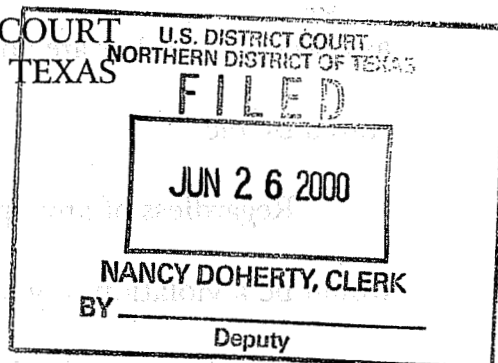


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



STEWART RAHR and CONTINENTAL)
INVESTMENT CORPORATION,)

Plaintiffs,)

VS.)

R. DALE STERRITT, JR., ET AL.,)

Defendants.)

CIVIL ACTION NO.

3:99-CV-0628-G

COURT'S INSTRUCTIONS TO THE JURY

MEMBERS OF THE JURY:

Now that you have heard all of the evidence and the arguments, it becomes my duty to give you the instructions of the court concerning the law applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you and to apply that law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but must consider the instructions

other agents. In these instructions, when I refer to actions taken by the corporate plaintiff or a corporate defendant, I am actually referring to the conduct of the officers, employees, or agents of that entity. An act or omission of such a person is deemed by the law to be attributable to the corporation for which the person is acting.

Separate Consideration of Each Claim and Each Party

There are two plaintiffs in this case, but it is not necessarily true that if one is entitled to recover, then both are entitled to recover. You must fairly consider each plaintiff's claim against each defendant; and you must fairly consider each defense against each plaintiff. In other words, you should consider each claim -- and the evidence on that claim -- separately, as if the claim had been tried separately.

Similarly, there is more than one defendant in this case, but it is not necessarily true that if one is liable, then all are liable. Each defendant is entitled to a fair consideration of that defendant's own case, which should not be influenced by your finding for or against another defendant. Unless I instruct you differently, all instructions that I give you apply to the case against each defendant.

In like manner, unless I instruct you differently, all instructions that I give you apply to the case and each plaintiff and each defendant. Counsel for the plaintiffs have consulted with one another during the trial. Counsel for the defendants have done that too. The lawyers have divided the work of the trial to promote order and

Remember that any statements, objections, or arguments made by the lawyers are not evidence in the case. If a lawyer has asked a witness a question that contains an assertion of fact, you must not consider the assertion as evidence of that fact unless the witness has affirmed or adopted it by his or her answer. The lawyer's statements are not evidence. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case and, in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

During the course of this trial I instructed you that certain testimony and certain exhibits were admitted into evidence for a limited purpose. You may consider such evidence only for the specific limited purposes for which it was admitted.

You are not bound by any opinion which you might think I have concerning the facts of this case, and if I have in any way said or done anything which leads you to believe that I have any opinion about the facts in this case, you are instructed to disregard it. Further, nothing in these instructions to you is made for the purpose of suggesting or conveying to you an intimation as to what verdict I think you should find.

the issues in this case are to be judged by this standard. A preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true. In other words, to establish a fact by a "preponderance of the evidence" means to prove that the fact is more likely so than not so. Keep in mind that the preponderance of evidence is not alone determined by the number of witnesses testifying as to a particular fact or state of facts. If in your minds the evidence is equally balanced on any material fact, then that fact has not been established by a preponderance of the evidence.

The second standard is "clear and convincing evidence." The phrase "clear and convincing" means evidence that produces in your mind a firm belief or conviction which is free from serious or substantial doubt. This standard of proof involves a greater degree of persuasion than is necessary to satisfy the "preponderance of the evidence" standard, but is less than the "beyond a reasonable doubt" standard used in criminal trials. Some of the issues in this case are to be judged by this standard; where that is true, the instructions will so indicate.

In determining whether any fact in issue has been proved by the required standard of evidence, you may consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

the other hand, the law does not require that the plaintiffs prove the amount of their losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit.

If you answer questions about damages because you have found liability on the part of one or more of the defendants, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your findings when judgment is entered. Do not add any amount for interest on any damages you find.

Credibility of Witnesses

Now, I have said that you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or "believability" of each witness and the weight to be given to that witness's testimony. In weighing the testimony of a witness, you should consider the witness's relationship to the plaintiffs or to the defendants; the witness's interest, if any, in the outcome of the case; the witness's manner of testifying; the witness's opportunity to observe or acquire knowledge concerning the facts about which the witness testified; the witness's candor, fairness, and intelligence; and the extent to which the witness's testimony has been supported

If you believe that any witness has been so impeached, it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you think it deserves.

You are not required to accept testimony even though the testimony is uncontradicted and the witness is not impeached. You may decide, because of the witness's bearing and demeanor or because of the inherent improbability of the witness's testimony or for other reasons sufficient to you, that such testimony is not worthy of belief.

Expert Witnesses

The rules of evidence provide that if scientific, technical, or other specialized knowledge might assist you in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify and state an opinion concerning such matters.

You should consider each expert opinion received in evidence in this case and give it such weight as you think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, then you may disregard the opinion entirely.

proof of any facts. If such charts or summaries do not correctly reflect facts or figures shown by the evidence in the case, you should disregard them.

In other words, such charts or summaries are used only as a matter of convenience; so if -- and to the extent that -- you find they are not in truth summaries of facts or figures shown by the evidence in the case, you should disregard them entirely.

Claims Under The Federal Securities Laws

This case involves the purchase of securities -- that is, common stock issued by Continental Investment Corporation. Over sixty-five years ago, after the stock market crash of 1929, Congress passed laws to protect the integrity of the financial markets. The underlying premise of those laws is that full disclosure of material facts about securities that are bought and sold will protect the integrity of the marketplace. The laws involved in the federal claims in this case are various sections of the Securities Exchange Act of 1934.

In this case, the plaintiff Stewart Rahr ("Rahr") has been described as a sophisticated investor. The federal securities laws, however, apply to and protect all persons who purchase and sell securities, even if those persons are sophisticated investors.

To find a violation of any of the federal securities laws, you must first find that instrumentalities of interstate commerce were involved. Instrumentalities of

not give up your honest beliefs solely because the others think differently, or merely to finish the case.

Remember that in a very real way, you are judges -- judges of the facts. Your only interest is to seek the truth from the evidence in the case.

As soon as I finish giving these instructions, you will retire to the jury room. In a few minutes, I will send to you the original of this charge and the exhibits that have been admitted into evidence. Do not begin your deliberations until you have received these materials. After you receive the original of this charge and the exhibits from the court, you should select one of your number to act as your foreperson. He or she will preside over your deliberations and will be your spokesperson here in court. A verdict form has been prepared for your convenience.

Any notes that you have taken during this trial are only aids to your memory. If your memory differs from your notes, you should rely on your memory and not on your notes. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

During your deliberations you will set your own work schedule, deciding for yourselves when and how frequently you wish to recess and for how long. When you have reached unanimous agreement as to your verdict, have your foreperson fill in the

The verdict form consists of a series of questions together with related instructions and definitions.

Federal Securities Law Claims

One of the plaintiffs, Stewart Rahr ("Rahr"), claims that one of the defendants, R. Dale Sterritt, Jr. ("Dale Sterritt"), directly violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5, as well as Section 18 of that Act. He also claims that certain other defendants are "control persons," as that term is used in the federal securities laws, who are thereby legally responsible for any violations of Dale Sterritt.

Section 10(b) and Rule 10b-5

Section 10(b) empowers the Securities and Exchange Commission ("SEC") to adopt rules which have the force of law. The SEC has adopted Rule 10b-5, which makes it unlawful to do any of the following things, directly or indirectly, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud; or
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

that in connection with Rahr's purchase of Continental Investment Corporation common stock, Dale Sterritt made an untrue statement of a material fact, or failed to disclose a material fact that had to be disclosed to keep the other statements that were made from being misleading. Rahr need prove only one misrepresentation or one omission for you to find that the "misrepresentation or omission" element of Section 10(b) has been satisfied.

There is a duty to correct statements of material fact made in a report filed with the SEC or sent to investors or in press releases issued by the company. This duty arises if it is learned that the statement is or has become materially misleading and if a reasonable person would expect that investors or other market participants would likely still be relying on the earlier, incorrect statement.

A statement is not false or misleading, however, merely because subsequent events prove it to have been erroneous. Whether statements or omissions are false or misleading must be determined as of the time they were made.

"Security" means any stock, treasury stock, note, bond, debenture, or option for a security. It includes stock which is both freely tradeable on the open market and stock which is "restricted" and cannot be freely traded.

A "material fact" is one that a reasonable investor would consider to be significant or important in making the investment decision.

falsity known to him or a risk of falsity that was so obvious that he should have been aware of it and so great as to make it highly probable that harm would follow.

If you find that Dale Sterritt made an omission or failed to disclose a material fact, then it is presumed that Rahr relied upon the omission or failure to disclose. Dale Sterritt may rebut this presumption if he proves, by a preponderance of the evidence, that even if the material fact had been disclosed, Rahr's decision regarding the transaction would not have been different.

Rahr must also prove by a preponderance of the evidence that the material misrepresentations or omissions proximately caused injury to him. A plaintiff is not required to show that the alleged misrepresentations or omissions were the sole or exclusive cause of the damages incurred by him but must show that the misrepresentations or omissions played a substantial part in bringing about or causing the alleged damage.

Section 18

Rahr also claims that Dale Sterritt violated Section 18 of the Securities Exchange Act of 1934. To show a Section 18 violation, Rahr must prove by a preponderance of the evidence that:

- a. Dale Sterritt made or caused to be made a material misrepresentation or omission in a document filed with the Securities and Exchange Commission;
- b. Rahr relied upon the misrepresentation or omission in purchasing Continental Investment Corporation stock;
- c. the price at which Rahr bought the Continental Investment Corporation stock was affected by the misrepresentation or omission; and
- d. Rahr suffered damages as a result.

A misrepresentation or omission is "material" if it relates to a matter that would be of some importance to a reasonable investor when deciding how to invest. A minor or trivial detail is not material.

Damages are a result of a misrepresentation or omission if they would not have occurred except for the misrepresentation or omission.

Secondary Liability Under The Federal Securities Laws

I have just described to you what Rahr must prove to show that Dale Sterritt committed a direct or primary violation of the federal securities laws. Rahr also claims that even though certain defendants were not primary violators of the federal securities laws, those defendants are nevertheless secondarily liable because they controlled the primary violator. I will now explain to you what it means for one defendant to control a direct violator of the securities laws.

A defendant is liable as a "control person" if --

- a. he had actual power or influence over another who committed a violation, and
- b. he induced or participated in the violation.

A defendant controlled another if he possessed, directly or indirectly, the power to direct or cause the direction of the management and policies of another, whether through the ownership of voting securities, by contract, or otherwise.

To be liable as a "control person," a defendant did not actually have to participate in the transaction or transactions that violated Section 18 or Rule 10b-5 of the Securities Exchange Act of 1934.

QUESTION NO. 4:

What sum of money, if paid now in cash, would fairly and reasonably compensate Rahr for damages that proximately resulted from the wrongful conduct you found in Question 1, 2, and/or 3?

INSTRUCTION: Consider the following elements of damages, if any, and none other: (a) The difference, if any, between the price Rahr paid for stock in Continental Investment Corporation and the fair market value that stock would have had, on the date Rahr purchased it, if there had been no wrongful conduct, and (b) Any additional pecuniary loss or expenses suffered or incurred by Rahr as a result of the wrongful conduct.

Answer in dollars and cents, if any, or none.

ANSWER: \$ 12,185,712.00

Answer Question No. 5.

QUESTION NO. 5:

Did Dale Sterritt commit statutory fraud against Rahr in a transaction involving stock in a corporation?

INSTRUCTION: Answer "Yes" or "No."

ANSWER: YES

If your answer to Question No. 5 is "Yes," then answer the following question. Otherwise, do not answer the following question.

Alternative Liability for Statutory Fraud Under State Law

Statutory fraud also occurs when --

- a. a person has actual awareness of the falsity of a representation or promise made by another person, and
- b. fails to disclose the falsity of the representation or promise to the person defrauded, and
- c. benefits from the false representation or promise.

Actual awareness may be inferred where objective manifestations indicate a person acted with actual awareness.

“Representation or promise” means the representation or promise you found to be fraud in answer to Question No. 5.

Conspiracy

A conspiracy is a combination of two or more persons to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means. To establish a conspiracy, Rahr must prove, by a preponderance of the evidence, all of the following elements:

- (1) two or more persons,
- (2) having an object to be accomplished,
- (3) a meeting of the minds on the object or course of action,
- (4) one or more unlawful, overt acts, and
- (5) resulting damage to the injured party as a proximate result thereof.

A party without actual knowledge of the object or purpose of a conspiracy cannot be a co-conspirator. A party cannot agree, either expressly or tacitly, to the commission of a wrong of which he is not actually aware.

A conspiracy requires specific intent to participate in the conspiracy on the part of each co-conspirator. It is not enough that a defendant was collaterally involved in a relevant transaction and had good reason to believe that a conspiracy existed. The defendant must have agreed with one or more of the other co-conspirators and intended to have brought about the illegal object of the conspiracy.

QUESTION NO. 8:

Was any of the following defendants part of a conspiracy to commit the wrongful conduct that you found in response to Question 5 and/or 7?

INSTRUCTION: Answer "Yes" or "No" for each of the following defendants.

	<u>YES</u>	<u>NO</u>
(a) Richard D. Sterritt, Sr.	<u>✓</u>	<u> </u>
(b) Edward W. Roush, Jr.	<u>✓</u>	<u> </u>
(c) Larry Wayne Sterritt	<u>✓</u>	<u> </u>
(d) Freddie Joe Royer, Jr.	<u>✓</u>	<u> </u>
(e) Sterritt Properties, Inc.	<u>✓</u>	<u> </u>
(f) 20th Century Holdings, Inc.	<u>✓</u>	<u> </u>
(g) Sarah Sterritt	<u> </u>	<u>✓</u>
(h) Kanayo Wadhwani	<u> </u>	<u>✓</u>
(i) Suresh Chainani	<u> </u>	<u>✓</u>
(j) Dresco Investments, Inc.	<u> </u>	<u>✓</u>
(k) Richard Straza	<u>✓</u>	<u> </u>
(l) Malcolm M. Kelso	<u>✓</u>	<u> </u>

Damages for Fraud

“Proximate cause” means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Consider the following elements of damages, if any, and none other.

- a. The difference, if any, between the price Rahr paid for stock in Continental Investment Corporation and the fair market value that stock would have had, on the date Rahr purchased it, if there had been no wrongful conduct.
- b. Any additional pecuniary loss or expenses suffered or incurred by Rahr as a result of the fraud.

Negligent Representation

Negligent misrepresentation occurs when --

- a. a party makes a representation in the course of his business or in a transaction in which he has a pecuniary interest,
- b. the representation supplies false information for the guidance of others in their business, and
- c. the party making the representation did not exercise reasonable care or competence in obtaining or communicating the information.

Damages for Negligent Misrepresentation

“Proximate cause” means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Consider the following elements of damages, if any, and none other.

- a. The difference, if any, between the price Rahr paid for stock in Continental Investment Corporation and the fair market value that stock would have had, on the date Rahr purchased the it, if there had been no wrongful conduct.
- b. Any additional pecuniary loss or expenses suffered or incurred by Rahr as a result of the misrepresentation.

Certain Definitions Relating to Question No. 12

“Clear and convincing evidence” is the standard of proof defined on page 7 above.

“Malice” means --

- a. a specific intent by a defendant to cause substantial injury to Rahr; or
- b. an act or omission by a defendant,
 - i. which, when viewed objectively from the standpoint of the defendant at the time of its occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
 - ii. of which the defendant had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others.

“Fraud” means --

- a. a material misrepresentation,
- b. made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion,
- c. made with the intention that it should be acted on by the other party, and
- d. that is acted upon by the other party in reliance and that thereby causes injury.

QUESTION NO. 12:

Do you find by clear and convincing evidence that the harm Rahr experienced from the conspiracy you found in answer to Question No. 8, or the negligent misrepresentation you found in answer to Question No. 10, was a result of malice or fraud?

INSTRUCTION: Answer "Yes" or "No" for each of the defendants for whom your answer to Question Nos. 8 and/or 10 is "Yes."

	<u>YES</u>	<u>NO</u>
(a) Richard D. Sterritt, Sr.	<u>✓</u>	<u> </u>
(b) Edward W. Roush, Jr.	<u>✓</u>	<u> </u>
(c) Freddie Joe Royer, Jr.	<u>✓</u>	<u> </u>
(d) Sterritt Properties, Inc.	<u>✓</u>	<u> </u>
(e) Malcolm M. Kelso	<u>✓</u>	<u> </u>
(f) Dale Sterritt	<u>✓</u>	<u> </u>

If your answer to Question Nos. 6, 7 and/or 12 is "Yes" for any defendant, then answer the following question only for that defendant or those defendants. Otherwise, do not answer the following question.

and you may impose punitive damages against one or more of the defendants, and not others, or against more than one defendant in different amounts.

Exemplary damages can be assessed against a corporation for the acts of one acting or purporting to act on its behalf if, but only if --

- a. the corporation authorized the doing and the manner of the act, or
- b. the one acting or purporting to act on the corporation's behalf was unfit and the corporation was reckless in employing him, or
- c. the one acting or purporting to act on the corporation's behalf was employed in a managerial capacity and was acting in the scope of employment, or
- d. the corporation or a manager of the corporation ratified or approved the act.

Failure to Comply With Fiduciary Duty

Because Dale Sterritt and Larry Wayne Sterritt were officers and/or directors of CIC, Dale Sterritt and Larry Wayne Sterritt each owed a fiduciary duty to Continental Investment Corporation ("CIC"). In addition, because Sterritt Properties was the majority and controlling shareholder of CIC, and Richard D. Sterritt, Sr. was the beneficial owner of the CIC shares owned by Sterritt Properties, Sterritt Properties and Richard D. Sterritt, Sr. owed a fiduciary duty to CIC.

A defendant failed to comply with his fiduciary duty if he usurped or misappropriated a corporate opportunity of CIC. A defendant usurped or misappropriated a corporate opportunity of CIC if CIC had a legitimate interest or expectancy in the opportunity and the defendant appropriated that opportunity for himself or for another person or entity with which he was associated or affiliated.

A defendant also failed to comply with his fiduciary duty if --

- a. The transactions in question were not fair and equitable to CIC;
- b. The defendant failed to make reasonable use of the confidences that CIC placed in him;
- c. The defendant failed to act in the utmost good faith and failed to exercise the most scrupulous honesty toward CIC;
- d. The defendant failed to place the interests of CIC before his own, used the advantage of his position to gain any benefit for himself at the expense of CIC, and placed himself in any position where his self-

QUESTION NO. 14:

Did any of the following defendants fail to comply with his fiduciary duty to CIC?

INSTRUCTION: Answer "Yes" or "No" for each of the following defendants.

	<u>YES</u>	<u>NO</u>
(a) Richard D. Sterritt, Sr.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(b) Larry Wayne Sterritt	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(c) Dale Sterritt	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(d) Sterritt Properties, Inc.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

If your answer to Question No. 14 is "Yes" for any defendant, then answer the following question only for that defendant or those defendants. Otherwise, do not answer the following question.

Conspiracy to Fail to Comply With Fiduciary Duty

A conspiracy is a combination of two or more persons to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means. To establish a conspiracy, Rahr must prove, by a preponderance of the evidence, all of the following elements:

- (1) two or more persons,
- (2) having an object to be accomplished,
- (3) a meeting of the minds on the object or course of action,
- (4) one or more unlawful, overt acts, and
- (5) resulting damage to the injured party as a proximate result thereof.

A party without actual knowledge of the object or purpose of a conspiracy cannot be a co-conspirator. A party cannot agree, either expressly or tacitly, to the commission of a wrong of which he is not actually aware.

A conspiracy requires specific intent to participate in the conspiracy on the part of each co-conspirator. It is not enough that a defendant was collaterally involved in a relevant transaction and had good reason to believe that a conspiracy existed. The defendant must have agreed with one or more of the other co-conspirators and intended to have brought about the illegal object of the conspiracy.

QUESTION NO. 16:

Was any of the following defendants part of a conspiracy to commit the wrongful conduct that you found in response to Question No. 14?

INSTRUCTION: Answer "Yes" or "No" for each of the following defendants.

	<u>YES</u>	<u>NO</u>
(a) Richard D. Sterritt, Sr.	<u>✓</u>	<u> </u>
(b) Edward W. Roush, Jr.	<u>✓</u>	<u> </u>
(c) Larry Wayne Sterritt	<u>✓</u>	<u> </u>
(d) Freddie Joe Royer, Jr.	<u>✓</u>	<u> </u>
(e) Sterritt Properties, Inc.	<u>✓</u>	<u> </u>
(f) 20th Century Holdings, Inc.	<u>✓</u>	<u> </u>
(g) Sarah Sterritt	<u> </u>	<u>✓</u>
(h) Kanayo Wadhvani	<u> </u>	<u>✓</u>
(i) Suresh Chainani	<u> </u>	<u>✓</u>
(j) Dresco Investments, Inc.	<u> </u>	<u>✓</u>
(k) Richard Straza	<u>✓</u>	<u> </u>
(l) Malcolm M. Kelso	<u>✓</u>	<u> </u>

Damages for Failure to Comply With Fiduciary Duty

“Proximate cause” means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Consider the following elements of damages, if any, and none other.

- a. The value, if any, of any corporate opportunity of CIC usurped or misappropriated by the defendant.
- b. Any additional pecuniary loss or expenses suffered or incurred by CIC as a result of the breach of fiduciary duty.

Certain Definitions Relating to Question No. 18

“Clear and convincing evidence” is the standard of proof defined on page 7
above.

“Malice” means --

- a. a specific intent by a defendant to cause substantial injury to CIC; or
- b. an act or omission by a defendant,
 - i. which, when viewed objectively from the standpoint of the defendant at the time of its occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
 - ii. of which the defendant had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others.

“Fraud” means --

- a. a material misrepresentation,
- b. made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion,
- c. made with the intention that it should be acted on by the other party, and
- d. that is acted upon by the other party in reliance and that thereby causes injury.

QUESTION NO. 18:

Do you find by clear and convincing evidence that the harm experienced by CIC from the failure to comply with fiduciary duty you found in answer to Question No. 14, or the conspiracy you found in answer to Question No. 16, was a result of malice or fraud?

INSTRUCTION: Answer "Yes" or "No" for each of the defendants for whom your answer to Question Nos. 14 and/or 16 is "Yes."

	<u>YES</u>	<u>NO</u>
(a) Richard D. Sterritt, Sr.	<u>✓</u>	<u> </u>
(b) Edward W. Roush, Jr.	<u>✓</u>	<u> </u>
(c) Larry Wayne Sterritt	<u>✓</u>	<u> </u>
(d) Freddie Joe Royer, Jr.	<u>✓</u>	<u> </u>
(e) Sterritt Properties, Inc.	<u>✓</u>	<u> </u>
(f) Malcolm M. Kelso	<u>✓</u>	<u> </u>
(g) Dale Sterritt	<u>✓</u>	<u> </u>

If your answer to Question No. 18 is "Yes" for any defendant, then answer the following question only for that defendant or those defendants. Otherwise, do not answer the following question.

and you may impose punitive damages against one or more of the defendants, and not others, or against more than one defendant in different amounts.

Exemplary damages can be assessed against a corporation for the acts of one acting or purporting to act on its behalf if, but only if --

- a. the corporation authorized the doing and the manner of the act, or
- b. the one acting or purporting to act on the corporation's behalf was unfit and the corporation was reckless in employing him, or
- c. the one acting or purporting to act on the corporation's behalf was employed in a managerial capacity and was acting in the scope of employment, or
- d. the corporation or a manager of the corporation ratified or approved the act.

Certain Definitions Relating to Question No. 20

“Securing the execution of a document by deception” occurs when a person causes another person to sign or execute any document affecting property and/or the pecuniary interest of any person, and does so by deception, with the intent to defraud or harm any person.

A person acts with intent with respect to the nature of his conduct or to a result of his conduct when it is the conscious objective or desire to engage in the conduct or cause the result.

“Deception” means --

- a. creating or confirming by words or conduct a false impression of law or fact that is likely to affect the judgment of another in the transaction, and that the actor does not believe to be true; or
- b. failing to correct a false impression of law or fact that is likely to affect the judgment of another in the transaction, that the actor previously created or confirmed by words or conduct, and that the actor does not now believe to be true; or
- c. preventing another from acquiring information likely to affect his judgment in a transaction; or
- d. promising performance that is likely to affect the judgment of another in the transaction and that the actor does not intend to perform or knows will not be performed.

QUESTION NO. 20:

In connection with any of the transactions at issue in this case, did any of the following defendants secure the execution of a document by deception?

INSTRUCTION: Answer "Yes" or "No" for each of the following defendants.

	<u>YES</u>	<u>NO</u>
(a) Richard D. Sterritt, Sr.	<u>✓</u>	<u> </u>
(b) Edward W. Roush, Jr.	<u>✓</u>	<u> </u>
(c) Dale Sterritt	<u>✓</u>	<u> </u>
(d) Freddie Joe Royer, Jr.	<u>✓</u>	<u> </u>
(e) Malcolm M. Kelso	<u>✓</u>	<u> </u>

QUESTION NO. 21:

In connection with any of the transactions at issue in this case, did any of the following defendants commit forgery with intent to defraud or harm another?

INSTRUCTION: Answer "Yes" or "No" for each of the following defendants.

	<u>YES</u>	<u>NO</u>
(a) Richard D. Sterritt, Sr.	<u>✓</u>	<u> </u>
(b) Edward W. Roush, Jr.	<u>✓</u>	<u> </u>
(c) Dale Sterritt	<u>✓</u>	<u> </u>
(d) Freddie Joe Royer, Jr.	<u>✓</u>	<u> </u>

"Property" means: (a) real property; (b) tangible or intangible personal property, including anything severed from land; or (c) a document, including money, that represents or embodies anything of value.

"Consent" means assent in fact, whether express or implied.

"Effective consent" means consent by a person legally authorized to act for the owner. Consent is not effective if induced by deception or coercion.

Certain Definitions Relating to Question No. 23

“Misapply” means a person deals with property or money contrary to an agreement under which the person holds the property or money or contrary to a law prescribing the custody or disposition of the property or money.

“Substantial risk of loss” means it is more likely than not that the loss will occur.

A person acts “intentionally” with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

Responsibility of Individual For Corporate Conduct

A defendant is responsible for the conduct of a corporation if the corporation was organized and operated as a mere tool or business conduit of the defendant and there was such unity between the corporation and the defendant that the separateness of the corporation had ceased and holding only the corporation responsible would result in injustice.

In deciding whether there was such unity between a corporation and a defendant that the separateness of the corporation had ceased, you are to consider the total dealings of the corporation and the defendant, including --

- a. the degree to which the corporation's property had been kept separate from that of the defendant;
- b. the amount of financial interest, ownership, and control the defendant maintained over the corporation; and
- c. whether the corporation had been used for personal purposes of the defendant.

For Swan Financial Services, Inc.:

- (a) Dale Sterritt _____
- (b) Dick Sterritt _____

For Atremo Holdings, Inc., S.A.:

- (a) Dale Sterritt _____
- (b) Richard D. Sterritt, Sr. _____
- (c) Edward W. Roush, Jr. _____
- (d) Freddie Joe Royer, Jr. _____

For Wallenberg Financial, Inc., S.A.:

- (a) Dale Sterritt _____
- (b) Richard D. Sterritt, Sr. _____
- (c) Edward W. Roush, Jr. _____
- (d) Freddie Joe Royer, Jr. _____

June 26, 2000.


FOREPERSON