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FILED
LOS ANGELES SUPERIOR COURT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DONALD W. HENRY, RECEIVER,)

Plaintiff,)

vs.)

LATHAM & WATKINS, a)
Professional corporation;)
JOHN R. STAHR, an individual;)
C. CHRISTOPHER COX, an)
individual; GARY MENDOZA,)
an individual; and DOES)
1 through 100, inclusive,)

Defendants.)

Case No.

BC129715

COMPLAINT FOR:

1. FRAUD AND DECEIT;
2. BREACH OF FIDUCIARY DUTY;
3. AIDING AND ABETTING BREACHES OF FIDUCIARY DUTY;
4. NEGLIGENT OMISSIONS;
5. NEGLIGENT MISREPRESENTATION;
6. NEGLIGENCE; AND
7. PROFESSIONAL MALPRACTICE

Plaintiff, DONALD W. HENRY, appointed by Order of the United States District Court, Central District, on July 28, 1994, as permanent receiver ("Receiver") of BMF Mortgage Pools, BMF Management, Inc., BMF Mortgage Investment Fund, BMF XXIII, VestCorp Securities, Inc. ("Vestcorp"), AmeriSpec, Inc. ("AmeriSpec"), First Diversified Financial Services, Inc. ("FDFS"), Outpatient Surgery Center of California ("Outpatient"), Surgical Center Management, Inc. ("SCM"), Anaheim Surgery Center ("ASC"), Euclid-Ball ASC, Ltd. ("Euclid"), Mitchell North Partners, Ltd. ("MNP"), Mitchell North,

1 Inc. ("Mitchell North"), and their respective subsidiaries,
2 affiliates, and related partnerships, among others, collectively
3 referred to as the "Receivership Entities", alleges as follows:
4

5 I.

6 INTRODUCTION AND BACKGROUND FACTS

7 A. BACKGROUND

8 1. In July 1994, the United States Attorney for the Central
9 District of California charged William Edward Cooper ("Cooper"),
10 Robert Ernest Lindley ("Lindley") and Valerie Jensen ("Jensen") with
11 two counts of mail fraud. On August 2, 1994, all three entered
12 guilty pleas to this criminal Information.

13 2. This brought to a conclusion an investment trust deed fraud
14 scheme that resulted in thousands of investors losing over \$130
15 million. This action relates to a part of that scheme which involved
16 the sale of limited partnership trust deed interests in two
17 investments which have become commonly known as Bank Mortgage Fund
18 No. 1 ("BMF1") and BMF Mortgage Income Fund ("BMF 100") which are
19 Receivership Entities.

20 3. The earliest plaintiff could have reasonably discovered the
21 fraud was July 28, 1994, the date plaintiff was appointed Receiver of
22 the Receivership Entities.

23 B. JURISDICTION AND VENUE

24 4. Many of the acts, transactions and conduct constituting
25 violations of law occurred in Los Angeles County, including the
26 dissemination of advertisements and correspondence and telephone
27 calls, containing misleading, deceptive, false and/or fraudulent
28 information and non-disclosed material facts. Defendants did

1 business in Los Angeles County and their principal place of business
2 in California is located in Los Angeles County. Plaintiff's
3 principal place of business is located in Los Angeles County.

4 **II.**

5 **IDENTIFICATION OF PARTIES**

6 5. Plaintiff brings this action on behalf of the Receivership
7 Entities who have been damaged by defendants, and each of them.

8 **A. FIRST PENSION CORPORATION**

9 6. First Pension Corporation ("FPC"), a California corporation
10 formed in 1980 and located in Irvine, California, was a pension
11 administrator. FPC had approximately 8,000 clients and \$350 million
12 in client assets under its control. It was 100% owned by First
13 Diversified Financial Services ("FDFS"), which, in turn, is owned by
14 Cooper, Lindley and Jensen. On April 22, 1994, FPC filed a Chapter
15 7 bankruptcy petition in the U.S. District Court, Central District of
16 California, Santa Ana, Case No. SA94-14145 JB, and on April 25, 1994,
17 the Office of the United States Trustee appointed a trustee, James
18 Joseph, to liquidate FPC's assets.

19 7. Cooper was a general partner of most of the limited
20 partnerships offered through VestCorp, a broker-dealer, and was
21 partial owner of FDFS, which he co-owned with Lindley and Jensen.
22 Cooper, during all relevant times, was president of Diversified
23 Financial Services ("DFS"), Equity Realty Advisors, Inc. ("ERA") and
24 United Securities Equities, each of which acted as a general partner
25 for some of the limited partnerships. On April 5, 1994, Cooper
26 became First Pension's president, replacing Jensen. During all
27 relevant times, Cooper was also a shareholder of Summit Trust
28 Services, Inc. ("Summit"), FPC's most recent custodian, and he was

1 president of Ernest-Edwards & Associates, Inc. ("Ernest-Edwards"), a
2 purported broker-dealer which dealt with FPC.

3 8. In 1984, Cooper was disciplined by state regulators after
4 nearly \$600,000 was diverted from a trust fund he was supervising at
5 L.B. Mortgage Servicing Co., according to records of the California
6 Department of Real Estate. As a direct consequence of such
7 diversion, Cooper's real estate license was restricted for negligence
8 and failing to supervise the company.

9 9. Jensen was a partial owner of FDFS and VestCorp. She
10 served as VestCorp's Chief Executive Officer from approximately 1986
11 through July 1992, the vice-president of FPC from approximately 1980
12 to 1982, and the president of FPC from 1982 to April 1994. She also
13 served as secretary of Summit and as a member of its Board of
14 Directors along with Judith Hanson, Lindley and Kenneth Lyon,
15 president of Summit.

16 10. Lindley was the president of BMF Management, Inc., a
17 general partner of some of the limited partnerships offered through
18 VestCorp. Lindley was a partial owner of FDFS with Cooper and
19 Jensen, the treasurer and secretary of VestCorp, Chief Financial
20 Officer and treasurer of DFS, a director of Summit, the treasurer of
21 Ernest-Edwards and the chairman of the board of NPB Service, the
22 company that services certain of BMF100's Trust Deed Loans for a
23 monthly fee.

24 11. Defendant Latham & Watkins ("Latham"), a professional law
25 corporation law, served as corporate counsel, assisted in drafting
26 and provided the legal opinion to the April 30, 1987, prospectus of
27 BMF100.

28 12. Defendant Gary Mendoza ("Mendoza"), an individual, was at

1 the relevant time, an attorney at Latham & Watkins who acted as
2 corporate counsel to the FPC entities, Receivership Entities, and
3 participated in drafting the April 30, 1987, BMF 100 prospectus.

4 13. Defendant John R. Stahr ("Stahr"), an individual, was at
5 the relevant time, an attorney at Latham & Watkins who acted as
6 corporate counsel to the FPC entities and participated in drafting
7 the April 30, 1987, BMF 100 prospectus. Stahr also prepared the SEC
8 filings for BMF 100.

9 14. Defendant C. Christopher Cox ("Cox"), an individual, was at
10 the relevant time, an attorney at Latham & Watkins who acted as
11 corporate counsel to First Pension.

12 **B. DOE DEFENDANTS**

13 15. Plaintiff is ignorant of the true names and capacities of
14 those defendants sued herein as DOES 1 through 100, inclusive, and
15 therefore sue those defendants by such fictitious names.

16 16. Plaintiff is informed and believes and thereon alleges that
17 each of the fictitiously named defendants herein are in some manner
18 liable and responsible to Plaintiff for the damages suffered by
19 Plaintiff as alleged herein.

20 17. Plaintiff is informed and believes and thereon alleges that
21 at all times herein mentioned, defendants, and each of them,
22 including all Doe Defendants, alternatively were and are agents,
23 employees, partners, joint venturers, co-conspirators and/or aiders
24 and abettors of each other and were acting within the course and
25 scope of the agency, employment, partnership, joint venture,
26 conspiracy or assistance with the consent and permission, express and
27 implied, and ratification of each other's conduct.

28 18. Plaintiff will amend this Complaint to allege their true

1 names and capacities when ascertained.

2
3 III.

4 PRIMARY WRONG

5 A. CRIMINAL INFORMATION

6 19. The criminal Information states in relevant part:

7 1. From approximately 1982, through and including April
8 1994, WILLIAM EDWARD COOPER ("COOPER"), ROBERT ERNEST LINDLEY
9 ("LINDLEY") and VALERIE JENSEN ("JENSEN"), together with
10 other individuals and entities known and unknown to the
11 United States Attorney, devised, intended to devise, and
12 carried out a scheme to defraud and to obtain money from
13 victims of the scheme by means of false and fraudulent
14 pretenses, representations and promises.

15 2. As described in this Information, during the period
16 of the scheme to defraud, COOPER, LINDLEY and JENSEN and
17 their co-schemers operated several related business entities
18 which purported to offer to clients a variety of financial
19 services, including but not limited to pension
20 administration, investments in real estate and certificates
21 of deposit.

22 3. In general, the scheme enabled COOPER, LINDLEY and
23 JENSEN and their co-schemers to:

24 a. Hide mounting losses in the real estate
25 investments from investors and pension clients;

26 b. Divert money from the real estate investments
27 and from cash accounts held for pension clients in order to
28 pay their own salaries, make payroll for their employees,

1 most operating expenses of the entities, cover losses and
2 make distributions to prior investors; and

3 c. Use diverted money to invest in other entities
4 in an effort to cover the shortfalls created by the scheme to
5 defraud.

6 4. As the scheme began to unravel in March and April
7 1994, COOPER and LINDLEY and certain other co-schemers
8 diverted investor checks and forged other checks for their
9 own personal use and benefit.

10 5. As is described in this Information, the scheme to
11 defraud resulted in a shortfall of approximately \$121.5
12 million in client accounts held through entities controlled
13 by COOPER, LINDLEY and JENSEN. These losses included
14 approximately \$66.7 million invested by clients of these
15 entities, and the remainder was interest purportedly accrued
16 in client accounts during the course of the scheme.

17 II. THE ENTITIES

18 6. At all times relevant to this Information (unless
19 otherwise noted):

20 a. Continental Home Loan ("Continental") was a
21 loan broker operating in Orange County, California from at
22 least 1980. Continental brokered risky, "hard money loans"
23 to individuals who were unable to obtain loans from more
24 conventional financial institutions due to credit problems.
25 These loans were secured by junior trust deeds of second or
26 lower priority on real estate, and Continental looked to the
27 amount of equity in the real estate, as opposed to the
28 credit-worthiness of the borrower, for ultimate repayment of

1 the loan.

2 b. Cooper was owner and operator of Continental.
3 LINDLEY was chief financial officer of Continental.

4 c. First Pension, Inc. ("First Pension") was a
5 pension fund administrator operating in Orange County,
6 California from at least 1980. First Pension administered
7 Individual Retirement Accounts ("IRAs") and Keough plan
8 accounts (retirement accounts for the self-employed) for
9 individuals, as well as pension plans for small employers.
10 First Pension deducted a fee from each client account to pay
11 for services rendered.

12 d. From approximately 1980 through December 1987,
13 JENSEN was vice-president of First Pension. In January 1988,
14 JENSEN was promoted to president of First Pension, and served
15 in that position until her resignation on April 5, 1994.

16 e. Vestcorp of California ("Vestcorp") was a
17 registered investment advisor which functioned as investment
18 advisor to First Pension clients from approximately 1980
19 through approximately 1983. In January 1983, COOPER, LINDLEY
20 and JENSEN and their co-schemers decided to discontinue
21 Vestcorp as a registered investment advisor and opened
22 Vestcorp Securities, Inc. ("Vestcorp Securities") as a
23 registered broker-dealer for the purpose of marketing real
24 estate and other investments.

25 f. From approximately 1980 until approximately
26 1983, First Pension clients were requested to appoint
27 Vestcorp as their investment advisor, and had the option, on
28 the advice of Vestcorp, of investing either in certificates

1 of deposit, interests in junior trust deeds sold to First
2 Pension investors by Continental or other hard money lenders,
3 or in real estate syndications. Beginning in 1983, First
4 Pension clients "self-directed" their pension funds either to
5 the investments previously available to them or into stocks,
6 bonds, mutual funds, or other types of investments.

7 g. In approximately 1987, COOPER, LINDLEY and
8 JENSEN formed a new entity, First Diversified Financial
9 Services ("First Diversified") as a holding company for First
10 Pension, Vestcorp Securities and other entities. COOPER,
11 LINDLEY and JENSEN each owned a one-third interest in First
12 Diversified. First Diversified provided a variety of
13 functions for First Pension, Vestcorp Securities and other
14 related entities, including but not limited to marketing,
15 payroll, accounting, data processing and mailroom services.

16 h. From approximately 1980 through and including
17 1993, First Pension maintained custodial cash accounts at
18 several successive southern California financial
19 institutions. These accounts purportedly contained the
20 aggregate amount of cash held by First Pension for its
21 clients. First Pension held cash for its clients because
22 each client was required to maintain at least \$50 cash in his
23 or her account at all times, and also because First Pension
24 needed an account in which to keep the portion of the
25 client's funds which remained undesignated for investment by
26 the client. Pursuant to First Pension's agreements with
27 these financial institutions, First Pension exercised
28 exclusive control over the funds deposited in the custodial

1 cash accounts.

2 i. In or about February 1993 COOPER, LINDLEY and
3 JENSEN formed a new entity, Summit Trust Services, Inc.
4 ("Summit Trust"), which was chartered as a trust company
5 under the laws of the state of Colorado. Effective January
6 1, 1994, Summit Trust became the new custodian for First
7 Pension's clients' undesignated cash.

8 III. THE SCHEME TO DEFRAUD

9 7. COOPER, LINDLEY and JENSEN and their co-schemers
10 carried out the scheme to defraud as follows:

11 A. The Bank Mortgage Funds

12 8. In approximately late 1981, many of the trust deeds
13 sold to First Pension clients by Continental became non-
14 performing due to falling real estate values and borrower
15 defaults. In approximately 1982, in order to hide the losses
16 on non-performing trust deeds from First Pension investors,
17 COOPER, LINDLEY and JENSEN and their co-schemers agreed to
18 pool all First Pension trust deeds into an entity called the
19 Bank Mortgage Fund One ("BMF1"). All First Pension clients,
20 including those with interests in non-performing trust deeds,
21 received a pro rata share in BMF1 based on the face amount of
22 their initial investment. In addition, quarterly statements
23 sent to First Pension clients with investments in BMF1
24 reflected both the client's principal investment and the
25 accrual of both the client's principal investment and the
26 accrual of interest, even though some of the trust deeds in
27 BMF1 were not current, performing loans.

28 9. Because of the undisclosed losses in the trust

1 deeds, there was a shortfall in BMF1 from the beginning. The
2 shortfall grew as a result of other undisclosed losses in
3 trust deeds during the period from 1981 through 1983, and
4 also as a result of diversions of newly invested funds in
5 order to cover operating losses at First Pension, Continental
6 and related entities. However, these losses were never
7 disclosed to First Pension clients, who continued to receive
8 statements indicating that interest was purportedly accruing
9 in their investment in BMF1.

10 10. As of March 31, 1994, the shortfall in BMF1 had
11 grown to approximately \$26.6 million. This shortfall
12 included approximately \$6.7 million in investor funds which
13 had been paid into and diverted from BMF1, and approximately
14 \$19.9 million in interest which had purportedly accumulated
15 in investors' accounts and which was reflected on investors'
16 statements.

17 B. The Mini-Funds

18 11. In approximately 1983, COOPER, LINDLEY and JENSEN
19 and their co-schemers agreed to offer a new form of real
20 estate investment to First Pension clients and others. The
21 "mini-funds" were limited partnerships formed for the
22 ostensible purposes of investing in junior trust deeds.
23 These mini-funds purportedly qualified for exemption from
24 registration under applicable federal and state securities
25 laws because they contained 35 or fewer investors. By March
26 31, 1994, approximately 190 of these mini-funds had been
27 offered and sold to First Pension clients and others, of
28 which approximately 60 had been liquidated and the investors

1 paid off.

2 12. From approximately 1986 and on, no trust deeds were
3 purchased with the funds raised from the mini-fund
4 solicitations. From the beginning, COOPER, LINDLEY and
5 JENSEN and their co-schemers used the mini-funds as a source
6 of operating revenue for their various business entities,
7 including existing entities and new entities. Eventually,
8 funds from later mini-funds were used to pay distributions to
9 investors in, and to liquidate, earlier mini-funds.

10 13. COOPER, LINDLEY and JENSEN and their co-schemers
11 actively concealed the lack of trust deeds in the mini-funds
12 by engaging in the following acts, among others:

13 a. In approximately 1990, the president of
14 VESTCORP Securities confronted COOPER that he was unable to
15 verify the existence of any trust deeds held by any of the
16 mini-funds. In order to prevent further suspicions on the
17 part of the president of VESTCORP and other employees,
18 COOPER, LINDLEY and JENSEN and their co-schemers hired an
19 actress to play the part of an auditor for the Department of
20 Corporations for the State of California ("DOC"). JENSEN
21 provided to COOPER, who in turn provided the actress, with a
22 fictitious Department of Corporations business card to
23 present to VESTCORP. The actress sat in a conference room at
24 First Diversified and pretended to review mini-fund files for
25 approximately three weeks. COOPER and LINDLEY then drafted
26 a letter on bogus Department of Corporations stationary which
27 defendant COOPER presented to the president of VESTCORP
28 Securities. The letter stated that, with some minor

1 discrepancies, the audited mini-funds files were in order.

2 b. In or about January 1993, a Special Agent of
3 the Federal Bureau of Investigation served a federal grand
4 jury subpoena on VESTCORP Securities calling for the
5 production of all records, including but not limited to
6 evidence of underlying assets, for certain selected mini-
7 funds. In response to the subpoena, COOPER, LINDLEY and a
8 co-schemer created false and fraudulent trust deeds and other
9 documents that were produced to a federal grand jury in
10 response to the subpoena.

11 14. As of March 31, 1994, the shortfall in the existing
12 130 mini-funds had grown to approximately \$68.9 million.
13 This shortfall included approximately \$37 million which
14 investors had paid into the mini-funds, and approximately
15 \$31.9 million in interest which had purportedly accumulated
16 in clients' accounts and which was reflected on their
17 statements.

18 C. Diversions From First Pension's Custodial Cash
19 Account

20 15. Beginning in approximately 1988, COOPER, LINDLEY
21 and JENSEN and their co-schemers diverted cash from First
22 Pension's custodial cash accounts in order to pay for
23 operating expenses, start new business entities, and make
24 distributions from and liquidate maturing mini-funds. To
25 accomplish these diversions, defendants COOPER, LINDLEY and
26 JENSEN and their co-schemers employed the following false and
27 fraudulent methods, among others:

28 a. COOPER and LINDLEY created a Nevada corporation

1 purportedly located in Arizona called Ernest Edwards &
2 Associates, and along with JENSEN diverted approximately \$7
3 million from First Pension's custodial cash account to a bank
4 account established in Ernest Edwards' name in Phoenix,
5 Arizona. Ernest Edwards had no legitimate business purpose,
6 and served solely as a conduit for COOPER and LINDLEY and
7 their co-schemers to divert investor money.

8 b. COOPER, LINDLEY and JENSEN and their co-
9 schemers created false and fraudulent client accounts with
10 accompanying false and fraudulent documentation. By
11 manipulating the computer system, JENSEN would create false
12 balances in these non-existent client accounts. COOPER,
13 LINDLEY and JENSEN and their co-schemers would then divert
14 funds for other purposes from these accounts by purportedly
15 making investments in non-existent trust deeds on behalf of
16 these fictitious clients. Using this technique, and their
17 co-schemers diverted approximately \$4.3 million.

18 c. COOPER, LINDLEY and JENSEN and their co-
19 schemers diverted approximately \$4.4 million from the
20 custodial cash account to make retirement distributions to
21 clients of First Pension who had invested in non-existent
22 trust deeds and certificates of deposit.

23 d. COOPER, LINDLEY and JENSEN and their co-
24 schemers diverted approximately \$540,000 in ostensible
25 "service fees" from the custodial cash account to First
26 Pension's general business account; in truth and in fact, no
27 services were ever rendered for these "fees."

28 e. COOPER, LINDLEY and JENSEN and their co-

1 schemers diverted approximately \$928,000 from the custodial
2 cash account for investment in fictitious certificates of
3 deposits.

4 16. In or about January 1994, First Pension transferred
5 control of the custodial cash account to Summit Trust. At
6 that time, due to the scheme to defraud, the custodial cash
7 account contained only \$8 million, and not \$31 million as
8 reflected on the books of First Pension. In order to explain
9 the shortfall, JENSEN engaged in the following actions, among
10 others:

11 a. JENSEN falsely represented to Summit Trust that
12 approximately \$23 million had been invested in bank
13 certificates of deposit through Ernest Edwards.

14 b. JENSEN created a fictitious file reflecting
15 correspondence between herself and Ernest Edwards concerning
16 the investment of the \$23 million in certificates of deposit.

17 c. In truth and in fact, as JENSEN well knew,
18 approximately \$23 million was missing from the custodial cash
19 account due to the diversions from that account by herself
20 and her co-schemers, and was not invested in bank
21 certificates of deposit. JENSEN also knew that the
22 approximately \$7 million actually sent to Ernest Edwards had
23 not been invested in bank certificates of deposit, but
24 instead had been diverted to further the scheme to defraud as
25 described in this Complaint.

26 17. As of March 31, 1994, therefore, the custodial cash
27 account held by Summit for the benefit of First Pension
28 customers should have contained approximately \$31 million.

1 In truth and in fact, the shortfall in First Pension's
2 custodial cash accounts was approximately \$23 million,
3 including approximately \$3 million in interest which should
4 have been earned but which was lost due to the diversions.

5 IV. SUMMARY OF LOSSES

6 18. The following table summarize the approximate out-
7 of-pocket losses suffered by investors, and the approximate
8 shortfalls in investor accounts due to investor losses and
9 interest accrued in investor accounts, resulting from the
10 scheme to defraud described in this Complaint:

<u>ENTITY</u>	<u>OUT-OF-POCKET LOSS</u>	<u>SHORTFALL</u>	<u>PARAGRAPH</u>
12 BMFI	\$ 6.7 million	\$26.6 million	xx
13 Mini-Funds	\$37.0 million	\$68.9 million	xx
14 Custodial Cash	\$20.0 million	\$23.0 million	xx
15 Summit Trust	\$ 3.0 million	\$ 3.0 million	xx
<hr/>			
17 TOTALS	\$66.7 million	\$121.5 million	

18
19 V. EXECUTION OF THE SCHEME TO DEFRAUD

20 COUNTS ONE AND TWO

21 (18 U.S.C. § 1341)

22 19. On or about the dates set forth below, within the
23 Central District of California and elsewhere, defendants
24 COOPER, LINDLEY and JENSEN, having devised, intended to
25 devise, and carried out a scheme to defraud and to obtain
26 money from victims of the scheme by means of false and
27 fraudulent pretenses, representations and promises, as
28 described in the preceding paragraphs of this Information,

1 for the purpose of executing the scheme to defraud, knowingly
2 and willfully caused to be placed in an authorized depository
3 for mail matter and delivered by the United States Postal
4 Service, according to the directions.

5
6 **B. BMF MORTGAGE INCOME FUND**

7 20. BMF100 was an investment fund formed by BMF Management,
8 Inc. (the "Fund Manager") and organized under the laws of the State
9 of California as a limited partnership.

10 21. Title of security in BMF100 was through Mortgage Income
11 Fund Participation Interests (the "Participation Interests"), a
12 limited partnership interest in BMF100.

13 22. Each Participation Interest represented a limited
14 partnership interest in BMF100 which would hold a pool of trust deed
15 loans and other assets. A Participation Interest would be
16 denominated in a dollar amount initially equal to the exchange value
17 of any trust deed loan contributed by an investor in exchange for
18 Participation Interests, as determined by applying a valuation
19 technique as described in the prospectus of the BMF100 offering.
20 Each participant was a limited partner in BMF100.

21 23. Substantially all of the principal payments received by
22 BMF100 on trust deed loans, including prepayments and the proceeds
23 from the sale of loans, net of BMF100 expenses, was to be reinvested
24 in additional trust deed loans or, at the election of a participant
25 in BMF100, passed through quarterly. Prior to such reinvestment or
26 distribution, principal payments received by the Fund, net of Fund
27 expenses, was to be reinvested in short-term interest-bearing
28 investments.

1 24. BMF100 was to consist entirely of (1) fixed rate, level
2 installment, or variable rate trust deed loans that provide for the
3 full amortization of principal, (2) fixed or variable rate trust
4 deed loans that provide for partial amortization of principal with
5 the unpaid balance of the principal due at maturity, (3) fixed or
6 variable rate, interest-only trust deed loans with the full amount
7 of the principal due at maturity, (4) cash and short-term interest-
8 bearing investments held by BMF100 pending distribution to
9 participants or investment in trust deed loans, (5) any real
10 property acquired by reason of non-judicial or judicial foreclosure
11 of a trust deed loan, (6) a liquidity reserve, not to exceed three
12 percent (3%) of total fund assets, comprised of short-term interest-
13 bearing investments, and (7) a collectability reserve, not to exceed
14 1% of total fund assets, comprised of short-term interest-bearing
15 investments.

16 25. The majority of the trust deed loans were to be secured
17 by a second trust deed on Southern California residential real
18 property. The remaining trust deed loans were to be secured by
19 first or third trust deeds on such property. A limited number of
20 trust deed loans were to be secured by a trust deed on commercial
21 property. Each trust deed loan was to meet the applicable standards
22 set forth in the prospectus for BMF100.

23 26. The total of BMF100's original investment in any trust
24 deed loan together with the loan balances on senior trust deeds in
25 existence at the time of the fund's investment was not to exceed
26 eighty percent (80%) of the appraised value of the relevant property
27 at the time such trust deed loan originated.

28 27. The prospectus for BMF100 stated that it was anticipated

1 that former investment advisory clients of Pension Asset Management
2 would be exchanging up to approximately \$2,164,000 of trust deed
3 loans presently owned by them for Participation Interests. These
4 exchanges, as disclosed by the prospectus, was expected to
5 constitute a substantial portion of the initial trust deed loans in
6 BMF100.

7 IV.

8 DEFENDANTS UNLAWFUL CONDUCT

9 A. LATHAM & WATKINS

10 28. Defendant Latham & Watkins unlawfully participated
11 directly and indirectly in the scheme in two basic ways. First,
12 Latham & Watkins made a series of false and misleading statements
13 to the California Department of Corporations ("DOC") and the United
14 States Securities & Exchange Commission ("SEC") in connection with
15 the BMF100 application for qualification filed with the DOC and its
16 registration statement filed with the SEC. Second, Latham & Watkins
17 prepared a prospectus used in connection with the sale of securities
18 issued by BMF100 which omitted material facts and misstated material
19 facts. The unlawful conduct of defendant Latham & Watkins resulted
20 in an excess of a \$2 million loss in BMF100 and additional losses
21 to BMF1.

22 29. Defendant Latham & Watkins began representing VestCorp of
23 California beginning in March 1984 when it received a \$10,000
24 retainer. VestCorp is a receivership entity. Their representation
25 involved legal services rendered in connection with pass through
26 mortgage loan pool matters, according to a billing issued by
27 defendant Latham & Watkins dated March 31, 1984. The billing
28 partner was defendant John R. Stahr. By July 1984, defendant Latham

1 & Watkins had billed over \$2,950.00 for services rendered since
2 April 1, 1984, in connection with mortgage pool matters, according
3 to a July 1984 billing statement issued by defendant Latham &
4 Watkins to VestCorp of California.

5 30. By August 31, 1984, defendant Latham & Watkins had
6 performed research and analysis of ERISA and the Internal Revenue
7 Code relating to prohibited transactions and fiduciary duties
8 issues, according to a September 1984 billing statement issued by
9 defendant Latham & Watkins to VestCorp of California. By August
10 1984, defendant Latham & Watkins had done research and planning for
11 revising the mortgage pools to give them the effect of a partnership
12 structure and had analyzed proposals for the ownership of
13 VestCorp/Providence/and First Pension, according to a September 1984
14 billing statement issued by defendant Latham & Watkins to VestCorp
15 of California.

16 31. In January 1988, defendant Latham & Watkins billed Pension
17 Asset Management Company ("PAM"), a receivership entity, \$7,075.00;
18 for February 1988, \$1650.00; for March, \$6,000.00; for April,
19 \$9500.00; and for May 1988, defendant Latham & Watkins billed PAM
20 \$1525.00 for legal services rendered in connection with the BMF100
21 offering.

22 32. By July 1986 Vest-Corp had an unpaid bill of \$50,751.86.
23 In addition, and although plaintiffs do not have the billings for
24 1987, the May 1988 billing issued by defendant Latham & Watkins to
25 PAM showed a balance due from previous billings of \$81,880.69.

26 33. The following charts illustrate the monthly billings and
27 the accumulated balance due from previous billings:

28 **VESTCORP BILLINGS**

1	Company	Billing Date	Amount Past Due	Monthly Fees	Monthly Costs	Amount Due
2	Vest-Corp	3/31/84	\$900.00	\$525.00		\$1,425.00
	Vest-Corp	4/1/84	\$2,950.00		\$13.40	\$2,963.40
3	Vest-Corp	8/31/84	\$2,963.40	\$24,150.00	\$0.00	\$25,538.40
	Vest-Corp	9/30/84	\$27,113.40	\$9,000.00	\$236.57	\$36,349.97
4	Vest-Corp	10/31/84	\$19,774.97	\$18,500.00	\$268.03	\$38,543.00
	Vest-Corp	11/30/84	\$38,543.00	\$4,250.00	\$479.79	\$43,272.79
5	Vest-Corp	12/31/84	\$4,729.79	\$1,900.00	\$224.06	\$6,853.85
	Vest-Corp	1/31/85	\$6,853.85	\$13,500.00	\$91.81	\$20,445.66
6	Vest-Corp	2/28/85	\$20,445.66	\$5,600.00	\$956.05	\$27,001.71
	Vest-Corp	3/31/85	\$27,001.71	\$150.00	\$408.31	\$27,560.02
7	Vest-Corp	4/30/85	\$10,001.71	\$1,500.00	\$143.08	\$11,644.79
	Vest-Corp	5/31/85	\$1,643.08	\$1,900.00	\$34.44	\$3,577.52
8	Vest-Corp	6/30/85	\$3,577.52	\$3,900.00	\$33.40	\$7,510.92
	Vest-Corp	7/31/85	\$7,510.92	\$4,600.00	\$55.94	\$12,166.86
9	Vest-Corp	8/31/85	\$12,166.86	\$2,400.00	\$67.10	\$14,633.96
	Vest-Corp	9/30/85	\$14,633.96	\$5,800.00	\$21.50	\$20,455.46
10	Vest-Corp	10/31/85	\$20,455.46	\$7,000.00	\$50.95	\$27,506.41
	Vest-Corp	12/31/85	\$27,506.41	\$8,600.00	\$168.55	\$36,274.96
11	Vest-Corp	1/31/86	\$36,274.96	\$1,200.00	\$91.50	\$37,566.46
	Vest-Corp	2/28/86	\$37,566.46	\$200.00	\$90.56	\$37,857.02
12	Vest-Corp	3/31/86	\$37,857.02	\$9,618.76	\$589.38	\$48,065.16
	Vest-Corp	4/30/86	\$48,065.16	\$8,800.00	\$232.49	\$57,097.65
13	Vest-Corp	5/31/86	\$52,097.65	\$3,000.00	\$160.19	\$55,257.84
	Vest-Corp	6/30/86	\$55,257.84	\$1,400.00	\$94.02	\$56,751.86
14	Vest-Corp	7/31/86	\$50,751.86	\$225.00	\$74.00	\$51,050.86
	Vest-Corp	8/31/86	\$46,050.86	\$1,200.00	\$0.00	\$47,250.86
15	Vest-Corp	10/31/86	\$42,250.86	\$16,800.00	\$2,196.75	\$61,247.61
16	TOTALS			\$158,668.76	\$6,781.87	

PENSION ASSET MANAGEMENT BILLINGS

18	Company	Billing Date	Amount Past Due	Monthly Fees	Monthly Costs	Amount Due
19					(Previous Balance Due)	\$56,416.42
	PAM	1/11/88	\$56,416.42	\$7,075.00	\$233.56	\$63,725.23
20	PAM	2/29/88	\$63,724.98	\$1,650.00	\$27.20	\$65,402.18
	PAM	3/31/88	\$65,402.18	\$6,000.00	\$672.50	\$72,074.68
21	PAM	4/30/88	\$72,074.68	\$9,500.00	\$306.01	\$81,880.69
	PAM	5/31/88	\$81,880.69	\$1,525.00	\$222.13	\$83,627.82
22	TOTALS			\$25,750.00	\$1,461.40	

34. By October 1988, defendant Latham & Watkins had been paid \$208,000.00 for services rendered in connection with the BMF100 offering, according to a letter from PAM signed by defendant Cooper and addressed to defendant Stahr. Defendant Latham & Watkins attorneys charged for 1,000 hours of their time over a 4-year period in connection with the BMF100 offering. In addition, defendant

1 Latham & Watkins provided legal services in connection with Cooper,
2 Lindley and Jensen's attempt to organize a bank to act as the
3 custodian for First Pension Individual Retirement Accounts.

4 35. Plaintiff is informed and believes that the legal fees
5 paid to defendant Latham & Watkins through VestCorp and/or PAM by
6 came from fraudulently diverted funds from Receivership Entities.
7 Plaintiff is informed and believes that Latham & Watkins knew or in
8 the exercise of due care, should have known, of the diversions for
9 the purpose of paying legal fees to the defendant Latham & Watkins.

10 36. In addition to the above described representations,
11 defendant Latham & Watkins was involved in two other undertakings
12 from which they derived knowledge of the Cooper, Lindley, and
13 Jensen's unlawful conduct. By January 29, 1985, defendant Mendoza
14 was representing Jensen in connection with an SEC investigation into
15 Vest-Corp of California and First Pension Corporation. Plaintiff
16 is informed and believes that on January 31, 1985, SEC attorney
17 Claudia Grossfeld wrote defendant Mendoza a letter which provided
18 in pertinent part as follows:

19 This will confirm our telephone conversation of January
20 29, 1985, during which we scheduled Ms. Valerie Jensen's
21 testimony for 10:00 a.m. on Tuesday, February 5, 1985, at
22 the Commission's Los Angeles Regional Office, 5757
23 Wilshire Boulevard, Suite 500 East, Los Angeles,
24 California 90036.

25 As we discussed, the primary purpose of Ms. Jensen's
26 February 5 appearance will be to produce and authenticate
27 certain of First Pension's records required by the
28 Subpoena Duces Tecum issued to Ms. Jensen on December 10,
1984.

37. The January 31, 1985, letter went on to describe documents
the SEC wanted produced for the period September 1980 to November
1984. The subject documents included First Pension's general
journals, bank account documents, contracts, and loan documents.

1 38. Plaintiff is informed and believes that another
2 representation by Latham & Watkins involved a First Pension client,
3 Lucille Reynolds, a widow who had \$275,000 in an IRA Rollover
4 Account with First Pension. Ms. Reynolds was represented in
5 February 1987 by Thomas M. Gieser of the Swanson and Dowdall law
6 firm. On February 17, 1987, Mr. Gieser wrote defendant Mendoza a
7 letter which made no fewer than eight references to BMF1. The
8 letter provided in pertinent part:

9 Receipt is hereby acknowledged of your letter dated
10 February 11, 1987, which letter is in response (sic) to
my previous letter to you dated February 9, 1987.

11 Unfortunately, your attempt to 'clarify several items' and
12 to 'correct some inaccuracies' raises additional questions
in my mind on behalf of my client.

13 By way of background, I would advise you that my client,
14 Mrs. Lucille Reynolds, a widow, has an IRA Rollover
Account, #1-00622-40-001, with First Pension.

15 In connection with said account, my client has had more
16 than Two Hundred Seventy Five Thousand Dollars (\$275,000)
deposited in the **Bank Mortgage Fund No. 1**.

17 Approximately fifteen (15) months ago, Mrs. Reynolds
18 advised First Pension, and Mr. Belka, of her desire to
liquidate the funds from her IRA Rollover Account,
19 specifically including the funds invested by First
Pension with **Bank Mortgage Fund No. 1**.

20 Although Mrs. Reynolds has received a distribution of a
21 portion of her investment in this account, she has been
advised repeatedly for the last approximately nine (9)
22 months that the balance of her investment would not be
distributed until the **Bank Mortgage Fund No. 1** "went
23 public."

24 Specifically, when my client and I met with Mr. Belka on
September 16, 1986, he advised us that the total amount
25 of investor funds in the **Bank Mortgage Funds No. 1** was in
the approximate amount of Ten Million Dollars
26 (\$10,000,000.00), and that Mrs. Reynolds' investment
balance of approximately Two Hundred Forty Thousand
27 Dollars (\$240,000.00) amounted to approximately 2.4
percent of said total funds invested. During that
28 meeting, Mr. Belka provided me with your name, and
suggested that I discuss with you the status of the
qualification of the **Bank Mortgage Fund**. When I first

1 spoke with you on September 16, 1986, you advised me that
2 you and/or your firm had been working on this for
3 approximately one to one and one-half years, and that it
4 was your estimate that by the end of October, 1986, at
5 the latest, the Fund would be ready to "hit the street".
(sic) You did advise me at that time that it was your
estimate only that the client could start soliciting
funds by the end of October.

6 Thereafter, I spoke with you on February 9, 1987, and you
7 advised me that it was your estimate that solicitation
8 activities for new investors would be able to commence by
9 the end of February, 1987. During both conversations, I
was apparently operating under the mistaken belief that
First Pension would be the entity soliciting funds. I
certainly did not mean to misquote you in any way
whatsoever.

10 However, it appears from your letter dated February 11,
11 1987, that First Pension has no role whatsoever in the
12 operating of the BMF Mortgage income Fund. As a matter
13 of fact, I am not sure what connection, if any exists,
between the Bank Mortgage Fund No. 1 that my client has
invested in, and the BMF Mortgage income Fund that you
are currently working on (emphasis added).

14 According to the representations of Glen Belka, my client
15 was led to believe that these funds were at the very
16 least extremely closely related, if not identical. As a
17 matter of fact, my client has been advised by Mr. Belka,
18 as well as other representatives of First Pension, for
19 the last several months, that as soon as the BMF Mortgage
Income Fund went public, she would be able to receive the
balance of her investment in the **Bank Mortgage Fund No.
1**, in the approximate amount of Two Hundred Thousand
Dollars (\$200,000.00).

20 However, after reviewing your letter, I am now not at all
21 sure that the completion of the public offering on the
22 BMF Mortgage Income Fund will have any impact whatsoever
23 on my client's ability to receive a liquidating
distribution from her **Bank Mortgage Fund No. 1**. In other
words, it appears that my client may have been "strung
along" for several months by various representatives of
First pension, including Mr. Belka.

24 Would you please advise me, in writing, what the
25 relationship is between the **Bank Mortgage Fund No. 1**,
26 currently administered by First Pension, and referred to
27 in their statement as the "BMF Income Fund" and the BMF
Mortgage Income Fund that you are working on? In
28 addition, would you please advise me, in writing, of the
impact of the BMF Mortgage Income Fund "going public" on
my client's ability to receive a liquidating distribution
from **Bank Mortgage Fund No. 1** referred to above. (This
letter is referred to hereinafter as the "Reynolds

1 Letter").

2
3 39. As a result of their distinguished backgrounds, training,
4 education, expertise, and involvement in the transactions and
5 undertakings described herein, defendants Stahr and Mendoza and
6 other personnel of Latham & Watkins, including C. Christopher Cox,
7 learned of material facts, including the diversion and commingling
8 of funds from Receivership Entities, which they either did not
9 disclose or misrepresented to the DOC, SEC and investors in
10 connection with the offering of the BMF100 public offering.
11 Defendants Stahr, Mendoza, Cox, and Latham & Watkins knew,
12 consciously avoided knowing or were reckless in not knowing of the
13 underlying scheme and other material facts which should have been
14 disclosed to investors, the DOC and the SEC, among others.
15 Defendants Latham & Watkins, Stahr, and Mendoza proceeded to join
16 in the scheme, failed to disclose or misrepresented facts to
17 investors, the DOC and SEC, which allowed the scheme to flourish.
18 In addition, defendant Cox was also involved in making false
19 representations to the DOC in connection with BMF100's application
20 for qualification.

21 40. On December 4, 1984, defendant Mendoza forwarded by letter
22 an Application for Qualification of Securities by Coordination in
23 connection with a proposed initial public offering of Participation
24 Interests in VestCorp Trust Deed Fund (this was the first name given
25 to BMF100). Defendant Mendoza represented in his December 4, 1984,
26 letter as follows:

27 It is presently contemplated that the participation
28 interests will be offered initially to former investment
advisory clients of Pension Asset Management, Inc., which
corporation will serve as the Fund manager. These people
have previously invested in trust deed loans (emphasis

1 added). The Fund is designed, in part, to give these
2 people an opportunity to contribute their trust deed
3 loans to the Fund, which will be composed of a number of
4 trust deed loans, in exchange for Participation interests
5 which will have approximately the same yield as the trust
6 deed loan contributed to the Fund.

7 41. This was false and misleading because existing investors
8 had interests in BMF1, not individual trust deeds. They simply had
9 no trust deed loans to contribute. This is established by the
10 Information, the Reynolds Letter, and documents which defendant
11 Mendoza had in his possession showing a complete listing of the
12 existing trust deeds in the BMF1 and their financial status.

13 42. By letter to defendant Mendoza, Wallace Wong of the DOC
14 responded on December 19, 1984, to defendant Mendoza's letter of
15 December 4, 1984. Wallace Wong's letter provided in pertinent part:

16 The proposal to exchange participation interest for
17 certain trust deed loans on the basis of the principal
18 amount due without regard to any other terms or condition
19 of payment history of such loan is inherently unfair.
20 Such proposal results in a different price for each
21 exchange. Such practice does not meet the requirements
22 of Rule .50 and .51. Any such exchange should be based
23 upon an independent appraisal or other appropriate
24 determination of the value of each item of non-cash
25 consideration at an appropriate point in time.

26 43. On January 11, 1985, defendant Mendoza again
27 misrepresented and omitted to state information needed to make that
28 which was stated not misleading, in a letter to the DOC addressed
29 to Wallace Wong. Defendant Mendoza represented that the "fund is
30 being formed to permit holders of such small trust deed loans to
31 diversify their risk and to enhance the liquidity of their
32 investment." Again this was not true since the investors held
33 interests in BMF1, not individual trust deeds. Moreover, defendant
34 Mendoza made a series of misleading statements aimed at persuading
35 Wallace Wong that it was not necessary to review the value of the

1 trust deeds which were to be exchanged. In this regard defendant
2 Mendoza's letter provided that, "none of the loans included on
3 Schedule A has a delinquent payment history, each is current, and
4 each is adequately secured with respect to other encumbrances."
5 Defendant Mendoza left out the fact that several of the loans that
6 had a part of BMF1 had a delinquent payment history, were not
7 current, and were not adequately secured. Before the permit was
8 issued defendants Mendoza, Stahr, and Latham & Watkins had a list
9 of such loans in their files.

10 44. Defendant Mendoza, in his January 11, 1985, letter to
11 Wallace Wong, went to great lengths to persuade Wong that the trust
12 deeds did not need to be appraised by an independent appraiser.
13 Such an appraisal carried the very real risk that the underlying
14 scheme would be detected. The letter in this regard provided:

15 Given the inherently subjective techniques that would be
16 employed to appraise each trust deed loan, and the
17 absence of a secondary or other active market as a means
18 to validate the appraisals, allocation of value according
19 to the principal amount of trust deed loans contributed
is the fairest means obtainable in the circumstances. In
addition, the expense of such an evaluation would result
in a substantial and unnecessary dilution of the
investors' interests.

20 45. This statement was misleading in view of the on-going
21 dilution to investors interests caused by the underlying scheme.
22 An independent valuation would have probably resulted in a detection
23 of the underlying scheme and resulted in the independent appraiser
24 disclosing that the trust deeds were not separate trust deeds but
25 part of BMF1.

26 46. Defendant Mendoza's January 11, 1985, letter to Wallace
27 Wong contained other misleading statements. For example, on page
28 3 of the letter the following statement appears:

1 Although the Fund manager and Glen L. Belka meet the net
2 worth requirement of Rule 111.2, the application of this
3 Rule by analogy to the Fund is inappropriate. The
4 purpose of the Rule is to provide a guarantee to
5 investors in real estate programs (such as apartment
6 building syndications) that the general partner, who is
7 contracting with a variety of third parties for goods,
8 materials and services will be in a position to meet such
9 significant financial obligations. Rather, as virtually
10 all of the Fund's assets will be held in relatively liquid
11 financial instruments, the Fund manager's responsibilities
12 are limited to acting as an investment adviser to the
13 Fund, and providing reports and accounting information.
14 These functions do not require substantial net worth.

15 47. This statement was misleading given the mounting short
16 fall in BMF1, the fact that the Fund's assets were not to be held in
17 liquid financial instruments, and the existing practices
18 constituting the scheme. Under these premises a substantial net
19 worth was required since a return to investors was very much
20 dependent on the financial condition of the Fund Manager and
21 defendant Belka.

22 48. Defendant Mendoza's January 11, 1985, letter is filled
23 with other misleading statements. On page 4, defendant Mendoza
24 again referenced existing investors exchanging "trust deed loans for
25 an interest in the Fund." In fact, these investors did not have
26 individual trust deed loans.

27 49. Defendant Latham & Watkins' attorney, C. Christopher Cox,
28 went over Wallace Wong's head and attempted to use his influence
with more senior officials at the DOC to circumvent the objections
raised by Wallace Wong. By letter dated February 22, 1985, C.
Christopher Cox made several misrepresentations and misleading
statements to DOC personnel, Morton L. Riff, Ernest W. Kapes and
Wallace Wong. Attorney Cox wrote in pertinent part:

1. Each loan selected by Fund Manager: All investors-- those who have invested in the trust deeds listed on Schedule A, and those who

1 have not yet but will invest in the Fund are
2 cash investors. At the time of their
3 investment, their monies have been or will be
4 promptly invested in a trust deed loan with a
5 principal balance equal to the amount of their
6 investments. [Emphasis added]

7 50. This is a direct misrepresentation. Existing investors
8 funds were not promptly invested in trust deed loans at the time of
9 their investment. Further, there were not individual trust deeds,
10 but rather a pool of trust deeds in which interests had been sold.
11 The interests sold to investors materially exceeded the trust deeds
12 that had been purchased.

13 51. Defendant Cox also made additional misleading and
14 materially deficient statements in attempting to persuade the DOC
15 to forego the requirement that the existing trust deeds be
16 independently valued. Defendant Cox stated as follows on page 6 of
17 his February 22, 1985, letter:

18 4. Imprudent use of investors' funds: Given the
19 subjectivity of any "appraisal" in the absence of an
20 active secondary market of substantial depth,
21 expenditure of Fund assets for such an "appraisal"
22 would unfairly and unreasonably harm the investors'
23 rate of return. By significantly increasing front-
24 end costs, it could also render the organization of
25 the Fund uneconomical, thereby eliminating an
26 opportunity for the Schedule A investors to
27 diversify their investment risk.

28 52. In addition to being misleading, this statement was
manipulative in that it attempted to mischaracterize the usefulness
of an expenditure of funds for an appraisal that had a high
probability of uncovering the scheme as anti-investor. Defendant
Cox also states on page 8 of his February 22, 1985, letter that:

(c) No unusual risk: Because all the
trust deed loans are secured and over-
collateralized there is relatively low
risk. The Fund, moreover, will be
diversified. Therefore, an investor who
owns a single trust deed loan will be

1 acquiring a less risky investment
2 than the one he already owns.

3 53. This statement was false in that it concealed that the
4 trust deed loans were not secured and were under-collateralized.
5 This was a highly risky investment, and there were no single trust
6 deed loans held by investors. Those interests had been pooled into
7 BMF1.

8 (d) Not a complex investment: Investment in
9 the Fund is straightforward. The Fund is a
10 mutual fund which will own a single kind of
11 fixed-income asset, and such assets will be
12 fully secured. Since the Fund is styled as a
13 mutual fund, it is easy to understand for the
14 average investor.

15 54. This was also misleading since the investment being
16 described to the DOC was not the investment investors had, BMF1, or
17 were to buy, BMF100. Defendant Cox also told the DOC in his
18 February 22, 1985, letter that the investment was designed for the
19 small investor, and was designed to permit the small investor to
20 realize the benefits of diversification. In fact, the investment
21 was designed to hide the existing scheme which had resulted in
22 substantially undisclosed losses for existing investors. Further,
23 C. Christopher Cox, again on page 9 of his letter, suggested that
24 existing investors were invested in single trust deeds ("When a
25 single trust deed loan turns sour without warning, an investor might
26 lose everything."). These same misleading statements to the effect
27 that there were individual trust deeds were made to DOC personnel
28 in private phone conversations and personal meetings by both C.
Christopher Cox and defendant Mendoza.

 55. Defendant Mendoza, with the active involvement of
defendant Cox, continued to make the foregoing misleading statements
and misrepresentations to the DOC to the effect that existing

1 investors were invested in individual trust deeds. The foregoing
2 misleading statements and misrepresentations were made in letters
3 sent to the DOC on May 14, 1985 (signed by defendant Mendoza), May
4 20, 1985 (signed by defendant Mendoza), June 26, 1987 (signed by
5 defendant Mendoza), July 30, 1987 (signed by defendant Mendoza), and
6 August 30, 1987 (signed by defendant Mendoza). Defendant Mendoza
7 also made similar misleading statements in three letters written to
8 the SEC on September 24, 1986, February 12, 1987, and April 2, 1987.

9 56. The prospectus used to sell BMF100, which was drafted by
10 defendant Latham & Watkins, also misstated the status of pre-
11 existing investors. On page 4 the prospectus provided that "Up to
12 \$2,164,000 of the Trust Deed Loans comprising the Fund may be
13 contributed by PAM's former investment advisory clients in exchange
14 for Participation Interests." This statement was misleading to both
15 existing investors and future investors, in that it did not disclose
16 the relationship between BMF1 and BMF100. The prospectus contains
17 numerous instances of similar materially misleading statements at
18 pages 5, 9, 17, 18, 19, 20, and Schedule A, for example.

19 57. In addition to the foregoing, there were omissions of
20 material facts in the prospectus. These omissions included:

21 a. the fact that the BMF1 trust deeds had been pooled,
22 and as a result of the pooling, BMF1 was in violation of the
23 qualification provisions of the California securities laws;

24 b. the true financial condition of BMF1, which in fact,
25 had a material shortfall of funds;

26 c. prior investigations into First Pension Corporation
27 and Vestcorp by the SEC;

28 d. Ms. Lucille Reynold's letter and claim regarding her

1 request for a liquidation distribution of her investment in BMF1;
2 and

3 e. the fact that various trust deeds reviewed by
4 defendant Latham and Watkins were in fact non-performing trust
5 deeds.

6 58. Defendant Mendoza made the misleading statements and
7 engaged in the unlawful conduct complained of, and acted under the
8 direct supervision of defendant Stahr. On a date in 1986 or 1987,
9 unknown to plaintiffs, attorney C. Christopher Cox left the firm of
10 defendant Latham & Watkins. In the beginning of 1988, defendant
11 Mendoza left the firm of defendant Latham & Watkins. Defendant
12 Mendoza however continued to provide legal services to Cooper,
13 Jensen, and Lindley from 1992 to July 1993 while employed with a
14 different law firm. Defendant Mendoza, after becoming the
15 Commissioner of the California Department of Corporations, continued
16 to have business contact with defendant Cooper including an effort
17 to collect a delinquent bill owed to defendant Mendoza's former law
18 firm.

19
20 **First Claim for Relief**
21 **Fraud and Deceit**

22 *(Against All Defendants)*

23 59. Plaintiff realleges and incorporates herein by reference
24 paragraphs 1 through 58 of this Complaint as though fully set forth.

25 60. Plaintiff is proceeding in this First Claim for Relief for
26 conduct prior to and during the offer and sale of said limited
27 partnership units and for conduct subsequent to the initial offer.
28 The Defendants owed to Plaintiff and the Receivership Entities a
statutory and common law duty of care to disclose truthfully all

1 necessary and relevant facts.

2 61. The fraud herein alleged occurred in two forms. The first
3 consisted of deceitful omissions in connection with the offer and
4 sale of the limited partnership units.

5 62. The second form of fraud consisted of the defendants'
6 failure to disclose facts concerning the true nature of the limited
7 partnership units sold by Defendants. As described above, the
8 Defendants continued their concealment and subsequent wrongdoing in
9 connection with the limited partnership units.

10 63. Defendants acted knowingly and intentionally in doing the
11 things alleged herein above. The Defendants knew that material
12 facts were being suppressed and, despite duties to reveal same,
13 concealed material facts with the intent to deceive.

14 64. Plaintiff and the Receivership Entities justifiably and
15 reasonably relied upon the defendants' flawed disclosure of material
16 facts.

17 65. As a direct and legal result of the acts and conduct of
18 the Defendants as herein alleged, Plaintiff has been damaged in an
19 amount to be determined according to proof at trial, but not less
20 than all sum paid to defendants, together with interest thereon as
21 provided by law.

22 66. The acts complained of against the Defendants were
23 committed with fraudulent and malicious intent to injure without
24 concern for the rights of Plaintiff. The conduct of the Defendants
25 was ratified by each and every Defendant named in this first claim
26 for relief, for which exemplary and punitive damages should be
27 awarded in a sum according to proof at trial.

28 ///

1 documents and oral presentations communicated was
2 accurate and did not contain misleading or
3 fraudulent statements or omissions of material
4 facts.

5 b. Engaging in transactions which resulted in a
6 conflict of interest.

7 c. Failing to adequately and fully disclose the full
8 extent and nature of the conflicts of interest in
9 which the Defendants, and their affiliates would be
10 engaging.

11 d. Preferring Defendants' own interests and those of
12 their affiliates over those of the Plaintiff and the
13 Receivership Entities.

14 e. Profiting and allowing Defendants' affiliates to
15 profit at the expense of Plaintiff and the
16 Receivership Entities.

17 f. Engaging in transactions which were designed to and
18 did result in a profit to the Defendants and their
19 affiliates at the expense of Plaintiff and the
20 Receivership Entities.

21 71. Defendants knowingly induced or participated in each
22 others' breach of fiduciary duties as previously alleged herein.

23 72. The acts of the Defendants in breaching, or knowingly
24 inducing or participating in the breach of fiduciary duties show a
25 willful indifference to the rights of Plaintiff and the Receivership
26 Entities.

27 73. As a proximate result of the Defendants' breach of their
28 fiduciary duties, and Defendants' knowing inducement or

1 participation therein, Plaintiff has suffered damages in an amount
2 to be determined at trial, but not less than all sums paid to
3 defendants.

4 74. The Defendants' acts were outrageous and were perpetrated
5 with an evil mind requiring an award of punitive damages sufficient
6 to deter Defendants and others from fraudulent conduct in the
7 future.

8
9 **Third Claim for Relief**
Aiding and Abetting Breaches of Fiduciary Duties

10 *(Against All Defendants)*

11 75. Plaintiff realleges and incorporates by reference
12 paragraphs 1 through 74 of this Complaint as though fully set forth
13 herein.

14 76. Defendants participated in and aided and abetted each
15 other in knowingly breaching fiduciary duties owed to Plaintiff and
16 the Receivership Entities.

17 77. Defendants, and each of them, were aware of the fiduciary
18 relationships described above and the resultant duties owed to
19 Plaintiff and the Receivership Entities. With full knowledge of
20 these duties, Defendants, and each of them, materially aided and
21 abetted in breaching the fiduciary duties of others by acting as set
22 forth above.

23 78. As a direct and proximate result of Defendants' aiding and
24 abetting breaches of fiduciary duties, Plaintiff has suffered
25 general and specific damages, but not less than all sums paid to
26 defendants, with interest thereon, to be determined according to
27 proof at trial.

28 ///

1 forth fully herein.

2 84. As more fully set forth above, Defendants had an
3 affirmative duty to act with reasonable diligence toward Plaintiff
4 and the Receivership Entities. Misrepresentations were made by each
5 Defendant negligently or in reckless disregard for the truth
6 thereof. These misrepresentations were made by each Defendant and
7 with the express intent and actual knowledge that Plaintiff and the
8 Receivership Entities would rely upon them.

9 85. At the time these misrepresentations were made, Plaintiff
10 and the Receivership Entities were ignorant of their falsity and
11 believed them to be true.

12 86. Plaintiff and the Receivership Entities relied upon the
13 misrepresentations and omissions of the Defendants, and each of
14 them. As a direct, proximate and reasonably foreseeable result of
15 the foregoing conduct, Plaintiff and the Receivership Entities
16 members have suffered damages with interest thereon, to be
17 determined according to proof at trial, but not less than all sums
18 paid to defendants.

19
20 **Sixth Claim for Relief**
21 **Negligence**

22 *(Against All Defendants)*

23 87. Plaintiff realleges and incorporates herein by reference
24 paragraphs 1 through 86 of this Complaint as though set forth fully
25 herein.

26 88. The Defendants owed Plaintiff and the Receivership
27 Entities the duty to act with reasonable care in complying with the
28 law, to inform them truthfully and fully about the said limited

1 partnership formation, offerings, and sales, and to exercise
2 reasonable care in the operation and management of the partnerships.

3 89. As set forth above, Defendants breached these duties.

4 90. The breach of these duties was the proximate cause of
5 damages to Plaintiff and the Receivership Entities.

6 91. The Defendants' conduct, described above, was reckless,
7 willful, wanton, outrageous and perpetrated with an evil mind, so
8 as to require an award of punitive damages sufficient to deter
9 Defendants and others from similar conduct in the future.

10
11 **Seventh Claim for Relief**
12 **Professional Malpractice**

13 *(Against All Defendants)*

14 92. Plaintiff realleges and incorporates by reference and
15 realleges paragraphs 1 through 91 as though set forth fully
16 herein. The claims asserted herein arise out of the same nucleus
17 of operative facts as those alleged under the preceding Causes of
18 Action.

19 93. Plaintiff proceeds with this claim for professional
20 malpractice against the Attorney Defendants who provided legal
21 services to BMF100.

22 94. The Attorney Defendants, in the course and scope of
23 their agency, advised and rendered legal services to Plaintiff
24 and the Receivership Entities, which fell below the standard of
25 care and violated the standard of conduct to be adhered to by
26 lawyers practicing in similar situations.

27 95. These Defendants owed a duty to Plaintiff and the
28 Receivership Entities, to render competent legal advice and legal

1 services with such skill, prudence, and diligence as other
2 members of their profession commonly possess and exercise and not
3 to render such advice or services recklessly or negligently. The
4 Attorney Defendants were reckless or negligent in rendering their
5 services and such services fell below the standard of care to be
6 adhered to by lawyers practicing in similar situations.

7 96. The Attorney Defendants owed Plaintiffs and the Class
8 professional and fiduciary duties to perform their work honestly
9 and with due care under community standards. These Attorney
10 Defendants breached these duties to Plaintiff and the
11 Receivership Entities. Plaintiff and the Receivership Entities,
12 at the time of the breaches of duties, were ignorant of the
13 breaches and of the falsity of the statements made. In reliance
14 upon said legal services, Plaintiff and the Receivership Entities
15 were misled. Had Plaintiff and the Receivership Entities known
16 the true facts and the breaches of duties they would not have
17 continued and/or would have taken action to reduce their losses.

18 97. As a direct and legal result of the Attorney Defendants
19 breaches of professional duties, Plaintiff and the Receivership
20 Entities have been damaged in an amount to be determined
21 according to proof at trial, but not less than all sums paid to
22 defendants, together with interest thereon as provided by law.

23
24 **PRAYER**

25 WHEREFORE, Plaintiff requests judgment against Defendants,
26 and each of them as follows:

27 **UPON THE FIRST AND SECOND CLAIMS FOR RELIEF:**

28 For damages in an amount not less than \$5,000,000., or an

1 amount according to proof at Trial;
2 For all sums paid to defendants;
3 For Punitive Damages; and
4 For Prejudgment Interest at the Statutory Rate of 10%.

5 **UPON THE THIRD THROUGH SEVENTH CLAIMS FOR RELIEF:**

6 For damages in an amount not less than \$5,000,000., or an
7 amount according to proof at Trial; and
8 For Prejudgment Interest at the Statutory Rate of 10%.


9 **UPON ALL CAUSES OF ACTION:**

10 For All Other Relief the Court Deems Just and Proper.

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JACOBS & ROACH
A Professional Law Corporation

Dated: June 14, 1995

By: 

Gary Byron Roach, Attorneys
for Plaintiff, Donald W. Henry,
Receiver

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

SHORT CASE TITLE

CASE NUMBER

Henry v. Latham & Watkins, et al.

CERTIFICATE OF ASSIGNMENT

File this certificate with all cases presented for filing in all districts of the Los Angeles Superior Court.

The undersigned declares that the above entitled matter is filed for proceedings in the _____ District of the Los Angeles Superior Court under Section 392 et seq., Code of Civil Procedure and Rule 300, Sections 3 and 4 of this court for the reasons checked below. The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above designated district is (not required for non-tort cases filed in Central District):

NAME: (INDICATE TITLE OR OTHER QUALIFYING FACTOR) <i>Gary Byron Roach</i>		ADDRESS: <i>1280 S. Victoria Ave.</i>	
(CITY) <i>Ventura</i>	(STATE) <i>CA</i>	(ZIP CODE) <i>93035</i>	<i>Ste 250</i> <i>Ventura, CA 93003</i>

JURY TRIAL NON-JURY TRIAL TIME ESTIMATED FOR TRIAL 10 HOURS / DAYS.

CHECK ONLY ONE NATURE OF ACTION.

NATURE OF ACTION	GROUND	NATURE OF ACTION	GROUND	
<input type="checkbox"/> A7100 Vehicle Accident	The cause of action arose within the district.	<input type="checkbox"/> A5520 Regular Dissolution	One or more of the party litigants resides within the district.	
<input type="checkbox"/> A7210 Med Malpractice		<input type="checkbox"/> A5525 Summary Dissolution		
<input type="checkbox"/> A7200 Other Personal Inj.	or	<input type="checkbox"/> A5530 Nullity	..	
<input type="checkbox"/> A7220 Product Liability	One or more defendants resides within the district.	<input type="checkbox"/> A5510 Legal Separation	(Not a requirement for filing in Central District—Rule 300)	
<input checked="" type="checkbox"/> A6050 Other Malpractice		<input type="checkbox"/> A6135 Foreign Support		
<input type="checkbox"/> A6012 Collection/Note	or	<input type="checkbox"/> A6136 Foreign Custody		
<input type="checkbox"/> A6040 Injunct Relief	Rule 300 allows filing in Central District (non-torts only).	<input type="checkbox"/> A6122 Domestic Violence		
<input type="checkbox"/> A8030 Declar Relief		<input type="checkbox"/> A6130 Family Law Complaint-Other		
<input type="checkbox"/> A6170 Late Claim Relief		<input type="checkbox"/> A6132 Paternity	Child resides or deceased father's probate would be filed in the district.	
<input type="checkbox"/> A6000 Other Compit.		<input type="checkbox"/> A6101 Agency Adoption	Petitioner resides within the district.	
(Specify): _____		<input type="checkbox"/> A6102 Independent Adoption		or
<input type="checkbox"/> A6011 Contract	Performance in the district is expressly provided for. ..	<input type="checkbox"/> A6104 Stepparent Adoption		Consent to out-of-state adoption, consensor resides within the district.
<input type="checkbox"/> A7300 Eminent Domain	The property is located within the district. ..	<input type="checkbox"/> A6103 Adult Adoption		
<input type="checkbox"/> A6020 Landlord/Tenant				<input type="checkbox"/> A6106 Sole Custody Petition
<input type="checkbox"/> A6060 Real Property Rights		<input type="checkbox"/> A6105 Abandonment		
<input type="checkbox"/> A8140 Admin Award	The administrative tribunal is located within the district ..	<input type="checkbox"/> A6210 Probate Will-Letters Testamentary	Decedent resided within the district	
<input type="checkbox"/> A6160 Abstract	The judgment debtor holds property within the district ..	<input type="checkbox"/> A6211 Probate Will-Letters Administration		or
<input type="checkbox"/> A6141 Sister State Judgment			<input type="checkbox"/> A6212 Letters of Administration	Decedent resided out of the district, but held property within the district.
<input type="checkbox"/> A7221 Asbestosis	Must be filed in the Central District	<input type="checkbox"/> A6213 Letters of Special Administration	or	
<input type="checkbox"/> A6134 R.E.S.L.			<input type="checkbox"/> A6215 Spousal Property	Petitioner, conservator or ward resides within this district.
<input type="checkbox"/> A6111 Minor's Contract	One or more of the party litigants resides within the district. ..	<input type="checkbox"/> A6216 Succession to Real Property		
<input type="checkbox"/> A6190 Election Contest			<input type="checkbox"/> A6217 Summary Probate	
<input type="checkbox"/> A6110 Name Change	The defendant functions wholly within the district. ..	<input type="checkbox"/> A6218 Small Estate (13200 PC)	(Specify): _____	
<input type="checkbox"/> A6121 Civil Harassment				<input type="checkbox"/> A6230 Conservatorship P & E
<input type="checkbox"/> A6100 Other Petition		<input type="checkbox"/> A6231 Conservatorship Person		
(Specify): _____		<input type="checkbox"/> A6232 Conservatorship Estate		
<input type="checkbox"/> A6151 Mandamus*	The defendant functions wholly within the district. ..	<input type="checkbox"/> A6233 Medical Treatment without Consent		
<input type="checkbox"/> A6152 Prohibition*				<input type="checkbox"/> A6240 Guardianship P & E
<input type="checkbox"/> A6150 Other Writ*		<input type="checkbox"/> A6241 Guardianship Person		
(Specify): _____		<input type="checkbox"/> A6242 Guardianship Estate		
<input type="checkbox"/> A6600 H.C. Family Law	Child is held within the District ..	<input type="checkbox"/> A6243 Spouse Lacks Capacity		
		<input type="checkbox"/> A6254 Trust Proceedings		
		<input type="checkbox"/> A6200 Probate Other		
		(Specify): _____		
		<input type="checkbox"/> A6260 Comp Minor's Claim		

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and this declaration was executed on June 14, 1995 at Ventura, California.

*On Rule 300 allows optional filing in Central District.


(SIGNATURE OF ATTORNEY/FILING PARTY)

* Perogative writs concerning a court of inferior jurisdiction shall be filed in Central District.

THE COURT MAY IMPOSE SANCTIONS OR OTHER PENALTIES FOR FAILURE TO FILE IN THE PROPER DISTRICT.