

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DEC 17 2001

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

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12 UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF WASHINGTON
14

15 U. S. BANK TRUST NATIONAL
16 ASSOCIATION, in its capacity as
17 Indenture Trustee on behalf of Holders of
18 Spokane Downtown Foundation Parking
19 Revenue Bonds, 1998 (River Park Square
20 Project),

21 Plaintiff,

22 v.
23
24

25 PRUDENTIAL SECURITIES
26 INCORPORATED, a Delaware
27 corporation; WALKER PARKING
28 CONSULTANTS/ENGINEERS, INC., a
29 Michigan corporation; FOSTER PEPPER
30 & SHEFELMAN PLLC, a Washington
31
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NO. CS-01-0128-EFS
Consolidated with
NO. CS-01-0127-EFS

DEFENDANT SPOKANE
DOWNTOWN
FOUNDATION'S ANSWER
AND DEFENSES

DEFENDANT SPOKANE DOWNTOWN
FOUNDATION'S ANSWER AND
DEFENSES - 1

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2 professional limited liability company;
3 SPOKANE DOWNTOWN FOUNDATION,
4 a Washington corporation; PRESTON
5 GATES & ELLIS LLP, a Washington
6 limited liability partnership; CITIZENS
7 REALTY COMPANY, a Washington
8 corporation; LINCOLN INVESTMENT
9 COMPANY OF SPOKANE, a Washington
10 corporation; RPS MALL, L.L.C., a
11 Washington limited liability company; RPS
12 II, L.L.C., a Washington limited liability
13 company; RWR MANAGEMENT, INC., a
14 Washington corporation, doing business as
15 R. W. ROBIDEAUX AND COMPANY;
16 CITY OF SPOKANE, WASHINGTON, a
17 first-class charter city of the State of
18 Washington; SPOKANE PUBLIC
19 PARKING DEVELOPMENT AUTHORITY,
20 an unregistered Washington corporation,
21 doing business as RIVER PARK SQUARE
22 PARKING,

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Defendants.

Defendant Spokane Downtown Foundation (Foundation)
responds to and answers the Amended Complaint of Plaintiff as
follows:

DEFENDANT SPOKANE DOWNTOWN
FOUNDATION'S ANSWER AND
DEFENSES - 2

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4 **I. JURISDICTION AND VENUE**

5 1. - 2. This Defendant admits Federal subject matter jurisdiction,
6 and venue, only to the extent that plaintiffs sustain the requirements
7 for a Federal 10b-5 claim. Absent jurisdiction for a 10b-5 claim, the
8 plaintiff's claims lack jurisdiction, and jurisdiction is therefore denied.
9 Further, this Defendant lacks knowledge in respect to paragraphs 1
10 and 2.
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16 **II. SUMMARY OF COMPLAINT**

17
18 3. This defendant admits bonds were issued in connection with
19 a planned renovation and expansion of the Garage. The bonds were
20 issued by the Foundation and Prudential acted as the underwriter for
21 the Bonds. This Defendant lacks knowledge of the remaining
22 contentions, in the manner alleged by plaintiff.
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27 4. This Defendant admits that a "Walker Parking Structure
28 Financial Feasibility Study ..." was done, and that a Walker Report
29 accompanied the Official Statements. This Defendant admits that
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DEFENDANT SPOKANE DOWNTOWN
FOUNDATION'S ANSWER AND
DEFENSES - 3

1
2 Prudential acted as the underwriter, that Prudential had legal
3 assistance from Foster Pepper & Shefelman, but lacks knowledge of
4 the remaining allegations or contentions.
5

6
7 5. This Defendant admits that the sole source of payment of the
8 bonds was to be revenues from the Garage and that a credit
9 enhancement was provided by City Ordinance. This Defendant lacks
10 knowledge of the remaining contentions, in the manner alleged by
11 plaintiff.
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16 6. -7. This Defendant denies the allegations of paragraphs 6
17 and 7 insofar as they pertain to the Foundation. This Defendant lacks
18 knowledge of the contentions in respect to others.
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21 **III. THE PARTIES AND THEIR ROLES**
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23 8. - 12. This Defendant admits: Plaintiff is a trustee and bound
24 by the terms of the Indenture of Trust; Prudential Securities was the
25 underwriter; John C. Moore was the managing director of Public
26 Finance for Prudential and acted for Prudential; Walker is an
27 engineering firm with expertise in preparation of financial feasibility
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DEFENDANT SPOKANE DOWNTOWN
FOUNDATION'S ANSWER AND
DEFENSES - 4

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2 studies for public parking facilities; Walker was hired by the City;
3 Walker provided a report; and the City obtained appraisals from Auble
4 and Barrett, as well as a review from Coopers & Lybrand. This
5 Defendant lacks knowledge of the remaining allegations, in the
6
7 manner alleged by plaintiff.
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11 13. -16. This Defendant admits that the Foster Pepper &
12 Shefelman law firm is a Washington State firm with expertise in
13 securities and public finance. This Defendant admits that Foster
14 Pepper & Shefelman was engaged by Prudential, and served as
15 underwriter's counsel. This Defendant lacks knowledge of the scope
16 and limitations of Foster Pepper & Shefelman's representation, as well
17
18 as the remaining allegations.
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23 17. This Defendant admits that the Foundation is a Washington
24 non-profit corporation. It became involved as a result of efforts by the
25 City and Developers to provide United States Internal Revenue
26 Service Revenue Ruling 63-20 financing to benefit the citizens of
27 Spokane, as described in the documents and instruments which
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DEFENDANT SPOKANE DOWNTOWN
FOUNDATION'S ANSWER AND
DEFENSES - 5

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2 comprise the Transcript of Proceedings. This Defendant further
3 admits that it was served by a Board of Directors who were requested
4 to serve voluntarily for the purposes described in the Foundation's
5 Amended Articles of Incorporation. The Foundation denies being
6 subject to the direct and indirect control of the Developers and their
7 representatives. To the extent there are any remaining allegations or
8 inferences, this Defendant lacks knowledge.
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14 18. - 22. This Defendant admits that Preston, Gates & Ellis,
15 LLP, is a Washington State law firm with expertise in public finance
16 and securities. Preston, Gates & Ellis acted as issuer's counsel and
17 bond counsel for the Foundation, and in that capacity issued bond
18 opinions and provided services to the Foundation. Given the manner
19 of plaintiffs' remaining allegations, this Defendant lacks knowledge.
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25 23. - 27. This Defendant admits that the entity defendants
26 identified in paragraphs 23 through 27 were entities which conducted
27 business in Spokane, Washington. Further, this Defendant lacks
28 knowledge, given the manner of plaintiffs' remaining allegations.
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DEFENDANT SPOKANE DOWNTOWN
FOUNDATION'S ANSWER AND
DEFENSES - 6

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2 28. - 30. On information and belief, R.W. Robideau, and the
3 Robideau entities did business in Spokane, and represented the
4 Developers in aspects of the subject transaction. The Robideau
5 defendants are understood to be experienced in real property
6 management, leasing, development, renovation and had managed the
7 business of River Park Square Mall on behalf of its owners for a
8 number of years prior to the issuance of the bonds. Given the manner
9 of allegation, this Defendant lacks knowledge of the remaining
10 allegations.
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18 31. This Defendant admits that the City of Spokane is a first
19 class charter city, that it undertook a number of studies and analyses
20 in connection with the subject Garage. On information and belief, the
21 studies and analyses included the Walker Report, appraisals by Auble
22 and Barrett, and a study by Coopers & Lybrand. Given the manner of
23 allegation, this Defendant lacks knowledge of plaintiff's remaining
24 contentions in paragraph 31.
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DEFENDANT SPOKANE DOWNTOWN
FOUNDATION'S ANSWER AND
DEFENSES - 7

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2 32. - 33. This Defendant admits that the defendant Spokane
3 Public Parking Development Authority was believed to be a
4 Washington entity created by the City of Spokane. As contemplated
5 by the City, developers, and transaction instruments, the Authority
6 leased the Garage from the Foundation and assumed responsibility
7 for the operations and management of the Garage. Further, the
8 Authority leased the land underneath the facility, as more
9 appropriately described in the transaction documents which make up
10 the Transcript of Proceedings. Given the manner of contention, this
11 Defendant lacks knowledge of plaintiffs' remaining allegations, if any,
12 in paragraphs 32 and 33.
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21 34. - 36. This Defendant denies the allegations in paragraphs
22 34 through 36 insofar as they pertain to the Foundation. Given the
23 manner of contention, this Defendant lacks knowledge of the
24 remaining allegations as they relate to others.
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**DEFENDANT SPOKANE DOWNTOWN
FOUNDATION'S ANSWER AND
DEFENSES - 8**

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**IV. GENERAL ALLEGATIONS APPLICABLE TO
ALL CLAIMS FOR RELIEF**

37. - 46. The Foundation denies involvement in, liability or culpability for plaintiffs' contentions. Further, given the manner of contention, this Defendant lacks knowledge of the remaining allegations in paragraphs 37 through 46.

47. - 48. This Defendant denies involvement in, liability or culpability on the part of the Foundation. Given the manner of contention, this Defendant lacks knowledge of plaintiffs contentions in paragraphs 47 and 48, as they relate to others.

49. - 57. The Foundation denies involvement in, liability or culpability for plaintiffs' contentions. Further, given the manner of contention, this Defendant lacks knowledge of the allegations in paragraphs 49 through 57 in respect to others.

58. - 65. This Defendant denies involvement in, liability or culpability for plaintiffs' contentions. Further, given the manner of plaintiff's contentions, this Defendant lacks knowledge of the

**DEFENDANT SPOKANE DOWNTOWN
FOUNDATION'S ANSWER AND
DEFENSES - 9**

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2 allegations made in paragraphs 58 through 65, except that the Auble
3 and Barrett appraisals are written, and their contents are more
4 accurately considered in their totality.
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7 66. - 72. This Defendant acknowledges that Sabey Corporation
8 owned and operated a retail mall known as the Northtown Shopping
9 Center, within the City of Spokane, and was a competitor to the River
10 Park Square Mall. This Defendant denies any involvement in, liability
11 or culpability for plaintiff's contentions. Further, given the manner of
12 contention, this Defendant lacks knowledge of the allegations in
13 paragraphs 66 through 72 of plaintiff's complaint.
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19 73. - 82. This Defendant admits that Coopers & Lybrand was
20 retained by the City to assist it in analyzing matters relating to the
21 Garage, and admits that Coopers & Lybrand prepared certain written
22 materials in connection with its work. This Defendant denies
23 involvement in, liability or culpability for plaintiff's contentions, given
24 the manner of contention, and lacks knowledge of allegations in
25 paragraphs 73 through 82.
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**DEFENDANT SPOKANE DOWNTOWN
FOUNDATION'S ANSWER AND
DEFENSES - 10**

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2 83. This Defendant denies liability or culpability for plaintiff's
3 contentions, in respect to the Foundation. Further, this Defendant
4 lacks knowledge in respect to all others addressed by paragraph 83.
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7 84. - 96. This Defendant denies liability or culpability for
8 plaintiff's contentions. Further, given the manner of contention, this
9 Defendant lacks knowledge with respect to all others addressed by
10 paragraphs 84 through 96.
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14 97. - 102. This Defendant admits that the Foundation evolved
15 from efforts by the City and Developers to provide for Revenue Ruling
16 63-20 financing to benefit the citizens of Spokane, as described in the
17 Amended Articles of Incorporation and other documents and
18 instruments which comprise the Transcript of Proceedings. Further,
19 this Defendant admits that the City passed certain resolutions and
20 ordinances which included a pledge of parking meter revenue funds.
21 This Defendant defers to the ordinances and resolutions and
22 appropriate legislative history for their legal effect. This Defendant
23 denies liability or culpability for Plaintiff's contentions, and given the
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DEFENDANT SPOKANE DOWNTOWN
FOUNDATION'S ANSWER AND
DEFENSES - 11

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2 manner of plaintiff's contentions in paragraph 97 through 102, lacks
3 knowledge.
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5 103. - 118. This Defendant admits there are various
6 agreements and instruments regarding the lease of the facility, and
7 there are several resolutions and ordinances pertaining to the facility,
8 and related project. Respectfully, the terms and covenants therein
9 speak for themselves. This Defendant denies liability or culpability for
10 plaintiff's contentions in paragraphs 103 through 118 in respect to the
11 Foundation. Further, given the manner of contention, this Defendant
12 lacks knowledge.
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19 119. - 120. This Defendant denies liability or culpability for
20 plaintiff's contentions in paragraphs 119 and 120. Given the manner
21 of contention, this Defendant lacks knowledge.
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25 121. - 129. This Defendant denies plaintiff's allegations in
26 paragraphs 121 through 129, as they offer legal conclusions, and this
27 Defendant lacks knowledge.
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**DEFENDANT SPOKANE DOWNTOWN
FOUNDATION'S ANSWER AND
DEFENSES - 12**

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2 130. This Defendant denies liability or culpability for plaintiff's
3 contentions in paragraph 130. This Defendant lacks knowledge.
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5 131. - 133. This Defendant lacks knowledge of plaintiff's
6 contentions in paragraphs 131 through 133.
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8 134. - 152. This Defendant denies liability or culpability for
9 plaintiff's contentions, in respect to the Foundation. This Defendant
10 lacks knowledge.
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14 **FIRST CLAIM FOR RELIEF**
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16 153. The responses to the preceding paragraphs are
17 incorporated.
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19 154. -162. This Defendant denies all allegations as they pertain
20 to the Foundation, and lacks knowledge in respect to others.
21
22

23 **SECOND CLAIM FOR RELIEF**
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25 163. This Defendant incorporates its preceding responses.
26

27 164. - 171. This Defendant denies all allegations as they may
28 pertain to the Foundation, and lacks knowledge in respect to others.
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DEFENDANT SPOKANE DOWNTOWN
FOUNDATION'S ANSWER AND
DEFENSES - 13

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THIRD CLAIM FOR RELIEF

172. This Defendant incorporates its response to the preceding paragraphs.

173. - 178. This Defendant denies all allegations as they may pertain to the Foundation, and lacks knowledge in respect to others.

FOURTH CLAIM FOR RELIEF

179. This Defendant incorporates its responses to the preceding paragraphs.

180. - 183. This Defendant denies all allegations as they may pertain to the Foundation, and lacks knowledge in respect to others.

FIFTH CLAIM FOR RELIEF

184. This Defendant incorporates its responses to the preceding paragraphs.

185. - 188. These allegations relate to other parties and this Defendant lacks knowledge.

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3 **DENIAL AND AMENDMENT**
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5 189. To the extent that any allegation in Plaintiff's Amended
6
7 Complaint allegedly supports liability against the Foundation and the
8
9 same was not previously denied, the same is hereby denied. Further,
10
11 this Defendant reserves the right to amend.

12 **ADDITIONAL AND AFFIRMATIVE DEFENSES**
13

14 By way of further response and for additional and affirmative
15
16 defenses this Defendant submits:

17
18 1. The Complaint (or First Amended Complaint) fails to state a
19
20 claim against this Defendant upon which relief can be granted.

21
22 2. The claim of fraud against this Defendant is inadequately
23
24 pleaded.

25 3. Plaintiff's claims are barred by applicable statutes of
26
27 limitation, and laches.

28
29 4. Alternatively, in the exercise of reasonable care, this
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31 Defendant did not and could not have known the facts upon which any
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**DEFENDANT SPOKANE DOWNTOWN
FOUNDATION'S ANSWER AND
DEFENSES - 15**

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2 state law securities violations are based or as an instrumentality of a
3
4 municipal or quasi-municipal entity, it lacked scienter.

5 5. Plaintiff's losses were caused by factors and the acts or
6
7 omissions of other parties, and were not caused by any act or
8
9 omission of this Defendant.

10 6. On information and belief, and as alleged by other
11
12 defendants, plaintiff's claims are barred by the doctrine of res judicata
13
14 or collateral estoppel.

15 7. Plaintiff's claims are barred by their lack of due diligence,
16
17 and/or reasonable care.

18 8. On information and belief, and as alleged by other
19
20 defendants, plaintiff's claims are barred by their agent(s) decision to
21
22 go forward with the closing of the Garage transaction in September of
23
24 1998, a time when the agent(s) had notice of matters for which plaintiff
25
26 now complains.
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DEFENDANT SPOKANE DOWNTOWN
FOUNDATION'S ANSWER AND
DEFENSES - 16

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2 9. Any damages suffered by the plaintiff were the proximate
3 result of conduct or negligence of persons other than this defendant,
4 and for whom this defendant is not responsible.
5

6
7 10. Plaintiff's claims are alternatively barred by ratification,
8 estoppel or waiver.
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11 11. The transaction documents provided for express allocation
12 of risk and responsibility between the parties.
13

14 12. Alternatively, the plaintiff's claims herein resulted from
15 mutual mistake.
16

17
18 13. This Defendant is entitled to all defenses applicable to non-
19 profit and volunteer entities.
20

21
22 14. Alternatively, if any aspect of plaintiff's contentions results in
23 a judgment or verdict affecting or against the Foundation, the
24 Foundation is entitled to allocation of fault and/or liability or judgment
25 against the principal actor(s) or party(ies).
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28 15. Plaintiff's claims lack jurisdiction.
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**DEFENDANT SPOKANE DOWNTOWN
FOUNDATION'S ANSWER AND
DEFENSES - 17**

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PRAYER FOR RELIEF

WHEREFORE, having fully responded, this Defendant requests that the Court grant the following relief:

1. Entry of a final judgment dismissing all claims against this Defendant with prejudice and without an award of damages or other relief against this Defendant.

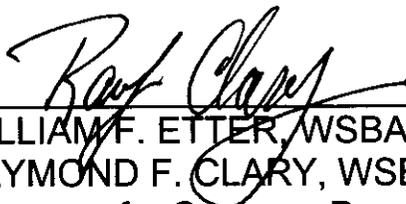
2. Allocation of fault and/or liability or judgment against the principal actor(s) or party(ies).

3. An award of reasonable fees and expenses incurred herein, including reasonable attorneys' fees.

4. Such other relief as the Court may deem just.

RESPECTFULLY SUBMITTED THIS 17th day of December, 2001.

ETTER, McMAHON, LAMBERSON & CLARY, P.C.



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Attorneys for Spokane Downtown Foundation

DEFENDANT SPOKANE DOWNTOWN
FOUNDATION'S ANSWER AND
DEFENSES - 18