

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

MAR 29 2004

JAMES R. LARSEN, CLERK
DEPUTY
RICHLAND, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

**IN RE RIVER PARK SQUARE
PROJECT BOND LITIGATION.**

NO. CS-01-0127-EFS

**ORDER RULING ON MOTIONS IN
LIMINE**

On March 24, 2004, and March 25, 2004, the Court conducted a motion hearing in the above-captioned case. Specifically, the Court considered Motions in Limine filed by the various parties to this litigation. The parties were represented as set forth in the minutes of the hearings, (Ct. Recs. 1749 and 1753). After reviewing the motions, memoranda, submitted materials, applicable case law, and hearing oral argument, as required, the Court was fully informed.¹ This order memorializes the Court's oral and written rulings from hearings. Accordingly, for the reasons stated on the record,

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¹The Court heard oral argument on the following Motions in Limine: (1) Bond Fund Plaintiffs' Motion in Limine, Sub-Motion #9, (Ct. Rec. 1454); (2) Prudential's General Motion in Limine, Sub-Motion #21, (Ct. Rec. 1511), (3) AGIC's Motion in Limine NOS. 1-7, (Ct. Rec. 1524), (4) the City of Spokane's Motion in Limine, (Ct. Rec. 1537), (5) Perkins Coie's Motion to Exclude Testimony of City Expert Kenneth Artin, (Ct. Rec. 1423), (6) RPS Developers' Motion in Limine, Sub-Motions #5 and #8 only, (Ct. Rec. 1487), and (7) Preston Gates & Ellis LLP's Motion to Exclude Testimony of Donald Keysser, (Ct. Rec. 1498).

1 **IT IS HEREBY ORDERED:**

2 1. Foster Pepper's Motion in Limine to Exclude the Testimony of
3 Ted Fiflis, (Ct. Rec. 1428), is **DENIED**. Mr. Fiflis will be allowed to
4 **testify but there will be a limiting instruction to the effect that**
5 **instruction on the law is the sole province of the Court.**

6 2. Preston Gates & Ellis LLP's Motion to Exclude the Testimony
7 of Ted Fiflis, (Ct. Rec. 1506), is **DENIED**. Mr. Fiflis will be allowed
8 **to testify but there will be a limiting instruction to the effect that**
9 **instruction on the law is the sole province of the Court.**

10 3. Foster Pepper's Motion in Limine to Exclude Post-September
11 1998 Allegations, Evidence of Rules of Professional Conduct and
12 404(b), and the "Flow of Funds" Provision of the Official Statement,
13 (Ct. Rec. 1530), is **GRANTED** as to Post-September 1998 Allegations,
14 **GRANTED IN PART AND DENIED IN PART** as to Rules of Professional Conduct
15 and 404(b), and **GRANTED IN PART AND DENIED IN PART** as to the "Flow of
16 Funds" Provision. **Specifically, Post-September 1998 allegations are**
17 **not relevant to support the 10b-5 fraud claim against Foster Pepper &**
18 **Preston Gates but may be relevant for other claims. Rules of**
19 **Professional Conduct testimony is properly excluded but the 404(b)**
20 **portion is DENIED with leave to renew at trial for specific objection.**
21 **Finally, the "Flow of Funds" testimony, which can be used to show**
22 **recklessness, is admitted with a limiting instruction to the effect**
23 **that Plaintiffs may not argue they were misled by the provision.**

24 4. Foster Pepper's Second Motion Regarding the Testimony of
25 Michael Maher, (Ct. Rec. 933), is **GRANTED**. Mr. Maher's testimony will
26 **be subject to a limiting instruction to the effect that he may testify**
as to the factual recitation of his actions, not to whether he

1 believes Smith Barney was misled.

2 5. Bond Fund Plaintiffs' MIL, (Ct. Rec. 1454), is **GRANTED IN**
3 **PART AND DENIED IN PART.** Specifically, with respect to the nine sub-
4 motions:

5 MIL #1 and MIL #2 - **GRANTED.**

6 MIL #3 - MIL #5 - **DENIED.**

7 MIL #6 - **DENIED** with leave to renew at trial.

8 MIL #7 - **GRANTED.**

9 MIL #8 - **DENIED.**

10 MIL #9 - **DENIED.** The Non-City Defendants will have eight (8)
11 Peremptory Challenges, the City of Spokane will have three (3)
12 Peremptory Challenges, and the Plaintiffs will have five (5)
13 Peremptory Challenges.

14 6. Bond Fund Plaintiffs' Motion to Limit the Testimony of Allan
15 W. Kleidon, (Ct. Rec. 1465), is **DENIED.** Mr. Kleidon shall include in
16 his testimony that his projections were based on the provided
17 assumption of fraud.

18 7. Bond Fund Plaintiffs' Motion to Strike Expert Testimony of
19 Robert Dean Pope, (Ct. Rec. 1469), is **DENIED.**

20 8. Prudential's General Motion in Limine, (Ct. Rec. 1511), is
21 **GRANTED IN PART AND DENIED IN PART.** Specifically, with respect to the
22 twenty-one sub-motions:

23 MIL # 1-7 - **GRANTED.**

24 MIL # 8 - **DENIED** with leave to renew at the time of trial.

25 MIL #9 and #10 - **GRANTED.**

26 MIL #11 and #17 - **DENIED** with leave to renew at the time of
trial. Specifically, if an expert's deposition testimony

1 orally supplements the 26(a)(2)(B) report, that would be a
2 proper area of inquiry. However, this will not serve as a
3 basis for counsel to inquire based solely on answers
4 given in direct response to "permissible discovery"
5 questions during deposition.

6 MIL #12 - # 15 - GRANTED.

7 MIL # 16 - GRANTED. The Court grants the motion only as to
8 bond holders that did not provide responses to discovery.

9 MIL # 18 - # 20 - GRANTED.

10 MIL #21 - GRANTED.

11 9. Prudential's Motion in Limine to Limit Testimony of Robert
12 Doty, (Ct Rec. 1514), is DENIED with leave to renew at the time of
13 trial.

14 10. Prudential's Motion in Limine RE Evidence of Market Value of
15 the Garage, (Ct. Rec. 1515), is DENIED.

16 11. Prudential's Motion in Limine RE Evidence of AGIC's Damages,
17 (Ct. Rec. 1517), is GRANTED.

18 12. Spokane Downtown Foundation's MIL to Exclude Evidence of
19 Post-Sale Walker Revenue Projections, (Ct. Rec. 1545), is DENIED.

20 13. AGIC's Motion in Limine NOS. 1-7, (Ct. Rec. 1524), is
21 GRANTED IN PART AND DENIED IN PART. Specifically, with respect to the
22 seven Sub-Motions:

23 MIL #1 - DENIED.

24 MIL #2 - GRANTED.

25 MIL #3 - GRANTED IN PART AND DENIED IN PART. The Motion to
26 Exclude all Third party Reports, Analyses, and Articles Regarding
AGIC or Radian, is DENIED with leave to renew at trial. However,

1 the Motion to Exclude Deposition Exhibits 899, 900, and 901 is
2 GRANTED as to all parties.

3 MIL #4 - DENIED with leave to renew at the time of trial.

4 Specifically, if an expert's deposition testimony orally
5 supplements the 26(a)(2)(B) report, that would be a proper area
6 of inquiry. However, this will not serve as a basis for counsel
7 to inquire based solely on answers given in direct response to
8 "permissible discovery" questions during deposition.

9 MIL #5 - #7 - UNDER ADVISEMENT.

10 14. The City of Spokane's Motion in Limine, (Ct. Rec. 1537), is
11 GRANTED IN PART AND DENIED IN PART. Specifically, with respect to the
12 seventeen Sub-Motions:

13 MIL #1- #6 - DENIED.

14 MIL #7- #8 - DENIED.

15 MIL #9a - DENIED.

16 MIL #9b - GRANTED. Specifically, as the parties stipulated, the
17 following will be excluded: "Any reference to other lawsuits or
18 claims against the City, with the exception of *RPS v. Miggins*,
19 *Priorities First v. City of Spokane*, *CLEAN v. City of Spokane*, and
20 issues on appeal in *Euster v. City of Spokane*."

21 MIL #10 - DENIED with leave to renew at trial.

22 MIL #11 and #12 - GRANTED.

23 MIL #13 - 16 - DENIED.

24 15. Perkins Coie's Motion to Exclude Testimony of City Expert
25 Kenneth Artin, (Ct. Rec. 1423), is DENIED.

26 16. RPS Developers' MIL Nos. 1-8, (Ct. Rec. 1487), are GRANTED IN
PART AND DENIED IN PART. Specifically, with respect to the eight Sub-

1 Motions:

2 MIL # 1 - #3 - GRANTED.

3 MIL #4 - GRANTED. However, counsel may make offers of proof and
4 the Court will make trial determinations on admissibility.

5 MIL #5 - DENIED - However, Mr. Rose's 26(a)(2)(B) report will be
6 provided to the RPS Defendants AS SOON AS POSSIBLE.

7 MIL #6 - DENIED.

8 MIL #7 - GRANTED.

9 MIL #8 - GRANTED IN PART AND DENIED IN PART. Specifically,
10 testimony as to actual construction costs is permissible, but
11 testimony as to tax allocation of construction costs is excluded.

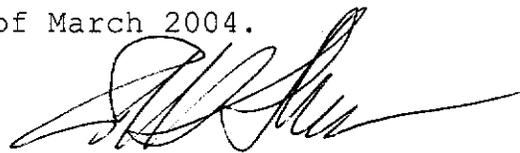
12 17. Preston Gates & Ellis LLP's Motion to Exclude Evidence RE IRS
13 Audit, (Ct. Rec. 1502), is GRANTED.

14 18. Preston Gates & Ellis LLP's Motion to Exclude Testimony of
15 Donald Keysser, (Ct. Rec. 1498), is DENIED with leave to renew at
16 trial.

17 IT IS SO ORDERED.

18 The District Court Executive is directed to enter this Order and
19 to furnish copies to all counsel.

20 DATED this 29th day of March 2004.



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23 EDWARD F. SHEA
United States District Judge

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