fact: Defendants' Second Motion for Sanctions (Privilege Discovery Order)**

Defendants' Second Motion for Sanctions concerns Plaintiffs' failure to comply with the Court's Privilege Discovery Order, which compelled Plaintiffs to produce ninety-six (96)

⁵ Even if each of the Plaintiffs has no independent recollection of these matters, as Plaintiffs apparently contend, it is clear they could provide responses that are more complete by reviewing information readily available to them (e.g., the numerous documents from that time period that are identified on Plaintiffs' Privilege Log). The fact of consultation with an attorney, and the subject matter of the consultation, are not privileged.

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documents identified in the Order within seven (7) days of the Order. The Court makes the following findings of fact relevant to the Second Motion for Sanctions:

The underlying discovery dispute began when Plaintiffs, pursuant to this Court's verbal order during a July 1, 2008 hearing, produced a complete privilege log to Defendants on July 30, 2008 ("Privilege Log").⁶ The Privilege Log identified ninety (90) documents, dated (i.e., created) between 1998 and 2004, which had not been previously identified in this litigation. On October 8, 2008, Defendants' counsel sent a letter to Plaintiffs' counsel, challenging Plaintiffs' claims of attorney-client privilege and/or work product protection for most of the documents listed on the Privilege Log. The parties were not able to resolve their differences as to whether various documents listed on the Privilege Log were privileged or subject to discovery. Defendants filed a Motion to Compel Discovery on November 6, 2008 (same as the Motion to Compel discussed above concerning the General Discovery Order), and argued, among other things, that various documents on Plaintiffs' Privilege Log were not protected by privilege and should be produced to Defendants.⁷

On December 9, 2008, this Court heard oral argument from counsel concerning Defendants' Motion to Compel Discovery. With respect to Defendants' claims that documents on Plaintiffs' Privilege Log should be produced in discovery, the Court, Plaintiffs' counsel and Defendants' counsel all agreed that an *in camera* review of the subject documents was in order.

⁶ Plaintiffs had provided a privilege log to Defendants on or about July 21, 2005 (identifying 44 documents), in response to discovery requests served by Defendants in the Parkview case on November 17, 2004, but Plaintiffs had since acknowledged that the privilege log needed to be supplemented to identify additional documents relevant to the subject matter of these actions. These additional documents were identified in Plaintiffs' July 30, 2008 Privilege Log.

⁷ After producing their July 28, 2008 Privilege Log, Plaintiffs subsequently produced revised privilege logs dated November 14, 2008 and December 31, 2008. All three are similar in content (same documents identified), but the December 31, 2008 version was the primary version considered in the parties' arguments and the Court's deliberations leading to the entry of the Privilege Discovery Order.

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Further, the Court advised the parties that it would also order the *in camera* review of documents identified in Defendants' privilege log, which Plaintiffs had unsuccessfully sought to obtain in their own motion to compel. Specifically, the Court and the parties' counsel agreed that the Court would enlist the assistance of a retired Circuit Court Judge, Gary E. Clary, to review the subject documents (of both Plaintiffs and Defendants) *in camera* and to report his findings and conclusions to this Court, whereupon the Court would issue an order ruling on the privilege disputes. This Court then entered an Order, dated December 30, 2008, appointing Gary Clary as Special Master for the limited purpose of reviewing *in camera* the documents identified on the parties' respective privilege logs and to issue a report of his findings and conclusions to the Court.

To be clear, the Court did not refer the actions themselves, or any cause of action asserted in these actions, to Special Master Clary. The scope of documents and privilege issues to be reviewed *in camera* by Special Master Clary was later expanded by a Consent Order, dated January 31, 2009, and by this Court's Order dated April 9, 2009. Importantly, these orders amended the December 30, 2008 Order to expressly provide: "The subject Order is further amended to provide that Special Master Clary is to provide this Court with a Report setting forth his findings and conclusions." See Orders dated January 31, 2009 and April 9, 2009. These orders, the *in camera* review performed by Special Master Clary pursuant to these orders, and the issuance of the Special Master's reports to the Court were all the subject of agreement between and among the Court and the parties' counsel.

After meeting on several occasions with the parties' counsel and completing his *in camera* review of the various documents identified on the parties' respective privilege logs, Special Master Clary provided this Court with his Report, dated April 14, 2009, and a

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Supplemental Report, dated April 22, 2009. After a discussion with the parties' counsel, this Court entered its Order, dated June 2, 2009, adopting the findings and conclusions contained in Special Master Clary's Reports, and incorporating the Reports therein. As specifically requested by counsel for the Plaintiffs and the Defendants, the Court included the following language in its Order:

"This action is taken without prejudice to the parties' rights to make any arguments or objections concerning the findings and conclusions contained in the Reports, or the subject matter thereof, via Motion(s) to Alter or Amend this Order, pursuant to Rule 59(e), SCRCF. As requested by the parties' counsel, the Court will grant a hearing on any Rule 59(e) Motion filed by the parties with respect to this Order and will afford the parties full consideration of any arguments or objections stated in such Motion(s), if any."

See Order dated June 2, 2009. Plaintiffs then timely filed their Motion to Alter or Amend the June 2, 2009 Order, on June 11, 2009. Defendants also timely filed their Motion to Alter or Amend the June 2, 2009 Order, on June 15, 2009. On July 2, 2009, Plaintiffs and Defendants each served their memoranda in support of their respective motions to amend the June 2, 2009 Order, and the Court heard oral argument from the parties' counsel during a lengthy hearing on July 6, 2009.

On July 28, 2009, this Court entered the Privilege Discovery Order, amending the June 2, 2009 Order, and granting in part and denying in part each of the parties' Rule 59(e) Motions. In the Order, the Court specifically designated, by Bates number, the documents to be produced by Plaintiffs and the documents to be produced by Defendants. Because the designated documents were readily available to the parties for production, having been previously Bates numbered and provided for *in camera* inspection, the Court ordered the parties to produce the documents within seven (7) days of the date of the Order. See Order dated July 28, 2009. Defendants served a copy of the Privilege Discovery Order on Plaintiffs' counsel, via U.S. mail, on July 30, 2009.

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See Defendants' Certificate of Service, dated July 30, 2009. Defendants also provided an electronic copy of the Order to Plaintiffs' counsel via e-mail on July 30, 2009. See Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009, at Exhibit F.

Pursuant to the terms of the Privilege Discovery Order, Defendants produced their designated documents to Plaintiffs on August 3, 2009. See Memorandum in Support of Defendants' Two Motions for Sanctions, dated August 21, 2009, at Exhibit G. Plaintiffs, however, failed to produce their designated documents as required by the Court's Order. On August 10, 2009, having received no documents from Plaintiffs, nor any indication as to when and if Plaintiffs intended to comply with the Court's Order, Defendants filed and served their Second Motion for Sanctions.

Defendants served their Memorandum in Support of Defendants' Two Motions for Sanctions on August 21, 2009, and the Court heard oral argument from the parties' counsel on August 24, 2009. At the hearing, Plaintiffs' counsel confirmed that the Plaintiffs had not produced any of the ninety-six (96) documents they were compelled to produce in the Privilege Discovery Order. In response to the Court's inquiries, Plaintiffs' counsel informed the Court that the individual Plaintiffs had still not determined whether they would produce the subject documents in compliance with the Order or refuse to produce the documents and seek to appeal the Order. Plaintiffs' counsel informed the Court that they had consulted with the Plaintiffs on this matter, and that some or all of the Plaintiffs had also consulted with other attorneys as to whether they should comply with the Privilege Discovery Order or pursue an appeal of the Order. It is well settled that the claim of privilege belongs to the client, of course, and not his attorney. The Plaintiffs alone must decide whether they will comply with the Court's Order or

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face sanctions for their failure to comply. At the August 24, 2009 hearing, the Court informed the parties' counsel that it was taking the matter under advisement, but warned that, if Plaintiffs' failure to comply with the Court's Order continued, the Court would likely dismiss the lawsuits pursuant to Rule 37(b), SCRPC. Plaintiffs made an oral motion for reconsideration of the Privilege Discovery Order at the conclusion of the hearing, which this Court denied.

On August 27, 2009, during a conference call among the parties' attorneys and the Court, the Court informed the parties' counsel that it intended to grant Defendants' Second Motion for Sanctions and dismiss the actions, but such sanctions would be vacated if Plaintiffs complied with the Privilege Discovery Order within twenty-five (25) days. The Court instructed Defendants' counsel to submit a proposed order and instructed Plaintiffs' counsel to immediately inform each of the Plaintiffs of the Court's intention to sign such an order in the next week. During a September 2, 2009 conference call with the parties' attorneys, the Court informed Plaintiffs' counsel that it would sign the aforementioned sanctions order that day. However, hours after the conference call concluded, and before the Court issued the written sanctions order, the Court was informed that Plaintiffs had filed that morning a Petition in the Supreme Court of South Carolina, seeking a Writ of Prohibition and/or a Writ of Certiorari concerning the Privilege Discovery Order and/or the sanctions order. The Court informed the parties that, in light of Plaintiffs' Petition to the Supreme Court, it would hold in abeyance the signing of the sanctions order. On September 10, 2009, Plaintiffs filed a Notice of Appeal to the Court of Appeals of South Carolina, seeking immediate review of the Privilege Discovery Order. On October 6, 2009, Plaintiffs sent a letter to Chief Justice Toal, requesting that these cases be transferred from the Undersigned to the Business Court. Chief Justice Toal denied Plaintiffs' request for a transfer on November 3, 2009. The Supreme Court denied Plaintiffs Petition on

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November 19, 2009. The Court of Appeals dismissed Plaintiffs' appeal as premature on December 2, 2009, and issued remittitur on December 17, 2009.

On January 14, 2010, the Court held a second hearing on Defendants' Motions for Sanctions, which was the fourth hearing concerning Plaintiffs' discovery deficiencies.⁸ Plaintiffs' counsel acknowledged that Plaintiffs still had not complied with the Privilege Discovery Order, and the Court instructed Defendants' counsel to revise the proposed order granting Defendants' Second Motion for Sanctions to account for the passage of time since the Court first stated it would sign the sanctions order. The Court also advised Plaintiffs' counsel that they would have ten (10) days from the date Defendants' counsel submitted the revised proposed order to respond to the proposed order. Defendants' counsel submitted the revised proposed order, with a copy to Plaintiffs' counsel, and Plaintiffs' counsel responded within the ten (10) day period, sending a letter to the Court (copied to Defendants' counsel) with alternative proposed orders and filing and serving Motions for Relief from July 28, 2009 Order Amending Court's Order Dated June 2, 2009 in each of the above-captioned cases. Plaintiffs' motions purported to be motions made under Rule 60(b), SCRCP.

The above findings are based upon evidence appearing in the record of these cases, including the various motions, memoranda and transcripts of the hearings identified on pp. 3-4 of this Order.

DISCUSSION OF APPLICABLE LAW AND CONCLUSIONS

1. Civil Contempt

At this time, Plaintiffs have given the Court no reason to believe that they intend to

⁸ In addition to the hearings on the record on December 9, 2008, July 6, 2009, August 24, 2009 and January 14, 2010, the Court and the parties' counsel have discussed Plaintiffs' discovery deficiencies on several other occasions, including conference calls and meetings off the record.

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comply with either the General Discovery Order or the Privilege Discovery Order. Indeed, their time for compliance under the terms of the two discovery orders passed many months ago. Plaintiffs have steadfastly refused to comply with the terms of the Privilege Discovery Order. The Court has afforded Plaintiffs many opportunities over the last year to comply with the terms of the General Discovery Order, but they have persistently failed to do so. They have been presented with a road map for compliance many times, through the plain terms of the General Discovery Order, the detailed memoranda served by Defendants, which specifically identify the manner in which Plaintiffs have failed to comply, and the Court's oral comments and rulings concerning the same. Further, the Plaintiffs, through their counsel, have been repeatedly warned that sanctions, including the sanctions of dismissing these actions, were not only a possible consequence, they were the likely consequence if the Plaintiffs persisted in their disobedience of the Court's orders. The Court even advised Plaintiffs that it was signing an order dismissing the actions as sanctions six (6) months ago. The Court can not escape the conclusion that Plaintiffs' failure to comply with the General Discovery Order and the Privilege Discovery Order is willful.

It is clear to the Court that Plaintiffs' failure to comply with either or both of the discovery orders has caused, and would continue to cause, extreme prejudice to Defendants. Plaintiffs' willful disobedience has deprived Defendants of critical discovery that is necessary to the presentment of their full defenses to Plaintiffs' claims. Plaintiffs' failure to produce the ninety-six (96) documents compelled in the Privilege Discovery Order, many of which appear relevant to Defendants' statute of limitations defense in these actions, continues to impede the Defendants' ability to complete discovery and prepare for trial. Defendants are similarly impacted by Plaintiffs' failure to provide complete responses to interrogatories concerning Plaintiffs' first communications with one another or with an attorney concerning the

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investigation or pursuit of claims against any of the Defendants. Defendants are also deprived of a fair opportunity to defend against Plaintiffs' claims as a result of Plaintiffs' failure to provide meaningful responses concerning the opinions held by their expert witnesses, the bases for such experts' opinions, or the damages claimed in these cases.

Further, it is inescapable that Plaintiffs' failure to obey the discovery orders has directly challenged and obstructed the Court's ability to control the administration of these cases. The trial in the Parkview action had been scheduled to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders. Plaintiffs' failure to comply with the General Discovery Order (In addition to the ongoing discovery dispute concerning the privilege issues) was a primary cause of the Court's earlier continuance of the Parkview trial from the May 18, 2009 term. The Court's and the public's interests in the orderly, prompt and efficient administration of justice can little afford to have these cases, which were filed in 2003 and 2005, held hostage by Plaintiffs' continuing failure to comply with the Court's General Discovery Order and Privilege Discovery Order. In addition to the obvious prejudice to Defendants, Plaintiffs' refusal to obey the Court's discovery orders impedes the Court's ability to control and efficiently manage its docket.

After considering the record in these cases, the Court concludes that all Plaintiffs in these actions are in contempt of court. "Contempt results from the willful disobedience of a court order, and before a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. A willful act is one ... done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done..." Ex Parte: David G. Cannon. In Re: The Estate of James Brown, 685 S.E.2d 814, 824 (Cl. App. 2009) (Internal quotation marks and citations

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omitted). The record clearly shows that all of the Plaintiffs in the above-captioned actions have willfully disobeyed both the General Discovery Order and the Privilege Discovery Order. Plaintiffs' persistent failure to comply with such orders has been both voluntary and intentional. Plaintiffs could produce the documents as required by the Privilege Discovery Order, but they choose not to do so. Plaintiffs could provide complete and intelligible responses to the interrogatories as required by the General Discovery Order, but they have chosen not to do so despite numerous opportunities. Instead, they have remained deliberately evasive and ambiguous in their responses.

While the Court is entering a finding of civil contempt, and imposing sanctions for the purpose of coercing compliance with the discovery orders and compensating and indemnifying Defendants (award of attorneys' fees), the record clearly reflects that Plaintiffs' persistent disobedience has, in fact, undermined the Court's administration of justice in these cases. "In addition, courts have the inherent power to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice. Judges have the authority to *sua sponte* use contempt proceedings to preserve the authority and dignity of their courts." *Id.* (internal quotation marks and citations omitted).

"Once the moving party has made out a *prima facie* case for contempt, the burden then shifts to the respondent to establish his ... defense and inability to comply with the order." *Id.* (internal quotation marks and citations omitted). Civil contempt "must be proven by clear and convincing evidence..." *Id.* The Court concludes that, as shown in its findings of fact, there is clear and convincing evidence of Plaintiffs' contempt (i.e., willful disobedience of both discovery orders), and Defendants have clearly made out a *prima facie* case for contempt.

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Plaintiffs have provided no defense, nor have they shown an inability to comply with either of the discovery orders. Their repeated representations that they have complied with the General Discovery Order, without more, is no defense at all in light of the clear evidence to the contrary. They freely admit that they have not complied with the terms of the Privilege Discovery Order. Instead, Plaintiffs have persisted in arguing, by way of untimely motions for reconsideration and otherwise, that the Privilege Discovery Order was wrongly decided. Plaintiffs continue to ask the Court to vacate or amend the Privilege Discovery Order, arguing, *inter alia*, that there are questions as to the effect of the implied waiver in the Orleans and Roosevelt cases, that the Court's Privilege Discovery Order was the result of mistakes of fact and law, and that the Court must now undertake a review of the 96 documents themselves. First, the Court disagrees with Plaintiffs' arguments. Once privilege was waived as to the documents (by mere filing of the suits and/or by reason of the allegations in the Orleans and Roosevelt complaints), they were subject to discovery in all five cases. There is no question that the 96 documents are relevant to the subject matter of these actions.⁹ At the July 6, 2009 hearing, which preceded the entry of the Privilege Discovery Order, in view of Special Master Clary's reports and the information contained in the parties' privilege logs, the Court did not find it necessary to review the documents themselves, nor did the parties request, or even suggest, such a review. The factual bases for the Court's rulings on the privilege issues have not changed. Second, and most importantly, Plaintiffs' dissatisfaction with the Court's rulings in the discovery orders are not an excuse for their willful disobedience of those orders. If Plaintiffs' disobedience

⁹ Plaintiffs briefly raised the question of relevance with respect to a few documents concerning Lincoln Limited Partnership in their June 11, 2009 Rule 59(e) motion, but the Court determined that the documents concerning Lincoln are relevant (see July 28, 2009 Order at p. 9). Special Master Clary's report did not find, and Plaintiffs have not contended (except as noted regarding Lincoln), that any of the 96 documents lack relevance to the subject matter of these actions.

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were excused by reason of their disagreement with the Court's rulings, a finding of contempt would never be appropriate in any case.

"In determining whether the contempt is civil or criminal, the major factor to consider is the purpose for which the power is exercised, including the nature of the relief and the purpose for which the sentence is imposed. The purpose of civil contempt is to coerce the defendant to do the thing required by the order for the benefit of the complainant, while the primary purposes of criminal contempt are to preserve the court's authority and to punish for disobedience of its orders. If it is for civil contempt, the punishment is remedial and for the benefit of the complainant. If it is for criminal contempt, the sentence is punitive and meant to vindicate the authority of the court... When sanctions are conditioned on compliance with the court's order, the contempt is civil in nature." Id. (internal quotation marks and citations omitted). The Court finds and declares that Plaintiffs are in civil contempt, due to their willful disobedience of the General Discovery Order, and due to their willful disobedience of the Privilege Discovery Order. The sanctions of dismissal imposed in this Order are intended to coerce Plaintiffs' compliance with the discovery orders, allowing them to purge the dismissal sanctions if they comply with the discovery orders within twenty-five (25) calendar days of this Order. The sanction of awarding Defendants their expenses, including attorneys' fees, of the motions necessitated by Plaintiffs' misconduct in discovery is remedial, intended to compensate Defendants and indemnify them from the losses incurred due to Plaintiffs' misconduct.

2. Rule 37 Sanctions; Grounds for Dismissal

The General Discovery Order and the Privilege Discovery Order are orders compelling discovery, made under Rule 37(a), SCRCP, in response to the Defendants' Motion to Compel Discovery. It is clear that Plaintiffs have failed to comply with either of these orders and,

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therefore, Rule 37(b)(2), SCRPC, applies. The Rule provides, in part:

"If a party ... fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule ..., ... the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following: ...

(C) An order striking out pleadings or parts thereof, ... or dismissing the action or proceeding or any part thereof ...

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders...

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust."

Rule 37(b)(2), SCRPC.

In light of Plaintiffs' refusal to comply with the Court's discovery orders, and the extreme prejudice suffered by Defendants as a result of Plaintiffs' non-compliance, the only sanction that can achieve justice is the dismissal of the lawsuits. Plaintiffs' non-compliance simply deprives Defendants of their ability to defend against Plaintiffs' claims, based on the statute of limitations defense and otherwise. Most of the documents that Plaintiffs were compelled to produce in the Privilege Discovery Order are dated (i.e., were created) more than three (3) years prior to the filing of these lawsuits, and they are likely relevant to Defendants' statute of limitations defense in these actions. Plaintiffs have failed to provide the dates that they first consulted an attorney regarding (or first discussed among themselves) the investigation or pursuit of claims against any of the Defendants. The Court compelled Plaintiffs to answer interrogatories seeking this information in its General Discovery Order (Interrogatory Nos. 9, 10 and 12), but Plaintiffs have refused to provide adequate responses. The Court has already found that "the statute of limitations is a major issue in these cases." See Order dated July 28, 2009, at

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p. 6.

The other sanctions available to the Court are either inadequate or would lead to the exact same result as the sanction of dismissal. Further, lesser sanctions are incapable of addressing the additional prejudice (i.e., prejudice to defenses unrelated to the statute of limitations), which Defendants have likely suffered but can not specifically identify due to Plaintiffs' refusal to provide the relevant documents and information. "Overly lenient sanctions are to be avoided where they result in inadequate protection of discovery." Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213, 217 (Cl. App. 1997). Refusing to disclose the substance of the Plaintiffs' expert witnesses' opinions, and the bases for such opinions, is clearly prejudicial to the Defendants. A lesser sanction aimed at this particular failure to comply with the Court's General Discovery Order, such as exclusion of expert witness testimony, would lead to the same result, because expert witness testimony as to the value of the subject properties is vital to the Plaintiffs' cases given the nature of this litigation. When a party is deprived of his rights to discovery, "prejudice must be presumed." See id. The party refusing to submit to discovery must bear the burden of proving lack of prejudice. See id. Plaintiffs have not proven a lack of prejudice on the Defendants' part.

In imposing the sanctions of dismissal, the Court has considered the various factors set forth in the applicable case law. For the reasons set forth above, the Court finds that, under these circumstances, the sanction of dismissal is reasonable, it does not go beyond the necessities of the situation to foreclose a decision on the merits of the cases, and it is aimed at the specific misconduct of the Plaintiffs. See Karpel v. Greenville Terraizo Co., Inc., 327 S.C. 538, 489 S.E.2d 679, 682 (Cl. App. 1997). Further, the sanction imposed serves to protect the rights of discovery provided by the Rules of Civil Procedure. See id. If Plaintiffs are going to file

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lawsuits, engage in discovery under the Rules of Civil Procedure and receive the benefits thereof, but repeatedly refuse to produce their documents or provide full and meaningful responses to reasonable discovery requests after being ordered to do so by the Court, then their lawsuits should be dismissed in order to, among other things, protect the rights of discovery under the Rules.

The Court has also considered the following factors in imposing the sanctions of dismissal: (1) the "precise nature of the discovery;" (2) "the discovery posture of the case;" (3) "willfulness;" and (4) "degree of prejudice." See Griffin Grading and Clearing, Inc. v. Tire Service Equipment Mfg. Co., Inc., 334 S.C. 193, 551 S.E.2d 716, 719 (Cl. App. 1999) (citing Laney v. Hesley, 262 S.C. 54, 202 S.E.2d 12 (1974)). The discovery compelled by the Court is directed at, among other things: the statute of limitations issue in these cases (the 96 documents to be produced may be responsive to a myriad of other discovery requests served in these actions by Defendants); the critical issue of the value of the properties (Plaintiffs claim the properties had substantial value and Defendants breached their fiduciary duties by not taking them back, whereas Defendants claim the properties lacked value net of indebtedness and accepting a return of the properties would not have been in the Limited Partnerships' best interests); and the basic issue of damages or the lack thereof. The trial in the Parkview action was set to commence on January 19, 2010, but had to be continued due to Plaintiffs' failure to comply with the Court's discovery orders, and the Parkview action is almost seven (7) years old. The other cases are more than four (4) years old. Considering that Plaintiffs did not identify ninety (90) of the documents listed on their Privilege Log until July 30, 2008, Defendants could not have challenged Plaintiffs' claims of privilege earlier than they did. Many of the documents first identified in July 2008 are among the documents Plaintiffs have been compelled to produce. Nor

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could Defendants have acted more expediently in addressing Plaintiffs' failure to provide adequate responses to the Discovery Requests.

The willfulness of the Plaintiffs' failure to comply with the discovery orders is abundantly clear, as discussed above. Plaintiffs have made the conscious choice to disobey the Court's discovery orders. The prejudice to the Defendants is also clear, as discussed above. As for the relative prejudice to the Plaintiffs, clearly it is prejudicial to dismiss Plaintiffs' actions. However, the prejudice to Plaintiffs if the cases are dismissed is not out of balance with the prejudice to Defendants as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. The prejudice to Plaintiffs is reasonable and necessary in order to counter the specific prejudice to Defendants. Further, the Court has afforded Plaintiffs ample opportunity to avoid the imposition of these sanctions, and Plaintiffs can purge the dismissal of these actions by complying with the General Discovery Order and the Privilege Discovery Order within twenty-five (25) days of the date of this Order. Plaintiffs control whether these cases stand permanently dismissed.

"Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." Griffin, 551 S.E.2d at 719. There is no question that Plaintiffs have willfully disobeyed the Court's discovery orders. By refusing to provide the Defendants with the documents and information as required by the Court's orders, Plaintiffs have also exhibited gross indifference to Defendants' rights in discovery. Defendants have carried their burden in showing that dismissal of the actions is the appropriate sanction under these circumstances. As to whether Plaintiffs have acted in bad faith, there is ample evidence that they have. Plaintiffs agreed to the entire process that ultimately resulted in the Court's Privilege Discovery Order, received benefits

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from this process, and it now appears that they never intended to produce the documents they claimed to be privileged if the Court ordered them to do so. Further, Plaintiffs' initial responses to the Discovery Requests, as well as their First, Second and Third Supplemental Responses, are persistently evasive, ambiguous, incomplete and/or non-responsive. Plaintiffs have repeatedly been given a road map as to how to comply with the General Discovery Order, and the Court has afforded them many opportunities over the course of a full year to do so, but they have willfully and intentionally disobeyed the General Discovery Order at every turn.

3. Award of Expenses, Including Attorneys' Fees

In each of their Motions for Sanctions, Defendants request that they be awarded their reasonable expenses, including attorneys' fees, incurred as a result of Plaintiffs' failure to comply with the Court's General Discovery Order and Privilege Discovery Order. Further, in the General Discovery Order, the Court held in abeyance the Defendants' request for an award of reasonable expenses of their Motion to Compel Discovery, including attorneys' fees, pursuant to Rule 37(a)(4), SCRPC. The Court finds that Defendants should receive a monetary award to compensate them for the expenses, including attorneys' fees, that they have incurred in connection with their Motion to Compel (i.e., expenses incurred in order to obtain the General Discovery Order, pursuant to Rule 37(a)(4)) and each of their Motions for Sanctions. "Courts, by exercising their contempt power, can award attorneys' fees under a compensatory contempt theory. The award of attorneys' fees is not a punishment but an indemnification to the party bringing the action. . . . However, any component of a sanction must be directly related to the contemptuous conduct and the loss incurred by the offended party." Ex Parte Cannon, 685 S.E.2d at 827 (internal quotation marks and citations omitted). The award of expenses is remedial and civil, even though the Plaintiffs will have no opportunity to purge themselves of the

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award. See id. ("A fine may also be 'remedial and civil' if paid to the complainant even though the contemnor has no opportunity to purge himself of the fine..." (citations omitted)).

In order that the Court may determine the proper amount of expenses, including attorneys' fees, required for indemnification of the Defendants, the Court will accept evidence of such expenses as follows. Within fifteen (15) calendar days of the date of this Order, Defendants shall submit to the Court an affidavit in support of their requests for expenses. Beginning on the date Defendants serve their affidavit, Plaintiffs shall have fifteen (15) calendar days to respond by affidavit or at a hearing, if a hearing is requested. The Court shall retain jurisdiction over Defendants' requests for an award of expenses, and will enter a separate order as to the amount of the award at the appropriate time. The time allotted to Defendants to file their supporting affidavit, and for Plaintiffs' response to the same, shall not affect the running of the twenty-five (25) day period in which Plaintiffs may fully comply with the Orders dated March 3, 2009 and July 28, 2009, in order to purge the sanctions of dismissal entered herein.

4. Plaintiffs' Pending Motions for Relief from July 28, 2009 Order Are Denied

On January 28, 2010, Plaintiffs filed Motions for Relief from July 28, 2009 Order Amending Court's Order Dated June 2, 2009 in each of the above-captioned actions. These motions, which purport to be motions under Rule 60(b), SCRCP, are actually untimely motions for reconsideration, subject to Rule 59(e), SCRCP. The Court's July 28, 2009 Order is an interlocutory discovery order, not a final order. As such, the Privilege Discovery Order is not subject to review by the trial court under Rule 60(b), SCRCP. Instead, the trial court may consider Plaintiffs' mislabeled motions as being additional motions for reconsideration of the Privilege Discovery Order under Rule 59(e), SCRCP (Plaintiffs previously made an oral motion

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for reconsideration on August 24, 2009, which the Court denied). Further, Plaintiffs' motions are clearly untimely under Rule 59(e), which requires that such a motion be served "not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRCP. Plaintiffs' motions are inappropriate and are, therefore, denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT: both of the Defendants' Motions for Sanctions are hereby GRANTED; the Court finds and hereby declares that the Plaintiffs in the above-captioned actions are in CONTEMPT of court; each of the above-captioned actions is hereby DISMISSED WITH PREJUDICE as sanctions for Plaintiffs' contempt, and pursuant to Rule 37(b)(2), SCRCP, subject to the terms stated herein; and the Court finds and hereby declares that Defendants are entitled to an award of reasonable expenses, including attorneys' fees, incurred in connection with their Motion to Compel Discovery and each of their two Motions for Sanctions, and that a subsequent order shall be entered as to the amount of the award. Plaintiffs may purge the sanctions of dismissal with prejudice by showing the Court that they have fully complied with the Court's Orders dated March 3, 2009 and July 28, 2009 within twenty-five (25) calendar days of the date of this Order (i.e., the date this Order is signed, set forth below). Further, Plaintiffs' Motions for Relief from July 28, 2009 Order, which purport to be motions under Rule 60(b), SCRCP, but are actually untimely motions for reconsideration, are DENIED.

IT IS SO ORDERED.

This 16th day of April, 2010.
John, South Carolina

Doyet A. Early, III
Doyet A. Early, III, Circuit Court Judge

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IN THE COURT OF COMMON PLEAS

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Parkview Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Roosevelt Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Rhonda G. Rentz, *et al.*, Plaintiffs,
v.
Orleans Gardens, a South Carolina
Limited Partnership, *et al.*, Defendants.

Laurance H. Davis, Jr., *et al.*, Plaintiffs,
v.
Palmetto Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Carolina Management Corporation of
Beaufort, *et al.*, Plaintiffs,
v.
Pinewood Park Apartments, a South Carolina
Limited Partnership, *et al.*, Defendants.

Beaufort County
C.A. No. 2003-CP-07-726

Orangeburg County
C.A. No. 2005-CP-38-1131

Charleston County
C.A. No. 2005-CP-10-4229

Beaufort County
C.A. No. 2005-CP-07-1989

Beaufort County
C.A. No. 2005-CP-07-1990

ORDER

Plaintiffs have filed a motion seeking reconsideration of this court's order dated April 6, 2010, pursuant to Rule 59, SCRPC. The order was signed after Plaintiffs repeatedly failed to comply with orders dealing with discovery dated March 3, 2009 and July 28, 2009. Each of those orders have resulted from numerous hearings, motions, memoranda, arguments and rulings, including rulings denying Plaintiffs Rule 59/60 motions seeking reconsideration of these orders.

[Handwritten signature]
#1



The court has carefully reconsidered all of Plaintiff's arguments in support of their motion, revisited all prior orders and the cases, memoranda and exhibits presented at each hearing; the court is still of the opinion that the previous orders were a correct application of the law to this factual matter.

Therefore Plaintiff's motion is DENIED.

IT IS SO ORDERED.



The Honorable Doyet A. Early, III

Sept 16, 2010
Beaufort, South Carolina



State of South Carolina
The Circuit Court of the Second Judicial Circuit

Doyet A. Early, III
Judge

Post Office Box 80
Bamberg, SC 29003
Phone: (803) 245-4004
Fax: (803) 245-2983
dearlyj@sccourts.org

September 16, 2010

The Honorable Jeri Ann Roseneau
Post Office Box 1128
Beaufort, South Carolina 29901-1128

Re: Laurance H. Davis, Jr. et al v. Parkview Apartments, 03-CP-07-726
Laurance H. Davis, Jr. et al v. Palmetto Apartments, 05-CP-07-1989
Carolina Management Corp of Beaufort, et al v. Pinewood Park Apartments, 05-CP-07-1990

Dear Ms. Roseneau:

Please find enclosed for filing my orders in the above cases. Please file and serve all interested parties.

Sincerely,

D. A. Early, III
D. A. Early, III

DAE:khc
Enclosures

cc: Joel Bailey, Esquire
Ellis Johnston, Esquire
Thomas Pendarvis, Esquire

The Supreme Court of South Carolina

Lawrence H. Davis, Jr., et al.,

v.

Plaintiffs,

Parkview Apartments, et al.,

Defendants.

Beaufort County
2003-CP-07-0723

Lawrence H. Davis, Jr., et al.,

v.

Plaintiffs,

Palmetto Apartments, et al.,

Defendants.

Beaufort County
2005-CP-07-1989

Carolina Management Corporation of Beaufort, et. al,

v.

Plaintiffs,

Pinewood Park Apartments,

Defendants.

Beaufort County
2005-CP-07-1990

Rhoda G. Rentz, et al.,

v.

Plaintiffs,

Orleans Gardens, et. al.,

Defendants.

Charleston County
2005-CP-10-4229

Lawrence H. Davis, Jr., et al.,

v.

Plaintiffs,

Roosevelt Gardens,

Defendants.

Orangeburg County
2005-CP-38-1131

ORDER

Pursuant to the provisions of S. C. CONST. Art. V, § 4, I find that assigning a single circuit judge to dispose of all matters arising out of the apartment management litigation currently pending and to be filed in the state court system will



promote the effective and expeditious disposition of this litigation by uniform rulings and will conserve the resources of the parties, their counsel, and the judiciary. Therefore,

IT IS ORDERED that the Honorable Doyet A. Early, III is assigned to hear and decide all pre-trial motions and other matters pertaining to these cases, including the trial and post-trial motions. Judge Early may schedule necessary hearings at any time.

S/Jean Hoefer Toal

Jean Hoefer Toal
Chief Justice

March 7, 2006
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-07-1990

Carolina Management Corporation of Beaufort, James B. Jackson, Whaley R. Hinnant, Jr., Mary Gasser Rawl and Rhoda G. Rentz, individually and in their capacities as the Limited Partners of Pinewood Park Apartments, a South Carolina Limited Partnership. Appellants,

vs.

Pinewood Park Apartments, a South Carolina Limited Partnership; Apartment Investment and Management Company a/k/a AIMCO; Insignia Financial Group, Inc.; AmReal Corporation a/ka and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation; ISTC Corporation; N. Barton Tuck, Jr.; and John Doe, a generic designation for a party or parties whose true identity is unknown Respondents.

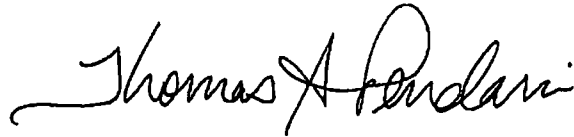
PROOF OF SERVICE

I, Thomas A. Pendarvis, an attorney with PENDARVIS LAW OFFICES, P.C., certify that I have served one (1) copy of NOTICE OF APPEAL on counsel for Respondents, by depositing a copy of the same in the United States Mail, postage prepaid, on the 3rd day of December, 2010 addressed to:

Ellis M. Johnston, II, J.D.
Calvin T. Vick, Jr., J.D.
Jesse C. Belcher, Jr., J.D.
HAYNSWORTH SINKLER BOYD, PA
PO Box 2048
Greenville, SC 29602

Marvin D. Infinger, J.D.
Ann Ross Rosen, J.D.
HAYNSWORTH SINKLER BOYD, PA
134 Meeting Street, 3rd Floor
Charleston, SC 29401

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink, reading "Thomas A. Pendarvis". The signature is fluid and cursive, with a large initial "T" and "P".

Thomas A. Pendarvis (SC Bar # 064918)
500 Carteret St., Suite A
Beaufort, SC 29902-5066
(843) 524.9500 tel.
(843) 524.9501 fax.
Thomas@PendarvisLaw.com

December 3, 2010

Beaufort, SC 29902

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Beaufort County
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2010180088

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SC COURT OF APPEALS

Carolina Management Corporation of Beaufort, James B.
Jackson, Whaley R. Hinnant, Jr., Mary Gasser Rawl and
Rhoda G. Rentz, individually and in their capacities as the
Limited Partners of Pinewood Park Apartments, a South
Carolina Limited Partnership, ... Appellants,

v.

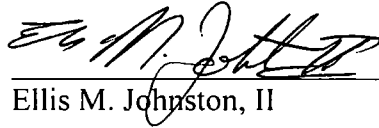
Pinewood Park Apartments, a South Carolina Limited Partnership,
Apartment Investment and Management Company a/k/a
AIMCO, Insignia Financial Group, Inc., AmReal Corporation
a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter
Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John
Doe, a generic designation for a party or parties whose true
identity is unknown, ... Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below, he served
counsel for the Appellants with a copy of *REPLY MEMORANDUM IN SUPPORT OF*
RESPONDENTS' MOTION TO DISMISS by mailing copies of the same by United States
Mail with first class postage prepaid to the following addresses:

Thomas A. Pendarvis
Pendarvis Law Offices, P.C.
500 Carteret Street, Suite A
Beaufort, South Carolina 29902-5066

Joel D. Bailey
The Bailey Law Firm, P.A.
PO Box 1437
Beaufort, South Carolina 29901-1437



Ellis M. Johnston, II

February 8, 2011
Greenville, South Carolina