

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 GRANTING IN PART AND
HOLDING IN ABEYANCE IN PART
PLAINTIFFS' MOTION TO
BIFURCATE TRIAL, GRANTING THE
CITY OF SPOKANE'S MOTION TO
BIFURCATE TRIAL, AND DENYING
THE CITY OF SPOKANE'S
ALTERNATIVE MOTION TO DISMISS
U.S. BANK TRUST'S BREACH OF
CONTRACT CLAIM FOR LACK OF
SUBJECT MATTER JURISDICTION

BEFORE THE COURT, without oral argument are Plaintiffs' Motion to Bifurcate Trial, (Ct. Rec. 925), filed September 11, 2003, and the City of Spokane's Motion to Bifurcate Trial, (Ct. Rec. 1401-1), or to Dismiss U.S. Bank Trust's Breach of Contract Claim for Lack of Subject Matter Jurisdiction, (Ct. Rec. 1401-2), filed January 27, 2004.

Plaintiffs argue bifurcation is necessary to allow the parties to complete trial within the allotted time. Specifically, Plaintiffs argue that: (1) all the claims of the Indenture Trustee on behalf of retail customers should be bifurcated on the understanding that the Trustee will be bound by all liability findings in the April 2004 trial; (2) all issues relating to damages should be bifurcated and

1 addressed once the issue of liability has been determined; and (3)
2 assuming the retail customers and the damages issues are bifurcated,
3 the Court should order that Plaintiffs will be given eight (8) trial
4 days to present their case-in-chief (exclusive of any cross-
5 examination of witnesses called by the Plaintiffs) and allocate the
6 remaining 10 days of testimony to the Defendants.

7 On January 27, 2004, the City of Spokane (the "City") filed a
8 motion seeking an order bifurcating U.S. Bank's claim for breach of
9 contract, or alternatively, dismiss the claim for lack of subject
10 matter jurisdiction. In response, U.S. Bank and the City filed a
11 Stipulation, (Ct. Rec. 1547), on February 19, 2004. In the
12 stipulation, U.S. Bank agreed that it would be appropriate to
13 bifurcate the Trustee's securities claims on behalf of the retail
14 bondholders and its breach of contract claim against the City.

15 Federal Rule of Civil Procedure 42(b) provides, in pertinent
16 part:

17 The Court, in furtherance of convenience or to avoid
18 prejudice, or when separate trials will be conducive to the
19 expedition and economy, may order a separate trial of any
claim, cross-claim, counter-claim, or third-party claim, or
any separate issue

20 The Court finds that U.S. Banks' securities claims on behalf of the
21 retail bondholders and its breach of contract claim against the City
22 are properly bifurcated from the jury trial set to commence April 19,
23 2004. However, the Court has not reached a determination on whether
24 the damages portion should be bifurcated or if the trial time
25 allocation suggested by the Plaintiffs is proper. Accordingly,

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