UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FELD ENTERTAINMENT, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**Civ. No. 07-1532 (EGS)**
AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, *et al.*,	)	
	)	
Defendants.	)	

DEFENDANTS' SUPPLEMENTAL AUTHORITIES IN SUPPORT OF MOTION TO DISMISS

Pursuant to this Court's June 24, 2011 Minute Order, Defendants hereby respectfully submit the following Supplemental Authorities[1]:

I. ADDITIONAL AUTHORITIES CONCERNING FEI'S FAILURE TO ALLEGE AN ADEQUATE RICO "PATTERN."

There are many recent decisions rejecting RICO claims centered on single schemes that lack any "plausible" allegations establishing that those schemes will continue into the future; hence such claims did not assert sufficient "closed-ended" or "open-ended" continuity to establish a "pattern" under RICO:

> *Straightshot Communications, Inc. v. Telekenex, Inc.*, C10-268Z, 2011 WL 1770935 (W.D. Wash. May 9, 2011) (rejecting RICO claim alleging single scheme with definitive goal – the "complete dismantling of [a company]… and the transfer of… business." The Court disallowed plaintiff's attempt to transform alleged single scheme into a regular way of doing business and found no future risk based on efforts to cover up the scheme, since such efforts "do not extend [the] duration of underlying scheme." *Id.* at *****6-*****7.[2]

> *Conry v. Daugherty*, CIV.A. No. 10-4599, 2011 WL 2473959 (E.D. La. June 22, 2011)(dismissing claim for failure to allege closed-ended open-ended continuity, given that the alleged illegal acts were "complete" and "concluded with the state foreclosure proceedings" and thus "d[id] not project into the future with a threat of repetition.").

[1] Defendants will provide hard copies of their supplemental authorities at the Court's request.
[2] Throughout the opinion, the Court repeatedly references its earlier Order (Docket no. 139), which granted Defendants' motion to dismiss for failing to allege pattern).

Brown v. Ferrara, No. 2:10-cv-00523-GZS, 2011 WL 1637928 (D. Me. Apr. 28, 2011) *report and recommendation adopted*, 2:10-CV-523-GZS, 2011 WL 2222000 (D. Me. June 7, 2011) (granting motion to dismiss where the activities do not pose a threat of "similar misconduct" or "continued criminal activity" outside of that focused dispute involving litigation and occurring over many years with only one victim.).

Vuyyuru v. Jadhav, A.3:10B-CVB-173, 2011 WL 1483725 (E.D. Va. Apr. 19, 2011) (granting motion to dismiss where the alleged pattern, involving a seven-year retaliation scheme to revoke a doctors' medical license, had alleged no continuity because the alleged scheme culminated in the revocation of his medical license in 2005 and thus had a "built-in ending point" that "does not present the necessary threat of long-term, continued criminal activity.").

Duma v. Fannie Mae, No. 10-5190, 2011 WL 2199172 at *1 (D.C. Cir. May 6, 2011), (D.C. Circuit cited *Western Associates* when affirming dismissal of a single scheme RICO case for failure to adequately allege a pattern of racketeering activity).

Busby v. Capital One, N.A., 2011 WL 1113368, at *10-11 (D.D.C. Mar. 28, 2011)(dismissing the RICO claims because "the plaintiff has provided no factual allegations indicating the existence of an ongoing, widespread scheme on the part of the defendants.").[3]

Schmidt v. United States, CIV. S-09-660 LKK, 2011 WL 1988531 (E.D. Cal. May 20, 2011) (granting motion to dismiss where plaintiffs did not allege predicate acts demonstrating an opportunity for criminal activity in the future, where legal enforcement proceedings had concluded and plaintiffs had not adequately alleged that these individuals utilized "enterprise" for a continuing course of criminal conduct in other cases.).

Collins v. Seago, CIV.A. 11-130-JJB, 2011 WL 1743658 (M.D. La. May 6, 2011) (granting motion to dismiss where there was no continuity or threat of future criminal conduct involving alleged completed billing dispute).

DeSimone v. Quicken Loans, Inc., 1:09-CV-01421-WTL, 2011 WL 2470661 (S.D. Ind. June 20, 2011) (motion to dismiss granted where Plaintiffs did not allege long-term pattern of criminal activity, involving a single parcel of real estate).

In addition, the mere allegation in a complaint that the past activity will continue into the future is not sufficient to transfer a single scheme with a single victim into an "open-ended" "pattern" for purposes of RICO:

[3] Judge Urbina's *Busby* decision was decided just before Defendants' reply brief was filed on April 1, 2011, but was not available on Westlaw until after the reply was filed.

Whitney, Bradley & Brown, Inc. v. Kammermann, 10-1880, 2011 WL 2489416 (4th Cir. June 23, 2011), affirming *Whitney, Bradley & Brown, Inc. v. Kammermann*, 01:09-CV-596, 2010 WL 2696648 (E.D. Va. July 7, 2010**)** ("As the district court explained…there was no showing of…continuity-of activity," because the Defendant's activities "actually ceased by December 2008, foreclosing the possibility of an open-ended pattern.").[4]

ISystems v. Spark Networks, Ltd., 10-10905, 2011 WL 2342523 (5th Cir. June 13, 2011) (affirming dismissal holding that allegations of a continuing pattern of taking over domain names through, *inter alia*, wire fraud, mail fraud, and theft "did not threaten long-term criminal activity" but were part of a single scheme to stop alleged trade infringement).

Kennar v. Kelly, 10CV2105-AJB WVG, 2011 WL 2116997 (S.D. Cal. May 27, 2011) (granting a motion to dismiss where there was no pattern or threat of continuity because IRS proceedings had concluded, and rejecting plaintiffs' argument that the defendants could pursue them in the future).

In response to the Court's questions at the oral argument, June 23, 2011 Transcript at 10, defendants also attach the district court opinion and Complaints in *Western Associates*,[5] which highlight the fact that the D.C. Circuit's ruling in that case is indeed dispositive, and that, contrary to FEI's assertion at oral argument, there simply is no principled basis for distinguishing the alleged scheme found inadequate as a matter of law there from this one. In both cases, the plaintiff alleged numerous predicate acts up to and including the time when the complaint was filed -- including mail fraud, wire fraud, and fraudulent concealment of those acts, and also that such acts were "continuing" "through the present" -- and yet the D.C. Circuit found that this single scheme, single victim claim of inherently finite duration that could not survive as a RICO claim. *See Attachments A-C; Att. C at 12, 26.* [6]

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[4]The underlying opinion discussed by the Fourth Circuit rejected a "*pro-forma* allegation" of a threat of continuing activity, because there was no evidence that activity "was continuing at the time the Complaint was filed in this matter." 2010 WL 2696648, at *4. The district court first considered the pattern issue at the summary judgment stage, as defense counsel did not file a motion to dismiss on grounds other than venue. *See* No. 09-cv-596, Docket #21 and #22.

[5] Following the oral argument, Defendants obtained these materials from the records facility in Suitland, Maryland.

[6] FEI's attempt at the oral argument to create the necessary "pattern" by claiming that Mr. Rider and the other defendants relied on his status as a plaintiff in the ESA litigation when he testified before legislative

II. PLAINTIFFS' EXTRA-LITIGATION ALLEGATIONS (LEGISLATIVE AND OTHER ADVOCACY WORK) CANNOT SERVE AS A BASIS TO ESTABLISH A RICO PATTERN, BECAUSE SUCH ACTIVITIES ARE PROTECTED UNDER *NOERR-PENNINGTON* IMMUNITY.

Because the Amended Complaint cannot satisfy the pattern requirement as elucidated in this Circuit, there is no need for the Court to reach the grave First Amendment issues that would be occasioned by allowing this RICO case to proceed, particularly since, as FEI has made crystal-clear, it will inevitably entail highly intrusive discovery into, *e.g.*, the organizations' advocacy strategies and communications with their members. *See, e.g., Omar v. McHugh*, 2011 WL 2451016, *8 n.11 (D.C. Cir. Jun. 21, 2011) (explaining that statutes are construed and applied so as to avoid "'serious constitutional problems.'"). In any event, FEI's attempt to establish a "pattern" of racketeering activity by relying on allegations of *extra-litigation* conduct, for which FEI is not seeking any damages impermissibly intrudes on activities constitutionally protected under the *Noerr-Pennington* doctrine, and hence cannot be considered to form any part of such a "pattern" here, as further demonstrated by the following supplemental authorities:

> *Mercatus Group LLC v. Lake Forest Hospital*, 2011 U.S.App. LEXIS 10567,*12-15, *21, 33(7th Cir. May 26, 2011) (affirming the dismissal of claims arising from alleged misrepresentations to a legislative body, based on *Noerr-Pennington* grounds, and holding that any alleged misrepresentations to the legislative body were within that doctrine's immunity, as the government body was acting in a legislative capacity, rather than an adjudicative capacity).
>
> *Coll v. First American Title Insurance Co.*, 2011 U.S.App. LEXIS 8486, 48-49 (10th Cir. April 26, 2011) (applying *Noerr-Pennington* to block claims involving conspiracy and bribery, and noting that there was no exception to *Noerr-Pennington* protection even for "egregious" conduct, "unethical business practices," and even misrepresentative public relations smear campaigns.

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bodies, Transcript at 73, fails not only because those activities are protected by *Noerr-Pennington*, *see infra*, but because the Congressional testimony to which the Amended Complaint refers took place in June 2000, *before* the lawsuit was filed, with no mention whatsoever of the lawsuit or Mr. Rider's standing, and the Nebraska hearing to which FEI also refers also contained no mention of the lawsuit. *See* Admitted ESA Exhibit PWC 93A at 245-248; 255-275.

> *TPCC NY, Inc. v. Radiation Therapy Servs., Inc.*, 2011 U.S. Dist. LEXIS 51716 (S.D.N.Y. May 16, 2011) (applying *Noerr-Pennington* to antitrust claims directed at petitioning activity to government agency because allegations that the activity could be outside the doctrine's scope were too vague and conclusory to form a plausible allegation under *Twombly*).

Defendants also bring to the Court's attention the D.C. Anti-SLAPP Act of 2010, 58 D.C. 741 (the "Anti-SLAPP Act"), which did not become effective as a basis for dismissing claims in the District of Columbia until March 31, 2011, the day before Defendants' reply brief was filed, and hence was not mentioned in defendants' final reply brief. This statute is specifically designed to afford special protections against lawsuits directed at legislative, executive branch and other advocacy on any "issue of public interest," which is broadly defined to include all "matter[s] of public significance." The new statute strongly reinforces defendants' argument that the legislative and executive branch advocacy on which FEI relies should not and cannot be the foundation on which any aspect of FEI's claims is based. The Supreme Court's recent ruling in *Borough of Duryea, Pennsylvania v. Guarnieri*, 2011 U.S. LEXIS 4564 (June 20, 2011) also emphasizes the broad protection afforded by the First Amendment for petitioning conduct that is "related to a matter of public concern," rather than private concern. *Id*. at *11.[7]

III. ADDITIONAL AUTHORITIES SHOWING THAT DISCOVERY CANNOT BE USED TO CURE FATAL PLEADING DEFECTS TO ESTABLISH A CLAIM.

[7] In response to the Court's inquiry at argument, the D.C. Circuit has ruled that a plaintiff may not include in a pattern predicate acts that injure other parties. *See Yellow Bus Lines, Inc. v. Drivers, Chauffeurs & Helpers Local Union 639*, 883 F.2d 132, 138 (D.C. Cir. 1989) (rejecting inclusion in pattern of acts affecting "persons unconnected with [plaintiff]"), *vacated on other grounds*, 913 F.2d 948, 951 (leaving pattern discussion undisturbed) (D.C. Cir. 1990) (*en banc*); *Committee to Defend the United States Constitution v. Moon*, 776 F. Supp. 568, 571 (D.D.C. 1991). While there are contrary precedents from other Circuits allowing patterns that include closely related acts that injured other persons in similar ways, *see, e.g. Jones v. Childers*, 18 F.3d 899, 913 (11th Cir. 1994), Defendants are not addressing this issue at length because the advocacy activities on which FEI is relying are (i) covered by *Noerr-Pennington*, (ii) plainly distinct from the single lawsuit as to which FEI asserts any damages, and (iii) caused no comparable injury to any other parties, even under FEI's allegations.

Defendants contend that FEI's Complaint does not satisfy the *Twombly* and *Iqbal* "plausibility" standard when it alleges that all of the defendants engaged in criminal activities in connection with believing Mr. Rider's basis for standing. In this regard, at the oral argument, FEI's counsel admitted that it is "conceivable" that the animal protection organizations and their counsel did *not* engage in any bribery -- the central premise of FEI's entire case. Tr. at 108 ("Is it conceivable that it isn't a bribe? It is. It's also very conceivable that it is. That's the standard."). Following *Iqbal* and *Twombly*, however, "conceivability" is ***not*** the standard. On the contrary, as the D.C. Circuit has recently reinforced, where a plaintiff asserts facts "that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Jones v. Horne*, 634 F.3d 588, 601-02 (D.C. Cir. 2011) (quoting *Iqbal*).

Recent authority also confirms that courts may not allow a plaintiff to engage in discovery to cure an otherwise legally deficient pleading. *See, e.g. New Albany Tractor, Inc. v. Louisville Tractor, Inc.*, 2011 WL 2448909 (6th Cir. June 21, 2011) at 5 (explaining that while such discovery may have been appropriate "*before Twombly* and *Iqbal* . . . the language of *Iqbal* specifically directs that no discovery may be conducted in cases such as this, even when the information needed to establish a claim . . . is solely within the purview of the defendant or a third party"); *see also id.* ("The plaintiff may not use the discovery process to obtain these facts after filing suit. The language of *Iqbal*, 'not entitled to discovery,' is binding on the lower courts.")[8]

[8] This same principle has been applied by this Court, *see, e.g., Martin v. Arc of D.C.*, 541 F. Supp. 2d 77, 81-83 (D.D.C. 2008) (dismissing False Claims Act claim for failure to allege necessary facts and disallowing plaintiff's request for discovery to find evidence to support her claim), and there are similar cases that were decided before the briefing in this case but that defendants could provide the Court should it wish to review them.

III. ADDITIONAL AUTHORITY CONCERNING PLAINTIFF'S FAILURE TO ESTABLISH THE REQUISITE CAUSATION.

Defendants have argued that the causation problems inherent in this case – including that (a) there were always ESA plaintiffs other than Mr. Rider and (b) *no one* can assert any concrete damages from the non-litigation advocacy on which FEI must rely – counsels strongly for dismissal under Supreme Court precedent, and that FEI should instead pursue its sole damages – its attorneys fees and costs in the ESA case -- through more appropriate vehicles, such as its pending request for fees and costs in the ESA action itself. A recent Supreme Court case supports that argument by making clear that such fee determinations call for the kind of judgment by district courts particularly unsuited to the use of a massive RICO case for such a purpose: *Fox v. Vice*, No. 10-114, 563 U.S. __ (June 6, 2011) (holding that "if the defendant *would have incurred those fees anyway*, to defend against *non*-frivolous claims, then a court has no basis for transferring the expense to the plaintiff" (on the grounds that other claims were frivolous) (emphasis added).

IV. ADDITIONAL AUTHORITY CONCERNING THE APPLICATION OF THE STATUTE OF LIMITATIONS TO THE DEFENDANTS ADDED IN 2010.

With regard to Defendants' argument that the RICO statute of limitations has clearly run for the Defendants added in 2010, Defendants also bring to the Court's attention a ruling by then-Judge Sotomayor, and affirmed in all respects by the Second Circuit, in which the court held that a stay of litigation could not be relied on to toll the applicable statute of limitations because the plaintiff could have taken various steps to preserve its claims. *See Ainberger v.* Kelleher, 1997 WL 420279, *7 (S.D.N.Y. 1997), *aff'd* 152 F.3d 917 (2nd Cir. 1998). Unfortunately, Defendants simply did not discover the case during earlier briefing, and they apologize for not bringing it to the attention of the Court previously.

Date: July 1, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of July, 2011, copies of the foregoing Defendants' Supplemental Authorities in support of their Motion to Dismiss, with Exhibits, was served by ECF on the following counsel of record:

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/s/ Laura N. Steel
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Western Associates Limited Partnership,
1280 Maryland Avenue, S.W.
Washington, D.C. 20024,
individually and on behalf of
Avenue Associates Limited Partnership,
1115 - 30th St. NW
Washington, D.C. 20007
Plaintiff,

v.

Market Square Associates,
DIHC Market Square, Inc., DIHC
Management Corporation, Dutch Institutional
Holding Company, DIHC Finance Corp.,
Stichting Pensioenfonds Voor de Gezondheid,
Geestelijke en Maatschappelijke Belangen ,
Crow-Pennsylvania Avenue Limited
Partnership, Crow-Washington CBD
Development Corporation, Herman
A. Vonhof, Robert T. Sorrentino, Barrington H.
Branch, Jan Koeman, Craig W. Johnston, and
T. Christopher Roth,

Defendants.

Trial by Jury Demanded

COMPLAINT

COMES NOW the Plaintiff, Western Associates Limited Partnership, individually and on behalf of Avenue Associates Limited Partnership, and for its complaint against the Defendants alleges as follows:

THE PARTIES

Plaintiff

1. Western Associates Limited Partnership ("WALP") is a District of Columbia limited partnership, with its principal place of business at 1280 Maryland Avenue, S.W., Washington, D.C. 20024.

2. Avenue Associates Limited Partnership ("AALP" or the "Partnership") is a District of Columbia limited partnership, with its principal place of business at 1115 30th Street, N.W., Washington, DC 20007. The partners in AALP are Market Square Associates (both a general partner and a limited partner) and WALP (a limited partner).

Defendants

3. Market Square Associates ("MSA") is a District of Columbia general partnership, with its principal place of business at 1115 30th Street, N.W., Washington, DC 20007. MSA is comprised of two entities, DIHC Market Square, Inc. ("DIHC-MSI") (which owns 71.4286% of MSA) and Crow-Pennsylvania Avenue Limited Partnership ("Crow") which owns 28.5714% of MSA.

4. DIHC-MSI is a Georgia Corporation, with its principal place of business at 200 Galleria Parkway, Atlanta, Georgia 30339. DIHC-MSI is the general partner of MSA.

5. Dutch Institutional Holding Company, Inc. ("DIHC") is a Delaware corporation with its principal place of business at 200 Galleria Parkway, MW, Suite 2000, Atlanta, Georgia 30339 and controls DIHC-MSI.

6. DIHC Management Corporation ("DIHC Management") is a Georgia corporation with its principal place of business at 200 Galleria Parkway, MW, Suite 2000, Atlanta, Georgia 30339.

7. DIHC Finance Corp. ("DIHC Finance") is a Georgia corporation with its principal place of business at 200 Galleria Parkway, NW, Suite 2000, Atlanta, Georgia 30339 and is controlled by DIHC and PGGM.

8. Stichting Pensioenfonds Voor de Gezondheid, Geestelijke en Maatschappelijke Belangen ("PGGM") is a stichting organized under the laws of The Netherlands, with its principal place of business at Kroost-Nord 149, 3704DV Zeist, The Netherlands.

9. Crow is a Texas limited partnership, with its principal place of business at 1115 30th Street, N.W., Washington, DC 20007.

10. Crow-Washington CBD Development Corporation ("Crow-Washington") is a Texas Corporation with its principal place of business at 1115 30th Street, N.W., Washington, DC 20007, and is the general partner of Crow.

11. At the time of the formation of MSA, Herman A. Vonhof ("Vonhof") was President of DIHC-MSI. On information and belief, Vonhof is still President of DIHC-MSI and resides at DIHC-MSI's principal place of business. Plaintiff is unaware of the exact time period during which Vonhof has acted as DIHC-MSI's President. Each reference to Defendants (or to any specific Defendant by name or title) in this Complaint includes Vonhof only with respect to acts occurring during the time period during which he was so employed.

12. Robert T. Sorrentino ("Sorrentino") is Vice President and Treasurer of DIHC (and also is Executive Vice President and Chief Financial Officer of DIHC Management Corporation), and resides at DIHC's principal place of business. Plaintiff is unaware of the exact time period during which Sorrentino has acted as DIHC's Vice President and Treasurer. Each reference to Defendants (or to any specific Defendant by name or title) in this Complaint includes Sorrentino only with respect to acts occurring during the time period during which he was so employed.

13. On information and belief, Barrington H. Branch ("Branch") was President of DIHC from early 1992 through February, 1997. Each reference to Defendants (or to any specific Defendant by name or title) in this Complaint includes Branch only with respect to acts occurring during this time period. On information and belief, Branch resides at 554 Arden Oaks Ct., N.W., Atlanta, GA 30305.

14. On information and belief, Jan Koeman ("Koeman") was an Executive Vice President of DIHC from early 1992 through December, 1993. Each reference to Defendants (or to any specific Defendant by name or title) in this Complaint includes Koeman only with respect to acts occurring during this time period. On information and belief, Koeman resides at 17 Parkside Ct., N.E., Atlanta, GA 30342.

15. On information and belief, Craig W. Johnston ("Johnston") was and is an Assistant Secretary of DIHC and Vice President-Finance of DIHC Management Corporation from April, 1991 through the present. Each reference to Defendants (or to any specific Defendant by name or title) in this Complaint includes Johnston only with respect to acts occurring during this time period. On information and belief, Johnston resides at DIHC's principal place of business.

16. At all times relevant to this Complaint, T. Christopher Roth ("Roth") was and is Vice President of Crow-Washington and the Manager of Crow. He resides at the principal place of business of Crow-Washington and Crow.

JURISDICTION AND VENUE

17. Personal jurisdiction and venue are predicated on 18 U.S.C. § 1964(c), 18 U.S.C. § 1965(a), (b), 28 U.S.C. § 1331, and 28 U.S.C. § 1367(a), since certain counts herein arise under federal law and the others emanate from the same nucleus of operative facts such that they form part of the same case or controversy.

RELEVANT TIMES

18. The relevant times to this Complaint are from on or about January 1, 1987 through the present.

FACTUAL ALLEGATIONS

The Market Square Project

19. The subject of this lawsuit is the real property and improvements known as Market Square, located at 7th St. and Pennsylvania Avenue, N.W., Washington, DC. ("Market Square", the "Project", or "Real Property"). Market Square is a world class, premier mixed-use property in Washington, D.C. consisting of retail space, condominiums, and office space (approximately 688,709 square feet of office and retail space, and 210 residential condominium units).

20. In September, 1985, a team led by Western Development Corporation ("Western") obtained development rights for the Market Square development site under a competitively bid public offering by the Pennsylvania Avenue Development Corporation ("PADC"). The team led by Western Development Corporation was originally formed as AALP under District of Columbia law on September 15, 1985.

21. Subsequent to obtaining these development rights, Western acquired the Market Square site, designed the Market Square building, arranged for acquisition of an adjacent parcel of land, contracted for and directed the substantial completion of design and construction working drawings, obtained a variety of key design and other approvals

for construction of the building and other improvements thereon, and applied for remaining permits. Western then brought MSA into AALP. MSA was responsible for infusing additional equity into the project (through DIHC and its controlled entity DIHC Finance Corp.) and for bringing experience in managing and leasing large properties (through Crow).

22. Although the design for Market Square was essentially complete and approved when MSA joined the Partnership, MSA decided to make a number of unilateral changes to the design of the proposed condominium units and other interior elements of the Building, including the introduction of new architects and engineers to redo the construction drawings in their entirety and redesign all the interiors. This redesign substantially delayed the start of construction, substantially increased costs of construction, and also caused the sale of the condominium units to be substantially delayed. This redesign, delay, and substantial increase in construction costs was the beginning of the unauthorized management and fraud leading to this lawsuit.

The Three AALP Partnership Agreements

23. The original AALP partnership agreement was amended and restated several times. On July 15, 1987, the then existing general and limited partners of AALP entered into an agreement with MSA and WALP. This agreement, styled the Second Amended and Restated Agreement of Limited Partnership ("Second Agreement"), substituted MSA and WALP as general and limited partners for the then existing general and limited

partners. Under the terms of the Second Agreement, MSA became a General Partner in AALP with a 2.5% general partnership interest, and a Class A Limited Partner with a 67.5% limited partnership interest; WALP became a General Partner with a 2.5% general partnership interest in AALP, and a Class B Limited Partner with a 27.5% limited partnership interest.

24. Under the Second Agreement, MSA was required to seek and obtain the approval of WALP (as a General Partner) to any increase in the budget for the Project, to the making or incurring of obligations or expenditures which exceeded the total authorized by said budget, and to any other major decision. Thus, before AALP could increase the original budget or incur, make or increase obligations or expenditures in excess of the approved budget, it was required to seek and receive WALP's approval. Second Agreement, § 4.1(1).

25. On July 15, 1987, MSA and WALP entered into another separate agreement, styled the Third Amended and Restated Agreement of Limited Partnership ("Third Agreement"), which, by its terms, did not become effective until December 27, 1991. The purpose of the Third Agreement was to convert WALP's 2.5% general partnership interest in AALP to a limited partnership interest with the effect that WALP would only be a Limited Partner in the Partnership. Thus, upon the effective date of the Third Agreement, MSA became the sole General Partner of AALP, with a 2.5% general partnership interest, and remained a Class A Limited Partner with a 67.5% limited partnership interest. WALP ceased being a General Partner and became a Class B Limited

Partner with a 30% limited partnership interest. Thus, under the terms of the Third Agreement, MSA became the sole Managing Partner of AALP.

26. Before execution of the Second and Third Agreements, MSA prepared and distributed to WALP a budget for the Project ("Original Budget") of $221,755,000, which it represented included all construction and development Project costs. The Original Budget contained two types of costs, Guaranteed Costs in the aggregate amount of $82,920,000 and Non-Guaranteed Costs in the aggregate amount of $138,835,000. Guaranteed Costs include the costs of architectural and engineering services and all construction, furniture, and landscaping costs. Non-Guaranteed Costs include insurance, financing (*i.e.* interest), and marketing costs. Under the terms and provisions of the Second and Third Agreements, if AALP was required to borrow capital to cover a cost over-run for any of the Guaranteed Costs, that loan could not be repaid using periodic distributions of cash flow. Second and Third Agreements, ¶ 3.3. The effect of this provision was to give WALP a priority in distributions of cash flow before payments could be made on loans to cover costs in excess of Guaranteed Costs.

27. WALP relied on this priority arrangement in entering into the Second and Third Agreements. MSA in effect guaranteed that WALP would not bear the risk of certain cost over-runs (*i.e.* costs incurred above the Guaranteed Costs) and that any Guaranteed Cost over-run would be absorbed exclusively by Crow and/or MSA.

28. Section 3.2(5) of both the Second and Third Agreements set forth the allocation rules for dissolution and winding up of the Partnership. With respect to any capital transactions in winding up, and after payment of any third party debts and partner debts, allocations to the partners of AALP would be made in the following order of priority:

(a) First, to each partner having a negative capital account proportionately to bring such accounts up to zero (Section 3.2(5)(a));

(b) Then, to MSA to bring its Account up to the amount equal to the sum of its Unpaid Preferred Return, its Accrued Preferred Return and its Unrecovered Capital (Section 3.2(5)(b-d));

(c) Then, to WALP in the sum of $5,000,000 (Five Million Dollars) if the cumulative internal rate of return to DIHC and its affiliates would equal or exceed 11% on all capital it provided to the partnership (Section 3.2(5)(f)); and

(d) Then, the balance to MSA and WALP in the ratio of 70% to MSA and 30% to WALP (Section 3.2(5)(h)).

29. Beginning in April 1988, Defendants became aware that the costs of the Project were exceeding the Guaranteed Costs as set forth in the Original Budget as approved and that the Project therefore could not be completed within the Original Budget. DIHC-MSI and Crow also became aware that the Project construction schedule

had slipped and that completion of the Project could not occur within the planned time frame. The anticipated delay in completion of the Project increased carrying costs of financing for the Project and delayed commencement of revenue from the Project. These Project delays signaled budget over-runs in addition to those anticipated and/or disclosed by Crow generated after the redesign. These delays and increases in construction and development costs were caused by or were the result of MSA's unauthorized management of the Project.

30. In order to cover the cost of budget over-runs caused by MSA's unauthorized management of the Project, MSA made several loans to AALP ("Optional Loans") to cover the increased construction and carrying costs associated with the cost over-runs in Crow's Guaranteed Costs. These loans were made at above-market rates, and were obtained generally from affiliates of DIHC, including DIHC Finance. In effect, DIHC and its affiliates were borrowing these funds from themselves merely using bookkeeping entries to reflect them as partnership obligations. However, under the Second and Third Agreements, AALP could not repay these Optional Loans using periodic distributions of cash flow. Second and Third Agreements, ¶ 3.3. Rather, AALP was required to use cash flow to repay construction loans and to make disbursements to MSA and WALP in proportion to their respective partnership interests (70-30%, respectively).

31. Although DIHC-MSI and Crow became aware of the budget problems in April 1988, and discussed these problems at length between themselves and with their affiliates, including DIHC and Crow-Washington, MSA knowingly and intentionally did

not disclose these substantial problems to WALP as required under the Second and Third Agreements, and as part of MSA's fiduciary duty to WALP. DIHC-MSI, Crow and Crow-Washington all knew of these over-runs, but caused MSA to withhold knowledge of their existence from WALP. Rather, Defendants concealed the cost over-runs and project delays from WALP through a scheme comprised of fraudulent budget projections and cost shifting. On a monthly basis, Defendants would send or cause to be sent to WALP using the U.S. Mails and interstate wire communications misleading and fraudulent budgets designed to reflect a prosperous program when in fact the Project was seriously over budget and the Defendants were aware that the budgets were misleading.

32. Subsequently, MSA made several Optional Loans to AALP to cover the cost over-runs due to its unauthorized management. On information and belief, Defendants knew that WALP would require Crow to honor its Guaranteed Costs agreement and therefore would not approve a budget that permitted the preferred repayment of these loans or that permitted MSA to shift Guaranteed Costs to Non-Guaranteed Cost items.

33. Beginning in April 1988, and continuing thereafter Defendants conspired (1) to conceal the true cost to complete the construction and development of the Project from WALP in order to gain WALP's approval of budget increases; and (2) to shift Guaranteed Cost items to Non-Guaranteed Cost line-items so that MSA would receive repayment of its Optional Loans before cash flow was disbursed to WALP.

Revised Budget

34. As part of this scheme, on December 12, 1989, Defendants caused MSA to send to WALP a Revised Development Budget ("Revised Budget") by facsimile and U.S. Mail. The Revised Budget increased the total Project Budget to approximately $237,075,000, including both revised Guaranteed Costs and Non-Guaranteed Costs. The Revised Budget also included a component for cash flow during the Lease-Up period which purported to reduce the Revised Budget by $6,504,000. Without WALP's approval of the Revised Budget, the Project could not move forward. WALP's approval of the Revised Budget was therefore essential to the continued existence of the enterprise.

35. On information and belief, at the time Crow, acting on behalf of MSA, prepared and submitted the Revised Budget, Defendants knew that the Revised Budget was materially false and misleading.

36. The Revised Budget misrepresented and mischaracterized various Guaranteed Cost items as Non-Guaranteed Costs. For example, construction costs, which should have been guaranteed by Crow and thus repaid after disbursements to WALP, were instead shifted into Non-Guaranteed cost categories which were to be repaid before disbursements to WALP. The effect of this misrepresentation and mischaracterized was to present a Revised Budget to WALP that was far more optimistic than the true state of the Project.

37. Also, the Revised Budget indicated that revenue from condominium sales during the Lease-Up period would be applied against the entire Revised Budget, and thus would present an overall cost savings on the Project. On information and belief, this representation was false because Defendants intended at all times to use revenue from condominium sales to help repay MSA's Optional Loans rather than as disbursements to the partners in their respective partnership interests percentages. As a result, the budgeted $6,504,000 cost savings set forth in Crow's Revised Budget did not in fact represent any cost saving to AALP or WALP.

38. Third, the Defendants knew that this Revised Budget would not be sufficient to complete the Project, but misrepresented to Plaintiff that the Revised Budget was reasonable, accurate, and complete. Upon information and belief, Defendants knew that additional substantial costs over and above the Budget would be incurred, but did not so advise Plaintiff. The Defendants' unauthorized management of the Project had other negative impacts besides the dramatic increases in the total Project costs. The unauthorized management also caused construction to be substantially delayed due to redesign efforts, delayed the marketing and delivery of parking, office, and retail space, caused significant contractual disputes and cost overruns, and also caused the condominiums to be brought to market on a substantially delayed basis, thus increasing their costs and decreasing their value.

39. On December 12, 1989, WALP approved the Revised Budget. WALP relied on the accuracy of the Revised Budget in granting its approval. Had WALP known

the true and proper allocation of costs under the Project, *i.e.*, that the total costs of construction and development of the Project budget was being increased due to Defendants' unauthorized management, that the Revised Budget misrepresented Guaranteed Costs as Non-Guaranteed Costs, that revenue from condominium sales would not result in cost savings, and that additional substantial costs over and above the Revised Budget would have to be incurred to complete the project, WALP would not have approved the Revised Budget.

40. Following WALP's approval of the Revised Budget, the construction and development of the Project proceeded. WALP relied on the accuracy of the Revised Budget and, having no reason to doubt MSA's representations, raised no concerns with the Revised Budget. On September 24, 1990, Defendants caused MSA to send to WALP by U.S. mail a memorandum setting forth a "Current Budgeted Total to Complete" for the Project. This memorandum falsely indicated that the Project was proceeding according to the Revised Budget.

41. The Second and Third Agreements required MSA to provide WALP with an annual audited financial statement of the partnership within 120 days of the first day of each calendar year. Under this provision, MSA was required to furnish WALP with AALP's 1990 financial statement in May 1991. WALP did not receive the financial statement in May of 1991. Beginning in July 1991, WALP sought a copy of the financial statement as required by the Second and Third Agreements.

42. Over the next two years, WALP sent Crow (as MSA's agent) and DIHC-MSI numerous letters demanding access to the Partnership books and records in accordance with the partnership Agreements and D.C. law. During this time, Defendants engaged in a concerted pattern of evasion to conceal the books and records of the partnership. On one occasion, WALP representatives arrived at Crow's Washington, D.C. offices to inspect the partnership books and records only to be informed that the books and records had been moved to Crow's Dallas, Texas office.

43. On December 27, 1991, pursuant to the terms of the Third Agreement, WALP ceased to be a General Partner and instead became a Class B Limited Partner with a 30% partnership interest. As a Limited Partner, WALP no longer had the right to approve or disapprove Partnership budgets. On information and belief, Defendants engaged in the pattern of evasion concerning the books and records of the Partnership in order to deprive WALP of its right to disapprove the massively increasing Project budget (under the Second Agreement) and to discover and complain of the increasing Project budget (under the Third Agreement).

44. On information and belief, on a quarterly basis between December 1989 and the present, the Defendants caused MSA to use Cash Flow disbursements to repay itself interest and principal amounts due on the Optional Loans made by MSA to cover Crow's Guaranteed Cost over-runs in breach of the partnership Agreements and MSA's fiduciary duty to WALP. These payments insulate MSA from liability for its cost over-runs and provide MSA with a return on its investment that is improperly preferred over WALP's

return on its investment. This conduct emanates from MSA's fraudulent Revised Budget and continues through the present. On information and belief, Defendants effected each of these fraudulent quarterly payments by means of interstate wire transfers or U.S. Mail or both.

45. Beginning on April 14, 1992, and continuing through the present, Defendants caused MSA to send false annual budget statements to WALP by U.S. Mail service. Defendants caused these false annual budget statements to be sent by U.S. Mail to WALP on dates including the following dates: July 15, 1993; October 26, 1994; October 26, 1995; January 18, 1996; and September 3, 1997. On information and belief, Defendants knew that each of these annual budgets was materially false Defendants intended at all times that WALP rely on the falsehoods contained in the Budgets as part of Defendants' scheme to conceal its fraud from WALP. Each of these false annual budgets was therefore a part and parcel of Defendants' on-going fraudulent scheme against WALP.

46. Beginning on August 2, 1991, and continuing through the present, Defendants caused MSA to send false audited financial statements to WALP by U.S. Mail service. Defendants caused these false financial statements to be sent by U.S. Mail to WALP on dates including the following dates: mid-1992; November 1, 1993; August 10, 1994; June 28, 1995; May 21, 1996; and March 26, 1997. In addition, on November 11, 1990, Defendants caused MSA to send WALP a false annual operating budget by facsimile from Dallas, Texas to Washington, D.C., thereby employing interstate wire communications. As Defendants knew, these annual financial statements were false and

intended at all times that WALP rely on the falsehoods contained therein as part of Defendants' scheme to conceal its fraud from WALP. Each of these false annual financial statements was therefore a part and parcel of Defendants' on-going fraudulent scheme against WALP.

47. WALP relied on the accuracy of the annual budgets and financial statements described in paragraphs 44 and 45 above.

48. Following nearly two years of demands by WALP, Defendants were able to successfully conceal their fraud from WALP and frustrate WALP's effort to review the partnership books and records. Notwithstanding that construction of the Project had been completed and that MSA assured WALP that it would receive a fair accounting of partnership assets, on September 2, 1993, WALP sent AALP a letter reiterating its concerns over the increases in the Project budget and the reasons for the increase WALP expressly reserved its right to demand an accounting of partnership assets.

49. Plaintiff has requested that MSA provide access to the partnership books and records under the agreement and as required under District of Columbia law so that they may be reviewed by Plaintiff. The Defendants have continued to refuse to provide books and records of the partnership to Plaintiff, notwithstanding that Plaintiff is entitled to the books and records of the Partnership under the agreements and under District of Columbia law. This refusal continues to the present.

50. In August 1997, WALP first learned from press reports that DIHC was planning to enter into several agreements with Cornerstone Properties, Inc. ("Cornerstone"), a Nevada Corporation. Under the terms of the agreements, Cornerstone would acquire DIHC's ownership interest in DIHC-MSI's parent entity (as well as a number of intervening entities) in a complex transaction in exchange for almost $260,000,000 in cash, promissory notes for $250,000,000 and 41% of Cornerstone's outstanding stock. On information and belief, as part of the deal, DIHC will acquire Crow's interest in MSA, in effect also cashing Crow out of the Market Square project entirely. The effect of the deal will be to remove DIHC from the Market Square project such that WALP will have no effective recourse for the past fraud, unauthorized management, breach of contract and breach of fiduciary duty committed by Defendants (and their agents).

51. As a result of the pattern of conduct between MSA, DIHC-MSI and Crow in favoring MSA over WALP for cash flow disbursements and in concealing the true status of partnership finances from WALP, Defendants have injured WALP in its business and/or property by preventing WALP from recovering its proper share of Partnership assets and proceeds.

52. Based upon the above, WALP brings this action in its own right as a limited partner in AALP, and also brings this action as a derivative action on behalf of AALP pursuant to Section 41-499.11 of the District of Columbia Uniform Limited Partnership Act of 1987, as amended. Plaintiff brings this derivative action to enforce the right of the

limited partnership to recover judgment in its favor because the General Partner able to do so (MSA) is not likely to bring this action because the action would be against MSA. Since WALP is a major limited partner in this partnership, WALP represents the interests of limited partners in maintaining this derivative action on behalf of the partnership.

53. Pursuant to Section 41-499.12 of the Uniform Limited Partnership Act of 1987, as amended, WALP is the proper Plaintiff to bring this action.

54. Pursuant to Section 41-499.14 of the Uniform Limited Partnership Act of 1987, Plaintiff seeks reasonable expenses, including reasonable attorney fees, for bringing this derivative action.

COUNT I
(Racketeer Influenced and Corrupt Organization)

55. Paragraphs 1-54 are incorporated herein and made a part of this count.

56. The Defendants knew that WALP would require Crow to honor its Guaranteed Costs agreement and would not approve a budget that permitted the preferred repayment of Optional Loans or that permitted Crow to shift Guaranteed Costs to Non-Guaranteed Cost items. Beginning on or about April 1988, Defendants conspired (1) to conceal the Project's true budget from WALP in order to gain WALP's approval of budget increases; (2) to shift Guaranteed Cost items to Non-Guaranteed Cost line-item so that MSA would receive repayment of its Optional Loans before cash flow was disbursed to WALP: (3) to impose these costs on WALP as alleged partnership costs when they were

really costs of MSA's unauthorized management; (4) to cause WALP to bear the costs of loans, preferences and interest under the agreement to pay for these budget increases pursuant to unauthorized and improper Optional Loans; and (5) to engage in a pattern of improper self-dealing by causing all such loans (including Optional Loans) to be made from organizations affiliated with MSA (through DIHC), which were made and continued at above-market rates without any attempt to refinance those loans at more reasonable rates.

57. As part of the scheme, Defendants caused to be prepared a fraudulent Revised Budget (and related documents), which they caused to be sent to WALP through the U.S. mail and/or by interstate facsimile over telephone communication facilities. The Defendants, acting through Crow, knew that the Revised Budget was false, and knew that WALP would rely on the falsehoods contained therein in approving the Revised Budget.

58. Over the following five years, Defendants engaged in a pattern of fraudulent conduct to conceal their scheme from WALP and to continue fraudulently receiving Preferred Cash Flow payments. On November 11, 1990, August 26, 1992, November 1, 1993, August 10, 1994, October 26, 1994, June 28, 1995, October 26, 1995, January 18, 1996, May 21, 1996, March 26, 1997, and September 3, 1997, and on other occasions throughout this time period, Defendants caused MSA to send to WALP, by U.S. Mail and/or interstate wire communications, false and fraudulent financial statements and budgets in order to conceal Defendants' scheme. On information and belief, Defendants

intended at all times that WALP rely on those false statements and budgets in order to conceal from WALP Defendants' on-going fraudulent activities.

59. AALP, being a partnership, is an "enterprise" within the meaning of 18 U.S.C. § 1961(5). AALP is engaged in, and its activities affect, interstate and foreign commerce.

60. Defendants are all persons employed by or associated with AALP.

61. In violation of 18 U.S.C. § 1962(c), Defendants have conducted, and participated directly and indirectly in the conduct of, the affairs of AALP through a pattern of racketeering activity consisting of mail fraud and wire fraud.

62. Specifically, as described in paragraphs 1-61 above, Defendants devised and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations, and promises.

63. For the purpose of executing such scheme and artifice, as described in paragraphs 1-61 above, Defendants placed in post offices (and authorized depositories for mail matter) documents to be sent or delivered by the Postal Service; and deposited or caused to be deposited documents to be sent or delivered by private or commercial interstate carriers; and took or received documents therefrom; and knowingly caused such documents to be delivered by mail or such carrier according to the direction thereon, in violation of 18 U.S.C. § 1341.

64. For the purpose of executing such scheme and artifice, Defendants caused writings and signals to be transmitted by means of wire communication in interstate commerce, as described in paragraphs 1-61 above, in violation of 18 U.S.C. ¶ 1343.

65. Each act of Defendants in causing these false statements and budgets to be sent to WALP by U.S. Mail and/or interstate wire communication constituted a separate violation of 18 U.S.C. §§ 1341 (mail fraud) and 1343 (wire fraud) and are racketeering activities. Because Defendants engaged in numerous acts of mail and wire fraud as described above, and because these acts were related to each other and continuous Defendants' conduct constituted a "pattern of racketeering activity" as defined in 18 U.S.C. § 1961(5).

66. The result of Defendants' violation of 18 U.S.C. § 1962(c) was to diminish WALP's equity interest (and corresponding right to payment) in the partnership. As a result of this pattern of racketeering activity, Defendants, which are engaged in interstate commerce, have received greater interest in and control of AALP. Defendants' conduct has injured WALP by depriving it of its full partnership interest in AALP and by wrongfully withholding preferred payments owing to WALP. Therefore, as a result of Defendants' activities, WALP has been injured in its business and property in an amount in excess of $89,000,000, as well as other harm, in violation of 18 U.S.C. § 1962(c).

COUNT II
(Racketeer Influenced and Corrupt Organization)

67. Paragraphs 1-66 are incorporated herein and made a part of this count.

68. In violation of 18 U.S.C. § 1962(d), each of the Defendants conspired with the other Defendants to violate 18 U.S.C. § 1962(c), as set forth in the preceding count. In furtherance of their conspiracy, Defendants engaged in numerous overt acts of mail and wire fraud, as set forth above. Defendants' conduct has injured WALP in its business and property by depriving it of its full partnership interest in AALP and by wrongfully withholding preferred payments owing to WALP. As a result of Defendants' actions, WALP suffered injury to its business and property in an amount in excess of $89,000,000, as well as other harm, in violation of 18 U.S.C. § 1964(c).

COUNT III
(Fraud/Conspiracy)

69. Paragraphs 1-54 are incorporated herein and made a part of this count.

70. On December 12, 1989, Crow sent WALP a Revised Development Budget ("Revised Budget") by facsimile and U.S. Mail. On information and belief, at the time that Crow, acting on behalf of MSA, prepared and submitted the Revised Budget, Defendants knew that the Revised Budget was false and misleading. As described above, subsequently Defendants intended to send WALP false and misleading budgets.

71. On information and belief, defendants conspired with one another and intended that WALP rely on the false Revised Budget and used WALP's reliance to secure WALP's approval of the Revised Budget. On December 12, 1989, WALP approved the Revised Budget. WALP relied on the accuracy of the Revised Budget in granting its approval. Had WALP known the true and proper allocation of costs under the Project, that DIHC-MSI and Crow intended to use cash flow to pay for Guaranteed Cost items, and that the Budget was false and misleading, WALP would not have approved the Revised Budget.

72. As a result of defendants' fraud and conspiracy, WALP suffered injury in an amount of in excess of $89,000,000.

COUNT IV
(Access to Books and Records)

73. The allegations contained in Paragraphs 1-54 are incorporated herein by reference.

74. Pursuant to Section 41-435(b) of the Uniform Limited Partnership Act of 1987, as amended, WALP, as a limited partner owning 10% or more of the limited partnership's interest, shall upon written request of the general partners have the right to inspect the books and records of the limited partnership. WALP has made such written requests to the general partner for access to the books and records of the partnership, but such right of request has been continuously denied by the general partner. Such denial is

inconsistent with the requirements of the statute and the rights of WALP and is arbitrary and without reason.

75. As a result of this improper refusal, WALP has been damaged because it is unable to review the books and records of the partnership and to protect its own financial interests.

76. Wherefore, Plaintiff is entitled to (a) an order from this Court directing Defendants and their agents acting on their behalf to allow WALP immediate access to the books and records of the partnership as well as (b) damages in an amount proven at trial, plus interest, and attorney fees, together with such other relief as the Court deems just and proper.

COUNT V
(Breach of Fiduciary Duty)

77. The allegations contained in Paragraphs 1-54 are incorporated herein by reference.

78. Pursuant to the Uniform Limited Partnership Act of 1987, as amended, as well as the common law of the District of Columbia, Defendants owe a fiduciary duty to Plaintiff, including a duty of due care and a duty of loyalty. WALP, as a limited partner in AALP, has relied on Defendants and their agents and representatives to perform their fiduciary duty towards WALP in a timely manner and in accordance with law. MSA (and its agents, partners and representatives) have continuously violated its fiduciary duties

toward Plaintiff. These fiduciary duties have been violated through Defendants' unauthorized management of the construction, failure to seek and obtain WALP's approval of the increasing budget as required by the Second Agreement, incurring without WALP's required approval costs, loans and other expenses which required such approval, unauthorized management of the Project so that it was completed late and over budget, self-dealing in arranging for Optional Loans and preference accounts to DIHC and its affiliates to the detriment of the Plaintiff, failing to provide the books and records to Plaintiffs required by applicable law, and restructuring the transaction between DIHC and Cornerstone so as to allow DIHC in acquiring Crow-Pennsylvania to effectively cash out of the transaction while preventing Plaintiff from being given the same opportunity.

79. These actions constitute a breach of fiduciary duty by Defendants towards plaintiff because Defendants owed these duties towards Plaintiff as described above but failed to honor these duties and treat plaintiff fairly and properly. As a result of this breach of duty, Plaintiff has been damaged in the amount exceeding $89 million.

80. Wherefore, Plaintiff is entitled to damages exceeding $89 million plus interest and attorney fees, together with such other relief as the Court deems just and proper.

COUNT VI
(Breach of Contract)

81. The allegations contained in Paragraphs 1-54 are incorporated herein by reference.

82. Pursuant to the Second Amended Agreement, MSA(acting through and with the other defendants) were required to seek and obtain the approval of WALP before making or incurring expenditures or obligations for or on behalf of the partnership which in the aggregate exceeded total expenditures specifically authorized by the approved budgets.

83. In violation of the Second Agreement, Defendants substantially exceeded (or caused AALP to exceed) the Approved Budgets authorized by WALP. The increases above the approved amount was the responsibility of Defendants and WALP did not authorize these increases. As a result, the actions of Defendants in authorizing and approving any and all expenditures and obligations in excess of this Approved Budget is in breach with the agreement.

84. As a direct result of these unauthorized budget increases, Defendants have incurred on behalf of the partnership additional unauthorized debt and equity in excess of $89,000,000. But for these breaches of the agreement and unauthorized expenditures, this additional debt and equity would not have been required. For example, the Optional Loans and additional expenditures incurred by the Partnership above the Approved Budget

would not have been required. Additionally, but for the occurrence of this additional unauthorized debt and equity for the Partnership, there would have been no requirement for increasing MSA's equity account and for accrued and unpaid preferences and interest booked applicable to Optional Loans (and related preferences). As a result, the actions of MSA in incurring additional equity, accrued and unpaid preferences and Optional Loans in excess of the budget amount represents a breach of both Agreements because they were incurred outside of the budget approval process.

85. Defendants are in further breach of the contract because the Second Agreement called for certain construction guarantees from Crow-Pennsylvania Avenue Limited Partnership and its affiliates, which construction guarantees effectively protected the partnership from cost overruns. On information and belief, these construction guarantees have been released or not enforced by MSA to the detriment of the partnership. There was no contractual authorization for MSA to release or refuse to enforce these guarantees. Accordingly, the partnership has been damaged by the amount of the guarantees not enforced.

86. These complained of actions violated the following provisions of the Second and Third Agreement (Sections 2.1, 2.2, 2.6, 3.1, 3.2 (5), 3.3,3.9, 4.1, 4.2, 4.3, 5.2(1), 5.2(2), 5.2(3), and 6.7)

87. As a result of these actions, WALP has been damaged in an amount exceeding $89,000,000.

88. Wherefore, Plaintiff is entitled to damages exceeding $89 million, plus interest and attorneys fees together with such other relief as the Court deems just and proper.

COUNT VII
(Appointment of A Receiver And Injunctive Relief Against All Defendants)

89. The allegations contained in Paragraphs 1-54 are incorporated herein by reference.

90. The above-described the actions of Defendants have resulted in unauthorized management of the partnership, waste of partnership assets, misdirection of the partnership funds, unauthorized budget increases and cost overruns, unauthorized loans and payment of preferences and unauthorized recordation of partnership responsibilities. At present, Defendants and their affiliates continue to manage Market Square, to collect rents, to collect all income from the operations of Market Square, to pay out funds, to manage the partnership, and to cause vendors and agencies to be retained on behalf of the partnership, to cause expenditures to be incurred on behalf of Market Square. As described above, MSA is mismanaging the Project, improperly depriving WALP of its rights, defrauding WALP, wasting assets, diverting assets, and causing obligations to be incurred by the Partnership, all improperly.

91. Unless a receiver is appointed by this Court to manage the Market Square Project pending the completion of this litigation, Plaintiff will be irreparably harmed. Also,

upon information and belief, Defendants are engaged in the transfer of their interest in Market Square to Cornerstone Properties intending to cash out of this Project. Contrary to the original intention of the Partnership Agreement, this Project will become part of the larger overall organization of Cornerstone and the ability of WALP to enforce its contractual rights against DIHC and its agents will evaporate.

92. Unless a receiver is immediately appointed and Defendants, and each of them and their agents are immediately restrained from demanding, collecting, receiving and using the Project's receivables, rents, security deposits, issues, profits, and any other income derived from the Real Property, Plaintiff will be irrevocably harmed in that Defendants, and each of them, will continue collecting the Real Property's income and profits, continue to mismanage the Real Property, decrease the value of the Real Property, and use such income and profits from the Real Property in a manner unauthorized by Plaintiff.

93. Accordingly, a receiver should be appointed and granted the general powers and duties of a Court-appointed receiver as well as the following specific powers and duties:

a. To enter on and take possession of the Real Property;

b. To operate, manage, maintain, preserve, lease, sell, convey or transfer the Real Property, in whole or in part, provided such sale, conveyance or transfer, if any, is approved and confirmed by this Court;

c. To demand, collect and receive all rents, issues, income, proceeds, revenues and profits, including, without limitation, all security deposits, prepaid rents, advances, storage fees and parking fees ("rents and profits") derived from the property, or any party thereof, including all proceeds in the possession of Defendants which are derived from the rents and profits generated by the property;

d. To bring and prosecute all proper actions for the (i) collection of rents and profits derived from the Real Property, (ii) removal from the Real Property of persons not entitled to entry thereon, (iii) protection of the Real Property, (iv) damage caused to the Real Property, and (v) recovery of possession of the Real Property;

e. To employ any person or firm to collect, manage, lease, maintain and operate the Real Property if the receiver deems it necessary or appropriate in his discretion and judgment to do so;

f. To hire, employ and retain attorneys (with Court approval), certified public accountants, investigators, security guards, consultants, property management companies, brokers and any other personnel or employees which the receiver deems necessary to assist him in the discharge of his duties.

g. To retain environmental specialists to perform environmental inspections and assessments of the Real Property;

h. To confirm that Defendants have the Real Property adequately insured and in proper repair, to promptly report any evidence or findings to the contrary to the parties and to the Court and, if necessary, to disburse funds for the maintenance of fire, hazard and liability insurance for the property in amounts the receiver may deem fit or proper and to cause all presently existing or acquired policies to be amended by adding himself, the receivership estate and the property managers he retains as additional insured;

i. To take possession and control of all the records, correspondence, insurance policies, books and accounts of Defendants which disclose or refer to the assets, rents and profits and/or liabilities pertaining to the property, whether in the possession and control of Defendants and/or any of its agents, servants or employees, provided, however, that such books and records shall be made available for the use of the agents, servants and employees of Defendants in the ordinary course of the performance of their duties.

j. To obtain copies of any and all plans, specifications and drawings pertaining to or affecting any part or all of the Real Property and to be authorized to obtain such plans, specifications and drawings from Defendants, from architects and contractors retained or formerly retained by said Defendants or from the city, municipality, county or state in which such property is situated if the receiver deems it necessary or advisable in his discretion to do so;

k. To continue in effect any contracts presently existing and not in default relating to the Real Property;

l. To enter into or modify contracts affecting any part or all of the Real Property including, without limitation, any and all leases affecting the Real Property, and to immediately terminate any existing contract which is not deemed beneficial in the receiver's sole opinion to the commercially reasonable operation of the Real Property;

m. To construct tenant improvements and/or make any repairs to the Real Property that the receiver, in his discretion, deems necessary or appropriate;

n. To pay and discharge out of the funds coming into his hands all expenses of the receivership and the costs and expenses of operation and maintenance of the Real Property, including all taxes, governmental assessments and charges in the nature thereof lawfully imposed upon the property provided, however, that no risk or obligation so incurred shall be at the personal risk or obligation of the receiver, but a risk or obligation of the receivership estate, and provided further that the receiver shall be empowered not to advance funds to satisfy the mortgage on the Project payable to defendants or their affiliates but instead to pay such funds into the Court's depositary pending the resolution of this action:

o. To have the power to advance funds to keep current any liens encumbering the Real Property, if any;

p. To expend funds to purchase merchandise, materials, supplies and services as the receiver deems necessary and advisable to assist him in performing his duties

hereunder and to pay therefor the ordinary and usual rates and prices out of the funds that may come into the possession of the receiver;

q. To apply for, obtain and pay any reasonable fees for any lawful license, permit, or other governmental approval relating to the property or the operation thereof; confirm the existence of and, to the extent permitted by law, exercise the privileges of any existing license or permit or the operation thereof, and do all things necessary to protect and maintain such licenses, permits and approvals;

r. To borrow such funds from any appropriate bank, financial institution or lender as may be necessary to satisfy the costs and expenses of the receivership, to the extent that the net rents and profits derived from the Real Property are insufficient to satisfy such costs and expenses, and issue a receiver's Certificate of Indebtedness evidencing the obligation of the receivership estate (and not the receiver individually) to repay such sums; the principal sum of each such Certificate, together with reasonable interest thereon, shall be payable out of the next available funds which constitute rents and profits derived from the Real Property;

s. To have the power to open and utilize bank accounts for receivership funds, and generally do such other things as may be necessary or incidental to the foregoing specific powers, directions and general authorities;

t. To present for payment any checks, money orders and other forms of payment made payable to Defendants which constitute rents and profits of the

Real Property, endorse same and collect the proceeds thereof, such proceeds to be used and maintained as elsewhere provided herein;

u. To file an inventory setting forth a list of all personal property of which the receiver has taken possession by virtue of his appointment within 30 days after the effective date of this appointment, and to file a supplemental inventory if he later takes possession of other personal property;

v. To prepare monthly profit/loss statements, rent rolls and balance sheets pertaining to the Real Property and, upon completion, to mail such statements to the parties;

w. To prepare periodic statements reflecting the receiver's fees and administrative costs and expenses incurred in the operation and administration of the receivership estate. Upon completion of such statements, and mailing the statements to the parties' respective attorneys of record, the receiver shall pay from estate funds, if any, the amount of each statement; despite the periodic payment of receiver's fees and administrative expenses, the fees and expenses shall be submitted to the Court for approval and confirmation in the form of either a noticed interim request for fees, a stipulation among parties or the receiver's Final Account and Report; and

x. To take actions relating to the Real Property beyond the scope contemplated herein, provided the receiver obtains prior Court approval for such actions.

94. Plaintiff hereby seeks an order requiring Defendants, and each of them, to perform the following:

a. Turn over to the receiver the possession of the Real Property and the records, books of account, ledgers and all business records thereof (including, without limitation, the plans, specifications and drawings relating or pertaining to any part, or all of the Real Property), wherever located and in whatever mode maintained (including, without limitation, information contained on computers and any and all software relating thereto as well as all banking records, statements and canceled checks);

b. Turn over to the receiver all documents which constitute or pertain to all licenses, permits or governmental approvals relating to the Real Property;

c. Turn over to the receiver all documents which constitute or pertain to insurance policies, whether currently in effect or lapsed, which relate to the Real Property;

d. Turn over to the receiver all construction contracts, leases and subleases, management agreements, franchise agreements, royalty agreements, licenses, assignments or other agreements of any kind whatsoever, whether currently in effect or lapsed, which relate to or are related to any part or all of the Real Property;

e. Turn over to the receiver all documents pertaining to past, present or future construction of any type with respect to all or any part of the Real Property;

f. Turn over to the receiver all documents of any kind pertaining to any and all toxic chemicals or hazardous materials, if any, ever brought, used and/or remaining upon the Real Property, including, without limitation, any and all reports, surveys, inspections, checklists, proposals, orders, citations, fines, warnings and notes; and

g. Turn over to the receiver all monies, checks, funds or proceeds obtain by Defendants, and each of them, which represent rents and profits derived from the Real Property (including, without limitation, all security deposits, advances, prepaid rents, storage fees and parking fees) which are received or have been received, which are in the possession of Defendants and/or in all bank accounts related to the Real Property wherever and in whatsoever mode maintained, including without limitation, bank accounts held in the name of an individual, corporation, partnership, or trust.

95. Plaintiff further seeks a temporary restraining order, preliminary injunction and permanent injunction against Defendants, enjoining them and their respective agents, employees, affiliates or representatives, and/or anyone acting on their behalf, from:

a. Interfering with the receiver, directly or indirectly, in the management, operation and leasing of the Real Property;

b. Interfering with the receiver, directly or indirectly, in the collection of rents and profits derived from the Real Property;

c. Collecting or attempting to collect the rents and profits derived from the Real Property;

d. Expending, disbursing, transferring, assigning, selling conveying, devising, pledging, mortgaging, creating a security interest in or disposing of the whole or any part of the property (including the rents and profits thereof) without the prior written consent of the receiver; and

e. Doing any act which will, or which will tend to, impair, defeat, divert, prevent or prejudice the preservation of the Real Property (including the rents and profits thereof), or Plaintiff's interest in the Real Property and said rents and profits.

96. Plaintiff alleges on information and belief that Defendants and their agents continue to collect and/or divert the rents and profits from the Real Property. By appointing a receiver, funds that might otherwise be lost will be preserved to maintain and operate the Market Square Project and to satisfy monies invested by Plaintiff in the Real Property.

97. Plaintiff further seeks preliminary and permanent injunctive relief against Defendants imposing a court-directed trust on the proceeds to defendants from the sale or transfer of Market Square (or any interest therein, any mortgage thereon, or any rights to

receive any monies from any Optional Loans or preferences) to Cornerstone ("the Cornerstone Proceeds") or in the alternative enjoining Defendants and their respective agents, employees, affiliates or representatives and/or anyone acting on their behalf, from directly or indirectly transferring the Cornerstone Proceeds outside the United States, pending further order of this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests as follows:

98. For judgment in favor of Plaintiff for the damages proven at trial, trebled pursuant to applicable law, together with interest thereon at the legal rate;

99. For an order granting Plaintiff immediate access to all books and records of AALP;

100. For the immediate appointment of a receiver to enter into possession, hold, occupy, possess, manage and protect the Real Property during the pendency of this action;

101. For preliminary and permanent injunctive relief barring Defendants and their agents from interfering with the operation and management of the Real Property;.

102. For preliminary and permanent injunctive relief imposing a trust on the Cornerstone Proceeds or in the alternative barring defendants from directly or indirectly transferring the Cornerstone Proceeds outside of the United States;

103. For an order that the cost of this action, including but not limited to, reasonable attorneys' fees expended by Plaintiff for the common benefit, fees and expenses of referees or trustees, if any, and other disbursements, be ordered paid by the parties entitled to share in the Real Property in proportion to their respective interests therein, and more particularly that Plaintiff be reimbursed for all sums advanced in this regard beyond their just proportion thereof, and that the costs be included and specified in a lien on the several shares of the parties;

104. For its own attorneys fees and costs incurred in bringing and maintaining this action, pursuant to applicable law; and

105. For such other and further relief as the Court may deem just and proper.

Dated: October 21, 1997

Respectfully submitted,

By: _____

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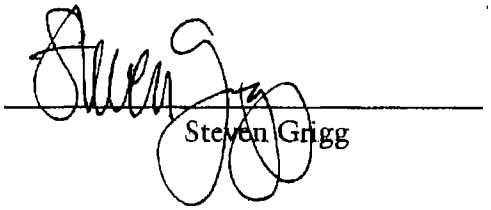
Attorneys for Plaintiff

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 21, 1997.



Steven Grigg

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WESTERN ASSOCIATES LIMITED PARTNERSHIP,

Plaintiff

v. **Civil Action No. 97-2452 (JGP)**

MARKET SQUARE ASSOCIATES, *et. al,*

Defendants

MEMORANDUM OPINION

This matter is before the Court on the defendants'[1] **Motions To Dismiss Plaintiff's Amended Complaint.**[2] This action arises out of a partnership accounting dispute concerning a

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[1] Defendants Market Square Associates, DIHC Market Square, Inc., DIHC Management Corporation, Dutch Institutional Holding Company ("DIHC"), DIHC Finance Corp., Stichting Pensioenfonds Voor de Gezondheid, Geestelijke en Maatschappelijke Belangen, Robert T. Sorrentino, Craig W. Johnston, and Barrington H. Branch ("DIHC defendants") collectively filed with the Court an Opposition to Plaintiff's Suggestion of the Mootness and Renewal of Defendants' Pending Motion to Dismiss [docket #47, #48] ("DIHC Renewed Motion") and defendants Market Square Associates, Crow-Pennsylvania Avenue Limited Partnership, Crow-Washington CBD Development Corporation and T. Christopher Roth ("Crow defendants") collectively filed with the Court a Motion To Dismiss Amended Complaint and Opposition to Plaintiff's Suggestion of Mootness [docket #45, #46] ("Crow Renewed Motion") and defendant Cornerstone Properties, Inc. filed with the Court a Notice of Joinder in Pending Motions To Dismiss The Amended Complaint and in Supporting Memoranda [docket #54]. To the extent that the Court addresses the arguments contained within a motion of one group of defendants, the distinction is specifically identified.

[2] Plaintiff filed an Amended Complaint ("Amend. Compl.") on January 22, 1998 [docket #41] while Crow defendants' Motion To Dismiss Complaint [docket #17] and DIHC defendants' Motion To Dismiss Complaint [docket #20] were pending before the Court. The original Complaint is considered superseded by the Amended Complaint. Since defendants contend the alleged defects contained within the original Complaint remain in plaintiff's amended pleading and defendants have renewed and supplemented their pending motions, the Court now considers all pending motions, oppositions and replies to address the Amended Complaint. See 6 Charles Alan Wright et al., Federal Practice and Procedure § 1476 (2d ed. 1990 & Supp. 1999).

(N)

EXHIBIT
B

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ked-use real estate development project known as Market Square. Plaintiff Western Associates Limited Partnership ("WALP"), a District of Columbia limited partnership, brings this action individually as a limited partner in Avenue Associates Limited Partnership ("AALP") and also on behalf of AALP as a derivative action.[3] (Amend. Compl. ¶ 90). AALP is a District of Columbia partnership. Id. ¶ 3. The defendants in this action are employed by or associated with AALP. Id. ¶ 94.

Plaintiff's Amended Complaint alleges violations of the Racketeer Influenced and Corrupt Organization Act ("RICO"), 18 U.S.C. § 1962 (c), (d) and § 1964 (c) (1984 & Supp. 1999). (Amend. Compl. ¶¶ 93-103). Plaintiff also alleges claims of fraud, civil conspiracy to defraud, breach of fiduciary duty, aiding and abetting a fiduciary, breach of contract, and requests access to books and records, the appointment of a receiver and injunctive relief against all defendants. Id. ¶¶ 104-153.

While separate submissions have been filed with the Court, defendants move collectively to dismiss, with prejudice, plaintiff's RICO claims in Count I and Count II of the Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6). Further, defendants request the dismissal of the remaining claims pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction. The Court has given careful consideration to all the pending motions to dismiss, all respective oppositions and replies and for the reasons set forth below, the Court will grant defendants' motions based upon plaintiff's failure to allege a "pattern of racketeering activity" under the RICO Act.

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[3] The derivative action on behalf of AALP is brought pursuant to D.C. Code Ann. § 41-499.11, the District of Columbia Uniform Limited Partnership Act of 1987, to enforce the right of the limited partnership to recover judgment in its favor because MSA, the general partner, is not likely to bring an action that would be against MSA. (Amend. Compl. ¶¶ 90-92).

BACKGROUND [4]

Market Square is a retail, commercial, and residential development located at 7th Street and Pennsylvania Avenue, Northwest, Washington, D.C. (Amend. Compl. ¶ 21). AALP was formed within the District of Columbia on September 15, 1985 to develop, own, manage, and ultimately dispose of the Market Square project. Id. ¶ 23. AALP has two partners: WALP and Market Square Associates ("MSA"). Id. ¶ 28. When construction was completed on the Market Square project in 1991, pursuant to partnership agreement, WALP became a limited partner and defendant MSA became owner of both the sole general partnership and the remaining limited partnership interest in AALP. Id.

Briefly, the plaintiff alleges the defendants agreed and conspired to commit and/or participated in numerous acts to defraud AALP, WALP, and WALP's general and limited partners beginning on or before 1988 and spanning more than eight years. (Amend. Compl. ¶¶ 20, 36-83). Plaintiff's eight count Amended Complaint alleges the defendants misused their power to manage the Market Square project and violated partnership agreements to repeatedly defraud AALP, WALP, and WALP's partners. Id. ¶¶ 29-92. The allegations of fraud arise from defendants' alleged misrepresentations contained within budget projections for the Market Square project, which induced WALP to approve a budget for the project in 1989. Id. ¶¶ 29-87. Additionally, defendants' misrepresentations were incorporated within a series of annual financial statements relating to the Market Square project and AALP and transmitted to WALP by mail or wire communication from

[4] For purposes of ruling on a motion to dismiss, the factual allegations of the complaint must be presumed to be true and liberally construed in favor of the plaintiff. Shear v. National Rifle Ass'n of Am., 196 U.S. App. D.C. 344, 346, 606 F.2d 1251, 1253 (1979). Therefore, the facts set forth herein are taken from plaintiff's Amended Complaint and for purposes of this decision, the Court accepts plaintiff's version of the facts.

91 through 1996. Id. Plaintiff WALP claims that the defendants' objective was to cause the plaintiff to have inaccurate cost and profit expectations for the Market Square project so as to conceal the financial ill health of the project and the AALP partnership. Id. Defendants are alleged to have denied WALP cash flow distributions that WALP was entitled to by virtue of its limited partnership interest and to have caused WALP to bear the risk of cost overruns in violation of partnership agreements. Id. ¶¶ 84-88. Upon receipt of the 1996 financial statement, which was sent to WALP in March 1997, WALP discovered that the AALP partnership was having difficulty meeting its obligations as they became due, and MSA no longer believed that it would meet the 1992 income projections. Id. The 1996 financial statement reported that net operating income for 1996 was more than $1,000,000 below MSA's projections and stated that "substantial doubt exists as to the Partnership's ability to continue as a going concern." Id. Plaintiff asserts that MSA continued to maintain that the Market Square project was "extremely successful" and no one reported to WALP that the 1992 income projection was inaccurate. Id. Plaintiff alleges that the 1996 financial statement revealed that the AALP partnership's financial health was in jeopardy and that the income projections were fraudulent. Id. Plaintiff contends that defendants' actions constitute multiple acts of mail and wire fraud in furtherance of four separate but related schemes to defraud and this conduct forms a "pattern of racketeering activity" under the civil provisions of RICO. Id. ¶¶ 36-37, 93-103. Plaintiff characterizes defendants' multiple schemes to defraud in the following four ways: 1) the Revised Budget Approval Scheme; 2) the Cost Shifting Scheme; 3) the Income Projection Scheme; and 4) the Going Concern Scheme. A brief description of the factual allegations underlying the schemes follows.

Under the Revised Budget Approval Scheme the plaintiff alleges that during or before April 1988 the defendants' knew that the total costs to complete the Market Square project would exceed

original budget prepared by MSA and approved by WALP, yet, defendants agreed to conceal the projected budget increases. (Amend. Compl. ¶¶ 38-46). In April 1988 the defendants revised the budget and increased the costs without seeking WALP's approval, violating partnership agreements. Id. The revised budget was not mailed to WALP for approval until August 1989. Id. Defendants are alleged to have known that the project's costs had already exceeded or were about to exceed the revised budget, yet, defendants continued to represent that the budget reflected accurate projections adequate to complete the Market Square project. Id. As a result, WALP relied on defendants' representations and approved the revised budget in December 1989. Id.

The Cost Shifting Scheme arose from the improper allocation of project costs, financing costs and disbursements. (Amend. Compl. ¶¶ 47-56). For example, the cost overruns were fraudulently shifted to appear as AALP's obligations rather than MSA's obligations by virtue of the financial statements sent to WALP for the years 1991 through 1996. Id. Plaintiff accuses defendants of increasing project costs without required approval and of borrowing funds to finance the unapproved costs from affiliates of the DIHC defendants at above-market rates. Id. Additionally, loans taken to fund costs were inappropriately repaid from WALP's cash flow when repayment should have been borne by MSA alone pursuant to partnership agreement. Id.

The Income Projection Scheme arose from defendants concealing the impact of cost overruns to make it appear to WALP that cost overruns enhanced the financial well-being of Market Square. (Amend. Compl. ¶¶ 57-69). Plaintiff accuses the defendants of concealing the fact that the project was over budget and in debt. Id. WALP contends that it was lulled into believing that its investment remained profitable. Id.

Under the Going Concern Scheme the plaintiff alleges the defendants misrepresented the ability of the partnership to continue as a going concern. (Amend. Compl. ¶¶ 70-83). Plaintiff relied

defendants' representations by refraining from bringing suit against defendants and not seeking the dissolution and winding-up of the AALP partnership. Id.

Plaintiff alleges that defendants concealed their fraudulent schemes from 1992 until March 1997. (Amend. Compl. ¶¶ 84-87). WALP claims to have learned of the facts giving rise to its RICO claim in March 1997 upon receipt of the 1996 financial statement. Id. The 1996 financial statement reported net income more than $1,000,000 below projected amounts and stated that "substantial doubt exist[ed] as to [AALP's] ability to continue as a going concern." Id. Up until this point WALP claims it did not receive any revisions of income projections nor any indication that the projections were inaccurate. Id. The 1996 financial statement purportedly led WALP, for the first time, to discover the existence or the alleged fraudulent schemes. Id.

Finally, plaintiff claims that defendants' fraudulent conduct injured AALP, WALP and WALP's partners in their business and property in an amount in excess of $89,000,000, as well as other harm in violation of 18 U.S.C. § 1964(c). (Amend. Compl. ¶¶ 88-92). Plaintiff alleges that because of the pattern of conduct between defendants they have injured WALP in its business and/or property by preventing WALP from recovering its proper share of partnership assets and proceeds. Id. Plaintiff's Amended Complaint contains numerous state law claims but the Court finds it necessary to address only the RICO claims in Count I and Count II.

A. Plaintiff's RICO violations as alleged in the Amended Complaint

The RICO allegations in Count I of WALP's Amended Complaint are that: 1) defendants are employed by or associated with AALP, which is a partnership that is engaged in and its activities affect interstate and foreign commerce and an "enterprise" within the meaning of 18 U.S.C. 1961(4); 2) beginning in April 1988 and continuing thereafter, defendants agreed to engage and did engage in a series of separate and related schemes designed to defraud AALP, WALP, and WALP's partners

and each of these schemes violated 18 U.S.C. § 1341 (mail fraud) and/or 18 U.S.C. § 1343 (wire fraud); 3) each act of mail and/or wire fraud constituted a separate predicate act of "racketeering activity" within the meaning of 18 U.S.C. § 1961(1); 4) the numerous acts of mail and wire fraud which were related and continuous over more than eight years constitute a "pattern of racketeering activity" as defined in 18 U.S.C. § 1961(5); 5) defendants participated in the conduct and affairs of AALP through a pattern of racketeering activity consisting of mail fraud and wire fraud in violation of 18 U.S.C. § 1962(c); and 6) by virtue of defendants' violation of 18 U.S.C. § 1962(c), AALP, WALP and WALP's partners have been injured in their business and property in an amount in excess of $89,000,000, as well as other harm in violation of 18 U.S.C. § 1964(c).

Plaintiff's RICO allegations under Count II are that: 1) each defendant, in violation of 18 U.S.C. § 1962(d), conspired with the other defendants to violate 18 U.S.C. § 1962(c) and that in furtherance of their conspiracy, defendants engaged in numerous overt acts of mail and wire fraud; and 2) by virtue of defendants violations of 18 U.S.C. § 1962(d) AALP, WALP and WALP's partners suffered injury to their business and property in an amount in excess of $89,000,000, as well as other harm, in violation of 18 U.S.C. § 1964(c).

II. STANDARD OF REVIEW

For purposes of a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the factual allegations of the complaint must be taken as true, and any ambiguities or doubts must be resolved in favor of the plaintiff. Gregg v. Barrett, 248 U.S. App. D.C. 347, 355, 771 F.2d 539, 547 (1985). To prevail on a motion to dismiss the defendants must show "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102 (1957).

II. DISCUSSION

The RICO Act provides a private civil action to recover treble damages for injury "by reason of a violation of" its substantive provisions. 18 U.S.C. § 1964(c). Section 1962(c) states,

> [i]t shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

18 U.S.C. § 1962(c) (Supp. 1999).[5] At the heart of any RICO complaint is the allegation of a "pattern of racketeering activity." A "pattern" is a term of art defined to require "at least two acts of racketeering activity" within a ten-year period. 18 U.S.C. § 1961(5). "Racketeering activity" is a term of art defined as any act indictable under certain state and federal criminal laws, which includes violations of federal mail and wire fraud statutes. 18 U.S.C. § 1961(1).

Defendants' Fed. R. Civ. P. 12(b)(6) motions to dismiss[6] challenge plaintiff's Amended Complaint by arguing that the claims in Count I and Count II do not constitute civil RICO violations under 18 U.S.C. § 1962(c), (d) and § 1964(c) and the claims are barred as a matter of law. Specifically, defendants identify three independent grounds for dismissing plaintiff's RICO claims. Defendants argue that plaintiff's failure to plead a "pattern of racketeering activity" remains a fatal

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[5] Section 1964(c) provides a civil remedy for violations of RICO §§ 1962(c) and 1962(d). Section 1962(d) makes it unlawful to conspire to violate § 1962(c).

[6] The Court notes that defendants' motions to dismiss are not converted to motions for summary judgment. While a letter was attached to the Crow defendants' Motion To Dismiss [docket #17] and this letter was explicitly referred to and relied upon by WALP in its original Complaint (See Compl. ¶ 48), the plaintiff has filed an amended complaint, which is now before the Court. The Amended Complaint contains no references to any particular letters between the parties. The Court has chosen to disregard all attachments to the original motions to dismiss filed by defendants and any arguments set forth by defendants based upon such attachments. Additionally, the Court has chosen to disregard the post briefing memorandum filed by defendants. These documents are not necessary to resolve the issues at bar and consequently this Court chooses to exclude them from consideration.

law in plaintiff's Amended Complaint and, alternatively, the claims are time-barred. (DIHC Renewed Motion at 4-5); (Crow Renewed Motion at 6, 12). Additionally, the Crow defendants argue that plaintiff has failed to plead its RICO claims with sufficient particularity under Fed. R. Civ. P. 9(b). (Crow Renewed Motion at 14). Defendants contend that only state law claims would remain following dismissal of the RICO claims, therefore, the remaining claims should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction. (DIHC Renewed Motion at 12); (Crow Renewed Motion at 1). The Court finds the plaintiff's allegations do not amount to a "pattern of racketeering activity," therefore, it is only necessary to address this alleged defect.

A. Lack of RICO "pattern of racketeering activity"

The Supreme Court has addressed what conduct meets the pattern requirement of civil RICO claims. Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 105 S.Ct. 3275 (1985); H.J. Inc., et al. v. Northwestern Bell Telephone Co., 492 U.S. 229, 109 S.Ct. 2893 (1989). While a minimum of two acts of racketeering are necessary to form a pattern, this may not be enough. Sedima, 473 U.S. at 496 n.14, 105 S.Ct. at 3285 n.14. In an attempt to characterize a "pattern of racketeering activity" the Supreme Court has stated a "pattern" may be demonstrated by "show[ing] that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity."[7] H.J., 492 U.S. at 239, 109 S.Ct. at 2900. While defining "relatedness" within the context of a RICO civil action, the Supreme Court referred to the following statutory language,

> criminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.

H.J., 492 U.S. at 240, 109 S.Ct. at 2901 (quoting 18 U.S.C. § 3575(e)). While referring to legislative

[7] The term "predicate acts" refers to the offenses that constitute the RICO claim.

history, the Supreme Court determined that, "the relatedness of racketeering activities is not alone enough to satisfy § 1962's pattern element. H.J., 492 U.S. at 240, 109 S.Ct. at 2901. To establish a RICO pattern it must be shown that the predicates themselves amount to, or that they otherwise constitute a threat of, continuing racketeering activity." Id. There are two established methods for demonstrating the "continuity" prong of the "pattern" requirement of the RICO statute: a plaintiff may show either a "closed period of repeated conduct, or . . . past conduct that by its nature projects into the future with a threat of repetition." Id. at 241, 109 S.Ct. at 2902. WALP claims that the defendants' activity satisfies the "closed period of repeated conduct" test. (Plaintiff's Opposition To Defendants' Motions To Dismiss Amended Complaint ("Plaintiff's Opposition") at 7). "A party . . . may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time. Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy the requirement: Congress was concerned in RICO with long-term criminal conduct." H.J., 492 U.S. at 242, 109 S.Ct. at 2902. While the Supreme Court has provided illustrative, non-exhaustive fact patterns that could amount to continued racketeering activity, none of the examples correspond to WALP's claims. Id. The Supreme Court noted that "when Congress said predicates must demonstrate "continuity" before they may form a RICO pattern, it expressed an intent that RICO reach activities that amount to or threaten long-term criminal activity." Id. at 243 n.4, 109 S.Ct. at 2902 n.4.

While the District of Columbia Circuit has not articulated a comprehensive test for determining pattern, it has not expanded the guidelines established by H.J. See Edmondson & Gallagher v. Alban Towers Ass'n, 310 U.S. App. D.C. 409, 48 F.3d 1260 (1995). The D.C. Circuit observed in Edmondson that courts consider many factors when evaluating whether a pattern of criminal activity amounts to a "closed period of repeated conduct" such as, "the number of unlawful

acts, the length of time over which the acts were committed, the similarity of the acts, the number of victims, the number of perpetrators, and the character of the unlawful activity . . . . " Id. at 414, 48 F.3d at 1265 (quoting Kehr Packages, Inc. v Fidelcor, Inc., 926 F.2d 1406, 1411-13 (3d Cir. 1991)). The D.C. Circuit added that "[i]n some cases . . . some factors will weigh so strongly in one direction as to be dispositive" and such was the case alleged by the plaintiffs in Edmondson. Id. at 414, 48 F.3d at 1265. The court affirmed dismissal of the action by finding the allegations amounted to a single scheme, single injury with few victims and that "the combination of these factors . . . makes it virtually impossible for plaintiffs to state a RICO claim." Id.

Here, the defendants allegedly violated federal mail and wire fraud statutes[8] over a period of eight years in connection with the transmission of budgets and annual financial statements sent to WALP. (Amend. Compl. ¶¶ 36-87). Therefore, according to the very broad, outer limits placed on the concept of a "pattern of racketeering activity" under 18 U.S.C. § 1961(5) and assuming the allegations of fraud are correct, there appears to be a sufficient number of predicate acts. However, "it is [the] factor of continuity plus relationship which combines to produce a pattern." Sedima, S.P.R.L., 473 U.S. at 496 n.14, 105 S.Ct. at 3285 n.14 (quoting S. Rep. No. 91-617, at 158 (1969)). As for "[w]hether the predicates proved establish a threat of continued racketeering activity depends on the specific facts of each case." H.J., 492 U.S. at 242, 109 S.Ct. at 2902.

Defendants argue that plaintiff's allegations fail to satisfy the "continuity" prong of the RICO pattern requirement as demanded by the H.J. and Edmondson decisions. (DIHC Renewed Motion at 7); (Crow Renewed Motion at 3, 8). Defendants assert that plaintiff has alleged a single injury,

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[8] 18 U.S.C. § 1341 makes it unlawful to send via the Postal Service anything intended to further a scheme to defraud. 18 U.S.C. § 1343 similarly makes it unlawful to transmit by means of wire, radio, or television communication, in interstate or foreign commerce, anything intended to further a scheme to defraud.

a single scheme involving a single victim and as such plaintiff's RICO claims should be dismissed just as the claims in Edmondson. (DIHC Renewed Motion at 7-8); (Crow Renewed Motion at 6). Plaintiff contends that continuity is simply a "temporal concept" under H.J. and that the key concern remains whether the predicate acts are related and occur over a substantial period of time. (Plaintiff's Opposition at 6-8). WALP focuses on the time frame alleged in Edmondson and argues that Edmondson is not WALP. Id. at 7-8. Edmondson, in plaintiff's view, represents a discreet holding that the period of time was insubstantial as the scheme alleged spanned only four months and the case was dismissed because the allegations did not satisfy the continuity requirement of H.J. (Plaintiff's Opposition at 2, 7-8). Plaintiff contends that allegations of multiple predicate acts that are related and occur over eight years are sufficient to allege a RICO pattern under the H.J. decision. Id. Plaintiff contends that defendants are urging this Court to adopt a rigid and inflexible interpretation of RICO's pattern requirements in violation of RICO precedent. (Plaintiff's Opposition at 2, 6-8). A brief analysis of H.J. and Edmondson follows.

In H.J. the representatives of a utility company allegedly sought to bribe members of the state regulatory commission with the objective of getting the commission to approve unfair and unreasonable rates for consumers. H.J., 492 U.S. at 233, 109 S.Ct. at 2897-2898. The plaintiffs alleged that the utility company made cash payments to members of the regulatory commission for a six year period. Id. at 250, 109 S.Ct. at 2906. The Supreme Court found that multiple acts of bribery in the context of single scheme to fix rates could state an adequate RICO pattern. Id. The Supreme Court reversed the dismissal of petitioners' complaint by finding that petitioner had indeed sufficiently pled a pattern of racketeering activity and the claims were wrongfully dismissed for failing to do so. Id.

The petitioners in H.J. were customers of a utility company who are not necessarily in a position to be aware of any injury. Additionally, the potential victim pool is much greater when the allegations involve a utility company that perpetrates a fraud upon consumers. The matter before this Court involves a limited number of partners who receive annual documentation about the partnership and matters of financial interest to the partnership.

In Edmondson, the plaintiffs, a real estate developer and its brokers, brought claims against a tenants' association, its president and attorneys by alleging fifteen predicate acts of fraud over a three year period. Id. at 414, 48 F.3d at 1265. The numerous predicate acts were allegedly in furtherance of a scheme aimed to stall or prevent the sale of an apartment building and to force the developer to pay off the tenants' association and its representatives. Id. at 413, 48 F.3d at 1264. The plaintiffs did not allege or suggest that the defendants would engage in "RICO-violating conduct" again. Id. The court held that the combination of the factors present, a single scheme, single injury and few victims, could not satisfy the "continuity" requirements to establish a "pattern of racketeering activity" under RICO and as such the RICO claim was properly dismissed on a Fed. R. Civ. P. 12(b)(6) motion to dismiss. Id. at 414, 48 F.3d at 1265.

The Edmondson decision recognized the significance that the number of victims, schemes and injuries play as factors when considered together and they may illustrate whether in a particular case the alleged "pattern of racketeering activity" is simply an isolated example of allegedly criminal conduct or whether it poses a sufficient threat of continuous criminal activity to form the basis of a RICO claim. Edmondson, 310 U.S. App. D.C. at 1264-65, 48 F.3d at 414. The Edmondson decision illustrates that where the combination of a single scheme and a few related victims and a single injury is present in a situation, there is not the kind of threat of continuing criminal activity that RICO was intended to address. Id. Therefore, it is appropriate for a court to perform a multiple

factor analysis in order to determine if the "pattern" requirement of the RICO Act has been met. The mere longevity of a scheme or schemes does not necessarily mean that a "pattern of racketeering activity" is present.

The Court recognizes that the Supreme Court has rejected the rigid approach whereby continuity is illustrated by the presence of multiple schemes. H.J., 492 U.S. at 240, 109 S.Ct. at 2901. While multiple criminal schemes remain "highly relevant to the inquiry into the continuity of the defendant's racketeering activity" they are not necessary to show continuity. Id. The Supreme Court reads RICO "broadly" but has failed to articulate a principled method of determining when a pattern of racketeering has been established, preferring to note instead that the "development of [the "relationship" and "continuity" concepts] must await future cases, absent a decision by Congress to revisit RICO to provide clearer guidance as to [RICO's] intended scope." Id. at 243, 109 S.Ct. 2903. Determining whether factual allegations fall within the scope of RICO remains a case by case inquiry. Id. This Court's inquiry finds the matter before it unlike the scenario depicted in H.J. and the allegations by WALP do not amount to a pattern of racketeering activity. The Court finds that plaintiff's claims are more like those alleged in Edmondson.

The Court finds that each of the fraudulent acts alleged by WALP was committed in furtherance of a single scheme to influence, rather than multiple illegal schemes. See Sil-Flo, Inc. v. SFHC, Inc., 917 F.2d 1507, 1516 (10th Cir. 1990) ("[S]ingle scam cannot be subdivided into separate acts for the purpose of setting up a RICO claim."). The predicate acts alleged by plaintiff were acts preparatory to one injury. The one injury in this Court's view remains an alleged fraud designed to induce WALP's consent and cooperation in an ultimate effort to diminish WALP's equity interest in AALP along with its corresponding right to its proper share of partnership assets and proceeds from the partnership. The multiple schemes alleged have the same singular purpose

and at most they are more in the nature of a single effort to defraud rather than a series of efforts to defraud the plaintiff in multiple ways. Accepting the plaintiff's arguments for the purpose of the motions before the Court, the predicate acts did not result in separate harms but culminated in a single ongoing harm enabling defendants to chip away at WALP's interests and to defraud AALP.

Further, WALP's allegations of "multiple victims" do not cure the defective pattern allegations of the RICO claim. If plaintiff's allegations are correct and WALP was injured then naturally those who have a financial interest in WALP may be affected. This matter involves, at most, one set of victims rather than multiple victims and one set of victims is still a single victim for the purposes of RICO. See Pyramid Sec. Ltd. v. Int'l Bank, 726 F. Supp. 1377, 1384 (D.D.C. 1989), aff'd, 288 U.S. App. D.C. 157, 924 F.2d 1114 (1991); see also Menasco, Inc. v. Wasserman, 886 F.2d 681, 684 (4th Cir. 1989) (explaining that an alleged RICO pattern "involved but one set of victims," even though plaintiff corporation had multiple investors).

The Court agrees with the DIHC defendants' description of the Amended Complaint as one which "dresses up the old with . . . boilerplate RICO verbiage." (DIHC Renewed Motion at 2). WALP appears to have distorted the allegations against the defendants to create the appearance of multiple injuries to multiple victims in an apparent effort to satisfy the statutory language of RICO. The Court recognizes that a single scheme to defraud is not necessarily dispositive of the "pattern of racketeering" issue. The Court has already indicated that whether a "pattern of racketeering" has been illustrated turns on the facts and circumstances of each individual case. In this Court's view, the facts and circumstances before this Court do not illustrate a pattern of racketeering activity.

Further, plaintiff WALP does not allege or suggest that defendants' actions threatened continued criminal activity, therefore, the requisite continuity is not present. Assuming the plaintiff's allegations are true, this matter constitutes an isolated example of criminal conduct and

does not reflect the kind of conduct that poses a sufficient threat of continuous criminal activity that may form the basis of a RICO claim. The wrongful conduct alleged in this matter involves a commercial real estate dispute resulting from unmet financial expectations, at most.

IV. CONCLUSION

For the reasons already stated, this Court holds that as a matter of law, even if all the plaintiff's allegations were true, such allegations do not establish a "pattern of racketeering activity" under RICO. Because WALP's federal RICO claims are defective, this Court dismisses with prejudice Count I and Count II of plaintiff's Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6), for failure to state a claim. Since the remaining issues are purely a matter of local law and the parties have not engaged in discovery, the Court will not invite the parties to brief the Court further but rather will allow the plaintiff to pursue the non federal claims elsewhere. See Edmondson 310 U.S. App. D.C. at 414-416, 48 F.3d at 1265-1267. Without a federal claim remaining in this suit and no diversity jurisdiction alleged, the state law claims are dismissed without prejudice and no consideration of their merits is required.[9] An appropriate order accompanies this memorandum.

Date: DEC 2 1 1999

JOHN GARRETT PENN
United States District Judge

[9] The Court finds that no cognizable federal claim exists and the Court refuses to exercise jurisdiction over the plaintiff's pendent state law claims. See United Mine Workers v. Gibbs, 383 U.S. 715, 726, 86 S.Ct. 1130, 1139 (1966).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Western Associates Limited Partnership,
1280 Maryland Avenue, SW
Washington, D.C. 20024,
individually and on behalf of
Avenue Associates Limited Partnership,
1115 30th Street, N.W.
Washington, D.C. 20007

Plaintiff,

v.

Market Square Associates, DIHC Market Square, Inc., DIHC Management Corporation, Dutch Institutional Holding Company, DIHC Finance Corp., Stichting Pensioenfonds Voor de Gezondheid, Geestelijke en Maatschappelijke Belangen , Crow-Pennsylvania Avenue Limited Partnership, Crow-Washington CBD Development Corporation, Herman A. Vonhof, Robert T. Sorrentino, Barrington H. Branch, Jan Koeman, Craig W. Johnston, T. Christopher Roth, and Cornerstone Properties, Inc.,

Defendants.

Case No. 1:97-CIV-02452 (JGP)

Trial by Jury Demanded

AMENDED COMPLAINT

COMES NOW the Plaintiff, Western Associates Limited Partnership, individually and on behalf of Avenue Associates Limited Partnership, and for its Amended Complaint against the Defendants alleges as follows:

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THE PARTIES

Plaintiffs

1. Western Associates Limited Partnership ("WALP") is a District of Columbia limited partnership with its principal place of business at 1280 Maryland Avenue, SW, Washington, D.C. 20024.

2. The names of WALP's general and limited partners are Richard L. Kramer, Steven Grigg, Herbert S. Miller, Kan Am U.S. Limited Partnership, Creighton R. Schneck, Laurence Seigel, Courtney Lord, Stacy Hornstein, Robert H. Mendelsohn, Jon B. Miller, JoAnne Molinari, Delon Hampton & Associates Chartered, Jeanne Clarke Harris, Alexis Herman, Irrevocable Inter Vivos Trust f/b/o the Kramer Children, 1989 Miller Trust, Irrevocable Inter Vivos Trust f/b/o the Miller Children, Howard Biel Trust f/b/o Matthew Graham Biel, Howard Biel Trust f/b/o Spencer Elliot Biel, and Howard Biel Trust f/b/o Stuart Isaac Biel.

3. Avenue Associates Limited Partnership ("AALP" or the "Partnership") is a District of Columbia limited partnership with its principal place of business at 1115 30th Street, NW, Washington, D.C. 20007. The partners in AALP are Market Square Associates (both a general partner and a limited partner) and WALP (a limited partner).

Defendants

4. Market Square Associates ("MSA") is a District of Columbia general partnership with its principal place of business at 1115 30th Street, NW, Washington, D.C.

20007. MSA is comprised of two entities, DIHC Market Square, Inc. ("DIHC-MSI"), which owns 71.4286% of MSA, and Crow-Pennsylvania Avenue Limited Partnership ("Crow"), which owns 28.5714% of MSA.

5. DIHC-MSI is a Georgia Corporation with its principal place of business at 200 Galleria Parkway NW, Atlanta, GA 30339. DIHC-MSI is a general partner of MSA and is controlled by Dutch Institutional Holding Co., Inc.

6. Dutch Institutional Holding Company, Inc. ("DIHC") is a Delaware corporation with its principal place of business at 200 Galleria Parkway NW, Suite 2000, Atlanta, GA 30339. DIHC is controlled by Stichting Pensioenfonds Voor de Gezondheid, Geestelijke en Maatschappelijke Belangen.

7. Stichting Pensioenfonds Voor de Gezondheid, Geestelijke en Maatschappelijke Belangen ("PGGM") is a stichting organized under the laws of the Netherlands with its principal place of business at Kroost-Nord 149, 3704DV Zeist, the Netherlands.

8. DIHC Management Corporation ("DIHC-Management") is a Georgia corporation with its principal place of business at 200 Galleria Parkway, NW, Suite 2000, Atlanta, GA 30339. On information and belief, DIHC-Management is controlled by DIHC and PGGM.

9. DIHC Finance Corp. ("DIHC Finance") is a Georgia corporation with its principal place of business at 200 Galleria Parkway, NW, Suite 2000, Atlanta, GA 30339. On information and belief, DIHC Finance is controlled by DIHC and PGGM.

10. Crow is a Texas limited partnership with its principal place of business at 1115 30th Street, NW, Washington, D.C. 20007.

11. Crow-Washington CBD Development Corporation ("Crow-Washington") is a Texas Corporation with its principal place of business at 1115 30th Street, NW, Washington, D.C. 20007. Crow-Washington is the general partner of Crow.

12. Cornerstone Properties, Inc. ("Cornerstone") is a Nevada corporation with its principal place of business at Tower 56, 126 East 56th Street, New York, NY. As more fully set forth below, beginning in early 1997 and continuing through the present, Cornerstone knowingly aided and abetted MSA, DIHC-MSI, and Crow in breaching their fiduciary obligations to WALP. Each reference to Defendants in this Amended Complaint includes Cornerstone only to the extent Cornerstone is specifically identified as a participant.

13. At the time of the formation of MSA, Herman A. Vonhof ("Vonhof") was President of DIHC-MSI. On information and belief, Vonhof is still President of DIHC-MSI and resides in Atlanta, GA. Plaintiff is unaware of the exact time period during which Vonhof has acted as DIHC-MSI's President. Each reference to Defendants in this

Amended Complaint includes Vonhof only with respect to DIHC-MSI conduct occurring during the time period during which he was so employed.

14. Robert T. Sorrentino ("Sorrentino") is Vice President and Treasurer of DIHC; Executive Vice President and Chief Financial Officer of DIHC Management Corporation; and Executive Vice President of Asset Management at Cornerstone. On information and belief, Sorrentino resides either in Atlanta, GA or in New York, New York. Plaintiff is unaware of the exact time period during which Sorrentino has acted as DIHC's Vice President and Treasurer. Each reference to Defendants in this Amended Complaint includes Sorrentino only with respect to DIHC conduct occurring during the time period during which he was so employed.

15. On information and belief, Barrington H. Branch ("Branch") was President of DIHC from early 1992 through February 1997. Each reference to Defendants in this Amended Complaint includes Branch only with respect to DIHC conduct occurring during this time period. On information and belief, Branch resides at 554 Arden Oaks Ct., NW, Atlanta, GA 30305.

16. On information and belief, Jan Koeman ("Koeman") was an Executive Vice President of DIHC from early 1992 through December, 1993. Each reference to Defendants in this Amended Complaint includes Koeman only with respect to DIHC conduct occurring during this time period. On information and belief, Koeman resides at 17 Parkside Ct., NE, Atlanta, GA 30342.

17. On information and belief, Craig W. Johnston ("Johnston") was and is an Assistant Secretary of DIHC and Vice President-Finance of DIHC Management Corporation from April 1991 through the present. Each reference to Defendants in this Amended Complaint includes Johnston only with respect to DIHC conduct occurring during this time period. On information and belief, Johnston resides in Atlanta, GA.

18. At all times relevant to this Amended Complaint, T. Christopher Roth ("Roth") was and is Vice President of Crow-Washington and Manager of Crow. Roth resides at 6649 Holland St., McLean, VA 22101-1612.

JURISDICTION AND VENUE

19. Personal jurisdiction and venue are predicated on 18 U.S.C. § 1964(c), 18 U.S.C. § 1965(a) and (b), 28 U.S.C. § 1331, and 28 U.S.C. § 1367(a), since certain counts herein arise under federal law and the others emanate from the same nucleus of operative facts such that they form part of the same case or controversy.

RELEVANT TIMES

20. The relevant times to this Amended Complaint are from on or about January 1, 1987 through the present.

FACTUAL ALLEGATIONS

The Market Square Project

21. The subject of this lawsuit is the real property and improvements known as Market Square, located at 7th St. and Pennsylvania Avenue, NW, Washington, D.C. ("Market Square" or "Project"). Market Square is a world class, premier, mixed-use property consisting of retail space, condominiums, and office space (approximately 688,709 square feet of office and retail space, and 210 residential condominium units).

22. In September, 1985, a team led by Western Development Corporation ("Western") obtained development rights for the Market Square development site under a competitively bid public offering by the Pennsylvania Avenue Development Corporation. Subsequent to obtaining these development rights, Western acquired the Market Square site, designed the Market Square building, arranged for acquisition of an adjacent parcel of land, contracted for and directed the substantial completion of design and construction working drawings, obtained a variety of key design and other approvals for construction of the building and other improvements thereon, and applied for remaining permits.

23. AALP was formed by Western as a limited partnership under District of Columbia law on September 15, 1985 to develop, own, manage, and ultimately dispose of the Market Square Project. Western then brought MSA into AALP. MSA was responsible for infusing additional equity into the project (through DIHC and its controlled entity

DIHC Finance) and for bringing experience in managing and leasing large properties (through Crow).

24. Although the design for Market Square was essentially complete and approved when MSA joined the Partnership, MSA made a number of unilateral changes to the design of the proposed condominium units and other interior elements of the building and retained new architects and engineers to redo the construction drawings in their entirety and redesign all building interiors. This redesign substantially delayed the start of construction, substantially increased costs of construction, and caused the sale of the condominium units to be substantially delayed.

The Three AALP Partnership Agreements

25. On July 15, 1987, the then-existing general and limited partners of AALP entered into an agreement with MSA and WALP. This agreement, styled the Second Amended and Restated Agreement of Limited Partnership ("Second Agreement"), substituted MSA and WALP as general and limited partners for the then-existing general and limited partners. Under the terms of the Second Agreement, MSA became a General Partner in AALP with a 2.5% general partnership interest and a Class A Limited Partner with a 67.5% limited partnership interest; WALP became a General Partner with a 2.5% general partnership interest in AALP and a Class B Limited Partner with a 27.5% limited partnership interest.

26. Under the Second Agreement, MSA was the Managing General Partner. As such, it was responsible for general oversight of the Project, including assuring that the Project proceeded according to budget and was completed within the approved schedule. However, under section 4.1(1) of the Second Agreement, MSA was required to seek and obtain WALP's approval (as a general partner) prior to making any major decision, including a decision to increase the Project budget or to the making or incurring of obligations or expenditures which exceeded the total authorized by said budget.

27. On July 15, 1987, MSA and WALP entered into a second separate agreement, styled the Third Amended and Restated Agreement of Limited Partnership ("Third Agreement"), which, by its terms, did not become effective until project construction was completed. Under the Third Agreement, upon completion of construction, WALP's 2.5% general partnership interest in AALP was to be converted to a limited partnership interest, with the effect that WALP would only be a limited partner in the Partnership.

28. Thus, in December 1991, upon completion of construction of the project, MSA became the sole general partner of AALP, with a 2.5% general partnership interest, and a limited partner with a 67.5% limited partnership interest. WALP ceased being a general partner and became a limited partner with a 30% limited partnership interest. MSA remained the Managing General Partner.

MSA's Budget For The Project

29. Before execution of the Second and Third Agreements, MSA prepared and distributed to WALP a budget for the Project ("Original Budget") of $221,755,000. MSA represented to WALP that the Original Budget included all construction and development costs necessary for completion and leasing of the Project.

30. The Original Budget contained "Guaranteed Costs" in the aggregate amount of $82,920,000 and "Non-Guaranteed Costs" in the aggregate amount of $138,835,000. Guaranteed Costs included the costs of architectural and engineering services and all construction, furniture, and landscaping costs. Non-Guaranteed Costs included insurance, financing (*i.e.* interest), and marketing costs.

31. Under Section 3.3 of both the Second and Third Agreements, if AALP was required to borrow funds to cover a cost over-run for Guaranteed Costs, such loans could not be repaid from periodic distributions of cash flow. WALP relied on this priority arrangement, which in effect guaranteed that WALP would not bear the risk of Guaranteed Cost over-runs and that any Guaranteed Cost over-run would be absorbed exclusively by MSA and/or Crow, in entering into the Second and Third Agreements.

32. Section 2.5 of both the Second and Third Agreements provides that if, after receipt of all capital contributions, the Partnership does not have sufficient funds to pay any obligation or expense, and if (1) AALP is unable to obtain a loan from a third party lender; and (2) no general partner is willing to make an additional capital contribution to pay such

obligation or expense, then any partner may make a loan ("Optional Loan") to the Partnership to pay such obligation or expense.

Allocation Of Partnership Proceeds
Under The Second And Third Agreements

33. The Second and Third Agreements provide specific rules for the allocation of Partnership proceeds both during the existence of the Partnership and upon dissolution and winding up of the Partnership.

34. With respect to cash flow for each fiscal year during the existence of the Partnership, Section 3.3 of both Agreements provides that, after payment of the mortgage and operating expenses, allocations are to be made to AALP's partners in the following order of priority:

(a) First, in payment of all accrued interest under any Optional Loans, but not to include any Optional Loans made to fund obligations under the Guaranteed Costs set forth in MSA's Budget;

(b) Second, in payment of any principal outstanding under any Optional Loan, again not to include any Optional Loan made to fund obligations under the Guaranteed Costs set forth in MSA's Budget;

(c) Third, to MSA in payment of all accrued and unpaid Preferred Return; and

(d) Fourth, the balance, 70% to MSA and 30% to WALP.

35. With respect to winding up, Sections 3.2(5) and 3.5 of both Agreements provide that, after payment of any debts owed to third parties and any debts owed to any partner (but not Optional Loans taken to cover Guaranteed Cost over-runs), allocations to AALP's partners would be made in the following order of priority:

(a) First, to each partner having a negative capital account proportionately to bring such accounts up to zero;

(b) Second, to MSA to bring its Account up to the amount equal to the sum of its Unpaid Preferred Return, its Accrued Preferred Return and its Unrecovered Capital;

(c) Third, to WALP in the sum of five million dollars ($5,000,000) if the cumulative internal rate of return to DIHC and its affiliates would equal or exceed 11% on all capital it provided to the partnership; and

(d) Fourth, the balance to MSA and WALP in the ratio of 70% to MSA and 30% to WALP.

Defendants Conspired to Engage In Multiple Separate Schemes
To Defraud AALP, WALP And WALP's General And Limited Partners

36. Beginning in April 1988 and continuing thereafter, defendants MSA, DIHC-MSI, Crow, DIHC, Crow-Washington, and PGGM agreed and conspired to

defraud AALP, WALP, and WALP's general and limited partners through a series of separate but related fraudulent schemes. As officers and/or directors of DIHC, and/or DIHC-MSI, on information and belief, defendants Vonhof, Branch, Koeman, Johnston, and Sorrentino knew of, approved of, and actively participated in this conspiracy during the time periods they were so employed. As Crow's managing partner, on information and belief, defendant Roth knew of, approved of, and actively participated in this conspiracy during the time periods he was so employed.

37. As part of the conspiracy, Defendants agreed to accomplish these multiple fraudulent schemes through fraudulent budgets and income projections which Defendants sent to WALP by means of the United States Postal Service and interstate wire communications in violation of federal criminal mail and wire fraud statutes. These fraudulent schemes are described below.

The Revised Budget-Approval Scheme

38. Defendants devised and intended to devise a scheme to defraud and to obtain money and property from WALP and WALP's general and limited partners by means of false and fraudulent pretenses, representations, and promises regarding the Revised Budget for the Project.

39. In or before April 1988, Defendants knew that the total cost of the Project would soon exceed the Original Budget approved by WALP.

40. In April 1988, Defendants, acting through defendants Crow and Roth, revised the Project budget to increase the total Project cost from $221,755,000 to approximately $237,075,000 ("Revised Budget").

41. In April 1988, WALP was a general partner in AALP. Accordingly, MSA was required to seek and obtain WALP's approval of any major Partnership decision, including any increase in the Project budget. Nonetheless, Defendants agreed to conceal the Revised Budget from WALP.

42. In furtherance of this scheme, MSA did not immediately seek WALP's approval of the Revised Budget as required by both D.C. law and the terms of the Partnership Agreements. It was not until August 1989 that Defendants, acting in concert through defendant Roth, first sent WALP, by U.S. Postal Service, a copy of the Revised Budget, which Crow and Roth had prepared for MSA in April 1988. At this time, Defendants, acting through Crow and Roth, represented to WALP that the Revised Budget was accurate, complete and sufficient to complete the Project.

43. On information and belief, in August 1989, when Defendants sent WALP the Revised Budget, Defendants knew that the total Project cost had already exceeded, or was about to exceed, the Revised Budget. Therefore, unknown to WALP, the Revised Budget, when sent to WALP for WALP's approval, was materially false in that it indicated that $237,075,000 was sufficient funding to complete the Project, when in fact Defendants knew that $237,075,000 was not sufficient to complete the Project.

44. On information and belief, Defendants intended at all times that WALP rely on their false representations in the Revised Budget.

45. Upon receipt of the Revised Budget, WALP did rely on the Defendants' false representations concerning the sufficiency of the Revised Budget, and in reliance on those falsities, approved the Revised Budget in December 1989.

46. For the purpose of executing this scheme, Defendants placed in post offices (and authorized depositories for mail matter) documents to be sent or delivered by the U.S. Postal Service; and deposited or caused to be deposited documents to be sent or delivered by private or commercial interstate carriers; and took or received documents therefrom; and knowingly caused such documents to be delivered by mail or such carrier according to the direction thereon, in violation of 18 U.S.C. § 1341, namely, the Revised Budget which defendant Roth mailed to WALP in 1989.

The Cost-Shifting Scheme

47. Defendants devised and intended to devise a scheme to defraud and to obtain money and property from WALP and WALP's general and limited partners by means of false and fraudulent pretenses, representations, and promises concerning the allocation of Project costs as set forth more fully below.

48. When MSA prepared both the Original Budget and the Revised Budget, it segregated the budgets into "Guaranteed Costs" and "Non-Guaranteed Costs." As

described more fully in paragraph 31 above, section 3.3 of both the Second and Third Agreements prohibited MSA from using AALP cash flow to repay any Optional Loans taken to cover Guaranteed Cost over-runs. In other words, Optional Loans taken to fund Guaranteed Cost over-runs were not to be repaid by AALP out of WALP's 30% share of cash flow. These provisions constituted a representation by MSA that WALP would not bear the risk of Guaranteed Cost over-runs and that any Guaranteed Cost over-run would be absorbed exclusively by MSA and/or Crow, as described in paragraph 31, above.

49. Beginning in April 1988 and continuing thereafter, Defendants conspired to fraudulently shift Guaranteed Cost items into Non-Guaranteed Cost categories so that Optional Loans taken to cover these cost over-runs would appear to be AALP's obligations rather than MSA's obligations.

50. In furtherance of this scheme, Defendants, acting in concert through MSA, had DIHC Finance, an affiliate of MSA, make substantial Optional Loans to AALP to finance both Guaranteed and Non-Guaranteed Cost over-runs, without segregating the Optional Loans into Guaranteed Cost and Non-Guaranteed Cost categories.

51. On information and belief, before having DIHC Finance make these Optional Loans to AALP, Defendants never gave AALP an opportunity to obtain financing from a third-party lender nor gave WALP an opportunity to make the Optional Loans itself, as required by the Partnership Agreements.

52. On or about April 14, 1992; July 15, 1993; October 26, 1994; October 24, 1995; January 18, 1996; and September 3, 1997, Defendants, acting through defendant Roth, sent WALP, by U.S. Mail Service, Partnership financial statements which falsely represented Optional Loans as covering only Non-Guaranteed Costs, when in truth, as Defendants knew, these Optional Loans also had been used to pay for Guaranteed Costs. These false representations were material.

53. On information and belief, Defendants intended at all times that WALP rely on these false representations and WALP did rely on these false representations by:
(1) refraining from suing Defendants for breach of contract or breach of fiduciary duty;
(2) refraining from seeking dissolution and winding-up of the Partnership; and
(3) refraining from seeking other legal or equitable remedies.

54. Defendants, acting in concert through MSA, then: (1) had AALP use AALP cash flow, 30% of which belonged to WALP (as described in paragraph 34, above) to repay portions of the Optional Loans through a series of wire transfer payments and/or accounting entries which properly should have been borne by MSA alone; and (2) had DIHC Finance continue to accrue interest on those Optional Loans against AALP when such interest should rightfully have accrued only against MSA.

55. For the purpose of executing this scheme, Defendants placed in post offices (and authorized depositories for mail matter) documents to be sent or delivered by the Postal Service; and deposited or caused to be deposited documents to be sent or delivered

by private or commercial interstate carriers; and took or received documents therefrom; and knowingly caused such documents to be delivered by mail or such carrier according to the direction thereon, in violation of 18 U.S.C. § 1341, namely: (1) the 1991 Financial Statement which Defendants, acting through Roth, caused to be mailed to WALP on or about April 14, 1992; (2) the 1992 Financial Statement which Defendants, acting through Roth, caused to be mailed to WALP on or about July 15, 1993; (3) the 1993 Financial Statement which Defendants, acting through Roth, caused to be mailed to WALP on or about October 26, 1994; (4) the 1994 Financial Statement which Defendants, acting through Roth, caused to be mailed to WALP on or about October 24, 1995; (5) the 1995 Financial Statement which Defendants, acting through Roth, caused to be mailed to WALP on or about January 18, 1996; and (6) the 1996 Financial Statement which Defendants, acting through Roth, caused to be mailed to WALP on or about September 3, 1997.

56. For purposes of executing this scheme, Defendants transmitted or caused to be transmitted by means of wire communication in interstate and/or foreign commerce, writings, signs, signals, and/or sounds in violation of 18 U.S.C. § 1343.

The Income Projection Scheme

57. Defendants devised and intended to devise a scheme to defraud and to obtain money and property from WALP and WALP's general and limited partners by means of false and fraudulent pretenses, representations, and promises regarding the projected income of the Project, as set forth more fully below.

58. Because Defendants knew that WALP would eventually discover that Defendants had improperly exceeded the Revised Budget and that these cost over-runs had destroyed the financial viability of the Project, Defendants conspired to, and did, devise a scheme to conceal the true impact of the cost over-runs from WALP and to make it appear to WALP that the cost over-runs had enhanced the financial well-being of the Project by increasing Project income so as to make the Project a financial success and enable WALP to obtain a reasonable return on its Partnership interest.

59. In furtherance of this scheme, on April 14, 1992, MSA mailed WALP a budget and income projection setting forth Defendants' projected annual net operating income (gross income minus expenses and taxes but before payment of debt and debt service) for the Project from 1992 through 2007. The income projection indicated projected revenues as follows:

Year	Crow's 1992 Income Projection	Year	Crow's 1992 Income Projection
Yr. 1992	$15,019,635	Yr. 2000	$25,284,898
Yr. 1993	$18,612,662	Yr. 2001	$25,117,477
Yr. 1994	$19,148,904	Yr. 2002	$22,443,755
Yr. 1995	$19,703,606	Yr. 2003	$28,952,522
Yr. 1996	$20,351,532	Yr. 2004	$30,231,727
Yr. 1997	$21,462,751	Yr. 2005	$28,042,960
Yr. 1998	$23,295,117	Yr. 2006	$31,080,225
Yr. 1999	$23,951,839	Yr. 2007	$35,989,329

60. In or about April 1992, in a meeting between Richard Kramer and Steven Grigg, two of WALP's general partners, and defendants T. Christopher Roth and Jan

Koeman, Defendants represented to WALP that the income projection was based on actual long-term lease agreements entered between AALP and Market Square tenants. Thus, Defendants represented to WALP that the income projection was not mere speculation, but rather a fact-based calculation of Project income based on actual long-term leases.

61. On information and belief, at the time Defendants sent this income projection to WALP, Defendants knew that it was materially false in that it contained materially inflated annual income projections which far exceeded any possible annual Project income. Defendants intended for WALP to rely on these false income projections and WALP did rely on these false representations by: (1) refraining from suing Defendants for breach of contract or breach of fiduciary duty; (2) refraining from seeking dissolution and winding-up of the Partnership; and (3) refraining from seeking other legal or equitable remedies.

62. Upon receipt of the income projection in April 1992, and in accordance with standard practice in the real estate development industry, WALP used a "Cap Rate" formula to estimate the long-term value of the Project. Applying estimated rates of return of 8% and 7%, WALP's cap rate analysis, based on Defendants' income projection, indicated that the project's value in 2007 would be between $450,000,000 and $514,000,000.

63. Accordingly, when Defendants later sent WALP budget statements indicating that the Project was over budget, WALP reasonably believed that the Project still

would generate steadily increasing levels of income and that the Market Square property therefore would increase in value as set forth in the income projection.

64. For example, when, on August 30, 1993, MSA belatedly informed WALP that the total project cost would be in excess of $252,000,000, WALP was not unduly alarmed because, based on Defendants' income projections, notwithstanding that budget over-run, WALP reasonably believed that the Project's net profit, in 2007, would be between $198,000,000 and $262,000,000.

65. Defendants knew that the income projections was false. Moreover, as time went by, Defendants knew that the income projection overstated by greater and greater margins the amount of income that in fact would be received by the Partnership. Yet, at no time did Defendants provide WALP an amended or revised income projection nor indicate to WALP in any way that their 1992 income projection was materially false.

66. To the contrary, on September 25, 1992, Defendants, acting through defendant Roth, placed in a U.S. post office (and/or authorized depository for mail matter), a letter to be sent by U.S. Mail Service to WALP in which Defendants represented to WALP that "Market Square is a success." On information and belief, Defendants knew at that time that this statement was materially false in that Defendants knew in September 1992 that the Project was heavily over-budget and in debt and thus was not a "success."

67. Further, on December 10, 1992, Defendants, acting through defendant Jan Koeman, placed in a U.S. post office (and/or authorized depository for mail matter), a

letter to be sent and delivered by the U.S. Postal Service to WALP in which Defendants falsely represented to WALP that all of the cost over-runs to that date "have enhanced the marketability of the project, and were within the total contingency amount contained in the development budget approved by Western." On information and belief, Defendants knew that these representations were materially false in that Defendants knew that Project cost over-runs had not enhanced the marketability of the Project and that the cost over-runs were not within the total contingency amount approved by WALP.

68. On information and belief, Defendants intended that WALP rely on the accuracy of the income projection and each of the other representations described above in paragraphs 57-67 Defendants sent WALP the fraudulent income projection, failed to revise the income projection, and made other misrepresentations in order to conceal Defendants' fraud from WALP and to assuage any concerns WALP might have as to Defendants' management of the Project. WALP relied on the fraudulent income projections and each of these other misrepresentations by: (1) refraining from suing Defendants for breach of contract and breach of fiduciary duty; (2) refraining from seeking dissolution and winding-up of the Partnership; and (3) refraining from seeking other legal or equitable remedies.

69. For the purpose of executing this scheme, Defendants placed in post offices (and authorized depositories for mail matter) documents to be sent or delivered by the Postal Service; and deposited or caused to be deposited documents to be sent or delivered by private or commercial interstate carriers; and took or received documents therefrom; and

knowingly caused such documents to be delivered by mail or such carrier according to the direction thereon, in violation of 18 U.S.C. § 1341, namely: (1) on April 14, 1992, Defendants, acting through MSA, mailed the income projection to WALP; (2) on September 25, 1993, Defendants, acting through Roth, mailed WALP a letter falsely representing that the Project was a "success"; and (3) on December 10, 1993, Defendants, acting through Koeman, mailed WALP a letter falsely representing that Project cost over-runs to that date had enhanced the marketability of the project and were within the total contingency amount contained in the development budget.

The Going-Concern Scheme

70. Defendants devised and intended to devise a scheme to defraud and to obtain money and property from WALP and WALP's general and limited partners by means of false and fraudulent pretenses, omissions representations, and promises concerning the ability of the Partnership to continue as a going concern.

71. On or about October 26, 1994, Defendants, acting through defendant Roth, sent WALP, by U.S. Mail Service, the Partnership's 1993 Financial Statement. The 1993 Financial Statement showed that Project income had fallen short of projections for 1993 and that Partnership income would be insufficient to cover obligations.

72. On information and belief, at the time Defendants had defendant Roth mail WALP the 1993 Financial Statement, Defendants knew that, under generally accepted accounting principles, the 1993 Financial Statement should have contained a clause

indicating substantial doubt as to the Partnership's ability to continue as a going concern. The 1993 Financial Statement was materially false in that it omitted a going-concern clause. On information and belief, Defendants knew that of this material falsity. Moreover, Defendants intended that WALP rely on that omission.

73. WALP did rely on this fraudulent omission by: (1) refraining from suing Defendants for breach of contract and breach of fiduciary duty; (2) refraining from seeking dissolution and winding-up of the Partnership; and (3) refraining from seeking other legal or equitable remedies.

74. Following WALP's receipt of the 1993 Financial Statement in mid-1994, Defendants, acting through defendants Roth (located in Washington, DC) and Koeman (located in Atlanta, GA), had interstate telephone conversations with WALP general partners Kramer (located in New York, NY) and Grigg (located in Washington, DC) in which Defendants falsely represented to Kramer and Grigg that the 1993 income shortfall was temporary and that Defendants' 1992 income projections was still accurate. On information and belief, Defendants knew at the time that these representations were false in that the income shortfall was not temporary and the 1992 income projection was not accurate. These false representations were material. On information and belief, Defendants intended that WALP rely on these representations.

75. WALP did rely on these representations by: (1) refraining from suing Defendants for breach of contract and breach of contract or breach of fiduciary duty; (2)

refraining from seeking dissolution and winding-up of the Partnership; and (3) refraining from seeking other legal or equitable remedies.

76. In or about October 1995, Defendants, acting through defendant Roth, sent WALP, by U.S. Mail Service, the Partnership's 1994 Financial Statement. Although the 1994 Financial Statement showed a substantial increase in net operating income, Defendants knew that this increase would be temporary and that net operating income would not recover to the point where it would meet MSA's 1992 income projection.

77. On information and belief, at the time Defendants had Roth mail the 1994 Financial Statement, Defendants knew that under generally accepted accounting principles, the 1994 Financial Statement should have contained a clause indicating substantial doubt as to the Partnership's ability to continue as a going concern. The 1994 Financial Statement was materially false in that it omitted a going-concern clause. On information and belief, Defendants knew that of this material falsity. Moreover, Defendants intended that WALP rely on that omission.

78. WALP did rely on that fraudulent omission by: (1) refraining from suing Defendants for breach of contract and breach of fiduciary duty; (2) refraining from seeking dissolution and winding-up of the Partnership; and (3) refraining from seeking other legal or equitable remedies.

79. In or about January 1996, Defendants, acting through defendant Roth, sent WALP, by U.S. Mail Service, the Partnership's 1995 Financial Statement. The 1995

Financial Statement indicated that actual net operating income for 1995 had fallen to $17,480,519, which was $2,223,087 less than Defendants' projection for that year.

80. On information and belief, at the time Defendants had defendant Roth mail WALP the 1995 Financial Statement, Defendants knew that, under generally accepted accounting principles, the 1995 Financial Statement should have contained a clause indicating substantial doubt as to the Partnership's ability to continue as a going concern. The 1995 Financial Statement was materially false in that it omitted a going-concern clause. On information and belief, Defendants knew of this material falsity. Moreover, Defendants intended that WALP rely on their omission in the 1995 Financial Statement.

81. WALP did rely on this fraudulent omission by: (1) refraining from suing Defendants for breach of contract and breach of fiduciary duty; (2) refraining from seeking dissolution and winding-up of the Partnership; and (3) refraining from seeking other legal or equitable remedies.

82. For the purpose of executing this scheme, Defendants placed in post offices (and authorized depositories for mail matter) documents to be sent or delivered by the Postal Service; and deposited or caused to be deposited documents to be sent or delivered by private or commercial interstate carriers; and took or received documents therefrom; and knowingly caused such documents to be delivered by mail or such carrier according to the direction thereon, in violation of 18 U.S.C. § 1341, namely: (1) the 1993 Financial Statement which Defendants, acting through Roth, caused to be mailed to WALP on or

about October 26, 1994; (2) the 1994 Financial Statement which Defendants, acting through Roth, caused to be mailed to WALP on or about October 24, 1995; and (3) the 1995 Financial Statement which Defendants, acting through Roth, caused to be mailed to WALP on or about January 18, 1996.

83. For purposes of executing this scheme, Defendants transmitted or caused to be transmitted by means of wire communication in interstate and/or foreign commerce, writings, signs, signals, and/or sounds in violation of 18 U.S.C. § 1343, namely, false representations made by Roth and Koeman during interstate telephone conversations with WALP partners following WALP's receipt of the 1993 Financial Statement in mid-1994.

Defendants Successfully Concealed Their
Fraudulent Schemes From WALP Until March 1997

84. From 1992 through the present, WALP has continually requested that MSA provide it access to the partnership books and records pursuant to the Partnership Agreements and as required under District of Columbia law, so that WALP could review these books and records. However, Defendants have refused continually to provide partnership books and records to WALP, notwithstanding that WALP is entitled to the books and records of the Partnership under the agreements and under District of Columbia law. This refusal continues to the present.

85. From 1992 through March 1997, Defendants were able successfully to conceal their fraud from WALP. Only upon receiving the 1996 Financial Statement in

March 1997 did WALP learn for the first time that the Partnership's financial health was in jeopardy, that the Partnership likely was having difficulty meeting its obligations as they become due, and that MSA no longer believed that it would meet its 1992 income projection.

86. The 1996 Statement reported that net operating income for 1996 was more than $1,000,000 below MSA's projections. More significantly, footnote eight of the 1996 Financial Statement stated:

> The Partnership has incurred losses in 1996 and 1995 of $7,992,817 and $10,671,605 respectively, and has a net partners' deficit as of December 31, 1996 of $45,135,695. Additionally, management is budgeting a cash shortfall of approximately $4,000,000 in 1997. Management is currently investigating both internal and external debt and equity financing opportunities, although no specific debt or equity sources have been identified. As such, substantial doubt exists as to the Partnership's ability to continue as a going concern. (Emphasis added).

87. This was the first time anyone had reported to WALP that MSA no longer believed that it could meet its 1992 income projection or that "substantial" doubt existed as to AALP's very ability to continue as a going concern. To the contrary, MSA had always maintained that the project was extremely successful, and it never sent WALP a revised income projection or indicated in any way that the 1992 income projection was no longer accurate.

Defendants Fraudulent Conduct Injured
AALP, WALP And All Of WALP's Limited Partners

88. As a result of the pattern of conduct between MSA, DIHC-MSI and Crow in fraudulently procuring WALP's approval of the Revised Budget, in favoring MSA over WALP for cash flow disbursements, and in concealing the true status of partnership finances from WALP, Defendants have injured WALP in its business and/or property by preventing WALP from recovering its proper share of Partnership assets and proceeds.

89. WALP is comprised of twenty general and limited partners, including local business people, the individuals largely responsible for the successful assembly of the Project, and trusts created for the benefit of certain partners' minor children. Each of these general and limited partners have been injured in his, her or its business and/or property by Defendants' pattern of fraudulent schemes.

90. Based upon the above, WALP brings this action in its own right as a limited partner in AALP, and also brings this action as a derivative action on behalf of AALP pursuant to Section 41-499.11 of the District of Columbia Uniform Limited Partnership Act of 1987, as amended. Plaintiff brings this derivative action to enforce the right of the limited partnership to recover judgment in its favor because the General Partner able to do so (MSA) is not likely to bring this action because the action would be against MSA. Since WALP is a major limited partner in this partnership, WALP represents the interests of limited partners in maintaining this derivative action on behalf of the partnership.

91. Pursuant to Section 41-499.12 of the Uniform Limited Partnership Act of 1987, as amended, WALP is the proper Plaintiff to bring this action.

92. Pursuant to Section 41-499.14 of the Uniform Limited Partnership Act of 1987, Plaintiff seeks reasonable expenses, including reasonable attorney fees, for bringing this derivative action.

COUNT I
(Racketeer Influenced and Corrupt Organization)

93. Paragraphs 1-92 are incorporated herein and made a part of this count.

94. AALP, being a partnership, is an "enterprise" within the meaning of 18 U.S.C. § 1961(4). AALP is engaged in, and its activities affect, interstate and foreign commerce. Defendants are all persons employed by or associated with AALP.

95. Beginning in April 1988 and continuing thereafter, Defendants agreed to engage and did engage in a series of separate but related schemes, described in paragraphs 21-92 above, designed to defraud AALP, WALP, and WALP's general and limited partners.

96. Each of these schemes violated 18 U.S.C. § 1341 and/or 18 U.S.C. § 1343, as set forth more fully in paragraphs 21-92 above.

97. Each act of mail and/or wire fraud described above constituted a separate predicate act of "racketeering activity" within the meaning of 18 U.S.C. § 1961(1).

98. Because Defendants engaged in numerous acts of mail and wire fraud as described above, and because these acts were related to each other and continuous over more than eight years, Defendants' conduct constituted a "pattern of racketeering activity" as defined in 18 U.S.C. § 1961(5).

99. Defendants have conducted, and participated directly and indirectly in the conduct of, the affairs of AALP through a pattern of racketeering activity consisting of mail fraud and wire fraud, all in violation of 18 U.S.C. § 1962(c).

100. By reason of Defendants' violation of 18 U.S.C. § 1962(c), AALP, WALP and WALP's general and limited partners have been injured in their business and property in an amount in excess of $89,000,000, as well as other harm, in violation of 18 U.S.C. § 1964(c).

COUNT II
(Racketeer Influenced and Corrupt Organization)

101. Paragraphs 1-100 are incorporated herein and made a part of this count.

102. In violation of 18 U.S.C. § 1962(d), each Defendant conspired with the other Defendants to violate 18 U.S.C. § 1962(c), as set forth in the preceding count. In furtherance of their conspiracy, Defendants engaged in numerous overt acts of mail and wire fraud, as set forth above.

103. By reason of Defendants' violations of 18 U.S.C. § 1962(d), AALP, WALP and WALP's general and limited partners suffered injury to their business and property in an amount in excess of $89,000,000, as well as other harm, in violation of 18 U.S.C. § 1964(c).

COUNT III
(Fraud/Conspiracy)

104. Paragraphs 1-103 are incorporated herein and made a part of this count.

105. In August 1989, Crow sent WALP the Revised Budget by facsimile and U.S. Mail. As set forth in paragraphs 38-46 above, at the time that Crow, acting on behalf of MSA, prepared and submitted the Revised Budget, Defendants knew that the Revised Budget was false and misleading.

106. On information and belief, defendants conspired with one another and intended that WALP rely on the false Revised Budget and used WALP's reliance to secure WALP's approval of the Revised Budget. On December 12, 1989, WALP approved the Revised Budget. WALP relied on the accuracy of the Revised Budget in granting its approval. Had WALP known the true and proper allocation of costs under the Project and that the Budget was false and misleading, WALP would not have approved the Revised Budget.

107. Beginning in April 1988 and continuing thereafter, Defendants had MSA, as AALP's managing partner, use AALP funds to fraudulently repay Guaranteed Cost

Optional Loans which properly should have been repaid by MSA alone, all in violation of 18 U.S.C. § 1343.

108. Beginning in April, 1992, Defendants fraudulently concealed these schemes from WALP by having MSA send WALP an income projection by U.S. Mail service which Defendants knew was materially false with the intent that WALP rely on the falsities contained therein, all in violation of 18 U.S.C. § 1341.

109. As a result of defendants' fraud and conspiracy, WALP suffered injury in an amount of in excess of $89,000,000.

COUNT IV
(Access to Books and Records)

110. The allegations contained in Paragraphs 1-92 are incorporated herein by reference.

111. Pursuant to Section 41-435(b) of the Uniform Limited Partnership Act of 1987, as amended, WALP, as a limited partner owning 10% or more of the limited partnership's interest, shall upon written request to the general partner have the right to inspect the books and records of the limited partnership. WALP has made such written requests to the general partner for access to the books and records of the partnership, but such right of access has been continuously denied by the general partner. Such denial is inconsistent with the requirements of the D.C. Code and the rights of WALP and is arbitrary and without reason.

112. As a result of this improper refusal, WALP has been damaged because it is unable to review the books and records of the partnership and to protect its own financial interests.

113. Wherefore, Plaintiff is entitled to (a) an order from this Court directing Defendants and agents acting on their behalf to allow WALP immediate access to the books and records of the partnership; and (b) damages in an amount proven at trial, plus interest, and attorney fees, together with such other relief as the Court deems just and proper.

COUNT V
(Breach of Fiduciary Duty)

114. The allegations contained in Paragraphs 1-113 are incorporated herein by reference.

115. Pursuant to the Uniform Limited Partnership Act of 1987, as amended, as well as the common law of the District of Columbia, Defendants owe a fiduciary duty to Plaintiff, including a duty of due care and a duty of loyalty. WALP, as a limited partner in AALP, has relied on Defendants and their agents and representatives to perform their fiduciary duty towards WALP in a timely manner and in accordance with law.

116. Each of Defendants' fraudulent acts described in paragraphs 36-109 above was a breach of Defendants' fiduciary duties to WALP.

117. Defendants also breached their fiduciary duties to WALP by failing to refinance certain partnership loans to take advantage of decreasing market interest rates.

118. In July 1987, as part of the original financing for the Project, AALP and DIHC Finance, a company controlled by defendant DIHC, entered a construction loan and mortgage agreement ("Mortgage") under which DIHC Finance lent AALP approximately $188,500,000 to cover Project construction costs and took a mortgage on the Project property and any improvements thereon to secure that loan.

119. Under the terms of the Mortgage, AALP paid DIHC Finance interest on the loan at a rate of 8.75% from the loan date until the loan conversion date, which occurred in November 1992, at which point the interest rate on the Mortgage increased to 9.75%. The Mortgage term at 9.75% is from November 1992 to November 2007.

120. Beginning in April 1988, Defendants, acting in concert through MSA, had AALP incur Optional Loans from MSA at 1.25% above Prime Rate, a substantial portion of which were incurred solely to pay to DIHC Finance interest that had accrued on the Mortgage. Defendant then had AALP continue to take additional Optional Loans solely to pay interest accruing on both the Mortgage and the prior Optional Loans.

121. In addition, in or about November 1992, Defendants, acting in concert through MSA, had AALP incur additional Optional Loans and construction loan advances solely to pay: (1) preferred return to MSA on its capital contribution, rather than paying

down the balance of the then-existing Optional Loans, and (2) interest accruing on prior Optional Loans.

122. Beginning in 1995, income from the Project was insufficient to pay the Mortgage on the Project. Moreover, market interest rates had begun to decrease substantially. Defendants failed to refinance or to seek refinancing of either the Mortgage or the Optional Loans, or any portion thereof, notwithstanding the fact that: (a) interest rates on secured loans such as the Mortgage had fallen significantly below the 9.75% that AALP was paying DIHC Finance on the Mortgage and the variable rate of 9.50% to 10.25% that AALP was paying MSA on the Optional Loans, and (b) income from the Project was insufficient to pay interest on the Mortgage.

123. Had Defendants refinanced the Mortgage to take advantage of lower market interest rates, interest payments due on the Mortgage would have decreased such that Project income would have been sufficient to pay the Mortgage interest in full. Thus, had Defendants refinanced the Mortgage, AALP would not have been required to take additional Optional Loans to pay interest that continued, and continues to this day, to accrue on both the Mortgage and prior Optional Loans.

124. On information and belief, Defendants did not refinance either the Mortgage or the Optional Loans because both the Mortgage and the Optional Loans, held at significantly above-market interest rates, were held by DIHC Finance, a DIHC

subsidiary. Thus, DIHC profited through DIHC Finance at WALP's expense by failing to refinance the Mortgage.

125. As a result of Defendants' conduct and omissions, all income from the Project from January 1993 through December 1997 was paid to MSA affiliates solely to pay interest on the Mortgage and/or the Optional Loans. Moreover, because Project income is currently insufficient to pay all the interest on the Mortgage and the Optional Loans, AALP's obligations to DIHC Finance continue to grow unabated, further diminishing the value of WALP's interest in the Project.

126. The result of this scheme is that Defendants have shifted all value in the Project from the Market Square property itself, 30% of which belongs to WALP, to the Mortgage and Optional Loans, 100% of which belong to MSA affiliates.

127. Defendants' conduct described in paragraphs 36-126 above breached Defendants' fiduciary duties to WALP. These fiduciary duties have been violated through Defendants': unauthorized management of the construction; failure to seek and obtain WALP's approval of the increasing budget as required by the Second Agreement; incurring without WALP's required approval costs, loans and other expenses which required such approval; unauthorized and unreasonably inept management of the Project so that it was completed late and over budget; self-dealing in arranging for Optional Loans and preference accounts to DIHC and its affiliates to the detriment of the Plaintiff; mismanagement and waste resulting in income far below that projected by Defendants and

far below that which would have been obtained had the property been competently managed; failure to provide the books and records to Plaintiffs required by applicable law; and restructuring of the transaction between DIHC and Cornerstone so as to allow DIHC in acquiring Crow-Pennsylvania to effectively cash out of the transaction while preventing Plaintiff from being given the same opportunity.

128. These actions constitute a breach of fiduciary duty by Defendants towards WALP because Defendants owed WALP the duties described above but failed to honor these duties and to treat WALP fairly and properly. As a result of this breach of duty, WALP has been damaged in an amount exceeding $89 million.

COUNT VI
(Aiding And Abetting A Fiduciary Breach)

129. In August 1997, WALP first learned from press reports that DIHC was planning to enter into several agreements with Cornerstone under which Cornerstone would acquire DIHC's ownership interest in DIHC-MSI's parent entity (as well as a number of intervening entities) in exchange for almost $260,000,000 in cash, promissory notes for $250,000,000, and 41% of Cornerstone's outstanding stock.

130. On information and belief, beginning in early 1997 MSA agreed with Crow, DIHC-MSI, DIHC, PGGM and Cornerstone to have these defendants aid and abet MSA in reaping the benefits of MSA's fiduciary breaches.

131. As part of this agreement, in November 1997, DIHC, DIHC Finance, and PGGM sold the Mortgage and Optional Loans to Cornerstone in exchange for valuable consideration, including a substantial ownership interest in Cornerstone.

132. As a result of this sale, MSA, acting through DIHC and PGGM, in effect refinanced the Mortgage and Optional Loans, retained all of the benefit of the refinancing for itself and failed to provide AALP (and thus WALP) any benefit from the refinancing, in breach of its fiduciary duties to AALP and WALP.

133. On information and belief, Crow, DIHC-MSI, DIHC, PGGM and Cornerstone knew that the sale of the Mortgage and Optional Loans was a breach of MSA's fiduciary duties to WALP and yet nonetheless actively participated in and substantially aided MSA in the commission of the breach.

134. A Cornerstone press release concerning the sale contained an admission by Cornerstone that the only real value in its acquisition of the Market Square property was the mortgage. It stated:

> While Cornerstone's stated interest in the partnerships which own Market Square is 60%, its economic interest is significantly larger since it will acquire the first mortgage note in the amount of $181 million on the property which earns interest at 9.875% and receive a priority distribution on its acquired capital base. During 1996, Cornerstone's predecessor received 100% of the cash flow from the property.

135. This revelation made it clear to WALP that another aspect of Defendants' schemes was to allow Defendants to collect all of the interest on the Market Square debt, leaving no income from the Project for distribution to WALP.

136. Since November 1997, Cornerstone has actively participated in this scheme by recording on its books and collecting via interstate wire transfer interest payments accrued on the Mortgage and Optional Loans as an obligation against AALP.

137. Crow, DIHC-MSI, DIHC, PGGM and Cornerstone aided and abetted MSA's fiduciary breaches by knowingly and materially assisting MSA breach its fiduciary obligations to AALP and WALP. These defendants must disgorge all interest and principal payments made by AALP to Cornerstone under either the Mortgage or any Optional Loan.

COUNT VII
(Breach of Contract)

138. The allegations contained in Paragraphs 1-137 are incorporated herein by reference.

139. Pursuant to the Second Amended Agreement, MSA (acting through and with the other defendants) were required to seek and obtain the approval of WALP before making or incurring expenditures or obligations for or on behalf of the partnership which in the aggregate exceeded total expenditures specifically authorized by the approved budgets.

140. In violation of the Second Agreement, Defendants substantially exceeded (or caused AALP to exceed) the budgets authorized by WALP. The increases above the approved amount were Defendants' responsibility and WALP did not authorize these increases. As a result, Defendants' actions in authorizing and approving any and all expenditures and obligations in excess of approved budgets is in breach of the Agreement.

141. As a direct result of these unauthorized budget increases, Defendants have incurred on behalf of the partnership additional unauthorized debt and equity in excess of $89,000,000. But for these breaches of the Agreement and unauthorized expenditures, this additional debt and equity would not have been required. For example, the Optional Loans and additional expenditures incurred by the Partnership above the Project budget would not have been required. Additionally, but for the occurrence of this additional unauthorized debt and equity for the Partnership, there would have been no requirement for increasing MSA's equity account and for accrued and unpaid preferences and interest booked applicable to Optional Loans (and related preferences). The actions of MSA in incurring additional equity, accrued and unpaid preferences and Optional Loans in excess of the budget amount represents a breach of both Agreements because they were incurred outside of the budget approval process.

142. Defendants are in further breach of the contract because the Second Agreement called for certain construction guarantees from Crow-Pennsylvania Avenue Limited Partnership and its affiliates, which construction guarantees effectively protected the partnership from cost overruns. On information and belief, these construction

guarantees have been released or not enforced by MSA to the detriment of the Partnership. There was no contractual authorization for MSA to release or refuse to enforce these guarantees. Accordingly, the partnership has been damaged by the amount of the guarantees not enforced.

143. These complained of actions violated the following provisions of the Second and Third Agreement: Sections 2.1, 2.2, 2.6, 3.1, 3.2 (5), 3.3,3.9, 4.1, 4.2, 4.3, 5.2(1), 5.2(2), 5.2(3), and 6.7.

144. As a result of these actions, WALP has been damaged in an amount exceeding $89,000,000.

145. Wherefore, Plaintiff is entitled to damages exceeding $89,000,000, plus interest and attorneys fees together with such other relief as the Court deems just and proper.

COUNT VIII

(Appointment of A Receiver And Injunctive Relief Against All Defendants)

146. The allegations contained in Paragraphs 1-145 are incorporated herein by reference.

147. The above-described actions of Defendants have resulted in unauthorized management of the Partnership, waste of Partnership assets, misdirection of the Partnership funds, unauthorized budget increases and cost overruns, unauthorized loans and payment

of preferences, and unauthorized recordation of Partnership responsibilities. At present, Defendants and their affiliates continue to manage Market Square, to collect rents, to collect all income from the operations of Market Square, to pay out funds, to manage the Partnership, to cause vendors and agencies to be retained on behalf of the partnership, and to cause expenditures to be incurred on behalf of Market Square. As described above, MSA is mismanaging the Project, improperly depriving WALP of its rights, defrauding WALP, wasting assets, diverting assets, and causing obligations to be incurred by the Partnership, all improperly.

148. Unless a receiver is appointed by this Court to manage the Market Square Project pending the completion of this litigation, Plaintiff will be irreparably harmed. DIHC and PGGM have transferred their interest in Market Square to Cornerstone Properties. Contrary to the original intention of the Partnership Agreement, this Project has become part of the larger overall organization of Cornerstone and the ability of WALP to enforce its contractual rights against DIHC and its agents has evaporated.

149. Unless a receiver is immediately appointed and Defendants and their agents are immediately restrained from demanding, collecting, receiving and using the Project's receivables, rents, security deposits, issues, profits, and any other income derived from the Real Property, Plaintiff will be irrevocably harmed in that Defendants, and each of them, will continue collecting the Real Property's income and profits, continue to mismanage the Real Property, decrease the value of the Real Property, and use such income and profits from the Real Property in a manner unauthorized by Plaintiff.

150. Accordingly, a receiver should be appointed and granted the general powers and duties of a Court-appointed receiver as well as the following specific powers and duties:

a. To enter on and take possession of the Real Property;

b. To operate, manage, maintain, preserve, lease, sell, convey or transfer the Real Property, in whole or in part, provided such sale, conveyance or transfer, if any, is approved and confirmed by this Court;

c. To demand, collect and receive all rents, issues, income, proceeds, revenues and profits, including, without limitation, all security deposits, prepaid rents, advances, storage fees and parking fees ("rents and profits") derived from the property, or any party thereof, including all proceeds in the possession of Defendants which are derived from the rents and profits generated by the property;

d. To bring and prosecute all proper actions for the (i) collection of rents and profits derived from the Real Property, (ii) removal from the Real Property of persons not entitled to entry thereon, (iii) protection of the Real Property, (iv) damage caused to the Real Property, and (v) recovery of possession of the Real Property;

e. To employ any person or firm to collect, manage, lease, maintain and operate the Real Property if the receiver deems it necessary or appropriate in his discretion and judgment to do so;

f. To hire, employ and retain attorneys (with Court approval), certified public accountants, investigators, security guards, consultants, property management companies, brokers and any other personnel or employees which the receiver deems necessary to assist him in the discharge of his duties;

g. To retain environmental specialists to perform environmental inspections and assessments of the Real Property;

h. To confirm that Defendants have the Real Property adequately insured and in proper repair, to promptly report any evidence or findings to the contrary to the parties and to the Court and, if necessary, to disburse funds for the maintenance of fire, hazard and liability insurance for the property in amounts the receiver may deem fit or proper and to cause all presently existing or acquired policies to be amended by adding himself, the receivership estate and the property managers he retains as additional insureds;

i. To take possession and control of all the records, correspondence, insurance policies, books and accounts of Defendants which disclose or refer to the assets, rents and profits and/or liabilities pertaining to the property, whether in the possession and control of Defendants and/or any of its agents, servants or employees, provided, however, that such books and records shall be made available for the use of the agents, servants and employees of Defendants in the ordinary course of the performance of their duties;

j. To obtain copies of any and all plans, specifications and drawings pertaining to or affecting any part or all of the Real Property and to be authorized to obtain

such plans, specifications and drawings from Defendants, from architects and contractors retained or formerly retained by said Defendants or from the city, municipality, county or state in which such property is situated if the receiver deems it necessary or advisable in his discretion to do so;

k. To continue in effect any contracts presently existing and not in default relating to the Real Property;

l. To enter into or modify contracts affecting any part or all of the Real Property including, without limitation, any and all leases affecting the Real Property, and to immediately terminate any existing contract which is not deemed beneficial in the receiver's sole opinion to the commercially reasonable operation of the Real Property;

m. To construct tenant improvements and/or make any repairs to the Real Property that the receiver, in his discretion, deems necessary or appropriate;

n. To pay and discharge out of the funds coming into his hands all expenses of the receivership and the costs and expenses of operation and maintenance of the Real Property, including all taxes, governmental assessments and charges in the nature thereof lawfully imposed upon the property provided, however, that no risk or obligation so incurred shall be at the personal risk or obligation of the receiver, but a risk or obligation of the receivership estate, and provided further that the receiver shall be empowered not to advance funds to satisfy the mortgage on the Project payable to defendants or their affiliates

but instead to pay such funds into the Court's depositary pending the resolution of this action:

o. To have the power to advance funds to keep current any liens encumbering the Real Property, if any;

p. To expend funds to purchase merchandise, materials, supplies and services as the receiver deems necessary and advisable to assist him in performing his duties hereunder and to pay therefor the ordinary and usual rates and prices out of the funds that may come into the possession of the receiver;

q. To apply for, obtain and pay any reasonable fees for any lawful license, permit, or other governmental approval relating to the property or the operation thereof; confirm the existence of and, to the extent permitted by law, exercise the privileges of any existing license or permit or the operation thereof, and do all things necessary to protect and maintain such licenses, permits and approvals;

r. To borrow such funds from any appropriate bank, financial institution or lender as may be necessary to satisfy the costs and expenses of the receivership, to the extent that the net rents and profits derived from the Real Property are insufficient to satisfy such costs and expenses, and issue a receiver's Certificate of Indebtedness evidencing the obligation of the receivership estate (and not the receiver individually) to repay such sums; the principal sum of each such Certificate, together with

reasonable interest thereon, shall be payable out of the next available funds which constitute rents and profits derived from the Real Property;

s. To have the power to open and utilize bank accounts for receivership funds, and generally do such other things as may be necessary or incidental to the foregoing specific powers, directions and general authorities;

t. To present for payment any checks, money orders and other forms of payment made payable to Defendants which constitute rents and profits of the Real Property, endorse same and collect the proceeds thereof, such proceeds to be used and maintained as elsewhere provided herein;

u. To file an inventory setting forth a list of all personal property of which the receiver has taken possession by virtue of his appointment within 30 days after the effective date of this appointment, and to file a supplemental inventory if he later takes possession of other personal property;

v. To prepare monthly profit/loss statements, rent rolls and balance sheets pertaining to the Real Property and, upon completion, to mail such statements to the parties;

w. To prepare periodic statements reflecting the receiver's fees and administrative costs and expenses incurred in the operation and administration of the receivership estate. Upon completion of such statements, and mailing the statements to

the parties' respective attorneys of record, the receiver shall pay from estate funds, if any, the amount of each statement; despite the periodic payment of receiver's fees and administrative expenses, the fees and expenses shall be submitted to the Court for approval and confirmation in the form of either a noticed interim request for fees, a stipulation among parties or the receiver's Final Account and Report; and

x. To take actions relating to the Real Property beyond the scope contemplated herein, provided the receiver obtains prior Court approval for such actions.

151. Plaintiff hereby seeks an order requiring Defendants, and each of them, to perform the following:

a. Turn over to the receiver the possession of the Real Property and the records, books of account, ledgers and all business records thereof (including, without limitation, the plans, specifications and drawings relating or pertaining to any part, or all of the Real Property), wherever located and in whatever mode maintained (including, without limitation, information contained on computers and any and all software relating thereto as well as all banking records, statements and canceled checks);

b. Turn over to the receiver all documents which constitute or pertain to all licenses, permits or governmental approvals relating to the Real Property;

c. Turn over to the receiver all documents which constitute or pertain to insurance policies, whether currently in effect or lapsed, which relate to the Real Property;

d. Turn over to the receiver all construction contracts, leases and subleases, management agreements, franchise agreements, royalty agreements, licenses, assignments or other agreements of any kind whatsoever, whether currently in effect or lapsed, which relate to or are related to any part or all of the Real Property;

e. Turn over to the receiver all documents pertaining to past, present or future construction of any type with respect to all or any part of the Real Property;

f. Turn over to the receiver all documents of any kind pertaining to any and all toxic chemicals or hazardous materials, if any, ever brought, used and/or remaining upon the Real Property, including, without limitation, any and all reports, surveys, inspections, checklists, proposals, orders, citations, fines, warnings and notes; and

g. Turn over to the receiver all monies, checks, funds or proceeds obtain by Defendants, and each of them, which represent rents and profits derived from the Real Property (including, without limitation, all security deposits, advances, prepaid rents, storage fees and parking fees) which are received or have been received, which are in the possession of Defendants and/or in all bank accounts related to the Real Property wherever

and in whatsoever mode maintained, including without limitation, bank accounts held in the name of an individual, corporation, partnership, or trust.

152. Plaintiff further seeks a temporary restraining order, preliminary injunction and permanent injunction against Defendants, enjoining them and their respective agents, employees, affiliates or representatives, and/or anyone acting on their behalf, from:

a. Interfering with the receiver, directly or indirectly, in the management, operation and leasing of the Real Property;

b. Interfering with the receiver, directly or indirectly, in the collection of rents and profits derived from the Real Property;

c. Collecting or attempting to collect the rents and profits derived from the Real Property;

d. Expending, disbursing, transferring, assigning, selling, conveying, devising, pledging, mortgaging, creating a security interest in or disposing of the whole or any part of the property (including the rents and profits thereof) without the prior written consent of the receiver; and

e. Doing any act which will, or which will tend to, impair, defeat, divert, prevent or prejudice the preservation of the Real Property (including the rents and profits thereof), or Plaintiff's interest in the Real Property and said rents and profits.

153. Plaintiff alleges on information and belief that Defendants and their agents continue to collect and/or divert the rents and profits from the Real Property. By appointing a receiver, funds that might otherwise be lost will be preserved to maintain and operate the Market Square Project and to satisfy monies invested by Plaintiff in the Real Property.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests as follows:

154. For judgment in favor of Plaintiff for the damages proven at trial, trebled pursuant to applicable law, together with interest thereon at the legal rate;

155. For an order awarding Plaintiff punitive damages against MSA, Crow, Crow-Washington, DIHC, DIHC-MSI, and PGGM for their intentional breaches of their fiduciary duties to WALP;

156. For an order awarding Plaintiff punitive damages against Cornerstone for intentionally aiding and abetting the other Defendants' breaches of fiduciary duties to WALP;

157. For an order granting Plaintiff immediate access to all books and records of AALP;

158. For an order requiring Cornerstone to disgorge to AALP all interest and principal payments made by AALP to Cornerstone under either the Mortgage or any Optional Loan;

159. For the immediate appointment of a receiver to enter into possession, hold, occupy, possess, manage and protect the Real Property during the pendency of this action;

160. For preliminary and permanent injunctive relief barring Defendants and their agents from interfering with the operation and management of the Real Property;

161. For an order that the cost of this action, including but not limited to, reasonable attorneys' fees expended by Plaintiff for the common benefit, fees and expenses of referees or trustees, if any, and other disbursements, be ordered paid by the parties entitled to share in the Real Property in proportion to their respective interests therein, and more particularly that Plaintiff be reimbursed for all sums advanced in this regard beyond their just proportion thereof, and that the costs be included and specified in a lien on the several shares of the parties;

162. For its own attorneys fees and costs incurred in bringing and maintaining this action, pursuant to applicable law; and

163. For such other and further relief as the Court may deem just and proper.

Dated: January 21, 1998

Respectfully submitted,

By: _____

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