

LEGAL COURIERS, INC.  
312 S. 12th Ave. P.O. Box 825  
Yakima, WA 98907-0825  
(509) 455-1111 FAX: (509) 575 0680

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THE HONORABLE EDWARD F. SHEA

DANIELSON HARRIGAN & TOLLEFSON LLP  
Arthur W. Harrigan, Jr., WSBA #1751  
Karl F. Oles, WSBA #16401  
Katherine See Kennedy, WSBA #15117  
999 Third Avenue, 4400 Wells Fargo Center  
Seattle, WA 98104  
Telephone (206) 623-1700  
Attorneys for Third-Party Defendants Roy J.  
Koegen, Anne Koegen, and Perkins Coie LLP

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

JAN - 9 2002

JAMES R. LARSEN, CLERK  
DEPUTY  
YAKIMA, WASHINGTON

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

IN RE RIVER PARK SQUARE  
PROJECT BOND LITIGATION.

Case No. CS-01-127-EFS

**ROY J. KOEGEN, ANN KOEGEN,  
AND PERKINS COIE LLP'S  
ANSWER TO CITY OF SPOKANE'S  
THIRD-PARTY COMPLAINT**

By way of answer to the Third-Party Complaint asserted by the City of Spokane ("City") at paragraphs 1-15, pages 77-82 of the Amended Answer, Counterclaim, Cross-Claims and Third-Party Claim of City of Spokane dated July 13, 2001, third-party defendants Roy J. Koegen, Anne Koegen, and Perkins Coie LLP admit, deny and assert as follows:

1. The allegations in paragraph 1 of the Third-Party Complaint are admitted.
2. The allegations in paragraph 2 of the Third-Party Complaint are admitted.
3. In response to the allegations in paragraph 3 of the Third Party Complaint, it is admitted that Roy Koegen's representation of the City was authorized by and performed for

**ROY J. KOEGEN, ANN KOEGEN,  
AND PERKINS COIE LLP'S ANSWER  
TO THIRD-PARTY COMPLAINT - 1**

ORIGINAL

LAW OFFICES  
DANIELSON HARRIGAN & TOLLEFSON LLP  
999 THIRD AVENUE, 4<sup>th</sup> FLOOR  
SEATTLE, WASHINGTON 98104  
TEL. (206) 623-1700 FAX. (206) 623-8717

1 the benefit of his marital community. The remaining allegations in paragraph 3 of the Third-  
2 Party Complaint are denied.

3 4. The allegations in paragraph 4 of the Third-Party Complaint are admitted.

4 5. The allegations in paragraph 5 of the Third-Party Complaint are admitted.

5 6. In response to the allegations in paragraph 6 of the Third Party Complaint, it is  
6 admitted that Roy Koegen's representation of the City was authorized by and performed on  
7 behalf of, for the benefit of, and with the knowledge and approval of Perkins Coie LLP. The  
8 remaining allegations in paragraph 6 of the Third-Party Complaint are denied.

9 7. In response to the allegations in paragraph 7 of the Third Party Complaint, it is  
10 admitted that Roy Koegen had an attorney-client relationship with the City that gave rise to a  
11 duty of care. The remaining allegations in paragraph 7 of the Third-Party Complaint are  
12 denied.

13 8. In response to the allegations in paragraph 8 of the Third Party Complaint, it is  
14 admitted that Roy Koegen's representation of the City included, but was not limited to,  
15 issues on which the City requested his assistance relating to the River Park Square  
16 development. The remaining allegations in paragraph 8 of the Third-Party Complaint are  
17 denied.

18 9. The allegations in paragraph 9 of the Third-Party Complaint are admitted.

19 10. In response to the allegations in paragraph 10 of the Third Party Complaint, it  
20 is admitted that Koegen's authority to bind the City was limited by applicable law and by the  
21 City's actions. The remaining allegations in paragraph 10 of the Third-Party Complaint are  
22 denied.

23 11. The allegations in paragraph 11 of the Third-Party Complaint are denied.

24 12. In response to the allegations in paragraph 12 of the Third Party Complaint, it  
25 is admitted that Roy Koegen did not advise the City that the Official Statement contained or

1 may have contained materially misleading information. It is admitted that Roy Koegen did  
2 not require revisions or modifications to the final Official Statement provided to investors. It  
3 is admitted that Roy Koegen advised the City that Walker Parking Consultants was a  
4 nationally recognized expert and that consequently the City had a right to reply on reports  
5 issued by Walker. The remaining allegations in paragraph 12 of the Third Party Complaint  
6 (and all of its various sub-parts) are denied, including the central allegation that Koegen  
7 failed to exercise due care in his representation of the City.

8 13. The allegations in paragraph 13 of the Third-Party Complaint are denied.

9 14. The allegations in paragraph 14 of the Third-Party Complaint are denied.

10 15. The allegations in paragraph 15 of the Third-Party Complaint are denied.

#### 11 AFFIRMATIVE DEFENSES

12 Having answered the allegations in the Third-Party Complaint, third-party defendants  
13 Roy Koegen, Anne Koegen, and Perkins Coie LLP assert the following affirmative defenses:

14 1. The City's Third-Party Complaint is void because the Spokane City Council  
15 never authorized nor approved initiating suit against the Third Party Defendants.

16 2. The City's Third Party Complaint is barred by the applicable statute of  
17 limitations.

18 3. The City's Third-Party Complaint fails to state a claim upon which relief can  
19 be granted.

20 4. The City will not be liable to the plaintiffs for misrepresenting the City's  
21 promise to loan parking meter revenues in 1998 because there was no misrepresentation.  
22 Current City officials seek to repudiate that promise, but that fact will not support a claim of  
23 misrepresentation in 1998. Because the City will not be liable for misrepresentation, Perkins  
24 will not be liable for contribution.  
25

1 5. The Third-Party Complaint is barred by the doctrines of estoppel, waiver, and  
2 assumption of risk.

3 6. The City has agreed to indemnify Koegen and Perkins for the acts complained  
4 of in the Third-Party Complaint.

5 7. The City's damages, if any, were caused by the wrongful acts and omissions of  
6 other parties to this action and by the City's own wrongful acts and omissions.

7 8. The City has failed to use reasonable diligence and care to mitigate its  
8 damages, if any.

9 REQUEST FOR JUDGMENT

10 Wherefore, having stated their Answer to the Third-Party Complaint, and having  
11 asserted their affirmative defenses, Third-Party Defendants Roy Koegen, Anne Koegen, and  
12 Perkins Coie LLP request that judgment be entered as follows:

13 A. Dismissing the Third-Party Complaint with prejudice.

14 B. Awarding Third-Party Defendants their costs pursuant to Fed. R. Civ. P.  
15 54(d)(1).

16 C. Awarding Third-Party Defendants such other and further relief as the Court  
17 finds appropriate.

18 DATED this 9<sup>th</sup> day of January, 2002.

19 DANIELSON HARRIGAN & TOLLEFSON LLP

20  
21 By Karl F. Oles

22 Arthur W. Harrigan, Jr., WSBA #1751

23 Karl F. Oles, WSBA #16401

24 Katherine See Kennedy, WSBA #15117

25 999 Third Avenue, 4400 Wells Fargo Center

Seattle, WA 98104

*Attorneys for Third-Party Defendants Roy J.  
Koegen, Anne Koegen, and Perkins Coie LLP*

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DANIELSON HARRIGAN & TOLLEFSON LLP  
Arthur W. Harrigan, Jr., WSBA #1751  
Karl F. Oles, WSBA #16401  
Katherine See Kennedy, WSBA #15117  
999 Third Avenue, 44<sup>th</sup> Floor  
Seattle, WA 98104  
Telephone (206) 623-1700  
Attorneys for Third-Party Defendants Roy J.  
Koegen, Anne Koegen, and Perkins Coie LLP

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

IN RE RIVER PARK SQUARE  
PROJECT BOND LITIGATION.

Case No. CS-01-128-EFS

**DECLARATION OF SERVICE**

Karen L. Crane, being first duly sworn, upon oath deposes and says:

1. That I am over the age of eighteen years, not a party hereto and am competent to testify to the facts set forth herein.

2. That on January 9, 2002, I caused to be delivered by the method indicated a true and correct copy of Roy J. Koegen, Ann Koegen, and Perkins Coie LLP's Answer to City of Spokane's Third-Party Complaint and Declaration of Service to:

Laurel H. Siddoway  
Randall & Danskin, P.S.  
601 West Riverside Avenue, Suite 1500  
Spokane, WA 99201  
Telephone: 509.747.2052/Facsimile: 509.624.2528  
*Attorneys for Defendant/Cross-Claimant and Third-Party  
Plaintiff City of Spokane*

- Via U.S. Mail
- Via Hand Delivery
- Via Facsimile
- Via Federal Express

**DECLARATION OF SERVICE - 1**

1 John D. Munding  
 2 Crumb & Munding, P.S.  
 601 West Riverside Avenue, Suite 1950  
 3 Spokane, WA 99201  
 Telephone: 509.624.6464/Facsimile 509.624.6155  
 4 *Attorneys for Plaintiff Nuveen Premium Income Municipal Fund*  
 5 *4 Inc. and Nuveen Quality Income Municipal Fund Inc.; Strong*  
 6 *Municipal Bond Fund, Inc., Smith Barney Municipal Fund,*  
 7 *Limited Term, Smith Barney Municipal High Income Fund, and*  
*Vanguard High Yield Tax Exempt Fund*

- Via U.S. Mail
- Via Hand Delivery
- Via Facsimile
- Via Federal Express

8 Peter D. Byrnes  
 Ralph E. Cromwell, Jr.  
 9 Byrnes & Keller, LLP  
 1000 Second Avenue, Suite 3800  
 10 Seattle, WA 98104  
 Telephone: 206.622.2000/Facsimile 206.622.2522  
 11 *Attorneys for Defendant Foster Pepper & Shefelman,*

- Via U.S. Mail
- Via Hand Delivery
- Via Facsimile
- Via Federal Express

12 Gary J. Ceriani  
 13 Michael P. Cillo  
 Davis & Ceriani, P.C.  
 14 1350 Seventeenth Street, Suite 400  
 15 Denver, CO 80202  
 Telephone: 303.534.9000/Facsimile: 303.534.4618  
 16 *Attorneys for Plaintiffs Vanguard High Yield Tax Exempt Fund,*  
 17 *Smith Barney Municipal High Income Fund, Smith Barney*  
 18 *Municipal Fund Limited Term, Strong Municipal Bond Fund*  
 19 *Inc., Nuveen Premium Income Municipal Fund 4 Inc., and*  
*Nuveen Quality Income Municipal Fund Inc.*

- Via U.S. Mail
- Via Hand Delivery
- Via Facsimile
- Via Federal Express

20 Geoffrey Jarpe  
 Alain Baudry  
 21 Maslon Edelman Borman & Brand, LLP  
 3300 Wells Fargo Center  
 22 90 South Seventh Street  
 Minneapolis, MN 55402  
 23 Telephone: 612.672.8200/Facsimile: 612.672.8397  
 24 *Attorneys for Plaintiff U.S. Bank Trust National Association*

- Via U.S. Mail
- Via Hand Delivery
- Via Facsimile
- Via Federal Express

**DECLARATION OF SERVICE - 2**

1 John Lowery  
 2 James R. Brigman  
 Riddell Williams, P.S.  
 3 1001 Fourth Avenue Plaza, Suite 4500  
 Seattle, WA 98154-1065  
 4 Telephone: 206.624.3600/Facsimile:  
 5 *Attorneys for Intervenor Plaintiff Asset Guaranty Insurance  
 Company*

- Via U.S. Mail
- Via Hand Delivery
- Via Facsimile
- Via Federal Express

6 Ladd B. Leavens  
 7 Davis Wright Tremaine, LLP  
 8 1501 Fourth Avenue, 2600 Century Square  
 Seattle, WA 98101-1688  
 9 Telephone: 206.622.3150/Facsimile: 206.628.7699  
 10 *Attorneys for Defendants Citizens Realty Co. and Lincoln  
 Investment Co. of Spokane*

- Via U.S. Mail
- Via Hand Delivery
- Via Facsimile
- Via Federal Express

11 Leslie R. Weatherhead  
 12 Witherspoon, Kelley, Davenport & Toole  
 422 West Riverside Avenue, Suite 1100  
 13 Spokane, WA 99201-0302  
 14 Telephone: 509.624.5265/Facsimile: 509.458.2717  
*Attorneys for Defendant RPS Mall LLC and RPS II LLC*

- Via U.S. Mail
- Via Hand Delivery
- Via Facsimile
- Via Federal Express

15 James B. King  
 16 Keefe King & Bowman, PS  
 601 West Main Street, Suite 1102  
 17 Spokane, WA 99201-0625  
 18 Telephone: 509.624.8988/Facsimile: 509.623.1380  
 19 *Attorneys for Defendant Spokane Public Parking Development  
 Authority (d.b.a. River Park Square Parking)*

- Via U.S. Mail
- Via Hand Delivery
- Via Facsimile
- Via Federal Express

20 William F. Etter  
 21 Etter, McMahon, Lamberson & Clary, PC  
 421 West Riverside, Suite 1600  
 22 Spokane, WA 99201-0401  
 23 Telephone: 509.747.9100/Facsimile: 509.623.1439  
 24 *Attorneys for Defendant Spokane Downtown Foundation*

- Via U.S. Mail
- Via Hand Delivery
- Via Facsimile
- Via Federal Express

25

**DECLARATION OF SERVICE - 3**

1 William F. Cronin and Paul R. Raskin  
 2 Corr Cronin, LLP  
 1001 Fourth Avenue, Suite 3700  
 3 Seattle, WA 98154-1135  
 Telephone: 206.621.1406/Facsimile: 206.625.0900  
 4 *Attorneys for Defendant Preston Gates & Ellis, LLP*

- Via U.S. Mail
- Via Hand Delivery
- Via Facsimile
- Via Federal Express

5 Patrick M. Risken  
 6 Evans, Craven & Lackie, PS  
 818 West Riverside, Suite 250  
 7 Spokane, WA 99201-0910  
 Telephone: 509.456.5200/Facsimile: 509.455.3632  
 8 *Attorneys for Defendant Walker Parking Consultants*

- Via U.S. Mail
- Via Hand Delivery
- Via Facsimile
- Via Federal Express

9 James L. Robart  
 10 Lane Powell Spears Lubersky, LLP  
 1420 Fifth Avenue, Suite 4100  
 11 Seattle, WA 98101  
 Telephone: 206.223.7031/Facsimile: 206.223.7107  
 12 *Attorneys for Defendant Prudential Securities Inc.*

- Via U.S. Mail
- Via Hand Delivery
- Via Facsimile
- Via Federal Express

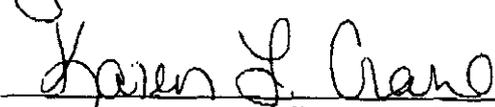
13 Peter M. Vial  
 14 McNaul Ebel Nawrot Hellgren & Vance, PLLC  
 600 University Street, Suite 2700  
 15 Seattle, WA 98101  
 Telephone: 206.467.1816/Facsimile: 206.624.5128  
 16 *Attorneys for Defendant RWR Management Inc.*

- Via U.S. Mail
- Via Hand Delivery
- Via Facsimile
- Via Federal Express

17 Randall L. Stamper  
 18 Tom Luciani  
 19 Stamper, Rubens, Stocker & Smith, P.S.  
 Suite 200, West 720 Boone Avenue  
 20 Spokane, WA 99201-2560  
 Telephone: 509.326.4800/Facsimile: 509.326.4891  
 21 *Attorneys for Intervenor Asset Guaranty Insurance Co.*

- Via U.S. Mail
- Via Hand Delivery
- Via Facsimile
- Via Federal Express

22  
 23 DATED this 9<sup>th</sup> day of January, 2001.

24   
 25 \_\_\_\_\_  
 Karen L. Crane